



Planning Inspectorate

The Planning Act 2008

A46 Newark Bypass

Examining Authority's Report
of Findings and Conclusions
and

Recommendation to the
Secretary of State for Transport

Examining Authority

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1 JULY 2025

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OVERVIEW

File Ref: TR010065

The application, dated 28 March 2024, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 26 April 2024.

The applicant is National Highways.

The application was accepted for examination on 23 May 2024.

The examination of the application began on 9 October 2024 and was completed on 8 April 2025.

The development proposed comprises on-line widening of the A46 for the majority of its length between Farndon Roundabout and the A1 in the vicinity of Newark-on-Trent. A new section of off-line dual carriageway would be provided between the western and eastern sides of the A1 before the new dual carriageway ties into the existing A46 to the west of Winthorpe Roundabout. The widening works include earthwork widening along the existing embankments, and new structures where the route crosses the Nottingham to Lincoln and East Coast Main Line railway lines, the River Trent, the Brownhills Link and the A1.

Summary of Recommendation:

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

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ERRATA SHEET – A46 Newark Bypass DCO

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 1 July 2025.

Page No.	Paragraph	Error	Correction
17	3.1.6	No titles to accompany links	Insert titles (titles should then remain consistent throughout Report)
140	3.11.138	Incorrect text : 'the circumstances are closer to those described in paragraph 6.5.5 of LTN 1/20, i.e. interurban and arterial roads'	Should read <u>6.5.6</u>
146	3.12.30	Incorrect text: or	Should read <u>of</u>
158	3.12.121	Incorrect text: OMTP	Should read <u>OTMP</u>
227	6.8.17 - 6.8.19	Inconsistency of reference: Exception / exemption	None suggested
Additional Issues raised (if necessary)			

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. An application (the Application) for the A46 Newark Bypass (the proposed development), Planning Inspectorate (the Inspectorate) reference TR010065, was submitted by National Highways (the Applicant) to the Inspectorate on 26 April 2024 under section (s) 37(2) of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 23 May 2024. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Transport.
- 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 Levelling Up, Housing and Communities (SoSLUHC) in its decision to accept the Application for Examination in accordance with s55 of the PA2008 [\[PD-001\]](#).
- 1.1.3. The proposed development is highway-related development. The proposed development falls within s22 of PA2008 and meets the definition of an NSIP set out in s14 of the PA2008. As such, the proposed development requires development consent in accordance with s31 of PA2008.
- 1.1.4. The Examination Library (EL) provides a record of all application documents and submissions to the examination, each of which is given a unique reference number eg [APP-001]. The reference numbers are used throughout this report and hyperlinks are included to allow the reader to access them directly.
- 1.1.5. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the Examining Authority (ExA) and the recommendation made in this report.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

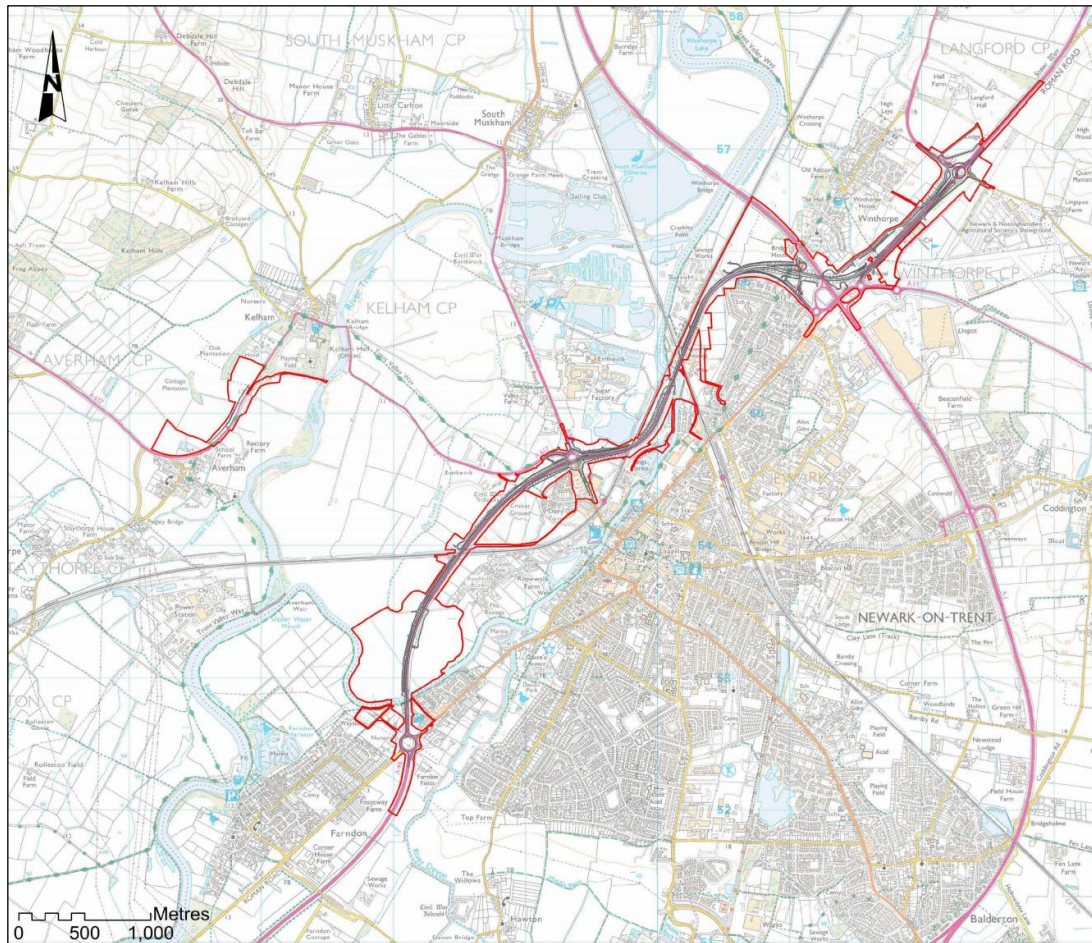
- 1.2.1. On 27 June 2024, Kenneth Stone, Paul Burley and David Love were appointed as the ExA for the Application under s61 and s65 of PA2008. Kenneth Stone was appointed as the Lead Member [\[PD-003\]](#).

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

- 1.3.1. The location of the proposed development is shown in the Location Plan [\[APP-004\]](#) (extract shown in Figure 1: Location Plan below) and the final versions of the Land Plans [\[REP8-002\]](#). The site lies within Newark and Sherwood District Council's and Nottinghamshire County Council's administrative areas and is wholly in England.

Figure 1: Location Plan and Red Line Boundary of the DCO as applied for



Source: [\[APP-004\]](#)

1.3.2.

Chapter 7 – Landscape and visual effects, of the Environmental Statement (ES) [\[REP7-024\]](#) provides a detailed description of the surrounding area. This is also summarised in the Case for the Scheme [\[REP7-074\]](#) and Chapter 2 of the ES – The Scheme [\[REP7-016\]](#). In summary, the characteristics of the surrounding area include:

- The current road is single carriageway and generally elevated on embankment due to the low-lying alluvial floodplain of the nearby River Trent.
- The River Trent forms a strong natural influence within an otherwise manmade landscape.
- There is a mixed geology of river terrace Sand and Gravel in Newark-on-Trent, and Riverine Clay, Sands and Gravels to the west, overlying various Mudstone strata.
- Several roundabouts form key junctions along the existing A46, linking with a number of A roads locally.
- The Nottingham to Lincoln railway line and East Coast Main Line (ECML) traverse the area, bringing further significant infrastructure to the landscape. The Nottingham to Lincoln line crosses the existing A46 twice, once at the south-western extent of the proposed development and the second at the north-eastern end of the proposed development. The ECML intersects the existing A46 once to the east of the British Sugar Factory.
- The existing A46 highway infrastructure is softened by roadside vegetation in places. Exceptions are the railway and watercourse crossings.

- To the north of the existing A46, farmland of irregular field patterns dominate, interspersed with small-scale settlement.
- To the south of the existing A46, the town of Newark-on-Trent forms a notable urban settlement. In the remainder of the report we refer to this urban settlement as Newark.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.3. The proposed development comprises on-line widening of the A46 for the majority of its length between Farndon Roundabout and the A1. A new section of off-line dual carriageway would be provided between the western and eastern sides of the A1 before the new dual carriageway ties into the existing A46 to the west of Winthorpe Roundabout. The widening works include earthwork widening along the existing embankments, and new structures where the route crosses the Nottingham to Lincoln and ECML railway lines, the River Trent, the Brownhills Link and the A1.

1.3.4. The proposed development works comprise:

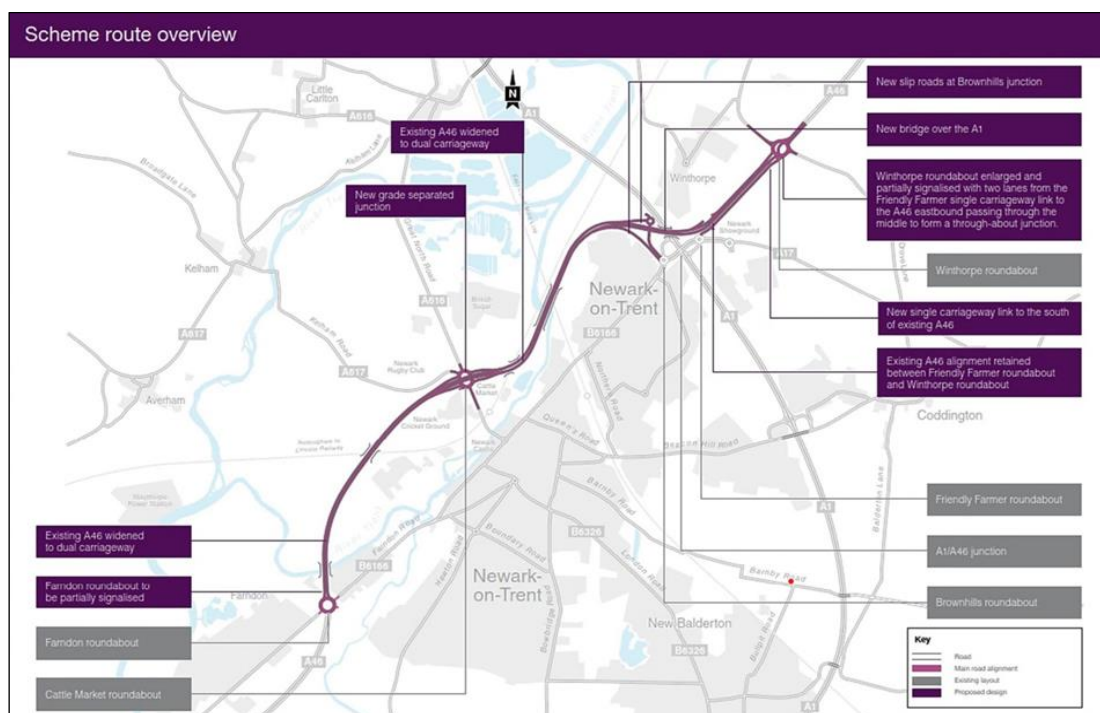
- The provision of a dual carriageway for a distance of 6.5 kilometres (approximately 4 miles) to provide two traffic lanes in both directions. This consists of the following key highways elements:
 - Partial signalisation of Farndon Roundabout at the southern extents of the proposed development.
 - Widening of the existing A46 for a length of 4.5 kilometres.
 - A new grade separated junction at Cattle Market Roundabout.
 - A new off-line section to bypass the existing Brownhills and Friendly Farmer roundabouts for a length of 1.3 kilometres.
 - A new grade separated link between Brownhills Roundabout and a new roundabout that is situated to the north of the new dual carriageway. These are linked to the new dual carriageway via a new northbound off-slip and southbound on-slip.
 - Retention of the existing dual carriageway between Winthorpe Roundabout and the A1 for a length of 0.8 kilometres.
 - An upgraded roundabout with partial signal controls at Winthorpe Roundabout.
 - A two-way parallel link road from Friendly Farmer to Winthorpe Roundabout situated to the south of the existing dual carriageway.
 - Tie in with local roads at Farndon, Cattle Market and Winthorpe roundabouts.
- New bridge structures over the Nottingham to Lincoln and ECML railway lines, River Trent and the A1.
- New culverts and extensions of existing culverts.
- A parking lay-by near Brownhills Junction.
- Improvements/ amendments to walking and cycling routes.
- Floodplain compensation at the following three floodplain compensation areas (FCAs):
 - Kelham and Averham FCA.
 - Farndon West FCA.
 - Farndon East FCA.
- Three potential borrow pit areas to support the creation of embankments required for the proposed development:
 - Farndon West.

- Farndon East.
- Brownhills Junction.
- The provision of drainage systems including attenuation ponds to drain carriageways and adjacent land.
- The provision of road lighting.
- The provision of road markings and new traffic signs.
- The provision of new road restraint systems.
- Earthworks in order to establish the road foundation (including cuttings and embankments) and also to provide visual screening and noise attenuation.
- Environmental mitigation including landscape planting, noise attenuation and areas identified for ecological mitigation.
- Boundary treatments such as boundary fencing, hedgerow planting and trees.
- Perimeter drainage ditches.
- Technology installations.
- Diversionary and protection works to public utilities including telephone, fibre-optics, electricity, gas, water supply and sewers.
- Associated accommodation works and maintenance access tracks.

Further details of the proposal for each Work No. can be found in [Appendix C: The recommended DCO](#).

1.3.5. An illustrative layout of the proposed development is provided below in Figure 2: Illustrative layout and location of proposed development (extract from ES Chapter 2: The Scheme [REP7-016](#)).

Figure 2: Illustrative layout and location of Proposed Development



Extract from ES Chapter 2: The Scheme [\[REP7-016\]](#)

RELEVANT PLANNING HISTORY

1.3.6. The applicant has considered the potential cumulative effects of other developments within an identified study area determined by the zones of influences for the various topic areas. In relation to the Zone of Influence (ZOI) for biodiversity, while a 30km

ZOI is used specifically for sites within the national site network designated for bat populations within the HRA, as there are no such sites within 30km of the proposed development, a 2km ZOI has been used. The largest ZOI extent is 2km reflective of the ZOI for Biodiversity, and this therefore reflects the extent of the study area for the identification of 'other existing development and/or approved development'. The detail of the assessment process is set out in the ES Chapter 15 – Combined and Cumulative Effects.

- 1.3.7. The applicant produced a long list of other developments which it consulted with stakeholders, which resulted in the suggestion for the addition of two further schemes. Table 15-5 of Chapter 15 of the ES provides the long list of 'other existing development and/or approved development'. The long list was reduced to a short list using the inclusion/exclusion criteria set out in Chapter 15, this amounts to a list of eight schemes and these are set out in table 15-6 of Chapter 15 which are then taken into account in the cumulative effects assessment.
- 1.3.8. As the application site is a linear scheme principally along the alignment of an existing highway adjacent to an urban location there are numerous other smaller sites which are referenced as appropriate in the relevant section of the report.
- 1.3.9. Neither Host Authority raised any issues with regard to the identification and assessment of the list of developments considered in the context of the cumulative assessment. Where specific matters have arisen as a result of the proposed development and other developments, these issues are addressed in the relevant section of this report.

1.4. THE EXAMINATION

LOCAL AUTHORITIES

- 1.4.1. The Host Authorities are Newark and Sherwood District Council (NSDC) and Nottinghamshire County Council (NCC) whose administrative areas the site is located within. Lincolnshire County Council (LCC) has also submitted representations as an adjoining Highway Authority.

START OF THE EXAMINATION

- 1.4.2. The preliminary meeting (PrMtg) took place on 8 October 2024 [[EV3-001](#)] and [[EV3-002](#)]. The ExA's Procedural Decisions (PD) and the Examination Timetable took full account of matters raised at the PrMtg. They were provided in the Rule 8 Letter [[PD-006](#)].
- 1.4.3. The examination began on 8 October 2024 and concluded on 8 April 2025. The principal components of and events around the examination can be seen in the Examination Timetable [[PD-006](#)] and are summarised below.

PROCEDURAL DECISIONS

- 1.4.4. The PDs taken by the ExA are recorded in the EL referenced [PD-]. They detail the ExA's decisions relating to the procedure of the examination and did not bear on the ExA's consideration of the planning merits of the proposed development. All were broadly discharged as intended and no further reference is made to them in this report.

STATEMENTS OF COMMON GROUND

1.4.5. By the end of the examination, the following bodies had concluded and signed Statements of Common Ground (SoCG) with the applicant:

- Canal & River Trust [\[REP7-090\]](#);
- Environment Agency [\[REP8-023\]](#);
- Historic England [\[REP5-049\]](#);
- Lincolnshire County Council [\[REP1-022\]](#);
- Natural England [\[REP7-094\]](#);
- Network Rail [\[REP7-119\]](#);
- Newark A46 Active Travel Partnership [\[REP4-022\]](#);
- Newark & Nottinghamshire Agricultural Society [\[REP8-026\]](#);
- Newark and Sherwood District Council [\[REP8-027\]](#);
- Nottinghamshire County Council [\[REP8-025\]](#);
- Think Again A46 Winthorpe Action Group [\[REP7-097\]](#); and
- Trent Valley Internal Drainage Board [\[REP5-055\]](#).

1.4.6. The SoCG with the following party remained unsigned at the end of the Examination:

- Lindum Developments Limited [\[REP8-024\]](#).

1.4.7. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this report. The weight (if any) to be afforded to unsigned SoCGs in particular contexts is considered in the relevant sections of this report.

WRITTEN QUESTIONS

1.4.8. The ExA asked three rounds of written questions:

- ExQ1 [\[PD-007\]](#) issued on 15 October 2024;
- ExQ2 [\[PD-009\]](#) issued on 14 January 2025; and
- ExQ3 [\[PD-011\]](#) issued on 12 March 2025.

1.4.9. The ExA made one request, on 1 April 2025, for comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010. This [\[PD-012\]](#) sought the applicant's opinion on the government's policy paper 'Strategic road network: interim settlement 2025 to 2026' which was published on 24 March 2025.

SITE INSPECTIONS

1.4.10. The ExA carried out the following Unaccompanied Site Inspections (USIs):

- 6 and 7 August 2024 [\[EV1-001\]](#); and
- 9 October 2024 [\[EV1-002\]](#).

1.4.11. The ExA carried out the following Accompanied Site Inspection (ASI) with notice to and in the company of parties:

- 6 December 2024 [\[EV1-004\]](#).

1.4.12. The ExA carried out the following Access Required Site Inspection (ARSI) with notice to and in the company of specific parties:

- 21 January 2025 [\[EV1-005\]](#).

HEARINGS

1.4.13. Hearings were held under s91 PA2008 into specific issues (ISHs), under s92 PA2008 into the compulsory acquisition of land and rights (CAHs) and under s93 PA2008 providing for open floor hearings (OFHs).

1.4.14. The following ISHs were held:

- ISH1, 3 December 2024 [\[EV7-002\]](#) and [\[EV7-003\]](#);
- ISH2, 4 December 2024 [\[EV8-002\]](#) and [\[EV8-003\]](#);
- ISH3, 4 December 2024 [\[EV9-002\]](#) and [\[EV9-003\]](#);
- ISH4, 5 December 2024 [\[EV10-002\]](#) and [\[EV10-003\]](#); and
- ISH5, 5 December 2024 [\[EV11-001\]](#).

1.4.15. The following CAHs were held:

- CAH1, 9 October 2024 [\[EV5-001\]](#) and [\[EV5-002\]](#); and
- CAH2, 3 December [\[EV6-002\]](#) and [\[EV6-003\]](#).

1.4.16. The following OFH was held:

- OFH1, 8 October 2024 [\[EV4-001\]](#).

1.5. CHANGES TO THE APPLICATION

1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the examination. The changes sought to address points raised by Interested Parties (IP) and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the examination.

1.5.2. The applicant's changes to the application documents, together with any additional information submitted, are detailed in the Application Document Tracker, the final version of which was submitted at DL8 [\[REP8-016\]](#). This provides a guide to all documents submitted as part of the Application and was updated at each deadline (DL) when new or revised documents were submitted. It provides a full record of all documentation submitted into the examination.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.6.1. By the end of the examination, the applicant had entered into agreements and obligations of the following types:

- Agreements under s106 of the Town and Country Planning Act 1990;
- Agreements under s253 of the Highways Act 1980;
- Commercial agreements (contracts); and
- Other undertakings and deeds under seal.

S106 / S253 agreements

1.6.2. These are referred to, where relevant, in subsequent sections of this report.

Commercial agreements

1.6.3. Some parties have confirmed that, during the examination, they have reached or are seeking to reach private agreements with the applicant regarding protection of their assets and/ or interests. These are referred to, where relevant, in subsequent sections of this report.

- 1.6.4. These undertakings, obligations and/ or agreements (other than unsigned or incomplete ones) have been taken fully into account by the ExA in all relevant sections of this report.

1.7. OTHER CONSENTS

- 1.7.1. In addition to the consents required under the PA2008, the applicant would require other consents to construct, operate and maintain the proposed development. These are identified in the Consents and Agreements Position Statement, the final version of which was submitted at DL7 [\[REP7-010\]](#) and are as follows:

- **Consent/ licence for the felling of trees** under the Forestry Act 1967.
- **Waste exemptions** for operations such as U1 (import of waste for use in construction) under the Environmental Permitting (England and Wales) Regulations 2016.
- **Environmental Permit** – Part B Local Authority Pollution Prevention and Control under the Local Authority Pollution Prevention and Control Act 1999.
- **Environmental Permit** – Mobile Treatment Plant Permit and Deployment under the Environmental Permitting (England and Wales) Regulations 2016 and the Pollution Prevention and Control Act 1999.
- **Environmental Permit** – Waste operation under the Environmental Permitting (England and Wales) Regulations 2016 and Pollution Prevention and Control Act 1999.
- **Agreement with the Environment Agency** that it is satisfied that the Definition of Waste: Development Industry Code of Practice (DoWCoP) route is acceptable for the excavated materials.
- **Licence to work with Asbestos** under the Control of Asbestos Regulations 2012.
- **Section 61 consent** if proposed by the contractor under Section 61 of the Control of Pollution Act 1974.
- **European Protected Species licence** under the Conservation of Habitats and Species Regulations 2017 in relation to bats.
- **A licence to interfere with badger setts** (dens) under section 10 of the Protection of Badgers Act 1992.
- **Water Vole Mitigation Licence** under the Wildlife and Countryside Act 1981.
- **Consent to discharge trade effluent** under Section 119 of the Water Industry Act 1991.
- **Environmental Permit** under the Environmental Permitting (England and Wales) Regulations 2016 in relation to temporary flood risk associated with construction.
- **Environmental Permit** under the Environmental Permitting (England and Wales) Regulations 2016 in relation to permanent flood risk associated with operation.
- **Full Water Abstraction Licence** under Section 24 of the Water Resources Act 1991 (as amended by the Water Act 2003) Water Abstraction and Impounding (Exemptions) Regulations 2017.
- **Environmental Permit** under the Environmental Permitting (England and Wales) Regulations 2016 bespoke water discharge activity and groundwater (point source) environmental permit during construction (i.e. this does not apply to operational discharges from the highway).
- **Environmental Permit** – bespoke water discharge activity and groundwater (point source) environmental permit during operation.
- **Land Drainage Consent** under Section 23 Land Drainage Act 1991.
- **Internal Drainage Board consent** under The Trent Valley and Lindsay Marsh IDB Byelaws dated January 2018.

- **Local Authority** (section 80 notice under the Building Act 1984 and Building Regulation compliance).

1.8. STRUCTURE OF THIS REPORT

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

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

1.8.2. This report is supported by the following appendices:

- [Appendix A](#) – Reference Tables.
- [Appendix B](#) – List of Abbreviations.
- [Appendix C](#) – The Recommended DCO.
- [Appendix D](#) – CA and TP Information.

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

- 2.1.1. This chapter identifies the key legislation, policy and Local Impact Reports (LIRs) that the Examining Authority's (ExA) recommendations are made against.

2.2. LEGISLATION AND POLICY

- 2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in appendix A to this report.

PLANNING ACT 2008

- 2.2.2. The Planning Act 2008 (PA2008) provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) (s104) has effect from that where no NPS has effect (s105). This is an application in respect of which there is an NPS in effect, National Policy Statement for National Networks 2015 (NPSNN 2015), and where a new NPS National Policy Statement for National Networks 2024 (NPSNN 2024) was designated on 24 May 2024 and which has effect for any applications accepted for examination on or after 24 May 2024. As this application was accepted for examination on 23 May the NPSNN 2024 does not have effect for the purposes of s104 of the PA2008. The content of and progress on draft NPSs must also be considered. The ExA has considered the statutory basis for examination, reporting and decision-making [\[PD-005\]](#) and has concluded that these must proceed under PA2008 s104 (decisions in cases where NPSs have effect). There are no substantial elements of the proposed development that fall outside the remit of relevant NPS policies and so PA2008 s105 (decisions in cases where no NPSs have effect) is not relevant.
- 2.2.3. An NPS has effect once it has been designated as such by Parliament. It continues then to have effect until it is withdrawn. In the process of withdrawal, a draft replacement NPS may include transitional provisions which clarify how an application prepared under a withdrawn NPS is to be managed moving forward. Draft (including replacement) NPSs do not have effect until they in turn are designated, and then only subject to any transitional provisions that may apply. However, the content of draft NPSs is a matter that is capable of being an important and relevant matter (PA2008 s104(2)(d)) to be considered by the SoS in their decision.
- 2.2.4. In this case, the application was accepted for examination (23 May 2024) before NPSNN 2024 was designated (24 May 2024), NPSNN 2015 is therefore the NPS in effect for the purposes of s104 of PA2008. The ExA considers NPSNN 2024 to be an important and relevant matter.
- 2.2.5. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision. These include any relevant NPS, any duly submitted Local Impact Report (LIR), any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

2.2.6. Section 104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:

- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations;
- where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment;
- where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- where the adverse impact of the Proposed Development would outweigh its benefits; and/ or
- where any condition prescribed for deciding an application otherwise than in accordance with an NPS is met.

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

EQUALITY ACT 2010

2.2.8. S149 of the Equality Act 2010 (EA2010) establishes a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the Secretary of State in decision-making. We had particular regard to the PSED in terms of holding in person, blended and virtual meetings, producing guidance and holding those meetings, and in our conduct of site inspections to ensure full appreciation of the potential impacts of the proposed development on persons with protected characteristics.

HUMAN RIGHTS ACT 1998

2.2.9. The assessment of the planning merits of the proposed development and the CA of land can engage various relevant Articles under the Human Rights Act 1998. We have had regard to them in chapter 3 of this report and refer to the Act where necessary. Implications in respect to CA are considered in chapter 6 of this report.

OTHER LEGISLATION

2.2.10. 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 Table A 2 – Summary of Relevant Legislation for the Proposed Development in [Appendix A](#) of this report. All applicable legislation has been considered by the ExA as required and the findings and recommendations in this report are framed so as to identify and enable the SoST to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSNN 2015 forms the primary policy context for this examination. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008.

2.3.2. NPSNN 2015 was designated on 14 January 2015 for roads for which the SoST is the highway authority. It sets out the national policy for highways-related

development and is relevant to this application because the proposed development comprises the construction and alteration of a highway where the speed limit for any class of vehicle is expected to be 50mph or greater, the area of development exceeds 12.5ha and National Highways is the highway authority.

- 2.3.3. NPSNN 2015 sets out the need for and 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.
- 2.3.4. NPSNN 2024 was designated on 24 May 2024 but was only to come into effect for applications accepted for examination after that date. As this Application was accepted for examination on 23 May 2024 it does not have effect, in the terms of s104 of the PA2008, for this Application. However, given that it is a recently designated NPS providing a statement of current government policy the ExA considers it is an important and relevant matter for the SoST to have regard to in the context of s104 of the PA2008.
- 2.3.5. It provides planning guidance for promoters of nationally significant infrastructure projects on the road and rail networks and notes that there is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth.
- 2.3.6. It further advises that sitting alongside the NPS are the investment programmes for the road and rail networks – the Rail Investment Strategy (HLOS) and the Road Investment Strategy (RIS). These, together with the business plans prepared by the relevant delivery bodies, provide detailed articulation of the government's funding strategy for the road and rail networks and investment priorities over forthcoming periods.

2.4. OTHER RELEVANT NATIONAL POLICIES

- 2.4.1. Other relevant government policy has been taken into account by the ExA. including the following:

The National Planning Policy Framework, December 2024

- 2.4.2. The latest National Planning Policy Framework (NPPF) was published in December 2024. It was amended on 7 February 2025 to correct cross references and make an amendment to paragraph 155 to make its intent clear. The NPPF, and the accompanying Planning Practice Guidance (PPG) set out the government's planning policies for England and how these are expected to be applied.
- 2.4.3. Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the PA2008 and the relevant NPSSs, but the NPPF is a relevant consideration on decision making for this application. Paragraphs 7 and 8 state that the government's approach to achieving sustainable development means that the planning system

has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.

- 2.4.4. Both the NPPF and the PPG are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that project. They are therefore important and relevant matters in relation to where they raise points in respect of this development and its impacts.

Noise Policy Statement for England, March 2010

- 2.4.5. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The statement sets out the long-term vision of the government's noise policy which is to:

“promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development”.

- 2.4.6. The Explanatory Note within the NPSE provides further guidance on defining significant adverse effects and adverse effects using the concepts:

- No Observed Effect Level (NOEL) - the level below which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established.
- Lowest Observable Adverse Effect Level (LOAEL) - the level above which adverse effects on health and quality of life can be detected.
- Significant Observed Adverse Effect Level (SOAEL) - the level above which significant adverse effects on health and quality of life occur.

- 2.4.7. When assessing the effects of the proposed development on noise matters, the aims of the development should firstly be to avoid noise levels above the SOAEL; and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

- 2.4.8. The potential noise impacts of the proposed development are considered in chapter 3 of this report.

2.5. DEVELOPMENT PLAN POLICIES

- 2.5.1. The applicant summarised the Development Plan position in its Case for the Scheme which at section 6.15 sets out the local policy context and the relevant local plan policies [\[REP7-074\]](#). The host authorities in their LIRs also drew attention to relevant development plan policies. Table A 3 - Regional and Local Plans in Appendix A of this Report sets out those policies. Individual policies are referred to as required in chapter 3 of this report.

- 2.5.2. We have taken all regional and local policies and precedent development approvals into account in our considerations.

2.6. MADE DEVELOPMENT CONSENT ORDERS

- 2.6.1. The dDCO includes wording derived from other made Development Consent Orders as explained in the Explanatory Memorandum (EM), the final version of the EM was submitted at DL8 [\[REP8-006\]](#) and the final version of the dDCO was submitted at [\[AS-106\]](#). Given this is the applicant's final draft DCO we have referred to this as the

applicant's preferred DCO (pDCO). A list of these Orders is set out in Table A 4 - Made DCOs of appendix A of this report.

2.7. LOCAL IMPACT REPORTS

2.7.1. Two LIRs were submitted into the examination at DL1 by the following local authorities:

- Newark and Sherwood District Council [[REP1-035](#)]; and
- Nottinghamshire County Council [[REP1-038](#)].

2.7.2. LIR content has been considered throughout the examination and in this report. It must be considered during the decision by the SoST pursuant to PA2008 s104(2)(b).

2.7.3. The issues raised are considered in further detail in relation to relevant planning issues in chapter 3 of this report.

2.7.4. Amongst other matters, LIRs identify local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. Table A5 in [appendix A](#) lists the individual local policies that are relevant to the proposed development.

2.8. ENVIRONMENTAL IMPACT ASSESSMENT

2.8.1. The applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the proposed development was EIA development.

2.8.2. On 14 September 2022, the applicant submitted a [Scoping Report](#) to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared ([a Scoping Opinion](#)).

2.8.3. On 21 October 2022 the Planning Inspectorate provided a Scoping Opinion [[APP-189](#)].

2.8.4. Overall, the ExA considers that the ES, as supplemented with additional information during the Examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

2.8.5. The ExA considered that changes to the documentation, comprising the ES during the examination, did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 of this report will summarise and consider the environmental effects under each topic section.

2.9. HABITATS REGULATIONS ASSESSMENT

2.9.1. The SoS 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.

2.9.2. 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 SoS decisions prepared under the PA2008, a record of considerations relevant to HRA has been set out in [chapter 4](#) of this report.

2.10. TRANSBOUNDARY EFFECTS

- 2.10.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 17 September 2024 [\[OD-005\]](#) 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.
- 2.10.2. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the examination. The ExA is satisfied, on the basis of the information provided by the Applicant and Natural England's agreement that the correct sites had been considered in the HRA [\[REP5-075\]](#), that the proposed development would not have an LSE on European sites in any EEA States.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The chapter is structured firstly to examine matters of principle, including need and alternatives, followed by generic topic headings. These are arranged in an alphabetical order with the exception of cultural heritage which we inserted before landscape and visual amenity due to their close association and cumulative effects which more appropriately fell to be considered after we had considered the other effects. 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 identify the policy background, followed by a summary of the application as made, then report on the issues raised by Interested Parties (IPs), the main issues considered and examined during the examination for each topic. Findings and conclusions will then be drawn for each topic together with the weight the ExA attaches to those findings in relation to the overall conclusions on the basis of a scale as to whether the effects carry a little weight, moderate weight, great weight, or very great weight for/ against the making of the Development Consent Order (DCO).

INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAP I)

3.1.3. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA made an Initial Assessment of the Principal Issues (IAP I) arising from the Application in advance of the Preliminary Meeting (PrMtg). This formed an initial assessment of the issues based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the proposed development. The IAP I was raised at the Preliminary Meeting (PrMtg) and no other key topics were identified during the examination. The IAP I can be found in annex C of the Rule 6 letter [\[PD-005\]](#).

3.1.4. The broad issues identified in the IAP I were covered under the following topic areas:

- General overarching matters including Policy, Need and Alternatives;
- Air Quality;
- Biodiversity;
- Climate and Carbon emissions;
- Geology and Soils;
- Historic Environment;
- Landscape and Visual effects;
- Material assets and Waste;
- Noise and Vibration;
- Population and Human Health;
- Transport and Traffic;
- Water Environment and Road Drainage inc Flooding; and
- Cumulative Effects.

THE PLANNING ISSUES IN THIS REPORT

3.1.5. The ExA considers that the issues raised by IPs were broadly in line with the IAP I and were subject to written and oral questioning during the examination. These are the issues that the ExA has used to structure the rest of chapter 3 which addresses each issue in turn. It should also be noted that the IAP I is a high-level framework.

The ExA has nevertheless had regard to all important and relevant matters arising from submissions from IPs and has reported on these, if required, within each section below.

3.1.6. The planning issues considered in this chapter are as follows:

- [3.2](#)
- [3.3](#)
- [3.4](#)
- [3.5](#)
- [3.6.](#)
- [3.7.](#)
- [3.8.](#)
- [3.8](#)
- [3.10](#)
- [3.11](#)
- [3.12.](#)
- [3.13](#)
- [3.14](#)

3.1.7. Impacts in relation to major accidents and natural disasters are addressed in Appendix 4.1 of the ES, which was updated at DL7 [\[REP7-044\]](#). No parties raised any issues in relation to these matters and whilst we had regard to the conclusions reached by the applicant we considered it did not require further examination.

3.2. THE PRINCIPLE OF THE DEVELOPMENT AND ASSESSMENT OF ALTERNATIVES

3.2.1. In addition to the issues arising from the IAPI, and with reference to the applicant's Case for the Scheme [\[REP7-074\]](#), the ExA has considered the principle of the development in terms of need and conformity with designated NPS policy (NPSNN 2015). The ExA has also paid regard to policy in NPSNN 2024 which it considers to be important and relevant.

3.2.2. In addition, the ExA has explored throughout the examination whether there are any alternatives to the proposed development. The applicant's assessment of alternatives is set out in chapter 3 of the Environmental Statement (ES) [\[REP7-018\]](#).

POLICY CONSIDERATIONS

National Policy

National Policy Statement for National Networks, 2015

Need

3.2.3. The drivers of the need for development of the national road network are set out at paragraphs 2.1 to 2.11 of NPSNN 2015. It is stated that there is a critical need to improve the national networks to address road congestion and a need for development to support national and local economic growth. There is also a need to improve the integration between the transport modes, including the linkages to ports and airports and broader environment, safety and accessibility goals will also generate requirements for development. In particular, development can address safety problems, enhance the environment or enhance accessibility for non-motorised users.

- 3.2.4. Paragraph 2.13 of NPSNN 2015 notes that the Strategic Road Network (SRN) provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals. It serves a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment.
- 3.2.5. Paragraph 2.21 and Table 1 set out options for addressing need but note that whilst there is a range of options for meeting the identified need – including maintenance and management, demand management and modal shift – relying solely on these alternatives is not viable or desirable.
- 3.2.6. Paragraph 2.22 states that without improving the road network, including its performance, it will be difficult to support further economic development, employment and housing and this will impede economic growth and reduce people's quality of life. The government has therefore concluded that at a strategic level there is a compelling need for development of the national road network.
- 3.2.7. Paragraph 2.23 then notes that the government's wider policy is to bring forward improvements and enhancements to the existing SRN including 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. It also includes improvements to trunk roads, in particular dualling of single carriageway strategic trunk roads and additional lanes on existing dual carriageways to increase capacity and to improve performance and resilience.

Road Investment Strategy 2

- 3.2.8. Paragraph 1.21 of NPSNN 2015 notes that the Road Investment Strategy (RIS) sits alongside the NPS and, together with the business plan prepared by the relevant delivery body, provides detailed articulation of the government's funding strategy for the road network and investment priorities over forthcoming periods.
- 3.2.9. RIS2, published by the Department for Transport, sets out the five-year strategy for investment in and management of the SRN from April 2020 to March 2025. It states (page 73) that it will address more of the most notorious delays, including around Newark in Nottinghamshire. On page 98 it is stated that the A46 Newark Bypass is committed for Road Period 2 (financial years 2020/21 to 2024/25), and it is noted that:

"Midlands Connect has highlighted the role of the A46 in connecting the Midlands, running from Lincoln to Gloucestershire via Leicester and Coventry. Much of this road is already high quality dual carriageway, and by filling in key sections it would be possible to create a coast-to-coast highway without the need for major new road-building across open countryside.

"The single greatest gap in this route is the A46 at Newark. An upgraded dual carriageway opened in 2012, but which stopped three miles short of the A1. We now propose to fill in this gap, eliminating regular traffic jams and creating a consistently good connection from the A1 at Newark to the M1 at Leicester. Coupled with the upgrades committed in RIS1, this means that the A46 dual carriageway will run unimpeded from Lincoln to Warwick.

"We are also developing a proposal to improve the A1 in South Yorkshire. Together with the upgrade to the A46, this would effectively create a bypass to allow traffic to avoid the M1 around Nottingham, Sheffield and Leeds, opening up a high quality

corridor for long-distance journeys to and from Scotland, the North East and Northern Ireland.”

- 3.2.10. By the close of the examination the applicant restated [REP8-033], in its response to the ExA’s Rule 17 request in relation to the government’s policy paper ‘Strategic road network: interim settlement 2025 to 2026’ which was published on 24 March 2025 [PD-012], that the government maintained support for the proposed development.

Alternatives

- 3.2.11. Paragraph 4.27 of NPSNN 2015 states that all projects should be subject to an options appraisal which should consider viable modal alternatives but that where projects have been subject to a full options appraisal in achieving their status within the RIS, option testing need not be considered by the ExA or the decision-maker. For national road schemes, a proportionate consideration of alternatives will have been undertaken as part of the investment decision-making process. It is not necessary for the ExA to reconsider this process, but they should be satisfied that this assessment has been undertaken.

- 3.2.12. As noted in paragraph 4.26, there is also a requirement for the applicant to consider alternatives in line with various other pieces of legislation, in particular:

- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations);
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD); and
- Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations).

National Policy Statement for National Networks, 2024

- 3.2.13. NPSNN 2024 notes that growth in the economy and the population will increase the demands placed upon the Strategic Road Network (SRN). Without investment and infrastructure interventions, increasing demand will lead to decreasing network performance for users, e.g. poorer journey time reliability, which comes with economic and social costs and can constrain job opportunities. Specific projects can play a role in improving connectivity between towns and cities to boost growth. (paragraphs 3.2, 3.4 and 3.7).
- 3.2.14. Resilience needs to be ensured to enable transport networks to perform as expected and account needs to be taken of risks associated with climate change. Safety is of paramount importance in the development of the transport network and contributes to achieving a resilient network (paragraphs 3.9, 3.13 and 3.18).
- 3.2.15. The government’s wider policy is to bring forward improvements and enhancements to the existing SRN where necessary, including new and improved junctions dualling of single carriageway strategic trunk roads (paragraph 3.46).
- 3.2.16. In respect of alternatives, the policy in NPSNN 2024 is not materially different from the policy in NPSNN 2015.

Local Policy

NSDC Amended Core Strategy, 2019

3.2.17. Policy NAP1 says that NSDC will support the implementation of strategic highway schemes at a number of locations. These include:

- A46 Link Capacity, Newark-on-Trent Bypass;
- A46/ A617 Cattle Market Roundabout;
- A46 Roundabout at Farndon;
- A1/ A17/ A46 Roundabout; and
- A1/ A46 Brownhills Roundabout.

THE APPLICANT'S CASE

Need

3.2.18. The main aims of the proposed development, set out in the applicant's Case for the Scheme, are to increase capacity and reduce traffic congestion on the A46 around Newark. This would directly contribute to the UK, regional and local governments' transport and economic growth plans by improving connectivity from Lincolnshire to the national motorway network, and improving route standard consistency for the A46, providing a consistent high-standard dual carriageway between the Midlands and Lincoln. The applicant's specific objectives are to:

- improve safety and reduce collisions for all users;
- improve journey time and journey time reliability along the A46 and its junctions between Farndon and Winthorpe, including on all approaches and the A1 slip roads;
- accommodate economic growth in Newark-on-Trent and the wider area by improving its strategic and local connectivity; and
- deliver better environmental outcomes by achieving a net gain in biodiversity and improving noise levels at Noise Important Areas along the A46 between Farndon and Winthorpe junctions.

3.2.19. Safety and journey time improvements are considered in Section 3.12 of this report, where it is concluded that the proposed development would help to reduce the number of accidents and deaths on the network and would improve journey times. Biodiversity is considered in section 3.4 and noise in section 3.10. It is concluded that there would be a moderate positive impact and negligible beneficial impact respectively on these two issues.

3.2.20. The applicant notes [\[REP7-074\]](#) that the economic performance and productivity of the Midlands lags behind the rest of England, particularly the south-east. While key regional industries are dependent on the A46, their productivity is weakened by unreliable journey times and major bottlenecks along the A46.

3.2.21. At the local level, there is below-average economic participation in Newark and Sherwood District when compared to the UK; the economic activity rate is 72%, approximately six percentage points below the UK average and the District has a significantly lower economic activity rate than neighbouring local authority areas and the wider region. The District also has a lower concentration of skilled labour than regional and national averages and the Castle and Bridge wards are amongst the 10% most deprived neighbourhoods in England. The government has identified Newark as an area with the most significant need (economic recovery and growth; improved transport connectivity; regeneration) of investment and it has been categorised in the highest Levelling Up tier.

3.2.22. The proposed development would contribute to economic growth including the RIS2 objective of improving network provisions along the 'Trans-Midlands Trade Corridor'

between the M5 and the Humber Ports. It would also strengthen a number of sectoral developments that are taking place across the wider Midlands area, comprising: the Humber Freeport, the automotive industry, the net zero industry, four Enterprise Zones, and the East Midlands 'Food Valley'.

- 3.2.23. It would also unlock housing and employment growth in Newark; Newark Business Park would accommodate a significant amount of Newark's employment growth but development is currently limited by the Brownhills Roundabout bottleneck. The delivery of new housing could also be negatively impacted by the failure of the proposed development to occur.

Alternatives

- 3.2.24. The applicant's assessment of alternatives in ES Chapter 3 [\[REP7-018\]](#) was based on the guidance in DMRB LA 104 Environmental Assessment and Monitoring.

- 3.2.25. Following the support for dualling the A46 at Newark in the government's Autumn Statement in 2014, the applicant undertook a sifting exercise identifying various options against which the congestion could be resolved. As noted in [\[REP2-037\]](#) the first Road Investment Strategy (RIS 1) identified the need to consider options for increasing the capacity of the A46 at Newark. This was explored further in ExQ1 where the applicant detailed that the narrative in RIS 2 refers to filling in the gap in the dual carriageway of the A46 at Newark rather than creating a new coast-to-coast highway across open countryside [\[REP2-037\]](#). Following RIS 1, the applicant undertook a 'Strategy, Shaping and Prioritisation' approach. Below is a summary of the options stages undertaken by the applicant to inform the proposed development:

- Identification of the need case (2014).
- Initial options identification and assessment – corridor and route sifting (2015).
- Options development, shortlisting and assessment (2016-2020).
- Options consultation (2020-2021).
- Option selection and development following Options consultation (2021-2022).
- Preferred route announcement (2022) followed by Statutory Consultation (2022).
- Design changes following Statutory Consultation (2022).
- Statutory and Non-Statutory Targeted Consultations (2023) leading to the preliminary design (2022-2023).

- 3.2.26. The applicant considered five different potential development corridors as described in ES Chapter 3 [\[REP7-018\]](#). In summary:

- A. Farndon moving north of Newark towards Muskham and then rejoining the A46 at Brough.
- B. Starts south of Farndon and moving towards Thorpe and following south of Newark before rejoining the A46 at Brough.
- C. The current line of the A46.
- D. Farndon moving north of Newark towards Muskham before joining the A1 back to the A46.
- E. South of Farndon and connecting to the A1 near Fernwood before re-joining the A46 near Winthorpe.

- 3.2.27. Each corridor was assessed against the proposed development's objectives and the NPSNN 2015. Furthermore, the DfT's Early Assessment and Sifting Tool (EAST) was used in the assessment process. Per NPSNN 2015 paragraph 4.26 and as explained in ES Chapter 3 paragraphs 3.3.41 to 3.3.43, this considered various environmental factors to reduce negative effects on the environment as follows:

- Historic environment;
- Biodiversity;
- Air quality;
- Noise;
- Landscape and visual;
- Water;
- Geology, soils and materials;
- People and communities;
- Climate; and
- Climate adaptation.

- 3.2.28. Of the five corridors, overall option C scored equal to B and E. However, it scored better with respect to modelling journey times, delays, incidents and reliability. Corridors A and D scored poorly in the EAST+ assessment, leaving option C as the overall preferred route.
- 3.2.29. Following corridor identification and sifting, route options were developed within Corridor C and assessed in terms of affordability, traffic, cost and benefit, and environmental implications, informed by an environmental assessment.
- 3.2.30. Paragraph 3.3.80 of ES Chapter 3 details that two options emerged within Corridor C. A summary of the environmental assessment conclusions for these is in Section 4.7 Environmental Assessment in the Options Summary Report.
- 3.2.31. The applicant details that Option 2 was selected on the basis of a number of factors, including safety, improved journey time reliability, and the level of overall support from the local community. Creating a flyover for the A46 to pass over Cattle Market roundabout and adding traffic lights at Farndon Roundabout meant that Option 2 would provide additional capacity and the greatest travel time savings on the road. Furthermore, Option 2 would have the most potential going forward to incorporate further embedded design and essential measures to help mitigate any potential significant effects, especially around Winthorpe and Cattle Market roundabouts.
- 3.2.32. In response to comments from Think Again Winthorpe Action Group (TAWAG) relating to noise and visual impact on the Winthorpe Conservation Area, the alignment was moved 75m further away from Winthorpe whilst still allowing for a curvature that would enable the national speed limit to be applied. This became the preferred route and titled Option 2 Modified. This forms the basis of the proposed development.

VIEWS OF IPs

Local Authorities

- 3.2.33. Host authority Newark and Sherwood District Council (NSDC) said [\[RR-048\]](#) that it recognises the benefits of the proposed development both locally and nationally and that it has been an important aspiration of the government's National Road Investment Strategy, an aspiration supported by a raft of partners including NSDC, Midlands Connect, Nottinghamshire County Council, Lincolnshire County Council and a number of highway authorities, Local Enterprise Partnerships and Local Planning Authorities from the Humber Ports to Tewkesbury.
- 3.2.34. NSDC also described [\[REP5-067\]](#) the proposed development as “*pivotal to the delivery of our Local Development Framework and allocated development*”.

- 3.2.35. Nottinghamshire County Council (NCC), a host authority and the local highways authority, said [\[RR-057\]](#) that it is strongly supportive in principle of the proposed development's objectives to increase network capacity, reduce delays and improve journey times.
- 3.2.36. North Kesteven District Council [\[RR-055\]](#) said that whilst the proposed development sits outside the boundary of the District, it nonetheless offers potential benefits for the economy of North Kesteven and Central Lincolnshire through improved and more reliable accessibility to Sleaford and to Lincoln and beyond to the A15 corridor towards the Humber. As such, the proposed development is capable as being seen as supporting housing and economic growth and in realising the vision for the District in line with the Central Lincolnshire Local Plan and North Kesteven's corporate plan.

Statutory Parties

- 3.2.37. North Muskham Parish Council [\[RR-056\]](#) and South Muskham & Little Carlton Parish Council [\[RR-067\]](#) both expressed support for the "*much needed dualling*" of the A46. Newark Town Council also supported the dualling of the A46 [\[REP1-037\]](#).

Other IPs

Support – Improved Journey Times

- 3.2.38. A number of RRs expressed support for the proposed development. [\[RR-019\]](#) said that it would improve the economy within Newark as it would attract people to come into the town without fear of being stuck in traffic for hours. [\[RR-040\]](#) noted the congestion caused in the town caused at busy times by the traffic joining the A1 from the A46 near Winthorpe and *vice versa* as a reason for their support.
- 3.2.39. [\[REP1-041\]](#) supported the proposed development, noting that the grade separation of the Cattle Market Roundabout was of fundamental importance and pointing out inter-relationships with other infrastructure and developments.
- 3.2.40. A local road haulage/ logistics company [\[RR-075\]](#) said that the A46's busy roundabouts cause significant queues on other A roads adjoining those roundabouts and that it is not uncommon for locals to avoid Newark town as a whole during these busy periods, leading to a loss of both economic activity and general sense of community within the town. It said that it is currently very difficult to run a business from the town, with unpredictable traffic adding sometimes significant delays and cost and increasing air pollution.
- 3.2.41. Newark Rugby Union Football Club, located on Kelham Road, said [\[RR-051\]](#) that the proposed development would reduce congestion and improve journey times for visitors to the club and improve access by all modes, including non-car modes.
- 3.2.42. Newark & Notts Agricultural Society said [\[RR-046\]](#) that it is strongly supportive of the proposed development which would be an economic benefit of national and regional significance, but which will also enhance access and, thus, the attractiveness, of Newark Showground as an events facility.

Objections

- 3.2.43. Other IPs did not support the proposed development. Some parties ([\[RR-030\]](#), [\[RR-050\]](#), [\[RR-060\]](#), [\[RR-064\]](#) and [\[RR-068\]](#)) commented that the proposed development was designed to improve conditions for traffic heading to the Humber side ports and

not to deal with conditions in and around Newark. [RR-066] said that it would not reduce congestion in Newark over the railway.

Need

- 3.2.44. [RR-017] suggested that the Southern Link Road (which is under construction) would enable traffic to go from the A46 to the A1 and lessen the need to use the bypass and [RR-015] requested that the applicant wait until the new Southern Link Road roundabout has been operational for two years before deciding whether to go ahead with the dualling of the A46. They said that new technology and many more people working from home meant that there were fewer demands on the road network and also suggested encouraging people to travel at quieter times. They advocated junction signalisation as an alternative to the proposed development. [RR-068] suggested an alternative bypass alignment.

Less Invasive Approach

- 3.2.45. Another IP also suggested junction signalisation and re-engineering of the roundabouts, noting that dualling would not improve matters and that the A46 is not used to its full capacity for 80% to 90% of the time [RR-054]. [RR-016] said that whilst they had experienced some heavy and slow-moving traffic, this had never been a major inconvenience. This would have the benefit of maintaining the urban edge of the status quo and not require building in the open countryside. The applicant responded to this query in its response to ExQ1 [REP2-037] to say that it had reviewed less-invasive methods to improve the A46 to meet the aims of RIS 2, including measures that would not result in a physically expanded network, but that traffic modelling confirmed that this would not be sufficient to resolve the current issues.

Questionable Benefit

- 3.2.46. [RR-015] questioned whether the years of road works and associated delays would be worth it given that dualling would make no difference at all to people who travel outside rush hours (when there is rarely congestion) and only an insignificant difference to those who choose to travel during rush hours.

Alternative Modes of Transport

- 3.2.47. [RR-029], [RR-039], [RR-060] and [RR-064] all raised queries relating to modal alternatives including investing in cycling routes and the bus and rail networks.

Examination

- 3.2.48. During the examination the ExA tested the applicant's case in respect of the need for the proposed development and whether there were any reasonable alternatives.
- 3.2.49. In relation to need and through its analysis of the applicant's transport assessment and representations relating to this matter, the ExA tested the case put forward by the applicant and the views of IPs in respect of journey time improvements and safety. The ExA also took into account the views of the host authorities and other IPs in respect of the role that the proposed development would play in supporting the local economy and facilitating economic and local development, the majority of which were strongly supportive.
- 3.2.50. In relation to alternatives, during the examination the ExA sought to identify whether alternatives had been suitably considered by the applicant and that it had not just

relied on the wording in the RIS regarding dualling the A46 and avoiding building in open countryside. The applicant confirmed during Compulsory Acquisition Hearing 1 (CAH 1) [\[EV5-001\]](#) that the proposed solution involved the least amount of third-party land, thus reducing the need for CA/ TP. This was considered alongside those environmental factors listed in 3.2.27 above. The ExA did not explore alternative transport modes given the commitment to expanding the A46 in RIS 2. A full options appraisal was undertaken to inform RIS 2 which concluded that there would not be sufficient capacity generated to meet the aims through alternative transport modes alone. Despite the wording in NPSNN 2015 paragraph 4.27 the applicant did undertake an alternative modes assessment in chapter 3 of the ES paragraph 3.3.75 concluding that such an approach would not meet the identified need. NPSNN 2015 paragraph 4.27 states that if the proposed development is supported in principle by RIS 2 then the ExA need not consider the 'need' for such a proposal. Furthermore, NPSNN 2015 table one sets out specifically that *"In general, the nature of some journeys on the Strategic Road Network means that there will tend to be less scope for the use of alternative transport modes."* Therefore, the ExA were satisfied that the analysis undertaken by the applicant was sufficient to demonstrate a reasonable consideration of the alternatives had been undertaken to inform the submission.

3.2.51. The final alternative to road building that was reviewed was as per the suggestion of the IPs that the current A46 is used below capacity and the junctions required better management through timed signals and improved lane management. The applicant responded to the ExA's first written questions (ExQ1) [\[REP2-037\]](#) that *'A 'Lowest Cost Option' was considered prior to the preferred route announcement, which excluded the dualling of the A46 and would have been less invasive. 'Lowest cost' option: At-grade Farndon, Hamburger at Cattle Market, new A1/A46 west-facing slips, earlier Winthorpe at grade tie-in, no widening of A46. However, traffic modelling demonstrated delays at all junctions and on the A46 mainline for this option. Therefore, although this option would have been less invasive it would not have achieved the aims of RIS2'.*

3.2.52. The ExA also enquired through the first round of written questions if the applicant had considered tunnelling. However, the applicant replied that due to the nature of flood risk in this location then such an option would have represented an unacceptable risk to human life and that the infrastructure would not be able to remain operational during a flood event [\[REP2-037\]](#).

3.2.53. The ExA also considered whether the proposal would meet with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations), the Water Framework Directive (WFD) and the Habitats Regulations.

EIA Regulations

3.2.54. The EIA Regulations, Regulation 14, requires the application to be accompanied by an ES, which includes: (i) a description of reasonable alternatives, and (ii) an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment.

3.2.55. For the purposes of the EIA Regulations, and the required consideration of alternatives, we are content that Regulation 14 has been complied with by the applicant and the ES approach is considered reasonable and proportionate in that respect.

Water Framework Directive (WFD)

- 3.2.56. The WFD (2000/60/EC), Article 4.7, provides that in considering whether derogation is justified and applying the derogation tests, the Secretary of State (SoS) must be satisfied that there is no significantly better environmental option for achieving the benefits expected to result from the proposal or, if there is such an option, it is ruled out as technically infeasible or disproportionately expensive.
- 3.2.57. The Water Framework Directive Compliance Assessment [REP7-062], agreed with the Environment Agency [REP8-023], demonstrates that the proposed development would not result in a deterioration of the status of the WFD or prevent the water course from achieving 'Good' status by 2027.
- 3.2.58. The applicant considers this requirement throughout the examination but specifically in response to ExQ1 [REP2-037]. In compliance with this, the WFD Compliance Assessment [REP7-063] has assessed how the proposed development in operation could impact the water bodies in the study area. The WFD Compliance Assessment shows that the proposed development would not result in a deterioration of the status of the WFD or prevent the water course from achieving 'Good' status by 2027.

Habitat Regulations Assessment (HRA)

- 3.2.59. The Conservation of Habitats and Species Regulations 2017 Regulation 64 imposes the following test: *"In considering whether the Secretary of State is satisfied that the project must be carried out for imperative reasons of overriding public interest, the Secretary of State must conclude that there are no alternative solutions"*.
- 3.2.60. The HRA [REP5-075] considers both Stage 1 of the HRA process (Screening) and Stage 2 (Appropriate Assessment) (AA) and concludes no significant effects (alone or in combination) on the integrity of European Sites including the River Humber SPA/ SAC.
- 3.2.61. The applicant's HRA [REP5-075] has been informed through the examination process via discussions with both NE and EA, as demonstrated in the relevant SoCGs [REP7-094, REP8-023] respectively. Equally, the applicant has set out various options and alternatives as set out in ES Chapter 3, with specific design options and iterations laid out in tables 3.11 and 3.12. It is for NE as Statutory Nature Conservation Body (SNCB) to agree the HRA and confirm that the proposed development will not have an adverse effect on sites within the national network. In this instance, NE confirmed that it is content with the conclusions of the HRA that confirm no adverse effects on integrity and raise no objection. The ExA is content that it is not therefore necessary to identify and assess alternative solutions and to consider their acceptability.

CONCLUSIONS ON NEED AND ALTERNATIVES

- 3.2.62. RIS2, which sits alongside NPSNN 2015 and sets out the government's investment priorities, includes a commitment to the A46 Newark Bypass. The applicant has explained the aims of this are to improve safety and journey times, to accommodate economic growth, and to deliver better environmental outcomes. It has also stated that there is funding in place for the proposed development.
- 3.2.63. All local authorities who made representations to the examination expressed support for the proposed development. The local highways authority said that it is

strongly supportive and the host lower-tier authority said that the proposed development is pivotal to the delivery of its local development framework and the allocations therein. A number of parish councils, local businesses, local residents and other parties also set out their support for the proposed development.

- 3.2.64. Whilst some parties objected on the basis that the proposed development would improve the journeys of traffic heading to the Humber ports, the ExA notes that this is an objective of the proposed development. Some parties suggested that improvements should be made to facilitate travel by alternative modes but did not explain how these would resolve the issues which the proposed development is seeking to address. Accordingly, the ExA considers that these objections do not weigh against the principle of the proposed development.
- 3.2.65. In respect of the aims of the proposed development, the ExA considers that it would improve safety overall and journey times (section 3.12 Transportation and Traffic of this report) and that it would result in some positive impacts on the environment such as improvement in quality of water bodies and creation of additional habitats. In addition, the ExA considers that the proposed development would contribute to economic growth.
- 3.2.66. Taking the above into account the ExA is satisfied that the applicant has explored all reasonable alternatives whilst still maintaining consistency with the aims of RIS 2 and legislative requirements. Although some IPs considered that alternative modes of transport should have been explored further to achieve environmental and social outcomes, it is clear within the confines of NPSNN 2015 that this has been explored as part of RIS 2 and that alternative modes of transport to the proposed development would not meet the demands of the SRN and aims of RIS 2. The proposed development results in the least amount of land take, achieves positive environmental outcomes and meets the ambitions of RIS 2. The ExA is satisfied that there are no alternatives that would meet the aims of the proposed development whilst achieving more positive outcomes in the assessment criteria.
- 3.2.67. Paragraph 4.27 of NPSNN 2015 makes it clear should a proposal be identified in RIS then there is not a need for the ExA or SoS to consider need. This has already been established as part of the RIS assessment. Equally, the work to inform RIS 2 makes it clear that there is an opportunity to avoid building in the open countryside. The applicant's submission details the assessment to inform this approach as detailed above. Further information around demand and capacity are included in the Transport assessment, section 3.12.
- 3.2.68. Overall, the ExA considers that there is a need for the proposed development and that, in principle, the proposed development accords with NPSNN 2015. The ExA also considers the proposed development accords with NPSNN 2024 which is important and relevant and that it would support government's priorities to support economic growth and housing delivery as articulated in the NPPF. The ExA attributes very great weight to these considerations in the overall planning balance.

3.3. AIR QUALITY

INTRODUCTION

- 3.3.1. This section considers the applicant's assessment of the air quality-related implications of the proposed development which is set out in Chapter 5: Air Quality [\[REP7-020\]](#) of the Environmental Statement (ES). ES Chapter 5 is accompanied by:

- Figure 5.1 – Air Quality Receptors [[AS-028](#)];
- Figure 5.2 – Air Quality Constraints [[AS-029](#)];
- Figure 5.3 – Air Quality Constraints Dust Buffer [[REP5-018](#)];
- Figure 5.4 – Air Quality Affected Road Network [[AS-031](#)];
- Figure 5.5 – Air Quality Summary of Traffic Data [[AS-032](#)];
- Figure 5.6 – Air Quality Monitoring Locations [[AS-033](#)];
- Appendix 5.1 – Air Quality Receptor Results [[APP-128](#)];
- Appendix 5.2 – SATURN Traffic Data Report [[REP7-046](#)];
- Appendix 5.3 – Air Quality Monitoring Report [[APP-130](#)]; and
- Appendix 5.4 – Air Quality Model Verification Report [[REP7-048](#)].

3.3.2. The effects of air quality on health and on protected species/ habitats are discussed elsewhere in this report (section 3.11 and chapter 4 respectively).

3.3.3. There are no Air Quality Management Areas (AQMAs) in the administrative area of Newark and Sherwood; the closest to the proposed development are in the Lincoln City Council area (approximately 19 kilometres to the north-east), in South Kesteven District, and in Nottingham, both approximately 20 km from the proposed development. All of these have been declared for exceedances of nitrogen dioxide (NO₂) objectives. The affected road network (ARN) for the proposed development [[AS-031](#)] does not extend into any of these AQMAs.

POLICY CONSIDERATIONS

National Policy Statements

National Policy Statement for National Networks, 2015

3.3.4. Projects can result in the worsening of local air quality through increases in emissions of pollutants but can also have beneficial effects on air quality, e.g. through reduced congestion. Increased emissions can contribute to adverse impacts on human health, protected species and habitats. Effects can cover a large area, well beyond an individual scheme (paragraphs 5.3 and 5.4).

3.3.5. Where the impacts of a project are likely to have significant air quality effects the ES should describe: existing air quality levels; forecasts of air quality at the time of opening; and any significant air quality effects, their mitigation and any residual effects, distinguishing between the construction and operation stages and taking account of the impact of traffic generated by the project (paragraphs 5.6 and 5.7).

3.3.6. The Secretary of State (SoS) must be provided with a judgement on the risk of a project affecting the UK's ability to comply with the Air Quality Directive (which was transposed in English law by The Air Quality Standards Regulations 2010). Where a project is likely to lead to a breach of the air quality thresholds, the applicant should work with the relevant authorities to secure appropriate mitigation measures with a view to ensuring so far as possible that those thresholds are not breached (paragraphs 5.8 and 5.10).

National Policy Statement for National Networks, 2024

3.3.7. NPSNN 2024 explains that air emissions include gases as well as particulate matter (PM). The government has legally-binding targets to reduce emissions of five key air pollutants (PM_{2.5}, nitrogen oxides, sulphur dioxide, ammonia and non-methane volatile organic compounds) by 2030 and two new air quality targets for 2040 set under the Environment Act 2021 – one for annual mean concentrations of PM_{2.5} and a population exposure reduction target for PM_{2.5} (paragraphs 5.8 and 5.9).

- 3.3.8. Compared with NPSNN 2015, paragraph 5.13 of NPSNN 2024 includes an expanded list of matters to be assessed. Paragraph 5.14 states that applicants should consider The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 (FPMR) by following Defra guidance.
- 3.3.9. In respect of all relevant statutory air quality limits, objectives and targets other than those set under FPMR, all reasonable mitigation action should be taken to ensure that the net impact of a project does not delay compliance with those objectives. In respect of the FPMR, the applicant should take all reasonable steps to reduce emissions of PM_{2.5} and its precursor pollutants. Where a scheme is expected to lead to a deterioration of air quality, the applicant should justify why the level of mitigation proposed is reasonable (paragraphs 5.19 to 5.21).

National Planning Policy Framework, December 2024

- 3.3.10. Paragraph 187 states that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of air pollution and should, wherever possible, help to improve local environmental conditions.
- 3.3.11. Decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of AQMAs and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified (paragraph 199).

Local Development Plan

NSDC Allocations & Development Management DPD, 2013

- 3.3.12. Policy DM10 states that proposals involving the potential for pollution should take account of and address potential impacts in terms of health, the natural environment and general amenity on air quality.

THE APPLICANT'S CASE

Construction Phase

- 3.3.13. To assess air quality effects, data from the Transport Assessment Report [[REP7-076](#)] were converted to annual average daily traffic (AADT) values in accordance with the Design Manual for Roads and Bridges (DMRB) LA 105 as explained in [[OD-002](#)]. For the modelled base year (2022), pollutant concentrations would be well below the air quality threshold (ES Appendix 5.1 [[APP-128](#)]). During the construction phase there would be no areas within the study area which would be at risk of exceeding air quality thresholds, including as a result of construction traffic.
- 3.3.14. Whilst traffic management measures such as road closures, diversions, and speed limit reductions could affect air quality at properties and designated sites within 200 metres (m), they are not expected to result in significant air quality effects because temporary road closures and diversions would only occur for very short periods of time and therefore would not affect annual NO₂ or PM₁₀ concentrations. Because speed limit reductions would result in a constant free-flow speed, they would likely result in lower vehicle emissions than during normal operation.
- 3.3.15. In accordance with DMRB LA 105, dust was assessed qualitatively, taking account of likely dust-raising activities and sensitive receptors within 50m, 100m and 200m

as illustrated on [\[REP5-018\]](#). Works would be carried out in accordance with best practicable means, per Section 79 (9) of the Environmental Protection Act 1990, and as described in the Statement Relating to Statutory Nuisances [\[REP7-070\]](#). Accordingly, the applicant considers it unlikely that there would be significant effects at nearby receptors, that construction-phase dust would be a statutory nuisance, or that it would be prejudicial to health.

Operational Phase

- 3.3.16. DMRB LA 105 says that it should only be necessary to model PM₁₀ for the base year. The applicant's assessment [\[APP-128\]](#) shows that the highest concentration would be 28.9 µg/m³ (at human health receptor R105), which is below the objective of 40 µg/m³. Consequently, PM₁₀ was not included in the model and not assessed further. DMRB LA 105 also says that there should be no need to model PM_{2.5} because the UK currently meets its legal requirements and the modelling of PM₁₀ can be used to demonstrate that a project does not impact on the PM_{2.5} threshold.
- 3.3.17. The applicant's modelling shows that the maximum PM₁₀ roads contribution across the modelled human health receptors would be 4.5 µg/m³ in the base year (2022). When combined with the maximum raw PM_{2.5} background concentration across the modelled human health receptors for 2022 (which is 9.7 µg/m³) the PM_{2.5} threshold of 20 µg/m³ would not be exceeded. PM_{2.5} is also a constituent part of PM₁₀, which means that vehicles emission factors, and therefore the existing roads' contributions for PM_{2.5}, would be even lower than those for PM₁₀.
- 3.3.18. The applicant also explained that the proposed development would not have a significant effect on the ability to meet the 2040 PM_{2.5} target of 10 µg/m³ given that PM_{2.5} concentrations are mainly influenced by existing background concentrations which are currently below the future target. On the basis that there would be no significant effects for PM_{2.5}, the applicant did not consider it further.
- 3.3.19. Therefore, the applicant's air quality assessment considered emissions of nitrogen oxides (NO_x) and ammonia (NH₃) and specifically: changes in pollutant concentrations at sensitive receptors to assess against air quality objectives; changes in concentrations at qualifying features to assess limit value compliance; and changes in concentrations and nitrogen deposition at designated sites. The contribution of NH₃ to nitrogen deposition at designated sites is discussed in section 3.4 of this report.
- 3.3.20. Outputs from the applicant's SATURN traffic model [\[REP7-046\]](#) were used to assess NO₂. Thirty human health receptors were selected from 118 'worst-case' human health receptors (consisting of residential properties, a school and a hospital), representing those which are predicted to experience the highest NO₂ concentrations and greatest changes in NO₂ (Table 5-4 of ES Chapter 5 [\[REP7-020\]](#)).
- 3.3.21. The applicant used local authority air quality data for 2022 and a scheme-specific diffusion tube monitoring survey monitoring survey was undertaken at 27 locations in 2022 [\[APP-130\]](#). The highest concentration (26.6 µg/m³) was at Brunel Drive/ Lincoln Road, less than 10m from the proposed road alignment and 20m from the nearest receptor. There were no exceedances of the NO₂ objective in 2022.
- 3.3.22. The results of the air quality assessment indicate that the proposed development would not have a significant air quality impact because there would be no exceedances of the air quality objectives and no significant impacts on human

health receptors. Furthermore, it would not affect the ability to comply with The Air Quality Standards Regulations 2010 (as amended). The applicant concluded, therefore, that air quality mitigation would not be required.

VIEWS OF IPs

Local Authorities

- 3.3.23. In their LIR, Newark and Sherwood District Council (NSDC) [\[REP1-035\]](#) and Nottinghamshire County Council (NCC) [\[REP1-038\]](#) said that the baseline and operational phase air quality assessment in the ES Chapter 5: Air Quality is proportionate and adequately derived. However, in its RR [\[RR-048\]](#) NSDC suggested that the Southern Link Road (SLR) in Newark, expected to be completed by spring 2026, had not been taken into account in the assessment.
- 3.3.24. NSDC and NCC also sought further information regarding the combined effects of construction vehicle flows and traffic management measures during the construction phase and requested a draft version of an air quality and dust management plan.
- 3.3.25. In addition, NSDC suggested that air quality monitoring equipment be installed along the route of the proposed development [\[REP2-050\]](#) and sought further information in relation to air quality damage costs [\[REP1-035\]](#).

Statutory Parties

- 3.3.26. The UK Health Security Agency (UKHSA) [\[RR-074\]](#) noted that the applicant had effectively scoped out PM_{2.5} for detailed assessment and had concluded that, with reference to its PM₁₀ modelling, PM_{2.5} concentrations would not cause an exceedance of the annual mean National Air Quality Objective (of 20 µg/m³) and that the proposed development would not impact the achievement of the PM_{2.5} annual average target concentration of 10 µg/m³ by 2040, based on the premise that PM_{2.5} concentrations from changes in road traffic are very small and are mainly influenced by existing background concentrations which are currently below this future target. UKHSA then noted that this conclusion is drawn without a full quantitative assessment and that the applicant had discounted the interim annual mean target of 12 µg/m³ by 2028 (with reference to the FPMR).

Other IPs

- 3.3.27. At the RR stage a number of IPs ([\[RR-001\]](#), [\[RR-015\]](#), [\[RR-016\]](#), [\[RR-021\]](#), [\[RR-030\]](#), [\[RR-039\]](#), [\[RR-050\]](#), [\[RR-060\]](#), [\[RR-062\]](#), [\[RR-064\]](#), [\[RR-066\]](#), [\[RR-071\]](#) and [\[RR-073\]](#)) made general comments, stating that the proposed development would increase traffic and air pollution, including particulates, during the construction and/or operational phases, and that the assessment and mitigation measures were inadequate. Some IPs also noted that there would be a net worsening of air quality. One IP [\[RR-066\]](#) said that the proposed development would not address congestion in Newark which causes pollution. However, none of those IPs provided evidence to support their submissions, or to demonstrate that the applicant's assessment was not robust.
- 3.3.28. [\[RR-075\]](#) said that the current A46 layout causes significant traffic congestion at peak times and that the traffic congestion also increases air pollution in the area. They added that the proposed development would dramatically cut down on this traffic congestion.

Dust

- 3.3.29. An IP [\[RR-021\]](#) stated that health impacts have not been modelled in relation to the 'dust corridor' associated with the proposed development and that, consequently, Newark residents were largely unaware of the issue. [\[RR-015\]](#), [\[RR-018\]](#), [\[RR-071\]](#) and [\[REP1-037\]](#) expressed concern about construction-related dust and debris and said that all reasonable steps should be taken to mitigate the impact of this.

Specific Effects

- 3.3.30. A number of IPs expressed concerns about specific air quality impacts:
- at Winthorpe, including Winthorpe Primary School and the school's outdoor area [\[RR-071\]](#), [\[RR-078\]](#)
 - at Nether Lock House [\[RR-010\]](#)
 - at Bridge House Farm [\[RR-059\]](#)
 - on non-motorised users [\[RR-071\]](#)

Mitigation

- 3.3.31. [\[RR-071\]](#) said that any negative effects on air quality, irrespective of magnitude and threshold levels, are not acceptable and sought details of mitigation.

EXAMINATION

- 3.3.32. The applicant confirmed [\[REP2-037\]](#) that traffic has been forecast up to 2061, including on the SLR. There would be an overall increase in traffic with the proposed development, mostly associated with trips travelling along the A46 to bypass Newark-on-Trent, largely attributable to strategic through traffic – which currently diverts through Newark town centre to avoid congestion – remaining on the A46. With the proposed development, the A46 is not forecast to be over capacity in this period. There would also be a beneficial effect, albeit not significant, as a result of the reduction of traffic in the town centre where pollutant concentrations and population density are highest.
- 3.3.33. The applicant explained [\[REP2-018\]](#) that it had not undertaken an assessment of the combined effects during the construction phase because assessment of construction traffic was scoped out of the assessment and because the effects of temporary traffic management would not be significant. NSDC and NCC confirmed [\[EV8-003\]](#) that they were satisfied with the applicant's explanation.
- 3.3.34. However, Think Again Winthorpe Action Group (TAWAG) [\[REP3-047\]](#) still sought assurance that live monitoring would take place during the construction phase to ensure that members of the wider Winthorpe community would not be exposed to potentially harmful PM of any size.
- 3.3.35. In response to the UKHSA's RR, the applicant stated [\[REP2-037\]](#) that future, including interim, PM_{2.5} thresholds are not relevant to the assessment of this application. The applicant also explained [\[REP1-009\]](#) that whilst DMRB does not require separate modelling, when the maximum modelled road contribution of PM₁₀ of 4.5 µg/m³ from existing traffic in the base year at modelled receptors is combined with the maximum PM_{2.5} background concentration of 9.7 µg/m³ across the study area, the PM_{2.5} threshold of 20 µg/m³ is not exceeded. Furthermore, given that PM_{2.5} is also a constituent part of PM₁₀, the PM_{2.5} value would be even lower than the value for PM₁₀. No further comments were received from the UKHSA.

- 3.3.36. The applicant explained [\[REP1-009\]](#) that Winthorpe Primary School is approximately 230m from the ARN and therefore not modelled as a receptor. Human health receptor R29 [\[AS-028\]](#) on Hargon Lane is approximately 100m from the A46 and the predicted annual mean NO₂ concentration would be 17.2µg/m³ in the opening year (2028) which is below the air quality objective. The change in predicted concentration is expected to be imperceptible (less than 0.4µg/m³ according to DMRB LA 105). Similarly, there would be no exceedances at receptors R28, R31 and R32 which are the other closest receptors to Winthorpe.
- 3.3.37. Nether Lock House was included as a sensitive receptor (R44 on [\[AS-028\]](#)) in the dispersion model. Annual mean NO₂ concentrations in the opening year are predicted to increase by 0.2µg/m³ from 16.3µg/m³ to 16.5µg/m³ – well below the air quality objective of 40µg/m³ – due to the predicted increase in traffic flow along the A46, approximately 110m to the east of the property.
- 3.3.38. Bridge House Farm was also included as a sensitive receptor (R30). Annual mean NO₂ concentrations would increase by 0.5µg/m³ from 18.7µg/m³ to 19.2µg/m³ due to the A46 carriageway alignment being closer to the receptor. No exceedances of NO₂, PM₁₀ or PM_{2.5} air quality objectives were predicted and, therefore, it would not be necessary for occupants of any property to keep windows closed during warmer months or to avoid using outdoor areas [\[REP2-037\]](#).
- 3.3.39. The applicant explained [\[REP2-037\]](#) that air quality objectives were not assessed at footpath or cycle path locations as exposure is transient and members of the public are not reasonably expected to spend a length of time commensurate with the air quality objective averaging periods at any single location. In any event, there are not predicted to be any exceedances of NO₂, PM₁₀ or PM_{2.5} objectives during the operational phase. Therefore, no significant effects were identified and no mitigation is needed. Nevertheless TAWAG said [\[REP3-047\]](#) that footpaths should be monitored given that they are used on a daily basis throughout the year by children and parents. The applicant explained [\[REP4-040\]](#), however, that because the use of footpaths is transient there would be no relevant exposure at these locations and that no ambient monitoring is required during the operational phase.
- 3.3.40. Having satisfied itself during the course of the examination that there would be no significant effects, NSDC confirmed [\[EV8-003\]](#) and [\[REP4-045\]](#) that damage cost payments and air quality monitoring stations would not be needed.
- 3.3.41. In relation to dust the applicant explained [\[REP2-037\]](#) that its approach was in accordance with DMRB LA 105 and guidance from the Institute of Air Quality Management which outlines a qualitative risk-based approach to assessment, noting that the usefulness of numerical criteria to determine effects is limited because the perception of loss of amenity or nuisance is affected by a wide range of factors such as the character of the locality and sensitivity of receptors.
- 3.3.42. Whilst the applicant identified [\[REP7-020\]](#) a ‘high’ construction dust risk, works would be carried out in accordance with best practicable means as detailed in the Register of Environmental Actions and Commitments in the First Iteration Environmental Management Plan (EMP) [\[REP6-012\]](#) and secured by Requirement (R) 3 of the dDCO [\[AS-106\]](#). As a consequence, effects at identified receptors are not predicted to be significant [\[REP2-037\]](#).
- 3.3.43. Following their request, the applicant provided NSDC and NCC with an Outline Air Quality and Dust Management Plan (OAQDMP) and updated this to reflect the authorities’ comments, also ensuring that the provisions align with the Pre-

commencement Plan as noted in [\[REP7-103\]](#). The agreed OAQDMP is appended to the EMP [\[REP6-012\]](#).

CONCLUSIONS ON AIR QUALITY

- 3.3.44. No parties have provided any evidence which contradicts the applicant's assessment and, having assessed all representations, the Examining Authority (ExA) considers the applicant's assessment to be satisfactory. The ExA is also satisfied with and accepts the applicant's response/ explanation in relation to construction phase effects and thus is satisfied that TAWAG's comment about construction phase effects has been addressed.
- 3.3.45. The proposed development would not result in any significant effects or in the exceedance of any air quality objectives (whether for NO₂, PM₁₀ or PM_{2.5}) during the construction or operational phases. It would not affect the UK's ability to comply with The Air Quality Standards Regulations 2010. In its EMP the applicant has proposed satisfactory mitigation measures to address the risk of dust during the construction phase and these are secured by R 3 of the rDCO.
- 3.3.46. Whilst an IP said that air quality mitigation should be provided irrespective of the magnitude of any negative effects and threshold levels, the decision must be based on prevailing air quality objectives. As such no additional mitigation can be required.
- 3.3.47. Accordingly, the ExA considers that the proposed development is consistent with the relevant provisions of NPSNN 2015 which is the NPS against which this application is to be determined pursuant to s104 of PA2008. The ExA also considers that the proposed development is consistent with NPSNN 2024, the NPPF and Policy DM10 of the NSDC Allocations & Development Management DPD, all of which the ExA considers to be important and relevant.
- 3.3.48. Whilst there would be some small (but not significant) increases in pollutant concentrations at some sensitive receptors, there would be decreases at other locations, particularly in the Newark town centre as a result of traffic which currently diverts through Newark town centre to avoid congestion remaining on the A46. The ExA has balanced this benefit against the increases in pollutant concentrations elsewhere and concluded that a little positive weight should be given to air quality considerations in the overall balance.

3.4. BIODIVERSITY

INTRODUCTION

- 3.4.1. This section considers the applicant's assessment in ES Chapter 8: Biodiversity [\[REP7-026\]](#) of the Environmental Statement (ES). This chapter is supported by the following:
- Figure 8.1 – General Survey Area for Most Ecological Receptors [\[AS-042\]](#);
 - Figure 8.2 – Nitrogen Sensitive Ecological Receptors [\[AS-043\]](#);
 - Figure 8.3 – Badger Roadkill Data within 2km of the Order Limits [\[AS-044\]](#);
 - Figure 8.4 – Planting for Loss of Local Wildlife Site Habitats [\[AS-045\]](#);
 - Figure 8.5 – Land Access Constraints [\[AS-046\]](#);
 - Appendix 8.1 – Extended Phase 1 Habitat Technical Report Part 1 [\[APP-145\]](#);
 - Appendix 8.1 – Extended Phase 1 Habitat Technical Report Part 2 [\[APP-146\]](#);
 - Appendix 8.2 – National Vegetation Classification Technical Report [\[APP-147\]](#);
 - Appendix 8.3 – Bat Technical Report [\[APP-148\]](#);
 - Appendix 8.4 – Barn Owl Technical Report [\[APP-149\]](#);

- Appendix 8.5 – Breeding Bird Technical Report [[APP-150](#)];
- Appendix 8.6 – Wintering Bird Technical Report [[APP-151](#)];
- Appendix 8.7 – Great Crested Newt Technical Report [[APP-152](#)];
- Appendix 8.8 – Aquatic Ecology Technical Report [[APP-153](#)];
- Appendix 8.9 – Invertebrate (Terrestrial) Technical Report [[APP-154](#)];
- Appendix 8.10 – Otter Technical Report [[APP-155](#)];
- Appendix 8.11 – Reptile Technical Report [[APP-156](#)];
- Appendix 8.12 – Water Vole Technical Report [[APP-157](#)];
- Appendix 8.13 – River Physical Habitat Technical Report [[APP-158](#)];
- Appendix 8.14 – Biodiversity Net Gain Technical Report [[REP7-056](#)]; and
- Appendix 8.15 – Badger Technical Report [[APP-160](#)].

3.4.2. The key measures being undertaken to mitigate and compensate the effects of the proposed development on habitats and the species they support are contained in the various appendices but mapped on the Environmental Masterplan [[REP7-042](#)] and a Register of Environmental Actions and Commitments (REAC) in the First Iteration Environmental Management Plan (EMP) [[REP6-012](#)]. Whilst it is not currently a requirement for NSIPs, the applicant has submitted a BNG report [[REP7-056](#)]. The weight given to BNG in the context of the current policy and legislative situation is discussed below.

3.4.3. ES Chapter 8 details the analysis and assessment of the Likely Significant Effects (LSEs) predicted to arise from the proposed development on the following categories of ecological receptors:

- Statutory designated sites;
- Non-statutory designated sites;
- Habitats of principal importance (HPI) and species of principal importance; and
- Protected species and notable habitats and species.

3.4.4. The applicant's assessment prepares for a worst-case scenario by considering the maximum lateral and vertical limits of deviation illustrated in the Works Plans [[REP3-002](#)].

3.4.5. Each individual supporting survey has its own specific Zone of Influence (ZoI) requirements, for example otter transects extend 2km upstream and downstream of the Order limits whilst sites of national importance extend to 200m from the Order limits. The protected species technical appendices record and highlight associated assumptions and limitations associated with each survey.

Sites of International Importance

3.4.6. There are no designated sites of international importance (National Site Network (NSN) or Ramsar sites) within 2km of the proposed development or within 200m of the Affected Road Network (ARN). There are no sites within the NSN where bats are a qualifying feature within 30km of the proposed development.

3.4.7. The Humber Estuary Ramsar, Special Area of Conservation (SAC) and Special Protection Area (SPA) are hydrologically connected to the proposed development, downstream of the River Trent. This is assessed in further detail in chapter 4 of this on HRA.

Sites of National Importance

- 3.4.8. There are no sites of national importance located within 2km of the proposed development, none have hydrological links to the proposed development, and none are within 200m of the ARN.

Sites of County importance

- 3.4.9. There are two designations of county importance located within 2km of the proposed development. These are both designated as Local Nature Reserves (LNR) in a county context with limited potential for substitution. However, both were scoped out of the EIA process [\[APP-189\]](#) as they are located upstream of the proposed development with no potential surface water pathway for contamination. Furthermore, they will also not experience a greater nitrogen load increase than 0.4kg N/ha/year and in accordance with DMRB LA 105 Air Quality the receptor does not require further assessment. This has not been challenged by IPs, including the host authorities, and there is no reason for the ExA to take a different stance.
- 3.4.10. The applicant identified 43 non-statutory designated sites of county importance within 2km of the proposed development and/ or within 200m of the ARN which are considered to support habitats sensitive to nitrogen disposition. Of these 43 Local Wildlife Sites (LWS), 24 within 200m of the ARN were considered to support habitats sensitive to nitrogen disposition and taken forward by the applicant in their assessment for air quality. Table 8.6 of ES Chapter 8 details each of these sites and their features. Desktop data only was used for four of these sites as access for survey work could not be obtained. These were:
- Newark Dismantled Railway LWS;
 - Newark Trent Grassland LWS;
 - Kelham Road Grassland LWS; and
 - Newark (Beet Factory) Dismantled Railway, however a visual survey was undertaken of part of the site from adjoining public land.
- 3.4.11. The citations for Newark (Beet Factory) Dismantled Railway LWS and Newark LWS provided by Newark and Sherwood District Council did not align with the applicant's survey work, bringing into question the reasons for their designation. Locations of all LWS sites can be found in Appendix F of Appendix 8.1 [\[APP-145\]](#), [\[APP-146\]](#).

Habitats

- 3.4.12. The proposed development study area broadly comprised a mosaic of predominantly arable, broadleaved woodland, improved and semi-improved grassland, small patches of amenity grassland, interspersed with intact species-poor hedgerow and ponds in an urban landscape. Six types of HPI were identified within 1km of the proposed development or adjacent to the ARN:
- coastal and floodplain grazing marsh;
 - eutrophic standing water;
 - lowland meadows;
 - lowland mixed deciduous woodland;
 - traditional orchard; and
 - wood pasture.
- 3.4.13. None of these were considered to meet the criteria of national importance.
- 3.4.14. No ancient woodlands or ancient trees have been identified within 1km of the Order limits. The applicant details that according to the Woodland Trust's Ancient Tree Inventory, there is one ancient woodland located within 200m of the ARN and a

veteran pedunculate oak is located approximately 170m north of the ARN at Coddington. Survey data from 2022 and 2023 identified four veteran trees within the Order limits and a further four veteran trees within 200m of the ARN. The locations of these trees and other nitrogen-sensitive ecological receptors are shown on Figure 8.2 [\[AS-043\]](#).

- 3.4.15. Further analysis was undertaken using the government's MAGIC.gov website which identifies a number of areas of Priority Habitat Inventory (PHI) – Deciduous Woodland within and immediately adjacent to the Order limits. Further areas of woodland identified via aerial imagery were subject to ground-truthing surveys in 2023 where access was permitted.
- 3.4.16. The following woodland types were recorded within the Order limits:
- Broadleaved semi-natural woodland (non-HPI);
 - Coniferous plantation woodland (non-HPI);
 - Lowland mixed deciduous woodland (HPI);
 - Mixed plantation woodland (non-HPI); and
 - Semi-natural broadleaved woodland (non-HPI).
- 3.4.17. Standing water and running water habitats of local importance have been scoped out of the assessment as standalone habitat given the positive effect of embedded mitigation measures. Instead, they have been assessed as habitats supporting protected species. Furthermore, assessment on aquatic environments is detailed in Appendix 13.1 of the ES Appendices [\[REP7-062\]](#).
- 3.4.18. Table 8.7 of ES Chapter 8 [\[REP7-026\]](#) provides descriptions, importance and location of the habitats present within or adjacent to the Order limits and/ or within 200m of the ARN.

Protected Species

- 3.4.19. In preparing its assessment, the applicant undertook surveys for a number of protected species and other notable fauna, as detailed in chapter 8 of the ES [\[REP7-027\]](#). The following species were scoped out of the baseline surveys:
- White-clawed crayfish;
 - European hedgehog; and
 - Brown hare.

Invasive Non-Native Species (INNS)

- 3.4.20. Surveys were conducted for the following INNS, both flora and fauna [\[APP-145\]](#), [\[APP-146\]](#):
- American mink;
 - Indian balsam;
 - Orange balsam and least duckweed ;
 - Invertebrate species including Asian clam, bloody red mysid, demon shrimp zebra mussel, signal crayfish and Chinese mitten crab; and
 - Northern River/ Florida crangonyctid.

POLICY BACKGROUND

National Policy

National Policy Statement for National Networks, 2015

- 3.4.21. NPSNN 2015 paragraph 5.20 describes biodiversity as *“the variety of life in all its forms and encompasses all species of plants and animals and the complex ecosystems of which they are a part.”* Paragraphs 5.20 to 5.38 detail the basis for the examination by the ExA and decisions by the SoS relating to biodiversity and ecological conservation.
- 3.4.22. Paragraph 5.22 states that: *“Where the project is subject to EIA the applicant should ensure that the ES clearly sets out any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance (including those outside England) on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity and that the statement considers the full range of potential impacts on ecosystems.”*
- 3.4.23. Paragraph 5.35 states that: *“Development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Where significant harm cannot be avoided or mitigated, as last resort, appropriate compensation should be sought.”*
- 3.4.24. Paragraph 5.33 states that: *“development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design. When considering proposals, the SoS should consider whether the applicant has maximised such opportunities in and around developments.”*

National Policy Statement for National Networks, 2024

- 3.4.25. NPSNN 2024 advises that applicants should consider the potential direct and indirect impacts on ecosystems including the impacts on habitats and protected species and the interactions between these, and provide environmental information proportionate to the likely impacts of the infrastructure on biodiversity and nature. The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests. Paragraph 5.47 advises that applicants should identify how their proposals can deliver Biodiversity Net Gain (BNG), but this is not currently mandatory for NSIP projects as per section 147 of the Environment Act 2021.
- 3.4.26. As part of their assessment, applicants are required to apply the mitigation hierarchy of avoid, minimise, restore, and offset. Paragraph 5.48 sets out the following that the applicant should demonstrate they have considered:
- developments are designed to avoid the risk of harm, for example by minimising the footprint of the development and/ or retaining the site’s important habitat features.
 - developments are designed and landscaped to provide green corridors and minimise habitat fragmentation (for example using underpasses or green bridges to link habitats).
 - during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works.
 - during construction and operation, best practice will be followed to ensure that risk of disturbance or damage to species or habitats follows the mitigation hierarchy (including because of transport access arrangements). For example, plan for construction work to be carried out at specific times to avoid sensitive times and location, such as the breeding season for wild birds and lifecycles of migratory fish.

- 3.4.27. If avoidance or reduction of harm is not possible, applicants should include appropriate mitigation measures, in line with the mitigation hierarchy, as an integral part of their proposed development, including identifying where and how these will be secured in the long term.

National Planning Policy Framework, December 2024

- 3.4.28. Paragraph 193 states that:

- if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
- development on land within or outside a SSSI, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs.
- development resulting in the loss or deterioration of irreplaceable habitat (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists.
- development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

- 3.4.29. Paragraph 195 details that: *“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”* This is considered under the Habitats Regulations Assessment (HRA) in chapter 4. In summary, the HRA concluded that there would be no likely significant effects on the qualifying interests on European sites within the National Site Network.

Local Policy

NSDC Amended Core Strategy, 2019

- 3.4.30. Core Policy 12 (Biodiversity and Green Infrastructure) details the following:

- *“The District Council will seek to conserve and enhance the biodiversity and geodiversity of the District by working with partners to implement the aims and proposals of the Nottinghamshire Local Biodiversity Action Plan...The District Council will therefore:*
 - *Expect proposals to take into account the need for continued protection of the District’s ecological, biological and geological assets. With particular regard to... species and habitats of principal importance identified in Section 41 of the Natural Environment and Rural Communities Act 2006 and in the Nottinghamshire Local Biodiversity Action Plan*
 - *Seek to secure development that maximises the opportunities to conserve, enhance and restore biodiversity...*

- *Promote the appropriate management of features of major importance for wild flora and fauna*
- *Provide for Suitable Alternative Natural Green Space to reduce visitor pressure on the District's ecological, biological and geological assets, particularly in the Newark area...*

NSDC Allocations & Development Management DPD, 2013

3.4.31. Policy DM7 (Biodiversity and Green Infrastructure) details the following:

"New development should protect, promote and enhance green infrastructure to deliver multi-functional benefits and contribute to the ecological network both as part of on site development proposals and through off-site provision."

Nottinghamshire Biodiversity Action Plan, 1998

3.4.32. The Nottinghamshire Biodiversity Action Plan (BAP) outlines the approach to biodiversity in Nottinghamshire and sets the habitats and species of conservation concern in the county. Relevant key targets listed within this BAP include the following:

- Through planning control or other land use consultation processes, allow no further loss of areas of ditches, eutrophic and mesotrophic standing water, lowland wet grassland, parkland and wood pasture, and rivers and streams habitat and seek opportunities to enhance existing areas and create new areas through approved development.
- Enhance, where necessary, bat roosting sites and important feeding habitats with the aim of increasing bat population levels within the county.
- Create and appropriately manage complementary habitats such as wet grassland, woodland and scrub alongside watercourses to provide potential resting and foraging areas for otters (*Lutra lutra*).
- Limit accidental killing of otters by providing underpasses on new and existing roads where appropriate.
- Avoid damage to actual or potential water vole *Arvicola amphibius* habitat caused by culverting, channelisation, sheet piling and flood defence work wherever possible, and explore opportunities for restoring watercourses to a more natural structure.
- Following further investigation on the effects of mink predation, and if deemed to be appropriate, encourage control of mink where this will increase water vole abundance or range.

THE APPLICANT'S CASE

Construction Phase

Designated Sites

3.4.33. There is potential for impacts to river and sea lamprey which are a qualifying feature of the Humber Estuary Ramsar and SAC. This is covered in more detail in chapter 4 on HRA of this report. In summary, impacts are likely to river and sea lamprey migrating up the River Trent to spawn. Construction of a new outfall on the west bank of the River Trent upstream of Nether Lock Viaduct has the potential to temporarily increase silt suspension in the water column. Light spill resulting from night works and noise and vibration from sheet piling works have potential to create a barrier to lamprey migration at both Nether Lock Viaduct and Windmill Viaduct.

- 3.4.34. The proposed development will result in damage and direct loss of habitats at four LWS including 4.9% of the total area of Dairy Farm Railway Strip. A total of approximately 74% of the total area of the Great North Road Grasslands LWS would be permanently lost. A total of 2.5% of the area of Newark (Beet Factory) Dismantled Railway LWS would be lost. 1% of the Old Trent Dyke LWS would be lost.

Habitats

- 3.4.35. The proposed development would result in the total loss of approximately 11,290m² of lowland mixed deciduous woodland HPI across three distinct woodlands, including those within designated sites. This accounts for approximately 63% of the HPI within the Order limits. A total loss of approximately 1,030m² of lowland meadow HPI, this equates to some 3.3% of the total within the Order limits. Some 9,690m² of coastal plain and floodplain grazing marsh HPI would be lost, equating to 8.5% of the total contiguous area of the HPI. Of this, 4,430m² will be permanently lost.
- 3.4.36. There would be a permanent loss of habitats of ecological value within the Order limits, including those within LWS and non-HPI habitats of approximately:
- 20% broadleaved semi-natural woodland (~25,000m²);
 - 47% broadleaved plantation woodland (~128,230m²);
 - 50% of semi-improved, unimproved, neutral, marshy and poor grassland (~238,960m²); and
 - 35% of scattered and dense/ continuous scrub (~18,920m²).
- 3.4.37. The proposed development has the potential to adversely impact the Root Protection Areas (RPA) of three veteran trees. One of these veteran trees would require a crown lift of less than 0.5m.

Protected and Notable Species

- 3.4.38. The proposed development would result in the following impacts on protected and notable species during construction:
- Bats – loss of a confirmed soprano pipistrelle roost and disturbance to nine other confirmed roosts;
 - Birds – Loss of a rookery located to the north-west of the Friendly Farmer Roundabout and loss of a kestrel nest;
 - Fish – temporarily culverting the Slough Dyke would result in potential injury to and death of fish. Sheet piling works at Windmill Viaduct would also have the potential for injury and death. Works at Nether Lock Viaduct have the potential to adversely impact spawning pools. Loss of a non-priority pond at Kelham and Averham Flood Compensation Area (FCA) would potentially result in death or injury to non-protected species of fish. Noise and vibration associated with sheet piling works could result in disturbance affecting spawning activities; and
 - Multiple species – vegetation clearance could result in the permanent and temporary loss of aquatic or terrestrial habitats for protected and notable species. This could include habitat that provides shelter, an area for breeding or rearing young, a food resource or commuting corridors for badger, bats, barn owl, reptiles, birds, fish, reptiles, water vole and aquatic and terrestrial invertebrates. Night-time works could directly disturb nocturnal species.

Operational Phase

- 3.4.39. During the operational phase impacts on designated sites are limited to increased levels of nitrogen. Increased nitrogen deposition can lead to lower-growing plants and bryophytes being outcompeted by faster growing plant species, resulting in a decrease in plant diversity and changes to the overall habitat composition. This in turn can impact animal species which these habitats support.
- 3.4.40. With respect to habitats, one veteran tree will require crown clearance management. Meanwhile an increase in artificial lighting could adversely affect protected species. The creation of a new grade separate junction over the existing A1 carriageway could result in bat and barn owl mortality resulting from collisions with traffic.

Design, mitigation, compensation and enhancement measures

- 3.4.41. The proposed development has been designed as per the requirements of DMRB LA 104 to adhere to the principles of the design and mitigation hierarchy, e.g. avoid, minimise, mitigate, compensate. The mitigation is detailed through the Register of Environmental Actions and Commitments (REAC) as per the First Iteration Environment Management Plan (EMP) [\[REP6-012\]](#). With respect to landscape planting, there would be a 5-year aftercare period and thereafter maintained in perpetuity as part of the applicant's general maintenance approach. Those habitats and planting provided as a result of BNG would be maintained for a period of 30 years post completion and thereafter as part of the general management approach. These measures are secured through the dDCO Requirement (R) 3.
- 3.4.42. Embedded mitigation measures are detailed in ES Chapter 2 [\[REP7-016\]](#). This includes environmental working practices to ensure adequate pollution control measures and use of precautionary methods of working during construction to minimise risks to protected species and habitats.

Compensation

- 3.4.43. There is currently no requirement for BNG for NSIPs. However, as part of their approach, the applicant has submitted a BNG assessment [\[REP7-056\]](#) to demonstrate consistency with the NPPF policy requirement for net gains, albeit there is no prescribed percentage that should be achieved. In summary, the applicant applied Natural England's BNG Metric 3.1 which has provided the following to compensate for the various habitat losses resulting from the proposed development:

Table 1: BNG Summary

Biodiversity Unit	Pre-Development	Post-Development	Difference (%)
Habitat	905.59 (893.63 onsite and 11.96 off-site)	949.82	4.95 net gain
Hedgerow	97.35	105.30	8.17 net gain
River	40.55	54.04	33.28 net gain

- 3.4.44. The issues considered around the impacts, mitigation and compensation are detailed in the 'examination' paragraphs 3.4.55 – 3.4.76 below. However, the proposal results in the loss of lowland woodland meadow which is a HPI which the metric does not cater for the loss of. The applicant has set out compensatory

measures within the Order limits but because of this loss the proposal cannot, technically, achieve Biodiversity Net Gain. The applicant caveats their technical report to allow for this.

Views of Interested Parties (IPs)

Local Authorities

- 3.4.45. In its Local Impact Report (LIR) ([REP1-038](#)), Nottinghamshire County Council (NCC) did not specifically raise any concerns with the baseline information but did advise that some surveys may need to be updated prior to the commencement of works as per the guidance on the Lifespan of Ecological Reports and Surveys from the Chartered Institute of Ecology and Environmental Management (CIEEM).
- 3.4.46. However, NCC did raise concern that apart from air quality, off-site impacts and in-combination effects had not been fully addressed and there were concerns regarding habitat connectivity. Concern was also raised that the mitigation hierarchy had not been fully adhered to with respect to avoidance.
- 3.4.47. Paragraph 5.27 of NCC's LIR provides eight bullet points of concern. In terms of BNG, NCC considered that Biodiversity Metric 4.0 should have been used. Despite this, NCC did not specifically raise any substantive objection to the proposed development based on biodiversity and, in its opinion, there were no concerns with respect to the requirements of the NPSNN 2015.
- 3.4.48. With respect to arboriculture, NCC did not raise any concerns regarding the baseline information but did provide a number of comments in relation to ancient or veteran trees. The applicant's assessment did not refer to the standing advice from Forestry Commission and Natural England that the buffer zone should be an uncapped radius of 15 x stem diameter (Root Protection Area), or canopy spread +5m, whichever is greater. The applicant has used Root Protection Area (RPA), but NCC considers that the greater of the two should be used. Further concern was raised with respect to the protection measures applied to trees T038, T136 and T139, as referenced in [AS-089](#). NCC also raised concerns about the lack of protection and monitoring measures in the First Iteration EMP.
- 3.4.49. Newark and Sherwood District Council (NSDC) raised the same points as NCC [\[REP1-035\]](#) but followed this up with some concerns over the chosen species within the Environmental Masterplan, specifically the use of tree species in and around the Cattle Market Roundabout where it wished to see willow trees which would be more consistent with the Landscape Character Assessment. NSDC also requested to be a consultee to the First Iteration EMP. It considered the BNG provision to be positive.

Statutory Parties

- 3.4.50. Natural England (NE) and the Environment Agency (the EA) raised several matters in relation to the Humber Estuary SAC and Ramsar site. This is dealt with separately in chapter 4 on the HRA.
- 3.4.51. With respect to matters out with the HRA process, both parties were generally satisfied with the applicant's submission.

Other IPs

Loss of Hedgerows and Trees

- 3.4.52. [\[RR-015\]](#) [\[RR-030\]](#) and [\[RR-059\]](#) all raised concerns with respect to loss of hedgerows and mature trees and the resultant impacts on habitats and species.

General habitat loss

- 3.4.53. [\[RR-021\]](#), [\[RR-042\]](#), [\[RR-050\]](#), [\[RR-053\]](#), [\[RR-059\]](#) and [\[RR-060\]](#) raised concern with respect to the impact on biodiversity without providing any substantive evidence.

Suitability of BNG Strategy

- 3.4.54. [\[RR-034\]](#) questioned the suitability of the BNG strategy with respect to future management.

Impact on Wildlife

- 3.4.55. [\[RR-015\]](#), [\[RR-030\]](#), [\[RR-059\]](#) and [\[RR-042\]](#) raised concerns with respect to wildlife including the potential for roadkill, general impacts on wildlife and the loss of a bird habitat on the Winthorpe Roundabout.

EXAMINATION

- 3.4.56. Matters relating to the Humber Estuary SAC and Ramsar National Networks are dealt with under the Habitat Regulations Assessment (HRA) in chapter 4.

Designated Sites

- 3.4.57. NE confirmed via the SoCG [\[REP7-094\]](#) that the proposed development would not have an adverse effect on designated sites within or adjacent to the Order limits and agreed with the findings of the HRA [\[REP5-075\]](#).

- 3.4.58. During the baseline assessment, the applicant was unable to secure access to parts of the LWS. As shown in the SoCG with NCC [\[REP8-025\]](#), the upper tier host authority commented that an NVC survey should be undertaken to fully inform the impact on the affected LWS grasslands. However, the applicant responded that a precautionary approach has been taken to assigning condition for baseline habitats where condition was assessed as part of the Phase 1 habitat survey where no NVC surveys were undertaken due to access constraints. In these cases, the baseline condition was assessed on a precautionary basis and therefore considered the status to be 'good'. NSDC raised no concerns with this baseline assumption throughout the examination.

- 3.4.59. NSDC originally raised concerns that during construction there was potential damage and loss of habitats within the Order limits including at nine LWS designations [\[REP1-035\]](#). However, the final SoCG [\[REP8-027\]](#) agrees that the proposal adheres to the principles of the design and mitigation hierarchy outlined in DMRB LA 104. Therefore, NSDC raised no objection to the adverse impacts on the LWS sites.

- 3.4.60. However, NCC [\[REP8-025\]](#) queried the location of the ponds at the Cattle Market Roundabout within the GNR LWS. It advised that the proposed development would inevitably lead to the loss of the habitat in this LWS and that this was compounded by the siting of the attenuation ponds. It requested that the applicant justify these ponds as their appeared to be alternative locations that would minimise the impacts on the site, and this would correctly comply with the mitigation hierarchy. The applicant responded advising that relocating the ponds outside the LWS would

require direct run-off against the natural fall of the land as well as the highway, which in turn would lead to piped runs at unrealistic depths or swales having to be raised higher to allow flows to be conveyed towards the basins. NCC confirmed agreement with the explanation and the location of these ponds was considered acceptable [\[REP8-025\]](#).

Habitats

- 3.4.61. The proposed development would result in the unavoidable loss of 1,032m² of lowland meadow HPI across LWS and non-designated land. Lowland meadow is classed as a habitat of very high distinctiveness within the Biodiversity Metric 3.1. The area of lowland meadow lost is in moderate condition with high strategic significance. The area of compensation is 7,505m². This equates to the creation of 3.64 habitat units versus 1.9 units lost. This would occur within the Order limits and therefore no agreement is required with NE [\[REP7-056\]](#) for offsite compensation.
- 3.4.62. During ISH 4 [\[EV10-002\]](#), NSDC confirmed that it considered the applicant had explored all opportunities for habitat creation. The applicant expanded on this in their NPSNN 2015 accordance tables [\[REP8-010\]](#). This sets out that the applicant considered embedded mitigation from the outset as well as those measures that could enhance biodiversity within and immediately adjacent the site, such as hedgerow planting to create green corridors.
- 3.4.63. Habitat severance was an issue raised in both host authorities' LIR. By way of its SoCG, NSDC [\[REP8-027\]](#) confirmed that it no longer held any concerns regarding this matter as per their comments during ISH 4 [\[EV10-002\]](#). NCC also confirmed agreement with the applicant's position [\[REP7-111\]](#).

Protected and Notable Species

- 3.4.64. The Environmental Masterplan [\[AS-026\]](#) details mitigation measures for birds and bats through the provision of boxes. However, some of these are outside the Order limits. At ISH 4, the applicant stated that as it wanted to naturalise these replacement habitats for as long as possible before the commencement of works, it would seek to implement agreements with landowners separately from the DCO. These agreements were not provided to the ExA. The applicant has instead detailed the use of R21 and R22 of the dDCO to secure the compensation measures, as was used under made DCO A303 (Amesbury to Berwick Down) Requirement 12 to secure stone curlew breeding plots outside the Order limits. There has been no objection from IPs to this approach. NE, as Statutory Nature Conservation Body (SNCB), has issued a Letter of No Impediment regarding the disturbance of bats [\[REP7-094\]](#) and has not raised an objection regarding the use of a requirement to secure compensation.
- 3.4.65. The applicant's submission raised the potential for an increased risk of collision with road traffic vehicles resulting from the felling of trees along the boundary of the A46 [\[APP-052\]](#). In ExQ1 [\[PD-007\]](#), the ExA requested details of barn owl collision mitigation. To compensate this risk, the applicant will replace these trees. The concern, however, is that these trees will take time to mature potentially creating a window of increased collision risk. The applicant responded that during construction the likelihood of a collision is negligible given the disturbance and better-quality habitat elsewhere. During operation the applicant intends to discourage barn owls from crossing the A46 by grassland maintenance and ensuring retention and enhancement of more suitable habitats elsewhere in the Order limits [\[REP2-037\]](#).

- 3.4.66. Concerns have been raised that the creation of water vole habitat secured under First Iteration EMP REAC commitment B5 [\[REP6-012\]](#) would result in an increase in American Mink. The Canal and River Trust commented that the creation of water vole habitat could encourage American Mink into the area and that local organisations are equipped to trap them [\[REP5-064\]](#). NSDC commented: *"any displacement would be via a displacement licence which would restrict this to 50 consecutive metres along both banks. As American Mink have a territorial range of 1-6 km this extent of displacement is, in our opinion, unlikely to bring displaced water vole into an increased risk of predation by American mink"* [\[REP5-068\]](#). Given this response, it is not considered by the ExA that the creation of water vole habitat raises a likely prospect of encouraging American Mink into the area.
- 3.4.67. General concerns regarding the impact on wildlife were raised by IPs. However, there were no objections on this matter from the host authorities or NE. Requirement 3 of the rDCO would require walkover surveys for notable fauna, such as hedgehogs, as secured by the First Iteration EMP REAC commitment B1. Other commitments include pre-commencement surveys for otter, birds, barn owl, badger and bats [\[REP6-012\]](#).
- 3.4.68. The impact of lighting will be neutral by virtue of no lighting on raised sections and minor additional lighting above the baseline at the Friendly Farmer link road and Brownhills Roundabout [\[REP4-034\]](#). Replacement and additional lighting columns would be lower than those being replaced. Furthermore, a lighting strategy would be produced in consultation with the relevant planning and highways authorities. This would be secured by R18 of the rDCO and takes account of the findings of ES Chapter 8 [\[REP7-026\]](#). There would then be an opportunity for host authorities to ensure that lighting is undertaken in a manner consistent with the findings and recommendations of the ES.

Biodiversity Net Gain

- 3.4.69. Despite BNG not being mandatory for NSIP projects, the applicant has determined that to comply with paragraph 5.33 of NPSNN 2015 a BNG calculation would assist the ExA in its assessment. The submission uses Biodiversity Metric 3.1 and has been agreed with NE [\[REP7-094\]](#) given the timing of the BNG assessment and the adoption of Metric 4.0. This has been queried by NCC [\[REP1-036\]](#) who considered sufficient time had been available for the applicant to use the Metric 4.0. Considering the position of NE on the use of Metric 3.1 the ExA considers the use of Metric 3.1 to be appropriate.
- 3.4.70. In their RRs the EA [\[RR-020\]](#) and NE [\[RR-044\]](#) raised concerns that the BNG assessment included a 'trading down' in river units, with high distinctiveness habitat being compensated for with habitats of medium distinctiveness, and a reduction in the area of high distinctiveness 'other rivers and streams' (1.62ha lost and 0.86ha provided) [\[REP7-056\]](#). The applicant explained in its response to the EA's relevant representation [\[REP1-010\]](#) that reconnecting rivers to their floodplain and removing barriers to fish migration are not considered feasible in the context of delivering this proposal. This was ultimately agreed by the EA [\[REP8-023\]](#) and NE [\[REP7-094\]](#). There was no issue raised on this matter from either NSDC or NCC throughout the examination.
- 3.4.71. The applicant has detailed that the entirety of the proposed planting and landscaping would be subject to a 5-year aftercare scheme with ongoing maintenance thereafter with those areas contributing to BNG managed for a 30-year period. The applicant confirmed in its response to ExQ3 that all areas of

landscaping and habitat creation contributed to BNG and therefore all would be managed for the 30-year period [\[REP7-103\]](#). Reports would be produced at years 1, 5 and 15 as secured by the First Iteration EMP REAC commitment B9 with a final report at year 30. Any shortfalls identified by the reports would then be addressed by the applicant as per [\[REP7-103\]](#).

Arboriculture

- 3.4.72. The proposed development would result in the total permanent loss of 62% of lowland mixed deciduous woodland from within the Order limits. This includes the partial loss of two woodlands (59% and 11%) and the almost complete loss of a third woodland (94%). A further 4% of this third woodland would be subject to long-term temporary loss [\[REP7-026\]](#). To compensate for the total loss of approximately 11,290m² of lowland mixed deciduous woodland HPI, including those located within a LWS, approximately 20,800m² of deciduous woodland would be planted. Where possible, creation of habitats has been prioritised in areas connected with and adjacent to areas of the equivalent HPI lost. Where this cannot be achieved within the Order limits, compensation would be delivered offsite. This is the case for lowland mixed deciduous woodland HPI, where approximately a further 13,000m² of woodland would be subject to enhancement to a higher quality lowland mixed deciduous woodland at Doddington Hall. This is subject to a s253 agreement with the landowner which has been submitted into the examination [\[REP9-004\]](#).
- 3.4.73. To compensate for the loss of approximately 226,340m² of non-HPI woodland (broadleaved semi-natural and plantation woodland not located within a designated site), approximately 63,750m² of 'other woodland; broadleaved' would be planted within the Order limits. The plantation woodlands at Doddington Hall have either a medium or low distinctiveness. The compensatory habitat will increase this to a higher distinctiveness. The metric allows for this approach to uplift the quality of an existing habitat as suitable compensation.
- 3.4.74. Doddington Hall is not ecologically linked to the Order limits. However, the ExA requested further details about site selection from the applicant at ExQ2 [\[PD-009\]](#). The applicant responded advising they had undertaken a sequential approach to site identification and Doddington Hall was the closest they could deliver such an area of woodland [\[REP5-060\]](#) considering factors such as land ownership, habitat quality and area size.
- 3.4.75. Concern was raised by NSDC [\[REP1-035\]](#) and NCC [\[REP1-038\]](#) regarding veteran trees T038, T136 and T139 with respect to potential impacts and protection measures. In response to ExQ2 the applicant updated its initial response to include monitoring and assessment by an experienced arboriculturist with an assessment undertaken prior to any works that could impact these trees and regular monitoring. Any works will necessitate a report that would be made available to NSDC upon request. This is secured via the First Iteration EMP REAC entries L2 and L6 [\[REP6-012\]](#). This has been agreed as per SoCGs with NCC [\[REP8-025\]](#) and NSDC [\[REP8-027\]](#).

Invasive Non-Native Species (INNS)

- 3.4.76. NSDC's LIR [\[REP1-035\]](#) raised concern that the original dDCO did not contain sufficient comfort on the efforts to eradicate INNS within the Order limits or to prevent the spread into the Order limits from adjacent land. In response, the applicant sought to add an INNS Management Plan and Bio-Security Risk Assessment, including an INNS Method Statement, to the First Iteration EMP. This has been agreed in the latest SoCG with NSDC [\[REP8-027\]](#).

Air Quality

- 3.4.77. Concern has been raised by the ExA regarding the potential impact of air quality, such as nitrogen and carbon, on newly-exposed habitats and the landscaping and planting to be provided as mitigation and equally to consider carbon sequestration, as per the Environmental Masterplan [\[REP7-042\]](#). NSDC said that they had no concerns in this regard [\[REP4-034\]](#). NE referred the ExA and the applicant to its standing advice on this matter but raised no concerns [\[RR-044\]](#).

CONCLUSIONS ON BIODIVERSITY

- 3.4.78. Whilst concerns were raised by NSDC and IPs regarding the impacts to LWS, no evidence was submitted that contradicts the applicant's conclusions. The location of attenuation ponds at the Great North Road Grasslands LWS has been evidenced by the applicant and agreed with NSDC. NCC has not offered any objective reasoning that the applicant's evidence is incorrect, nor any reason to contradict NSDC. Lowland meadow provision would provide for the loss of the LWS grassland and provide a larger area of this habitat around the Cattle Market Roundabout with the applicant providing maintenance as detailed in [\[REP7-056\]](#).
- 3.4.79. The applicant has demonstrated that BNG cannot be achieved due to the loss of HPI, but there is no objection from NE to its approach which demonstrates a quantitative gain in habitats. This is consistent with the approach detailed in the NPPF. Maintenance and monitoring of all elements that contribute towards BNG will be secured by R3 of the rDCO through the First Iteration EMP REAC.
- 3.4.80. Despite the loss of woodland within the Order limits, the proposed development does achieve appropriate compensation. The woodland at Doddington Hall would be improved resulting in a positive impact on biodiversity, despite not being ecologically linked to this site. This has been secured via a s253 agreement [\[REP9-004\]](#). The applicant has provided details as to why this location is suitable and there are no contradictory comments from IPs. In short, the site offers an opportunity for improvement as it is currently woodland of plantation origin and is held by a single landowner [\[REP7-103\]](#). Measures to protect veteran trees on site would be secured through the First Iteration EMP REAC and NSDC would have access to reports produced by the Ecological Clerk of Works (ECOW) in the event of any concerns.
- 3.4.81. NSDC agreed with the applicant that the newly exposed habitats resulting from the loss of existing vegetation would not be adversely impacted by vehicular emissions and resultant nitrogen disposition [\[REP8-027\]](#).
- 3.4.82. No adverse comments have been received regarding the baseline survey information for species. A rookery would be lost at the Farndon Roundabout, but pre-commencement walkover surveys would take place ensuring safety of birds. The applicant proposes compensatory barn owl, kestrel and bat boxes. Those within the Order limits would be secured by REAC B8 of the First Iteration EMP [\[REP6-012\]](#) and the Environmental Masterplan [\[REP7-042\]](#). R21 and R22 of the rDCO would ensure the provision of offsite bat and barn owl boxes.
- 3.4.83. Whilst LWS grassland sites would be significantly affected, there would be an overall increase in biodiversity units across the Order limits, which despite the loss of the HPI would result in a long-term benefit of a larger area of habitat. There is no objection to the loss of the LWS grasslands from NSDC. The ExA considers that the proposal would have a moderate positive effect on biodiversity in the long term. The creation of habitat in the Farndon East and West FCAs from agricultural land, the planting of hedgerows and the woodland improvement at Doddington Hall

adequately compensates for the short-term adverse impact during the construction and initial aftercare periods as given. This equates to a BNG of 4.95 units in habitats, 8.17 units in hedgerows and 33.28 units in river habitat.

- 3.4.84. The ExA considers that the applicant's assessment is consistent with the requirements of NPSNN 2015. As confirmed by IPs, the submission demonstrably meets the mitigation hierarchy and achieves a net gain in biodiversity. NPSNN 2024 and NPPF are considered important and relevant by the ExA and the applicant's assessment also meets these through the provision of BNG and use of the mitigation hierarchy. This has not been disputed by IPs. The host authorities, NE and the EA do not raise matters to contradict the applicant's assessment. Disturbance during the construction period would result in a general adverse effect given the likelihood for disturbance, but in the longer term there would be a moderate positive effect. In this respect, the proposed development attracts a little positive weight in the planning balance.

3.5. CLIMATE AND CARBON EMISSIONS

INTRODUCTION

- 3.5.1. This section considers the applicant's assessment in Chapter 14: Climate [[REP7-038](#)] of the Environmental Statement (ES). Climate-related flooding is discussed in section 3.13 below.

POLICY CONSIDERATIONS

National Policy Statements

National Policy Statement for National Networks, 2015

- 3.5.2. New national networks infrastructure will be typically long-term investments which will need to remain operational over many decades in the face of a changing climate. Applicants must consider the impacts of climate change when planning the location, design, build and operation of such infrastructure and should demonstrate that there are no critical features of the design which may be seriously affected by more radical changes to the climate beyond those projected in the latest set of UK climate projections (paragraph 4.40 and 4.43).
- 3.5.3. The government has a legally-binding framework to cut greenhouse gas (GHG) emissions (paragraph 5.16). However, since NPSNN 2015 was designated, this target has changed (the new target is discussed below).
- 3.5.4. The impact of road development on aggregate levels of emissions is likely to be very small. Carbon budgets and plans will include policies to reduce transport emissions, taking into account the impact of the government's overall programme of new infrastructure. It is very unlikely that a road project will, in isolation, affect the ability of government to meet its carbon reduction plan targets. Any increase in carbon emissions is not a reason to refuse development consent unless it would have a material impact on the ability to meet carbon reduction targets (paragraphs 5.16, 5.17 and 5.18).
- 3.5.5. Evidence of appropriate mitigation measures in both design and construction should be presented. The Secretary of State (SoS) will consider the effectiveness of such mitigation measures in order to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high. The SoS's view of the adequacy of

the mitigation measures relating to design and construction will be a material factor in the decision-making process (paragraph 5.19).

National Policy Statement for National Networks, 2024

- 3.5.6. Paragraphs 2.19 and 2.20 state that while transport is currently the largest contributor to UK domestic GHG emissions, the government is clear on the need to offer genuine modal choice and to not stop people travelling, but to enable people to do the same things differently and more sustainably while still realising transport's social and economic benefits.
- 3.5.7. Carbon emissions from construction and operation of the strategic road network represent a small proportion of emissions, with the vast majority generated by the vehicles that travel on them. The National Road Traffic Projections 2022, provide a strong analytical basis for understanding the potential evolution of traffic growth, congestion, and emissions. In all scenarios, carbon dioxide (CO₂) tailpipe emissions are projected to fall significantly due to the anticipated uptake of zero-emission vehicles (paragraphs 2.24 and 2.25).
- 3.5.8. Applicants must consider the direct and indirect impacts of climate change when planning the location, design, build, operation and maintenance of a development, noting that the SoS will need information on how the proposal will take account of the projected impacts of climate change and remain resilient (paragraph 4.39).
- 3.5.9. A carbon management plan should be produced as part of, and secured under, a development consent order (DCO), setting out steps taken to minimise, capture and offset emissions in design and construction (paragraphs 5.35 and 5.37).
- 3.5.10. Paragraph 5.38 notes that the SoS must be satisfied that the applicant has, as far as possible, assessed the carbon emissions at all stages of the development. It notes, however, that it would not be feasible or sensible for an assessment of the UK's ability to meet the net zero target when taking individual development decisions and that there is no legal requirement to do so.
- 3.5.11. At paragraph 5.39, it is noted that section 1(1) of the Climate Change Act 2008 reflects and puts into effect the net zero target set in light of the temperature goal of the Paris Agreement, increased in June 2019 from 80% emissions reduction to 100% emissions reduction by 2050. Carbon budgets 1 to 5 were set to meet the 80% emission reduction target, but carbon budget 6 (2033-2037) has been set to meet the 2050 net zero target. Thus, an assessment of carbon impacts against carbon budget 6 is to be taken as an assessment against the net zero target.
- 3.5.12. The SoS should be content that the applicant has taken all reasonable steps to reduce the total carbon emissions at all stages of development. It should give positive weight to projects that embed nature-based or technological processes to mitigate or offset the emissions. Given the important role national network infrastructure plays in supporting the process of economy-wide decarbonisation, the SoS accepts that there are likely to be some residual emissions from construction (paragraph 5.40).
- 3.5.13. Operational carbon emissions from some types of national network infrastructure cannot be totally avoided. Given the range of non-planning policies aimed at decarbonising the transport system, government has determined that a net increase in operational carbon emissions is not, of itself, reason to prohibit the consenting of

national network projects or to impose more restrictions on them in the planning policy framework (paragraph 5.41).

- 3.5.14. Operational emissions will be addressed in a managed, economy-wide manner. Therefore, approval of schemes with residual carbon emissions can be consistent with meeting net zero. However, the SoS should refuse consent where the increase in carbon emissions resulting from the proposed scheme would be so significant that it would have a material impact on the ability of government to achieve its statutory carbon budgets (paragraph 5.42).

National Planning Policy Framework, December 2024

- 3.5.15. Paragraph 164 states that new development should be planned in ways that avoid increased vulnerability to the range of impacts arising from climate change and in ways that help to reduce GHG emissions.

Local Development Plan

NSDC Amended Core Strategy, 2019

- 3.5.16. Core Policy 9: Sustainable Design expects development proposals to demonstrate a high standard of sustainable design. Development should be resilient in the long-term, taking into account the potential impacts of climate change.
- 3.5.17. Core Policy 10: Climate Change seeks to mitigate the impacts of climate change by ensuring that proposals minimise potential adverse environmental impacts during their construction and operation. Proposals should ensure that the impacts on natural resources are minimised, the use of renewable resources are encouraged, and they should be efficient in the consumption of energy, water and other resources.

THE APPLICANT'S CASE

Effects on Climate

- 3.5.18. Design Manual for Roads and Bridges (DMRB) LA 114 says that an assessment should identify the scale and nature of GHG emissions across the whole project life cycle, taking into account design and mitigation measures already incorporated into the project, and should report on construction and operational (maintenance and user) GHG emissions. Decommissioning (for both impacts on climate and vulnerability of projects to climate change) is excluded from the assessment due to the length of the operational phase.

Construction Phase

- 3.5.19. ES Chapter 14 explains that the design of the proposed development adheres to the principles of the design and mitigation hierarchy outlined in DMRB LA 114, the first principle being to avoid potential adverse effects where possible, before seeking to minimise or mitigate any unavoidable impacts. Embedded mitigation measures incorporated in the design include resource efficiency through retrofitting existing structures and the use of borrow pits. Further opportunities to reduce emissions would be sought during the detailed design stage (Register of Environmental Actions and Commitments (REAC) [\[REP6-012\]](#) commitment C2, secured by R3 of the dDCO [\[AS-106\]](#)).
- 3.5.20. As set out at REAC commitment C1, a Carbon Management Plan (CMP) would be completed by the contractor as part of the Second Iteration Environmental

Management Plan (EMP) and would cover: procurement; materials and resource management on site; a change process for low/ zero carbon solutions; low/ zero carbon plant and management; construction techniques and competency; and training.

- 3.5.21. The applicant has aligned its assessment to life cycle stages (or modules) in Publicly Available Specification (PAS) 2080:2023 which specifies the requirements for the management of whole-life carbon in buildings and infrastructure. Emissions arising from the construction phase would amount to 143,887 tCO₂e as summarised in Table 2: Scheme Life Cycle Stage Emissions – Construction Phase. Of this, earthworks is the largest emissions category amounting to 51,404 tCO₂e. Structures is second, totalling to 42,084 tCO₂e.

Table 2: Scheme Life Cycle Stage Emissions – Construction Phase

Life Cycle Stage	Associated Emissions (tCO ₂ e)
Product stage (modules A1-A3)	95,176
Construction Process Stage – transport to site (module A4)	30,001
Construction Process Stage – construction and installation (module A5)	18,710
Total	143,887

Operational Phase

- 3.5.22. The applicant has assessed new stores of carbon (e.g. sequestration from planting), maintenance (including repair and replacement) activities, and operational energy use. The assessment also considered carbon emissions associated with users of the road within a study area that corresponds with the affected road network which represents the area of the road network that would experience the greatest changes in traffic flows.
- 3.5.23. The operational land use change assessment covered the extent of habitat removal and habitat creation or enhancement associated with the proposed development, focussing on the changes to sequestration in the operational phase across the study area for existing habitat per ES Chapter 8: Biodiversity [\[REP7-026\]](#).
- 3.5.24. The main impact during operation, as summarised in Table 3: Operational Phase Emissions, would be the release of GHGs which could be caused by: changes in vehicle distributions and speed limits; maintenance activities; energy usage; and reduced carbon sequestration from land-use change.

Table 3: Operational Phase Emissions

Source of Emissions	60-year assessment period (tCO ₂ e)
Road user emissions	523,019
Renewals and maintenance	15,416
Operational Energy	2,963
Land use change emissions	- 2,085
Total	539,312

- 3.5.25. Opportunities for carbon reduction during operation would be recorded in a Carbon Opportunities Log which would be updated by the Principal Contractor and passed to the maintenance provider to pursue as part of the Third Iteration EMP (secured by R4 of the dDCO). The Third Iteration EMP would also include a detailed carbon monitoring plan.

Impact on Government's ability to meet carbon budgets

- 3.5.26. As summarised in Table 4: Summary of emissions against carbon budgets, emissions would amount to less than 0.007% of the total emissions in any five-year UK carbon budget. The applicant has concluded, therefore, that the impact of the proposed development would not be significant and would not impact on the government's ability to meet those carbon budgets.

Table 4: Summary of emissions against carbon budgets

Scheme stage	Estimated total GHG emissions over relevant carbon budgets (tCO ₂ e) ⁽¹⁾	Net GHG emissions over relevant carbon budgets (tCO ₂ e) ⁽²⁾	Net GHG emissions per relevant carbon budget (tCO ₂ e)		
			4 th (2023-2027)	5 th (2028-3032)	6 th (2023-2037)
Construction	143,887	143,887	107,915	35,972	0
Operation	12,333,180	539,312	-	40,601	41,991
Total	12,477,067	683,200	107,915	76,573	41,991

⁽¹⁾ 'Do something' scenario; ⁽²⁾ 'Do something' minus 'Do minimum'.

Resilience to Climate Change

- 3.5.27. The applicant produced a qualitative assessment of the proposed development's resilience to climate change in line with DMRB LA 114. The study area was based on the Order limits, including any construction compounds and temporary land take, and identified hazards induced by climate change. The applicant identified that extreme weather events could impact on the construction and operational phases.
- 3.5.28. Mitigation, as set out at REAC commitment C5, would include contingency plans for situations arising due to storms, high winds or flooding; workforce health and safety plans and welfare management systems; and regular monitoring. With mitigation in place, the applicant concluded that climate resilience impacts during the construction phase are not expected to be significant.

- 3.5.29. Operational phase mitigation would include emergency response and contingency plans; regular maintenance of landscaping, assets and drainage systems; regular sweeping and cleaning to remove debris; increased maintenance capacity to allow for potential extended maintenance intervals; and regular reviews of winter maintenance plans. Measures, per REAC commitment C3, would be set out in the Third Iteration EMP. Taking account of such mitigation the applicant concluded that no significant effects would occur. The applicant also concluded that there would not be any significant cumulative effects or in-combination climate change effects.

VIEWS OF IPs

Local Authorities

- 3.5.30. In its LIR [\[REP1-038\]](#), Nottinghamshire County Council (NCC) said that the baseline and assessment set out in ES Chapter 14: Climate are proportionate and adequately derived.
- 3.5.31. It noted that the projected uptake of lower carbon fuels, electric vehicles (EVs) and improved vehicle technology since the UK government announced the move to end the sale of new petrol and diesel cars by 2030 is not fully captured in the modelling scenarios of future road traffic emissions, meaning that the applicant's assessment is likely to lead to an overestimation of operational emissions and not provide a true picture of the likely impact (paragraph 13.17). It also noted that the applicant's in-combination assessment does not include an analysis of the impact of climate change on air quality (paragraph 13.20).
- 3.5.32. It said that segregated cycling routes could contribute to creating a network of cycleways and footways that would reduce the reliance on vehicle use, and that every opportunity should be explored to see if there is any possibility to support additional EV infrastructure along the corridor (paragraphs 13.15 and 13.18).
- 3.5.33. With reference to NPSNN 2024, NCC stated that the ES did not set out mitigation measures to offset or remove any residual carbon emissions and also noted that the absence of reference in the ES to the NCC Net Zero Framework and to National Highways' Net Zero Plan, stating that it is not clear how the proposed development would align with these (paragraphs 13.14 and 13.16). Again, with reference to NPSNN 2024, NCC requested that a carbon management plan (CMP) be provided for review.

Statutory Parties

- 3.5.34. There were no comments from any statutory parties in relation to this topic.

Other IPs

- 3.5.35. At the RR stage, a number of IPs [\[RR-001\]](#), [\[RR-016\]](#), [\[RR-039\]](#), [\[RR-050\]](#), [\[RR-062\]](#), [\[RR-064\]](#) and [\[RR-073\]](#) said that the proposed development would increase carbon emissions, some saying by 143,887 tCO₂ in the crucial Fifth Carbon Budget during which, they said, is when the fastest and most significant cuts need to be made. They also stated that the operation of the proposed development would increase carbon by an additional 539,312 tCO₂e over its 60-year lifetime. However, none of these IPs explained whether such changes would result in the proposed development being unable to meet the relevant policy tests.

- 3.5.36. Another IP, Protect Newark's Green Spaces, stated [\[RR-060\]](#) that there is a “*climate crisis*” and advocated that the funding for the proposed development be spent on other modes of transport.

Acceptability of the Applicant's Assessment

- 3.5.37. A number of IPs suggested that the applicant's assessment was not sufficiently comprehensive. [\[RR-012\]](#) said that the ES does not identify and describe:
- the full science-based impacts of the development 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; and
 - the impacts on the delivery the UK Climate plan (“the Carbon Budget Delivery Plan”).
- 3.5.38. [\[RR-021\]](#) and [\[RR-066\]](#) said that ‘Scope 3’ emissions, i.e. emissions attributed to increased traffic flow, do not appear to have been taken into account.

EXAMINATION

- 3.5.39. The basis for the assessment of the application under s104 of the PA2008 is NPSNN 2015, albeit the Examining Authority (ExA) considers NPSNN 2024 to be important and relevant. Both Newark and Sherwood District Council (NSDC) [\[REP2-050\]](#) and the applicant [\[REP2-037\]](#), [\[REP8-028\]](#) and [\[REP8-010\]](#) have stated that the applicant's assessment aligns with NPSNN 2024 as well as with NPSNN 2015. No representations were made to suggest that any part of these analyses is incorrect.
- 3.5.40. Whilst, with reference to NPSNN 2024, NCC had said that a CMP should be submitted as part of the DCO application, it agreed [\[EV11-001\]](#) that this could be provided as part of the Second Iteration EMP and secured by Requirement 3 of the dDCO. NCC also confirmed that it was no longer seeking an in-combination assessment of the impact of climate change on air quality.
- 3.5.41. NSDC sought an outline of the contents of the CMP and this was provided as an appendix to the First Iteration EMP [\[REP6-012\]](#). Acknowledging that this would be updated/ expanded if the application was approved, NSDC confirmed [\[REP5-068\]](#) that it was satisfied with the submitted document.
- 3.5.42. Following general criticism [\[RR-012\]](#) of its assessment, the applicant provided a detailed response [\[REP1-009\]](#) noting that the ES provides clear, concise information to support the SoS in reaching a reasoned conclusion about the likely effects of the proposed development based on current knowledge, established methods of assessment and, where relevant, worst-case scenarios.
- 3.5.43. The applicant also confirmed that it had taken account of ‘Scope 3’ emissions, specifically from construction, maintenance and from road users during the operational phase of development [\[REP2-037\]](#).
- 3.5.44. Nevertheless, and following the UK Supreme Court's judgement 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), the applicant undertook a review [\[REP4-036\]](#) of its assessment to ensure that all likely significant indirect effects of the proposed development had been reported, and that none had been omitted during the EIA Scoping stage or from the ES. It concluded that there were no additional likely significant indirect effects that had not already been identified in the submitted assessment.

- 3.5.45. The applicant also confirmed that it is neither necessary nor feasible to estimate the impact of changes in GHG emissions associated with a particular development on the global climate system and that ES Chapter 14 provides an assessment of the potential impact on the UK's commitments under the Paris Agreement, concluding that GHG emissions resulting from the proposed development would not have a material impact on the government's ability to meet its carbon reduction targets and therefore would not impact the government's ability to deliver the Carbon Budget Delivery Plan or the commitments under the Paris Agreement.
- 3.5.46. The applicant explained [\[REP2-019\]](#) that it is not proposing any offsetting measures to balance emissions. Rather, the focus has been on avoiding emissions as much as possible. A 44% reduction in emissions compared to the initial baseline assessment has been achieved by minimising design-related GHG emissions and by identifying opportunities to improve resource efficiency and reduce carbon, such as through the re-use of existing carriageway infrastructure, use of pre-cast materials where possible, and provision of renewable energy for the site compound.

CONCLUSIONS ON CARBON AND CLIMATE EMISSIONS

- 3.5.47. Whilst the basis for the assessment of this topic is NPSNN 2015, the ExA considers NPSNN 2024 to be important and relevant, including because NPSNN 2024 was prepared in light of the 6th carbon budget.
- 3.5.48. Compared with NPSNN 2015, NPSNN 2024 requires further detail in the assessment of GHGs and in relation to mitigation, noting that the SoS should be content that the applicant has taken all reasonable steps to reduce the total carbon emissions at all stages of development. However, NPSNN 2024 clearly notes that the SoS accepts that there are likely to be some residual emissions from construction of infrastructure and that a net increase in operational carbon emissions is not, of itself, reason to prohibit the consenting of projects; decisions should still be based on the effect that a project would have on the government's ability to meet national carbon budgets. As such the basis for decision-making continues to be the impact that a scheme could have on the government achieving its carbon targets.
- 3.5.49. No evidence has been provided to demonstrate that the applicant's assessment cannot be relied upon and the ExA considers it to be satisfactory. The ExA agrees that the proposed development would not affect the ability of government to meet its carbon reduction plan targets and, as such, does not consider the increase in GHGs as a result of the proposed development (which, at 683,200tCO₂e (net) over the relevant carbon budgets, would amount to less than 0.007% of the total emissions in any five-year UK carbon budget) to be a reason to refuse development consent.
- 3.5.50. Having reviewed NCC's Net Zero Framework and National Highways' Net Zero Plan, the ExA notes that these are corporate objectives as opposed to planning policy and does not consider them to be important and relevant. In any event, the ExA does not consider that any provisions in these documents would affect its analysis of or conclusions on this topic.
- 3.5.51. The ExA also concludes that the applicant has given due consideration to the impacts of climate change when planning the location, design, construction and operation of the proposed infrastructure and has taken or proposed reasonable steps to reduce the total carbon emissions at all stages of development so that the carbon footprint of the proposed development is not unnecessarily high. Future measures, including a carbon management plan and operational phase mitigation,

would be satisfactory controlled by the Second and Third Iteration EMPs, secured by the rDCO.

- 3.5.52. NCC suggested that the provision of segregated cycle routes and electric vehicle (EV) infrastructure would be desirable and a way to reduce emissions. EV infrastructure does not form part of the proposed development and whilst enhancements for cyclists are proposed (discussed in section 3.11), these have not been presented as carbon/ climate change mitigation. However, there is no requirement for the proposed development to fully mitigate or offset all residual emissions. Therefore, and taking account of the overall conclusion in relation carbon reduction targets, the ExA does not see any justification for requiring segregated cycle routes and electric vehicle infrastructure as a form of mitigation.
- 3.5.53. Whilst the proposed development would not affect the ability of government to meet its carbon reduction plan targets, it would lead to a net increase in operational carbon emissions. Accordingly, the ExA attaches a little negative weight to this consideration.

3.6. GEOLOGY AND SOILS

INTRODUCTION

- 3.6.1. This section considers the applicant's assessment of the geology and soils-related implications of the proposed development as set out in Chapter 9: Geology and Soils [\[REP7-028\]](#) of the Environmental Statement (ES) and the following accompanying documents:

- Figure 9.1 – Topography [\[AS-047\]](#);
- Figure 9.2 – Potential Sources of Contamination [\[AS-048\]](#);
- Figure 9.3 – Superficial Deposits [\[AS-049\]](#);
- Figure 9.4 – Bedrock Geology [\[AS-050\]](#);
- Figure 9.5 – Aquifer Designation Superficial Deposits [\[AS-051\]](#);
- Figure 9.6 – Aquifer Designation Bedrock Geology [\[AS-052\]](#);
- Appendix 9.1 – A46 Newark Northern Bypass Preliminary Sources Study Report [\[APP-161\]](#), [APP-162](#) and [APP-163](#);
- Appendix 9.2 – Contaminated Land Risk Assessment [\[APP-164\]](#), [APP-165](#), [APP-166](#), [APP-167](#), [APP-168](#), [APP-169](#);
- Appendix 9.3 – Agricultural Land Classification Report [\[REP7-058\]](#); and
- Appendix 9.4 – Soil Nutrient Survey Report [\[REP7-060\]](#).

- 3.6.2. Whilst the effect of the proposed development on agricultural land is considered in this section, the effect on farm holdings is discussed in section 3.11 of this report. Considerations in relation to minerals and borrow pits are dealt with in section 3.9 of this report.

POLICY CONSIDERATIONS

National Policy Statements

National Policy Statement for National Networks, 2015

- 3.6.3. ESs should set out any likely significant effects on internationally-, nationally- and locally-designated sites of geological conservation (paragraphs 5.22 and 5.23).
- 3.6.4. Applicants and the decision-maker should take into account the economic and other benefits of best and most versatile agricultural land (BMV; defined as land in grades 1, 2 and 3a of the Agricultural Land Classification (ALC)). Where significant

development of agricultural land is demonstrated to be necessary, applicants should seek to use areas of poorer quality land in preference to higher quality land and should seek to minimise impacts on soil quality, taking into account any mitigation measures (paragraphs 5.168 and 5.176).

3.6.5. Where possible, developments should be on previously-developed (brownfield) sites provided that the land is not of high environmental value. Applicants should ensure that they have considered the risk posed by and ways to address land contamination (paragraph 5.168)¹.

3.6.6. Applicants can minimise the direct effects of a project on the existing use of the proposed site, or on proposed uses near the site, by the application of good design principles, including in relation to the layout of the project and the protection of soils during construction having regard to Defra's 'Code of Practice for the Sustainable Use of Soils on Construction Sites' (paragraph 5.179).

National Policy Statement for National Networks, 2024

3.6.7. Policy in NPSNN 2024 does not materially differ from that in NPSNN 2015 in respect of agricultural land.

3.6.8. Paragraphs 5.153 and 5.154 note that land contamination from previous and current uses can harm human health, drinking water supplies, groundwater and surface water, soils, habitats, and biodiversity. Development should, where possible, remediate despoiled, degraded, derelict, contamination, and unstable land, where appropriate. Proposals should be appropriate for the location, including preventing unacceptable risks from land contamination or instability. Applicants should consult the Coal Authority, Environment Agency (EA) and local authority if necessary.

3.6.9. Applicants should ensure and demonstrate that they have considered the risks posed by land contamination in accordance with the EA's land contamination risk management (LCRM) guidance and should have a range of mitigation options available including sustainable remediation, managing unacceptable risks to human health and the environment. Disposal of soils to landfill should be minimised (paragraphs 5.155 and 5.159).

3.6.10. Paragraph 5.180 acknowledges that re-use of previously-developed land may not be possible for some forms of infrastructure, particularly linear infrastructure.

National Planning Policy Framework, December 2024

3.6.11. At paragraphs 187 and 196 it is stated that planning decisions should contribute to and enhance the natural and local environment by (*inter alia*) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil pollution. Where appropriate, contaminated land should be remediated. Planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from contamination.

Local Development Plan

NSDC Allocations & Development Management DPD, 2013

¹ The Model Procedures for Management of Land Contamination with are referenced in NPSNN 2015 have been withdrawn and replaced with the Environment Agency's (EA) 'Land contamination risk management' (LCRM) guidance.

- 3.6.12. Policy DM8 says that proposals resulting in the loss of the most versatile areas of agricultural land will be required to demonstrate a sequential approach to site selection and demonstrate environmental or community benefits that outweigh the loss.
- 3.6.13. Policy DM10 states that where a site is known to be, or highly likely to have been, contaminated by a previous use, investigation of this and proposals for any necessary mitigation should form part of the proposal for re-development.

Other Guidance

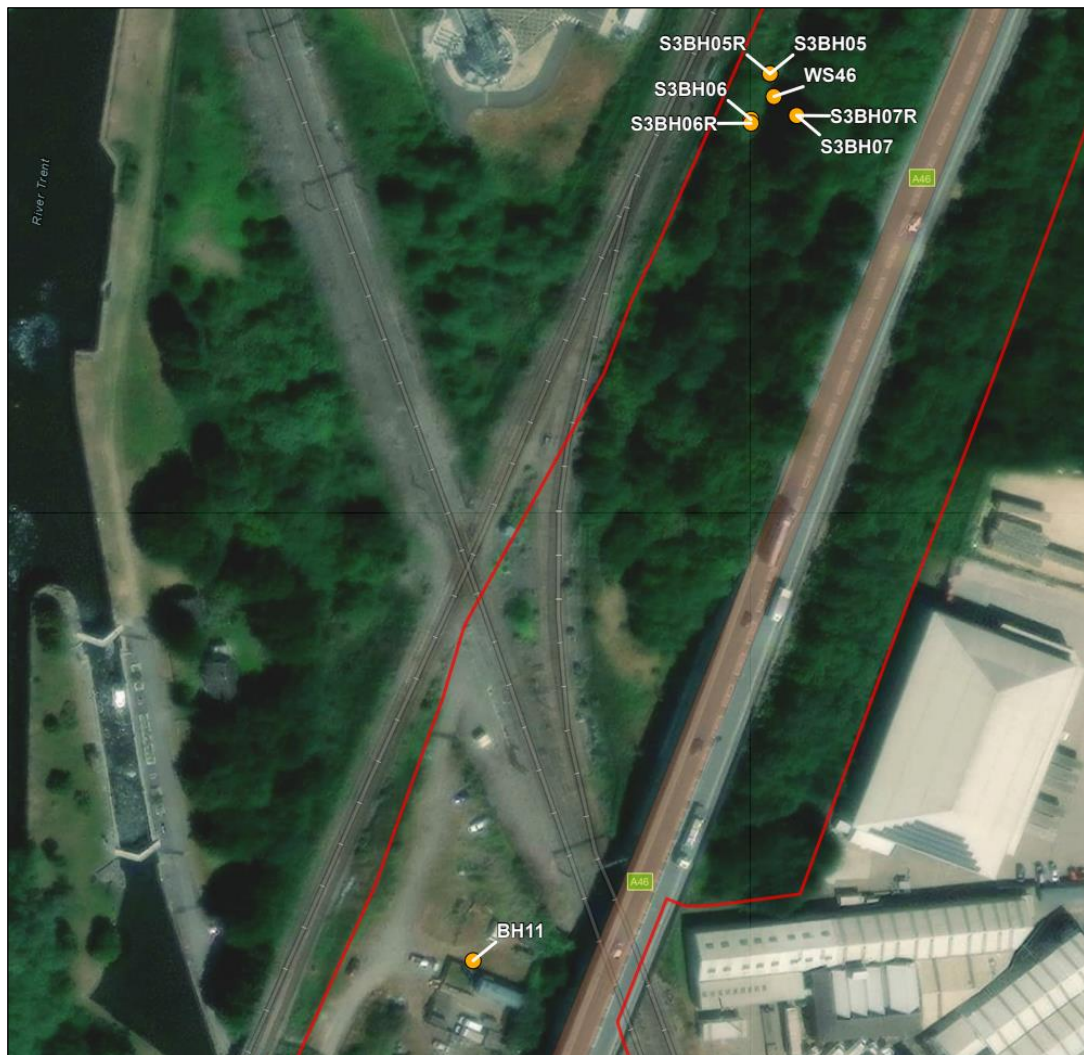
- 3.6.14. Newark & Sherwood District Council's (NSDC) contaminated land strategy (adopted December 2024) aims to identify actual and potential contaminated sites in the district by rational, ordered, and efficient investigation, to remove unacceptable risk to human health and the environment, and to prevent the creation of new contaminated sites. NSDC confirmed [[REP5-068](#)], however, that this updated strategy did not give rise to any new considerations or affect the applicant's assessment or conclusions.

THE APPLICANT'S CASE

Contamination

- 3.6.15. NSDC has not designated any land as contaminated under the definition in Part 2A of the Environmental Protection Act 1990 and as such does not have any entries on the Contaminated Land Register.
- 3.6.16. The study area for contamination [[AS-048](#)] comprised the Order limits and an additional buffer of 500 metres (m), covering the likely extent of impact pathways as well as underlying groundwaters and surrounding surface waters, including aquifers which are below or down-gradient of the study area.
- 3.6.17. There are two recorded active landfills within 500m of the proposed development; any impacts on groundwater quality from those authorised landfills would be managed by the environmental permit(s) for the landfill sites. A small, historic landfill is located 400m from the proposed development, on the British Sugar site. The applicant has concluded that this is beyond the likely extent of impact pathways (including from major accidents and disasters).
- 3.6.18. Investigations and testing recorded limited visual or olfactory evidence of soil contamination across the majority of the Order limits. Leachate extract from soil, groundwater and surface water testing recorded generally low-level exceedances of several determinants including metals, polycyclic aromatic hydrocarbons compounds and inorganics which were generally representative of background conditions and do not pose an unacceptable risk to controlled waters.
- 3.6.19. Ground testing identified short- and long-term carbon dioxide exceedances, likely to be naturally-occurring from underlying Alluvium and Mercia Mudstone.
- 3.6.20. Ground investigations also identified a localised area of soil contamination near Nether Lock (Location ID WS46 on Figure 3: Extract from ES Appendix 9.2 showing Contamination Hotspots) but at a depth which presents a low risk to human health. A localised exceedance of polycyclic aromatic hydrocarbons was also found on the site of a former glue factory (now ADR Automotive; Location ID BH11). However, delineation by way of supplementary ground investigations indicated that contamination is not widespread.

Figure 3: Extract from ES Appendix 9.2 showing Contamination Hotspots²



Construction Phase

- 3.6.21. No earthworks are proposed in contamination hotspot area WS46 and the contamination would remain *in situ* at between 1.2m and 3.65m. The land at BH11 is likely to be permanent hardstanding associated with piled foundations and, therefore, construction works are unlikely to create a source-pathway-receptor linkage. Mitigation would involve following the EA's LCRM guidance and ensuring that no earthworks are proposed in the contamination hotspot area (commitment GS4 of the Register of Environmental Actions and Commitments (REAC) in the First Iteration Environmental Management Plan (EMP) [REP6-012], secured by Requirement (R) 3 of the draft DCO (dDCO) [AS-106]). The applicant has identified a slight adverse residual effect on construction workers at the contamination hotspot area, which is not significant.
- 3.6.22. Taking account of mitigation measures in the EMP, there would be slight adverse residual effects in relation to the effect of contamination and ground gas across the rest of the proposed development on construction workers, and in relation to the effect of mobilised material (such as soil-derived dust, contaminated surface water

² Source – Appendix F Contamination Hotspot Exploratory Holes of Appendix 9.2 Contaminated Land Risk Assessment [APP-169]

run-off or contaminated groundwater) on people using public spaces/ commercial/ industrial properties within the vicinity of, and living close to, the proposed development.

- 3.6.23. The applicant has identified slight adverse residual effects in relation to surface water at the contamination hotspot; surface water generally across the proposed development; and groundwater where there is a potential for aquifers to be affected. Again, mitigation would be secured via the EMP.
- 3.6.24. Mitigation of known contamination and verification would be secured through REAC commitment GS6, secured by R3 of the dDCO. The procedure set out in R8 of the dDCO would be followed should any previously-unidentified contamination or unforeseen ground conditions become evident.
- 3.6.25. EA guidance on 'Discharges to surface water and groundwater: environmental permits' and 'Groundwater protection position statements' would be followed. Consents and permits for activities such as discharging into surface water would be sought where necessary, as noted in the Consents and Agreements Position Statement [\[REP7-010\]](#).

Operational Phase

- 3.6.26. The operation of the development is not expected to result in any significant effects from contamination and therefore was 'scoped out' of the assessment [\[APP-189\]](#). Impacts relating to major accidents and natural disasters have been considered in ES Appendix 4.2 (Assessment of Major Accidents and Natural Disasters [\[REP7-044\]](#)) and it has been concluded that, with risk mitigation measures in place, the identified risks would not result in major accidents.

Geology and Soils

Geology

- 3.6.27. There are no designated or non-designated geological sites/ features of interest, including Regionally Important Geological Sites, within 500m of the proposed development and, consequently, construction phase effects would be neutral. Operational phase effects on geology were 'scoped out' of the ES.

Soils

- 3.6.28. There would be no loss of agricultural land during the operational phase; land lost permanently from agriculture would be removed in the construction phase. Not all of the affected agricultural land would be required permanently and parts could be returned to agricultural use following the construction phase; land that would be permanently removed from agricultural use is illustrated on a drawing at Appendix C of [\[REP2-037\]](#) and summarised in the accompanying table. The temporary and permanent losses of agricultural land are summarised in Table 5.

Table 5: Summary of Agricultural Land Losses

	Temporary Loss – to be returned to agricultural use		Permanent Loss	
	Kelham and Averham FCA (ha)	Rest of Order Limits (excluding Kelham and Averham FCA) (ha)	Kelham and Averham FCA (ha)	Rest of Order Limits (excluding Kelham and Averham FCA) (ha)
Grade 2	5.7	0.0	0.3	0.0
Grade 3a	2.3	13.5	1.1	14.5
BMV Total	8.0	13.5	1.4	14.5
Other Grades	3.2	4.8	0.0	65.4
Grand Total (BMV Total + Other Grades) *	11.2	18.4	1.4	79.8

Source: [\[REP5-060\]](#); Allow for rounding in totals

3.6.46. Following the application of mitigation measures in the Outline Soils Management Plan (OSMP; appended to the EMP), there would be significant effects associated with the temporary loss of ALC grade 2 land (Moderate Adverse); the permanent loss of ALC grade 3a land (Moderate Adverse); and the permanent loss of ALC grade 3b land (Large Adverse).

3.6.47. By way of mitigation, the OSMP and the Pre-commencement Plan [\[REP7-072\]](#) include guidance on aftercare and monitoring of soils after construction to ensure that any reinstated soils are functional at the required level, whether returned to agricultural use or used for another purpose.

VIEWS OF IPs

Local Authorities

3.6.48. In their LIRs, both Nottinghamshire County Council (NCC) [\[REP1-038\]](#) and NSDC [\[REP1-035\]](#) indicated that the applicant's assessment was generally acceptable and they did not identify any policy conflicts. However, in respect of the Contaminated Land Risk Assessment (ES Appendix 9.2 [\[APP-164\]](#), [APP-165](#), [APP-166](#), [APP-167](#), [APP-168](#), [APP-169](#)) they said that the conceptual site model could account for unknown contamination and hotspots in unexplored areas of the site and the potential for construction sources of ground gases, although given the nature of the site, the risk is likely to be negligible. They also suggested that as some baseline data was obtained in 2018 and a site reconnaissance was undertaken in 2021, it would be beneficial to update it, albeit it was not anticipated to have changed significantly given the rural nature of the site. NSDC also noted [\[RR-048\]](#) an expectation that full details of contamination mitigation would be confirmed prior to commencement of works.

Statutory Parties

Contamination

- 3.6.49. The EA [\[RR-020\]](#) said that the presence of the British Sugar landfill site in relation to the development had not been adequately assessed and sought confirmation that:
- the proposed development would not detrimentally impact controlled waters or the authorised landfill;
 - existing boreholes would be identified, protected, and not damaged by any of the proposed works; and
 - the boundaries of the authorised landfill site boundary and Order Limits as shown on the submitted plans are correct.

Geology

- 3.6.50. The Coal Authority [\[REP1-040\]](#) did not raise any issues.

Soils

- 3.6.51. Natural England (NE) [\[RR-044\]](#) and [\[REP2-045\]](#) expressed concern relating to the absence of an ALC survey of land south of Farndon Roundabout and about the lack of clear commitments to reinstate all temporarily-lost BMV land to its original classification after construction and to ensure that soils are not handled when wet.

Other IPs

- 3.6.52. No additional matters were raised by IPs in relation to geology or contamination. [\[RR-003\]](#) and [\[RR-032\]](#) sought confirmation that full land remediation, including in relation to topsoil, would be undertaken on the land within their ownership.
- 3.6.53. [\[RR-003\]](#) said that the creation of an FCA at Kelham could affect the versatility of crops grown on their agricultural land which is mainly ALC Grade 2 and that this would affect the value of the land. However, given that this comment relates to compensation, the ExA did not explore it further.

EXAMINATION

Contamination

- 3.6.54. NSDC confirmed [\[REP2-050\]](#) that, in relation to matters within its competency and subject to controls in the dDCO, it agreed with the applicant's approach to contaminated land. In light of the provisions of the dDCO and given the applicant's recent activities on the site, it also confirmed [\[EV11-001\]](#) that it was no longer seeking any updates to the baseline data.
- 3.6.55. The applicant clarified [\[EV7-003\]](#) that the dDCO included controls in relation to both known and unknown contamination, including the provision of verification reports.
- 3.6.56. The EA's questions in relation to existing boreholes and the location of existing landfill sites were answered to its satisfaction [\[REP3-044\]](#). In response to its query regarding the risk to controlled waters from leaving the contamination hotspot *in situ*, the applicant produced a controlled waters detailed quantitative risk assessment (DQRA) [\[REP5-057\]](#) which was agreed by the EA [\[REP5-065\]](#).
- 3.6.57. Both NSDC [\[REP2-050\]](#) and the applicant [\[REP3-037\]](#) noted that ground gas mitigation measures would not be required and that risks to site workers during construction phase would be controlled by health and safety and construction design and management regulations as noted in REAC commitment GS7.

Geology

- 3.6.58. Given that no issues were raised in relation to the applicant's assessment of potential geology-related effects, this matter was not discussed any further.

Soils

- 3.6.59. NCC noted that the OSMP was appropriate for this stage in the DCO process.
- 3.6.60. The applicant noted [\[REP2-037\]](#) that the area south of the Farndon Roundabout, which was within the prospective Order limits at the time of the soil surveys, is outside of the submitted Order limits and no further survey work was needed. The Applicant added R23 to the dDCO which provides for agricultural land classification surveys to be undertaken on land which has not already been surveyed before works commence on that land. The wording of R23 was agreed with NE [\[REP7-094\]](#) and the areas to be surveyed illustrated on [\[REP7-102\]](#).
- 3.6.61. The applicant confirmed [\[REP1-009\]](#) that it would adhere to Defra's Construction Code of Practice for the Sustainable Use of Soils on Construction Sites, noted in the OSMP and in the PCP. These specify the conditions under which soil may and may not be handled during all stages of the construction process and acknowledges the importance of ensuring soils are handled only after passing a field test to determine that soils are in a sufficiently dry state. Field tests would be carried out by following the guidance in the Institute of Quarrying's "Good Practice Guide for Handling Soils".
- 3.6.62. Soil reinstatement, including on the land referred to in [\[RR-003\]](#) and [\[RR-032\]](#), and as confirmed in [\[REP2-037\]](#), would be secured by commitments in the REAC (which was amended to reflect the wording sought by NE [\[REP5-065\]](#)). The OSMP and REAC commitment GS1 include measures to ensure that soil quality and ALC grades would be maintained after reinstatement. Where soils are not used for reinstating land to its prior condition, they would be used within the works either for re-soiling of the landscaped areas or within mitigation bunds.

CONCLUSIONS ON GEOLOGY AND SOILS

- 3.6.63. Taking account of all submissions made to it, the ExA considers the applicant's assessment of the geology- and soil-related effects of the proposed development to be satisfactory.
- 3.6.64. The proposed development would not result in any significant effects on designated sites of geological conservation. Similarly, there would be no significant effects in relation to contamination (including from ground gases) and the rDCO provides for satisfactory mitigation measures comprising avoidance of known contamination and procedures to be followed when previously-unidentified contamination is encountered.
- 3.6.65. Thus, the proposed development accords with paragraph 5.168 of NPSNN 2015, development plan Policy DM10 and paragraphs 187 and 196 of the NPPF. The ExA also considers the applicant's approach to be consistent with paragraphs 5.153, 5.154 and 5.155 of NPPN 2024 which is important and relevant.
- 3.6.66. There would be significant effects resulting from the temporary loss of ALC grade 2 land (5.7ha; Moderate Adverse), the permanent loss of ALC grade 3a land (15.6ha; Moderate Adverse), and the permanent loss of ALC grade 3b land (59.7ha; Large Adverse).

- 3.6.67. Mitigation measures in the OSMP include design to minimise the area of land lost and to minimise loss of soil function. Soil that is not being used for reinstatement would be re-used in the proposed development (e.g. for landscaping), preventing valuable soil resources from being sent to landfill, consistent with NPSNN 2015 paragraph 5.179 and NPSNN 2024 paragraph 5.159.
- 3.6.68. Given the particular circumstances of this case – specifically the nature of this linear scheme which involves additions to existing linear infrastructure along the route of that existing infrastructure – and also noting that neither of the host authorities raised any ‘in principle’ concerns on this point, the ExA does not consider it necessary for the applicant to have pursued an alternative route which might have resulted in the loss of less BMV agricultural land in order to satisfy Policy DM8. Whilst the ExA recognises the economic and other benefits of BMV agricultural land, we consider that the applicant has sought to minimise the loss, has proposed a comprehensive suite of mitigation measures and that, overall, the impacts have been minimised, consistent with paragraphs 5.168 and 5.176 of NPSNN 2015. Nevertheless, the ExA considers that the loss of BMV agricultural land should be given a little negative weight in the overall planning balance.

3.7. CULTURAL HERITAGE

INTRODUCTION

- 3.7.1. This section considers the applicant’s assessment of cultural heritage assets as set out in the Environmental Statement (ES) Chapter 6 [\[REP7-022\]](#). The ES assesses the impacts upon designated and non-designated cultural heritage assets during both the construction and operation periods. The assessment is based on the methodology set out in DMRB LA 106.
- 3.7.2. ES Chapter 6 is supported by the following:
- Figure 6.1 – Order Limits and Heritage Study Area [\[AS-034\]](#);
 - Figure 6.2 – Heritage Survey Areas [\[AS-035\]](#);
 - Figure 6.3 – Heritage Assets with Significant Effects (Construction and Operation) [\[AS-036\]](#);
 - Appendix 6.1 – Cultural Heritage Desk Based Assessment [\[REP7-050\]](#);
 - Appendix 6.2 – Assessment of Heritage Value [\[APP-133\]](#);
 - Appendix 6.3 – Assessment of Cultural Heritage Effects During Construction of the Scheme [\[APP-134\]](#);
 - Appendix 6.4 – Assessment of Cultural Heritage Effects During Operation of the Scheme [\[APP-135\]](#); and
 - Archaeological Management Plan [\[REP5-026\]](#).

POLICY BACKGROUND

National Policy

National Policy Statement for National Networks, 2015

- 3.7.3. Paragraphs 5.120 and 5.121 recognise that both the construction and operation of national networks has the potential to result in adverse impacts on the historic environment.
- 3.7.4. Paragraph 5.127 states that the applicant should describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant Historic Environment Record (HER) should have been consulted and the heritage assets assessed using appropriate expertise. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, the applicant should include an appropriate desk-based assessment and, where necessary, a field evaluation.
- 3.7.5. Paragraph 5.129 states that in considering the impact of a proposed development on any heritage assets, the Secretary of State (SoS) should consider the particular nature of the significance of the heritage asset and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal.
- 3.7.6. Paragraph 5.131 requires the SoS, when considering the impact of a proposed development on the significance of a designated heritage asset, to give great weight to the asset's conservation. The more important the asset, the greater the weight should be.
- 3.7.7. Paragraph 5.132 provides that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss.
- 3.7.8. Paragraph 5.133 states that where the proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, the SoS should refuse consent unless it can be demonstrated that the harm is necessary to deliver substantial public benefits that outweigh that harm.
- 3.7.9. Paragraph 5.134 considers that where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 3.7.10. Paragraph 5.137 is also relevant as the proposal has the potential to impact on the setting of historic assets. This paragraph states applicants should look for opportunities for new development within Conservation Areas (CA) and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

National Policy Statement for National Networks, 2024

- 3.7.11. NPSNN 2024 states that applicants should '*undertake an assessment of any significant heritage impacts of the proposed project and should describe the significance of any heritage assets affected, including any contribution made by their setting*'. Paragraph 5.210 states that '*as a minimum, the relevant Historic Environment Record should have been consulted and the heritage assets assessed*

using appropriate expertise'. The assessment should consider a desk top study to identify any assets and, where necessary, a field evaluation.

- 3.7.12. Paragraph 5.212 considers that recording the heritage asset is not as valuable as retention. The ability to record evidence of the asset should not be a factor in deciding whether consent should be granted.
- 3.7.13. Paragraphs 5.213 to 5.215 sets out the requirements for recording and advancing the understanding of heritage assets before being wholly or partially lost. Applicants should deposit copies of any reports with the relevant HER and be required to deposit the archive generated in a local museum or other public depository willing to receive it. Requirements should be considered to ensure that this is undertaken in a timely manner in accordance with a written scheme of investigation. Furthermore, where there is a high probability of undiscovered assets, appropriate procedures should be put in place for the identification and treatment of such assets discovered during works.
- 3.7.14. With respect to decision making, paragraphs 5.216 to 5.226 set out the considerations to be reviewed by the relevant SoS. In summary the SoS should take the following into account:
- available evidence from the applicant's submission, HER, any expert advice and relevant representations from interested parties;
 - the particular nature of the significance of the heritage asset;
 - the desirability of sustaining and, where appropriate, enhancing the significant of the heritage assets, their settings and the contribution they make to sustainable communities; and
 - the relevant weight to the asset's conservation.
- 3.7.15. Paragraph 5.221 sets out the process when development will lead to substantial harm to, or total loss of, significance of a designated heritage asset. The SoS should refuse consent unless it can be demonstrated that the public benefit outweighs the harm. Alternatively, it should be demonstrated that the proposed development is consistent with the following:
- the nature of the heritage asset prevents all reasonable uses of the site;
 - no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation;
 - conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
 - the harm or loss is outweighed by the benefit of bringing the site back into use.
- 3.7.16. Where the proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, as per paragraph 5.222.
- 3.7.17. Paragraph 5.208 states that non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to Scheduled Monuments, should be considered subject to the policies for designated heritage assets. Additionally, paragraph 5.209 states that the SoS should consider the impacts on other non-designated heritage assets, as identified either through the development plan process by local authorities, including 'local listing', or through the NSIP examination and decision-making process, on the basis of clear evidence that the assets have a significance that merit consideration in that process.

National Planning Policy Framework, December 2024

- 3.7.18. Paragraph 207, of '*conserving and enhancing the historic environment*', states that determining authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.
- 3.7.19. As a minimum, the relevant HER should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
- 3.7.20. Paragraph 212 states that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 215 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Development Plan

NSDC Amended Core Strategy, 2019

- 3.7.21. Of relevance to cultural heritage is Core Policy 14 (Historic Environment). This sets out how NSDC will work with partners and developers to:
- secure the continued conservation and enhancement of the character, appearance and setting of the District's heritage assets and historic environment, in line with their identified significance as required in national policy;
 - preserve and enhance the special character of Conservation Areas and important open spaces and features identified through the Conservation Area Appraisal process through allocation in the Allocations & Development Management DPD;
 - Undertake positive action for those heritage assets at risk through neglect, decay, vacancy or other threats where appropriate; and
 - protection of Historic Landscapes by working in partnership with the Court Leet, the Crown Estates and the Parish Council. Appropriate new development which facilitates these aims will be supported.

Other Documents

The Nottinghamshire Plan, 2021

- 3.7.22. The Nottinghamshire Plan seeks to protect and enhance the cultural environment through ambitions 5 (Strengthening businesses and creating more good quality jobs) and 6 (Making Nottinghamshire somewhere people love to live, work and visit). To achieve these ambitions NCC will deliver the following relevant actions in relation to cultural heritage:
- Action 6.4 - Work to achieve 'favourable management' status for heritage sites, meaning that important sites are conserved for the future; and
 - Action 6.10 - Work with partners on the County's special landscapes and heritage buildings, to attract investment and protect them from neglect, decay, or from unsuitable or unsympathetic developments.

THE APPLICANT'S CASE

- 3.7.23. The applicant's assessment identifies two study areas. An initial 500m buffer from the Order limits sought an understanding of all known designated and non-designated heritage assets including archaeological remains, historic buildings and historic landscapes. It also informed the understanding for potential unknown buried archaeological remains.
- 3.7.24. An additional study area of 1km was used to assess potential changes to the setting of designated heritage assets. The applicant used the Zone of Theoretical Visibility (ZTV) to support the Landscape and Visual Impact Assessment (LVIA) and thus inform this element of the heritage assessment. The applicant considers it unlikely that heritage assets beyond 1km would be adversely impacted by the proposed development.
- 3.7.25. The submission has been informed by a desk study review using the HER. This has been followed up with consultation work with the host authorities and subsequent field surveys.
- 3.7.26. The applicant's assessment is based on a worst-case scenario by considering the maximum lateral and vertical limits of deviation illustrated in the Works Plans ([REP3-002](#)).
- 3.7.27. The bullets below provide a summary of the applicant's baseline position within the 1km study area. It has been extracted from the Nottinghamshire HER.
- 15 Scheduled monuments (designated);
 - 7 Grade I listed buildings (designated);
 - 15 Grade II* listed buildings (designated);
 - 379 Grade II listed buildings (designated);
 - 5 Conservation areas (designated);
 - 1 Registered Parks and gardens (designated);
 - 242 non-designated archaeological remains;
 - 123 non-designated historic buildings; and
 - 5 non-designated historic landscapes.
- 3.7.28. There are no known world heritage sites or registered historic battlefields within the study areas, however, the Civil War landscape surrounding Newark is considered within the assessment as a non-designated historic landscape.

Construction Phase

- 3.7.29. The applicant's submission [[APP-134](#)] provides a detailed summary of the effects on designated assets in table 1.1. The designated assets likely to suffer a large significant adverse effect are:
- Langford Hall, Grade II* listed building;
 - Farndon Windmill Grade II listed building;
 - the 1922 redevelopment of Causeway Arches/ Smeaton's Arches Grade II listed structure; and
 - Winthorpe Conservation Area .
- 3.7.30. A further seven designated assets will experience a moderate significant adverse effect. Furthermore, another 36 designated assets will experience a slight adverse effect which are not considered significant in the applicant's assessment.

- 3.7.31. A total of 21 non-designated archaeological assets have been identified as likely to experience significant adverse effects because of the proposed development, see Table 6: Non-Designated Archaeological Remains Identified to Experience Significant Adverse Effects below. However, the applicant is committed to extensive excavation and recording through Requirement (R) 9 of the dDCO.

Table 6: Non-Designated Archaeological Remains Identified to Experience Significant Adverse Effects

HER Reference(s)	Description	Effect
MM859	Enclosures at Kelham	Large adverse
MM876 and MM896	Cropmark complex and linear features south-west of Winthorpe	Large adverse
MM930 and MM931	Enclosure cropmarks and possible paleochannel south-west of Winthorpe	Large adverse
MM932	Possible cropmark feature	Large adverse
MM933	Enclosure cropmark, linear features and field boundaries	Large adverse
MM934	Enclosure cropmarks	Large adverse
MM937	Possible barrow, linear features/ field boundaries	Large adverse
MM945	Possible enclosure site and/ or relict field system	Large adverse
MM956	Paleochannel	Large adverse
MM957	Paleochannel	Large adverse
MM958	Paleochannel	Large adverse
MM959	Paleochannel	Large adverse
MM960	Paleochannel	Large adverse
MM961	Paleochannel	Large adverse
MM962	Paleochannel	Large adverse
MM963	Organic deposits	Large adverse
MM849	Pit alignment at Newark	Moderate adverse
MM869	Linear features and enclosure at Averham	Moderate adverse
MM949	Organic deposit	Moderate adverse

- 3.7.32. There are 18 non-designated assets that would experience a significant large adverse effect and three would experience a significant moderate effect. Another 46 would experience a slight adverse effect, which the applicant does not consider to be significant.

Operational Phase

- 3.7.33. Once the proposed development is in operation, there are no predicted significant effects on either designated or non-designated heritage assets.

Design, mitigation and enhancement measures

- 3.7.34. The proposed development has been designed in accordance with the requirements of DMRB LA 104. The first principle of this is to avoid potential adverse effects, followed by minimising or mitigating any unavoidable impacts. Chapter 2 of the ES [\[REP7-016\]](#) details the embedded mitigation measures.

Construction

- 3.7.35. The applicant has applied the requirements of DMRB LA 106 and Table 3.2 of the REAC within the First Iteration EMP [\[REP6-012\]](#) which details the relevant actions and commitments of the applicant to address the potential impacts experienced by designated and non-designated heritage assets. This is secured through R9 of the rDCO. These can be found in full in chapter 6 of the ES [\[REP7-022\]](#).
- 3.7.36. R9 of the rDCO sets out the need for additional trial trenching, as set out in the approved Archaeological Management Plan (AMP), to be undertaken in accordance with the Written Scheme of Investigation (WSI) in appendix G of that document. The applicant may only depart from the methodology set out in the AMP with the prior agreement of Nottinghamshire County Council.

VIEWS OF IPs

Local Authorities

- 3.7.37. In its Local Impact Report (LIR) [\[REP1-035\]](#), Newark and Sherwood District Council (NSDC) advised that the proposals would have a negative effect on built heritage. They identified significant effects at the following assets and requested further details from the applicant:
- Smeaton's Arches, grade II listed structure;
 - Church of St. Mary Magdalene, grade I listed building;
 - Newark Castle, Scheduled Ancient Monument (SAM);
 - Fiddler's Elbow/ concrete footbridge, grade II* listed structure;
 - Langford Hall, grade II* listed building; and
 - Winthorpe CA.
- 3.7.38. NSDC also advised a negative impact on archaeology and requested the applicant provided further information which had been shared during the pre-application consultation process but not submitted with the ES. They also requested a detailed Outlined Mitigation Strategy be submitted into the examination. It should be noted that Nottinghamshire County Council (NCC) raised similar issues in its LIR [\[REP1-038\]](#).
- 3.7.39. Given the host authorities prepared their respective LIRs jointly they have both submitted similar positions with respect to cultural heritage.

Statutory Parties

- 3.7.40. Historic England (HE) advised of their remit [\[RR-028\]](#). They further advised of the need for a robust AMP and consideration for the sensitive historic landscape.

Parish Councils

- 3.7.41. The parish councils did not make comment on this topic.

Other IPs

- 3.7.42. At the RR stage, a number of IPs [\[RR-013\]](#), [\[RR-015\]](#), [\[RR-032\]](#), [\[RR-038\]](#), [\[RR-050\]](#), [\[RR-060\]](#), [\[RR-064\]](#) and [\[RR-071\]](#) raised various issues as summarised below. However, none of these IPs provided evidence to support their submissions, or to demonstrate that the applicant's assessment was unsatisfactory.

Winthorpe Conservation Area

- 3.7.43. Concerns have been raised by [\[RR-071\]](#) about the potential impact on Winthorpe Conservation Area (CA). Issues have been raised regarding the effect on the west side of the CA and the potential dilution of the Open Break to the west and south.

Newark Market Town/ Conservation Area

- 3.7.44. [\[RR-015\]](#) raised concern with respect to the impacts on specific assets in Newark including the Castle, specifically from the new grade separated junction at Cattle Market Roundabout. [\[RR-050\]](#), [\[RR-060\]](#) and [\[RR-064\]](#) listed concern about the scale of such infrastructure in relation to the proximity to Newark.

Individual Properties

- 3.7.45. [\[RR-013\]](#) and [\[RR-038\]](#) raised specific concern with respect to Lowwood and the proximity of the raised section of Brownhills roundabout and the lack of using the property as a Key Visual Receptor and associated photomontage to undertake the assessment of effect.
- 3.7.46. [\[RR-032\]](#) submitted concerns with respect to Langford Hall including the impacts on the associated lodge and the lack of design detail of the new access.

EXAMINATION

- 3.7.47. The main issues considered during the examination were as follows:
- The applicant's Outline AMP;
 - The impact of the proposed development on the
 - English Civil War landscape (including designated and non-designated features);
 - Late Upper Palaeolithic (LUP) Ice Age landscape near Farndon;
 - Winthorpe Conservation Area;
 - Historic character of Newark; and
 - Intervisibility between heritage assets.
- 3.7.48. Although there were substantial numbers of designated and non-designated assets assessed by the applicant, these were the ones identified by IPs and the ExA as being of those where potential adverse impacts would result and which required further assessment beyond ES Chapter 6 [\[REP7-022\]](#). Where not discussed in this section, the ExA was content with the applicant's assessment and submitted evidence throughout the examination.
- 3.7.49. The examination focused on the impact on the following individual listed buildings and structures and SAM:
- Farndon Windmill, grade II listed building;
 - Lowwood, grade II listed building;
 - Smeaton's Arches, grade II listed structure;
 - All Saints' Church, Winthorpe, grade II listed building;
 - Newark Castle, SAM;

- Fiddler's Elbow/ concrete footbridge, grade II* listed structure; and
- Langford Hall, grade II* listed building;

Archaeology including Scheduled Ancient Monuments (SAM)

- 3.7.50. It was confirmed early in the examination process that NCC would be the lead host authority on matters relating to archaeology. Therefore, both NSDC's and NCC's LIRs made very similar statements, and the host authorities worked together on this matter to produce a single position. NCC's LIR [\[REP1-038\]](#) commented that:

"It is the Council's position that the applicant must provide sufficient desk-based research, non-intrusive survey and intrusive field evaluation to adequately assess the archaeological potential of this scheme and provide an agreeable Outline Archaeological Mitigation Strategy (OAMS) for Examination. The Environmental Statement (ES) must present the full range of findings from this archaeological work to provide the evidential basis for the OAMS."

- 3.7.51. The host authorities provided comment on the importance of the archaeology work by outlining the depth of potential finds including the internationally important Late Upper Palaeolithic (LUP) site at the north end of Farndon, known and notable Roman and Anglo-Saxon sites within the Order limits and English Civil War activity associated with the 17th century siege of Newark.
- 3.7.52. By the close of the examination, the host authorities, HE and the applicant had agreed an Outline Archaeological Management Plan (Outline AMP) for where avoidance had not been possible. This is demonstrated through the relevant SoCGs with NCC [\[REP8-025\]](#) and HE [\[REP5-049\]](#) where the applicant provided an updated document with the details of all trial trenching undertaken prior to submission and reflecting discussions with the councils to an agreed position. This document forms one of the certified documents in the rDCO. The SoCG with NCC shows that the matter of below-ground archaeology is an agreed point.

Civil War Landscape

- 3.7.53. Civil War landscape is a phrase agreed between HE and the applicant to describe the broader landscape which includes various designated and non-designated assets associated with the English Civil War and the siege of Newark. It is not a formal designation in its own right and therefore we have considered it as a non-designated heritage asset, and used the term to capture all the various features when considered together. We have considered the individual heritage assets (designated and non-designated) within the context of the landscape as well as in their own right.
- 3.7.54. Following comments received from the host authorities [\[REP1-035\]](#), [\[REP1-038\]](#) and HE [\[REP5-049\]](#), the applicant was requested by the ExA to submit a map showing only the Civil War landscape features, including designated and non-designated heritage assets, to allow for a clearer assessment of the inter-relationship between features and how the proposed development would potentially impact on the legibility and ability to interpret these features and the relationships between them [\[REP4-041\]](#).
- 3.7.55. At ExQ2, the host authorities were asked to cross reference [\[REP4-041\]](#) with the most recent Works Plans [\[REP3-002\]](#) and detail any concerns they had with the impact on assets within the Civil War landscape. They were also asked to consider

the desirability of preserving the assets and the efforts by the applicant to enhance their setting, as set out in NPPF paragraph 210.

- 3.7.56. With respect to designated assets, NCC replied [\[REP5-069\]](#) that they considered the proposed development would impact on three SAMs, which are all Civil War redoubts, to the north of the A46 and the Great North Road. Other features include Newark Castle, St Mary's parish church and 'Edinburgh', which was the Scots' army Civil War HQ. NCC confirmed these are the components most affected by the proposals and acknowledged that the existing A46 already impacts on these assets. The main impact resulting from the proposed development is the new raised Cattle Market roundabout which is a separated junction. This will substantially alter views in and out of Newark along the Great North Road (A616) and the present situation of mature trees will be replaced by a physical barrier. NCC considered that it was unclear what weight the applicant had given this matter during the development of design options of this elevated section of the road. In their opinion the landscaping would have minimal effectiveness in preserving the setting of the Civil War landscape including the designated and non-designated assets.
- 3.7.57. The applicant explained [\[REP5-060\]](#) and [\[REP6-034\]](#) that consideration had been given to each SAM in the design process, for example by moving drainage ditches in respect of a Civil War redoubt near the Cattle Market Roundabout reference MM007 [\[REP7-018\]](#). The applicant considered that the proposed development would have an overall positive contribution to the heritage significance of the Civil War landscape through survey work which would enhance understanding of the asset.
- 3.7.58. During the examination the impacts on the Civil War redoubt SAM at Cattle Market roundabout were agreed between the applicant and NCC as per its SoCG [\[REP8-025\]](#). HE raised no concerns given the SAM was already impacted by A46 and appreciation was already difficult [\[REP5-049\]](#).
- 3.7.59. The concern raised by NCC relates to the intervisibility between Civil War assets travelling along Great North Road and the new raised section of the Cattle Market roundabout that will block those views specifically between the redoubts and Newark Castle. Concern was also raised with respect to the visibility between the Church of St Mary Magdalene and Newark Castle. This is considered further in section 3.8 of this report on Landscape and Visual [\[REP7-024\]](#) impact.
- 3.7.60. Newark Castle, as shown in VP 18 of [\[REP7-052\]](#), does not currently have a clear line of site to the Civil War features around the A46. It is obscured by existing vegetation, and they are difficult to pinpoint, even with the aid of maps.
- 3.7.61. The host authorities and HE have each presented a settled conclusion with respect to the impacts on the designated and non-designated assets of the Civil War landscape. The SoCG with HE [\[REP5-049\]](#) highlights the importance of the Civil War landscape with respect to archaeology, designated and non-designated assets. HE has raised no concern with the applicant's AMP and consider that it is a robust document that will address any matters where avoidance of archaeological remains has not been possible. In NCC's LIR, it was not considered that the original supporting documents to ES Chapter 6 were sufficient to address concerns that an appropriate level of trial trenching had been undertaken [\[REP1-038\]](#). NCC suggested that the original R9 of the dDCO should be updated to reflect its preferred position [\[REP2-052\]](#). This would amend the wording to reflect the applicant's updated AMP, specifically the WSI in appendix G, and the need to secure approval from NCC should the applicant wish to depart from the

methodology set out in the AMP. The applicant updated R9 to the wording suggested by NCC. Furthermore, the outstanding survey information was submitted into the examination as part of an updated AMP [REP5-026]. Together these addressed the concerns of NCC with respect to the archaeological assets of the Civil War landscape. However, they continue to raise concern with respect to the intervisibility of assets that will potentially be blocked by the raised section of the Cattle Market roundabout. NSDC's LIR [REP1-035] and SoCG [REP8-027] do not raise concerns of an archaeological nature, but they do consider that the setting of the SAMs north of Cattle Market roundabout will be unduly compromised by the raised section of the junction and they also raise concern regarding intervisibility of assets. This point remains outstanding with the applicant.

- 3.7.62. The host authorities consider that the designated heritage assets of the Civil War landscape and siege of Newark would suffer less than substantial harm, and NCC state there is no objection regarding the effect on non-designated assets, including their setting.

Late Upper Palaeolithic (LUP) Ice Age Landscape

- 3.7.63. Both NCC [REP1-038] and HE [RR-028] raised concerns regarding the potential impact on the non-designated LUP Ice Age landscape. This is recognised as being of international importance by HE. The applicant confirmed that this had been part of the detailed design with the construction compound at Farndon being moved to avoid potential LUP assets [REP7-018]. An Outline AMP [REP5-026] has been agreed with HE and host authorities and agreed mitigation measures are secured through the First Iteration EMP [REP6-012].
- 3.7.64. NCC [REP8-025] and HE [REP5-049] confirmed that they did not have any outstanding issues relating to archaeology including LUP assets following confirmation from the applicant that their assessment had considered avoidance of the most sensitive areas. Where avoidance has not been possible, NCC and HE have agreed a WSI as part of the AMP which is a certified document in the rDCO.

Intervisibility Between Heritage Assets in the Wider Landscape

- 3.7.65. Concerns have been raised by the host authorities regarding the intervisibility between heritage assets across the wider landscape, including Kelham Hall, Smeaton's Arches, Newark Castle, Church of St Mary Magdalene and Church of All in Winthorpe [REP8-025, REP8-027]. Neither host authority has detailed a cultural relationship between these assets. When taken together as whole they may add to the cultural landscape experience, however this is not something that contributes to the significance of each individual heritage asset. In its closing statement [REP9-002] the applicant "*considers that the distance between the assets named by NSDC, at circa 3km from one another in the case of Kelham and Newark, or Winthorpe and Newark and with existing road network, buildings and infrastructure is sufficient to preclude any notable or significant intervisibility that contributes to their individual setting or significance. A 'kinetic' experience of assets appearing in the landscape as one walks between them along footpaths, may be appreciated and these views will still be experienced along the footpaths, though possibly at different points along the walk due to new elements of infrastructure required to widen the existing road alignment and connect or improve existing roundabouts. Furthermore, other assets named by Newark and Sherwood District Council, such as Newark Castle and St Mary's church, are not interrupted by the Scheme proposals and therefore would retain any intervisibility*". This point remains unresolved.

Built Heritage

Langford Hall, Grade II* listed (MM026)

- 3.7.66. During construction, the applicant concludes there would be an impact on the heritage value of Langford Hall as the proposed development seeks to close off the existing access onto the A46 and install a new driveway from the A1133. This would result in a temporary moderate adverse effect resulting from noise, light, vibration and dust generated during construction. The landscape treatments at the A46 Winthorpe roundabout and boundary treatments would result in a slight adverse permanent effect [\[REP7-022\]](#). There would also be a storage compound in an adjacent field, north-east of the A46 and south-west of the existing access. During operation the change in landscaping and the altered driveway would remain as a slight adverse effect.
- 3.7.67. In [\[REP1-038\]](#), NCC confirmed that these changes would be less than substantial with a slight adverse impact. NSDC agreed with this conclusion [\[REP1-035\]](#).
- 3.7.68. [\[RR-032\]](#) raised concerns regarding the lack of detail of the new driveway. Langford Hall lies north of the A46 with an existing sinuous driveway leading from the main road up to the house. The Lodge is adjacent the A46 and is already adversely affected by its proximity. The applicant considers that The Lodge will experience some impact during construction by virtue of proximity. However, the applicant intends to adopt a series of mitigation measures including the use of temporary noise barriers. The applicant considers that the new access will result in a permanent change. All parties agree that this will result in less than substantial harm. The details of the driveway are secured by R19 of the rDCO and all parties have confirmed agreement.

Concrete Footbridge, River Trent, Grade II* listed (MM038)

- 3.7.69. This asset appears under several different names through the examination. However, the HER and HE records it as 'concrete footbridge', but it is also referred to as Fiddler's Elbow and Elbow Bridge in some submissions.
- 3.7.70. During construction, the applicant considers that there would be a temporary moderate adverse effect on the setting of this asset. This would be due to nearby construction activities expanding the existing crossing over the River Trent and a construction compound. However, once the proposed development becomes operational there would be a neutral effect [\[REP7-022\]](#).
- 3.7.71. In NCC's LIR [\[REP1-038\]](#), it considers that the works would cause less than substantial harm. NSDC consider that there would be a neutral effect [\[REP1-035\]](#).

Newark Castle, Scheduled Monument MM001

- 3.7.72. Concerns have been raised by the host authorities [\[REP8-025\]](#), [\[REP8-027\]](#) with respect to the impacts on views towards and out of the Castle to and from the Cattle Market Roundabout. Given the distances involved, the intervening mature vegetation and the height of the Castle parapet the applicant considered that there would not be an adverse impact on the setting of the Castle [\[REP7-022\]](#).
- 3.7.73. In the SoCG with NSDC [\[REP8-027\]](#), the parties have not agreed on the impact on the Castle. The host authorities detail that concerns remain regarding intervisibility, whilst the applicant maintains that this will not be harmed. The SoCG with NCC [\[REP8-025\]](#) references the impact on setting of several designated and non-designated assets.

Church of All Saints, Winthorpe Grade II listed (MM063)

- 3.7.74. The asset lies on raised land at the south-west edge of Winthorpe. It is already impacted by the A1 and A46 due to proximity. The presence of construction machinery and resultant noise, dust, lighting etc. would impact on the quiet and contemplative setting of the church yard. The applicant's assessment considers there to be a temporary moderate adverse effect during construction and that there would be a permanent minor adverse effect as a result of the construction works but that this would be mitigated by proposed tree planting along the northern boundary of the A46.
- 3.7.75. In [\[REP8-027\]](#), NSDC and the applicant do not agree on the potential impact on this asset. NSDC consider that the applicant has not demonstrated sufficiently to justify its position of permanent minor adverse effect. However, the applicant considers that there would be a permanent slight adverse effect post-construction during operation.

Smeaton's Arches, Grade II listed (MM141, M228)

- 3.7.76. This asset is also referred to as causeway arches in HE's records and the Nottinghamshire HER. The asset is located within the Order limits. The southern part of the asset (MM141) would be impacted because of construction activity and the compound south-west of Cattle Market Roundabout. The northern part of the asset (MM228) was widened in 1922, and the applicant proposes to partially demolish this to make way for the expanded Cattle Market Roundabout. This could give rise to an impact on the remaining 18th century elements that are likely still buried beneath the existing Cattle Market Roundabout. Equally, it is likely that this original element of the asset would be impacted by general construction operations such as vibration. Mitigation measures are detailed in REAC CH1 (monitoring), AQ1 (dust), L1 (lighting) and NV1 (noise) [\[REP6-012\]](#). The applicant's assessment shows that this would result in an overall temporary moderate adverse effect [\[REP7-022\]](#).
- 3.7.77. The demolition of part of the asset and widening of the road would result in the loss of the designated (though not original) fabric and an alteration in its dimensions and strictly linear form and setting. This would affect the ability to appreciate its historic interest. In addition, the new flyover would reduce the visually linear connection along the arches towards Newark. Therefore, the applicant considers there to be a permanent large adverse effect.
- 3.7.78. NCC's LIR comments that it considers this to be less than substantial harm but with a permanent large adverse effect. NSDC also refer to less than substantial harm in its LIR, but consider it still has concerns regarding the visual impact on the arches in its SoCG. All parties agree that the impact on the arches, despite the loss of the 1922 section, is less than substantial.

Farndon Windmill, Grade II listed (MM139)

- 3.7.79. The asset lies outside the Order limits but has potential to be impacted by construction operations resulting from noise, dust, lighting, and vibration. Given the proximity to works the applicant considers there to be a temporary large adverse effect. The asset would be most impacted by the change from agricultural landscape within its setting to the flood compensation areas. The applicant considers this a permanent slight adverse effect.

- 3.7.80. NCC's LIR [\[REP1-038\]](#) comments that the development would result in a less than substantial harm on the asset. This position is echoed in NSDC's LIR [\[REP1-035\]](#).

Lowwood

- 3.7.81. The asset lies about 35m north of the Order limits and is already affected by noise and traffic due to its proximity with the A1. The presence of machinery and works during construction would give rise to noise, lighting and dust that could have an impact on the ability to enjoy the immediate garden setting which contrasts with the rural and lightly wooded nature of the surrounds. The applicant considers the construction impact to be temporary moderate adverse.
- 3.7.82. The asset would be located approximately 200m north-east of new road infrastructure, including a new flyover carrying the A46 over the A1. Tree planting between the asset and the A1 would change the outlook from the front windows and the garden. The applicant considers this to be a permanent moderate adverse effect.
- 3.7.83. Concerns have been raised regarding the setting of Lowwood by [\[RR-013, RR-038\]](#) and the host authorities [\[REP8-025, REP8-027\]](#). Currently the asset enjoys an open outlook westward towards the A1. The applicant intends to plant trees as a form of mitigation in the northern end of the existing agricultural fields between the asset and the A1. The southern portion would be lightly wooded parkland [\[REP7-042\]](#). This would provide a more enclosed feel to the setting of the asset. NSDC considers this to be a major adverse effect in their SoCG but also less than substantial harm.
- 3.7.84. TAWAG raised concerns that the assessment does not include a photomontage from Lowwood [\[REP7-097\]](#). However, the applicant has provided a detailed assessment that has not been objected to by either host authority in their respective SoCGs.
- 3.7.85. It has been demonstrated through ES Chapter 11 [\[REP7-032\]](#) that Lowwood would not suffer an excess of noise above the current baseline. However, it does enjoy an open aspect currently that would be affected by the creation of a woodland, however the details of this are to be agreed through the requirements, therefore the density has not been set. NSDC states that the harm to the setting of Lowwood would be less than substantial harm.

Winthorpe Conservation Area

- 3.7.86. [\[RR-071\]](#) raised concerns regarding the impact on the character and setting of Winthorpe Conservation Area (CA). The impact on specific listed properties in Winthorpe is assessed above.
- 3.7.87. The first issue relates to noise. The CA is already impacted by noise from both the A1 and A46 and the applicant's conclusions on noise, ES Chapter 11 [\[REP7-032\]](#), confirms that noise would not increase as a result of the proposed development.
- 3.7.88. The other issue relates to wider setting. The open parkland area to the west and south of Winthorpe contribute to its setting as detailed by NSDC [\[REP1-035\]](#). The applicant intends to create a parkland landscape to the west and south. Bunds and fencing would create a minor sense of enclosure along the south providing a softened landscape edge.

- 3.7.89. The effects on Winthorpe CA remain unresolved between parties as per the SoCGs [REP8-025, REP8-027] as the host authorities consider the outlook from the west side of the CA to be adversely impacted by the new road infrastructure.
- 3.7.90. During ExQ1 [PD-007], the ExA requested a copy of the Winthorpe Conservation Character Appraisal. This was not submitted into the examination. During the ExA's USI, they visited the CA and appreciated its rural setting and importance of maintaining the Open Break to prevent coalescence with neighbouring Newark. The Open Break clearly contributes to the character of the settlement, and thus the CA. It acts as a green buffer separating the village from both the A1 to the west and the A46 to the south.
- 3.7.91. It should be noted that NSDC accepted the impacts on the CA in [REP3-046] following the submission of further photomontages at DL2. However, its SoCG considers there to be a major adverse effect on the setting and significance of the CA, but this harm is categorised as less than substantial [REP8-027]. Winthorpe CA is already impacted by noise, but the applicant has demonstrated an improvement to this with noise mitigation measures embedded into the design.

Historic Character of Newark

- 3.7.92. IPs [RR-015, RR-050, RR-060, RR-064] all raised concern regarding the impact of the proposed development on the traditional market town of Newark. There is little detail other than the suggestion of the impact of the raised section of the Cattle Market Roundabout.
- 3.7.93. This matter was explored through the examination with a request for further visual assessment materials at ISH 4 [EV10-003]. This was further commented on by NSDC who raised concerns regarding the impact of the grade separated flyover and blocking of views on the approach to Newark [REP3-046]. The applicant responded [REP4-040] stating that they considered that historic views into Newark were already limited and that there was no adverse effect on leaving Newark. New views would be visible of the town through the creation of the flyover. This point remained unresolved between parties by the close of the examination.

Non-Designated Heritage Assets

- 3.7.94. The applicant identifies a total of 21 non-designated archaeological assets that are likely to experience significant adverse effects during construction. This is detailed in paragraph 6.13.6 of ES Chapter 6 [REP7-022]. However, archaeological excavation and recording undertaken before the physical loss of the assets would advance the understanding of the significance of the assets and this retained information would form part of the applicant's collective cultural heritage assessment providing a greater level of understanding.
- 3.7.95. The SoCG with NCC [REP8-025] comments that the proposed development would impact on the setting of non-designated assets, especially around Cattle Market junction. However, it should be noted that all parties have agreed the AMP [REP5-026] and none of the SoCGs reference a specific concern in relation to non-designated heritage assets.
- 3.7.96. Other than those Civil War assets around Cattle Market Roundabout, the parties agree there would not be an overall adverse effect.

CONCLUSIONS ON CULTURAL HERITAGE

- 3.7.97. Great weight should be given to any heritage asset's conservation, with the more important the asset the greater the weight, having regard to the matters identified in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and in accordance with paragraph 5.131 of the NPSNN 2015. A similar policy position is set out in the NPPF. The ExA has therefore attributed great weight and importance to any harm to a heritage asset in the overall balance.

Designated Assets

- 3.7.98. For each of the designated assets examined above, the ExA is satisfied that the harm would be less than substantial, albeit some would be at the upper end of this scale.
- 3.7.99. The ExA conclude that less than substantial harm would occur at Smeaton's Arches, specifically the 1922 re-built section north of Cattle Market Roundabout that would need to be demolished to make way for the enlarged roundabout. Harm to Grade II listed structures should be exceptional. In this instance, it is necessary to accommodate the enlarged Cattle Market Roundabout which in turn is an essential part of the design of the proposed development to provide for the necessary increase in traffic capacity and the grade separated fly over. The design requirements of DMRB have informed the size and capacity of the junction. However, NSDC has commented that it considers this to be less than substantial harm as it relates to the section rebuilt in 1922 which is less valuable than the original. The ExA would agree with this assessment but that the harm is at the upper end of less than substantial given the partial loss of the 1922 section. We attribute great weight to this harm given it would result in the loss of the section rebuilt in 1922.
- 3.7.100. Views of the proposed development may impact on the Church of All Saints in Winthorpe and the northern section of Smeaton's Arches. However, given the existing baseline of an already engineered corridor and mature vegetation, the ExA considers that there are no cumulative concerns with respect to each asset and their intervisibility.
- 3.7.101. The host authorities' assert that the impact on intervisibility between Kelham Hall, the designated Civil War assets, Newark Castle, Church of St Mary Magdalene and the Church of All Saints has not been clearly demonstrated. It can be understood that Newark Castle and the Civil War features have a clear relationship, but it was accepted by NSDC during ISH 4 [\[EV10-003\]](#) that there is no cultural relationship between the Church of St Mary Magdalene and the Castle. Furthermore, its submission does not provide specific detail as to the cultural significance of this link [\[REP8-027\]](#). Without evidence of a cultural link between assets, the applicant is not able to undertake any meaningful assessment or respond to the concerns raised. The applicant's assessment considers that the grounds of the Church of All Saints is already impacted by noise from both the A1 and A46, but noise is expected to slightly decrease as a result of the proposed development. The ExA are satisfied that there would be a neutral impact on this asset.
- 3.7.102. In relation to the Winthorpe CA, we are content that the proposed development would not directly affect the key attributes and overall character. However, the effective enclosure of the Open Break will result in a slight adverse effect on the rural character but this is not anticipated to undermine the qualifying interests of the CA.

- 3.7.103. Newark CA would suffer minimal impact resulting from the proposed development by virtue of retained vegetation, distance and the existing baseline. Therefore, the impact on the Newark CA will be neutral.

Non-Designated

- 3.7.104. NCC details that there would be harm to non-designated assets as a result of the enlarged Cattle Market Roundabout and grade separated junction. NCC's LIR details that there will be less than substantial harm to these assets. The ExA has no reason to disagree with this conclusion and attributes minor negative weight to this harm.

Archaeology

- 3.7.105. Archaeological assets have been identified as non-designated assets and we have considered them as such. NPSNN 2015 advises that non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to SAMs, should be considered subject to the policies for designated heritage. We have not identified any such assets in this case and have considered SAMs in their own right.
- 3.7.106. The applicant has demonstrated consistency with the mitigation hierarchy and avoided, where possible, assets of archaeological value, for example moving a construction compound into the middle of Farndon roundabout to avoid potential assets. Where avoidance has not been possible due to the constraints of the development corridor and physical features the applicant has developed an AMP. This document has been agreed with IPs including HE and NCC. R9 of the rDCO secures additional trial trenching as per appendix G of the AMP and further investigative works as necessary. The ExA considers that the applicant has undertaken avoidance where possible and the AMP will ensure those assets subject to disturbance will be properly recorded, which will enhance the understanding of the archaeological record. The ExA is satisfied with the applicant's approach but recognises there will be some minor harm as a result of unavoidable disturbance, and we attribute great weight to this harm.

Civil War Landscape

- 3.7.107. The English Civil War landscape is a mix of designated and non-designated assets. The applicant has completed a desk-based assessment supported by preliminary survey work, as required by NPSNN 2015. The ExA considers that the harm on the designated assets of the Civil War is less than substantial with the SAM redoubt at Cattle Market roundabout being impacted at the upper end of this harm. Non-designated assets have been recorded by the applicant and where avoidance has not been possible due to the road alignment within the identified development corridor recording will be achieved as per the Outline AMP. This document has been agreed between IPs. The ExA accepts that there would be less than substantial harm to the Civil War landscape and attribute great weight to this harm as a result of the relative position of the Cattle Market junction to both designated and non-designated assets and the degree of harm this affords.

Summary

- 3.7.108. The ExA is satisfied that the applicant has fully addressed the potential effects on the historic environment assets for the construction and operational phases of the proposed development and has demonstrated that effects associated with the proposed development can be satisfactorily mitigated and managed.
- 3.7.109. Where there is identified harm, this must be balanced against public benefit. NSDC provides details of its concerns in its SoCG [\[REP8-027\]](#) with respect to the impacts on cultural heritage. Equally, it provides a substantive statement detailing that the proposed development provides benefits for the district such as improved journey times, connectivity, ability to unlock land to improve the local economy and job security [\[REP5-067\]](#).
- 3.7.110. NSDC and NCC both detail their support for the proposal and public benefits they expect it to bring. The necessary consideration of balance is undertaken below in 'the conclusion on the case for development consent' at chapter 5.
- 3.7.111. The ExA is also satisfied that no oversight or omission has occurred in respect of the assessment undertaken which may prejudice the SoS's duty to consider the desirability of preserving listed buildings and their settings.
- 3.7.112. The ExA considers that the applicant's assessment complies with the policy aims of the NPSNN 2015, which is the primary decision-making document. It is also consistent with NPSNN 2024, NPPF, PPG and the NSDC local plan which are considered important and relevant in the determination of this application. The ExA considers there to be less than substantial harm to heritage assets specifically around the Cattle Market Roundabout including the general views of the Civil War assets as a result of the grade separated junction. The Smeaton's Arches would also suffer less than substantial harm (at the upper end) as a result of the loss of the 1922 section. There would also be harm to some archaeological remains. Overall, the harm would weigh against the granting of the DCO.

3.8. LANDSCAPE AND VISUAL EFFECTS

INTRODUCTION

- 3.8.1. This section considers the applicant's assessment in ES Chapter 7: Landscape and Visual Effects [\[REP7-024\]](#) and is supported by the following figures and appendices.
- Figure 7.1 – Published Regional Character Areas and Policy Zones [\[AS-037\]](#);
 - Figure 7.2 – Landscape Character Areas [\[AS-038\]](#);
 - Figure 7.3 – Zone of Theoretical Visibility [\[AS-039\]](#);
 - Figure 7.4 – Visual Receptor Location Plan CAD [\[AS-040\]](#);
 - Figure 7.5 – Visual Effects Plan [\[AS-041\]](#);
 - Appendix 7.1 – Landscape Character Policy Zone Descriptions [\[APP-136\]](#);
 - Appendix 7.2 – Visual Baseline and Impact Schedules [\[APP-137\]](#);
 - Appendix 7.3 – Key Visual Receptor Photographs and Photomontages Part 1 [\[REP7-052\]](#);
 - Appendix 7.3 – Key Visual Receptor Photographs and Photomontages Part 2 [\[APP-139\]](#);
 - Appendix 7.4 – Arboricultural Impact Assessment Part 1 [\[REP7-054\]](#);
 - Appendix 7.4 – Arboricultural Impact Assessment Part 2 [\[AS-086\]](#);
 - Appendix 7.4 – Arboricultural Impact Assessment Part 3 [\[AS-087\]](#);
 - Appendix 7.4 – Arboricultural Impact Assessment Part 4 [\[AS-088\]](#); and
 - Appendix 7.4 – Arboricultural Impact Assessment Part 5 [\[AS-089\]](#).

- 3.8.2. Both landscape and visual effects have been assessed in a single chapter as per the advice and guidance from the Landscape Institute (LI), specifically Guidelines for Landscape and Visual Impact Assessment (GLVIA) v3. Landscape impact assessment deals with changes to landscape as a shared public resource. The LI notes that society has an interest in this, and it is recognised as one of the key dimensions of environmental interest, alongside matters such as biodiversity and cultural heritage. It is concerned with issues such as protected landscapes, the contribution of landscape character to a sense of place and quality of life for all, and the way that changes may affect individual components of the landscape.
- 3.8.3. Visual impact assessment relates to how people will be affected by changes to views and visual amenity at different places, including publicly-accessible locations, and views from residential properties. Visual receptors are always people (although usually visual receptors are defined according to use, for example residential, business, road, footpath) rather than landscape features.
- 3.8.4. The assessment is based on a Landscape and Visual Impact Assessment (LVIA) split under several appendices which has been informed by the requirements outlined in DMRB LA 107. A Zone of Theoretical Visibility (ZTV) [AS-039] was produced using a viewer height of 1.6m and a maximum vehicular height of 4.2m. The study area has been determined as 2km from the alignment of the proposed development as shown in figures 7.1 [AS-037], 7.2 [AS-038] and 7.3 [AS-039].
- 3.8.5. At a national level, the proposed development lies within National Character Area (NCA) 48 Trent and Belvoir Vales. At a county level, the proposed development includes four Regional Character Areas (RCA):
- Trent Washlands RCA which covers the River Meadowlands and Village Farmlands Landscape Character Types (LCT);
 - East Nottinghamshire Sandlands RCA, which covers the Village Farmlands LCT;
 - South Nottinghamshire Farmlands RCA, which covers the Meadowlands and Village Farmlands LCT; and
 - Mid-Nottinghamshire Farmlands RCA, which covers the Village Farmlands with Ancient Woodlands LCT.
- 3.8.6. The location of each of these can be found in appendix 7.1 [APP-136]. The applicant has identified the following designations within the study area, see Table 7: Designations within the study area, Table 7 below.

Table 7: Designations within the study area

Designations within the study area	Relationship with the Order limits
Winthorpe Conservation Area	Within the Order limits to the northern extents of the proposed development at Winthorpe
Newark Conservation Area	Within the Order limits to the east of the existing A46 mainline
Averham Conservation Area	Immediately adjacent to the Order limits (proposed FCA only)
Kelham Conservation Area	Within the Order limits (proposed floodplain compensation area only)
Farndon Conservation Area	1km west of the Order limits at Farndon junction

Designations within the study area	Relationship with the Order limits
Listed Buildings – Various	Numerous within the study area: 387 Grade II, 15 Grade II* and seven Grade I
Scheduled Monuments – Various	17 within 1km; closest within 10m of the Order limits at Cattle Market junction
Newark Castle Gardens Grade II Registered Park and Garden	580m to the south of the Cattle Market junction.
Veteran and notable trees	Five veteran and ten notable trees within, or directly adjacent to, the order limits (of which one veteran and nine notable trees are located at Kelham)
Tree Preservation Order (TPO)	Four group TPOs within the Order limits (TPOs 56, 116, 152 and 153).

Source: Table 7-6 Relevant designations within the study area [\[REP7-024\]](#)

- 3.8.7. Visual receptors have been identified via a desktop study with reference to the ZTV. The applicant then undertook both winter and summer site visits to capture the baseline. Visual receptors included within the assessment are presented in figure 7.4 (Visual Receptor Location Plan) of the ES [\[AS-040\]](#) whereas a list and initial analysis can be found in appendix 7.2 [\[APP-137\]](#). Photographs from each key viewpoint and photomontage locations are provided in appendix 7.3 (Key Visual Receptor Photographs and Photomontages parts 1 and 2) [\[REP7-052, APP-139\]](#).

POLICY BACKGROUND

National Policy

National Policy Statement for National Networks, 2015

- 3.8.8. Paragraphs 4.28-4.35 outline the importance of integrated design, with visual appearance “*a key factor in considering the design of new infrastructure, as well as functionality, fitness for purpose, sustainability and cost.*”
- 3.8.9. Paragraphs 5.143-5.161 consider how LVIA's should be undertaken and how landscape impacts should be considered in the decision-making process to “*avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation*”.

National Policy Statement for National Networks, 2024

- 3.8.10. NPSNN 2024 is considered important and relevant by the ExA. Paragraphs 5.161 to 5.178 sets out the requirements, including mitigation, for a national networks NSIP. Paragraph 5.169 advises that: “*The aim should be to avoid or minimise harm to the landscape, where adverse impacts are unavoidable providing reasonable mitigation and deliver landscape enhancement measures where possible and appropriate.*”
- 3.8.11. Paragraphs 4.27 to 4.32 set out the requirements for good design. It advises that: “*The Secretary of State needs to be satisfied that national networks infrastructure projects are sustainable, having regard to appropriate industry good design guidance, and that the applicant has considered, as far as possible, both functionality (including fitness for purpose and sustainability) and aesthetics (including the scheme’s contribution to the quality of the area in which it would be located).*”

National Planning Policy Framework, December 2024

- 3.8.12. Paragraphs 135, 187-201 of the NPPF set out policies in the framework with respect to conserving and enhancing the natural environment. The following are considered the most relevant to this specific proposal.
- 3.8.13. Paragraph 135 considers that decisions should be: *“sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)”*.
- 3.8.14. Paragraph 187 states that decisions should contribute to and enhance the natural environment by *“protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils.”*
- 3.8.15. Finally, the impact of lighting should be considered on intrinsically dark landscapes as per paragraph 198.

Local Policy

NSDC Amended Core Strategy, 2019

- 3.8.16. Core Policy 13 Landscape Character states the following: *“Based on the comprehensive assessment of the District’s landscape character, provided by the Landscape Character Assessment Supplementary Planning Document, the District Council will work with partners and developers to secure new development which positively addresses the implications of relevant landscape Policy Zone(s) that is consistent with the landscape conservation and enhancement aims for the area(s) ensuring that landscapes, including valued landscapes, have been protected and enhanced”*

NSDC Allocations & Development Management DPD, 2013

- 3.8.17. Policy NUA/OB/1 Newark Urban Area – Open Breaks identifies areas that are under pressure from development which provide an open break between settlements:
- Newark and Farndon;
 - Newark and Winthorpe; and
 - Newark and Coddington.
- 3.8.18. Planning permission will not normally be granted for built development in these areas.
- 3.8.19. Policy DM5 Design states that: *“In accordance with Core Policy 13 all development proposals will be considered against assessments contained in the Landscape Character Assessment Supplementary Planning Document”*. Furthermore, development proposals should be considered: *“In accordance with Core Policy 12, natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced.”*
- 3.8.20. Policy DM9 Protecting and Enhancing the Historic Environment considers that *“Development proposals should take account of the distinctive character and setting of individual conservation areas including open spaces and natural features”* and that *“Development proposals should respect the varied historic landscapes of the district through their setting and design.”*

Newark & Sherwood Landscape Character Assessment Supplementary Planning Document, 2013

- 3.8.21. The landscape character assessment provides an assessment of the landscape in Newark & Sherwood for each RCA and then by Landscape Policy Zone. The policy zones include specific information to form the basis for considering landscape issues as part of planning decisions.

A Green Infrastructure Strategy for Newark & Sherwood, 2010

- 3.8.22. The strategy states that it: *“will allow for the expansion of settlements whilst ensuring that the District, its assets and landscapes suffer no negative effects and instead prosper from new development”*. The need: *“to respond to the threats and challenges of climate change for communities and wildlife has also shaped the strategy’s development”*.

THE APPLICANT’S CASE

Construction Phase

- 3.8.23. The potential sources of impact during construction are:
- Presence and movement of construction traffic, plant and equipment;
 - Presence of construction compounds and haul routes;
 - Temporary fencing and hoardings;
 - Demolition and site clearance, including vegetation clearance along the route;
 - Introduction of temporary structures and signage;
 - Earthworks and changes in the landform of the site, particularly along the length of the northbound carriageway widening;
 - Storage of earth and other materials;
 - Presence and views of lighting for works during low daylight levels or for night work, as well as compounds;
 - The progressive construction of the permanent built elements including above grade structures such as the rail and river crossings and the grade separated junction at Cattle Market;
 - Vegetation removal, including that which currently offers landscape character and visual screening value, or which has TPO status; and
 - Bare soil of newly formed earthworks.
- 3.8.24. The ES chapters consider a reasonable worst-case scenario, and the maximum limits of deviation described in Article 10 of the dDCO. For ease of reference, these are a vertical deviation of 1.0m upwards and 2.5m downwards with a lateral deviation as per those shown on the Utilities Works Plans [\[AS-016\]](#) and Works Plans [\[REP3-002\]](#).

Operational Phase

- 3.8.25. Sources of impact during the operation of the proposed development are likely to include:
- Additional road infrastructure, notably hard surfacing and new elevated structures such as the grade separated junction at Cattle Market. These elements would increase the extents, vertical scale and perception of the highway network;
 - Potential increase in the number of, or scale of, related infrastructure such as signs, traffic signals, lighting, CCTV, technology elements, servicing or power

units any new maintenance access platforms/ routes and associated hard surfacing and pedestrian guardrails;

- Permanent loss of vegetation within and outside the existing highway boundary, which in turn may reduce physical containment and open views to the widened A46;
- New or modified earthworks and drainage elements that may require additional land take, including ponds, swales and floodplain compensation areas; and
- New planting and habitat creation leading to a change in land use from the baseline.

- 3.8.26. A more detailed summary of both the construction and operation impacts on each affected LCA is provided below.

LCA 1 – Trent Washlands

Construction

- 3.8.27. LCA 1 would experience a direct impact during construction as a result of removal of vegetation to the west and north of the existing northbound carriageway of the A46. Large scale earthworks, the removal of existing mature vegetation, and associated construction traffic and activity would be required in the construction of the embankments to carry the new carriageway. This would bring about the change from farmland within the River Trent floodplain to engineering built elements. The topography would be raised to accommodate the new carriageway to the level of the current road.
- 3.8.28. Excavation to accommodate two new floodplain compensation areas at Farndon, as well as construction borrow pits, would lead to localised changes in topography, lowering the landscape in an area adjacent to the River Trent and to the east of the existing A46 up to a maximum depth of 4m. Localised removal or pruning of riparian vegetation may be required along the interface between Farndon West and East FCAs and the Old Trent Dyke. Vegetation clearance would be required adjacent to the River Trent to allow for construction of temporary and permanent river crossings. There would also be changes to local watercourses and drainage ditches during construction.
- 3.8.29. Beyond the A46 corridor, the most substantial changes would result from the creation of the FCAs. This is a change from farmland to FCA catering for biodiversity improvements including marsh grazing and ponds. Excavated material would be stockpiled, creating temporary bunds, for use within the proposed development. These bunds would result in a decrease in audible and visual experiences for all users. This would be set within the context of the existing baseline that includes agricultural fields, British Sugar PLC, Staythorpe Power Station, and the existing road network.
- 3.8.30. The applicant accepts that there would be a temporary moderate adverse effect on this landscape character type during the construction period.

Operation

- 3.8.31. During operation, there would be a direct and permanent change in the land use and appearance of the LCA as a result of the widened carriageway, surface water drainage/ flood mitigation features, new planting and grade separated junctions. The new Farndon West FCA would bring a permanent alteration in land use and local topography where ground levels would be reduced within a defined area adjacent to the River Trent west of the existing A46. This FCA would comprise an area of

wetland planting and priority habitat creation that would flood on an infrequent basis. Farndon East FCA would comprise a large permanent lake with wet grassland and native individual tree planting along the margins. Neither FCA would be returned to agriculture following construction.

- 3.8.32. The Kelham and Averham FCA would result in a topographic change in two fields between the two villages. The FCA would be returned to agricultural use post completion.
- 3.8.33. During Year 1 of operation, the applicant considers the magnitude of effect would be moderate adverse, which combined with a medium sensitivity would result in a moderate adverse significant effect. It is anticipated that as vegetation planting becomes established this would reduce to a not significant slight adverse by year 15.

LCA 2 – Winthorpe Village and Farmlands

Construction

- 3.8.34. During construction, there would be a direct impact on the farmlands surrounding Winthorpe as a result of the widening of the existing A46 and the construction of the new A46 link, including associated new slip roads and roundabout, between the existing A46 and A1. At height works associated with the construction of the A1 overbridge, earthworks and construction activity would all bring detracting elements to this high sensitivity character area during construction.
- 3.8.35. Additional earthworks movements as a result of the excavation of borrow pits north of the new Brownhills roundabout, new ponds, swales and drainage features would be introduced to the area. There would also be notable earthwork movements associated with the construction of new permanent bunds alongside the A46 between Brownhills and Winthorpe roundabouts. Vegetation clearance would be necessary to accommodate the proposed development, including the loss of mature woodland and the fragmentation of existing hedgerows. This would lead to a change in landcover and pattern as well as the alteration in land use associated with the loss of agricultural land during construction. Laydown areas, several satellite compounds, welfare units, haul routes and temporary soil stockpiles would also be present, bringing further detracting features to the character area. The applicant expects that there would be a decrease in local tranquillity levels adjacent to the works. A concrete batching plant within the main construction compound in the adjoining East Nottinghamshire Sandlands LCA to the south would be apparent from the Winthorpe Village and Farmlands LCA. There would be no direct impact on the fabric of Winthorpe village.
- 3.8.36. There would be no engineering works within the Winthorpe CA, albeit woodland planting would be provided to the east of the A1 within the most western extents of the conservation area. The works would be set in the context of the existing A46 and A1 and existing detracting features in neighbouring LCAs but would be conspicuous in the LCA.
- 3.8.37. The applicant considers the magnitude of change to the LCA as a whole to be major adverse. When combined with the high sensitivity of the LCA, would result in a temporary Large Adverse significant effect during construction for a period of up to four years.

Operation

- 3.8.38. During operation, there would be direct impacts on the landscape character of this LCA during the early years while mitigation measures establish. The new infrastructure would reduce the sense of openness between Winthorpe and Newark. The increased width of the carriageway and associated infrastructure would reduce the area of farmland west and south of the village. The applicant proposes to install noise mitigation barriers consisting of 2.0m – 2.5m earth bunds with fencing at the southern edge of the Winthorpe Open Break. Additional landscaping would soften this effect. A shared path would also be installed.
- 3.8.39. By Year 15, the tree belt and linear vegetation would have established providing a sense of mitigation that would also block views of the urban edge of Newark south of the village. Currently, the Open Break merges into the A46 and the urban edge of Newark with no tall barriers until the southern side of the road where it meets warehousing and the showground. The proposal would introduce a vegetated edge to the Open Break. This is demonstrated through the Environmental Masterplan [\[REP6-012\]](#) and VP43 [\[APP-139\]](#). There would not be a direct impact on Winthorpe village or CA.
- 3.8.40. The applicant's findings show that LCA 2 would suffer a Major Adverse magnitude of change, which when combined with the high sensitivity to change would result in a Large Adverse significant effect during Year 1. However, as mitigation measures take effect, it is anticipated that by Year 15 this would reduce to moderate adverse significant effect.

LCA 3 – East Nottinghamshire Sandlands

Construction

- 3.8.41. During construction there would be a direct impact on a small part of the East Nottinghamshire Sandlands LCA, immediately adjacent to the existing A46, east of the A1. There would be construction activity and plant associated with the Friendly Farmer Link adjacent to the existing A46 mainline carriageway. Away from this, the main direct impacts would arise from haul routes, laydown areas, satellite compounds and a concrete batching plant within the main construction compound which, whilst on the very edge of the LCA, would be visible. Works would be set in the context of the Newark Showground and large-scale warehousing south of the existing A46.
- 3.8.42. The applicant considers that given the localised extent and temporary nature of the works in the LCA, the magnitude of change upon landscape character is moderate adverse. This combined with the low sensitivity to change, would result in a slight adverse effect during construction which is not considered significant.

Operation

- 3.8.43. During operation there would be a direct impact on a very small part of this LCA, immediately adjacent to the A46, east of the A1. This would result from the slight increase in land occupied by the highway and the loss of vegetation where the Friendly Farmer Link would be immediately south of the existing carriageway. The change would be set in the context of the existing A46, Newark Showground and large-scale warehousing.
- 3.8.44. Given the localised extent of the proposed development within the East Nottinghamshire Sandlands LCA the applicant concluded that there would be a

minor adverse magnitude of impact during operation. This, combined with a low sensitivity to change, would result in a slight adverse effect during both Year 1 and Year 15 of operation and would not be significant.

LCA 4 – Newark

Construction

- 3.8.45. A very small proportion of the Newark LCA would be directly impacted during construction, with the use of local roads to access construction works and compounds in neighbouring LCAs. There would be no change to the physical characteristics of the area, but there would be a temporary increase in construction related traffic. This traffic would pass through the most north-eastern part of Newark Conservation Area, although it should be noted that this area is characterised by disused ex-industrial land and adjacent to the East Coast Main Line (ECML) railway. There would be indirect impacts and associated effects on the character area due to construction activity within the adjacent Trent Washlands LCA between the River Trent and the existing A46 beyond, decreasing tranquillity at the north-western edge of Newark, particularly given the lack of screening features between the two LCAs.
- 3.8.46. Overall, the applicant considers the magnitude of effect on the Newark LCA would be negligible, which when considered in the context of Newark's high sensitivity to change, would lead to a slight adverse effect during construction which the applicant considers is not significant.

Operation

- 3.8.47. The applicant advises that there would be no direct impact upon this LCA during operation. As a result, the applicant predicts that the magnitude of impact would be no change in Year 1 and Year 15 which when combined with the high sensitivity to change would result in a neutral effect which the applicant considers is not significant.

LCA 5 – South Nottinghamshire Farmlands

Construction

- 3.8.48. During construction there would be no direct impact, and no change to the physical characteristics of the character area. Whilst the Order limits are almost immediately adjacent to the northernmost extent of the character area, there are no construction activities within this area. The closest construction activities would take place at Farndon Roundabout approximately 350m to the north of the character area. Due to the open nature and lack of enclosure within the LCA, there may be a decrease in tranquillity and some broader influences resulting from detracting construction features in the neighbouring Trent Washlands LCA. However, this would be set in the context of existing detracting features including the existing A46 and overhead powerlines and pylons that traverse the area.
- 3.8.49. Overall, the applicant details that the magnitude of effect on South Nottinghamshire Farmlands LCA would be negligible, which combined with the medium sensitivity to change would result in a neutral effect during construction which the applicant considers is not significant.

Operation

- 3.8.50. The applicant's evidence shows that there would be no direct or indirect impacts upon this LCA during operation. As a result, it is predicted that the magnitude of

impact would be no change in Year 1 and Year 15 which when combined with the medium sensitivity to change the applicant concludes would result in a neutral significance of effect.

LCA 6 – Farndon Village

Construction

- 3.8.51. Farndon Village LCA sits outside of the Order limits for the proposed development and as such physical characteristics of the LCA would remain unchanged during construction. There would be a slight reduction in tranquillity resulting from the use of nearby land to the north of the LCA as a holding area for delivery vehicles and as a satellite compound. Given the distance involved, the applicant considers that there would be an impact upon the setting of Farndon CA.
- 3.8.52. The magnitude of effect upon Farndon Village LCA is Negligible, which when combined with a high sensitivity to change, leads to a non-significant Slight Adverse effect during construction.

Operation

- 3.8.53. There would be no direct impact upon the Farndon Village LCA during operation. Whilst changes in the neighbouring Trent Washlands LCA may be apparent in the Farndon Village LCA, the applicant does not consider that this would result in damage or alter the setting of the character area. As a result, the applicant predicts that the magnitude of impact would be No Change in Year 1 and Year 15 which when combined with the high sensitivity to change would result in a Neutral significance of effect.

LCA 7 – Mid-Nottinghamshire Farmlands

Construction

- 3.8.54. There would be no direct impact upon the Mid-Nottinghamshire Farmlands LCA because of the construction of either the main carriageway or the Kelham and Averham FCA. The LCA only just falls within the 2km study area, with the most southerly extents of the LCA being more than 2.5km from the main road alignment, and within 1km of construction of the Kelham and Averham FCA. There may be a small deterioration in tranquillity as a result of excavation and earthworks movement in the neighbouring Trent Washlands LCA to the south, although this is considered to be temporary in nature and set in the context of the arable land use and the transient presence of farming activities and machinery. Large woodland plots at Frog Abbey and Kelham Hills bring containment to the LCA from the south, limiting construction impacts and their resulting effects on the setting of the character area.
- 3.8.55. The magnitude of change upon the Mid-Nottinghamshire Farmlands LCA is negligible, which when combined with a medium sensitivity to change, leads to a slight adverse effect during construction resulting in a neutral effect. This is not considered significant.

Operation

- 3.8.56. There would be no alteration in landscape features and elements within this LCA during operation. The magnitude of effect is considered by the applicant to be No Change, leading to a Neutral significance of effect during Year 1 and Year 15 of operation

Visual Amenity

- 3.8.57. The Visual Baseline and Impact Schedules in Appendix 7.2 of the ES Appendices [\[APP-137\]](#) provide a detailed description of the change in view and the associated magnitude of impact and significance of effect during construction. This includes taking account of mitigation measures set out in ES Chapter 7 [\[REP7-024\]](#). Of the 63 receptors identified in [\[AS-040\]](#), 15 would experience significant adverse effects during construction. Of these, three would experience very large adverse effects, four large adverse effect and eight would experience moderate adverse effects.

Residential Receptors

Construction

- 3.8.58. The largest impacts during the construction phase would be due to the removal of screening vegetation and the presence of construction plant and machinery. Of the five representative residential receptors experiencing significant effects during construction, one would experience very large adverse effects as demonstrated at visual receptor location 24 as per [\[AS-040\]](#), two would experience large adverse effects as shown by locations 41 and 48 from [\[AS-040\]](#) and the remaining two receptors would experience moderate adverse effects as per locations 9 and 21 from [\[AS-040\]](#). All the residential receptors that would experience significant effects are either within the Order limits or within 100m of the works, notably close to new road infrastructure at Farndon Roundabout, Cattle Market Roundabout and Brownhills Roundabout.

Operation

- 3.8.59. During operation, four residential receptors would experience significant effects in Year 1 of operation, two would experience Large Adverse effects as shown at visual receptor locations 24 and 41 from [\[AS-040\]](#) and two would experience Moderate Adverse effects from locations 9 and 21 from [\[AS-040\]](#). This would be a result of vegetation removal during construction opening of views of new elevated structures that would be visible during Year 1 of operation, notably at Cattle Market Roundabout and Brownhills Roundabout. By Year 15, maturing mitigation planting would remove significant effects for three of the residential receptors 9, 21 and 41 from [\[AS-040\]](#), however due to the proximity and scale of the new structures at Cattle Market Roundabout, effects for some residents on Sandhills Park, visual receptor 24 from [\[AS-040\]](#), would remain a large adverse significant residual effect.

Public Rights of Way and Recreational Facilities

Construction

- 3.8.60. The largest impacts during the construction phase would be due to the removal of screening vegetation and the presence of construction plant and machinery within the view from these receptors. Of the eight representative visual receptors using PRoW, recreational routes or recreational facilities, as identified on [\[AS-040\]](#), that would experience significant effects during construction, two would experience very large adverse effects (32, 40), two would experience large adverse effects (34, 43) and four would experience moderate adverse effects (10, 13, 23, 46). All significant effects for recreational receptors would be on recreational routes, on the River Trent or at recreational facilities close to the construction of new structures such as Windmill Viaduct, Nether Lock Viaduct, Castle Market Roundabout and Brownhills Roundabout.

Operation

- 3.8.61. During operation, the three representative visual receptors using PRow or recreational routes, as identified on [\[AS-040\]](#), experiencing significant effects during operation, one would experience large adverse effects (40) and two would experience moderate adverse effects (11, 23). All significantly affected recreational receptors would be on recreational routes close to new structures at Brownhills Roundabout, Cattle Market Roundabout and Windmill Viaduct. The largest impacts during Year 1 would be due to the removal of screening vegetation opening views of new large-scale infrastructure. By Year 15, mitigation planting in the foreground of the views would screen the new structures and effects would be reduced to non-significant for two of the recreational receptors (11, 23), however due to the proximity and scale of the new structures at Brownhills Roundabout, effects for users of the Trent Valley Way long distance route and National Cycle Network (NCN) Route 64 on Winthorpe Road (40) would remain a moderate adverse significant of effect.

Road users

Construction

- 3.8.62. There would be moderate adverse significant effects on views from two viewpoints, as per [\[AS-040\]](#), representing road users (12, 50). Whilst not highly sensitive receptors, impacts and resulting significant effects would arise from the construction of large-scale structures including the Windmill Viaduct, Nottingham to Lincoln Railway Line West and East crossings, Cattle Market Roundabout, Nether Lock Viaduct and Brownhill Roundabout and Winthorpe Roundabout. Removal of screening vegetation would open views of construction leading to changes in existing views from the road.

Operation

- 3.8.63. There are no anticipated adverse effects during operation. It is anticipated that this would be neutral and it is not considered significant.

Design, mitigation and enhancement measures

- 3.8.64. The applicant considers the design of the proposed development to be consistent with DMRB LA 104 which details the mitigation hierarchy to avoid, reduce, offset. The proposal also seeks to enhance the landscape character area identified by NSDC's Landscape Character Assessment Supplementary Planning Document detailed above. Embedded mitigation is detailed in ES Chapter 2 (The Scheme) of the ES [\[REP7-016\]](#). Such measures include maintaining existing infrastructure, earthworks and screen planting and avoiding vegetation clearance as far as practicable, integration of new earthworks into the landscape, limiting the vertical alignment of the new infrastructure as far as practicable, directional lighting where required, and consideration of colour, form, and materials to minimise the visual prominence of these new features and aid their integration into the receiving landscape or architectural context.

Mitigation Measures – Construction

- 3.8.65. R3 of the dDCO requires the applicant to develop the First Iteration EMP [\[REP6-012\]](#) into a second iteration. This would include measures for approval by the SoS, with NSDC as consultee. Such measures relevant to landscape and visual amenity include:
- Keeping a well ordered and tidy site, including keeping stockpiles to a minimum, with delivery of goods on an as needed basis;

- Limiting works to core hours in the most part (noting the exception detailed in commitment G2 of Table 3-2 REAC of the First Iteration EMP);
- Protecting existing trees and vegetation to be retained with protective fencing, where deemed necessary, in accordance with BS 5837:2012 Trees in relation to design, demolition and construction;
- Restoration of land used temporarily to construct the proposed development, as soon as reasonably practicable;
- Constructing screening mounds, where they are proposed as part of the permanent works, as early as is reasonably practicable to provide screening to the construction work;
- Temporary offices and welfare facilities would be a recessive colour to blend in with the local surroundings. This is particularly the case in more rural areas away from the urban edge of Newark; and
- Lighting would be kept to the minimum luminosity necessary and use low energy consumption fittings. Where appropriate, lighting would be activated by motion sensors to prevent unnecessary usage. The main site compound would be always occupied for the security of the plant, equipment, and materials within it. As such, the main site compound would be lit as required during hours of darkness. Lighting would be directional, and positioned sympathetically, to minimise light spill and disturbance for highly sensitive receptors. Construction lighting arrangements are further detailed in ES Chapter 2 (The Scheme) of the ES.

Mitigation Measures – Operation

3.8.66. Mitigation measures during the operation phase are summarised below:

- New and replacement native planting which considers climate change resilience and reflects the local landscape character, including those species listed in the Newark & Sherwood Landscape Character Assessment SPD. Over time, this vegetation would mature to offer effective screening where required as well as general landscape integration and softening of built features;
- Retention and strengthening of hedgerows and linear belts of vegetation along the highway boundary where possible, to ensure that existing field boundaries and highways planting remains intact, and wildlife corridors are not severed. Where retention is not possible, new planting would be sought to restore continuity of existing vegetation. This would include, but not be limited to, areas of species rich grassland, hedgerows, hedgerows with trees, linear belts of shrubs and trees and woodland, as well as wetland planting of drainage features and habitat creation at Farndon East and West FCAs;
- Land used temporarily during construction would be, so far as reasonably possible, reinstated to previous land use where not required for essential environmental mitigation;
- Appendix 7.4 parts 1 - 5 (Arboricultural Impact Assessment) of the ES [[APP-140](#)], [[AS-086](#)], [[AS-087](#)], [[AS-088](#)] and [[AS-089](#)] details specific mitigation in relation to potential remediation measures following construction with respect to trees; and
- There would be no new lighting on the raised sections of the proposed development [[REP4-034](#)].

Views of Interested Parties

Local Authorities

3.8.67. Both NSDC [[REP1-035](#)] and NCC [[REP1-038](#)] confirmed that the applicant's methodology was consistent with DMRB LA 107 and follows industry best practice.

Both parties suggested that VP24 north of the Cattle Market Roundabout looking south towards Newark should be a key visual receptor and further work was needed to consider the impacts on Winthorpe CA.

- 3.8.68. The host authorities made suggestions with respect to how the proposed development might be improved to limit the landscape and visual impacts. Concerns were raised over the lighting proposals and the analysis for nighttime impacts. It should be noted that both LIRs accept that the proposals generally mitigate the adverse effects. They also accept the cumulative impacts have been assessed and agree with the analysis and conclusions.

Statutory Parties

- 3.8.69. Historic England (HE) [RR-028] highlighted the importance and sensitivity of the 17th century Civil War landscape around Newark. It stressed the importance of understanding the landscape so that the proposed development would not have an unnecessary adverse impact on its historic importance.

Other IPs

- 3.8.70. [RR-007], [RR-010] and [RR-050] made general comments with respect to landscape and visual effects of the proposals without offering a specific concern.

Removal of hedgerows and opening currently enclosed views

- 3.8.71. [RR-003] raised concern with respect to the removal of hedgerows and other mature vegetation and the effect this would have on existing views.

Impact of the Grade Separate Junction at Cattle Market Roundabout

- 3.8.72. [RR-030] and [RR-040] shared concerns regarding the impact the new flyover at Cattle Market Roundabout would have on existing views and the scale relationship to the landscape character.

Adverse Effects on Winthorpe Village and Associated Properties

- 3.8.73. [RR-013], [RR-038] and [RR-071] shared concerns with respect to impacts on Winthorpe CA, specifically the western edge and the property known as Lowwood.

Impact on Newark and the Surrounding Landscape Character

- 3.8.74. [RR-060] and [RR-064] raised concern over the potential landscape and visual impact on Newark.

Impact on Individual Properties

- 3.8.75. [RR-059] raised concern with respect to the visual impact on Bridge House Farm kennels.

Examination

- 3.8.76. There are two LCAs that are principally affected by the proposed development. The majority of the proposed development lies within LCA 1 – Trent Washlands, whilst further concerns were received for those impacts on LCA 2 – Winthorpe Village and Farmlands. The examination primarily focused on the impacts on these two LCAs. Where issues of landscape and visual amenity are not referenced below, the ExA

are content that they had been resolved between parties. The key issues considered were:

- Effects on landscape character during construction and operation with regard to any adverse effects on the qualities of the landscape and visual effects including:
 - LCA 1 – Trent Washlands;
 - LCA 2 – Winthorpe Village and Farmlands;
 - Visual Amenity
 - Residential receptors;
 - Public rights of way and recreational facilities;
 - Road users;
 - Intervisibility between landscape features;
 - Light pollution;
 - Design.

3.8.77. No other IPs have commented on the standard of the methodology or raised any substantive issues in relation to this matter.

LCA 1 - Trent Washlands

3.8.78. The majority of the works and changes would be in LCA 1 – Trent Washlands, as demonstrated on [\[AS-038\]](#). The issues can be summarised as loss of vegetation, earthworks/ changes to topography and the enlarged Cattle Market Roundabout.

Earthworks/ changes to topography

3.8.79. The most substantial changes resulting from earthworks are to the FCAs. Of the three FCAs one is located between Averham and Kelham and the other two are located north-east of Farndon split by the A46. All three are within LCA 1 - Trent Washlands.

3.8.80. The applicant's assessment shows that the Kelham and Averham FCA would result in a neutral change over the course of the life of the proposed development as it would be returned to agricultural use. There would be a topographic change, but this would likely not be appreciated across the wider landscape and is not expected to result in an adverse effect on the LCA.

3.8.81. The Farndon East and West FCAs would not be returned to agriculture but would provide biodiversity benefits as set out in the Environmental Masterplan [\[REP7-042\]](#). The scale of the landscape means that the topographical changes would be difficult to interpret in the landscape. This change is positive, according to the applicant, when set against a backdrop of the A46 corridor and the wider agricultural land use.

Loss of existing vegetation

3.8.82. Substantial losses of vegetation would occur around and immediately adjacent to the Order limits as detailed below. This would result in both landscape and visual impacts. The impacts are predominantly within LCA 1 - Trent Washlands:

- 840m² within Dairy Farm Railway Strip including 680m² of broadleaved plantation woodland
- 22,260m² of Great North Road Grasslands LWS including 670m² of broadleaved plantation woodland
- 300m² of Newark (Beet Factory) Dismantled Railway LWS including 290m² of woodland

- 11,290m² of lowland mixed deciduous woodland Habitats of Principal Importance (HPI) across three distinct woodlands, including those mentioned above

3.8.83. The issue here is whether the loss of mature vegetation would have an unacceptable adverse impact on the landscape character. The most substantial impact is the loss of planting on the northern side of the Cattle Market Roundabout, specifically the reduction of vegetation at the Great North Road Grasslands LWS, and the approach from the west to accommodate the larger junction. There would also be the loss of some trees that border the Great North Road.

3.8.84. The Environmental Masterplan [\[REP7-042\]](#) demonstrates the retention of as much vegetation as possible and maintains the avenue effect of the trees along Great North Road. There would be a significant moderate adverse effect during the construction period prior to the establishment of replacement/ compensatory planting. The applicant's assessment considers that the loss of vegetation, coupled with the new planting, would result in a Neutral effect across the Order limit by Year 15.

Cattle Market Roundabout

3.8.85. Issues surrounding the design of the Cattle Market Roundabout and how these impact on the landscape character and visual effects have been raised by several IPs, as detailed above. At the end of the examination the extent of harm and the nature of the mitigation remains a point not agreed in the SoCGs with NCC and NSDC [\[REP8-025, REP8-027\]](#). Given the introduction of a new elevated section of the carriageway at this location the applicant considers that this represents the largest magnitude of change in the LCA.

3.8.86. The new enlarged junction has raised concern with respect to the scale and effect on the landscape character and Newark. The area around the junction is already characterised by Newark's urban edge, tall office development, British Sugar PLC factory, the A46 and associated infrastructure. The applicant's assessment shows that the introduction of the flyover structure at this junction would result in a major adverse significant effect on the landscape at this location that cannot be mitigated given its size and nature.

Brownhills Roundabout

3.8.87. The elevated and remodelled sections of the carriageway at Brownhills Roundabout represents a significant potential for change. It lies within LCA 1 - Trent Washlands.

3.8.88. The proposal would see a raised section crossing the A1 and allowing for the flow of traffic along the A46 without the need to negotiate the Brownhills Roundabout. As a result, there would be a new raised element over the A1 and the Brownhills Roundabout, as illustrated in the Environmental Masterplan [\[REP7-042\]](#) and VP 41 [\[APP-139\]](#). The Brownhills Roundabout would have a smaller radius than current and would cater to those joining/ leaving the A46 and local traffic.

3.8.89. Concerns have been raised over the height of the junction specifically over lighting along the raised elements [\[REP1-035\]](#). The applicant has explained that there would be no new lighting on raised sections of the enlarged carriageway, whilst the raised section must be a specific height to cross the A1. The Brownhills Roundabout must be above the 1 in 100-year storm event level [\[REP6-033\]](#).

- 3.8.90. The raised section at Brownhills would result in an initial large adverse effect. However, as mitigation measures mature this would reduce to a significant moderate adverse effect by Year 15 according to the applicant's assessment.

LCA 2 - Winthorpe Village and Farmlands

- 3.8.91. NSDC's SoCG states that there remain concerns regarding the impact on Winthorpe. However, the detail of the text does not refer to Winthorpe, but to Newark [\[REP8-027\]](#). This was explored by the ExA during ExQ1 [\[PD-007\]](#) where NSDC were requested to provide a copy of the Winthorpe Conservation Area Appraisal. This was not provided. This was further examined during ISH 4 [\[EV10-003\]](#) where NSDC stated that their concerns related to the flyover crossing the A1 bringing the highway closer to Winthorpe village. NSDC did accept that the vegetated mitigation measures did go some way to alleviating their concerns.

Winthorpe Village

- 3.8.92. The applicant considers that there would not be a direct impact on Winthorpe village during construction or operation.
- 3.8.93. NSDC considers that there would be an impact on the Open Break to the south and the farmlands to the east and north. The Open Break separates the village from Newark and is protected from development through the Local Plan and contributes positively to the LCA by providing a green edge to the village between it and the existing A46 and urban edge of Newark. The applicant intends to maintain the Open Break in its current land use, but the widened carriageway would result in a small area of land take which in turn would result in altered field patterns as demonstrated on the Works Plans [\[REP3-002\]](#). During construction, the applicant considers that there would be a major adverse effect, which it considers is significant, on the LCA. This has not been disputed by either host authority or TAWAG.
- 3.8.94. During operation the effect would reduce as vegetation matures. The applicant asserts that during Year 1 of operation, the magnitude of effect would be moderate adverse. By Year 15 woodland planting, linear belts of shrubs and trees as well as hedgerow planting are expected to mature and thus reduce the impact of the new carriageway infrastructure to a moderate adverse significant residual effect by Year 15.

Visual Amenity

Residential receptors

Sandhills Park, Newark

- 3.8.95. Concerns relating to the effect on Sandhills Park are of a visual nature as its northern edge looks out directly onto Cattle Market Roundabout. VP24 demonstrates the likely visual impact to the residents at Sandhills Park [\[REP4-039\]](#). Currently, the residential area is bounded by a wooden fence before some informal intermittent semi-mature vegetation and the Cattle Market Roundabout. Lighting columns and the British Sugar PLC factory with its chimneys and tall buildings enclose the eclectic view. The VP illustrates a large wall-like structure representing the raised section of the upgraded junction with an opening for the circulatory. This simplified view still shows elements of British Sugar PLC in the background and a noise barrier in the foreground but fewer lighting columns than currently seen. The Environmental Masterplan [\[REP7-042\]](#) show potential for additional planting.

- 3.8.96. In its LIR [\[REP1-035\]](#), NSDC raised concern over the lack of planting at this location. The applicant responded that there is not sufficient room around the Sustainable Drainage System (SuDS) basin north of Sandhills Park given the proximity to the junction. This issue is resolved in the SoCG [\[REP8-027\]](#) as the applicant provided a reasoned justification for the positioning of the SuDS infrastructure.
- 3.8.97. The Environmental Masterplan [\[REP7-042\]](#) and VP24 [\[REP4-039\]](#) provide the most relevant information to gauge the impacts on residents at Sandhills Park. Currently, the view looks out towards the existing Cattle Market Roundabout, British Sugar PLC and open countryside. The proposal would see a noise mitigation boarded fence in the foreground with the grade separated raised section of the junction presenting a brick barrier. This would create an enclosing effect on an otherwise currently open view.
- 3.8.98. There have been no objections from residents at Sandhills Park with only NSDC raising this concern.

Farndon

- 3.8.99. Appendix 7.2 [\[APP-137\]](#) demonstrates the potential impacts on Marsh Lane, Farndon and associated residential properties. It has been included in the applicant's assessment as a key visual receptor. During construction, the loss of vegetation and works associated vehicular movements are likely to cause a slight adverse effect. This is expected to reduce to neutral by year 15 post completion as vegetation matures.
- 3.8.100. VP9 [\[APP-137\]](#) is a representative view for residents on Crees Lane, Farndon looking towards the Farndon Roundabout. The applicant's assessment considers that during construction there would be a moderate adverse effect predominantly resulting from the satellite construction compound in the roundabout and the loss of existing roadside vegetation. During operation the effect would be moderate adverse reducing to slight adverse by Year 15 once landscaping mitigation measures begin to mature. The result of the maturing landscaping measures means this is not considered significant.
- 3.8.101. VP10 [\[APP-137\]](#) shows the likely potential impacts on The Ivies, The Osiers, Mills Drive and The Weavers. Views of Farndon Borrow Pit East and FCA excavations immediately north of the river would be filtered by intervening vegetation. Equally, retained vegetation would screen views of the Windmill Viaduct works. However, given the proximity of these receptors to works and resultant noise and vehicular movements, there is an expected moderate adverse effect during construction. Given the extent of proposed and retained vegetation, this is expected to reduce to slight adverse post completion and becoming neutral by Year 15.

Winthorpe

- 3.8.102. VP41 [\[APP-137\]](#) demonstrates how the proposed development would appear from the western edge of Winthorpe. Concerns have been raised by IPs that this is not representative and that a VP should have been taken from the opposite side of the A1, near to Lowwood. The applicant provides an assessment [\[APP-137\]](#) from receptor 42 located at The Spinney which provides for residents on The Spinney and Guisborough Road.

- 3.8.103. VP41 shows the impact from the new raised section of Brownhills Roundabout crossing the A1. Currently, the VP shows agricultural fields and mature vegetation. There would be a large adverse effect during construction as a result of the extent of the works. It is clear that the western edge of the village would also experience this magnitude of effect.
- 3.8.104. During operation, it would take time for mitigation measures to mature, therefore in Year 1 the effect would still be large adverse, but by Year 15 this would have reduced to slight adverse.
- 3.8.105. The applicant did not produce a photomontage from Lowwood at the western edge of Winthorpe. The outlook is due to change as the existing agricultural fields would be planted with trees potentially blocking views into, and out of, Lowwood whilst the agricultural fields adjacent the A1 would be turned into parkland similar to the southern Open Break of the village. Details of the planting, including species and density, are to be agreed through R6 of the dDCO.
- 3.8.106. VP42 [\[APP-137\]](#) is considered to experience a Slight Adverse impact during construction evidenced by the extent of retained mature vegetation. During operation, this is expected to reduce to neutral by Year 15 as a result of noise mitigation measures and new planting maturing.
- 3.8.107. The host authorities and TAWAG all raised concerns about the assessment and impact of the proposal on the western edge of the village. All considered that a photomontage should be produced from Lowwood to provide a more accurate and succinct impression of the impacts on the western edge of the village. Following the USI [\[EV1-001\]](#) and ARSI [\[EV1-005\]](#), the ExA considered that there was no reasonable requirement to request the applicant to produce another photomontage from that location given the assessment undertaken at receptors 41 and 43.

Public rights of way and recreational facilities

- 3.8.108. VP10 [\[APP-137\]](#) shows bridleway Newark BW2 and provides a clear indication of the likely effects on river users from this location, a concern raised by IPs. The applicant's assessment shows that there would be a moderate adverse effect during construction as a result of necessary lighting during the construction of the new river crossing and loss of vegetation. During operation, there would be a slight adverse effect reducing to neutral by Year 15.
- 3.8.109. VP43 [\[APP-137\]](#) shows the potential impact on the Winthorpe Open Break from PRoW Winthorpe FP2. Currently, the Open Break ends at the A46 and is bounded by a linear edge of informal mature vegetation. Views are open towards large warehousing. During construction, this vegetation would be removed resulting in a large adverse effect. However, as per the Environmental Masterplan [\[REP7-042\]](#) the applicant intends to install a bund with fencing measuring up to 2.5m. This would be planted with additional tree planting to soften the effect. This is demonstrated on VP43. The applicant considers that during Year 1 post operation the effect would be slight adverse reducing to neutral by Year 15.
- 3.8.110. The final concern considered through the examination relates to views from BW5 near the concrete footbridge/ Fiddler's Elbow. VP32 [\[REP7-052\]](#) demonstrates the likely effects on users of the bridleway. The applicant's assessment considers that during construction users are likely to experience a very large adverse effect, whilst by the time the proposal becomes operational there would be a slight adverse effect in Year 1 and 15 resulting from the landscaping proposals.

- 3.8.111. The ExA observed each of the above locations during the USI [\[EV1-001\]](#). There are no IPs who have raised a counter argument to the applicant's assessment on how users of recreational facilities would be affected.

Road users

- 3.8.112. VP24 [\[APP-139\]](#) shows the Cattle Market junction. This demonstrates the large solid structure blocking existing views north and south from the Great North Road/A616. However, the raised section would generate new views for users of the A46. This would include joint views of Newark Castle and Church of St Mary Magdalene which NSDC considers to be an important part of the landscape experience. Concerns have also been raised by IPs [\[RR-060\]](#) and [\[RR-064\]](#) regarding the scale of the junction in relation to Newark.

- 3.8.113. During the ExA's USI, views of the church spire and Newark Castle were blocked by existing vegetation when travelling south along Great North Road. This is further evidenced in VP25 [\[APP-139\]](#). In response to NSDC's concerns about the structure of the Cattle Market Roundabout [\[EV10-003\]](#), the applicant detailed [\[REP4-040\]](#):

- The open structure would be 300mm to 500mm deeper overall, this would increase the height of the structure and potentially depart from DMRB standards for the design of slip roads for visibility and merge lengths;
- The land beneath the open structure would be hardened and not allow any planting creating a utilitarian environment;
- The area beneath the open structure would be vulnerable to anti-social behaviour, litter collection and arson;
- The centre of the gyratory would still be landscaped with trees and shrubs, this would block any potential views through the structure;
- Views of Newark Castle and the church spire are restricted at present and are more visible from the south of the existing Cattle Market Roundabout;
- The multi span structure would need to be placed on bearings to allow it to move due to temperature changes, this would require additional maintenance and repair, increasing health and safety risks from working at height and removing and replacing heavy bearings. The two single span structures are fully integral and have no bearings to maintain; and
- Capital and whole life costs would be significantly higher, £6.5m and £8.0m extra respectively.

- 3.8.114. In response, NSDC advised that it remains unconvinced by this argument and would have no concerns over raising the height to maintain the existing views [\[REP5-067\]](#) and that the benefits of a lighter-weight structure would outweigh the disbenefits. Equally, NSDC detailed the importance of the proposed development to the area [\[REP5-067\]](#). This matter remains unresolved between parties [\[REP8-027\]](#).

- 3.8.115. The applicant considers that there would be a significant moderate adverse effect. In their LIR, NSDC [\[REP1-035\]](#) agreed with this assessment but the matter remains unresolved in the SoCG.

Intervisibility between landscape features

- 3.8.116. The host authorities both raised concerns regarding the intervisibility between heritage assets and how this would impact on the experience of the wider landscape. Matters of cultural heritage and such visual links between assets are explored fully above in section 3.7 of this chapter.

- 3.8.117. NSDC raised concerns relating to the intervisibility between built landscape features including Kelham Hall, Newark Castle, Church of All Saints and the Church of St Mary Magdalene. The council's case was that the visibility between assets enhances the landscape experience [REP8-027]. During the USI [EV1-001], the ExA took the opportunity to review the intervisibility and landscape experience but existing mature vegetation already blocks views.

Light pollution

- 3.8.118. NSDC raised queries regarding the introduction of lighting into areas that are currently unlit [REP1-035]. This was supported by IPs with concerns over light pollution. During ISH 4 [EV10-003], the applicant confirmed that the only new lighting would be at the Friendly Farmer Roundabout. There would be no lighting on raised sections. Additionally, lighting is covered by R18 of the dDCO with details to be agreed with the relevant local planning and highways authorities and should take account of ES Chapter 6 Cultural Heritage [REP7-022], ES Chapter 7 Landscape and Visual Effects [REP7-024] and ES Chapter 8 Biodiversity [REP7-026].

Design

Cattle Market Roundabout

- 3.8.119. Concerns have been raised by the host authorities with respect to the design and appearance of Cattle Market Roundabout. NSDC suggested a lighter structure incorporating a gap would be better to maintain through views from Great North Road and this design solution would better meet the policy of NPSNN 2015. However, the applicant responded detailing the technical complications with such an approach [REP4-040]. R24 requires the applicant to agree the finishing detail for the raised element. This seeks to finish the structure in a red brick/ block in an attempt to reduce the visual impact of the structure.

Brownhills Roundabout

- 3.8.120. Concerns have also been raised by IPs [RR-013, RR-038 and RR-059] with respect to the re-modelled Brownhills Roundabout and connection to Friendly Farm Roundabout. The applicant has responded to these stating that the Brownhills Roundabout is currently 70m in diameter, but the replacement would be smaller at 60m. The remodelling is required to cater for three access points including a slip road to the elevated A46. The height has been lowered as a result of consultation and is now level with the A1 but cannot be reduced further because of flood risk concerns.
- 3.8.121. The remodelling of the Brownhills Roundabout has been evidenced by the applicant as consistent with the requirement of DMRB CD 116 with respect to safety requirements. The Environmental Masterplan [REP7-042] demonstrates the extent of planting, screens and bunds around the area providing for a green effect with vegetation to be monitored and maintained by the applicant.

CONCLUSIONS ON LANDSCAPE AND VISUAL EFFECTS

Landscape

- 3.8.122. The ExA considers that the proposal would result in a number of negative impacts during construction on the landscape character areas as identified by the applicant. The disruption caused by earthworks/ creation of FCAs, removal of vegetation, the creation of the widened carriageway and the introduction of the grade separated junction at Cattle Market Roundabout would result in harm which can be readily

interpreted using the ZTV. The construction period would impinge on the tranquillity of the landscape from Church of All Saints in Winthorpe and those PRowWs in the vicinity of the works.

- 3.8.123. The ExA considers that great harm will come within LCA 1 – Trent Washlands as a result of the Cattle Market Roundabout which is located within this LCA. The introduction of the grade separated fly over would introduce a large, incongruous feature into the landscape resulting in great harm to this area of the LCA, and to which the ExA attribute great weight against the proposed development in relation to this specific feature. It is appreciated that the applicant has undertaken the necessary work to inform the proposed development, and the grade separated junction is a necessity to achieve the aims of RIS 2. Considering the entire length of the proposed development, the overall landscape impact would result in moderate harm and the ExA attribute moderate weight against the proposed development resultant from this overall harm.

Visual

- 3.8.124. Great harm would be experienced by visual receptors, specifically those residential units at Sandhills Park, those at the eastern side of Farndon in proximity to the Farndon Roundabout and residential receptors in the southern and western sides of Winthorpe. Despite temporary mitigation measures such as screens, the introduction of bunds and planting early in the construction period the impact on these receptors would still be negative. This is considered by the ExA to be a normal part of the construction process of any large infrastructure development.
- 3.8.125. During the early years of operation, there would remain moderate harm to residential receptors resulting from the time taken for vegetation to mature. But as the applicant's visualisations demonstrate, this harm would reduce to a little but it won't address all harm and those receptors at Sandhills Park would still experience a moderate degree of harm, to which the ExA attributes moderate weight against the proposed development.
- 3.8.126. Given the degree of harm to the visual amenity experienced by receptors resulting from the grade separated flyover at Cattle Market Roundabout, however the ExA considers this to be great harm and attributes this specific element great weighting against the proposed development.

Design

- 3.8.127. The ExA considers that the applicant has demonstrated consistency with the requirements of DMRB. However, this means that the necessary grade separated junction at Cattle Market Roundabout would be a prominent feature in both landscape and visual terms. It would be a new intrusion in a landscape that already experiences the A46 and substantial development to the south of Cattle Market Roundabout including a lorry park and tall offices with the British Sugar PLC factory to the north. The use of a red block banding as agreed between IPs would assist in reducing the impact but it would still be a harmful element across the linear development.
- 3.8.128. Brownhills Roundabout and the new elevated carriageway would be well mitigated with respect to their intrusions on landscape and visual amenity. The use of planting, bunds and screens that forms part of the design solution would reduce noise generally in Winthorpe and provide a benefit to increase the feeling of tranquillity in the village. The creation of a vertical boundary of the Open Break is

unfortunate but brings benefits in terms of noise mitigation, connectivity and habitat creation. These benefits are welcomed despite the negative vertical volume.

- 3.8.129. Lighting has been agreed between IPs and the commitment not to provide this on the raised sections of the proposed development would result in less intrusion whilst the limited additional lighting at Friendly Farmer Roundabout would be lower, and therefore less impactful, than the existing arrangement.
- 3.8.130. Across the length of the proposed development, the applicant has provided for a well-designed solution to meet the aims of RIS 2 making good use of green infrastructure to mitigate harm where possible. The grade separated flyover at Cattle Market Roundabout is a necessary part of these works and the applicant has demonstrated they have undertaken an approach that considered alternatives and why the suggestion of NSDC cannot be undertaken. It is considered that the design approach meets the terms of good design sought in NPSNN 2015. The positive overall design conclusion is balanced against the approach to the Cattle Market Roundabout.

Summary

Landscape

- 3.8.131. During the construction period, the works would result in great harm in LCA 1 – Trent Washlands where the majority of the proposal is situated, particularly the Cattle Market Junction. A little harm would occur during this time in adjacent LCAs, specifically LCA 2 – Winthorpe Village and Farmlands given the proximity to the existing A46. This harm would be to the south of the village by providing a vertical edge to the Open Break limit. This harm would continue into Year 1 of operation.
- 3.8.132. By Year 15, the overall harm to both LCAs would have reduced to moderate. There would overall be a moderate adverse significant effect on the landscape and the ExA affords this moderate weight against the proposed development in the planning balance.
- 3.8.133. However, the Cattle Market Roundabout with the grade separated junction is a large, engineered structure the impact of which would not decrease over time regardless of whatever planting the applicant provides. Despite the adverse effect of the remainder of the proposed development reducing by Year 15, this element would retain great harm beyond Year 15 and throughout the lifetime of the proposed development and the ExA accords the harm from this element great weight against the proposed development.

Visual

- 3.8.134. Visual receptors would suffer great adverse harm during construction, despite the applicant's embedded mitigation measures. Great negative harm would be experienced by residents in the north and east parts of Sandhills Park and Lowwood at Winthorpe. This harm on the latter would reduce substantially by Year 15 of operation to a little. However, Sandhills Park would continue to experience great harm. The ExA considers this, across the length of the linear project, to be moderate harm and provides moderate weight against the proposed development.
- 3.8.135. Despite the efforts of the applicant to reduce the effect on receptors of the Cattle Market Roundabout, the grade separated flyover would continue to result in great harm on the residents of Sandhills Park and Non-Motorised Users (NMUs). Although the existing outlook across Cattle Market Roundabout is of an already

engineered landscape and urban edge, the harm from this element is afforded great weight against the proposed development.

Design

- 3.8.136. In terms of good design, the applicant has demonstrated an approach consistent with the requirements of NPSNN 2015. They have provided for substantial amounts of planting and made positive re-use of soils through planting bunds which are embedded into the design.
- 3.8.137. The grade separated Cattle Market junction is a negative aspect of the design but is necessary to meet the aims of RIS 2 and the safety requirements of DMRB. The applicant has demonstrated that alternatives are not viable. The applicant has agreed to break up the mass of the grade separated structure through the use of red brick banding. The ExA is content that the design meets the requirements of NPSNN 2015, and those of NPSNN 2024 and NPPF which are considered important and relevant.

Overall Balance

- 3.8.138. The ExA conclude that the applicant has demonstrated that they have complied with the landscape, visual and design requirements of NPSNN 2015. They have provided details of alternatives that have been considered and how the proposed development has evolved through assessment of various sustainability factors. There is no disguising the harm that the grade separated Cattle Market Roundabout results into LCA 1, visual receptors and in design terms. However, this is a single, and necessary, element along the 6.5km length of the proposed development. Overall, the ExA considers that there would be a moderate degree of harm during construction and up to Year 15 of operation of the whole proposed development. Thereafter, the harm would reduce to a little. In this regard the ExA attributes moderate weight against the proposed development.
- 3.8.139. With respect to the area around the Cattle Market Roundabout, there is expected to be great harm to which the ExA attributes great weight against the proposed development.

3.9. MATERIAL ASSETS AND WASTE

INTRODUCTION

- 3.9.1. This section considers the applicant's assessment of the material assets and waste implications of the proposed development which is set out in Chapter 10: Material Assets and Waste [\[REP7-030\]](#) of the Environmental Statement (ES). ES Chapter 10 is accompanied by Figure 10.1: Material Assets and Waste Management First Study Area [\[REP2-008\]](#) and Figure 10.2: Material Assets and Waste Management Second Study Area [\[AS-054\]](#).
- 3.9.2. The transportation and use of material assets and waste management activities can have other environmental effects, for example in terms of air quality, carbon emissions, and noise. These matters are considered in other sections of this report.

POLICY CONSIDERATIONS

National Policy Statements

National Policy Statement for National Networks, 2015

- 3.9.3. Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Sustainable waste management is implemented through the 'waste hierarchy': prevention; preparing for re-use; recycling; other recovery, including energy recovery; and disposal (paragraphs 5.39 and 5.40).
- 3.9.4. Applicants should set out arrangements for managing waste and seek to minimise the volume of waste produced and sent for disposal unless it can be demonstrated that an alternative is the best overall environmental outcome. The decision-maker should consider the extent to which the applicant would ensure effective management of hazardous and non-hazardous waste arising from the construction and operation of the proposed development. The process should ensure that any such waste will be properly managed, both on-site and off-site, can be dealt with appropriately by waste infrastructure, and that adequate steps have been taken to minimise the volume of waste arisings (paragraphs 5.42 and 5.43).
- 3.9.5. Paragraph 5.169 states that applicants should safeguard any mineral resources as far as possible and paragraph 5.182 advises that where a proposed development has an impact on a Mineral Safeguarding Area (MSA), the Secretary of State should ensure that the applicant has put forward appropriate mitigation measures to safeguard mineral resources.

National Policy Statement for National Networks, 2024

- 3.9.6. At paragraph 5.71 of NPSNN 2024 encourages applicants to use existing materials first, then low carbon materials, sustainable sources, and local suppliers. Consideration should be given to circular economy principles wherever practicable, for example by using longer-lasting materials efficiently, optimising the use of secondary materials and considering how the development will be maintained and decommissioned. Applicants should take account of emerging government policy including the Waste Prevention Programme for England (published in August 2023) and Defra's Construction Code of Practice for the Sustainable Use of Soils on Construction Sites.
- 3.9.7. Paragraph 5.75 of NPSNN 2024 states that infrastructure projects should look to use modern methods of construction where possible.
- 3.9.8. Paragraph 5.191 states that applicants should safeguard mineral resources as far as possible and consider whether prior extraction would be appropriate.

National Planning Policy Framework, December 2024

- 3.9.9. Paragraph 8 refers to waste minimisation as part of the environmental objective of sustainable development.
- 3.9.10. Paragraph 222 states that it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.

Other National Policy

National Planning Policy for Waste, 2014

- 3.9.11. Paragraphs 1 and 8 National Planning Policy for Waste (NPPW) say that positive planning plays a pivotal role in delivering the country's waste ambitions through,

amongst other things, helping to secure the re-use, recovery or disposal of waste without endangering human health and without harming the environment. Local planning authorities should ensure that the handling of waste arising from the construction and operation of development maximises re-use/ recovery opportunities, and minimises off-site disposal.

The Waste Management Plan for England, 2021

- 3.9.12. The Waste Management Plan for England (WMPE) sets out the government's ambition for a more sustainable and efficient approach to resource use and management. It notes that the construction, demolition and excavation sector was the largest contributing sector to total waste generation (accounting for almost two thirds of generation in 2016), but that England and the UK have been comfortably meeting the 2020 target.

The Waste Prevention Programme for England, 2023

- 3.9.13. The Waste Prevention Programme for England (WPPE) sets out the government's aims to prevent waste from occurring in the first place and to manage it better when it does. It identifies seven key sectors for action, based on available data on the amount of waste arisings or known carbon emissions from production. These sectors include construction, in relation to which it is noted that the sector will need to meet the challenges of Net Zero and reducing waste by designing buildings to be disassembled rather than demolished, and to be adaptable to meet changing future needs. It says that waste needs to be properly managed during the construction process, such that different waste streams are properly segregated, and that recyclable or reusable materials are identified.

Local Development Plan

Nottinghamshire Minerals Local Plan, 2021

- 3.9.14. The majority of the proposed development is situated in a safeguarding area for sand and gravel. Policy SP7 says that non-minerals development within minerals safeguarding areas will have to demonstrate that mineral resources will not be needlessly sterilised as a result of the development and that the development would not pose a serious hindrance to future extraction in the vicinity. Where this cannot be demonstrated and there is a clear and demonstrable need for the non-minerals development, prior extraction will be sought where practicable.
- 3.9.15. Policy DM13 supports the extraction of minerals as a necessary element of other development proposals on the same site where the scale and duration of the mineral extraction does not result in adverse environmental impacts and where it brings environmental and other benefits to the development it is incidental to.
- 3.9.16. Policy DM15 states that 'borrow pits' will be supported where they are adjacent to or close to the project/s they are intended to serve; are time-limited to the life of the project and material is to be used only for the specified project; and can be worked and reclaimed without any unacceptable environmental impacts.

Nottinghamshire and Nottingham Waste Core Strategy, 2013

- 3.9.17. Policy WCS1 sets out a presumption in favour of sustainable development. Policy WCS2 states that all new development should be designed, constructed and implemented to minimise the creation of waste, maximise the use of recycled

materials and assist the collection, separation, sorting, recycling and recovery of waste arising from the development.

Emerging Policy

Nottinghamshire and Nottingham Waste Local Plan, submitted 5 March 2024

- 3.9.18. Draft Policy SP1 relates to waste prevention and re-use and is similar to adopted Policy WCS2, noting that all new development should be designed, constructed, and operated to minimise the creation of waste, maximise the use of recycled materials, and assist with the collection, separation, sorting, recycling and recovery of waste arising from the development during its use.

THE APPLICANT'S CASE

- 3.9.19. The applicant's assessment considers only the construction phase; the operational phase was 'scoped out' [\[APP-189\]](#). It was undertaken in accordance with DMRB LA 110 Material Assets and Waste and based on two study areas: within 500 metres of the Order limits [\[REP2-008\]](#); and a wider area within which there is suitable waste infrastructure that could accept arisings or waste generated by the proposed development as well as sources of construction materials [\[AS-054\]](#).
- 3.9.20. In relation to the handling of materials and deposition of waste, the applicant reports an approach consistent with the waste hierarchy set out in the Waste (England and Wales) Regulations 2011. It has also taken account of the Construction Code of Practice for the Sustainable Use of Soils on Construction Sites (Defra, 2009) and CL:AIRE Definition of Waste: Development Industry Code of Practice (2011).
- 3.9.21. The applicant's assessment considers:
- types and quantities of materials required, where known;
 - details of the source or origin of materials, site-won materials to replace virgin materials, materials from secondary or recycled sources, or virgin or non-renewable sources, if known;
 - the type and volume of materials that would be recovered from off-site sources;
 - cut and fill balance;
 - details of on-site storage and stockpiling arrangements;
 - forecasts of non-hazardous, hazardous, and inert waste arisings;
 - surplus materials and waste falling under regulatory controls;
 - wastes that require storage on-site prior to re-use, recycling and disposal;
 - wastes to be pre-treated on site for re-use in the Proposed Development; and
 - wastes requiring treatment or disposal off-site.

Assessment of Likely Significant Effects

- 3.9.22. The applicant's assessment of the residual effects takes account of the mitigation measures set out in: the Outline Site Waste Management Plan (OSWMP); the Outline Materials Management Plan (OMMP); and the Outline Soils Management Plan (OSMP). These documents are appended to the First Iteration Environmental Management Plan (EMP) [\[REP6-012\]](#) and would be developed into 'full' versions prior to construction as secured by Requirement (R) 3 of the draft Development Consent Order (dDCO) [\[AS-106\]](#). Where relevant the provisions in these documents have been reflected in a Pre-commencement Plan [\[REP7-072\]](#) which would cover any activities taking place before the permitted development was commenced (for example site set-up and archaeological investigations).

- 3.9.23. A summary of the material asset-related effects during construction is at Table 10-18 of ES Chapter 10 [\[REP7-030\]](#). No significant effects have been identified.
- 3.9.24. The applicant does not expect there to be any substantial use of material assets for vegetation clearance or for demolition and, therefore, reports neutral residual effects. There would be a slight adverse effect from the importation of materials; whilst more than 80% of recovered material and non-hazardous construction and demolition waste would be re-used, not all of the site-won materials are likely to be suitable for use as structural fill. There would also be a slight adverse effect because the majority of material would be primary material as it is unlikely to be possible to source all required materials from recycled/ secondary materials.
- 3.9.25. In relation to peat and minerals resources, there is one MSA in the study area. The applicant has noted that:
- the total area for the sand and gravel MSA in Nottinghamshire is over 377 square kilometres (sq km), while the area of the proposed development in the MSA is approximately 1.8 sq km which represents approximately 0.48% of the MSA;
 - the NMLP recognises that there may be circumstances where the overriding need for the non-mineral development outweighs the need for mineral resources to be recovered from the site of the non-mineral development.
- 3.9.26. The applicant has therefore concluded that there is unlikely to be a risk to the MSA, that no mitigation is needed, and that the effect would be neutral.
- 3.9.27. A summary of the waste-related effects during construction is set out at Table 10-22 of ES Chapter 10 [\[REP7-030\]](#). No significant effects have been identified.
- 3.9.28. Vegetation that is removed would be chipped and used for landscaping in the proposed development or sent off-site for composting, resulting in a neutral effect.
- 3.9.29. Initial estimates suggest that demolition works could give rise to approximately 756m³ of inert waste which, if sent to landfill, would cause less than a 1% reduction in the region's inert landfill capacity. To minimise inert waste, waste hierarchy principles would be deployed, resulting in a slight adverse residual effect.
- 3.9.30. Non-hazardous waste would arise mainly from the excavation works, amounting to approximately 29,500m³, and would be sent to landfill. A further 2,656m³ would arise from demolition works. In total, this worst-case estimate of non-hazardous waste would occupy approximately 0.11% of the regional landfill capacity. By applying waste hierarchy principles, there would be a slight adverse residual effect.
- 3.9.31. The applicant has also concluded that there would be a slight adverse residual effect in respect of hazardous waste. As a worst-case estimate, 2,824m³ of material would be classed as hazardous – approximately 0.35% of the regional landfill capacity. The full Site Waste Management Plan would set out arrangements for handling and storing hazardous waste in accordance with relevant legislation.
- 3.9.32. Although waste arisings (such as off-cuts, office-related waste, packaging and contaminated materials or packaging) from the construction phase have not been estimated, the applicant does not expect high quantities of such waste to arise. As a worst-case scenario, if 10% of aggregate-based materials were lost (amounting to 103,157m³) and there were 16,500m³ of non-hazardous waste arisings, these would represent less than 1% of the regional landfill capacity for both non-hazardous and inert waste. The applicant has stated that the implementation of mitigation

measures would likely reduce the effects through the re-use and recycling of waste and that the effects would be slight adverse and not significant.

- 3.9.33. The Second Iteration EMP would include monitoring arrangements and procedures to reduce or eliminate materials- and waste-related impacts during construction.

VIEWS OF IPs

Local Authorities

- 3.9.34. In its LIR [\[REP1-038\]](#) Nottinghamshire County Council (NCC), the minerals and waste authority, stated that minerals and waste facilities have been identified adequately within the ES and the supporting DCO documentation and that there are no existing mineral extraction sites located in close proximity to the boundary of the proposed development. It noted that it is unlikely that the proposed development would result in the infringement of future potential mineral extraction sites and that prior extraction may be impractical. NCC also stated that the benefit of prior extraction would have to be balanced against the impact it would have on the programme for the proposed development and the adverse environmental effects associated with mineral extraction.

Other IPs

- 3.9.35. [\[RR-032\]](#), [\[RR-034\]](#) and [\[RR-070\]](#) noted that there were minerals under the parts of their land that would be affected by the proposed development and that those parties would be seeking compensation for those minerals. Given that compensation is outwith the ExA's remit, this matter was not explored any further during the examination.

EXAMINATION

- 3.9.36. In the context of the proposed development being located in a safeguarding area, NCC confirmed [\[REP2-052\]](#) that the proposed development complies with NMLP Policy SP7. As well as the applicant having satisfactorily detailed the need for development in this location, NCC said that it had also demonstrated that there was an over-riding need, such that prior extraction would not be necessary.
- 3.9.37. Whilst in its LIR [\[REP1-038\]](#) NCC had sought a standalone Mineral Safeguarding Assessment from the applicant, it later confirmed [\[EV11-001\]](#) that it was no longer seeking a separate document and that the applicant's submissions had provided sufficient information in relation to minerals.
- 3.9.38. NCC also confirmed [\[REP2-052\]](#) compliance with NMLP Policy DM13 which relates to the extraction of minerals as part of development proposals on the same site and, subject to appropriate restoration measures (to include full use of surplus spoil from the project), compliance with NMLP Policy DM15 which relates to Borrow Pits. Following clarification from the applicant, NCC confirmed [\[REP5-069\]](#) that restoration would be satisfactorily controlled by R6 of the dDCO.
- 3.9.39. NCC confirmed [\[REP2-052\]](#) the contents of the OMMP to be appropriate for this stage of the DCO process. Details would be further developed following DCO approval and detailed design and the final Materials Management Plan would need to be submitted to CL:AIRE, administrator of the Definition of Waste: Code of Practice.
- 3.9.40. In relation to the use of sustainable materials, the applicant explained [\[REP2-037\]](#) its approach to re-using existing highways assets where possible and its intention to

implement the waste hierarchy and circular economy principles throughout the construction phase. It also set out examples of modern methods of construction which could be implemented.

- 3.9.41. The applicant confirmed [\[REP2-019\]](#) that soils would be managed in accordance with Defra's Code of Practice so that they do not become waste. NCC said [\[REP2-052\]](#) that the contents of the OSMP are appropriate for this stage of the DCO process and would need to be further developed following DCO approval and detailed design.
- 3.9.42. The applicant explained [\[REP2-019\]](#) that the proposed development would not cause the loss of waste management capacity, prejudice the operation, or restrict future development of waste management facilities. It would also not have a significant impact in terms of a permanent reduction in landfill void space. NCC confirmed [\[REP2-052\]](#) that the OSWMP [\[REP6-012\]](#), which outlines how waste would be managed as high up in the waste hierarchy as possible with a focus on preventing the generation of waste in the first place, is consistent with Nottinghamshire and Nottingham Waste Core Strategy Policies WCS1 and WCS2. It noted that a more ambitious target for utilising recycled aggregate content should be explored in the next iteration of the OSWMP. The SoCG with the EA [\[REP8-023\]](#) also records agreement in relation to the proposed approach to dealing with waste.

CONCLUSIONS ON MATERIAL ASSETS AND WASTE

- 3.9.43. The ExA considers the applicant's assessment of the waste and material assets effects of the proposed development to be satisfactory and that it is consistent with relevant policy in NPSNN 2015 which is the NPS against which this application is to be determined pursuant to s104 of PA2008. The ExA also considers that the proposed development is consistent with NPSNN 2024, the NPPF and the local development plan, all of which the ExA consider to be important and relevant.
- 3.9.44. Overall, the applicant has concluded that the proposed development would not give rise to any significant effects in terms of material assets use and waste management and generation. Appropriate mitigation measures, such as soil handling and waste minimisation protocols, would be secured by the dDCO.
- 3.9.45. However, given that there would be some use of primary materials and use of landfill capacity the ExA considers that a little negative weight should be attached to this topic in the overall balance.

3.10. NOISE AND VIBRATION

INTRODUCTION

- 3.10.1. This section considers the applicant's assessment in Chapter 11: Noise and Vibration [\[REP7-032\]](#) of the Environmental Statement (ES).
- 3.10.2. ES Chapter 11 is supported by the following:
- Figure 11.1 – Operational Noise Study Area [\[AS-055\]](#);
 - Figure 11.2 – Construction Noise Study Area [\[AS-056\]](#);
 - Figure 11.3 – Noise Important Areas (NIAs) [\[AS-057\]](#);
 - Figure 11.4 – Noise Monitoring Locations [\[AS-058\]](#);
 - Figure 11.5 – Noise Levels in the Do-Minimum Opening Year [\[AS-059\]](#);
 - Figure 11.6 – Noise Levels in the Do-Minimum Design Year [\[AS-060\]](#);
 - Figure 11.7 – Noise Levels in the Do-Something Design Year [\[AS-061\]](#);

- Figure 11.8 – Noise Levels in the Do-Something Design Year [[AS-062](#)];
- Figure 11.9 – Short-term Noise Change [[AS-063](#)];
- Figure 11.10 – Long-term Noise Change [[AS-064](#)];
- Figure 11.11 – Construction Noise and Vibration Assessment Locations [[AS-065](#)];
- Appendix 11.1 – Construction Activities and Plant for Noise Assessment [[APP-172](#)]; and
- Appendix 11.2 – Baseline Noise Survey Results [[APP-173](#)].

3.10.3. The applicant followed the methodology set out in DMRB LA 111 Noise and Vibration. However, with the agreement of the Planning Inspectorate [[APP-189](#)], operational vibration has been scoped out in accordance with paragraph 1.4 of Design Manual for Roads and Bridges (DMRB) LA 111 on the basis that regular maintenance of the road surface would not allow significant effects to occur.

POLICY BACKGROUND

National Policy

National Policy Statement for National Networks, 2015

3.10.4. NPSNN 2015 paragraphs 5.186 to 5.200 state that excessive noise can have wide-ranging impacts on the quality of human life and health, for example owing to annoyance or sleep disturbance, use and enjoyment of areas of value, for example quiet places, and areas with high landscape quality. It also notes that similar considerations apply to vibration.

3.10.5. Paragraph 5.191 notes that operational noise should be assessed using the principles of the relevant British Standards and other guidance. The prediction of road traffic noise should be based on the method described in the Calculation of Road Traffic Noise (CRTN). The prediction, assessment and management of construction noise, should refer to relevant British Standards and other guidance which also give examples of mitigation strategies.

3.10.6. Paragraph 5.198 states “*Mitigation measures for the project should be proportionate and reasonable and may include one or more of the following:*

- *Engineering: containment of noise generated.*
- *Materials: use of materials that reduce noise (for example low noise road surfacing).*
- *Lay-out: adequate distance between source and noise-sensitive receptors; incorporating good design to minimise noise transmission through screening by natural or purpose-built barriers.*
- *Administration: specifying acceptable noise limits or times of use (e.g. in the case of railway station PA systems)”.*

3.10.7. Paragraph 5.200 states: “*Applicants should consider opportunities to address the noise issues associated with the Important Areas as identified through the noise action planning process*”.

National Policy Statement for National Networks, 2024

3.10.8. NPSNN 2024 is considered by the ExA to be important and relevant in the determination of this submission. It provides a general update to the wording from the earlier version but requires the same degree of assessment.

National Planning Policy Framework, December 2024

3.10.9. Paragraph 187 states that: *“Planning policies and decisions should contribute to and enhance the natural and local environment by...preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.”*

3.10.10. Paragraph 198 states that planning policy and decisions should aim to: *“Mitigate, and reduce to a minimum, potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life; Identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.”*

Planning Practice Guidance, 2024

3.10.11. Planning Practice Guidance (PPG) provides guidance on how the policy set out in NPPF may be interpreted in practice for a wide range of issues. There is a subsection of PPG relating specifically to noise:

“Local planning authorities’ plan-making and decision taking should take account of the acoustic environment and in doing so consider:

- *Whether or not a significant adverse effect is occurring or likely to occur.*
- *Whether or not an adverse effect is occurring or likely to occur.*
- *Whether or not a good standard of amenity can be achieved.*

In line with the Explanatory Note of the Noise Policy Statement for England, this would include identifying whether the overall effect of the noise exposure (including the impact during construction wherever applicable) is, or would be, above or below the significant observed adverse effect level...”

3.10.12. Among the specific factors to consider, where relevant, the guidance states: *“In cases where existing noise sensitive locations already experience high noise levels, a development that is expected to cause even a small increase in the overall noise level may result in a significant adverse effect occurring even though little to no change in behaviour would be likely to occur”.*

Noise Policy Statement for England, 2010

3.10.13. The Noise Policy Statement for England (NPSE) purpose is to promote *“good health and a good quality of life through the effective management of noise within the context of government policy on sustainable development.”* The three main aims are to:

- 1) Avoid significant adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of government policy on sustainable development.
- 2) Mitigate and minimise adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of government policy on sustainable development.
- 3) Where possible, contribute to the improvement of health and quality of life through the effective management and control of environmental, neighbour and neighbourhood noise within the context of government policy on sustainable development.

3.10.14. This policy is implemented having regard to the following key phrases:

- Lowest Observed Adverse Effect Level (LOAEL): this is the level above which adverse effects on health and quality of life can be detected.
- Significant Observed Adverse Effect Level (SOAEL): this is the level above which significant adverse effects on health and quality of life occur.

3.10.15. There are no pre-defined levels of effect as it is acknowledged that they will generally be different for different sources, different receptors and at different times of the day. The LOAEL and SOAEL values used in this assessment, informed by DMRB LA 111 (paragraph 11.3.35), are set out in ES Chapter 11 tables 11-1 for construction noise, 11-4 for construction vibration and 11-7 for operational noise levels [[REP7-032](#)].

Environmental Noise (England) Regulations 2006

3.10.16. These regulations require the determination of exposure to environmental noise from major sources or road, rail and aircraft noise and in urban areas, through noise mapping, on a 5-year cycle. Through this process the local authority can identify Noise Important Areas (NIAs). Eleven NIAs are identified in the vicinity of the proposed development [[AS-057](#)].

Local Policy

Nottinghamshire Local Transport Plan, 2011

3.10.17. The Nottinghamshire Local Transport Plan 2011-2026 presents considerations on road induced noise affecting the health, wellbeing and quality of life of communities, also stating: “...*Priority will be given to highway measures that reduce noise in areas where there are high levels of road traffic and significant noise sensitive properties affecting a high number of people. However, greater priority will be given to measures that will lead to both the biggest noise benefits and other transport objectives (such as tackling congestion and encouraging active travel) as it is essential to ensure that resources are targeted appropriately.*”

THE APPLICANT’S CASE

Construction Phase

3.10.18. During construction, the proposed development has the potential to directly alter the noise and vibration baseline for sensitive receptors for a temporary period as a result of:

- Construction plant inventory and utilisation;
- The programme and the duration of activities with noise and vibration impacts exceeding relevant thresholds;
- Hours of work;
- Proximity of the works to receptors;
- Frequency and routing of the movement of construction vehicles;
- The location of compounds; and
- The routing of temporary diversions, the volumes of traffic using them and duration they are applied.

3.10.19. The most significant noise sources during construction would be earthworks, floodplain compensation areas, ground improvement works, drainage works, bridge structures including piling and construction compounds.

3.10.20. The Pre-Commencement Plan (PCP) [[REP7-072](#)] activities have been assessed with the applicant confirming impacts and mitigation measures as per those set out

in ES Chapter 11 [\[REP7-032\]](#). To address excessive noise during these works, mitigation measures include the use of temporary acoustic screens and limiting working times to fewer than 10 days in any 15 consecutive day and a total number of days fewer than 40 in any 6 consecutive months where screens would not be practicable. This is consistent with DMRB LA 111 and has been agreed with NSDC in the SoCG [\[REP8-027\]](#).

3.10.21. The applicant has undertaken an assessment of wider construction activities as per DMRB LA 111 in consultation with NSDC. Impacts have been recognised and mitigation measures secured. These have been agreed with NSDC [\[REP8-027\]](#).

3.10.22. With respect to noise, there are no properties that qualify under the Noise Insulation Regulations. The applicant's modelling shows a general decrease in noise across the study area. Potentially significant adverse effects would be avoided if construction works in the vicinity of relevant receptors do not extend to a period of 10 or more days of working in any 15 consecutive days or take place for a total number of days exceeding 40 in any 6 consecutive months. This would address the effects of excessive noise arising from some works. This is reflected in the First Iteration Environment Management Plan (EMP) Register of Environmental Actions and Commitments (REAC) [\[REP6-012\]](#) secured via R 3 of the dDCO.

Vibration

3.10.23. The applicant has identified that there would be a Moderate Adverse effect from vibration caused by construction activities. To mitigate this the applicant has agreed with NSDC [\[REP8-027\]](#) that active construction works within 100 metres of affected receptors would be reduced to fewer than 10 days in any 15 consecutive days and total number of days fewer than 40 in any 6 consecutive months.

3.10.24. The applicant notes that the First Iteration EMP REAC [\[REP6-012\]](#) would help to address these short-term impacts by limiting the hours of work and the number of nighttime working incidents. These have been agreed with NSDC in the SoCG [\[REP8-027\]](#).

Operational Phase

3.10.25. During operation, there is the potential for changes in traffic flows and road alignments to result in changes to noise sensitive receptors. Factors which have the potential to impact on road traffic noise include:

- Overall traffic volume;
- Proportion of heavy vehicles;
- Traffic speed i.e. changes in free-flow conditions and waiting times at junctions;
- Road alignment (vertical and horizontal alignment);
- Acoustic screening features (for example earthworks, acoustic barriers, cutting, and structures);
- The type of carriageway surfacing material; and
- Change to the noise character of the existing area or non-acoustic factors (for example vegetation removal).

3.10.26. The applicant concludes that operational noise would result in a general positive impact over existing levels both short and long term. The assessment within ES Chapter 11 shows most receptors currently suffering from a Major Adverse effect moving to a Moderate or Minor Adverse effect.

Design, mitigation and enhancement measures

- 3.10.27. The proposed development has been designed to minimise noise and vibration impacts as far as is practicable. Embedded mitigation measures, as detailed on figure 2.3 Environmental Masterplan [[REP7-042](#)], comprise:
- Three 2.0m – 2.5m high landscape bunds north of the A46 between the A1 and Winthorpe Roundabout;
 - Six 2.0m tall noise barriers
 - Two located along the southbound entry slip from the Cattle Market Roundabout extending part way down the western side of the Great North Road south of the Cattle Market Roundabout;
 - One located at the southbound entry slip road at Brownhills Junction;
 - One along the northbound carriageway from the Brownhills Junction to the Esso Service Station;
 - Two located from the Esso Service Station to the Winthorpe Roundabout at the northern end of the proposed development, transitioning at the midpoint from the barrier at the roadside to the barrier on the crest of the adjacent bund;
 - Standard height parapets, typically 1.1m for vehicle parapets and 1.4m for combined pedestrian and vehicular parapets, with infill panels along the western and eastern sides of the new viaduct;
 - The existing dual carriageway between the Friendly Farmer and Winthorpe roundabouts would be retained and a new link introduced to the south to optimise the A46 positioning in relation to Winthorpe; and
 - A thin surface course would be applied to new carriageways to reduce operational surface noise as secured by First Iteration EMP REAC NV12 [[REP6-012](#)].
- 3.10.28. Mitigation measures during construction are detailed in the REAC within the First Iteration EMP [[REP6-012](#)].

Views of Interested Parties

Local Authorities

- 3.10.29. Newark and Sherwood District Council (NSDC) [[REP1-035](#)] and Nottinghamshire County Council (NCC) [[REP1-038](#)] both confirmed that the overall baseline monitoring was acceptable. However, they did advise that the applicant could provide the meteorological conditions experienced during the survey which would be useful. Paragraph 13.5 of NSDC's LIR agrees that the baseline provided in the ES is '*proportionate and adequately derived*'.
- 3.10.30. In summary, the LIRs do not raise any substantive concerns regarding the assessment baseline or results. However, they do raise concerns regarding the number of nighttime diversions and suggest that this should not exceed that specified in DMRB LA 111 which is 10 days in 15 consecutive days or 40 days in 6 consecutive months. This should be secured in the First Iteration EMP. They also requested further discussion regarding the proposed working hours to ensure it is consistent with their own standard construction hours of 07:30 – 18:00 Monday to Friday and 08:00 – 13:00 on Saturdays.
- 3.10.31. Of particular concern to NSDC is the potential for 74 residential properties at Pelham Street and Victoria Street/ Portland Street/ Clinton Street/ Albert Street in Newark to experience a moderate or major increase in traffic noise in the opening year. NSDC considers that there could be a significant adverse effect.

Statutory Parties

- 3.10.32. No statutory parties made comment on noise and vibration.

Parish Councils

- 3.10.33. Farndon Parish Council [\[RR-022\]](#) requested that long-term noise monitoring is undertaken at locations ST2 and LT3 to capture the whole of the village. Other measures in relation to noise that were requested include lowering the speed limit, the type and use of expansion strips and noise reducing surfacing.
- 3.10.34. North Muskham Parish Council [\[RR-056\]](#) commented generally on noise but offered no detail or evidence. It also provided general support for the proposed development.
- 3.10.35. Newark Town Council (NTC) [\[REP1-037\]](#) raised concerns regarding a general increase in noise during construction and operation. NTC also wished to be assured that all reasonable attempts to resolve noise issues had been considered.

Other IPs

- 3.10.36. [\[RR-018\]](#), [\[RR-025\]](#) and [\[RR-053\]](#) raised concern with respect to general noise and vibration impacts.

Newark

- 3.10.37. [\[RR-015\]](#) and [\[RR-064\]](#) raised concerns with respect to noise impacts on residential and business properties adjacent the works and those on diversion routes during construction.

Winthorpe

- 3.10.38. [\[RR-040\]](#) and [\[RR-071\]](#) both raised concern with respect to the proximity of the village to the A1 and the proposed development and how this might worsen noise levels.

Individual Properties

- 3.10.39. [\[RR-078\]](#) raised concern regarding the potential noise impact on Winthorpe Primary School. [\[RR-032\]](#) raised concern with respect to Langford Hall and the associated lodge. [\[RR-038\]](#) raised concern about impacts on Lowwood, Winthorpe given the current experience in proximity to the A1 and bringing the A46 closer. [\[RR-059\]](#) raised concern with respect to the noise impacts on Bridge House Farm kennels.

THE EXAMINATION

Construction

Noise

- 3.10.40. The host authorities raised no concerns with respect to baseline values or the methodology and agreed that the assessment is consistent with the methodology set out in DMRB LA 111 as per the submitted LIRs [\[REP1-035\]](#), [\[REP1-038\]](#).
- 3.10.41. In its LIR [\[REP1-035\]](#), NSDC requested that the original construction start time be adjusted from 07:00 to 07:30. This would keep start times consistent with other projects in the area and with NSDC's own preference. This was investigated during

ISH 4 where the applicant and NSDC were asked what activities could take place in the first 30 minutes from 07:00 on Mondays to Fridays with noise-generating activities taking place after NSDC's preferred start time of 07:30. It was confirmed in the applicant's response to ExQ2 [\[REP5-060\]](#) that some minor activities had now been agreed upon with NSDC. This has been reflected in the SoCG with NSDC and is secured by R5 of the dDCO.

- 3.10.42. The host authorities also requested that nighttime diversions should not exceed the duration of significance criteria set out in DMRB LA 111, i.e. 10 days in 15 consecutive days or 40 days in 6 consecutive months. This is secured through R3 of the dDCO and the First Iteration EMP REAC NV6 [\[REP6-012\]](#).
- 3.10.43. The final concern raised by the host authorities in their LIRs related to cumulative noise impacts when multiple activities were taking place at the same time. For example, the use of haul routes within the site and the site compounds at the same time as other construction activities. The applicant replied in its response to the LIRs [\[REP1-035\]](#), [\[REP1-038\]](#) that ES Chapter 11 presents the outcomes of the construction noise and vibration assessment on the basis of preliminary construction information available at the time of the assessment. Specific details of construction activities are dependent on the final design, programme and chosen methodology. None of these will be in place until a Principal Contractor is appointed. Appendix 11.1 (Construction Activities and Plant for Noise Assessment) of the ES Appendices [\[APP-172\]](#) presents the construction information assumptions used in the assessment to represent a reasonable worst case for activities occurring in sequence. However, details of construction activities and relevant timings are to be reviewed, once known, in advance of any construction activity taking place.
- 3.10.44. NSDC [\[REP1-035\]](#) and Winthorpe with Langford Parish Council [\[RR-079\]](#) raised concern with respect to impacts on Winthorpe village. The applicant's assessment demonstrates the proposed development does not result in an adverse noise impact on the settlement when coupled with embedded mitigation measures including 2.0m tall soil bunds/ noise barriers along the southern edge of the village/ northern side of the expanded A46. The expanded bridge over the A1 to the west of the village will contain noise barriers as detailed in paragraph 3.10.27 above. The applicant has concluded that with mitigation measures there would be a negligible impact on Winthorpe. This has been agreed through the SoCG with NSDC [\[REP8-027\]](#).
- 3.10.45. In response to NSDC's concerns regarding residential properties at Pelham Street, the applicant confirmed that the interpretation of contextual factors showed that:
- The long-term impact is generally less than the short-term in that major impacts become moderate and moderate impacts become minor. This local circumstance indicates the effect is likely not significant, although some moderate impacts remain in the long-term from the short-term;
 - Over time, noise levels will stay within 1dB of the moderate range for areas already experiencing a moderate impact. Since the effect stays moderate both in the short and long term, it's unlikely to be significant;
 - Noise levels are below SOAEL so no modification to the assessment is needed for this local circumstance; and
 - No change in acoustics character is expected so no modification to the assessment is needed for this local circumstance.
- 3.10.46. This issue is not reflected in the final SoCG with either NCC or NSDC nor are there any outstanding noise issues identified in these documents. However, in response to ExQ3 [\[REP7-103\]](#), the applicant detailed that the modelling did not indicate that

specific noise mitigation measures were required to be installed to address the potential for an increase in traffic noise in the short term. Despite there being no identified adverse effects, the applicant has entered into an agreement with NSDC [\[REP8-032\]](#) to address these concerns. Given there are no identified outstanding noise issues in relation to this, the ExA attaches no weight to this agreement in its assessment.

- 3.10.47. Concerns were raised with respect to the potential impacts on residential receptors in Farndon. However, the applicant's assessment demonstrated that noise impacts would not increase above current levels and that, with mitigation measures, there would be a decrease in noise levels and any adverse effects would be negligible. This has been agreed through the SoCG with NSDC [\[REP8-027\]](#).
- 3.10.48. The owner of Bridge House Farm raised concerns relating to the operation of their dog breeding and kennels business and the impacts the proposed development may have on this. The applicant confirmed through noise monitoring those levels already exceeded LOAEL values, but the proposed development would not increase these during construction. This has been agreed with the owner [\[REP3-036\]](#).
- 3.10.49. Following discussions with the IP, the applicant agreed a series of works, including noise-reduction measures. However, given that there would be no significant effects at Bridge House Farm these works were not presented as mitigation measures. Accordingly, the ExA has not weighed these in the planning balance.
- 3.10.50. During the examination, the Old Stable Yard was granted planning permission retrospectively for six Gypsy, Roman and Traveller (GRT) pitches. The site had been operating without permission since at least 2017. The applicant's original assessment did not include this site and at ExQ2 [\[PD-009\]](#) the applicant was requested to provide an assessment of the potential impacts on this location. The applicant stated [\[REP5-060\]](#) that noise monitoring had taken place close to Bridge House Farm that would be representative of the noise impacts. The extant mitigation measures, such as bunds and screens, would ensure that noise during construction was expected to be Negligible. The applicant considers that further mitigation is not required as a result of the assessment of Old Stable Yard.
- 3.10.51. Individual property complaints have been received, for example Langford Hall regarding the Lodge adjacent the existing A46 south-east of Winthorpe, Lowwood which looks out onto the A1 from the western side of Winthorpe, and properties in Newark and Farndon. The applicant addressed these concerns with details in the ES Chapter 11 Noise and Vibration [\[REP7-032\]](#) showing that there would be no significant increase in noise levels during construction because of mitigation measures. Any increase in noise would be controlled via a limitation on working hours/ activities.

Vibration

- 3.10.52. The host authorities raised concern that implementing the mitigation measures in the First Iteration EMP [\[REP6-012\]](#) may not be practical due to various activities being undertaken at the same time. However, the applicant detailed that the exact nature of the timings of the works would not be known until a Principal Contractor (PC) is appointed. At this point, the PC would be able to demonstrate how the mitigation measures would be implemented consistently with the findings of the ES. This has been agreed through the SoCGs with the host authorities [\[REP8-025\]](#) and [\[REP8-027\]](#).

Operation

Noise

- 3.10.53. In their LIRs, NSDC [\[REP1-035\]](#) and NCC [\[REP1-038\]](#) commented that the operational noise mitigation measures set out in the ES are in accordance with the NPSNN 2015. Furthermore, the LIRs state that whilst they both had concerns over the conclusions of the operational noise assessment, they considered the proposed mitigation measures would result in an acceptable outcome. As per the applicant's assessment in ES Chapter 11 [\[REP7-032\]](#), current noise levels are expected to improve for the vast majority of receptors with those others suffering a negligible impact. Noise and vibration levels are not expected to exceed the existing levels once the proposal is operational.
- 3.10.54. Embedded mitigation measures would assist settlements, such as Farndon and Winthorpe, to experience a reduction from current noise levels. The applicant's assessment has demonstrated that some receptors would experience a decrease in noise impact of up to 5dB. The general impact has been agreed in the SoCG with NSDC [\[REP8-027\]](#).
- 3.10.55. With respect to Old Stable Yard, the applicant explained [\[REP5-060\]](#) that the monitoring location currently exceeded LOAEL due to the existing road network. However, with the proposed development these levels would not increase and the embedded mitigation measures such as noise barriers and bunds would result in a negligible beneficial effect across the study area. Therefore, regardless of the LOAEL/ SOAEL rating values selected for operational noise, i.e. receptor sensitivity/ physical nature/ noise transferal characteristics, in this instance do not influence the assessment outcome, which is that a significant effect would not arise.

Vibration

- 3.10.56. Operational vibration was scoped out on the basis that the road would be maintained as part of the SRN and therefore would not result in unacceptable levels of vibration.

Other Controls

- 3.10.57. As per Appendix A of the Consents and Agreements Position Statement [\[REP7-010\]](#), NSDC have specific powers to control noise/ vibration during construction under s60 and s61 of the Control of Pollution Act (CoPA) 1974, and the statutory nuisance provisions in s79 and s80 of the Environmental Protection Act (EPA) 1990. S60 of the CoPA grants NSDC the power to serve a notice on the contractor specifying the plant to be used, the hours of working and the levels emitted from the site. S61 allows for the contractor to apply for 'prior consent' detailing the works to be completed, the methods to be adopted, and the mitigation measures to be applied. If prior consent is granted, and the works are carried out in accordance with the application and any conditions included in the consent, a notice under s60 cannot be served. Construction noise/ vibration also falls under the more general statutory nuisance provisions of the EPA. If the construction noise/ vibration is deemed to result in a statutory nuisance, the Local Authority must serve an abatement notice setting out the works required to abate the nuisance. Demonstrating 'best practicable means' have been applied to control the noise/ vibration is a defence under the EPA.
- 3.10.58. Once the proposed development becomes operational, the applicant would be required to undertake a final noise assessment under the Noise Insulation

Regulations 1975 (as amended). If there are any outstanding issues identified by this assessment, mitigation measures would need to be considered. This would be enforced by NSDC.

- 3.10.59. The applicant has submitted a Statement Relating to Statutory Nuisances [\[REP7-070\]](#). This document concludes that, with mitigation measures in place, none of the statutory nuisances identified in section 79(1) of the EPA 1990 are predicted to arise as a result of the proposed development.

CONCLUSIONS ON NOISE AND VIBRATION

- 3.10.60. The ExA agrees with the applicant's assessment on noise and vibration given that the assessment methodology or conclusions have not been substantively challenged by either host authority as detailed in the SoCGs [\[REP8-025, REP8-027\]](#), nor has any IP presented technical evidence to challenge the applicant's position. The proposed development, with mitigation measures, would result in a negligible beneficial impact on noise i.e. reduction in existing noise levels. Regarding operational traffic noise, the ExA is satisfied that the applicant's proposed mitigation would be effective and that there is a commitment to minimise effects to an acceptable degree as secured by R3 of the rDCO and the associated First Iteration EMP REAC.
- 3.10.61. Overall, the ExA is satisfied that the proposed development would accord with the NPSNN 2015, all legislation and policy and that the proposed mitigation is adequately provided for and secured through R3 of the rDCO, via the First Iteration EMP REAC NV1 – NV13 [\[REP6-012\]](#). The ExA is also satisfied that the proposed development accords with NPSNN 2024, NPSE and NPPF which are important and relevant. Safeguards exist through alternative legislation control measures should receptors experience significant levels of adverse impact. In this respect, these qualities of the proposed development attract moderate positive weight in the planning balance.

3.11. POPULATION AND HUMAN HEALTH

INTRODUCTION

- 3.11.1. This section considers the applicant's assessment in Chapter 12: Population and Human Health [\[REP7-034\]](#) of the Environmental Statement (ES). ES Chapter 12 is accompanied by:
- Figure 12.1 – Local Impact Area (LIA) [\[AS-066\]](#);
 - Figure 12.2 – Wider Impact Area (WIA) [\[AS-067\]](#);
 - Figure 12.3 – Residential Properties within the Local Impact Area [\[REP5-019\]](#);
 - Figure 12.4 – Community Land and Assets within the Local Impact Area [\[AS-069\]](#);
 - Figure 12.5 – Businesses within the Local Impact Area [\[REP5-020\]](#);
 - Figure 12.6 – Agricultural Land Impact Plan [\[REP3-015\]](#);
 - Figure 12.7 – Open Space and Outdoor Recreational Facilities within the Local Impact Area [\[AS-072\]](#);
 - Appendix 12.1 – Walker, Cyclist and Horse-rider (WCH) Survey Results [\[REP4-009\]](#); and
 - Appendix 12.2 – Population and Human Health Supplementary Information [\[REP3-018\]](#).

POLICY CONSIDERATIONS

National Policy Statements

National Policy Statement for National Networks, 2015

- 3.11.2. The government is committed to creating a more accessible and inclusive transport network that provides a range of opportunities and choices for people to connect with jobs, services, and friends and family. It expects applicants to improve access, wherever possible, on and around the national networks by designing and delivering schemes that take account of the accessibility requirements of all those who use, or are affected by, national networks infrastructure, including disabled users. Where appropriate, applicants should seek to deliver improvements that reduce community severance and improve accessibility (paragraphs 3.19, 3.20 and 3.22).
- 3.11.3. National road networks have the potential to affect the health, well-being and quality of life of the population. They can have direct impacts on health because of traffic, noise, vibration, air quality and emissions, light pollution, community severance, dust, odour, polluting water, hazardous waste and pests. New or enhanced infrastructure may also have indirect health impacts, e.g. by affecting access to key public services, local transport, opportunities for cycling and walking or use of open space for recreation and physical activity (paragraphs 4.79 and 4.80).
- 3.11.4. Where there are likely significant environmental impacts that would have an effect on human beings, an ES should identify and set out an assessment of any likely significant adverse health impacts. Measures to avoid, reduce or compensate for adverse health impacts should be identified as appropriate. These impacts may affect people simultaneously so the applicant, and the Secretary of State (SoS) in determining an application, should consider the cumulative impact on health (paragraphs 4.81 and 4.82).
- 3.11.5. Applicants are expected to take appropriate mitigation measures to address adverse effects on public rights of way (PRoW) 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 SoS 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 (paragraph 5.184).
- 3.11.6. PRoW can be extinguished under s136 of PA2008 if the SoS is satisfied that an alternative has been or will be provided or is not required (paragraph 5.185).

National Policy Statement for National Networks, 2024

- 3.11.7. NPSNN 2024 sets out similar policy to that in NPSNN 2015 in respect of Population and Health considerations. It says that enhancement opportunities should be identified by promoting local improvements for active travel and horse riders, driven by the principles of good design to create safe and attractive routes to encourage health and wellbeing. This includes potential impacts on vulnerable groups which may be differentially impacted by a development compared to wider society (paragraph 4.72).
- 3.11.8. The applicant should also identify existing and proposed land uses near the project and the effect on development plan proposals (paragraph 5.184).

National Planning Policy Framework, December 2024

- 3.11.9. Paragraph 96 says that planning decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods. It also says that planning decisions should enable and support healthy lifestyles.
- 3.11.10. Paragraph 115 notes that in assessing applications it should be ensured that appropriate opportunities to promote sustainable transport modes are prioritised, taking account of the type of development and its location; and that safe and suitable access to the site can be achieved for all users.

Local Development Plan

NSDC Amended Core Strategy, 2019

- 3.11.11. The Core Strategy identifies a number of strategic sites for housing and employment uses including 'Land South of Newark' (NAP 2A) which would be served by the Southern Link Road, connecting the A1 and the A46 (to the south of the Farndon Roundabout).

NSDC Allocations & Development Management DPD, 2013

- 3.11.12. This document identifies land intended for housing and employment use, including sites close to the alignment of the proposed development.

NSDC Amended Allocations & Development Management DPD, submitted January 2024

- 3.11.13. The Allocations and Development Management DPD is being reviewed. No additional allocations are proposed but some allocations which have been delivered or which are no longer considered to be deliverable are proposed to be removed.

THE APPLICANT'S CASE

Land Use and Accessibility

Construction Phase

Temporary or permanent land requirements

- 3.11.14. No land would be required from private property and housing or from community land and assets, but the construction of the proposed development would require business and development land. However, no significant effects have been identified, either because the land represents a small part of the landholding or because the effect would be temporary and would not prevent future use.
- 3.11.15. There would be some significant effects amongst the 14 affected agricultural landholdings:

Temporary Moderate Adverse (significant)

- **Farm 14 – 2.2 ha** (13% of the farm's land within the LIA) would be affected for approximately 36 months and would be reinstated.

Temporary Large Adverse (significant)

- **Farm 15 – 2.3 ha** (24% of the farm's land within the LIA) would be temporarily required to facilitate construction access routes.

Permanent Moderate Adverse (significant)

- **Farm 02 – 14.5 ha** (12% of the farm's land within the LIA) would be permanently acquired in association with the construction of the Brownhills Junction, embankments, attenuation basins and a new shared WCH route.
- **Farm 07 – 7.5 ha** (15% of the farm's land within the LIA) would be permanently acquired to deliver the Kelham and Averham Flood Compensation Area.
- **Farm 14 – 2.7 ha** (15% of the farm's land within the LIA) would be affected permanently in connection the with realignment of Winthorpe Roundabout and landscape bunds.
- **Farm 16 – 2.3 ha** (17% of the farm's land within the LIA) would be permanently required to facilitate the widening of the A46.

Permanent Large Adverse (significant)

- **Farm 01 – 47 hectares (ha)** (36% of the farm's land within the LIA) would be permanently acquired to enable the widening of the A46 and the creation of floodplain compensation areas and attenuation basins.
- **Farm 09 – 5 ha** (61% of the farm's land within the LIA) would be permanently acquired to deliver the upgrade of the Cattle Market Roundabout, the creation of attenuation basins and access and maintenance tracks.
- **Farm 10 – 5.3 ha** (31% of the farm's land within the LIA) would be permanently affected to deliver the upgrade of Cattle Market Roundabout and access and maintenance tracks.

Temporary changes in access

- 3.11.16. Construction would require changes in road layouts, temporary diversions and closures throughout the construction period which, along with increases in traffic from construction activities, may affect a number of receptors in the LIA, particularly in terms of increased journey time and community severance.
- 3.11.17. Temporary diversions or closures of WCH routes in the LIA would be needed, resulting in changes to accessibility and increases to journey lengths for WCH, potentially also introducing severance for communities. Traffic management and diversion routes are in ES Appendix 12.2: Population and Human Health Supplementary Information [[REP3-018](#)].
- 3.11.18. The Outline Traffic Management Plan (OTMP) [[REP8-014](#)] would be developed into a Traffic Management Plan (TMP) pursuant to Requirement (R) 11 of the draft Development Consent Order (dDCO) [[AS-106](#)]. The TMP would aim to maintain access and minimise disruption to private property, businesses, community land and facilities, WCH routes, and green and open spaces.
- 3.11.19. A Construction Communications Management Plan (CCMP; part of the Second Iteration EMP, secured by R3 of the dDCO) would be prepared with the aim of keeping stakeholders and local people up-to-date and informed during construction. There would also be signage and information for temporary WCH diversions.
- 3.11.20. The applicant identified two significant residual effects in relation to accessibility:

Temporary Moderate Adverse (significant)

- **Newark Bridleway (BW) 2 – approximately 700 m diversion** via Crees Lane and Newark footpath (FP) 3 for up to 24 months.
- **Newark Footpath (FP) 48#1 – approximately 2 km diversion** for up to 24 months during the construction of the Crankley Point Sewage Treatment Works underpass extension and earthworks.

Temporary changes in amenity

- 3.11.21. A range of construction phase activities could have amenity implications for receptors close to work areas, e.g. an increase in heavy goods vehicles and other construction traffic on local roads, the diversion of local traffic, the establishment of construction sites, the installation and use of construction equipment, and the presence of construction workers in the LIA. Amenity effects are identified where at least two significant residual (i.e. post-mitigation) noise, air quality and/ or landscape and visual amenity effects combine at the same location/ receptor. As no significant residual noise or air quality effects have been identified, there would be no amenity effects during the construction phase.

Operational Phase

- 3.11.22. Some new WCH provision would be delivered including a new walking and cycling route between Winthorpe FP2 and FP3 across the A46; there is currently no formal direct connection between these PRow, both of which end at the existing edges of the A46 carriageway. Such works could reduce severance and be of benefit to cyclists, walkers and other vulnerable road users wishing to cross the A46.
- 3.11.23. The part of Newark FP14 which crosses the A46 to the south-west of the Cattle Market Roundabout would be stopped up and users diverted via the existing footway adjacent to the A617 which would join shared footways and cycleways crossing the Cattle Market Roundabout via signal-controlled crossings.
- 3.11.24. Signage would also be provided for new or permanently diverted WCH routes.
- 3.11.25. Access to all affected residential properties, agricultural land, businesses and areas of open space and recreation would be maintained during the operational phase.

Permanent changes in access to community receptors

- 3.11.26. The operation of the proposed development has the potential to alter access to community receptors in the LIA. Improved junctions and new motorised and WCH routes have the potential to change the volume and flow of traffic along the A46 and merging roads. It also has the potential to decrease congestion along the A46 between Winthorpe and Farndon, improving journey times and reducing severance to local services. Improvements to routes may also improve access for WCH. One significant effect has been identified:

Permanent Moderate Adverse (significant)

- National Cycle Network 64 and Trent Valley Way along Winthorpe Road – there would be an increase in journey length of 105 metres (m).
- 3.11.27. The applicant has also identified a number of 'slight beneficial' effects, none of which are 'significant':

- access to private property and housing because of improved journey times and reliability;
- the relocation of access to Langford Hall from the A46 to the A1133, reducing interactions between slower turning traffic and faster moving traffic on the A46;
- access to development land and businesses due to improved journey times and reliability; and
- a new WCH route linking Winthorpe FP2 and Winthorpe FP3.

Permanent changes in amenity

- 3.11.28. Changes in amenity result from a combination of at least two significant residual effects reported in other topics, specifically noise, vibration, air quality and visual effects. As no significant residual noise or air quality impacts were identified, there would be no amenity impacts during the operational phase.

Health

Construction Phase

Temporary changes in access to local services

- 3.11.29. There may be temporary changes in access to local services (e.g. health, social care and education facilities) due to changes in travel routes and/ or journey delays. Changes to road layouts, temporary diversions and road closures would be likely during the construction period throughout the LIA. There is the potential for delays in access for users of local services but no significant effects have been identified.

Temporary changes in social capital

- 3.11.30. The introduction of a temporary construction workforce into established communities could adversely alter people's perceptions of, and interactions with their communities – modifying behaviour and the value they place on social capital. Adverse effects on health from changes in social capital could be experienced as a reduction in wellbeing or as physiological effects on the body's hormonal and immune systems, with increased susceptibility to mental and physical illness.
- 3.11.31. Construction could impact on employment and income across the WIA. There is a strong correlation between employment status and health and wellbeing outcomes. Being employed increases a household's income which can improve physical and psychological wellbeing, providing people with the financial means to access the goods and services which they need. There is evidence to suggest that employment status may also be a consequence of physical and mental health, rather than the direct cause.
- 3.11.32. The applicant has not identified any significant effects arising from temporary changes in social capital during the four-year construction phase but has identified one 'slight beneficial' effect on the economy in terms of existing and new contracts entered into with local companies across the WIA. This is likely to be beneficial for employment opportunities associated with direct employment from the construction activity, as well as for local businesses through indirect spend.

Temporary changes in access to green space, recreation and physical activity

- 3.11.33. Whilst construction activity may lead to temporary changes in access to green space, recreation and physical activity due to changes in travel routes and/ or journey delays, the applicant has not identified any significant impacts.

Temporary jobs

- 3.11.34. The applicant also identified (paragraph 12.9.7 of ES Chapter 12 [[REP7-034](#)]) that the temporary creation of jobs would have direct and indirect beneficial employment-related health impacts in the WIA.

Operational Phase

Permanent changes in access to local services

- 3.11.35. Improved junctions and new motor vehicle and WCH routes have the potential to change the volume and flow of traffic along the A46 and adjoining roads and to decrease congestion along the A46 between Winthorpe and Farndon, resulting in improved journey times and reduced severance to local services for all users. This could reduce feelings of isolation and encourage the use of WCH routes, resulting in positive impacts on physical and mental health. The applicant has identified this as a 'slight beneficial' effect. It has not identified any significant effects.

Permanent change in the provision of green space, recreation and physical activity

- 3.11.36. Improved junctions and new motor vehicle and WCH routes have the potential to decrease congestion along the A46 between Winthorpe and Farndon, resulting in improved journey times and reducing severance in terms of green space, recreation, and physical activity for all users. This could reduce feelings of isolation and encourage the use of WCH routes, resulting in positive impacts on physical and mental health.
- 3.11.37. Two changes have been identified by the applicant:
- a new WCH route linking Winthorpe FP2 and Winthorpe FP3, connecting Winthorpe with locations to the south of the A46, such as the Newark Showground; and
 - the new Brownhills junction would result in the permanent realignment of National Cycle Route 64 and the Trent Valley Way along Winthorpe Road.
- 3.11.38. Both of these changes have been assessed as having a 'neutral' residual effect. No significant effects have been identified in relation to this consideration.

Enhancement Measures

- 3.11.39. ES Chapter 12 also notes that during the design development process, consideration was given to any potential for enhancement opportunities in relation to population and human health. Enhancement measures that were included in the design seek to address existing severance and encourage greater use of WCH routes and to facilitate access in and around new junctions to accommodate WCH as required. However, the applicant has noted that these enhancement measures were not taken into account when determining the significance of effects because they are over and above what is required to mitigate the adverse effects of the proposed development.

VIEWS OF IPs

Local Authorities

- 3.11.40. In its LIR [[REP1-035](#)], Newark and Sherwood District Council (NSDC) expressed concern that agricultural holdings would be subject to inconvenience and potential loss of earnings during construction if adequate compensation is not provided.

- 3.11.41. It noted the importance of ensuring that connectivity is maintained for pedestrians, equestrian and cyclists who use footpaths and bridleways in the area which would be affected and requested that disruption to users of the A1 and A46 underpasses at Brownhills be kept to a minimum. It said that the length of the proposed pedestrian link between Winthorpe FP2 and Winthorpe FP3 was a concern for residents of Winthorpe, suggesting that the length may discourage pedestrian usage as it is not direct.
- 3.11.42. Overall, NSDC said that improvements to the strategic network would inevitably improve the free flow of traffic and improve business confidence and productivity, thus providing a boost to the local economy and that, overall, the socio-economic benefits of the proposals would have a positive impact.
- 3.11.43. Nottinghamshire County Council (NCC) stated [\[RR-057\]](#) that it was concerned about cycling and walking facilities and in particular the proposals for shared use footway along part of B6326 Great North Road which would not meet Local Transport Note (LTN) 1/20 design standards.
- 3.11.44. It also stated [\[REP1-038\]](#) that it has an aspiration to create an integrated cycle network and that the following routes in the Local Cycling and Walking Infrastructure Plan (LCWIP) are relevant to the proposed development:
- A617 connecting Newark to Fiskerton (crossing the A46 at the Cattle Market Roundabout);
 - Great North Road connecting South Muskham to Newark on Trent (crossing the A46 at the Cattle Market Roundabout);
 - Continuous route connecting Flintham to Lincolnshire via Newark town centre (crossing the A46 at the Farndon roundabout, before re-joining the A46 at the Brownhills Roundabout and traversing along the A46 to Potter Hill); and
 - Winthorpe Road connecting Newark to Lincolnshire via Winthorpe (passing under the A46 north-west of Brownhills Roundabout).

Statutory Parties

Equalities Considerations

- 3.11.45. The UK Health Security Agency (UKHSA) noted [\[RR-074\]](#) that two local Gypsy, Roma and Traveller (GRT) communities (Tolney Lane and Old Stable Yard), which are to be considered to be vulnerable populations, had not been considered in the applicant's assessment of the Population and Human Health.

Health Effects

- 3.11.46. UKHSA said [\[RR-074\]](#) that there was a need to mitigate suicide risks, particularly given the proximity of a mental health facility (the Farndon Unit).

Disruption

- 3.11.47. Winthorpe with Langford Parish Council noted [\[RR-079\]](#) the potential for general disruption to the Winthorpe village community during the construction phase, including in terms of access to Winthorpe Primary School and the village pub.

Other IPs

Effect on Agricultural Landholdings

- 3.11.48. One IP said that whilst they supported the overall objective, they were concerned about how it would affect the viability of their farming business. They also explained concerns about access to their farm holding [\[EV4-001\]](#) and [\[REP1-050\]](#).

Walking, Cycling and Horse-riding (WCH) including Public Rights of Way

- 3.11.49. [\[RR-006\]](#) expressed concern that the new pedestrian route connecting to Hargon Lane would become a “*social nuisance and crime route*” and sought restrictions on motorcycle use along the route.
- 3.11.50. The Canal & River Trust (CRT) [\[RR-009\]](#) sought clarity in relation to the ‘footpath at end of BW5’. It also noted that Newark BW2 and Newark BW6, both providing access for leisure users to the River Trent, would be impacted by construction activities but it said that it took no significant issue with this given the proposed diversionary route and use of marshals during the construction phase.
- 3.11.51. [\[RR-015\]](#) said that pedestrians’ needs should be prioritised at all junctions and that following the closure of Newark FP14 across the A46, the new walking route, as well as other walking routes, would benefit from signage and publicity. It also stated there is no safe way to cycle to Lincoln along the current A46 around the A17 and A46 junction where there are paths and bridges to get from Newark to the large businesses but no easy way to get to Winthorpe, Lincoln or Coddington.
- 3.11.52. The owner of Langford Hall asked [\[RR-032\]](#) for the proposed footway near the Winthorpe Roundabout to be extended to meet with the proposed new access drive to Langford Hall to enable access/ egress on foot.
- 3.11.53. Newark & Notts Agricultural Society (NNAS) stated [\[RR-046\]](#) that access/ egress by bicycle to/ from Newark Showground along the new link road and from Winthorpe Roundabout along Drove Lane needs to be considered to facilitate safe and effective use by cyclists (in addition to pedestrians). It also expressed concern about a pedestrian route across its land which raised operational and security issues albeit it acknowledged that the applicant was exploring an alternative alignment.
- 3.11.54. Newark A46 Active Travel Partnership (ATP) said [\[RR-047\]](#) that the proposed development neglects to improve active travel, especially on the eastern side of Newark where the A1, A46 & A17 junction acts as a major barrier. It also noted that there would be a degradation in existing routes, e.g. between Newark and Winthorpe as a result of a longer walking route.
- 3.11.55. Newark Rugby Union Football Club noted [\[RR-051\]](#) that the A46 is a major barrier between Newark and the Club for pedestrians and cyclists, and that the proposals for the Cattle Market Roundabout would deliver improved, safer crossing facilities.
- 3.11.56. A local resident said [\[RR-053\]](#) that the temporary closure of Newark BW2 would significantly disrupt their daily lives in terms of access to walks for their dogs.
- 3.11.57. [\[RR-059\]](#) stated that Winthorpe Road would no longer be suitable to walk along during construction or after completion and questioned what would happen to the existing footpath that connects Newark to Winthorpe village.
- 3.11.58. Winthorpe Primary School stated [\[RR-078\]](#) that people use the underpasses beneath the A46 and the A1 to travel to the school, that the walking and cycling route should remain open during construction and should be free of long detours.

3.11.59. Think Again Winthorpe Action Group (TAWAG) also referred [\[RR-071\]](#) to the accessibility of the school and the proposed light-controlled crossing of the live slip road instead of the existing grade-separated route.

3.11.60. Newark Town Council [\[REP1-037\]](#) said that there is currently no safe way to cycle to Lincoln along the A46 and that information to promote cycling was needed.

Impact on Businesses and Community Facilities

3.11.61. At the RR stage, a number of parties commented on potential impacts at specific locations as a result of the implementation of the proposed development:

- Impact on businesses in Newark [\[RR-030\]](#) and [\[RR-060\]](#).
- Impact on Newark Showground [\[RR-046\]](#).
- Impact on the business at Bridge House Farm [\[RR-059\]](#).

3.11.62. Newark Town Council [\[REP1-037\]](#) also expressed concern that construction-related disruption would harm businesses in Newark town centre. It said that there should be a meaningful compensation scheme and a marketing campaign.

Impact on Development Land

3.11.63. The promoter of development on site NUA/MU/1, adjacent to Newark Showground, objected [\[RR-037\]](#) to the route of the proposed pedestrian and cyclist route because of the effect it could have on the delivery of development on site NUA/MU/1.

Health Effects

3.11.64. A number of RR suggested that the proposed development could have health implications as a result of air pollution, water pollution and noise impacts ([\[RR-030\]](#), [\[RR-038\]](#), [\[RR-059\]](#), [\[RR-060\]](#) and [\[RR-071\]](#)).

Leisure (Fishing)

3.11.65. CRT [\[RR-009\]](#) sought clarification on how fishing pegs alongside the River Trent near Fiddler's Elbow Bridge could be affected. Another IP said [\[REP1-050\]](#) that they would want continued access to the river, where they have fishing rights, if their land was permanently acquired, or compensation for the loss of those rights.

Other Comments

3.11.66. A submission from Coddington Parish Council [\[REP2-041\]](#) was accepted at the discretion of the Examining Authority (ExA). It said that the proposed closure and diversion of the public footpath back towards the A17 is unacceptable as there is no safe pedestrian route available which connects to the rest of the public footpath to Winthorpe. It said that a diversion which provides direct access to cross the A46 to Winthorpe is required, supported by a safe pedestrian and cyclist crossing facility from the Coddington side to the Winthorpe side of the road network.

EXAMINATION

3.11.67. During the examination, the ExA focussed on matters where significant impacts had been identified in the ES and matters which had been raised in representations.

Effect on Agricultural Landholdings

- 3.11.68. Whilst an IP had expressed concern ([[REP1-050](#)]) in relation to the viability of their farming business, following further discussions with the applicant they confirmed [[REP4-051](#)] that they no longer had such concerns.
- 3.11.69. In response to its representation in relation to compensation for agricultural businesses, NSDC acknowledged [[EV11-001](#)] that compensation is outside of the remit of the ExA and SoS. It added [[REP4-045](#)] that it would not wish for the productivity of those largely arable farms to be so severely compromised that it would impact them in the longer term.
- 3.11.70. Whilst the ES had identified a number of significant impacts on agricultural landholdings, no other representations were received in relation to this matter.

Walking, Cycling and Horse-riding (WCH) including Public Rights of Way

Generally

- 3.11.71. The applicant noted [[REP1-009](#)] that where the proposed development would impact on an existing walking or cycling route either during construction or when the it is operational, replacement facilities would be provided alongside or crossing the new highway alignment and that [[REP2-018](#)] other than Newark FP14 all other WCH routes would be retained with some localised realignment.
- 3.11.72. NCC said [[REP4-049](#) and [REP8-025](#)] that it was content with the details of the proposed construction-phase closures and diversion routes as set out in Table 2-11 of the OTMP [[REP8-014](#)]. The applicant undertook to work collaboratively with NCC in co-ordinating public information [[REP8-025](#)]. Details of how local people and businesses would be informed of diversions would be set out in the CCMP, as agreed with NCC [[REP7-093](#)].
- 3.11.73. NCC's agreement in relation to permanent changes to the PRoW network is recorded in [[REP8-025](#)].
- 3.11.74. NCC stated [[REP2-052](#)] that whilst there would be some temporary disruption to the local transport network and walking and cycling routes during construction, once operational the proposed development would generally have neutral or beneficial effects on walking and cycling routes. In addition, it said that the proposed development would provide a journey time reduction along the A46 which would provide a minor benefit for residents in accessing open space and community assets by private car, and that any indirect effects on health would likely be minor.
- 3.11.75. When asked whether the applicant had addressed new or existing severance issues and/ or safety concerns that act as a barrier to non-motorised users (NMU), NCC said [[REP2-052](#)] that further work could be undertaken to look at the wider network feeding into the A46 Relief Road proposals such as a light-controlled junction over the A17 near the Friendly Farmer Roundabout and an extension of Newark BW6 from the A1 bridge to Holme Lane, albeit it later confirmed [[EV8-003](#)] that it was raising this in the context of potential designated funds schemes.
- 3.11.76. The applicant said [[REP1-009](#)] that permanent walking and cycling routes had been designed in accordance with LTN 1/20 unless environmental or physical constraints prevented this. There would be 3.0 metre (m) wide shared-use facilities which are acceptable where pedestrian use is low but it would be possible to split some or all of the facilities into two 1.5m segregated routes, details of which would be agreed during detailed design. Where a combined walking/ cycling route joins an existing footway, details of transitions to enable cyclists to safely rejoin the carriageway

would be agreed with NCC. All crossings that it deems necessary would be signalised based upon anticipated use in accordance with the Design Manual for Roads and Bridges (DMRB) [\[REP3-037\]](#).

- 3.11.77. Compliance with LTN 1/20 standards remained a point of disagreement between the applicant and NCC as indicated in the SoCG [\[REP8-025\]](#). NCC explained [\[REP7-111\]](#) that the applicant considered the design acceptable based on the number of users, noting that there is a table in LTN 1/20 that offers guidance on the width of potential shared use facilities based on the number of users. However, it said that the Council's understanding is that regardless of the pedestrian/ cyclist volumes, the over-riding design principle is that shared use footways should be introduced only as a last resort per paragraph 6.5.4 of LTN 1/20. It said that in NCC's experience Active Travel England had not supported designs that incorporate shared use at locations where the pedestrian/ cyclist volumes are well below the threshold set out in the document.
- 3.11.78. NCC also explained [\[REP5-069\]](#) that this is why it considered that the proposed development did not fully safeguard its LCWIP aspirations noting that NCC had adopted LTN 1/20 as the design standard for new infrastructure on County Highway. It said that where these facilities interface with or are provided on County Highway, there is an expectation that NCC will be required to upgrade them at its expense in the event that it brings forward proposals to upgrade or create the remainder of these routes. This is of greatest concern on the B6326 Great North Road but there is also an issue on the A617 where NCC would like to extend the proposed shared use footway improvement further west than NH's current design provides for. This would require the relocation of a large direction sign which would be much easier to do if included in the A46 scheme than if NCC proposed to do it as part of a County-led project.
- 3.11.79. The applicant explained [\[REP7-103\]](#) that, in its opinion, all new facilities would comply with LTN 1/20 and that shared facilities proposed to be provided are acceptable due to low usage. It said that Section 6.5 of LTN 1/20 defines when shared use facilities are acceptable - where pedestrian and cycle flows are <300 per hour – which is the case for all routes in the proposed development. It also noted that section 6.5.6 of LTN 1/20 states that shared use is acceptable alongside interurban and arterial roads where there are few pedestrians and at and around junctions where cyclists are generally moving at a slow speed including in association with Toucan facilities. Furthermore, the applicant said that the directional sign on the A617 is one of multiple constraints and obstacles that any future scheme to extend a combined footway and cycle track west along the A617 would need to take into account.

Farndon

- 3.11.80. Whilst NCC initially made comments in relation to temporary diversions at Farndon, it confirmed [\[EV8-003\]](#) that there were no outstanding matters and that agreement between NCC and the applicant was recorded in [\[REP8-025\]](#).

Newark FP14

- 3.11.81. Despite some suggestions to the contrary, the applicant and NCC confirmed [\[EV8-003\]](#) that Newark FP14 is still open and has not been proposed for closure by NCC. The diverted route would be 1,020m long [\[REP2-019\]](#), accessible for all users and would comply with LTN 1/20. This compares with an existing distance of 665m. The ExA observed on Unaccompanied Site Inspection 1 that the existing route also requires the use of stairs.

- 3.11.82. No parties objected to the stopping-up of part of this PRow as detailed in Part 1 of Schedule 4 of the dDCO [AS-106]. NCC requested [REP2-052] that the diversion be signposted and the applicant confirmed [REP3-037] that there would be temporary signage during construction per the OTMP and that permanent signage for PRow, footways and cycleways would be included in the detailed design.
- 3.11.83. The applicant stated [REP1-009] that the 3m-wide route around the Cattle Market Roundabout junction, with signal-controlled crossings at all crossing points, would be an improvement. It would link to a route alongside the Great North Road – which NCC has noted [REP1-038] is an important part of the strategic cycle network – incorporating a signalised crossing of the new lorry park entrance which the Applicant considers to be an improvement.
- 3.11.84. An IP suggested [REP1-052] that a pedestrian underpass should be provided at the Cattle Market Roundabout. However, the applicant noted [REP1-012] that this location is within the floodplain and there is also an existing flood culvert. Therefore, an underpass would be prone to flooding and usability issues.

Newark BW5, Newark BW6, Newark FP48 and Newark FP66

- 3.11.85. The applicant confirmed [REP8-025] that Newark FP66 would remain operational during the works, as would Newark BW5 (which crosses Fiddler's Elbow Bridge). Newark BW6 would be temporarily closed for the installation of the temporary access bridge and during lifting operations associated with the new bridge construction over the bridleway. Closures would be minimised where practicable with the use of marshals to maintain access. Access would be affected for about 10 weeks approximately 12 months after construction begins and during working hours. The route would be fully open for use outside of these hours.
- 3.11.86. A diversion would be in place for Newark FP48 (also referred to as Newark FP48#1 or FP48-1 in some documents) for 24 months to allow construction of the widened underpass to the sewage works and embankment earthworks. The diversion would run south along Quibell's Lane to join Newark BW10 across the Lincoln Road railway bridge, joining the Trent Valley Way before joining Newark BW5.
- 3.11.87. NCC said [REP8-025] that it would like to be further consulted on these issues which although temporary in nature are likely to be in place for some time. The applicant [REP5-060] and NCC [REP5-069] agreed that consultation on the temporary diversion routes was secured through R11 of the dDCO which requires submission and approval of a TMP substantially in accordance with the OTMP.

Path at End of Newark BW5

- 3.11.88. The applicant confirmed [REP1-009] that an error in the ES had resulted in this route not being correctly assessed. The path leads to a dead end at the Nottingham to Lincoln Railway Line and is not a PRow but survey data indicates that it is used frequently by recreational users. Construction activities at the Nether Lock Viaduct would temporarily restrict access to the path for the duration of the construction period. During this time, the path would be closed and inaccessible for all users, except those authorised to operate and maintain the hydroelectric power station at Nether Weir. The magnitude of this impact would be negligible because while the path would be inaccessible throughout the construction period, there is an alternative walking route (namely BW5) for recreational users.

National Cycle Route 64 and the Trent Valley Way

- 3.11.89. NSDC expressed concern [\[REP2-050\]](#) that the temporary route would not be suitable for people of all abilities and advocated early notification of diversions.
- 3.11.90. In light of comments about the realignment of this route which would involve the at-grade crossing of the A46 off-slip at Brownhills via a signal-controlled crossing and NCC's comment [\[REP2-052\]](#) that there would be a worsening of conditions for active travel and / or vulnerable groups in this location, the ExA asked whether a fully-segregated alternative could be delivered. However, the applicant confirmed [\[REP2-037\]](#) that it was pursuing the proposed route because the majority of people consulted felt that it was preferable to an option including multiple subways.
- 3.11.91. The applicant explained [\[REP1-009\]](#) that ES Chapter 12 recognises Winthorpe Primary School as a key community asset and that whilst there would be temporary alignment changes to the route throughout the construction phase (the existing route would be retained while the new Brownhills Underbridge is constructed and then moved onto its permanent alignment) access to the school would be maintained and would not involve lengthy diversions. Therefore, the effect would not be significant. Given that the permanent realignment would increase the length of the route by 105m, there would be a moderate adverse effect due to the daily use of the route, but the realignment would result in an upgraded, segregated route for walkers and cyclists, which is anticipated to be safer for users.

Winthorpe, including FP2 and FP3

- 3.11.92. In light of conflicting indications in submissions, the ExA sought clarity [\[EV8-003\]](#) as to whether there is an existing connection across the A46 between Winthorpe FP2 and FP3. It was agreed [\[EV8-003\]](#) that the only route via public land involves walking along the A46 highway and that there are no dedicated pedestrian or cyclist facilities. Consequently, the applicant treated this route as being severed and created an alternative route which it sees as a benefit [\[REP1-009\]](#). NCC also confirmed [\[EV8-003\]](#) that it sees the alternative route as being preferable to the existing situation and an enhancement [\[REP2-052\]](#). Connecting to this circular route would be a walking and cycling route between Winthorpe Roundabout and the first Showground entrance on Drove Lane which the applicant also considers to be an improvement [\[REP1-009\]](#).
- 3.11.93. NSDC said [\[REP2-050\]](#) that the upgrade to the pedestrian link from the Friendly Farmer Roundabout to the Winthorpe Roundabout would be more appealing for users and would hopefully encourage greater use, and that the use of signalised junctions at Brownhills would also be safer for users in this area.
- 3.11.94. However, TAWAG [\[REP3-047\]](#) said that it wanted routes to be provided to a standard that would encourage NMU leisure and commuting use, and that this route was insufficiently specified.
- 3.11.95. TAWAG also sought [\[REP7-097\]](#) the applicant's assistance in re-routing Winthorpe FP3 away from the Showground altogether and thus re-define the route to Coddington. It explained [\[REP4-054\]](#) that a continuous route could be achieved by way of the implementation of a third party's planning permission.

Hargon Lane

- 3.11.96. The applicant confirmed [\[REP1-009\]](#) that motorcycle anti-access barriers would be provided at the new track accesses at the A1133, Hargon Lane and the Friendly Farmer Roundabout. Details and exact locations would be developed during detailed design and agreed with NCC.

Other Routes

- 3.11.97. ATP said that there was a lack of vision on the replacement of motorised journeys with active travel which requires suitable infrastructure through and around the complex A1, A46 & A17 junction system [\[REP2-048\]](#), arguing that policy supports the incorporation of active travel measures. It said that the proposed development would lead to a degradation of NMU routes, e.g. along Winthorpe Road. It put forward a number of opportunities for NMU routes to compensate for the degradation that it had identified. All of these were outside of the Order limits and, therefore, would have required a change to be made to the submitted application.
- 3.11.98. The applicant said [\[REP3-036\]](#) that it had more than compensated for any identified losses and had agreed to investigate further enhancements through separate funding for potential delivery outside of the proposed development. The ATP and the applicant confirmed [\[EV8-003\]](#) that it was unlikely that they would reach agreement during the examination.
- 3.11.99. The applicant updated the Streets, Rights of Way and Access Plans [\[REP4-002\]](#) to include pedestrian access to Langford Hall as requested by the owner.

Impact on Businesses and Community Facilities

- 3.11.100. Access, including on active travel routes, would be maintained to Winthorpe, including the school and the pub, throughout the construction period with disruption minimised via the implementation of the TMP. In terms of amenity, at least two residual effects must combine at the same location for there to be a significant effect. As no significant residual noise or air quality impacts were reported at the school or pub, the applicant concluded that there would be no effect on amenity or on human health during the construction or operational phases.
- 3.11.101. The applicant noted that some businesses in Newark are likely to experience changes in access due to increased construction traffic and proposed construction activities. However, as access to businesses would be maintained and any delays would be minimal, affected businesses would experience a slight adverse effect. Local people and businesses would be engaged with in accordance with the CCMP. The applicant said that there would be a slight beneficial (non-significant) effect on access to businesses once the proposed development is operational due to improved journey time and reliability [\[REP1-009\]](#).
- 3.11.102. The applicant also noted [\[REP2-037\]](#) that the potential for impacts on Newark Showground would be managed via the TMP. NNAS did not agree with this and said [\[REP8-026\]](#) that there should be a direct agreement between the applicant and NNAS which incorporated these provisions. NNAS said that DCO-related enforcement powers did not offer sufficient protection, that the applicant was entering into direct agreements with other parties and that there is no justification to treat NNAS differently.
- 3.11.103. The construction of Brownhills Roundabout and the associated slip roads would temporarily affect Winthorpe Road for approximately 36 months and this would impact upon access to Bridge House Farm. However, access would be maintained throughout and delays are anticipated to be minimal. A segregated footway/cycleway would also be available throughout the construction phase [\[REP1-009\]](#).

Impact on Development Land

Site Allocation NUA/MU/1

- 3.11.104. Lindum Developments Ltd (LDL) expressed concern that the route of a cycleway and footpath proposed by the applicant would dissect the allocated site and as such jeopardise the efficient delivery of the site for employment purposes.
- 3.11.105. An unsigned SoCG with LDL [\[REP8-024\]](#) was submitted by the applicant and the applicant indicated [\[REP8-031\]](#) that an alternative alignment which requires land outside of the Order limits had been agreed. The applicant said that heads of terms had been drafted between both parties, that the parties were well progressed in negotiating the detail of a legal agreement but that the signing of the legal agreement would be achieved after DL9 (i.e. after the last deadline in the examination). Whilst the applicant had previously sought NSDC's opinion on a potential alternative alignment [\[REP8-027\]](#), neither the details of the legal agreement's provisions, nor the final details of the alternative route agreed between the applicant and LDL, were provided to the ExA.

Other Land

- 3.11.106. A number of site allocations were listed in NSDC's LIR [\[REP1-035\]](#) and the ExA sought clarification [\[EV8-001\]](#) as to whether the proposed development could have physical impacts that could hinder or help the delivery of those sites. NSDC said [\[REP4-045\]](#) that there were no allocated sites which rely on the proposed development albeit more generally the upgrade of the A46 would support economic growth/ local businesses.
- 3.11.107. The applicant also confirmed [\[REP4-032\]](#) that there are no developments which are dependent on the proposed development and, in a similar vein to NSDC's comments, suggested [\[REP2-037\]](#) that the progression of the proposed development would aid developments, particularly through improvements to journey time reliability.
- 3.11.108. NSDC confirmed [\[REP2-050\]](#) that the temporary use of the former NCC depot, which is allocated for employment development, as a construction works compound was not a cause for concern in terms of employment land supply.
- 3.11.109. NSDC did state, however, that a number of development plan allocations could be negatively impacted by the failure of the proposed development to occur because of their close proximity to the proposed development, specifically:
- NUA/E/2 – Land West of the A1 (Newark Industrial Estate Policy Area) – employment;
 - NUA/E/4 – Former NCC Highways Depot – employment;
 - NUA/MU/1 – Land North of the A17 (Newark Showground Policy Area) – mixed-use development; and
 - NUA/MU/3 – NSK site – housing, employment and retail.
- 3.11.110. NCC did not raise any concerns in respect of the effect that the proposed development could have on the delivery of strategic development sites.
- 3.11.111. Other than site NUA/MU/1, no other party suggested that the development of any allocated site would be affected or prejudiced by the proposed development.

Impact on Residential Properties

- 3.11.112. In response to ExQ2, the applicant noted [\[REP5-060\]](#) that there is an uninhabited residential property which forms part of the former Mint Leaf restaurant. It updated the ES and concluded that the loss of the property would have a neutral (not

significant) effect. NSDC said [\[REP7-114\]](#) that, given the undesirable location outside of the Newark Urban Area, the Council did not object to the loss of this unit which is above the former restaurant and does not appear to have a separate planning consent.

Health Effects

- 3.11.113. Whilst some representations set out concern about the effect of air quality on health, as noted in section 3.3 there would be no locations where air quality objectives, which are set to protect human health, would be exceeded. Some IPs raised concerns in relation to noise and water quality. These are dealt with in section 3.10 and section 3.13 of this report.
- 3.11.114. In response to the UKHSA's comments, the applicant noted that risk of death by suicide is not within the scope of DMRB LA 112 and Institute of Environmental Management and Assessment guidance for determining significance for human health in environmental impact assessment which is why it was not considered in ES Chapter 12. Nevertheless, it said [\[REP1-009\]](#) that no specific activity associated with the proposed development is likely to increase the risk of death by suicide for local population groups, including residents of the Farndon Unit, and that the proposed development would reduce interaction between pedestrians and the A46 via the closure of an at-grade PRow crossing over the A46 and active travel route improvements, reducing the risk of collisions. The National Highways Suicide Prevention Toolkit would be used during detailed design development.
- 3.11.115. In terms of indirect health effects, NCC stated [\[REP2-052\]](#) that whilst there would be some temporary disruption, once operational the proposed development would generally have beneficial and/ or neutral effects on walking and cycling routes and would provide a journey time reduction along the A46. This would provide a minor benefit for residents in accessing open space and community assets by car.

Equalities Considerations

- 3.11.116. The applicant did not consider groups with more sensitivities in ES Chapter 12 because vulnerable population groups have been assessed in the Equality Impact Assessment (EqIA) [\[REP7-080\]](#) which draws on the findings of the ES in relation to air quality, landscape and visual effects, noise and vibration and population and human health. The EqIA identifies and assesses differential and disproportionate impacts on populations which share protected characteristics (as set out under the Equality Act 2010). Section D of the EqIA assesses the impact on the local GRT communities in the vicinity of the proposed development, identifying a disproportional impact associated with changes in noise exposure which, following noise mitigation, would be a 'neutral' effect.
- 3.11.117. The applicant explained [\[REP3-037\]](#) that an Inclusion Action Plan (IAP) would be prepared to ensure that the proposed development is accessible and beneficial to all stakeholders, regardless of their background or abilities. Key objectives would be to promote diversity and equality; remove physical, social and economic barriers; engage underrepresented groups; foster inclusive design; and enhance community benefits. The IAP is a National Highways Collaborative Performance Framework metric and requires engagement with the contractor, suppliers and wider supply chain in order to gather intelligence and evidence for the IAP. As many of the suppliers and wider supply chain have not been appointed at the DCO application stage, it would be prepared as part of the Second Iteration EMP.

- 3.11.118. The applicant also noted [\[REP3-037\]](#) that the creation of a more inclusive and equitable environment and ensuring opportunities and benefits of the proposed development are shared fairly would enhance health outcomes associated with the delivery of the proposed development, hence the IAP is referenced as an enhancement in the ES.
- 3.11.119. NSDC sought an outline of the proposed commitments and details of parties who would be subject of the IAP before a decision is made on the Application to enable the decision-maker to discharge the Public Sector Equality Duty. NSDC also noted that special regard should be paid to engagement with those most affected by the development including GRT groups. NCC said [\[REP4-049\]](#) that a framework IAP would provide better understanding of the overall parameters to be included and reassurance in regard to the Public Sector Equality Duty. In response, the applicant provided an outline of the IAP [\[REP5-060\]](#) and agreed this with NSDC via the SoCG process [\[REP8-027\]](#).

Employment

- 3.11.120. REAC commitments PHH4 and PHH5 in the EMP [\[REP6-012\]](#) aim to ensure that local people benefit from jobs created by the proposed development. NSDC said [\[REP2-050\]](#) that these are acceptable in principle but would like to see more detail. The applicant said [\[REP3-037\]](#) that the detail provided is well-defined and that the Education, Employment and Skills Plan, along with the IAP (referenced in PHH5) would be provided in the Second Iteration EMP.

Leisure (Fishing)

- 3.11.121. CRT explained [\[REP7-108\]](#) that it had liaised with the Federation that owns the rights to fish (a profit à prendre registered with title NT495012) on the stretch of the River Trent. CRT and Federation are parties to an agreement (a contract, granting no legal interest in land) governing access over CRT land to the river. The expectation by both these parties is that this agreement would be suspended in respect of the land to be temporarily used by the applicant and for any lengths of the riverbank that the applicant is to acquire permanently, rights under the agreement of the Federation will be terminated over those lengths. CRT and the Federation would seek compensation for any loss.
- 3.11.122. In relation to the fishing rights noted in [\[REP1-050\]](#), the applicant said [\[REP7-103\]](#) that it was clear on the IP's position on keeping their fishing rights and that it would continue to look into how to accommodate the IP keeping their fishing rights bearing in mind the need to appropriately manage third parties on what would be the applicant's land. This would be detailed in the heads of terms with any limitations and caveats agreed between both the Applicant and the IP. No further updates were provided during the examination.

CONCLUSIONS ON POPULATION AND HUMAN HEALTH

- 3.11.123. Having considered the applicant's submissions and all representations in relation to this topic, the ExA considers the assessment of the population and human health-related effects of the proposed development to be satisfactory.
- 3.11.124. Whilst there would be some significant effects arising from the temporary and permanent loss of agricultural land, no party has suggested that this would affect the viability of any farm holdings. The ExA also acknowledges that the nature of the proposed development, which follows the alignment of existing infrastructure, limits opportunities to avoid the farm holdings concerned and that the applicant has

endeavoured to keep losses of agricultural land to an absolute minimum. Nevertheless, the ExA considers that the loss of agricultural land is a matter which attracts negative weight.

- 3.11.125. There would also be temporary significant effects arising from the diversion or closure of PRow during construction. Whilst this, too, is a negative consideration, the ExA notes that the applicant has sought to minimise diversions and closures, to provide suitable diversions where possible and to ensure that changes would be suitably-managed and advertised, measures which are secured by way of the OTMP and the CCMP.
- 3.11.126. The permanent increase in the length of National Cycle Network 64/ the Trent Valley Way along Winthorpe Road (an additional 105m) has also been assessed by the applicant as having a significant effect. This change involves users having to cross a live slip road whereas currently no such crossings are necessary which the ExA considers to be a negative aspect of the scheme in the context of NPSNN policy which seeks to reduce severance and improve conditions for NMUs. However, the applicant has sought to provide an upgraded and otherwise segregated route for walkers and cyclists, which is anticipated to be safer for users. Therefore, the ExA considers this aspect of the proposed development to be a neutral matter.
- 3.11.127. The applicant has proposed other WCH enhancement measures which seek to address existing severance, to encourage greater use of WCH routes and to facilitate access in and around new junctions to accommodate WCH. These include a new WCH route linking Winthorpe FP2 and Winthorpe FP3, connecting Winthorpe with locations to the south of the A46, such as the Newark Showground.
- 3.11.128. Whilst an IP said that this route had been insufficiently specified, the ExA is satisfied that the specification is based on projected usage and would be satisfactory.
- 3.11.129. Another IP was concerned that this route could give rise to anti-social behaviour, including by people using motorcycles. Given the relatively low projected usage and that the applicant said that motorcycle barriers would form part of the detailed design, the ExA considers this issue to be a neutral matter.
- 3.11.130. The route of a footway/ cycle track across land under the control of LDL remains unresolved. The applicant's overall intention is to create a link between the A17 and the proposed footway/ cycle track running along the south-eastern side of the A46 (between points F-5D and F5M on Sheet 5 of [\[REP4-002\]](#)). However, the applicant has indicated that it is willing to deliver an alternative route, the alignment of which would be agreed with LDL, so as not to prejudice the proposed layout of LDL's prospective employment development.
- 3.11.131. Whilst the applicant indicated that progress was being made in agreeing an alternative route across land not within the Order limits and to acquire additional land from LDL to enable this to happen, no agreement was made available to the ExA. In its closing statement [\[REP9-002\]](#) the applicant stated that *"in the event that an agreement cannot be reached the Applicant stands behind the route provided for the footpath/ cycletrack as shown on Sheet 5 of the Streets, Rights of Way and Access Plans"*.
- 3.11.132. The applicant's ES says [\[REP7-034\]](#) that the route in question is intended to link the existing Winthorpe FP2 and FP3 footpaths, providing a new walking/ cycling route between Winthorpe and locations to the south of the A46 such as the Newark

Showground. In its ES the applicant concluded that this could have a 'slight beneficial (not significant)' effect by reducing severance.

- 3.11.133. The ExA agrees that the delivery of this route in its entirety – whether as shown in the application documentation or via another alignment – would be beneficial because it would reduce severance and provide additional opportunities for active travel, considerations to which importance is attached in both NPSNN 2015 and NPSNN 2024.
- 3.11.134. The ExA is also satisfied that a route – whether as illustrated in the application documentation or as may be agreed with LDL – is secured by Article 15 of the dDCO which requires the applicant to provide the footpath/ cycletrack listed in Schedule 3, Part 10 in the location shown on the Streets, Rights of Way and Access Plans unless otherwise agreed with the local highway authority.
- 3.11.135. As such, the ExA considers the proposed walking/ cycling route improvements to be a positive aspect of the proposed development.
- 3.11.136. Whilst some representations sought wider improvements to WCH facilities including beyond the Order limits and including the re-routing of PRow, the ExA considers there to be no justification for this – the applicant has sought to address severance where it occurs, to mitigate impacts of the proposed development on WCH and to accommodate WCH as appropriate throughout the proposed development. Whilst the additional routes proposed by IPs might be supported by local people and could provide additional WCH opportunities, in the ExA's opinion the omission of these routes from the proposed development should not be a factor which adds negative weight to the planning balance.
- 3.11.137. In seeking to accommodate future WCH movements, the applicant has sought to stop-up three short sections of the PRow network. The first, part of Newark FP14, would be stopped-up because an alternative route would be provided. Whilst the alternative would be longer, it would be accessible to all users, including people with disabilities (which the current route is not), and would avoid safety issues associated with people crossing the A46 in a location without formal crossing facilities. The parts of the Winthorpe FP2 and Winthorpe FP3 that would be stopped-up are very small parts of existing routes where they reach a 'dead end' and where the applicant has proposed alternative walking routes. In all cases, the ExA considers that satisfactory alternative routes would be provided and therefore recommends the extinguishment of these parts of the PRow network under Section 136 of PA2008.
- 3.11.138. Compliance with LTN 1/20 standards remains a point of disagreement between the applicant and NCC. Whilst the Council's understanding is that shared-use pedestrian and cyclist routes should be introduced as a last resort, paragraph 6.5.4 of LTN 1/20 relates to urban areas and notes that shared use facilities are generally not favoured by either pedestrians or cyclists, particularly when flows are high. In this case, where the shared route is on the edge of Newark, the circumstances are closer to those described in paragraph 6.5.5 of LTN 1/20, i.e. interurban and arterial roads where there are few pedestrians, in which case shared use may be appropriate in some situations, if well-designed and implemented. It should also be borne in mind that additional land-take for a wider route could affect the amount of land available for lorry parking which, according to a number of RRs, is an important facility. In that context, and whilst it is mindful of NCC's approach to the specification of pedestrian and cyclist facilities, the ExA considers that the shared-use facilities strike an appropriate balance in this case and should not attract any

negative weight. Accordingly, the ExA does not consider there to be any material conflict with NCC's LWCIP.

- 3.11.139. Whilst there was support from some local businesses for the proposed development, a number of parties expressed concern about disruption during the construction phase. The OTMP evolved in response to submissions during the examination, including from the host authorities, and includes a range of measures which seek to avoid or minimise impacts on existing businesses. It also notes a number of specific businesses, including the operators of large facilities in and around Newark-on-Trent, as key stakeholders with whom diversion routes would be agreed. The ExA considers that the OTMP represents a satisfactory means of mitigating impacts during the construction period.
- 3.11.140. NNAS sought a direct agreement with the applicant so that NNAS is able to require compliance with the measures in the OTMP, stating that DCO-related enforcement powers are not sufficient and that the applicant has entered into agreements with other parties. The ExA notes, however, that there is no evidence that the applicant is unwilling to take account of NNAS's operations. Indeed, the applicant has included specific provisions relating to the Showground in the OTMP, including in relation to maintaining access. Furthermore, the agreements that the applicant has entered into relate to matters other than compliance with the OTMP or other similar undertakings – they primarily relate to matters that are not covered by the dDCO. The ability to enforce against non-compliance with the OTMP is covered by the dDCO. Therefore, the ExA considers it unnecessary for an additional agreement to be entered into between NNAS and the applicant.
- 3.11.141. No significant effects were identified by the applicant in relation to health, amenity or access to green space, or recreation and physical activity during the construction and operational phases, and no evidence was submitted to the examination which would lead the ExA to draw different conclusions. Furthermore, NSDC said that it did not object to the loss of vacant residential unit above a former restaurant which would be demolished as part of the proposed development. Accordingly, the ExA attaches neutral weight to these considerations.
- 3.11.142. Similarly, no evidence was provided to contradict the applicant's assessment of slight beneficial effects in respect of employment, permanent changes in access to local services, and access to businesses once the proposed development is operational due to improved journey time and reliability. In addition, NSDC said that whilst there were no allocated sites which rely on the proposed development, more generally the upgrade of the A46 would support economic growth/ local businesses. The ExA considers that these are all matters to which positive weight should be attached.
- 3.11.143. However, the proposed development would reduce access to fishing rights in two locations along the River Trent. Given the relatively low number of people that this would affect, the ExA considers that only a very limited amount of negative weight should be attached to this consideration.
- 3.11.144. Finally, the ExA considers that the applicant has paid due regard to equalities considerations in formulating the proposed development and in its application submission. Its continued commitments in this regard would be secured by the IAP which forms part of the EMP (secured by R3). Accordingly, the ExA also considers that the Public Sector Equality Duty has been satisfactorily addressed.

- 3.11.145. Taking account of all of the above, the ExA concludes that the proposed development is consistent with the population and human health-related policies of NPSNN 2015. It also considers the proposed development to be consistent with NPSNN 2024, the NPPF and the local development plan, all of which are important and relevant. Overall, the ExA concludes that a little negative weight should be given to population and human health-related considerations.

3.12. TRANSPORTATION AND TRAFFIC

INTRODUCTION

- 3.12.1. This section considers the Transport Assessment Report (TAR) [[REP7-076](#)] that was submitted as part of this Application. The following were appended to the TAR:

- **Combined Modelling and Appraisal Report (ComMA)** which summarises all of the transport modelling and appraisal carried out by the applicant;
- **Road Safety Audit & Designer's Response**; and
- **Walking, Cycling and Horse-riding Assessment & Review** which sets out details of non-motorised user (NMU) facilities and usage.

- 3.12.2. Given that it is based on the transport assessment, this section also considers the applicant's economic appraisal of the proposed development which is set out in the ComMA. The economic appraisal assesses the net benefits of the proposed development to users and the wider community, taking into account the capital construction and operating and maintenance costs over a 'whole life' period.

POLICY CONSIDERATIONS

National Policy Statements

National Policy Statement for National Networks, 2015

- 3.12.3. There is a critical need to improve the national networks to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity, and to provide a transport network that is capable of stimulating and supporting economic growth. The government's policy for addressing need must be seen in the context of wider policies on economic performance, environment, safety, technology, sustainable transport and accessibility, as well as journey reliability (paragraphs 2.2 and 3.1).
- 3.12.4. Advances in technology which influence travel demand are not expected to remove the need for development of the networks. There is also a need to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new links can facilitate economic growth and help rebalance the economy (paragraphs 2.5 and 2.6).
- 3.12.5. The wider policy is to improve and enhance the existing Strategic Road Network (SRN) including junction improvements and dualling of single-carriageway strategic trunk roads to increase capacity and to improve performance and resilience (paragraph 2.23).
- 3.12.6. Applicants should consult the relevant highway authority and local planning authority, as appropriate, on the assessment of transport impacts. They should undertake an objective assessment of the impact of the proposed development following WebTAG methodology and should put in place arrangements for undertaking the road safety audit process. Applicants should also consider reasonable opportunities to support other transport modes and use reasonable

endeavours to address any existing severance issues that act as a barrier to NMU (paragraphs 4.60 to 4.62 and 5.204 and 5.205).

- 3.12.7. Paragraph 4.5 of NPSNN 2015 states that applications for road projects will normally be supported by a business case prepared in accordance with Treasury Green Book principles and that the economic case prepared for a transport business case will assess the economic, environmental and social impacts of a development. It notes that such information will be proportionate to the development and will be important for the Examining Authority's (ExA) and the Secretary of State's (SoS) consideration of the adverse impacts and benefits of a proposed development.

National Policy Statement for National Networks, 2024

- 3.12.8. National networks provide critical long-distance links between places, facilitating passenger, business and leisure journeys across the country, connecting vital infrastructure such as ports and airports to people and markets and enabling the effective movement of goods and freight into, out of, and across the country, which is vital to UK prosperity, health, wellbeing, and security (paragraph 2.1).
- 3.12.9. Paragraph 3.42 states that there are interdependencies between the efficient operation of the SRN and its impact on the local road network and vice versa. Effective operation and optimisation of both the SRN and the local road network are essential to achieve the outcomes set by the Transport Decarbonisation Plan.
- 3.12.10. Whilst the majority of SRN journeys will continue to be made by private motor vehicles and over long distances, there may be opportunities to consider how the SRN can assist in delivering sustainable transport interventions or outcomes connecting communities and enabling active travel (where road safety considerations allow). Safe links and movements across the SRN can be incredibly valuable to support better accessibility and connectivity and enhance the local active travel offer. Applicants should seek to offer an integrated transport outcome, significantly considering opportunities to support other sustainable transport modes, as well as improving local connectivity and accessibility (paragraphs 3.44 and 5.273).
- 3.12.11. Infrastructure development should also recognise the importance of providing adequate lorry parking facilities to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance (paragraphs 5.289).
- 3.12.12. Policy in relation to business cases is similar to that in NPSNN 2015. However, at paragraph 4.6 it is noted that the purpose of the business case is not to ascribe a monetary value to every factor in the planning balance. It is also noted that the economic case is one of five cases that comprise the business case, and government decisions on funding are based on all five.

National Planning Policy Framework, December 2024

- 3.12.13. The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development, and supporting infrastructure. Achieving sustainable development has an economic objective which includes identifying and coordinating the provision of infrastructure. In assessing specific applications for development, it should be ensured that sustainable transport modes are prioritised (paragraphs 7, 8 and 115).

Local Development Plan

NSDC Amended Core Strategy, 2019

- 3.12.14. Policy NAP1 says that Newark and Sherwood District Council (NSDC) will support the implementation of strategic highway schemes at a number of locations. These include:

- A46 Link Capacity, Newark-on-Trent Bypass;
- A46/ A617 Cattle Market Roundabout;
- A46 Roundabout at Farndon;
- A1/ A17/ A46 Roundabout; and
- A1/ A46 Brownhills Roundabout.

Other Policies

Third Nottinghamshire Local Transport Plan, 2011

- 3.12.15. The Third Nottinghamshire Local Transport Plan (LTP3) aims to support economic growth, help protect the environment, improve health and safety, improve accessibility, and maintain and improve existing infrastructure. Objectives include tackling congestion and making journey times more reliable, and encouraging active travel. The Implementation Plan details improvements that will help to address objectives and notes that: *“The County Council will continue (in collaboration with partners) to press for the A46 Newark improvements to be included and delivered during the second RIS period.”*

THE APPLICANT’S CASE

Traffic Modelling

- 3.12.16. The applicant has assessed the traffic-related effects of the proposed development by building the ‘A46 Newark Bypass Model’ which covers the A46 between Lodge Lane (south of the Farndon Roundabout) and Brough Lane (north of the Winthorpe Roundabout) and includes all major junctions and pedestrian crossings as well as the adjacent road network. The model comprises three primary components:
- **A Highway Assignment Model (HAM)** using SATURN software to predict traffic flows, speeds, delays, routing and journey costs on the network, taking into account congestion.
 - **A Variable Demand Model** to predict future levels of demand for private vehicle travel, taking into account trip generation, distribution and mode split.
 - **A microsimulation model**, using VISSIM software, to assess junctions along the corridor of the proposed development.
- 3.12.17. A number of existing regional traffic models were adapted for this analysis. Data from National Highways’ Traffic Information System (WebTRIS), Automatic Traffic Counts and Manual Classified Counts were used. Turning counts, queue length and level crossing closure data were also collected.
- 3.12.18. Forecasts were produced for 2028 (the expected opening year), 2043 (15 years post construction), and 2061 (the last year for which National Trip End Model data is available). ‘Do minimum’ (DM) and ‘do something’ (DS) scenarios were modelled, reflecting proposed residential and employment developments in the local area [\[REP3-040\]](#), as well as proposed transport network changes including the Newark Southern Link Road (SLR).

Current Network Performance

- 3.12.19. The strategic HAM indicates that in the base year (2019) and on an Annual Average Daily Traffic (AADT) basis, between the Farndon Roundabout and the Winthorpe Roundabout the A46 carries between 28,300 and 41,800 vehicles per day with around 15% of the traffic being HGVs. The busiest section is between the Brownhills Roundabout and the A17.
- 3.12.20. The Friendly Farmer Roundabout currently carries the highest volume of traffic with around 4,500-4,700 vehicles in the weekday AM and PM peak hours. In the base year around 1,300 vehicles remain in the network in both the weekday AM and PM peak hours, indicating a degree of congestion.
- 3.12.21. To analyse junction performance the applicant has used the Level of Service (LOS) concept which rates performance based upon thresholds of delay on a scale ranging from A to F; E is considered to be 'at capacity' while F is considered to be 'over capacity'. Using this classification, the Cattle Market Roundabout is operating at capacity with one approach over-capacity in the PM peak hour. The Brownhills Roundabout is operating within capacity overall, albeit one approach operates over-capacity during the PM peak. The Friendly Farmer Roundabout is operating within capacity overall, albeit two approaches operate at capacity. Both the Farndon Roundabout and the Winthorpe Roundabout operate well within capacity.

Forecast Network Performance

- 3.12.22. Without the proposed development, total traffic in the area is forecast to grow by around 8% between 2019 and 2028 and by 18% between 2019 and 2043.
- 3.12.23. The proposed development would increase capacity and enable more traffic to use the A46 corridor. The SLR would also enhance the connection between the A1 and A46, offering strategic (non-local) traffic an alternative route avoiding the centre of Newark. As a result, whilst some A-road links would experience an increase in the number of trips, other links are expected to experience a reduction in traffic. The proportion of HGVs on the A46 is forecast to stay broadly the same.
- 3.12.24. Traffic on local roads is forecast to grow by around 5% between 2019 and 2028 and by a further 10% by 2043 (although the growth on individual routes varies significantly), attributable to an increase in background traffic associated with economic growth and traffic diverting onto local roads to avoid A46 congestion.
- 3.12.25. The applicant's forecasts show that the majority of local roads through Newark would experience a reduction in traffic as a result of the proposed development. The proportion of HGVs on local roads would stay broadly the same. However, forecasts indicate that an increase in traffic is likely on the B6346 Great North Road (an increase by 33% in 2028 and by 43% in 2043) and on the B6166 Lincoln Road (there would be no increase in traffic as a result of the proposed development in 2028 but there is forecast to be an increase of around 8% in 2043).
- 3.12.26. The Cattle Market and Farndon Roundabouts are forecast to experience the largest increase in traffic with increases of up to 50-60% in 2043. Traffic at both the Brownhills and Friendly Farmer Roundabouts is forecast to reduce by up to 20%.

Strategic network performance

- 3.12.27. Improved journey times and journey time reliability are key objectives of the proposed development. There are forecast to be improvements to journey times on

the A46 in each direction in both 2028 and 2043, with a reduction of around 3%-5% in the weekday AM and PM peak hours, equating to savings of around three to five minutes on journeys of 90 minutes. There would also be reductions in journey times on the A617 and A17 corridors. Journey times savings would be broadly comparable between 2028 and 2043, with the journey times on the A617 forecast to reduce in the AM peak by around 6% in the eastbound direction. Westbound journey times on the A17 would reduce in the PM peak by around 7%. Journey times on all other routes would remain largely unchanged.

Local network performance

- 3.12.28. The proposed development is likely to result in additional traffic using the network in the weekday peak hours in 2028 and 2043. However, the average delay is forecast to reduce substantially. In 2028, the number of vehicles passing through the network in the weekday AM and PM peak hours is forecast to increase by around 900 to 1,000, an increase of around 8%. By 2043, the number of vehicles passing through the network is forecast to increase by around 1,200 to 1,600, an increase of around 9% to 11%. An additional 100 to 200 vehicles would remain in the network in 2028 and 2043.
- 3.12.29. In 2028, the largest reductions in average delay would be in the PM peak where delay is forecast to reduce from around 76 seconds to 53 seconds, a reduction of around 30%. By 2043, there would be a larger reduction in the PM peak from around 111 minutes to 70 minutes, a reduction of around 37%. The average number of stops that a vehicle would have to make while using the network in the weekday peak hours is also forecast to reduce in both 2028 (from three to two in the AM peak and from four to one in the PM peak) and 2043 (from seven to three in both peak hours).
- 3.12.30. According to the applicant, this indicates that the network is able to accommodate more traffic, and the reduction in average delays and the number of times each vehicle has to stop is indicative of more free-flowing conditions.

Journey Times

- 3.12.31. The applicant's analysis indicates that there are forecast to be substantial improvement to journey times on the A46 in both directions between Lodge Lane and Brough Lane as result of the proposed development. In 2028, the largest reductions would be in the PM peak, with northbound journey times reducing from around 16 minutes to 11 minutes (around a 29% reduction). Because of greater congestion in the 2043 DM scenario, journeys would reduce from around 15 minutes to eight minutes in the PM peak, a 47% reduction.

Delay from Strategic Model

- 3.12.32. The analysis focuses on 2043 as traffic flows are forecast to be higher than in 2028. There would be a reduction in link delay along the A46 mainline and on the approaches to the Cattle Market Roundabout (due to grade separation) with the introduction of the proposed development. Delays at the Brownhills and Friendly Farmer Roundabouts would be reduced in the weekday AM and PM peaks because the A46 mainline would bypass this section of the network. Thus, whilst the network would be used by more traffic, delays across the network would reduce.

Junction Performance

- 3.12.33. The applicant's analysis of junction performance indicates that there would be a substantial improvement in the performance of the Cattle Market Roundabout in both 2028 (LOS A) and 2043 (LOS B). All other junctions would operate well within capacity with a maximum LOS of C in 2043.

Road Safety

Safety

- 3.12.34. Between 2015 and 2022 (eight years) in the Newark area there were 1,024 personal injury accidents (PIA) resulting in 1,358 casualties, of which 13 were fatal (1%), 179 were serious (13%) and 1,166 were slight (86%). Of these, 131 PIA were at junctions on the A46 between the Farndon Roundabout and the Winthorpe Roundabout (inclusive). There were no fatalities at any of these junctions. Cyclists were involved in accidents at the Cattle Market and Brownhills Roundabouts. Because this stretch of the A46 is a single carriageway, incidents that lead to lane closures contribute to increased delay and poor journey time reliability.
- 3.12.35. Using COBALT software, the applicant has estimated that the proposed development would result in around 494 fewer accidents and 685 fewer casualties over the 60-year appraisal period, including approximately nine fewer deaths, representing a monetised benefit of over £29m (in 2010 prices).
- 3.12.36. The majority of roads in Newark would experience a benefit in terms of a reduction in the number and severity of accidents. However, increases in traffic on some roads adjacent to the proposed development, such as on the A17, would lead to some localised increases in accidents. Nevertheless, the applicant does not consider these to be of a sufficient magnitude to outweigh benefits elsewhere.
- 3.12.37. A Stage 1, Road Safety Audit (RSA1) was carried out during the preliminary design stage (Appendix B of the TAR). The applicant has stated that some of the agreed actions from RSA1 were incorporated in the current design. Others, where the change relates to the detail and would not represent a material change to the DCO (e.g. proposed signs), would be addressed at the detailed design.

Sustainable Transport

Walking, Cycling and Horse-riding (WCH)

- 3.12.38. During the enabling works phase, WCH would be segregated from works areas or diverted. Where diversions are not possible, routes would be closed. Marshals would be deployed where construction activities do not prohibit use of the routes but the safety of users needs to be maintained. The Principal Contractor would consult with the relevant local authorities to identify, agree, implement and manage appropriate measures within the Order limits for WCH routes affected by construction.
- 3.12.39. The applicant states that there are likely to be both beneficial and adverse impacts upon people's journey patterns and amenity resulting from the proposed development. These impacts would include diversions of some routes.
- 3.12.40. During consultation with local user groups, the following concerns were raised:
- **Crossing of the existing A46 at Cattle Market Roundabout** – it is only partially signalised and currently not suitable for mobility-impaired users;

- **Newark FP14** – crosses the existing A46 via an uncontrolled crossing and is considered to be unsafe and not suitable for mobility-impaired users; and
- **Winthorpe FP2 and Winthorpe FP3** – these two footpaths historically connected Winthorpe to Newark Showground but the route was severed by the construction of the existing A46 carriageway and a vehicle restraint system.

3.12.41. The applicant is proposing the following:

- Improved connectivity via new, at-grade crossing points at Brownhills Roundabout and Winthorpe through-about;
- Creation of a combined pedestrian and cyclist ‘circular’ route between Brownhills Roundabout and the Winthorpe through-about which also provides improved access to Newark Showground with the aim of reducing the severance of Winthorpe FP2 and Winthorpe FP3;
- Signalisation of additional crossing points on a number of junctions, including the Cattle Market Roundabout and Winthorpe through-about;
- Reduction of the north-south severance by providing a new crossing west of Friendly Farmer Roundabout;
- Retention of existing routes where possible. Where it is unsafe to retain a route, a suitable diversion would be provided, such as via the Cattle Market Roundabout to replace the closed section of Newark FP14;
- Localised maintenance and lighting improvements on existing routes; and
- New shared-use route adjacent to the widened A46, improving connectivity to Newark Showground.

Public Transport

3.12.42. The last remaining flat railway crossing in the UK, where the Nottingham to Lincoln line intersects with the East Coast Main Line, is to the immediate north of the existing A46. The applicant has worked with Network Rail and the Department for Transport to identify and understand any conflicts between the proposed development and the potential grade separation of the railway lines. This led to an alteration to the layout of the proposed development before the Application was submitted [[APP-028](#)].

3.12.43. Local bus services may be temporarily diverted or suspended during construction. Once operational, the proposed development would not adversely impact existing bus service provision. The Principal Contractor would liaise with bus operators and Nottinghamshire County Council (NCC) to determine if any measures are needed to maintain existing bus routes and to minimise the impact of construction on punctuality. The Outline Traffic Management Plan (OTMP) [[REP8-014](#)], secured by Requirement (R) 11 of the recommended development consent order (rDCO) [Appendix C], includes a commitment to provide advance warning of road closures to bus operators.

Construction Phase

3.12.44. The applicant has based its assessment on the main construction works commencing in August 2025 and the proposed development opening in November 2028. Phasing would be determined by the requirements for Temporary Traffic Management (TTM) on existing routes and the need to minimise disruption to the travelling public, residents and businesses.

3.12.45. Although construction would primarily be undertaken during defined working hours, the main construction compound – the former NCC depot to the south of the Cattle Market Roundabout – would be staffed on a 24-hour basis in relation to activities

such as site security, vehicle recovery, traffic management, water management and deliveries of large components and/ or plant which is being moved during off-peak hours in order to minimise disruption on the highway network. Smaller satellite compounds would generally be located adjacent to bridge structures and be in operation for a limited duration whilst undertaking these works. Works within the compounds would normally only be undertaken during core hours except during periods of overnight works such as bridge beam installation, road tie-ins etc.

- 3.12.46. Whilst there is no set route for construction vehicles, where practicable they would primarily travel on the A46 and A1, and limit travel on local or side roads when travelling to work sites and compounds, as set out in the OTMP. In the applicant's assessment, construction traffic has been assigned with reference to the assumed sources of construction materials.
- 3.12.47. The number of staff is expected to peak in 2026, with a maximum of 350 staff on-site per day, of which 250 would be site-based staff and 100 would be office-based, working at the site office or from home.
- 3.12.48. Those working away from home would stay overnight in existing accommodation in the local area. On-site accommodation would only be provided for recovery teams working shift patterns on-site. Car sharing and travel by sustainable and active modes would be encouraged. A Construction Worker Travel and Accommodation Plan (CWTAP) would be developed per R3 of the dDCO [\[AS-106\]](#).

Construction Traffic

- 3.12.49. During the peak construction year (2026, which includes the earthworks stage), there would be 1,900 two-way vehicle movements per day and approximately 135 two-way HGV movements per hour.
- 3.12.50. TTM would include temporary speed limits, carriageway and slip road closures, segregation of routes, use of signage and clear road marking systems, formation of safe access and egress points, and communication of measures to stakeholders. On most roads in the surrounding road network, construction vehicle activity would be permitted with restrictions except for Tolney Lane where construction vehicles would be banned. The OTMP includes details of anticipated temporary speed limits which would be implemented via Traffic Regulation Orders.
- 3.12.51. Whilst aiming to limit the number of full carriageway closures, they would be required for the A1 bridge installation. Details would be confirmed following consultation with the highway authorities and advance communication for road users would be provided such that alternative routes can be chosen.

Traffic Modelling

- 3.12.52. The model for the construction assessment is based on an adaptation of the A46 operational model for 2028 and includes staff movements, peak-year HGV movements and TTM. Given that the network is forecast to be heavily congested in the DM scenario, the relatively small increase in traffic as a result of construction is likely to further increase delay and congestion. Whilst overall network performance is forecast to deteriorate as a result of construction activity, this would be for a relatively short period (up to six months). The proportion of vehicles remaining in the network is forecast to remain broadly consistent and journey times would increase by about two minutes in each direction. No material changes to junction performance have been forecast except at the Cattle Market Roundabout. However,

the small impact of construction activity is not expected to result in the junction operating over capacity.

Economic Appraisal

- 3.12.53. The applicant's economic appraisal comprised four components: economic benefits to road users, including time savings and vehicle operating costs; economic disbenefits to road users associated with the delays during construction; accident savings and associated economic benefits; and monetised environmental benefits/disbenefits from changes to greenhouse gas emissions, local air quality and noise. The appraisal followed the Department for Transport's Transport Analysis Guidance (TAG).
- 3.12.54. For a 'core' scenario the appraisal indicates that there would be a positive benefit to cost ratio (BCR) of 1.2. The sensitivity test of a higher economic growth scenario, where increased traffic flows exacerbate congestion around Newark, indicates a higher BCR of 1.76. Conversely, a lower economic growth scenario would have a BCR of 0.92 which, according to the applicant, suggests a 'break-even' position where costs and benefits are similar.
- 3.12.55. In terms of social impacts, construction would have an overall adverse impact on development land and businesses, agricultural land, and WCH provision as a result of both permanent and temporary land take and reduced access during construction. To address this, compensation would be provided to land and business owners if considered due under the Compensation Code.
- 3.12.56. The operation of the proposed development is expected to have a beneficial impact on access to private property and housing; development land and businesses; community land and assets; green space, recreation and physical activity due to reduced congestion and improved journey times.

VIEWS OF IPs

Local Authorities

- 3.12.57. NSDC raised concerns about the loss of lorry parking spaces (at Newark Lorry Park, from which land would be acquired for the proposed development) and the consequential displacement of lorries [\[RR-048\]](#). It also expressed concern about increased pressure on the Cattle Market Roundabout due to the projected increase in the number of vehicles using the junction once the proposed development has been completed. It said that this is a negative aspect of the proposed development because it puts more pressure on this entrance into Newark which can already become congested when the level crossing barriers at Newark Castle railway station are down [\[REP1-035\]](#). NSDC also noted the importance of achieving a satisfactory solution for the connection to the Great North Road at the Cattle Market Roundabout. However, NSDC noted that without the proposed development congestion in and around Newark would only get worse and, overall, the proposed development could bring long-term benefits for the area.
- 3.12.58. NCC noted [\[RR-057\]](#) that there would be increased impacts on junctions on the local road network but that the submitted documents do not provide sufficient details to enable an adequate appraisal of the proposals and provide detailed feedback to the applicant. It also expressed concerns about the design of the proposed dedicated right turn lane from Great North Road into Kelham Road for southbound traffic.

- 3.12.59. In its Local Impact Report (LIR) [REP1-038], NCC said that local routes which are experiencing delays could be sensitive to potential re-assignment affects resulting from the implementation of the proposed development and that bus services could be affected. A particular area of concern was at Kelham where NCC is exploring a relief road scheme. Great North Road, which is capacity-constrained by a river crossing and a railway level crossing and which is an important route on the strategic cycle network, was another area of concern.
- 3.12.60. NCC also sought to understand how the A46 scheme would impact existing cycle routes and whether the proposals safeguard the aspirations in its Local Cycling and Walking Infrastructure Plan (LCWIP).
- 3.12.61. Whilst noting that site allocations are a matter for NSDC, NCC said that it would like to understand whether the proposed development would impact the delivery of strategic sites, particularly in terms of increases in traffic flows and accessibility by public transport and active modes.
- 3.12.62. Lincolnshire County Council (LCC), an adjoining highway authority, said [REP1-022] that there would not be any unacceptable impact on Lincolnshire's highway network either during construction or after completion of the proposed development. LCC noted [RR-036] its desire to be involved with monthly traffic management workshops in order to liaise further with the applicant in relation to road space bookings and road closures/ diversions, particularly when LCC's contractor for the North Hykeham scheme is undertaking works to the Hykeham roundabout. LCC also asked to be consulted on the Traffic Management Plan.

Statutory Parties

- 3.12.63. Farndon Parish Council [RR-022] said that parishes should be included as stakeholders and invited to monthly traffic management meetings. It sought reassurances in relation to safety for NMUs during construction. It said that a road and footpath condition survey should be undertaken and that the applicant should make good any damage that it causes during the construction period. It also noted the potential impact of the SLR and the potential for impact on the Farndon Roundabout, including on traffic heading into Newark.
- 3.12.64. South Muskham & Little Carlton Parish Council [RR-067] also noted the need to ensure access to Newark while expressing support "*for this much needed dualling*". North Muskham Parish Council [RR-056] made a similar comment.
- 3.12.65. Winthorpe with Langford Parish Council [RR-079] made comments in relation to potential disruption during the construction phase and the speed limit on the A1133, noting that this should not be at the national speed limit.
- 3.12.66. Newark Town Council (NTC) said [REP1-037] that the lorry park brings custom to town centre businesses. It said that construction around the Cattle Market Roundabout should not add to congestion challenges already created by the level crossing and that there should be traffic control measures to ensure regular movement of traffic from Lincoln Road onto the A46 to avoid a complete standstill of traffic on Lincoln Road. NTC also said that the impact of the roundabout which would connect the SLR to the A46 was unknown and that it should be given two years to 'bed in' before starting work on the proposed development.

Other IPs

Support

- 3.12.67. A number of RRs expressed support for the proposed development. [\[RR-019\]](#) said that it would improve Newark's economy as it would attract people to come into the town, without fear of being stuck in traffic for hours. [\[RR-040\]](#) noted the congestion caused in the town at busy times by the traffic joining the A1 from the A46 near Winthorpe and *vice versa* as a reason for their support.
- 3.12.68. A road haulage/ logistics company [\[RR-075\]](#) noted the difficulties in running a business in the area due to unpredictable traffic and delays and that the proposed development would change perceptions of the town and make it a better place.
- 3.12.69. Similar comments were made by a local town planning consultant [\[REP1-041\]](#) who noted that traffic issues were influencing businesses' location decisions and that land in Newark is allocated for significant growth.
- 3.12.70. Newark Rugby Union Football Club, located on Kelham Road, said [\[RR-051\]](#) that the proposed development would reduce congestion and improve journey times on the A46 and feeder roads such as Kelham Road and Great North Road, and would deliver improved, safer crossing facilities.

Adequacy of Transport Assessment

- 3.12.71. An IP [\[RR-015\]](#) suggested that the applicant's traffic surveys were out-of-date and should be repeated before a decision is made. They said that 24-hour surveys should be completed to evidence how many minutes per day conditions are congested and how many hours per day traffic flow is unhindered.

Proposed Development would not address traffic issues

- 3.12.72. Some parties ([\[RR-030\]](#), [\[RR-050\]](#) and [\[RR-060\]](#)) commented that the proposed development was designed to improve conditions for traffic heading to the Humber ports and not to deal with conditions in and around Newark. [\[RR-066\]](#) said that it would not reduce congestion in Newark over the railway. Concerns were also expressed that there would be an increase in traffic [\[RR-060\]](#) and that traffic issues in Newark and the surrounding areas would become permanently worse [\[RR-015\]](#).

Alternatives

- 3.12.73. An IP [\[RR-015\]](#) requested that the applicant wait until the new SLR roundabout has been operational for two years before deciding whether to go ahead with the dualling of the A46. They said that new technology and many more people working from home meant that there were fewer demands on the road network and also suggested encouraging people to travel at quieter times. They advocated junction signalisation as an alternative to the proposed development.
- 3.12.74. Another IP also suggested junction signalisation and re-engineering of the roundabouts, noting that dualling would not improve matters and that the A46 is not used to its full capacity for 80% to 90% of the time [\[RR-054\]](#).

Active Travel

- 3.12.75. A number of parties made comments in relation to active travel. These are discussed in section 3.11 of this report.

Safety

- 3.12.76. [\[RR-032\]](#) suggested that the speed limit on the A1133 from the Winthorpe Roundabout towards Langford be reduced given the location of the proposed new access to Langford Hall on the A1133.
- 3.12.77. [\[RR-071\]](#) questioned how the Winthorpe through-about would operate in the event of a power failure or computer malfunction and raised concerns about the safety of the left filter lane at the Friendly Farmer Roundabout.

Effect on Railway

- 3.12.78. [\[RR-029\]](#) suggested that changes be made to the proposed development to facilitate a flyover for the Nottingham to Lincoln Line over the East Coast Main Line, should a grade separation scheme be brought forward in the future. It was also suggested that the proposed development and a railway grade separation scheme should be brought forward as a single scheme and constructed together.

Issues at Specific Locations

- 3.12.79. [\[RR-006\]](#) objected to the use of Hargon Lane by farm traffic and maintenance vehicles.
- 3.12.80. [\[RR-032\]](#) sought continuity of access to Langford Hall during construction.
- 3.12.81. [\[RR-034\]](#) noted the need to ensure safe access for farm vehicles between the A46 and the land to be retained by the IP.
- 3.12.82. [\[RR-041\]](#) and [\[RR-065\]](#) raised issues relating to access to the existing service stations near the Friendly Farmer Roundabout.
- 3.12.83. [\[RR-059\]](#) said that there would need to be considerable alterations to the entrance and driveway areas of Bridge House Boarding Kennels to create a safe and secure environment for visitors and their dogs.
- 3.12.84. [\[RR-061\]](#) made general comments about keeping traffic moving during the construction phase. Other parties noted the importance of maintaining access to their properties/ businesses: British Sugar plc on Great North Road [\[RR-008\]](#); Staythorpe Power Station [\[RR-063\]](#); and Nether Lock House [\[RR-010\]](#).
- 3.12.85. An IP was concerned about traffic queuing outside of their property on Fosse Road during the operational phase, and congestion during construction [\[RR-018\]](#).

Economic Appraisal

- 3.12.86. A number of IPs [\[RR-001\]](#), [\[RR-016\]](#), [\[RR-039\]](#), [\[RR-064\]](#), [\[RR-073\]](#) said that the proposed development would generate a low economic return of £1.20 of benefits for every £1.00 spent and, therefore, was poor value for money. Some suggested that other initiatives that would prove more beneficial to the community of Newark should be explored.
- 3.12.87. No IPs criticised the methodology followed, or the conclusions drawn, by the applicant.

Other Representations

- 3.12.88. A representation from Coddington Parish Council [\[REP2-041\]](#) was accepted at the discretion of the ExA. This sought reassurance that there would be signage and traffic controls during construction phase to avoid additional vehicles, especially HGVs, travelling along the weight-restricted roads of Beckingham Road and Drove Lane in particular.

EXAMINATION

- 3.12.89. During the examination, the applicant responded to a number of criticisms that had been made about the proposed development, including that it would cater for traffic to ports and would not address traffic issues in Newark and would make the situation in Newark and the surrounding area permanently worse.
- 3.12.90. The applicant said [\[REP1-009\]](#) that the A46 forms part of a major freight route and an alternative to the M1 corridor particularly to/ from the Humber ports. The government's Road Investment Strategy 2: 2020 to 2025 included a commitment to improve the A46 'Trans-Midlands Trade Corridor' between the M5 and the Humber ports and that the proposed development was based on the need to increase capacity and reduce congestion as well as improving safety.
- 3.12.91. It explained [\[REP2-037\]](#) that whilst its modelling predicts an increase in traffic, a significant component of the increase is attributable to the reassignment of strategic through traffic that currently diverts off the A46 and goes through Newark town centre to avoid congestion. This traffic would use the upgraded A46 instead of travelling through the urban area. The proposed development would therefore lead to a better flow of traffic and a reduction in congestion on both the A46 and on local roads in Newark including the B6326 London Road, Barnaby Road, Beacon Hill Road, Beckingham Road, Drove Lane, Farndon Road and Fosse Road. A reduction in traffic in the town would also enable bus operators to deliver more efficient and reliable services and encourage walking and cycling.
- 3.12.92. In response to a suggestion that technological changes and working from home could reduce demands on highway network, the applicant said [\[REP1-009\]](#) that spreading the demand for travel more evenly across the day to make better use of the available capacity is not in its gift, particularly if existing road users are not already deterred from travelling in the peak hours by congestion that they currently experience.
- 3.12.93. The applicant also explained [\[REP1-009\]](#) that junction signalisation is not an alternative – whilst existing roundabouts other than Farndon are not large enough to allow traffic signals, the purpose of the dualling is to provide sufficient capacity to accommodate forecast levels of traffic growth and to improve road safety.

Traffic Modelling

- 3.12.94. In respect of its traffic modelling, the applicant confirmed [\[REP2-037\]](#) that the SLR had been taken into account and that while it does relieve some traffic from the A46, on its own it would not provide connectivity and capacity through to the A46 and A17 to the east of the A1, and would not remove congestion at the existing Cattle Market Roundabout. Accordingly, even with the development of the SLR if the proposed development is not delivered there would still be significant delays on the A46, especially at the Cattle Market Roundabout.

- 3.12.95. The applicant rejected [\[REP1-009\]](#) the suggestion that the traffic surveys are out-of-date noting that it had undertaken a significant data collection exercise in 2022 to underpin its modelling including a two-week volumetric link count on a number of roads in Newark and the surrounding area, classified turning counts at six key locations, queue length surveys, journey time surveys and level crossing surveys.
- 3.12.96. NCC (the local highways authority) did not raise any issues in relation to the applicant's data collection, methodology or overall conclusions. It did, however, raise specific concerns relating to the performance of specific junctions (discussed below).

Junctions

- 3.12.97. The applicant explained [\[REP1-009\]](#) that congestion caused from level crossing closures was accounted for in traffic modelling and that Great North Road would be widened to two lanes for southbound traffic from Cattle Market Roundabout towards the Kelham Road junction. This would provide additional southbound queuing capacity and would alleviate the effects of the level crossing closure on the Cattle Market Roundabout. It said that improvements to Newark Castle level crossing would not be required because the proposed development would not worsen or change the existing situation in relation to crossing operation and safety.
- 3.12.98. In light of its concerns about impacts on the local road network, NCC requested additional peak hour assessment of the performance of the following junctions:
- B6326 Great North Road/ B6166 Bar Gate;
 - B6326 Great North Road/ Ossington Way (Waitrose junction);
 - A17 / Stapleford Lane/ Beckingham Road; and
 - A17 / Long Hollow Way/ Godfrey Drive.
- 3.12.99. Following its review of the applicant's ARCADY modelling (which models traffic capacity, queues, and delays at roundabouts) and sensitivity testing, NCC confirmed [\[REP6-037\]](#) that it was satisfied in respect of the Great North Road/ Bar Gate, the Great North Road/ Ossington Way, and the A17/ Stapleton Lane/ Beckingham Road junctions.
- 3.12.100. However, following a review of VISSIM modelling outputs, NCC queried the modelling of the southbound Great North Road and the A17 / Long Hollow Way/ Godfrey Drive junction. In response, the applicant undertook sensitivity testing. Following further discussions, NCC confirmed that it no longer had any concerns in relation to these parts of the network or in relation to southbound traffic on the Great North Road [\[REP7-111\]](#). Accordingly, the SoCG [\[REP8-025\]](#) between the applicant and NCC indicates full agreement in relation to the transport assessment and modelling.
- 3.12.101. In light of its own concerns regarding the Cattle Market Roundabout, NSDC also reviewed the VISSIM model and confirmed [\[REP4-048\]](#) that, in its opinion, the junction would operate satisfactorily.

Safety

- 3.12.102. The applicant said [\[REP1-009\]](#) that it had discussed the speed limit along the A1133 as part of the consultation process with NCC as it is responsible for speed limits along the route, but NCC required the national speed limit to be retained as it could not see any justification to restrict the speed limit.

- 3.12.103. The applicant also noted that in the event of a signal failure or malfunction at the Winthorpe through-about, traffic management would be put in place. This would close the through section of the mainline A46 and traffic would use the circulatory section of the roundabout.
- 3.12.104. In respect of concerns relating to a left-turn filter lane at the Friendly Farmer Roundabout, the applicant explained [\[REP8-027\]](#) that the design had been developed to provide a 'give way' rather than a free flow link from the existing A46 heading north. This means that two lanes are no longer required to merge into one on a bend, making it safer for road users.

Access

- 3.12.105. In response to the concern about traffic queuing outside of residential properties on Fosse Road during the operational phase and congestion during construction, the applicant said [\[REP1-009\]](#) that the reduction in congestion resulting from the proposed development would alleviate the current blocking-back issues seen on the local road network within Newark-on-Trent and that forecasts indicate that traffic would reduce on Fosse Road.
- 3.12.106. In response to [\[RR-006\]](#), the applicant confirmed [\[REP1-009\]](#) that the new access track alignment from Hargon Lane would cater for maintenance vehicles which would generally consist of lightweight vans with occasional larger vehicles which would be needed to remove debris and waste from the balancing ponds. It said that it was aware of farm vehicle usage and that during detailed design the applicant would consult on the necessity for and location of passing places on Hargon Lane with the residents of Hargon Lane, the Parish Council and local service providers prior to determining if and where these would be provided.
- 3.12.107. The applicant stated [\[REP1-009\]](#) that the construction of Brownhills Roundabout and the associated slip roads would temporarily affect Winthorpe Road for approximately 36 months and that whilst Winthorpe Road provides sole vehicular access to Bridge House Farm access would be maintained throughout the construction period and delays are anticipated to be minimal. Accommodation works, including fencing and driveway alterations and drainage features would be developed in consultation with the landowner as the detailed design progresses.
- 3.12.108. In response to [\[RR-032\]](#), the applicant said [\[REP1-009\]](#) that the new access road would be constructed and opened for use prior to the stopping up of the existing access road to Langford Hall to ensure continuity of access. A footway would also be provided up to the new access to Langford Hall as noted in [\[REP4-030\]](#) and illustrated on [\[REP4-002\]](#).
- 3.12.109. In respect of the service stations near the Friendly Farmer Roundabout, British Sugar plc and Staythorpe Power Station, the OTMP includes specific reference to mitigation measures and advance communication of changes to the highway network. The OTMP also notes that there would be multiple traffic management phases and a phased construction solution for the Friendly Farmer roundabout tie-in to maintain access to the service stations.
- 3.12.110. In response to [\[RR-034\]](#), during CAH2 [\[REP4-030\]](#) the applicant explained that it had updated the OTMP [\[REP8-014\]](#) to specifically refer to access to the land off the A46 (under the heading 'A46 field access'), and how that would be maintained during the construction. The IP confirmed [\[EV6-002\]](#) that the issue had been addressed.

- 3.12.111. The applicant also explained [\[REP2-037\]](#) that temporary accesses would be provided for the hydroelectric power station near Nether Lock and Crankley Point Sewage Treatment Works. The existing access along the towpath to Nether Lock House would be maintained during construction. There would be short-term closures along this route during bridge beam lifting but marshals would manage pedestrians and vehicles during closures.

Impact on Other Infrastructure/ Sites

Kelham Relief Road

- 3.12.112. NCC confirmed [\[EV8-003\]](#) that a scheme to address constraints created by Kelham Bridge does not have any formal status and is still at the feasibility stage. It clarified that the only location where it thought that an issue could arise was on the A617 Main Road where a relief road could tie into Main Road by way of a roundabout because the roundabout could be partly located in the proposed Kelham and Averham flood compensation area. NCC noted [\[REP4-049\]](#) that it would continue to work closely with the applicant to ensure that the deliverability of the Kelham Bypass Scheme is complementary to the A46 Newark Bypass proposal and said that it does not have any further concerns at this stage.

Railway Grade Separation at Newark Flat Crossing

- 3.12.113. Network Rail Infrastructure Limited confirmed [\[REP2-046\]](#) that the proposed development would not be detrimental to the safe operation of the railway and that it would not preclude a future grade separation scheme from being delivered.

Lorry Parking

- 3.12.114. Whilst NSDC said that the proposed development would result in a 30% reduction in the Lorry Park's capacity (due to land acquisition), it noted [\[REP4-048\]](#) that the lorry park would be replanned as a result of the A46 works to ensure adequate provision and, in its opinion, a solution to the loss of land could be achieved.

Strategic Sites

- 3.12.115. No concerns were raised during the examination in relation to the proposed development affecting the delivery of strategic development sites. The potential for the proposed development to facilitate housing and economic development is discussed in section 3.11.

Other Modes

- 3.12.116. Considerations relating to WCH are discussed in section 3.11 of this report, including whether the proposals would safeguard the aspirations of NCC's LCWIP.
- 3.12.117. In relation to opportunities for modal shift, the applicant explained [\[REP2-037\]](#) that the existing public transport network does not generally offer comparable alternatives to cars for most movements because small traffic flows are distributed over a large area and therefore are not suited to be catered for by public transport. In addition, alternative transport modes would not address the congestion and capacity issues experienced on the A46. It noted, however, that the alleviation of traffic in Newark brought about by the implementation of the proposed development (as a result of traffic re-routing from the town centre to the A46) would allow bus operators to deliver more efficient and reliable services on both the strategic and local road network. Additionally, the reduction in traffic within the town would help to encourage walking and cycling.

- 3.12.118. In response to the suggestion that works for the proposed development and for the grade separation of the Newark Flat Crossing should be undertaken together, the applicant noted [\[REP3-036\]](#) that there is not a mature design for grade separation, it is not a committed scheme, and it does not have funding or a programme in place. As such the applicant said that it did not consider it appropriate to undertake any works associated with a potential grade separation scheme.
- 3.12.119. NCC raised concerns [\[REP1-038\]](#) about potential delays to local bus services during construction, noting that these should be managed and that alternatives should be well-advertised [\[EV8-002\]](#). It said [\[REP4-049\]](#) that it would value funds being made available by the applicant should the bus operators identify a requirement for additional buses to be put into operation to maintain existing bus timetables.
- 3.12.120. The applicant said [\[REP5-060\]](#) that it was not able to provide funds to bus operators during construction in the event there is disruption to bus services. However, it would engage and communicate with the bus operators and other key stakeholders leading up to and during construction and per the OTMP [\[REP8-014\]](#) would provide advanced warning of closures impacting their routes and traffic management measures.

Mitigation

- 3.12.121. In conjunction with the local highway authority and other key stakeholders, the OTMP would be developed into a Traffic Management Plan pursuant to R11 of the draft DCO [\[AS-106\]](#). It would include details of TTM measures to be implemented during the construction phase, including diversion routes. A key objective would be to address the safety of the travelling public, walkers, cyclists and horse-riders and roadworkers to ensure that no person is injured either working within or travelling through the site on the SRN.
- 3.12.122. The OTMP [\[REP8-014\]](#) was agreed with NCC [\[REP8-025\]](#), taking account of both NCC's and NSDC's comments [\[REP8-027\]](#), [\[REP5-060\]](#) and [\[REP7-104\]](#). A Pre-commencement Plan (PCP) [\[REP7-072\]](#) details controls over pre-commencement works, many of which mirror the provisions on the OTMP.
- 3.12.123. The OTMP acknowledges that LCC will be delivering the North Hykeham Relief Road and the need to liaise and co-ordinate with the contractor for that scheme. It also notes that LCC would be invited to monthly traffic management meetings.
- 3.12.124. Parish councils would not be invited to the traffic management meetings which are intended to be technical and planning meetings, but feedback from parish councils would be received via the methods in the Outline Construction Communications Management Plan (in the EMP [\[REP6-012\]](#)) for escalation at traffic management meetings, where required [\[REP5-060\]](#).
- 3.12.125. NCC raised concerns about an increase in traffic on Pelham Street (which is close to Newark town centre). In ExQ3, the ExA asked both NCC and the applicant to describe the impacts that would occur if mitigation was not secured. NCC did not provide a response [\[REP7-111\]](#). The applicant explained [\[REP7-103\]](#) that, based on its traffic modelling, there could be noise and air quality effects albeit there would be no significant effects. The applicant's explanation accords with the findings in relation to each of those topic areas (see section 3.3 in relation to air quality and section 3.10 in relation to noise).

- 3.12.126. An agreement (dated 2 April 2025) [\[REP8-032\]](#) between NCC and the applicant which sets out potential mitigation measures was submitted to the examination. Any measures would depend on monitoring that would take place following the opening of the proposed development and the measures would be agreed following further discussions between the applicant and NCC.
- 3.12.127. In respect of signage, it was agreed [\[REP8-027\]](#) that the applicant would engage with NSDC to include its views during the detailed design stage but would agree the signage strategy with NCC.
- 3.12.128. Whilst an IP suggested that a road and footpath survey should be undertaken and that the applicant should make good any damage that it causes during the construction period, NCC did not seek the inclusion of such provisions in the dDCO.

Economic Appraisal

- 3.12.129. No issues were raised during the examination in relation to the methodology used or conclusions drawn by the applicant.

CONCLUSIONS ON TRANSPORTATION AND TRAFFIC

- 3.12.130. Following its review of the TAR and all representations made in relation to this topic, the ExA considers the applicant's assessment of the transport-related effects of the proposed development to be robust. It considers the data and methodology used to be appropriate in terms of their geographical and temporal scope and, overall, considers the applicant's conclusions to be sound.
- 3.12.131. The ExA also notes that the applicant has worked positively with the host authorities to demonstrate that key junctions would operate satisfactorily and, in its design, has positively responded to queuing issues caused by the Newark Castle level crossing which lies beyond the applicant's route network but which can affect performance of the SRN.
- 3.12.132. Whilst the proposed development is likely to result in additional traffic using the network, the increased capacity of the network means that average delays are forecast to reduce substantially and there would be improvements in terms of journey times and journey time reliability. There would also be material improvements in the LOS of some junctions along the A46, notably at the re-configured Cattle Market Roundabout.
- 3.12.133. As a consequence of trip re-assignment, there would be benefits in terms of a reduction in traffic in the Newark urban area. This would be of benefit to local bus service reliability, too.
- 3.12.134. Whilst a number of parties suggested alternative ways of addressing current issues along the A46 (for example through signalisation or technological change), the ExA is satisfied that these are not realistic alternatives.
- 3.12.135. In light of the submissions of the local planning authority, the ExA is also satisfied that the proposed development would not impact the delivery of strategic sites and, following confirmation from Network Rail, that it would not preclude railway grade separation at Newark Flat Crossing. Furthermore, the local highways authority has confirmed that the proposed development would not affect the delivery of a relief road at Kelham.

- 3.12.136. Given the provisions of the PCP and OTMP, the ExA is also satisfied that due consideration has been given to safety during the construction phase. In addition, the applicant's assessment of operational-phase safety, which was not challenged by any party, indicates the proposed development would help to reduce the number of accidents and deaths on the network and would represent a monetised benefit of over £29m (in 2010 prices).
- 3.12.137. Full consideration has been given to the maintenance of access to properties during the construction and operational phases of development. This, as well as other means of reducing or avoiding construction-phase impacts and communicating with affected parties, is secured by the comprehensive OTMP and the similar provisions of the PCP. The ExA considers that these documents, which are secured by R11 and R17 of the rDCO (Appendix C), represent a satisfactory package of enforceable mitigation measures.
- 3.12.138. Bearing in mind the nature of the proposed development, the ExA recognises that opportunities for modal shift, or for the use of alternative modes to address the identified need, are very limited. However, consideration of NMU has been integral to design development and as noted in relation to Population and Health (section 3.11) the ExA considers the proposed walking/ cycling route improvements to be a positive aspect of the proposed development.
- 3.12.139. Given that it considers the transport assessment to be robust, the ExA also considers the applicant's economic appraisal – which is based on the transport assessment – to be satisfactory. Whilst some parties have said that the BCR is not sufficiently large and, on that basis, the development should not proceed, the relative magnitude of the BCR is not, on its own, a determinative factor. Accordingly, the ExA has not moderated the weight that it attaches to Traffic and Transportation in light of the relative magnitude of the BCR; rather, it has taken account of the applicant's conclusions which state that the BCR is likely to sit on a range from 'break even' to positive.
- 3.12.140. Whilst the applicant and NCC have agreed a mechanism to mitigate potential effects of increased traffic flows in Pelham Street, no evidence was presented to the examination to demonstrate that such an agreement is necessary given that no significant impacts have been predicted in this location. Therefore, the ExA has not weighed this consideration in the overall balance. However, in the event that the ExA had considered mitigation to be necessary it would have attached neutral weight to an agreement aimed at addressing impacts and, consequently, the ExA's overall weighting would not be different.
- 3.12.141. Overall, the ExA considers that the proposed development is consistent with the policy in NPSNN 2015 in relation to the assessment of transport impacts. The ExA also considers the proposed development to be consistent with the relevant provisions of NPSNN 2024, the NPPF, the local transport plan and the local development plan, all of which are important and relevant.
- 3.12.142. The ExA notes that, from a traffic and transportation point-of-view, the proposed development would not give rise to any unacceptable impacts but would deliver a range of benefits which are not limited to A46 users including economic growth, reduced traffic on other roads in Newark-on-Trent, and wider social benefits due to reduced congestion and improved journey times.
- 3.12.143. Noting that the need for the proposed development has already been discussed and that weight has been attached to that consideration earlier in this report, having

regard to the matters discussed in this section of the report the ExA considers that moderate positive weight should be attached to this aspect of the applicant's traffic and transport case.

3.13. ROAD DRAINAGE AND WATER ENVIRONMENT

INTRODUCTION

- 3.13.1. Environmental Statement (ES) Chapter 13 reports on Road Drainage and Water Environment matters [\[REP7-036\]](#). This chapter is supported by the following:
- Figure 13.1 – Surface Water Plan [\[AS-073\]](#);
 - Figure 13.2 – River Waterbody Catchments [\[AS-074\]](#);
 - Figure 13.3 – Flooding Constraints [\[AS-075\]](#);
 - Figure 13.3 – Groundwater Constraints [\[AS-076\]](#);
 - Appendix 13.1 – Water Framework Directive (WFD) Compliance Assessment [\[REP7-062\]](#);
 - Appendix 13.2 – Flood Risk Assessment (FRA) [\[REP7-064\]](#);
 - Appendix 13.3 – HEWRAT Assessment [\[APP-178\]](#);
 - Appendix 13.4 – Drainage Strategy Report [\[APP-179\]](#); and
 - Appendix 13.5 – Surface Water Quality Monitoring Report [\[APP-180\]](#).
- 3.13.2. Chapter 13 details the existing baseline and shows that there are four main watercourses located within a study area of 1km radius around the Order limits. The existing A46 crosses the River Trent twice and the Slough Dyke (The Fleet) once. There are thirteen ordinary watercourses in the study area.
- 3.13.3. There are no WFD designated waterbodies within the study area, however, there are nine non-WFD lakes/ ponds. These lakes/ ponds have been identified in the applicant's assessment as being surface water fed.
- 3.13.4. Data from the Highways Agency Drainage Data Management System (HA DDMS) confirms that there is a substantial network of drains in the area covering agricultural, residential and road network systems. The applicant's assessment refers to this in the singular as 'the Drainage System'.
- 3.13.5. Water quality monitoring was undertaken at 14 different points to establish the current condition of water bodies. The results of this are in appendix 13.5 Surface Water Quality Monitoring Report [\[APP-180\]](#).
- 3.13.6. The proposed development is located within Flood Zones 2 and 3. These Flood Zones are associated with the River Trent. There is no risk of tidal flooding. There are areas of surface water flooding within the study area, specifically adjacent Alexander Avenue, Newark where there is an area of medium pluvial flood risk associated with an existing culverted watercourse under the A46.
- 3.13.7. The groundwater hydraulic gradient is largely topographically controlled. Groundwater levels within alluvium follow the topographic gradient of the valley of the River Trent and its tributaries, towards the north/ north-east. In the topographically elevated area at the north of the proposed development, groundwater levels again follow the topographic gradient west/ south-west, likely discharging locally to a tributary of The Fleet watercourse
- 3.13.8. There are two groundwater Source Protection Zones (SPZ) east of the proposed development. The outer protection zones of the SPZs are located approximately 1.5km east, and 2.8km south-east of the Order limits.

- 3.13.9. The proposed development is located entirely within the Lower Trent Erewash – Secondary Combined Water Framework Directive (WFD) groundwater body. This has a ‘Good’ status. The Cycle 3 2019 quantitative and chemical status are both ‘Good’. It is also within a WFD drinking water protected area which is designated as ‘probably not at risk’. Finally, the majority of the proposed development is located in an area that is highly susceptible to groundwater flooding (>75% change of suffering from groundwater flooding).
- 3.13.10. There are no Ramsar sites, Special Protection Areas (SPAs), Special Areas of Conservation (SACs) or Sites of Special Scientific Interest (SSSIs) located within the study area. The Humber Estuary SAC is located approximately 53km north-east from the Order limits directly, and 75km via the River Trent. There are two Local Nature Reserves (LNRs) within the study area, no Ground Water Dependent Terrestrial Ecosystems (GWDTEs) and three Nitrate Vulnerable Zones (NVZs).
- 3.13.11. After the close of the examination, during the preparation of the ExA's recommendation, the government released the National standards for sustainable drainage systems (SuDS), 19 June 2025. As this was not available to the ExA or IPs during the examination period it has not formed part of the ExA's consideration. These new standards do not apply to works on the SRN for which the DMRB remains the prevalent standard. However, they could be relevant to those areas where the SRN links with the LRN but the ExA considers that they would not alter their conclusions.

POLICY BACKGROUND

National Policy Statements

National Policy Statement for National Networks, 2015

Flood Risk

- 3.13.12. Paragraphs 5.90 to 5.115 set out the requirement for an FRA to be submitted with the application and provides guidance on the methodology.
- 3.13.13. Paragraph 5.99 requires that when determining an application, the relevant SoS should be satisfied that flood risk will not increase elsewhere and will only consider development appropriate in areas at risk of flooding where it can be demonstrated that:
- The most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
 - Development is appropriately flood resilient and resistant and any residual risk can be safely managed.
- 3.13.14. As per paragraph 5.92 those proposals in Flood Zones 2 and 3 should be accompanied by an FRA. This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed.
- 3.13.15. Paragraph 5.98 sets out that the SoS should be satisfied that, where relevant, the application is supported by an appropriate FRA and that the Sequential Test has been applied. If applicable, the SoS should be satisfied that the proposal meets with the requirements of the Exception Test.

- 3.13.16. Paragraph 5.105 describes the Sequential Test which provides a preference that projects should be located out with a flood zone, or Flood Zone 1. If no reasonable alternative is available, then projects can be located in Flood Zone 2. National networks infrastructure projects can be located in Flood Zone 3, subject to the Exception Test.
- 3.13.17. The Exception Test is detailed in paragraph 5.106. Following the successful application of the Sequential Test, development can be considered appropriate within Flood Zones 3a and 3b only having passed the Exception Test. However, it should be borne in mind that there is a need for national networks to remain operational during a flood event.
- 3.13.18. The Exception Test consists of two parts as laid out in paragraph 5.108 and, to be successful, both elements must be passed:
- it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh flood risk; and
 - an FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.
- 3.13.19. In addition to the above, as per paragraph 5.109, any proposal that is classified as 'essential infrastructure' and proposed to be in Flood Zone 3a or 3b should be designed to remain safe for users in times of flood. Furthermore, any project in Flood Zone 3b should result in no net loss of floodplain storage and not impede water flows.

Water quality and resources

- 3.13.20. 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.
- 3.13.21. Paragraph 5.225 states that the SoS will generally need to give impacts on the water environment more weight where a project would have adverse effects on the achievement of the environmental objectives established under the WFD.
- 3.13.22. Paragraph 5.226 further outlines that the SoS should be satisfied that a proposal has had regard to the River Basin Management Plans and the requirements of the WFD and its associated directives which has an overall aim that there should be no deterioration of ecological status in watercourses.
- 3.13.23. Paragraph 5.227 states that the ExA and the SoS should consider proposals put forward by the applicant to mitigate adverse effects on the water environment. If the Environment Agency (the EA) objects to the grant of development consent on the grounds of impacts on water quality/ resources, the SoS can grant consent, but will need to be satisfied that all reasonable steps have been taken to try to resolve the concerns. The EA will need to be satisfied with this outcome.

National Policy Statement for National Networks, 2024

Flood Risk

- 3.13.24. Paragraph 5.130 refers to the consideration of climate change and the expected milder, wetter winters and warmer summers, while sea levels will continue to rise alongside rainfall patterns. Given the lifetime of NSIPs, these factors will lead to an

increased risk of flooding. This paragraph requires the Examining Authority and the SoS to take account of climate change adaptation as set out in paragraphs 4.32 – 4.43 of the NPSNN 2024.

Water Quality and Resources

- 3.13.25. In terms of WFD compliance, the overall aim of projects should be to meet the environmental objectives under regulation 13 or if appropriate meet the exemption of overriding public interest by use of regulation 19 of the WFD Regulations 2017.

National Planning Policy Framework, 2024

Flood Risk

- 3.13.26. The NPPF includes both the sequential and exception tests as described above and there is no material difference to the policy approach to that set out in NPSNN 2015 and NPSNN 2024.

Water Quality

- 3.13.27. Paragraph 182 provides that applications that could affect drainage on or around a site should incorporate Sustainable Drainage System (SuDS) to control flow rates and reduce run-off volumes. These should provide multifunctional benefits through facilitating improvements in water quality and biodiversity as well as, where possible, amenity.

Local Policy

Newark and Sherwood Local Development Framework Amended Core Strategy, 2019

- 3.13.28. The Newark and Sherwood Local Development Framework Amended Core Strategy document contains the following policies of relevance to this topic:
- Core Policy 9 – Sustainable Design;
 - Core Policy 10 – Climate Change; and
 - Core Policy 10A – Land Drainage Designations.
- 3.13.29. In summary, the local authority expects proposals to conserve and enhance water quality and allow water movement of all types to function by natural processes throughout seasonal variations. They also expect developments to reduce flood risk, where possible, and provide an FRA and management plan to support applications.

THE APPLICANT'S CASE

Potential Impacts

Construction Phase

Surface Water

- 3.13.30. There is potential for surface water quality to be affected through the construction period. This could arise from contaminants entering surface watercourses through construction activities. These include:
- excavation;
 - deposition of soils;

- sediments or other construction materials to accommodate temporary watercourse crossings;
- construction and modification of outfalls;
- the Slough Dyke realignment;
- spillage of fuels or other contaminants;
- mobilisation of contamination following disturbance of contaminated ground or groundwater, or through uncontrolled surface run-off;
- the work adjacent to the tributary of The Fleet as part of the minor riparian habitat enhancement measures;
- potential for localised damage to channel and riparian features and disruption to the natural hydraulic and sediment transport processes due to the modification and construction of culverts and bridges;
- changes in topography and/ or earthworks which could have the potential to change overland flows; and
- the removal of the existing pond in the Kelham and Averham Flood Compensation Area (FCA) and replacement with a larger waterbody.

Fluvial Flood Risk

3.13.31. During construction, there is the potential for activities associated with all aspects of the proposed development to alter flow paths of surface water or increase the amount of surface water run-off in localised areas. The following risks to the water environment have been identified:

- works during culvert extension, excavation and enabling works;
- all works associated with bridge/ viaduct installation;
- works to the existing assets during construction;
- works to assets being constructed; and
- the use of construction equipment and facilities used to carry out the works, for example fuel spills.

Groundwater

3.13.32. Excavations for ground and earthworks during construction could impact groundwater flows and levels. There is the potential for a temporary and local reduction in groundwater flows and levels to dewatering superficial or bedrock aquifers during excavations. There is also the potential for contamination of groundwater by the mobilisation of contaminants within the soils, through accidental spills and leaks, or through direct contact with construction materials or piling operations. There is also the indirect risk via watercourses and/ or abstractions and the potential to reduce recharge to the underlying aquifer during the temporary culverting of Slough Dyke.

Regulatory Compliance

3.13.33. The WFD status of the waterbodies in the study area could be compromised by the potential adverse impacts on channels and riparian features. Further risk could come from the disruption to the natural hydraulic and sediment transport processes as a result of construction works along the River Trent. There is potential for construction related run-off to affect water quality and therefore aquatic habitats and the species reliant on them. Works to realign the Slough Dyke are also a potential risk to the WFD status.

3.13.34. The cumulative impact of below-ground construction works, such as piling activities, and potential reduction in recharge of the groundwater due to the presence of

temporary culverts have the potential to affect the WFD status of the Lower Trent Erewash Secondary Combined ground waterbody.

Designated Sites

- 3.13.35. Changes in surface water qualities and volumes during construction could adversely affect the LNRs through contaminated surface water run-off.

Operational Phase

Surface Water

- 3.13.36. Pollution of surface water from discharge of routine run-off may lead to long-term degradation of water quality. Contaminants in road run-off typically include vehicle emissions, vehicle part wear and leaks, catalytic converters, road surface erosion and seasonal and regular maintenance practices. The realigned Slough Dyke would be approximately 10m closer to the A1, but this is not expected to increase the risk of surface water contaminants entering the watercourse given the limited pathways. The maintenance track adjacent to the Slough Dyke would be made of concrete with no drainage system, therefore contaminants would run straight into the watercourse. The applicant considers that the infrequent use of this track means that there would be a limited risk.
- 3.13.37. The permanent realignment of the Slough Dyke would result in a minor increase in length and sinuosity. However, it is expected to be similar dimension as existing and there is not an expected change to flow dynamics. The watercourse would be reinstated to existing riparian habitat with scour protection which is not expected to alter the flow of the watercourse.
- 3.13.38. The borrow pits at Farndon East would form a large lake with a maximum depth of 4m. This would be groundwater fed, and therefore no impacts on surface water are expected.
- 3.13.39. The tributary of The Fleet would be enhanced immediately downstream of the A46. These enhancements could include additional areas of semi-natural habitat in the bank top zone, and felled timber from the proposal to be placed on the bank top to enhance the riparian habitat. These enhancements have the potential to improve habitat quality but there is not expected to be a change in water quality.

Fluvial Flood Risk

- 3.13.40. There is a potential for an increase in flood risk within the Order limits and the surrounding areas due to:
- the presence of permanent infrastructure within the floodplain and the resultant decrease in the floodplain; and
 - the increase in impermeable surfacing and changes in surface water run-off as a result of changes in topography or flow patterns.

Groundwater

- 3.13.41. Permanent below-ground infrastructure, including permanent excavations for floodplain compensation areas and realignment of Slough Dyke, may cause a change in existing groundwater flow regime, resulting in an interruption to flow. This may lead to the loss of water supply to watercourses.

- 3.13.42. The final use of the Farndon East and Farndon West FCAs would include groundwater-fed wetlands, ponds and a lake which may cause a change in existing groundwater flow regime.
- 3.13.43. Increased impermeable surfacing and new drainage systems have the potential to reduce recharge to underlying aquifers.

Regulatory Compliance

- 3.13.44. Infrastructure associated with the viaduct crossings adjacent to watercourses have the potential to cause direct adverse morphological impacts. This could result in a less dynamic flow, loss of sediment continuity, increase sedimentation, habitat severance, potential barriers for migrating fish and the loss habitats for macrophytes through shading. This could affect the WFD status of the watercourse.
- 3.13.45. There is no anticipated change or risk resulting from the realignment works of the Slough Dyke given there is no expected change to flow dynamics.
- 3.13.46. Below-ground infrastructure associated with viaducts has the potential to impact groundwater flows and the WFD status.

Designated Sites

- 3.13.47. Changes to surface water qualities and volume could adversely affect the LNRs through contaminated surface water run-off or increase surface water flood risk.

Design, Mitigation and Enhancement Measures

Mitigation measures – Construction

- 3.13.48. Groundwater protection measures are detailed in the First Iteration EMP [\[REP6-012\]](#). This document is a mechanism for delivery to aid the mitigation measures required during construction to manage potential effects of the proposal on water resources and to demonstrate compliance with environmental legislation. Requirement (R) 3 of the dDCO secures the Second Iteration EMP which should be in accordance with the First Iteration EMP.
- 3.13.49. As part of the Second Iteration EMP, the following documents would be produced for comment by the local authority, Natural England (NE) and the EA, as relevant to their statutory function:
- Pollution Prevention Plan, including emergency spill procedures and incident control plan;
 - An Erosion and Sediment Management Plan;
 - An Invasive Non-Native Species (INNS) Management Plan and Bio-Security Risk Assessment, including an INNS method statement;
 - An Emergency Response Plan for Flood Events;
 - Piling Works Method Statement;
 - Storage of Oil, Fuel and Other Potentially Hazardous Substances Method Statement; and
 - Dewatering Management Plan.
- 3.13.50. Further to the above a 'no derogation' agreement would be made with the owner/operator of any private groundwater supply potentially impacted by dewatering. This would be secured as a private agreement and is separate from the DCO process.

Culvert extensions

- 3.13.51. The culvert extensions under the A46 would require consent from the Trent Valley Internal Drainage Board (IDB) as per the Statement of Common Ground (SoCG) [\[REP5-055\]](#) and the Consents and Agreements Position Statement [\[REP7-010\]](#). The applicant has detailed that the culverts would be constructed as per the following:
- Existing water flow would be diverted during construction to provide a dry working environment. This would be done by intercepting the flow using a temporary dam and sump, then the water would be pumped through the existing culvert; and
 - The concrete walls would be demolished using a mechanical excavator.

Watercourse realignment

- 3.13.52. With respect to water realignment works, consent would be required either from the Trent Valley IDB or the EA, depending on the watercourse. The applicant is not seeking to disapply the related permitting regimes [\[REP7-036\]](#). In summary, an over-pumping system would be required to create a dry works area for the working platform, and realignment construction works. It is expected that the flow would be pumped at a suitable quantity and velocity as to not alter the flow dynamics of the watercourse. Silt/ sediment traps would be required during construction works within the channel to reduce the risk of mobilisation of sediment.

Water quality monitoring during construction

- 3.13.53. ES Chapter 13 [\[REP7-036\]](#) details that surface water monitoring and groundwater monitoring would be undertaken during construction to ensure there is no deterioration in water quality as a result of the proposed development. Water sampling would be undertaken four times a year (summer, autumn, spring, and winter) during construction. This monitoring would include in situ measurements and laboratory analysis as outlined in appendix 13.5 (Surface Water Quality Monitoring Report) [\[APP-180\]](#).

Mitigation measures – Operation

- 3.13.54. ES Chapter 13 [\[REP7-036\]](#) details that alterations to the road network would provide adequate drainage to accommodate potential changes in surface run-off, including allowance for climate change in accordance with DMRB CG 501 – ‘Design of highway drainage systems standards’ and through consultation with the EA and the LLFA. Appendix 13.4 Drainage Strategy Report [\[APP-179\]](#) concluded the attenuation exceedance would be managed in the landscape to mimic the pre-development flow paths. The applicant has confirmed that there is no request for a relaxation in storage, or departure from standards.

Floodplain Compensation Areas

- 3.13.55. The proposed development would provide three FCAs, Kelham and Averham, Farndon East and Farndon West, to compensate for a loss of floodplain storage.
- 3.13.56. Farndon East would be designed and landscaped to be a permanent lake with grass planting around the edges where possible and to drain into Old Trent Dyke. Farndon West would be designed to comprise of residual ponds formed following the excavation of the associated borrow pit. The applicant would create a floodplain grazing marsh in the northern extent of the site. The Farndon FCAs would

incorporate fish escape passages to mitigate the risk of fish entrapment as flood water recedes. These passages would be finalised following consultation with the EA and NE and are secured via R3 of the dDCO.

- 3.13.57. Kelham and Averham FCA would drain into the existing highways and agricultural drain to the south of the FCA via a culvert underneath the A617. This then discharges into the River Trent.

Enhancement Measures

- 3.13.58. The FRA demonstrates that there will be an overall drop in flood risk across the Order limits. However, it is not within the scope of the submission to address extant flooding problems [\[REP5-062\]](#).

Views of Interested Parties

Local Authorities

- 3.13.59. Nottinghamshire County Council's (NCC) Local Impact Report (LIR) [\[REP1-038\]](#) commented that the baseline information met legislative and policy requirements. In its role as Lead Local Flood Authority (LLFA), it considered that the impacts of the proposal would be neutral. At that time, they raised no concerns relating to flood risk, monitoring or WFD compliance.
- 3.13.60. However, following receipt of the EA's relevant representation (RR) [\[RR-020\]](#), NCC raised concerns in its SoCG with the applicant as reflected in [\[REP8-025\]](#). Under the section 'Road Drainage and the Water Environment' the status was marked as 'under discussion' and that they had commissioned consultants to review the hydraulic modelling information. By the end of the examination, this matter had been resolved and there were no outstanding issues for the LLFA. They requested to be a consultee on R15 of the dDCO.
- 3.13.61. Newark and Sherwood District Council (NSDC) agreed with NCC for most of its LIR [\[REP1-035\]](#) but raised initial concerns with respect to the WFD compliance and echoed those comments made by the EA. It also said that the FRA:
- Failed to satisfy the second part of the flood risk exception test, insofar as it relates to fluvial flood risk;
 - Showed the proposed development would increase flood risk elsewhere over the lifetime of the development;
 - Failed to demonstrate that opportunities to reduce flood risk overall have been considered;
 - Failed to provide details on the amount and location of the flood storage being displaced;
 - Had no consideration of phasing works and when the floodplain compensation will become available so there is no loss in floodplain – this is a particular concern given the floods already experienced when the floodplain is already available;
 - Failed to consider the maintenance of the flood compensation; and
 - Did not include drawings for the Slough Dyke realignment and the realignment has not been represented within the hydraulic modelling.

Statutory Parties

- 3.13.62. The EA [\[RR-020\]](#) raised concerns with respect to WFD compliance, water quality monitoring and flood risk. Its initial concerns can be summarised as:

- Flood risk had not been appropriately assessed. Therefore, there was a risk that the proposed mitigation measures were not appropriate. As proposed, the development was shown to increase flood risk elsewhere;
- Insufficient information had been submitted in relation to the realignment of Slough Dyke (main river);
- Insufficient information had been submitted in relation to the proposed development's interaction with the EA flood defences;
- There were missed opportunities for environmental and ecological improvements in relation to the aquatic environment, including biodiversity net gain, for watercourses;
- There was insufficient commitment to addressing invasive species impacting the aquatic environment, principally Himalayan Balsam;
- Water quality matters had not been adequately addressed. The WFD Compliance Assessment had not been satisfactorily carried out. There was a risk that surface water run-off associated with diffuse highways run-off, combined with other sources, was not adequately addressed. Further mitigation for water quality and watercourses was likely to be required;
- Surface water and groundwater quality monitoring requirements were not adequate;
- The presence of the British Sugar authorised landfill site in relation to the development had not been adequately assessed;
- Further commitment and additional plans were required in relation to the Environmental Management Plan. This included the requirement for a Dewatering Management Plan, securing site-specific piling risk assessments and method statements, and surface water and groundwater monitoring commitments. Further information was also needed in relation to waste disposal options;
- Consumptive water usage had not been adequately considered;
- Several DCO requirements needed to be amended, and the EA included as a consultee. The EA also requested an additional requirement in relation to piling; and
- The legislation for EA permits and licences was not being disapplied in the DCO. However, it acknowledges the applicant's intention to pursue the disapplication of the Environmental Permitting Regulations in relation to flood risk activities, which, if agreed, would require a protective provision to be included in the DCO.

Parish Councils

3.13.63. Farndon Parish Council [\[RR-022\]](#) raised several concerns:

- FCA management arrangements and frequency of maintenance activities;
- Timing and potential of risk to Farndon village resulting from the details in Appendix C.7 'Reservoir Flood Risk';
- Management of excavated materials;
- Relationship between the FCAs;
- Clarification that the water table had been considered in the applicant's submission;
- Details of security measures around the FCAs;
- Timing and delivery of the FCAs; and
- An explanation of [\[REP7-064\]](#) that shows the risk increasing from 'Significant Hazard' to 'Extreme Hazard' at the Farndon FCA.

3.13.64. Newark Town Council [\[RR-052\]](#) raised concerns over flood risk given recent flood events in the area. Winthorpe with Langford Parish Council [\[RR-079\]](#) raised

concerns regarding the realignment of the Slough Dyke and potential pollution risks impacting water quality.

Other IPs

- 3.13.65. [\[RR-010\]](#), [\[RR-015\]](#), [\[RR-017\]](#), [\[RR-018\]](#), [\[RR-021\]](#), [\[RR-050\]](#), [\[RR-053\]](#), [\[RR-076\]](#) and [\[RR-080\]](#) all raised general concerns relating to accuracy of information, flood risk, drainage and water quality/ risk of pollution. However, none provided technical evidence to support their concerns.

Flood Compensation Areas (FCAs)

- 3.13.66. [\[RR-002\]](#) considered that the FCAs were in the wrong location as they would not be within the fluvial flood plain and a better solution would be to facilitate discharge of flood waters by increasing river flow rates.
- 3.13.67. [\[RR-034\]](#) raised concerns over the ongoing management and maintenance arrangements of the FCAs relating to plot numbers 2/1a, 2/5b, 1/19a and 19/b. This is discussed further in chapter 6 of this report.

Newark Rugby Club

- 3.13.68. [\[RR-051\]](#) was concerned with respect to flooding events at Newark Rugby Club and sought assurance that the works would not increase the frequency of flood events.

Bridge House Farm

- 3.13.69. [\[RR-059\]](#) raised concerns regarding the potential impacts on Bridge House Farm kennels with respect to flood risk on adjacent land where dogs are often exercised and the potential for an increase in flooding to block access to the business and residential premises.

Staythorpe Power Station

- 3.13.70. [\[RR-063\]](#) was concerned with respect to the potential impacts on local road infrastructure and how this might affect the ability for access to Staythorpe Power Station.

Newark Ransome and Marles Cricket Club/ Newark Cricket Club

- 3.13.71. [\[RR-080\]](#) submitted concerns over the potential flood risk impacts on Newark Cricket Club.

Culverts Under the A617

- 3.13.72. [\[RR-002\]](#) and [\[REP6-039\]](#) raised concerns about the culverts and wider drainage system at the A617 and Kelham House. The specific issue related to the capacity of the culverts and ongoing maintenance of the field drain at Kelham House.

Compatibility of Proposed Solar Farm

- 3.13.73. [\[RR-002\]](#) and [\[RR-058\]](#) raised concern regarding the proposed solar farm on part of the Kelham and Averham FCA. The IPs raised concern over the compatibility of land uses.

EXAMINATION

Flood Risk

- 3.13.74. During construction, the applicant expects temporary works structures to increase flood depths by up to 0.05m in a 3.33% AEP flood event due to displacement of flood waters. According to DMRB LA 104 this would have a minor adverse impact on three residential properties resulting in a slight or moderate effect, which is not considered significant.
- 3.13.75. During operation, the applicant details that the proposal would be raised above the design flood level, although local access roads and junctions connecting into the A46 route would be inundated in 1% AEP plus climate change flood event. The proposed development would have a negligible impact to displacement of flood water and no impact on conveyance of flooding.

Sequential Test

- 3.13.76. During ExQ1 [\[PD-007\]](#), the applicant was asked to detail how the proposal met with the Sequential Test. Section 2 of this chapter of the report covers the approach to alternative proposals taken by the applicant.
- 3.13.77. Considering the applicant undertook an extensive alternatives exercise and RIS 2 encourages the use of the existing A46 corridor to meet a range of sustainability objectives, the ExA considers that the Sequential Test has been met and the Exception Test must be applied.

Exception Test

- 3.13.78. The Exception Test comprises two limbs, both of which need to be addressed:
- the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
 - the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Wider Sustainability Benefits that Outweigh the Flood Risk

- 3.13.79. The first bullet of the Exception Test set out above is met given the wider sustainability merits of the proposal as detailed in the applicant's Case for the Scheme [\[REP7-074\]](#).
- 3.13.80. The second bullet of the Exception Test set out above has been reviewed extensively through this examination. There are three subsections of this, the first is that the proposal must be safe for its lifetime, the second it should not increase flood risk elsewhere, and the third it should, where possible, reduce flood risk overall.

Safe for its Lifetime and Effect on Flood Risk Elsewhere

- 3.13.81. IPs have not challenged that the applicant has not met the first part of the second limb of the test in that the proposal would be safe for its lifetime taking account of the vulnerability of its users. The carriageway would be raised to a height sufficient to allow it to avoid flooding during its lifetime and escape routes are available.
- 3.13.82. The EA stated [\[RR-020\]](#) that the proposal would not satisfy the Exception Test as it raised the potential of flooding elsewhere. The applicant stated [\[REP2-037\]](#) that this conclusion arose from deficiencies with the modelling data. The proposal would

raise the prospect of flooding in excess of 10mm in two areas (Newark Cricket Club and Fosse Road) during a 1-in-20-year event but not at the same time.

- 3.13.83. The modelling also showed a potential increase to flood levels on the Lincoln to Nottingham railway line but Network Rail confirmed that this would not impact on the functionality of the network [\[REP7-119\]](#).
- 3.13.84. To address this issue the applicant submitted a Hydraulic Modelling Technical Note [\[REP5-056\]](#) to support the updated FRA [\[REP7-064\]](#). The EA accepted that the updated modelling note provided sufficient evidence that some of the small, localised increases in modelled water levels were due to modelling precision errors and boundary effects and confirmed that the second part of the Exception Test had been met insofar as its remit was concerned [\[REP8-023\]](#).
- 3.13.85. NCC, as LLFA, confirmed they did not have any outstanding issues. This is reflected in the SoCG [\[REP8-025\]](#).
- 3.13.86. NSDC raised concern that the proposal could have an adverse impact on its plans for works at Tolney Lane to ensure safe access and egress from Great North Road. However, given there are no detailed plans available this issue was not explored further by the ExA. NSDC also agree that the flood mitigation scheme is suitable, and they raise no concerns over the capacity or design of the FCAs.

Reduction of Flood Risk Overall

- 3.13.87. During ISH 3, the applicant was asked to comment on the policy requirement to reduce flood risk overall, i.e. the final part of the Exception Test and to what extent public funds could be used for such a purpose [\[EV9-001\]](#). The applicant responded at DL 5 [\[REP5-062\]](#) stating that the proposed development should mitigate the effects that it causes and that it is not appropriate for a public body, such as National Highways, to utilise public funds to mitigate existing flood risk problems. However, in this instance the FRA demonstrates that there would be an overall reduction in flood risk to third party land principally because of the FCAs.

Interaction with Existing Flood Defences

- 3.13.88. In response to initial concerns raised by the EA [\[RR-020\]](#), the applicant provided further details [\[REP7-098\]](#) on how the proposed development would interact with all flood defences, noting that there would not be a change in the fluvial flood risk for the design event (1% AEP plus 39% climate change) when compared to the baseline. This was agreed with the EA [\[REP8-023\]](#) and the host authorities did not raise any further issues in this regard.
- 3.13.89. In its final position statement, the EA confirmed that the applicant had supplied the necessary cross sections [\[REP7-098\]](#) to allow it to confirm that the proposed development would not have an adverse effect on the existing flood defences.

Flood Compensation Areas

- 3.13.90. The applicant undertook a sequential approach to the locations of the FCAs. According to the FRA [\[REP7-064\]](#), the proposed development would need to compensate 184,497m³ of floodplain loss. Table 2 of the FRA demonstrates that Farndon West FCA would provide 111,467m³, Farndon East FCA would provide 151,544m³ and Kelham and Averham FCA would provide 61,519m³. This totals 324,530m³ across the three FCAs. The FCAs would be built as part of the pre-

commencement works, in advance of the loss of the features for which they would mitigate. This is secured via R15 of the dDCO.

3.13.91. The location of the FCAs was informed by the following necessary technical factors:

- The location of the FCAs should be downstream of most of the high-elevation floodplain encroachment and therefore act as indirect floodplain compensation;
- Using the proposed development as a single site solution requires a large land-take in that location, reducing the economic viability of the proposed development;
- The land-take required for a single site solution would have conflicted substantially with other development proposals. Enabling hydraulic connectivity for a single-site solution would have required a considerable modification to an existing watercourse near the site; and
- The land for the FCAs would be substantially flooded (on at least a yearly basis) which would change its existing usage.

3.13.92. Given the above factors and the volume of compensatory storage required, a single site would not have been sufficient. Therefore, the applicant sought a multi-site solution. In total, 29 sites were considered with all needing to be in close hydraulic proximity to the development as well as meeting the above criteria. Figure 3.13 of ES Chapter 3 detailed the location of the proposed sites.

3.13.93. All 29 FCA options went through a site selection screening process at an early stage of the design iteration. This included a RAG (Red, Amber, Green) rating of each site based on an extensive criteria. Of the 29 sites 12 were considered suitable for further consideration. This is detailed in the applicant's FRA appendix G [\[REP7-064\]](#).

3.13.94. The outcome of the screening process identified two broad areas:

- Kelham and Averham; and
- Farndon.

3.13.95. Following this, the applicant proceeded to discuss the exact locations with key stakeholders, including landowners.

3.13.96. There were two notable issues considered through the examination with respect to the FCA. At Kelham and Averham, part of the site was subject to a proposal for a solar farm and questions were considered regarding the capacity of culverts under the A616 and how this might interact with existing drainage on land at Kelham Hall. The second related to the Farndon FCA where discussion took place regarding the number and design of fish escape passages which is discussed in chapter 4 of this report on the Habitats Regulations Assessment (HRA).

Kelham and Averham

3.13.97. Concern was raised by IPs [\[RR-002, RR-058\]](#) regarding the potential for the proposed solar farm to reduce the capacity of the FCA. Despite the solar farm planning application being refused by NSDC in January 2025, there is still the prospect for an alternative determination through an appeal to the SoS via s78 of the Town and Country Planning Act (TCPA). The SoCG with the EA states that the site plan for the solar farm application had been amended prior to determination and that it no longer had an objection as panels had been removed from the eastern part of the FCA. Given the amendment to the solar farm application, the outcome of any appeal would be immaterial to this DCO application.

- 3.13.98. The second issue with the Kelham and Averham FCA relates to the access tracks and culvert modelling. This was initially raised by the EA [\[RR-020\]](#). To address this, the applicant undertook further modelling that demonstrated that the culverts would be of sufficient size to accommodate flows without backing up and causing a risk of flooding elsewhere as per the SoCG with the EA [\[REP8-023\]](#). The applicant would also undertake maintenance of the existing infrastructure that the culverts would connect to [\[REP7-103\]](#). There was no objection to this from either host authority or the IDB.

Surface Water

- 3.13.99. TAWAG raised concerns [\[RR-071\]](#) with respect to how water run-off from the road would be managed, both in terms of the volume and peak flow but also for accidental pollution events. It also raised concerns with respect to the potential flood effects resulting from run-off into local watercourses on the village.
- 3.13.100. The SoCG indicates that TAWAG is seeking to address wider issues, that the applicant has addressed issues associated with its development, and therefore this issue was not pursued further.

Ground Water

- 3.13.101. The applicant states that dewatering of excavations for ground and earthworks during construction may cause temporary short-term changes in groundwater flows and levels within the vicinity of the excavation. Necessary consents would need to be sought, as per the Consents and Agreements Position Statement [\[REP7-010\]](#). The applicant expects that once dewatering ceases, groundwater flows and levels would quickly recover.
- 3.13.102. The final SoCG confirms that the applicant and the EA have agreed to monthly monitoring of groundwater during construction and quarterly for one year post construction. The results would be sent to the EA. This is secured through RDWE 7 of the First Iteration EMP REAC [\[REP6-012\]](#).
- 3.13.103. Trent Valley IDB raised no concerns as the applicant is not seeking to disapply the terms of the Land Drainage Act 1991 and therefore the IDB's consent is required prior to works being undertaken on drains in their administrative area. The SoCG [\[REP5-055\]](#) shows agreement of all matters between the IDB and applicant.

Water Framework Directive

- 3.13.104. The applicant submitted a WFD compliance statement [\[REP7-062\]](#) in support of the proposal. This concludes that the proposal would unlikely result in large scale losses of aquatic and bankside habitat, although there are several interactions between the works and waterbodies including the Slough Dyke (tributary of the Trent), Windmill Viaduct, Old Trent Dyke and the FCAs.
- 3.13.105. The EA raised concerns [\[RR-020\]](#) about the potential for adverse effects resulting from the engineering works to Slough Dyke. The applicant intends to re-model the Slough Dyke to make it longer with more sinuosity while maintaining the depth. This would allow it to return to a more natural state. Currently it is heavily modified, and these changes would have several benefits including improving the WFD status. The applicant would also improve the riparian environment and add scour protection. Following the submission of details [\[REP7-098\]](#), the EA confirmed that it did not object to these works [\[REP8-035\]](#).

- 3.13.106. The Humber River Basin Management Plan (RBMP) classes all the surface waterbodies as not achieving 'Good' overall status or potential. The proposal must ensure that appropriate mitigation is secured to prevent further deterioration. The groundwater waterbody status is currently at 'Good' overall status. Mitigation to ensure this waterbody is not affected by the proposals is secured through the First Iteration EMP.
- 3.13.107. The applicant concluded that the proposal is not anticipated to prevent any waterbodies within the study area from reaching their target 'Good' status in the future, as potential impacts resulting from the proposed development are expected to have only small-scale localised impacts.
- 3.13.108. The applicant detailed that there would be an opportunity for the proposed development to contribute to improvements in the waterbody status of the River Trent from Soar to Beck waterbody. A permanent lake would be created in the Farndon East FCA with a maximum depth of 4m and grass planting around the edges where possible. During flooding events, the receding flood water would drain into the Old Trent Dyke. Farndon West FCA would be designed to comprise of residual ponds formed in post-borrow pit excavations with floodplain grazing marsh created in the northern extent of the FCA. During flooding events, the receding flood water would drain into the Old Trent Dyke. The FCA would incorporate fish escape passages to mitigate the risk of fish entrapment as flood water recedes. The final design and location of the fish passages are secured in First Iteration EMP REAC [\[REP6-012\]](#).
- 3.13.109. The Drainage Strategy Report [\[APP-179\]](#) proposes that impermeable surface run-off from the highway would enter swales at the toe of the embankment, which would flow into attenuation basins and be discharged at a restricted rate into a receiving watercourse. These attenuation basins may also be planted as required to create wetland areas. These measures may help to reduce the levels of phosphate in the water, in turn aiding the improvement of the River Trent from Soar to Beck WFD status.
- 3.13.110. In response to concerns raised by the EA [\[RR-020\]](#), the applicant has responded [\[REP1-010\]](#) that under WFD Regulations, it is not a requirement to mitigate for all potential impacts providing the works do not cause a deterioration in waterbody status. As construction activities would be phased to minimise the in-combination effects on individual water bodies, and appropriate mitigation measures would be implemented during construction, the applicant determined that in-combination impacts would be localised and temporary. The cumulative effects assessment [\[REP7-040\]](#) identified seven developments, however no cumulative effects on WFD waterbodies were identified.
- 3.13.111. The applicant undertook a review of any new or approved developments since the DCO application was submitted [\[REP7-040\]](#), identifying four new developments to progress to the Stage 2 'Assessment of Cumulative Effects' for Road Drainage and the Water Environment. For all these projects, and following mitigation as specified in the First Iteration EMP [\[REP6-012\]](#), the residual cumulative effects during construction and operation were assessed as 'Neutral' with no significant cumulative effects.

Designated Sites

- 3.13.112. The applicant has detailed that the Farndon Pond LNR is upstream of the proposed development and there would be no significant effects on this LNR. Devon Park

Pastures LNR is downstream of parts of the proposed development on the River Trent, the LNR is upstream of the confluence of River Devon and River Trent. As a result, the applicant does not consider that there is a credible pathway of interaction with the proposed development and there would be no significant effects on this LNR [\[REP7-036\]](#).

Monitoring

- 3.13.113. In response to concerns in relation to the frequency of water quality monitoring [\[RR-020\]](#), the applicant agreed to undertake monthly ground and surface water monitoring during construction and quarterly for one year post construction as set out in the First Iteration EMP REAC [\[REP6-012\]](#).

CONCLUSIONS ON ROAD DRAINAGE AND WATER ENVIRONMENT

Flood Risk

- 3.13.114. The applicant has sought to demonstrate that the proposed development meets the terms of the Sequential Test and of the Exception Test by virtue of not increasing the risk of flooding elsewhere and that it would remain safe for users throughout its lifetime. This has been agreed with statutory consultees and demonstrated in SoCGs with the EA and NCC.
- 3.13.115. The applicant has demonstrated that they undertook a sequential approach to the location of the FCAs and that they would provide for the loss in floodplain through floodplain compensation. The dDCO would ensure they are built prior to the commencement of works that would result in any loss of floodplain capacity. There are no outstanding concerns from statutory consultees. The ExA therefore agrees with the applicant's position with respect to the FCAs and there are no outstanding concerns from IPs.
- 3.13.116. The ExA conclude that the applicant's submission has demonstrated compliance with both the Sequential and Exception Tests as required by NPSNN 2015. The proposed development is essential infrastructure, as per the definition in the NPPF 2024, and would not increase the risk of flooding elsewhere beyond those limits agreed with the EA. The ExA concludes that the proposed development meets the Sequential and Exception Tests as set out in terms in NPSNN 2024 and the NPPF 2024 which are important and relevant matters.
- 3.13.117. The proposed development would provide a minor benefit to some areas within and adjacent the Order limits with an overall minor decrease in the risk of flooding. The proposed development would remain operational during flood events with the compensatory floodplain capacity being provided for by the FCAs. Overall, the ExA considers this a minor positive aspect of the proposed development and attributes it limited positive weight.

Road Drainage

- 3.13.118. Neither host authority has raised concerns over the surface water drainage proposals with respect to flow rates and capacity. Some benefits would occur as a result of an improved and updated SuDS regime around Cattle Market Roundabout, for example. Any works to culverts would require either the consent of NCC, as LLFA, or the Trent Valley IDB. R15 of the dDCO requires the proposed development to be in accordance with the FRA.

- 3.13.119. Given the proposed development would maintain the status quo of flow rates and consent is still required for works to culverts and ditches, the ExA considers this to be a neutral impact and therefore provides it with neutral weight.

Water Framework Directive

- 3.13.120. The proposal would not have an adverse effect on the waterbody status as per the WFD compliance assessment and confirmed by the EA. Works to the Slough Dyke would make it more naturalised and potentially increase the status thus improving its condition from a currently very engineered watercourse to something more naturalised. Water monitoring has been agreed with the EA and this is secured through the First Iteration EMP.
- 3.13.121. Despite the replacement of an existing waterbody in the Kelham and Averham FCA, there would be minor positives associated with the proposed development. Works to the Slough Dyke, the creation of water bodies in the FCAs, and the agreement of water quality monitoring frequency with the EA means that the ExA considers the proposed development is compliant with the WFD.

Summary

- 3.13.122. There are no outstanding issues between parties with respect to the water environment and the ExA considers that this element of the proposed development is consistent with NPSNN 2015. Equally, there are no concerns with respect to consistency with either NPSNN 2024 and the NPPF 2024, which the ExA considers important and relevant. There are some minor positives associated with the proposed development with respect to the water environment such as a limited decrease in the risk of flooding across the Order limits and adjacent areas, a minor improvement to the functionality of road drainage including SuDS, such as that at Cattle Market Roundabout, and works to the Slough Dyke returning it to a more naturalised state.
- 3.13.123. Overall, the proposed development would result in a minor positive benefit to the water environment and road drainage and has demonstrated compliance with WFD. The ExA attributes a little positive weight for the overall balance.

3.14. CUMULATIVE EFFECTS

INTRODUCTION

- 3.14.1. This section considers the applicant's assessment in Chapter 15: Combined and Cumulative Effects [\[REP7-040\]](#) of the Environmental Statement (ES).

POLICY CONSIDERATIONS

National Policy Statements

National Policy Statement for National Networks, 2015

- 3.14.2. Paragraph 4.3 states that, in considering any proposed development, and in particular when weighing impacts against benefits, the Examining Authority (ExA) and the Secretary of State (SoS) should take into account 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.
- 3.14.3. Paragraph 4.17 says that the ExA should consider how significant cumulative effects and the interrelationship between effects might, as a whole, affect the

environment, even though they may be acceptable when considered on an individual basis with mitigation measures in place.

National Policy Statement for National Networks, 2024

- 3.14.4. Paragraph 4.12 states that the consideration of cumulative effects is a key part of environmental assessment. The applicant should provide information on how the effects of the proposal would combine and interact with the effects of other development, where relevant. For most practical purposes this means that the applicant should consider the impact of other existing and committed developments within an appropriate geographical area and assess the additional impact of their own development.
- 3.14.5. It is also stated that there is no single or agreed approach to assessing the cumulative impacts of environmental effects due to some effects being limited to a specific geographical boundary but others, such as the impact and effect of carbon emissions on climate change, not being geographically limited. For this reason, it may be necessary for different approaches to be taken to assess the cumulative impact of different environmental effects. The Secretary of State (SoS) should consider how the accumulation of, and interrelationship between, effects identified in the environmental assessment might affect the environment, economy, or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.

THE APPLICANT'S CASE

Combined Effects

- 3.14.6. For the assessment of combined construction effects the applicant considered visual, noise, vibration and air quality effects on single environmental receptors. For the assessment of combined operational effects, visual, noise and air quality effects were considered. No significant adverse vibration effects are anticipated to occur during operation of the proposed development.
- 3.14.7. The applicant noted that where a range of activities would affect identified receptors in differing ways (such as visual and noise effects), no additional in-combination mitigation measures over and above the mitigation in the First Iteration Environmental Management Plan (EMP) [\[REP6-012\]](#) are proposed to alleviate the temporary construction related combined effects.
- 3.14.8. The locations where there would be significant combined construction-phase effects are:
- Sandhills Close (moderate adverse) – before mitigation, significant effects have been identified in relation to visual impact, noise and air quality (dust);
 - Quibell's Lane (moderate adverse) – before mitigation, significant effects have been identified in relation to noise, vibration and air quality (dust); and
 - Lincoln Road (moderate adverse) – before mitigation, significant effects have been identified in relation to noise, vibration and air quality (dust).
- 3.14.9. However, effects would be temporary in nature and so the applicant concluded that no additional mitigation is necessary beyond what is included already in the EMP.
- 3.14.10. No significant in-combination effects have been identified for the operational phase.

Cumulative Effects

3.14.11. The following developments are predicted to cause significant cumulative effects with the proposed development:

- **NAP2A Land south of Newark** (10/01586/OUTM and 14/01978/OUTM):
 - Temporary Moderate Adverse cumulative cultural heritage effect on the built heritage receptor [\[AS-036\]](#) Grade II* Listed Building Farndon Windmill (MM139) during construction.
 - Temporary Moderate Adverse cumulative geology and soils effect on receptors [\[REP7-058\]](#) ALC Grade 3 and 3a land during construction.
- **NUA/E/3 Telford Drive:**
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor [\[AS-038\]](#) LCA 2 Winthorpe Village and Farmlands during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during Year 1 of operation.
 - Temporary Large Adverse cumulative landscape and visual effect on visual receptors [\[AS-040\]](#) R32 and R40 during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on visual receptors R32 and R40 during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on visual receptors R40 and R41 during Year 1 of operation.
 - Temporary Moderate Adverse cumulative geology and soils effect on receptors ALC Grade 3a land during construction.
- **NUA/Ho/4 Lincoln Road, Yorke Drive and Lincoln Rd Playing Field** (18/02279/OUTM, 22/00426/S73):
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during Year 1 of operation.
 - Temporary Large Adverse cumulative landscape and visual effect on visual receptors R32 and R40 during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on visual receptor R34 during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on visual receptor R40 during Year 1 of operation.
 - Temporary Moderate Adverse cumulative geology and soils effect on receptors ALC Grade 3a land during construction.
- **NUA/MU/1 Land North of the A17, Newark:**
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during Year 1 of operation.
 - Temporary Large Adverse cumulative landscape and visual effect on visual receptor R40 during construction.

- Temporary Moderate Adverse cumulative landscape and visual effect on visual receptors R41, R43 and R48 during construction.
- Temporary Moderate Adverse cumulative landscape and visual effect on visual receptors R40 and R41 during Year 1 of operation.
- Temporary Moderate Adverse cumulative geology and soils effect on receptor ALC Grade 3a land during construction.
- **NUA/E/2 Stephenson Way:**
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during Year 1 of operation.
 - Temporary Large Adverse cumulative landscape and visual effect on visual receptor R40 during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on visual receptors R41 and R43 during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on visual receptors R40 and R41 during Year 1 of operation.
 - Temporary Moderate Adverse cumulative geology and soils effect on receptors ALC Grade 3a land during construction.
- **NUA/MU/3 NSK Factory Northern Road Newark (Retail) (and residual site NUA/MU/3):**
 - Temporary Large Adverse cumulative landscape and visual effect on visual receptor R32 during construction.
 - Temporary Moderate Adverse cumulative geology and soils effect on receptors ALC Grade 3a land during construction.
- **BGO Ark PropCo Limited (21/02408/FULM):**
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during construction.
 - Temporary Moderate Adverse cumulative landscape and visual effect on landscape receptor LCA 2 Winthorpe Village and Farmlands during Year 1 of operation.
 - Temporary Moderate Adverse cumulative geology and soils effect on receptors ALC Grade 3a land during construction.

3.14.12. In conclusion, the applicant said that these significant effects would arise from the possible but unlikely overlap of unavoidable construction activities as well as temporary operational-phase effects which, in respect of landscape receptors, would reduce to 'not significant' by Year 15 and, therefore, due to the temporary duration of these significant effects, no additional mitigation is required beyond what is included already in the EMP.

VIEWS OF IPs

Local Authorities

3.14.13. In its LIR [[REP1-038](#)], NCC said that the in-combination assessment does not include an analysis of the impact of climate change on air quality and that vehicle emissions would be intensified as hotter summers increase the formation of ground-level ozone, which is a dangerous air pollutant.

- 3.14.14. The LIRs of NSDC [REP1-035] and NCC [REP1-038] noted that there was no consideration of the potential combined air quality effects associated with construction vehicle flows and traffic management measures during the construction phase and requested further information.
- 3.14.15. In its RR [RR-036], Lincolnshire County Council noted that whilst there are no NSIP projects in the immediate vicinity of the scheme which have already been consented, there are a number of solar projects proposed towards the western boundary of Lincolnshire which cumulatively could put pressure on the highways network during construction, and have a significant impact on the amenity of communities located along the A46 between Newark and Lincoln. These include the Fosse Green Energy project at Witham St Hughs, and the Great North Road Solar Park (already identified in ES Chapter 15).

Statutory Parties

- 3.14.16. There were no comments from any statutory parties in relation to this topic.

Other IPs

- 3.14.17. [RR-003] stated that the applicant had not taken account of its planning application for a solar scheme (23/01837/FULM) which was submitted to NSDC on 17 October 2023 and [AS-092] noted an emerging scheme for a carbon capture project at Staythorpe Power Station, noting that this should be considered by National Highways.

EXAMINATION

- 3.14.18. An updated review of developments was undertaken by the applicant [REP2-021] to capture any schemes post-dating the applicant's original ES assessment cut-off date of 31 May 2023, including developments that were noted in RR. The applicant concluded that no new significant cumulative effects would occur and therefore no additional mitigation is required beyond what is already included in the EMP.
- 3.14.19. In response to NCC's comment relating to climate change and air quality, the applicant noted [REP2-019] that given the uncertainty around climate change and future technologies (such as types of transportation fuels changing vehicle exhaust emissions), it is not possible to robustly quantify or reasonably assess the impact of climate change on air quality. Therefore, no proportionate mitigation for climate change can be applied to the proposed development to ameliorate the undefined risk of future impacts. As such, the effectiveness of impacts of climate change on proposed mitigation measures cannot be determined either. In addition, the air quality assessment does not include ozone as a pollutant considered – the pollutants included are construction dust, nitrous oxide and ammonia in accordance with Design Manual for Roads and Bridges LA 105: Air Quality.
- 3.14.20. The applicant also noted [REP1-009] that neither construction traffic nor temporary traffic management would have significant effects.

CONCLUSIONS ON CUMULATIVE EFFECTS

- 3.14.21. The ExA considers the applicant's assessment of combined and cumulative effects to be satisfactory.
- 3.14.22. A number of developments could result in significant cumulative effects from the possible but unlikely overlap of unavoidable construction activities. There could also

be temporary operational-phase effects which, in respect of landscape receptors, would reduce to 'not significant' by Year 15.

- 3.14.23. No parties disagreed with the applicant's conclusions that no additional mitigation would be needed beyond that which is already included in the EMP.
- 3.14.24. The ExA is satisfied that no additional mitigation is needed to address potential combined and cumulative effects and considers that this should be a neutral consideration in the overall balance.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

- 4.1.1. This chapter sets out the Examining Authority's (ExA) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Transport (SoST), as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
- 4.1.2. This chapter is structured as follows:
- Section 2: Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites
 - Section 3: Conservation Objectives for sites and features
 - Section 4: Findings in relation to Adverse Effects on Integrity
 - Section 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 described in chapter 2 and appendix A of this report.
- 4.1.6. The ExA has been mindful throughout the examination of the need to ensure that the SoST has such information as may reasonably be required to carry out their duties as the competent authority. We have sought evidence from the applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and at Issue Specific Hearings (ISH).

RIES and Consultation

- 4.1.7. The ExA produced a Report on the Implications for European Sites (RIES) [\[PD-010\]](#) which compiled, documented, and signposted HRA-relevant information provided in the Development Consent Order (DCO) application and examination representations up to DL4 (13 December 2024). The RIES was issued during examination 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 2025 and 4 February 2025. Comments were received from the applicant [\[REP5-061\]](#), NE [\[REP5-066\]](#) and the Environment Agency (EA) [\[REP5-065\]](#). These comments have been taken into account in the drafting of this chapter.

- 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 SoST to fulfil their duties of consultation under regulation 63(3) of the Habitats Regulations should the SoST wish to do so.

Proposed Development Description and HRA Implications

- 4.1.9. The proposed development is described in chapter 1 of this report.
- 4.1.10. The proposed development is not directly connected with, or necessary to, the management of a European site [\[REP5-075\]](#). Therefore, for any European site for which a likely significant effect (LSE) is identified the SoS must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their conservation objectives.
- 4.1.11. The applicant submitted a version of the HRA (HRA Report) with the DCO application [\[APP-185\]](#). The HRA Report was updated at DL3 (DL3 HRA Report) [\[REP3-024\]](#) in response to matters raised by NE and the EA. It included a technical note outlining the fish escape passage options considered and justification for the option selected (contained in appendix G of the DL3 HRA Report).
- 4.1.12. Another updated HRA Report was provided at DL5 [\[REP5-075\]](#) following further consultation with NE and publication of the RIES [\[PD-010\]](#). The amendments made to the HRA Report at DL5 included clarifying the spatial extent and screening criteria used for the in-combination assessment and updating relevant tables to outline the distance of the NSIPs included in the in-combination assessment from the proposed development. These amendments to the HRA Report are considered non-material. All references in this Report to the HRA Report are to this version unless stated otherwise.
- 4.1.13. Section 3.6 of the HRA Report [\[REP5-075\]](#) describes the consultation that has been undertaken to inform the HRA. The scope and extent of the HRA was determined by ongoing engagement with consultees, including NE and the EA, in addition to other considerations.
- 4.1.14. The applicant did not identify any LSEs on non-UK European sites in European Economic Area (EEA) States in its HRA Report [\[REP5-075\]](#) or within its ES. Only UK European sites are addressed in our recommendation Report, therefore.
- 4.1.15. The HRA Report [\[REP5-075\]](#) identified two European sites within the UK National Site Network for inclusion within the assessment:
- Humber Estuary SAC; and
 - Humber Estuary Ramsar
- 4.1.16. These are listed in section 4.1 of the HRA Report [\[REP5-075\]](#). The spatial relationship between the Order limits of the proposed development and European sites is shown on a figure within appendix C of the HRA Report. No additional UK European sites were identified by IPs during the examination for inclusion within the assessment.

Summary of HRA Matters Considered During the Examination

- 4.1.17. The main HRA matters raised by the ExA, NE and other IPs, and discussed during the examination include:

- The applicant's approach to the assessment of in-combination effects at the screening stage;
- The applicant's conclusions on in-combination effects at the screening stage;
- The adequacy of mitigation in relation to construction impacts on lamprey from light spill; and
- The adequacy of mitigation in relation to impacts on lamprey from entrapment/ isolation during flooding.

4.1.18. These matters are discussed in the RIES [\[PD-010\]](#) and the sections below.

4.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (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 and/ 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 LSEs are presented in section 4 of the HRA Report: [\[REP5-075\]](#).

- Humber Estuary SAC
 - sea lamprey (*Petromyzon marinus*)
 - river lamprey (*Lampetra fluviatilis*)
- Humber Estuary Ramsar
 - criterion 8 – river lamprey and sea lamprey

4.2.3. Section 3 of the HRA Report sets out the methodology applied to determining what would constitute a 'significant effect'.

4.2.4. Potential impacts during construction and operation are assessed in the HRA Report; it did not assess impacts during the decommissioning phase. Paragraph 3.2.6 of the HRA Report explains that it is highly unlikely that the proposed development would be demolished after its design life as it will form an integral part of the local and strategic road networks and therefore effects associated with decommissioning were scoped out of the assessment.

4.2.5. No additional European sites, impact pathways or qualifying features were identified by NE or other IPs for inclusion within the assessment.

LSE from the Proposed Development Alone

4.2.6. The applicant identified potential impacts of the proposed development considered to have the potential to result in LSE alone in section 4 of the HRA Report [\[REP5-075\]](#). The impact pathways relevant to each of the European sites' features are set out in Table 8: European sites, qualifying features and impact pathways for LSE assessed by the applicant of this report and are reflected in the screening matrices at appendix A of the HRA Report [\[REP5-075\]](#).

4.2.7. The impacts considered by the applicant to have the potential to result in LSE alone are:

- Habitat or species fragmentation associated with the temporary and localised fragmentation of migratory habitat (the River Trent) during construction;

- Habitat or species fragmentation due to the entrapment/ isolation of individual lamprey (within Farndon East Flood Compensation Area (FCA) and Farndon West FCA) during operation; and
- Reduction in species density through the loss of lamprey individuals from entrapment/ isolation during operation.

4.2.8. NE confirmed [\[RR-044\]](#) that it agreed with the conclusion of no LSE regarding reduction in habitat area, changes to key elements of the site, and fragmentation, disruption and disturbance of the Humber Estuary SAC or the Ramsar site during construction and operation of the proposed development. No further information was sought in regard to the conclusions of these impact pathways [\[RR-044\]](#) [\[REP2-045\]](#).

LSE from the Proposed Development In-Combination

4.2.9. The applicant addressed potential in-combination effects arising from the proposed development within section 4.3 of the HRA Report. The methodology applied to the in-combination assessment is set out in section 3.4.

4.2.10. The other plans and projects included in the in-combination assessment are outlined in table 4-2 of the HRA Report and their locations are illustrated on figures 15.2 to 15.9 of the ES [\[AS-078 AS-079 AS-080 AS-081 AS-082 AS-083 AS-084 AS-085\]](#). In their RR, NE [\[RR-044\]](#) requested that the applicant clarify whether non-NSIPs were included in the in-combination assessment. The applicant confirmed that non-NSIPs were included in the in-combination assessment [\[REP1-009\]](#), and the HRA Report was updated to clarify this point.

4.2.11. At DL3, the HRA Report [\[REP3-024\]](#) was updated to include additional non-NSIPs in the in-combination assessment.

4.2.12. In-combination LSE have been identified for qualifying features of both of the European sites considered in the HRA screening. The impacts considered to have potential to result in LSE in-combination are identified in paragraph 4.2.7 above.

4.2.13. NE [\[REP5-066\]](#) confirmed that it was satisfied with the scope of the in-combination assessment in the updated HRA Report [\[REP3-024\]](#).

LSE Assessment Outcomes

4.2.14. A number of matters were raised in the examination and where the ExA sought clarity in relation to the applicant's assessment of LSE. These are reported in table 2.3 of the RIES [\[PD-010\]](#) and summarised below.

4.2.15. NE requested [\[RR-044\]](#) that further details on temporary drainage and silt management techniques be provided to enable the assessment of the likely impact of construction works on the European sites. In response, the applicant [\[REP1-009\]](#) clarified that measures to protect the water environment during construction are outlined in the First Iteration Environmental Management Plan (EMP) [\[REP6-012\]](#) and would be detailed in relevant plans as part of the Second Iteration EMP. NE [\[REP2-045\]](#) agreed that with the implementation of these plans it is likely that an impact upon the European sites would be avoided.

4.2.16. ExQ2 QR2 from the RIES [\[PD-010\]](#) sought to confirm that the measures to protect the water environment are not necessary to avoid or reduce adverse significant effects of the proposed development on the European sites. NE [\[REP5-066\]](#) was content that the measures proposed by the applicant are not necessary to avoid or

reduce adverse significant effects and potential construction impacts on the water environment are not required to be considered in the applicant's assessment of effects on integrity.

- 4.2.17. NE (NE2 [\[RR-044\]](#)) queried an apparent error in the HRA Report [\[APP-185\]](#) referring to "*the loss of lamprey individuals*". The applicant confirmed [\[REP1-009\]](#) that the loss of lamprey individuals is not an additional pathway and has been considered in stage 1 of the HRA.
- 4.2.18. NE (NE2 [\[RR-044\]](#)) noted that electro-fishing was proposed in the First Iteration EMP [\[REP6-012\]](#) to mitigate potential direct impacts on fish during sheet piling at Windmill Viaduct and works to Slough Dyke. NE advised that any possibility of direct harm or loss of lamprey individuals should be clearly set out in the HRA Report. The applicant explained [\[REP1-009\]](#) that proposed electro-fishing is mitigation for other non-designated fish species with potential to be adversely impacted by piling and the impact of sheet piling on lamprey at Windmill Viaduct was scoped out at stage 1 of the HRA and considered not likely to lead to LSE. In addition, the applicant [\[REP1-009\]](#) explained that Slough Dyke is considered unsuitable for river and sea lamprey and any works are unlikely to impact qualifying features of the European sites.
- 4.2.19. NE (NE3 [\[RR-044\]](#)) requested that further explanation be provided to rule out potential adverse impacts on resting and larval lamprey due to daytime piling works. The applicant confirmed [\[REP1-009\]](#) that a worst-case scenario was assessed in the HRA Report [\[APP-185\]](#) and provided additional information to explain how lamprey physiology and habitat features used by each life stage of lamprey led to the conclusion of a 'de-minimis' level impact. The HRA Report was updated at DL3 [\[REP3-024\]](#) to include this further justification. The agreed Statement of Common Ground (SoCG) [\[REP7-094\]](#) between the applicant and NE, indicated that NE had no material concerns with the information provided in the DL3 HRA Report.
- 4.2.20. NE (NE4 [\[RR-044\]](#)) queried why the potential effects on migrating lamprey from operational light spill were not assessed in the HRA. The applicant explained [\[REP1-009\]](#) that the proposed development would not introduce any new lighting in closer proximity to the River Trent than is currently present and an assessment of operational lighting effects was not required in the HRA Report.
- 4.2.21. In response to a query raised by NE (NE5 [\[RR-044\]](#)), the applicant confirmed [\[REP1-009\]](#) that both NSIPs and non-NSIPs within 2km of the River Trent had been included in the in-combination assessment, as well as those within 2km of the Humber Estuary SAC and Ramsar site.
- 4.2.22. NE (NE6) advised [\[RR-044\]](#) that the in-combination assessment lacks sufficient detail to rule out the possibility of significant in-combination effects. The applicant acknowledged [\[REP1-009\]](#) that further clarity was required regarding the in-combination assessment and how the conclusions had been reached. Additional information was provided by the applicant in the DL3 HRA [\[REP3-024\]](#). The SoCG [\[REP7-094\]](#) between the applicant and NE, set out that NE agree with the information provided in the HRA Report at DL3 [\[REP3-024\]](#).
- 4.2.23. The SoCG submitted at DL4 [\[REP4-024\]](#) stated that NE had no material concerns with the information provided in the HRA Report [\[REP3-024\]](#). However, NE requested that the applicant provide a number of non-material updates to the HRA Report. In response to ExQ2 QR3, the applicant added signposting to where the non-material updates have been provided in the updated HRA Report [\[REP5-075\]](#).

- 4.2.24. The sites and features identified in Table 8: European sites, qualifying features and impact pathways for LSE assessed by the applicant below were assessed by the applicant to determine whether 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 their conservation objectives.
- 4.2.25. 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.
- 4.2.26. Taking into account the reasoning set out above, the ExA considers that the proposed development is likely to have a significant effect from the impacts identified in Table 8: European sites, qualifying features and impact pathways for LSE assessed by the applicant on the qualifying features of the European sites identified in table 8 when considered alone, or in combination with other plans or projects. This was not disputed by IPs/ NE during the examination.

Table 8: European sites, qualifying features and impact pathways for LSE assessed by the applicant

European site(s)	Qualifying Feature(s)	LSE pathways
Humber Estuary SAC	Sea lamprey River lamprey	Reduction of habitat area Disturbance to key species Habitat or species fragmentation
Humber Estuary Ramsar	Criterion 8 – river lamprey and sea lamprey	Reduction in species density Changes in key indicators of conservation value (eg water quality) Climate change

4.3. CONSERVATION OBJECTIVES

- 4.3.1. The conservation objectives for the sites and features identified above are set out in table 4.1 of the applicant's HRA Report [\[REP5-075\]](#).
- 4.3.2. No relevant conservation objectives are provided for the Humber Estuary Ramsar site in the HRA Report [\[REP5-075\]](#). However, the conservation objectives for the Humber Estuary SAC and Humber Estuary SPA are provided to support the conservation management of the Humber Estuary Ramsar site.
- 4.3.3. No queries or comments were raised by IPs on the conservation objectives provided in the HRA Report [\[REP5-075\]](#) during the examination.

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

- 4.4.1. The European sites and qualifying features identified in paragraph 4.2.2 and Table 8: European sites, qualifying features and impact pathways for LSE assessed by the applicant above 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 AEol was made in light of the conservation objectives for the European sites.

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 AEol for each site.

4.4.3. The applicant's in-combination assessment is set out in section 5.5 of the HRA Report [\[REP5-075\]](#). Based on the findings of the examination, the ExA is satisfied that an assessment of AEol 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.

Sites for which the applicant concluded AEol can be excluded

4.4.4. The applicant's HRA Report [\[REP5-075\]](#) concluded that the proposed development will not result in AEol on the Humber Estuary SAC and Ramsar. Section 5 of the HRA Report [\[REP5-075\]](#) provides an assessment to address the potential for AEol resulting from the impact pathways identified in Table 8: European sites, qualifying features and impact pathways for LSE assessed by the applicant above.

4.4.5. A number of the applicant's conclusions of no AEol in relation to these European sites and their qualifying features were questioned by NE, and in ExQs, and were discussed throughout the examination. They are reviewed below.

Humber Estuary SAC and Ramsar

4.4.6. The applicant's HRA Report provided an assessment which addressed the potential for AEol resulting from:

- Entrapment/ isolation (loss) of lamprey individuals within Farndon East FCA and Farndon West FCA during periods of flooding.
- Temporary disturbance of lamprey migratory routes along the river to spawning habitat upstream (as a result of artificial light spill during bridge beam installation).

Entrapment/ isolation of lamprey within the Farndon FCAs - AEol proposed development alone and in-combination

4.4.7. Sections 5.4 and 5.5 of the HRA Report [\[REP5-075\]](#) provide an assessment of the loss of lamprey individuals due to entrapment/ isolation within the Farndon East FCA and Farndon West FCA should a flood event occur during operation of the proposed development. Relevant mitigation measures are described in section 5.2.

4.4.8. The applicant's initial assessment [\[APP-185\]](#) determined that provided fish escape passages are put in place within the Farndon FCAs to provide a direct escape route for lamprey back to the River Trent, the risk of entrapment would be appropriately reduced and there would be no AEol.

Mitigation to prevent entrapment/ isolation of lamprey during flooding

4.4.9. The applicant [\[REP1-009\]](#) refined the design of the proposed fish escape passages and produced a technical note outlining the options that it had considered and

justification for the design option selected. The technical note was shared with NE and the EA on 15 October 2024 [REP2-045] and was included in appendix G of the DL3 HRA Report [REP3-024].

- 4.4.10. During refinement of the fish escape passage design, the applicant [REP1-009] [REP3-024] considered four alternative options to mitigate for the risk of fish entrapment within the Farndon FCAs. A preferred option was selected by the applicant [REP1-009] [REP3-024] and comprises the provision of two fish escape passages from the north of each FCA, as overspill channels, into Old Trent Dyke.
- 4.4.11. The EA [REP3-044] and NE [REP2-045] confirmed that they were consulted on the preferred fish passage option selected prior to the submission of the information into the examination at DL1 [REP1-009]. The applicant's response to comments received from the EA and NE were included in appendix H and I of the DL3 HRA Report [REP3-024], respectively.
- 4.4.12. In appendix I of the updated HRA Report [REP3-024], the applicant noted that the dimensions of the fish escape passage selected (0.5m width and 0.3m depth) were recommended by the EA as a minimum following consultation on criteria to incorporate into the design of the Farndon FCAs. However, the EA [REP3-044] [REP4-044] advised that the dimensions were recommended for use in fish passage channels direct to the River Trent over a short distance. The EA argued that the new fish escape passage design (option 4 presented in appendix G of the updated HRA Report [REP3-024]) is over a much greater distance including long stretches of naturalised channel and the dimensions proposed are no longer appropriate. The EA advised [REP4-044] that the detailed design of the extended channel length presented in the technical note should be reassessed.
- 4.4.13. The SoCG [REP7-094] between NE and the applicant indicated that NE was content with the design, monitoring and maintenance of the proposed fish escape passages. However, it is noted that NE had not provided any further comments on this matter since DL2 [REP2-045].
- 4.4.14. ExQ2 QR7 in the RIES [PD-010] sought confirmation from the applicant on the dimensions of the proposed fish passage option considered in the assessment and requested that the EA and NE confirm their position regarding the design of the fish escape passages.
- 4.4.15. Following a meeting with the applicant on 23 January 2025, the EA [REP5-065] gained a better understanding of the fish escape mitigation and was satisfied that the proposed minimum dimensions for the fish escape passage are acceptable and considered this matter resolved.
- 4.4.16. NE [REP5-066] reviewed the EA's comments made at DL4 [REP4-044] and agreed that further detailed design and assessment regarding the fish escape passages was required in joint consultation with both the EA and NE. NE [REP5-066] requested that a commitment be made for the applicant to consult both the EA and NE on the detailed design of the fish escape passages.
- 4.4.17. The applicant provided further justification [REP5-061] for the design of the fish escape passage option selected and confirmed that both NE and the EA will be consultees on the Second Iteration EMP, including provision of future iterations of the number design and precise location of the fish escape passages. The Second Iteration EMP is secured via R3 of the rDCO at appendix C of this report.

- 4.4.18. In response to ExQ3 Q9.0.1 and Q9.0.2, NE confirmed [\[REP7-106\]](#) that it agreed in-principle with the current fish escape passage mitigation proposed and was content with the applicant's commitment to consult both NE and the EA on any future iterations of the fish escape passage design.
- 4.4.19. NE agreed [\[REP7-106\]](#) that with appropriately-designed mitigation, there would be no AEoI on the Humber Estuary SAC and Ramsar due to entrapment/ isolation of lamprey and that it had no further comments on this matter.

Maintenance of fish escape passages

- 4.4.20. The EA requested [\[REP3-044\]](#) that the applicant provide details regarding the maintenance of the Farndon FCAs fish escape passages. The applicant explained [\[REP4-019\]](#) that ongoing monitoring and maintenance of fish escape passages will form part of the Landscape and Environmental Management Plan (LEMP). The applicant referred to specific commitments proposed within the First Iteration EMP to ensure the ongoing maintenance of the FCAs for the lifetime of the proposed development and how these are secured in the draft DCO. However, the applicant noted that the maintenance details would be confirmed at the next stage of design.
- 4.4.21. In response to ExQ2 QR8 in the RIES [\[PD-010\]](#), the EA [\[REP5-065\]](#) confirmed that it was satisfied with the proposed maintenance measures and considered this matter resolved.

Conclusion

- 4.4.22. ***Conclusion***
- 4.4.23. On the basis of the above information, the ExA is satisfied that this LSE pathway will not result in AEoI to the European sites from the proposed development alone or in-combination.

Temporary disturbance of lamprey migratory routes (as a result of artificial light spill)– AEoI proposed development alone and in-combination

- 4.4.24. The assessment of temporary severance of lamprey migratory routes along the River Trent from artificial light spill during construction is provided in sections 5.4 and 5.5 on the HRA Report [\[REP5-075\]](#). Relevant mitigation measures are described in section 5.3.
- 4.4.25. The applicant concluded [\[REP5-075\]](#) that with the implementation of additional mitigation measures to minimise light spill onto retained habitats, such as the creation of an artificial light spill barrier, there would be no AEoI.

Prevention of light spill impact on migrating lamprey – mitigation hierarchy

- 4.4.26. NE (NE7 [\[RR-044\]](#)) advised that to prevent light spill impacts on migrating lamprey, the applicant should follow the mitigation hierarchy and explore whether the bridge beam installation works could be programmed to avoid lamprey migration season and/ or night-time works.
- 4.4.27. The applicant updated the HRA Report [\[REP3-024\]](#) to provide further clarification that the mitigation hierarchy has been applied and noted that bridge beam installation works would seek to avoid the lamprey migration season.
- 4.4.28. NE confirmed [\[REP5-066\]](#) that it was content that the requested updates had been made, and that its previous concerns have been addressed.

Prevention of light spill impact on migrating lamprey – commitment to mitigation

- 4.4.29. If programming bridge beam installation works to avoid the lamprey migration season is not possible, NE (NE7 [\[RR-044\]](#)) requested that the applicant provide a construction lighting strategy that contains further details of light spill mitigation measures and promotes a stronger commitment to their implementation.
- 4.4.30. The applicant updated the Register of Environmental Actions and Commitments (REAC) in the First Iteration EMP [\[REP6-012\]](#) to include the wording suggested by NE [\[REP2-045\]](#) to support a stronger commitment to light spill mitigation.
- 4.4.31. NE confirmed [\[REP5-066\]](#) that its concerns had been addressed and agreed with the applicant's conclusion of no AEol.
- 4.4.32. **Conclusion**
- 4.4.33. The ExA is satisfied that this LSE pathway will not result in AEol to the European sites from the proposed development in-combination with other plans and projects.

AEol Assessment Outcomes- Summary

Proposed development alone and in-combination

- 4.4.34. The applicant's HRA Report concluded that AEol can be excluded on the European sites listed in paragraph 4.1.15 from the proposed development alone, or in-combination with other plans and projects. Some of the conclusions in the applicant's HRA Report were subject to examination through ExQs and submissions from NE and the EA.
- 4.4.35. These conclusions were agreed with NE [\[REP7-094\]](#) as the ANCB. Based on the findings of the examination, the ExA is satisfied that AEol on all qualifying features of European sites can be excluded from the proposed development alone and in combination with other plans and projects.

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 SoS.
- 4.5.2. Two European sites and their qualifying features were considered in the applicant's assessment of LSE:
- Humber Estuary SAC; and
 - Humber Estuary Ramsar.
- 4.5.3. LSE were identified for both of these sites from the proposed development alone and in-combination with other plans or projects.
- 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, the sites and features for which LSE were identified were not disputed by any IP. The ExA is satisfied that the correct European sites and qualifying features have been identified for the

purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

- 4.5.5. The ExA's findings are that, subject to the mitigation measures secured in the rDCO, AEoI on the European sites listed above from the proposed development when considered alone or in-combination with other plans or projects can be excluded.
- 4.5.6. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. This Chapter sets out the Examining Authority's (ExA) reasoning and conclusions on the case for development consent for the proposed development. It brings together the proposed development described in Chapter 1, the legal and policy context set out in Chapter 2, and the matters, issues and findings determined in relation to the need for the development and planning issues explored in Chapter 3. Whilst the Habitats Regulations Assessment (HRA) has been considered separately in Chapter 4, relevant matters are taken fully into account.

5.1.2. Examination Library (EL) references are not included in this summary, but the full references are available from the corresponding sections of Chapters 1 to 4.

5.2. MATTERS TO BE TAKEN INTO ACCOUNT

5.2.1. The statutory framework for deciding Nationally Significant Infrastructure Project (NSIP) applications where there is a relevant designated National Policy Statement (NPS) is set out in section (s) 104 of the Planning Act 2008 (PA2008). In deciding the application, the Secretary of State (SoS) must have regard to:

- whether the development is in accordance with any NPS which has effect in relation to development of the description to which the application relates (a relevant NPS);
- the appropriate marine documents (if any) determined in accordance with s59 of the Marine and Coastal Access Act 2009;
- any Local Impact Report (LIR) (within the meaning given by s60(3) of the PA2008) submitted to the SoS before the deadline specified in a notice under s60(2);
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the SoS's decision.

5.2.2. The SoS must decide the application in accordance with any relevant NPS except to the extent that one or more of subsections (4) to (8) of s104 applies. S104(7) requires the adverse impacts of the proposed development to be weighed against any benefits.

5.2.3. Given the proposed development is an NSIP for highway infrastructure, the designated National Policy Statement for National Networks (NPSNN) provides the primary basis for making decisions on development consent applications for national networks NSIPs in England by the Secretary of State for Transport (SoST).

5.2.4. The Application was accepted for examination on 23 May 2024 before NPSNN 2024 was designated (24 May 2024) and, as such, NPSNN 2015 is the NPS in effect for the purposes of s104. However, the ExA considers NPSNN 2024 to be an important and relevant matter. Whilst there have been legal challenges to NPSNN 2024 these are now resolved and the approach to downstream emissions is settled and can be used in drawing conclusions in this respect.

5.2.5. Section 4 of NPSNN 2015 addresses assessment principles. Paragraph 4.2 states: *"Subject to the detailed policies and protections in this NPS, and the legal*

constraints set out in the Planning Act, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in this NPS”.

- 5.2.6. In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, paragraph 4.3 of NPSNN 2015 expects the following to be taken 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; and

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.”

- 5.2.7. NPSNN 2024 also sets out a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established in the NPS and which comply with the policies in it.

- 5.2.8. The ExA’s findings and conclusions in respect of the need for the proposed development and generic planning issues are set out in chapter 3 and chapter 4 considers effects on European Sites and Habitats Regulations Assessment (HRA). This chapter of the report summarises the ExA’s conclusions in relation to the need for the development set out in Section 3.2 of chapter 3, and the benefits and adverse impacts identified under the different topic headings in chapter 3. We shall also have regard to any HRA matter identified in chapter 4. We shall weigh the adverse impacts against the benefits, taking account of all important and relevant matters, in the light of the relevant legislative and policy background set out in chapter 2, before reaching a conclusion on the case for development consent.

- 5.2.9. Our conclusions follow from our consideration of all evidence presented to the examination, including the application documents, the Environmental Statement (ES), the HRA, the LIRs, Statements of Common Ground (SoCG), Relevant and Written Representations, oral submissions at the hearings, answers to the ExA’s questions, responses to requests for information and our Site Inspections and including all matters which we consider are both important and relevant to the SoST’s decision, including, but not limited to, NPSNN 2024, development plan policies, the National Planning Policy Framework, the government’s Net Zero Strategy (NZS) and the Transport Decarbonisation Plan (TDP).

5.3. SUMMARY OF MAIN PLANNING ISSUES

Principle of the development including need and alternatives

- 5.3.1. The A46 plays a critical role within the Strategic Road Network (SRN), connecting major manufacturing clusters and key ports and forming part of the strategic Trans-Midlands Trade Corridor between the M5 in the south-west and the Humber Ports in the north-east. The stretch of A46 between the Farndon Junction, to the west of Newark-on-Trent and the A1 to the east of Newark-on-Trent, is the last remaining stretch of single carriageway between the M1 and A1 and it has been demonstrated that this results in queuing traffic as a regular occurrence, often impacting journey time reliability.
- 5.3.2. The *“widening of the A46 north of Newark-on-Trent to dual carriageway, raising the last section of the A46 between the A1 and M1 to Expressway standard.*

Improvement of the A46/A1 junction to allow for better traffic movement to Newark and Lincoln” was announced in Road Investment Strategy 1 2015/16-2019/20 (RIS 1) as a scheme to be developed in the next “Road Period”. The government published RIS 2 in March 2020 covering the period 2020-2025. RIS 2 outlined the long-term strategic vision for the SRN, and again reaffirmed the government’s commitment to improvements at the A46 in Newark. The proposed development is a committed scheme in RIS2.

- 5.3.3. The aims of the government’s investment priorities are to improve safety and journey times, to accommodate economic growth, and to deliver better environmental outcomes. The applicant has identified the objectives of the proposed development as:
- Improving safety through scheme design to reduce collisions for all users.
 - Improving journey time and journey time reliability along the A46 and its junctions between Farndon and Winthorpe, including all approaches and A1 slip roads.
 - Accommodating economic growth in Newark-on-Trent and the wider area by improving its strategic and local connectivity.
 - Delivering better environmental outcomes by achieving a net gain in biodiversity and improve noise levels at Noise Important Areas along the A46 between Farndon and Winthorpe junctions.
 - Building an inclusive scheme which improves facilities for cyclists, walkers and other vulnerable users where existing routes are affected.
- 5.3.4. We have concluded in Section 12 of Chapter 3 of this Report, relating to transportation, that the proposed development would meet its traffic and transport objectives. This would represent a substantial benefit for all users of the highway and communities in close proximity to the proposed development.
- 5.3.5. All local authorities who made representations to the examination expressed support for the proposed development. The local highways authority said that it is strongly supportive and the lower-tier host authority – Newark and Sherwood District Council (NSDC) – said that the proposed development is pivotal to the delivery of its local development framework and the allocations therein.
- 5.3.6. The proposed development would conform with the government’s vision and strategic objectives set out in the NPSNN 2015, and reiterated in NPSNN 2024, to deliver national networks that meet the country’s long-term needs, supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. It would meet the critical need to improve the national networks to address road congestion.
- 5.3.7. We are satisfied that the applicant has explored all reasonable alternatives whilst still maintaining consistency with the aims of RIS 2 and legislative requirements. We agree with the applicant that alternative modes of transport as opposed to the proposed development would not meet the demands of the SRN and aims of RIS 2. The proposed development results in the least amount of land take, achieves positive environmental outcomes and meets the ambitions of RIS 2. We are therefore satisfied that there are no alternatives that it would meet the aims of the proposed development whilst achieving more positive outcomes overall when considered against the assessment criteria.
- 5.3.8. Accordingly, we attach very great weight to the contribution the proposed development would make towards the need set out in the NPSNN 2015, and

restated in NPSNN 2024, to deliver national networks that meet the country's long-term needs as part of a wider transport system. We further conclude that the proposed development therefore benefits from the presumption in favour of development set out in the NPSNN 2015.

Air Quality

- 5.3.9. We have concluded that the applicant's assessment of air quality is satisfactory and, in accordance with paragraph 5.10 of the NPSNN, the application has adequately considered air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the proposed development.
- 5.3.10. We conclude that the proposed development would not result in any significant effects or in the exceedance of any air quality objectives (whether for NO₂, PM₁₀ or PM_{2.5}) during the construction or operational phases. It would not affect the UK's ability to comply with The Air Quality Standards Regulations 2010. The applicant has proposed satisfactory mitigation measures to address the risk of dust during the construction phase, these measures are set out in the First Iteration EMP which would be developed into a Second Iteration EMP and this is secured by R3 of the recommended Development Consent Order (rDCO).
- 5.3.11. Whilst we note that there would be some small (but not significant) increases in pollutant concentrations at some sensitive receptors, there would be decreases at other locations, particularly in the Newark town centre as a result of traffic which currently diverts through Newark town centre to avoid congestion remaining on the A46. We have balanced this benefit against the increases in pollutant concentrations elsewhere and concluded that a little positive weight should be given to air quality considerations in the overall balance.

Biodiversity

- 5.3.12. NSDC agreed with the applicant that the newly-exposed habitats resulting from the loss of existing vegetation would not be adversely impacted by vehicular emissions and resultant nitrogen deposition and the ExA has no evidence to conclude otherwise.
- 5.3.13. No adverse comments have been received regarding the baseline survey information for species. A rookery would be lost at the Farndon Roundabout, but pre-commencement walkover surveys would take place ensuring safety of birds. The applicant proposes compensatory barn owl, kestrel and bat boxes. Those within the Order limits are secured by REAC B8 of the First Iteration EMP and the Environmental Masterplan. R21 and R22 of the rDCO would ensure the provision of off-site bat and barn owl boxes.
- 5.3.14. Whilst Local Wildlife Site (LWS) grassland sites would be significantly affected, there would be an overall increase in biodiversity units across the Order limits which, despite the loss of the Habitat of Principal Importance (HPI), would result in a long-term benefit of a larger area of habitat. There is no objection to the loss of the LWS grasslands from NSDC. The ExA considers that the proposed development would have a moderate positive effect on biodiversity in the long term. The creation of habitat in the Farndon East and West flood compensation areas (FCAs) from agricultural land, the planting of hedgerows and the woodland improvement at Doddington Hall adequately compensates for the short-term adverse impact during the construction and initial aftercare periods as given. This equates to a biodiversity net gain (BNG) of 4.95 units in habitats, 8.17 units in hedgerows and 33.28 units in river habitat. Whilst the applicant has demonstrated, and the ExA accepts, that

BNG cannot technically be achieved overall due to the loss of HPI, there is no objection from Natural England (NE) to the applicant's approach which demonstrates a quantitative gain in habitats. This is consistent with the approach detailed in the NPPF.

- 5.3.15. The ExA considers that the applicant's assessment is consistent with the requirements of NPSNN 2015. As confirmed by IPs, the submission demonstrably meets the mitigation hierarchy and achieves a net gain in biodiversity. NPSNN 2024 and NPPF are considered important and relevant by the ExA and the applicant's assessment also meets these through the provision of BNG and use of the mitigation hierarchy. This has not been disputed by Interested Parties (IPs). The host authorities, Natural England (NE) and the Environment Agency (EA) did not raise matters to contradict the applicant's assessment. Disturbance during the construction period would result in a general adverse effect given the likelihood for disturbance, but in the longer term there would be a moderate positive effect. Overall, therefore, the ExA concludes that in relation to biodiversity the proposed development attracts a little positive weight in the planning balance.

Climate and Carbon emissions

- 5.3.16. No evidence has been provided to demonstrate that the applicant's assessment, which has been prepared to be consistent with the principles in the *Finch* judgement, cannot be relied upon and we consider it to be satisfactory. We consider that the proposed development would not affect the ability of government to meet its carbon reduction plan targets. As such, we do not consider the increase in Greenhouse Gas (GHG) emissions as a result of the proposed development (which, at 683,200tCO₂e (net) over the relevant carbon budgets, would amount to less than 0.007% of the total emissions in any five-year UK carbon budget) to be a reason to refuse development consent.
- 5.3.17. We also conclude that the applicant has given due consideration to the impacts of climate change when planning the location, design, construction and operation of the proposed infrastructure and has taken or proposed reasonable steps to reduce the total carbon emissions at all stages of development so that the carbon footprint of the proposed development is not unnecessarily high. Future measures, including a carbon management plan and operational phase mitigation, would be satisfactorily controlled by the Second and Third Iteration EMPs, secured by the rDCO.
- 5.3.18. Whilst the proposed development would not affect the ability of government to meet its carbon reduction plan targets it would lead to a net increase in operational carbon emissions. Accordingly, the ExA attaches a little negative weight to these conclusions for the overall planning balance.

Geology and Soils

- 5.3.19. We consider the applicant's assessment of the geology and soil-related effects of the proposed development to be satisfactory and that it has fully addressed the possible effects on geology and soils associated with the construction and operation of the proposed development.
- 5.3.20. We conclude that the proposed development would not result in any significant effects on designated sites of geological conservation. Similarly, there would be no significant effects in relation to contamination (including from ground gases) and the rDCO provides for satisfactory mitigation measures comprising avoidance of known contamination and procedures to be followed in the event that previously-identified contamination is encountered.

- 5.3.21. In relation to Best and Most Versatile (BMV) agricultural land, there would be significant effects resulting from the temporary loss of Agricultural Land Classification (ALC) grade 2 land (5.7ha; Moderate Adverse), the permanent loss of ALC grade 3a land (15.6ha; Moderate Adverse), and the permanent loss of ALC grade 3b land (59.7ha; Large Adverse).
- 5.3.22. Mitigation measures in the Outline Soils Management Plan (OSMP) include design to minimise the area of land lost and to minimise loss of soil function. Soil that is not being used for reinstatement would be re-used in the proposed development (e.g. for landscaping), preventing valuable soil resources from being sent to landfill. This approach is consistent with NPSNN 2015 and NPSNN 2024.
- 5.3.23. Given that the proposed development is a linear scheme which involves additions to existing linear infrastructure predominantly along the route of that existing infrastructure, and also noting that neither of the host authorities raised any 'in principle' concerns on this point, we do not consider it necessary for the applicant to have pursued an alternative route which might have resulted in the loss of less BMV agricultural land in order to satisfy development plan policy. Whilst we recognise the economic and other benefits of BMV agricultural land, we consider that the applicant has sought to minimise the loss, has proposed a comprehensive suite of mitigation measures and that, overall, the impacts have been minimised. Nevertheless, we consider that the loss of BMV agricultural land should be given a little negative weight in the overall planning balance.

Cultural Heritage

Designated Assets

- 5.3.24. For each of the designated assets assessed by the applicant, the ExA is satisfied that the harm would be less than substantial, albeit some would be at the upper end of this scale.
- 5.3.25. Great harm would occur at Smeaton's Arches, specifically the 1922 re-built section north of Cattle Market Roundabout that will need to be demolished to make way for the enlarged roundabout. Harm to Grade II listed structures should be exceptional. In this instance it is necessary to accommodate the enlarged Cattle Market roundabout which in turn is an essential part of the design of the proposed development to provide for the necessary increase in traffic capacity and the grade separated flyover. The design requirements of DMRB have informed the size and capacity of the junction. NSDC has commented that it considers this to be less than substantial harm as it is the 1922 rebuilt section of Smeaton's Arches that would be lost. The ExA agrees with this assessment and attributes great weight to this harm.
- 5.3.26. Views of the proposed development may impact on the Church of All Saints in Winthorpe and the northern section of Smeaton's Arches. However, given the existing baseline of an already engineered corridor and mature vegetation, the ExA considers that there are no cumulative concerns with respect to each asset and their intervisibility.
- 5.3.27. The host authorities assert that intervisibility between Kelham Hall, the designated Civil War assets, Newark Castle, Church of St Mary Magdalene and the All Saints' Church has not been clearly assessed. It can be understood by the ExA that Newark Castle and the Civil War features have a clear relationship, but it was accepted by NSDC that there is no cultural relationship between the Church of St Mary Magdalene and Newark Castle. However, the host authorities continue to assert that the intervisibility is an issue unresolved by the applicant but they do not

provide any specific detail as to the cultural significance of any link between these assets. There is no evidence before the ExA that would suggest a cultural link between the designated Civil War assets, Newark Castle, the Church of St Mary Magdalene and the All Saints' Church. The ExA is satisfied that there would be a neutral impact on the cultural link between these assets.

- 5.3.28. In relation to the Winthorpe CA, we are content that the proposed development would not directly affect the key attributes and overall character. However, the effective enclosure of the Open Break will provide a slight adverse effect on the rural character, but this is not anticipated to undermine the qualifying interests of the CA.
- 5.3.29. Newark Conservation Area (CA) itself would suffer minimal impact resulting from the proposed development by virtue of retained vegetation, distance and the existing baseline. Therefore, the Newark CA would suffer a neutral impact.

Non-Designated Assets

- 5.3.30. NCC considers that there would be less than substantial harm to non-designated assets as a result of the enlarged Cattle Market junction. The ExA agrees with this conclusion and attributes minor negative weight to this harm.
- 5.3.31. Great weight should be given to any heritage asset's conservation, with the more important the asset the greater the weight, having regard to the matters identified in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and in accordance with paragraph 5.131 of the NPSNN 2015. A similar policy position is set out in the NPPF. The ExA has therefore attributed great weight and importance to any harm to a heritage asset in the overall balance.

Archaeology

- 5.3.32. Archaeological assets have been identified as non-designated assets and we have considered them as such. NPSNN 2015 advises that non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to Scheduled Monuments, should be considered subject to the policies for designated heritage. We have not identified any such assets in this case and have considered Scheduled Monuments in their own right.
- 5.3.33. The applicant has demonstrated consistency with the mitigation hierarchy and avoided, where possible, assets of archaeological value, for example moving a construction compound into the middle of Farndon Roundabout to avoid potential assets. Where avoidance has not been possible due to the constraints of the development corridor and physical features the applicant has developed an Archaeological Management Plan (AMP). This document has been agreed with IPs including Historic England (HE) and Nottinghamshire County Council (NCC). R9 of the rDCO secures additional trial trenching as per appendix G of the AMP and further investigative works as necessary. The ExA considers that the applicant has undertaken avoidance where possible and the AMP would ensure those assets subject to disturbance would be properly recorded, which will enhance the understanding of the archaeological record. The ExA is satisfied with the applicant's approach but recognises there would be some minor harm as a result of unavoidable disturbance and we attribute great weight to this harm.

Civil War Landscape

- 5.3.34. The English Civil War landscape includes a mix of designated and non-designated assets. The applicant has completed a desk-based assessment supported by preliminary survey work as required by NPSNN 2015. The ExA considers that the harm on the designated assets of the Civil War landscape is less than substantial with the Scheduled Ancient Monument (SAM) redoubt at the Cattle Market Roundabout being impacted at the upper end of this harm by virtue of the introduction of the grade separated junction and the volumetric impact this represents. Non-designated assets have been recorded by the applicant and where avoidance has not been possible due to the road alignment within the identified development corridor recording would be achieved per the OAMP. This document has been agreed between IPs. The ExA considers that there would be harm to the Civil War landscape, principally as a result of the expanded Cattle Market junction, and attribute great weight to this harm, we further categorise the harm to the designated assets as being at the upper end of less than substantial harm.

Overarching heritage conclusion

- 5.3.35. The ExA is satisfied that the applicant has fully addressed the potential effects on the historic environment assets for the construction and operational phases of the proposed development and has demonstrated that effects associated with the proposed development can be satisfactorily mitigated and managed.
- 5.3.36. The NPSNN requires that the less than substantial harm to designated heritage assets we have identified should be weighed against the public benefit of the development. In this instance, we conclude that the benefits of the proposed development clearly outweigh the less than substantial harm to the designated heritage assets.
- 5.3.37. The NPSNN requires the harm to non-designated assets should be weighed in the balance, recognising that the greater the harm the greater the justification that will be needed. The ExA concludes that the harm to the non-designated assets arising from the proposed development would be outweighed by the benefits of the proposed development.
- 5.3.38. NSDC and NCC both detail their support for the proposal and the public benefits they expect it to bring.

Landscape and Visual effects

Landscape

- 5.3.39. During the construction period the works would result in great harm in Landscape Character Area (LCA) 1 – Trent Washlands where most of the proposal is situated, particularly due to the Cattle Market Roundabout. A little harm would occur during this time in adjacent LCAs, specifically LCA 2 – Winthorpe Village and Farmlands given the proximity to the existing A46. This harm would be to the south of Winthorpe village as a result of the proposed development providing a solid barrier to the Open Break limit. This harm would continue into Year 1 of operation.
- 5.3.40. By Year 15, the overall harm to both LCAs would have reduced to moderate. There would overall be a moderate adverse impact on the landscape and the ExA affords this moderate weight in the planning balance.
- 5.3.41. However, the Cattle Market Roundabout and grade separated junction is a large, engineered structure, the impact of which would not decrease over time regardless of whatever planting the applicant provides. Despite the adverse effect of the

remainder of the proposed development reducing by Year 15, this element would continue to cause great harm throughout the lifetime of the proposed development and the ExA accords this harm great weight in the overall balance.

Visual

5.3.42. Visual receptors would suffer great adverse harm during construction, despite the applicant's embedded mitigation measures. Great negative harm would be experienced by residents in the northern and eastern parts of Sandhills Park and of Lowwood at Winthorpe. The harm experienced by visual receptors in terms of amenity from Lowwood would reduce significantly by Year 15 of operation to a little harm. However, Sandhills Park would continue to experience great harm. The ExA considers this, in the context of the length of the linear project, to represent moderate harm and attaches moderate negative weight to this aspect of the proposed development.

5.3.43. Despite the efforts of the applicant to reduce the effect on receptors of the Cattle Market grade separated flyover, this will continue to result in great harm to residential properties on Sandhills Park and non-motorised users (NMUs). Although the existing outlook across Cattle Market Roundabout is of an already engineered landscape and urban edge, the harm for this element is afforded great negative weight.

Design

5.3.44. In terms of good design, the applicant has demonstrated an approach consistent with the requirements of NPSNN 2015. It has provided for significant amounts of planting and re-used soils through planting bunds which are embedded into the design. The ExA considers the entire design, apart from the Cattle Market Roundabout, results in minor harm, and due to the number of receptors that would experience this harm, this is afforded moderate weight.

5.3.45. The grade separated Cattle Market Roundabout is a negative aspect of the design but is necessary to ensure the proposed development performs effectively and the safety requirements of DMRB. The applicant has demonstrated that alternatives are not viable and the ExA have accepted this. The applicant has agreed to break up the mass of the grade separated structure through the use of red brick banding. The ExA is content that the design meets the requirements of NPSNN 2015, and of NPSNN 2024 and NPPF which are important and relevant.

Overall Balance

5.3.46. The ExA concludes that the applicant has demonstrated that it has complied with the landscape, visual and design requirements of NPSNN 2015. It has provided details of alternatives that have been considered and how the proposed development has evolved through assessment of various sustainability factors. There is no disguising the harm that the grade separated Cattle Market Roundabout causes to LCA 1, visual receptors and in design terms. However, this is a single, and necessary, element along the 6.5km length of the proposed development. Overall, the ExA considers that there would be a moderate degree of harm during construction and up to Year 15 of operation. Thereafter, the harm would reduce to a little. In this regard, the ExA attributes moderate negative weight.

5.3.47. With respect to the area around the Cattle Market Roundabout, there is expected to be great harm which would not significantly reduce over time and therefore the ExA attributes great negative weight to this aspect of the proposed development.

Material assets and Waste

- 5.3.48. We consider the applicant's assessment of the waste and material assets effects of the proposed development to be satisfactory and consistent with relevant policy in NPSNN 2015. We also consider that the proposed development is consistent with NPSNN 2024, the NPPF and the local development plan, all of which we consider to be important and relevant.
- 5.3.49. Whilst the proposed development is located in a minerals safeguarding area, NCC confirmed that the proposed development complies with relevant local policy. As well as the applicant having satisfactorily detailed the need for development in this location, NCC said that it had also demonstrated that there was an over-riding need, such that prior extraction would not be necessary. We have no evidence to undermine these conclusions.
- 5.3.50. We agree with NCC that the contents of the Outline Materials Management Plan (OMMP) are appropriate for this stage of the DCO process. Details would be further developed following DCO approval and detailed design and the final Materials Management Plan, secured through the rDCO, would need to be submitted to CL:AIRE, administrator of the Definition of Waste: Code of Practice.
- 5.3.51. We accept that the proposed development would not cause the loss of waste management capacity, or that it would prejudice the operation, or restrict future development of waste management facilities. It would also not have a significant impact in terms of a permanent reduction in landfill void space.
- 5.3.52. Overall, the applicant has concluded that the proposed development would not give rise to any significant effects in terms of material assets use and waste management and generation. Appropriate mitigation measures, such as soil handling and waste minimisation protocols, would be secured by the rDCO.
- 5.3.53. However, given that there would be some use of primary materials and use of landfill capacity, we consider that a little negative weight should be attached to this topic in the overall balance.

Noise and Vibration

- 5.3.54. The ExA agrees with the applicant's assessment on noise and vibration given that the assessment methodology or conclusions have not been substantively challenged by either host authority as detailed in the SoCGs, nor has any IP presented technical evidence to challenge the applicant's position. The proposed development, with mitigation measures, would result in a negligible beneficial impact on noise i.e. a reduction in noise existing noise levels. Regarding operational traffic noise, the ExA is satisfied that the applicant's proposed mitigation would be effective and that there is a commitment to minimise effects to an acceptable degree as detailed in the associated First Iteration EMP REAC and secured by R3 of the rDCO.
- 5.3.55. Overall, the ExA is satisfied that the proposed development would accord with the NPSNN 2015, all legislation and policy and that the proposed mitigation is adequately provided for and secured through R3 of the rDCO, via the First Iteration EMP REAC NV1 – NV13. Safeguards exist through alternative legislation control measures should receptors experience significant levels of adverse impact. In this respect, the proposed development attracts moderate positive weight in the planning balance.

Population and Human Health

- 5.3.56. Having considered the applicant's submissions and all representations in relation to this topic, the ExA considers the assessment of the population and human health-related effects of the proposed development to be satisfactory.
- 5.3.57. Whilst there would be some significant effects arising from the temporary and permanent loss of agricultural land, no party has suggested that this would affect the viability of any farm holdings. The ExA also acknowledges that the nature of the proposed development, which follows the alignment of existing infrastructure, limits opportunities to avoid the farm holdings concerned and that the applicant has endeavoured to keep losses of agricultural land to an absolute minimum. Nevertheless, the ExA considers that the loss of agricultural land is a matter which attracts negative weight as identified in Geology and Soils conclusions above.
- 5.3.58. There would also be temporary significant adverse effects arising from the diversion or closure of PRoW during construction. Whilst this, too, is a negative consideration, the ExA notes that the applicant has sought to minimise diversions and closures, to provide suitable diversions where possible and to ensure that changes will be suitably-managed and advertised, measures which are secured by way of the Outline Traffic Management Plan (OTMP) and the Construction Communications Management Plan (CCMP).
- 5.3.59. The permanent increase in the length of National Cycle Network 64/ the Trent Valley Way along Winthorpe Road (an additional 105m) has also been assessed by the applicant as having a significant effect. The applicant has sought to provide an upgraded and otherwise segregated route for walkers and cyclists, which is anticipated to be safer for users. Therefore, the ExA considers this aspect of the proposed development to be a neutral matter.
- 5.3.60. The ExA considers the proposed walking/ cycling route improvements to be a positive aspect of the proposed development.
- 5.3.61. The route of a footway/ cycle track across land under the control of Lindum Developments Ltd (LDL) remains unresolved. The applicant's overall intention is to create a link between the A17 and the proposed footway/ cycle track running along the south-eastern side of the A46 (between points F-5D and F5M on Sheet 5 of The Streets, Rights of Way and Access Plans). However, the applicant has indicated that it is willing to deliver an alternative route, the alignment of which would be agreed with LDL, so as not to prejudice the proposed layout of LDL's prospective employment development.
- 5.3.62. The ExA agrees that the delivery of this route in its entirety – whether as shown in the application documentation or via another alignment – would be beneficial because it would reduce severance and provide additional opportunities for active travel, considerations to which importance is attached in both NPSNN 2015 and NPSNN 2024.
- 5.3.63. Whilst some representations sought wider improvements to WCH facilities including beyond the Order limits and including the re-routing of PRoW, the ExA considers there to be no justification for this. In the ExA's opinion, the omission of these routes from the proposed development should not be a factor which adds negative weight to the planning balance.

- 5.3.64. In seeking to accommodate future WCH movements, the applicant has sought to stop-up three short sections of the PRow network. The first, part of Newark FP14, would be stopped-up because an alternative route would be provided. Whilst the alternative would be longer it would be accessible to all users, including people with disabilities (which the current route is not), and would avoid safety issues associated with people crossing the A46 in a location without formal crossing facilities. The parts of the Winthorpe FP2 and Winthorpe FP3 that would be stopped-up are very small parts of existing routes where they reach a 'dead end' and where the applicant has proposed alternative walking routes. In all cases, the ExA considers that satisfactory alternative routes would be provided and therefore recommends the extinguishment of these parts of the PRow network under section 136 of PA2008.
- 5.3.65. Compliance with LTN 1/20 standards remains a point of disagreement between the applicant and NCC. The ExA considers that the shared-use facilities strike an appropriate balance in this case and should not attract any negative weight. Accordingly, the ExA does not consider there to be any material conflict with NCC's Local Cycling and Walking Infrastructure Plan.
- 5.3.66. The ExA considers that the OTMP represents a satisfactory means of mitigating impacts during the construction period.
- 5.3.67. No significant effects were identified by the applicant in relation to health, amenity or access to green space, or recreation and physical activity during the construction and operational phases, and no evidence was submitted to the examination which would lead the ExA to draw different conclusions. Furthermore, NSDC said that it did not object to the loss of the vacant residential unit above a former restaurant which would be demolished as part of the proposed development. Accordingly, the ExA attaches neutral weight to these considerations.
- 5.3.68. Similarly, no evidence was provided to contradict the applicant's assessment of slight beneficial effects in respect of employment, permanent changes in access to local services, and access to businesses once the proposed development is operational due to improved journey time and reliability. In addition, NSDC said that whilst there were no allocated sites which rely on the proposed development, more generally the upgrade of the A46 would support economic growth/ local businesses. The ExA considers that these are all matters to which positive weight should be attached.
- 5.3.69. However, the proposed development would reduce access to fishing rights in two locations along the River Trent. Given the relatively low number of people that this would affect, the ExA considers that only a very limited amount of negative weight should be attached to this consideration.
- 5.3.70. Finally in relation to this topic, the ExA considers that the applicant has paid due regard to equalities considerations in formulating the proposed development and in its application submission. Its continued commitments in this regard would be secured by the Inclusion Action Plan which forms part of the EMP (secured by R3). Accordingly, the ExA also considers that the Public Sector Equality Duty has been satisfactorily addressed.
- 5.3.71. Taking account of all of the above, the ExA concludes that the proposed development is consistent with the population and human health-related policies of NPSNN 2015. It also considers the proposed development to be consistent with NPSNN 2024, the NPPF and the local development plan, all of which are important

and relevant. Overall, balancing the various conclusions the ExA considers that a little negative weight should be given to population and human health-related considerations in the round.

Transport and Traffic

- 5.3.72. Following its review of the Transport Assessment Report (TAR) and all representations made in relation to this topic, the ExA considers the applicant's assessment of the transport-related effects of the proposed development to be robust. It considers the data and methodology used to be appropriate in terms of their geographical and temporal scope and, overall, considers the applicant's conclusions to be sound.
- 5.3.73. Whilst the proposed development is likely to result in additional traffic using the network, the increased capacity of the network means that average delays are forecast to reduce substantially and there would be improvements in terms of journey times and journey time reliability. There would also be material improvements in the level of service (LOS) of some junctions along the A46, notably at the re-configured Cattle Market Roundabout.
- 5.3.74. As a consequence of trip re-assignment, there would be benefits in terms of a reduction in traffic in the Newark urban area. This would be of benefit to local bus service reliability, too.
- 5.3.75. Whilst a number of parties suggested alternative ways of addressing current issues along the A46 (for example through signalisation or technological change), the ExA is satisfied that these are not realistic alternatives.
- 5.3.76. In light of the submissions of the local planning authority, the ExA is also satisfied that the proposed development would not impact the delivery of strategic sites and, following confirmation from Network Rail, that it would not preclude railway grade separation at Newark Flat Crossing. Furthermore, the local highways authority has confirmed that the proposed development would not affect the delivery of a relief road at Kelham.
- 5.3.77. Given the provisions of the Pre-commencement Plan (PCP) and OTMP, the ExA is also satisfied that due consideration has been given to safety during the construction phase. In addition, the applicant's assessment of operational-phase safety, which was not challenged by any party, indicates the proposed development would help to reduce the number of accidents and deaths on the network and would represent a monetised benefit of over £29m (in 2010 prices).
- 5.3.78. Full consideration has been given to the maintenance of access to properties during the construction and operational phases of development. This, as well as other means of reducing or avoiding construction-phase impacts and communicating with affected parties, is secured by the comprehensive OTMP and the similar provisions of the PCP. The ExA considers that these documents, which are secured by R11 and R17 of the rDCO (Appendix C), represent a satisfactory package of enforceable mitigation measures.
- 5.3.79. Bearing in mind the nature of the proposed development, the ExA recognises that opportunities for modal shift, or for the use of alternative modes to address the identified need, are very limited. However, consideration of Non-Motorised Users (NMU) has been integral to design development. This is weighed in the balance in

relation to Population and Health (Section 11 of Chapter 3) to avoid the double-counting of weight.

- 5.3.80. Given that it considers the transport assessment to be robust, the ExA also considers the applicant's economic appraisal – which is based on the transport assessment – to be satisfactory. Whilst some parties have said that the benefit cost ratio (BCR) is not sufficiently large and, on that basis, the development should not proceed, the relative magnitude of the BCR is not, on its own, a determinative factor. Accordingly, the ExA has not moderated the weight that it attaches to Traffic and Transportation in light of the relative magnitude of the BCR; rather, it has taken account of the applicant's conclusions which state that the BCR is likely to sit on a range from 'break even' to positive.
- 5.3.81. Whilst the applicant and NCC have agreed a mechanism to mitigate potential effects of increased traffic flows in Pelham Street, no evidence was presented to the examination to demonstrate that such an agreement is necessary given that no significant impacts have been predicted in this location. Therefore, the ExA has not weighed this consideration in the overall balance. However, in the event that the ExA had considered mitigation to be necessary it would have attached neutral weight to an agreement aimed at addressing impacts and, consequently, the ExA's overall weighting would not have been different.
- 5.3.82. Overall, the ExA considers that the proposed development is consistent with the policy in NPSNN 2015 in relation to the assessment of transport impacts. The ExA also considers the proposed development to be consistent with the relevant provisions of NPSNN 2024, the NPPF, the local transport plan and the local development plan, all of which are important and relevant.
- 5.3.83. The ExA notes that, from a traffic and transportation point-of-view, the proposed development would not give rise to any unacceptable impacts but would deliver a range of benefits which are not limited to A46 users including economic growth, reduced traffic on other roads in Newark-on-Trent, and wider social benefits due to reduced congestion and improved journey times.
- 5.3.84. Taking all of these considerations together, and bearing in mind that weight has already been attached separately to the need for this transport scheme, the ExA considers that moderate weight should be attached to the applicant's traffic and transport case.

Water Environment and Road Drainage including Flooding

Flood Risk

- 5.3.85. The applicant has demonstrated that the proposed development meets the terms of the Sequential Test and of the Exception Test by virtue of not increasing the risk of flooding elsewhere and that it would remain safe for users throughout its lifetime.
- 5.3.86. The applicant has demonstrated that it undertook a sequential approach to the location of the FCAs and that it would provide for the loss of floodplain through compensatory provision. The ExA agrees with the applicant's position with respect to the FCAs and there are no outstanding concerns from IPs.
- 5.3.87. The proposed development is essential infrastructure, as per the definition in the NPPF, and will not increase the risk of flooding elsewhere beyond the limits agreed with the EA.

- 5.3.88. The proposed development would provide a minor benefit to some areas within and adjacent to the Order limits with an overall minor decrease in the risk of flooding. The proposed development would remain operational during flood events with the compensatory floodplain capacity being provided for by the FCAs. Overall, the ExA considers this a minor positive aspect of the proposed development and attributes it a little positive weight.

Road Drainage

- 5.3.89. We conclude that some benefits would occur as a result of an improved and updated SuDS regime around Cattle Market junction. Any works to culverts would require either the consent of NCC as LLFA, or the Trent Valley Internal Drainage Board (IDB). R15 of the rDCO requires the proposed development to be in accordance with the FRA.
- 5.3.90. Given that the proposed development would maintain the status quo of flow rates and consent is still required for works to culverts and ditches the ExA considers this to be a neutral impact and therefore does not affect the planning balance.

Water Framework Directive

- 5.3.91. The proposal would not have an adverse effect on any waterbody status as confirmed by the EA. Works to Slough Dyke would make it more naturalised and potentially increase its status thus improving its condition from a currently very engineered watercourse to something more naturalised. Water quality monitoring has been agreed with the EA and this is secured through the First Iteration EMP.
- 5.3.92. Despite the replacement of an existing waterbody in the Kelham and Averham FCA, there would be minor positives associated with the proposed development. Works to Slough Dyke, the creation of water bodies in the FCAs, and the agreement of water quality monitoring frequency with the EA means that the proposed development is considered compliant with the WFD.

Summary

- 5.3.93. There are no outstanding issues between parties with respect to the water environment and the ExA considers that this aspect of the proposed development is consistent with NPSNN 2015. Equally, there are no concerns with respect to consistency with either NPSNN 2024 and the NPPF, which the ExA consider important and relevant. There are some minor benefits associated with the proposed development with respect to the water environment such as a limited decrease in the risk of flooding across the Order limits and adjacent areas, a minor improvement to the functionality of road drainage including SuDS, such as that at Cattle Market junction, and works to Slough Dyke to return it to a more naturalised state.
- 5.3.94. Overall, the proposed development would result in a minor positive benefit to the water environment and road drainage to which the ExA attributes a little positive weight.

Cumulative Effects

- 5.3.95. The ExA considers the applicant's assessment of combined and cumulative effects to be satisfactory.

- 5.3.96. A number of developments could result in significant cumulative effects from the possible, but unlikely, overlap of unavoidable construction activities. There could also be temporary operational-phase effects which, in respect of landscape receptors, would reduce to 'not significant' by Year 15.
- 5.3.97. No parties disagreed with the applicant's conclusions that no additional mitigation would be needed beyond that which is already included in the EMP.
- 5.3.98. The ExA is satisfied that no additional mitigation is needed to address potential combined and cumulative effects and considers that this should be a neutral consideration in the overall balance.

Habitats Regulation Assessment

- 5.3.99. 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 SoST.
- 5.3.100. Two European sites and their qualifying features were considered in the applicant's assessment of Likely Significant Effects (LSE):
- Humber Estuary SAC; and
 - Humber Estuary Ramsar.
- 5.3.101. LSE were identified for both of these sites from the proposed development alone and in-combination with other plans or projects.
- 5.3.102. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSE were identified were not disputed by any IP. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 5.3.103. The ExA's findings are that, subject to the mitigation measures secured in the rDCO, adverse effects on integrity (AEoI) on the European sites listed above from the proposed development when considered alone or in-combination with other plans or projects can be excluded.
- 5.3.104. The ExA considers that there is sufficient information before the SoST to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

5.4. OVERALL CONCLUSIONS AND PLANNING BALANCE

- 5.4.1. Paragraph 4.2 of NPSNN 2015 states, subject to the detailed policies and protections within it, and the legal constraints set out in PA2008, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established within NPSNN 2015. A similar presumption is provided in NPSNN 2024, which is an important and relevant matter.
- 5.4.2. In reaching conclusions on the case for the proposed development, we have had regard to s104 of PA2008, NPSNN 2015 as the relevant NPS, and to NPSNN 2024, the NPPF, the LIRs and all other matters which we consider are both important and relevant to the SoST's decision, including local development plan policies, the TDP

and NZS. We have also considered whether the determination of this application in accordance with the relevant NPS would lead the United Kingdom (UK) to be in breach of any of its international obligations where relevant.

- 5.4.3. The proposed development would make an important contribution to the improvement and enhancement of the existing strategic road network, improving journey times and more importantly, safety for road users, meeting one of the key objectives of NPSNN 2015. Accordingly, we attach substantial weight to the benefits of the proposed development. We have found that economic benefits would result from the proposed development, along with other benefits in terms of overall improvements for road safety.
- 5.4.4. Paragraph 3.4 of NPSNN 2015 recognises that some developments will have some adverse local impacts including on noise, emissions, landscape/ visual amenity, biodiversity and cultural heritage. It states that whilst applicants should deliver developments in accordance with government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain.
- 5.4.5. We have considered the impacts based on the worst-case scenario as assessed in the ES. The areas where adverse effects would result and remain to an extent where they would weigh negatively in the overall balance and against the Order being made are identified below, along with the weighting we have attributed to them:
- Climate and carbon emissions – a little negative weight against.
 - Loss of BMV – a little negative weight against.
 - Cultural heritage (general) – great weight against.
 - Cultural heritage (Cattle Market Roundabout) – great weight against.
 - Landscape (general) – moderate weight against.
 - Landscape (Cattle Market Roundabout) – great weight against
 - Visual amenity (general) – moderate weight against.
 - Visual amenity (Cattle Market Roundabout) – great weight against.
 - Material assets and waste – a little negative weight against.
 - Population and human health – a little negative weight against.
- 5.4.6. Whilst adverse effects would arise from the proposed development, both during the construction and operation phases, we are satisfied that the applicant has taken a reasonable and proportionate approach in seeking to minimise such adverse effects. The first iteration EMP including the REAC secures appropriate mitigation which is to be developed further through the subsequent second iteration EMP. This is secured through the rDCO and which includes a comprehensive list of mitigation and management plans that the proposed development must be constructed in accordance with during the construction process.
- 5.4.7. The increase in carbon emissions resulting from the proposed development would be unlikely to be so significant as to have a material impact on the ability of the government to meet its carbon reduction targets.
- 5.4.8. The applicant has satisfactorily demonstrated that the proposed development would comply with the sequential and exception tests in relation to flood risk.
- 5.4.9. The ExA is satisfied that no oversight or omission has occurred in respect of the cultural heritage assessment undertaken by the applicant which may prejudice the

SoS's duty to consider the desirability of preserving listed buildings and their settings.

- 5.4.10. The ExA considers there to be harm to heritage assets specifically around the Cattle Market Roundabout including the general views of the Civil War assets as a result of the grade separated junction. Works to Smeaton's Arches would result in the upper end of less than substantial harm to which we have applied great negative weight and importance. Other assets would experience less than substantial harm, again the ExA considers this to be of importance. Having applied the heritage balance, we have concluded that the harm is outweighed by the public benefits of the proposed development, and therefore heritage matters do not weigh against the Order being made in the overall balance.
- 5.4.11. Although some adverse effects are likely to result from the proposed development, we consider them overall to be within the scope of the relevant policy provisions of the NPSNN. We are satisfied that the proposed development would be generally in conformity with NPSNN 2015.
- 5.4.12. Consequently, the ExA concludes that the adverse impacts of the proposed development are substantially outweighed by its benefits and meet the law and government policy as set out in s104 of PA2008 and NPSNN 2015, and is consistent with NPSNN 2024 and NPPF and local development plan which are important and relevant matters. We therefore conclude there is a case for development consent to be granted.
- 5.4.13. Our overall conclusion is that we find that the benefits of the proposed development, particularly in terms of fulfilling the need identified in NPSNN 2015 for national networks, addressing existing congestion, improving safety, saving lives and promoting economic benefits for the region, would outweigh the negative impacts we have identified in relation to the construction and operation of the proposed development, including the less than substantial harm to designated heritage assets and harm to non-designated heritage assets, the landscape harm both generally and arising from the Cattle Market Roundabout, the visual amenity harm both generally and arising specifically in relation to the Cattle Market Roundabout, the minor harms in respect of material assets and waste and population and human health, and the limited impact in terms of carbon emissions.
- 5.4.14. Consequently, the ExA concludes that the adverse impacts of the proposed development are substantially outweighed by its benefits in meeting the law and government policy as set out in s104 of PA2008 and NPSNN 2015, and is consistent with NPSNN 2024 and NPPF and local development plan which are important and relevant matters. We therefore conclude there is a case for development consent to be granted.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

- 6.1.1. The application included proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land, including Statutory Undertakers' (SU) land and Special Category Land. None of the land to be acquired for the proposed development is National Trust "Inalienable" land. There is one parcel identified on the Crown Land Plans.
- 6.1.2. This Chapter discusses whether the evidence before the examination justifies the granting of those powers, having regard to all relevant legislation and guidance, before providing our recommendations.
- 6.1.3. Land over which CA or TP powers are sought is referred to in this Chapter as the Order land.

6.2. THE REQUEST FOR CA AND TP POWERS

- 6.2.1. The request for CA and TP powers is made through the inclusion of Part 5 'Powers of Acquisition' in the applicant's final draft Development Consent Order (dDCO) [[AS-106](#)] (the preferred DCO). The following provisions are included:
- Article 26: Compulsory acquisition of land.
 - Article 27: Compulsory acquisition of land – incorporation of the mineral code.
 - Article 28: Time limit for exercise of authority to acquire land compulsorily.
 - Article 29: Compulsory acquisition of rights and imposition of restrictive covenants.
 - Article 30: Private rights over land.
 - Article 31: Power to override easements and other rights.
 - Article 32: Disregard of certain interests and improvements.
 - Article 33: Set-off for enhancement in value of retained land.
 - Article 34: No double recovery.
 - Article 35: Modification of Part 1 of the 1965 Act.
 - Article 36: Application of the 1981 Act.
 - Article 37: Modification of the 2017 Regulations.
 - Article 38: Acquisition of subsoil or airspace only.
 - Article 39: Rights under or over streets.
 - Article 40: Temporary use of land for carrying out the authorised development.
 - Article 41: Temporary use of land for maintaining the authorised development.
 - Article 42: Statutory undertakers.
 - Article 43: Apparatus and rights of statutory undertakers in stopped up streets.
 - Article 44: Recovery of costs of new connections.
- 6.2.2. If made, the Development Consent Order (DCO) would also confer on the applicant other rights and powers that may interfere with property rights and private interests. These additional powers include the following:
- Article 18: Temporary alteration, diversion, prohibition and restriction of the use of streets.
 - Article 19: Permanent stopping up and restriction of use of streets and private means of access.
 - Article 24: Protective works to buildings.
 - Article 25: Authority to survey and investigate the land.

- Article 45: Felling or lopping of trees and removal of hedgerows.
- Article 51: Removal of human remains.
- Article 53: Use of private roads for construction.
- Article 58: Temporary suspension of navigation in connection with the authorised development.

6.2.3. As finally submitted, the application was accompanied by the following:

- Book of Reference (BoR) [[REP8-008](#)].
- Land Plans [[REP8-002](#)].
- Works Plans [[REP3-002](#)].
- Streets, Rights of Way and Access Plans [[REP4-002](#)].
- General Arrangements Plans [[REP7-002](#)].
- Crown Land Plans [[AS-017](#)].
- Special Category Land Plans [[REP7-004](#)].
- Statement of Reasons (SoR) [[AS-108](#)].
- Funding Statement [[APP-026](#)].
- Case for the Scheme [[REP7-074](#)].
- Explanatory Memorandum [[REP8-006](#)].
- Preferred DCO [[AS-106](#)].
- Consents and Agreements Position Statement [[REP7-010](#)].
- NPSNN (2015) Accordance Tables [[REP8-010](#)].
- NPSNN (2024) Accordance Tables [[REP8-028](#)].
- Land Rights Tracker [[REP8-018](#)].

6.2.4. Taken together, these documents set out the land and rights sought by the applicant, together with the reasons for their requirement and the basis under which compensation would be funded. References to the BoR and the Land, Works, General Arrangement and Streets, Rights of Way and Access Plans in this chapter from this point should be read as references to the latest revisions cited above. It should be particularly noted that all Land plan plot references employed in this chapter are correct as per the most recently submitted Land Plans [[REP8-002](#)].

6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. The purposes for which CA and TP powers are required are set out in the BoR and SoR.

6.3.2. The main powers authorising the CA of land, or interests in, or rights over land, are contained in Articles 26 (compulsory acquisition of land) and 29 (compulsory acquisition of rights and restrictive covenants) of the dDCO. Table 1 within Annex A of the SoR provides a description of the land which would be subject to the powers of outright acquisition in terms of Article 26. The purpose for acquiring this land is to enable the applicant to construct the permanent works on the land and other elements described in Annex A.

6.3.3. Article 29 allows rights over land to be acquired instead of outright acquisition. This, the applicant states, allows flexibility in approach and a potential reduction in the impact on the land interest. CA of rights and the compulsory imposition of restrictive covenants would be authorised by Article 29. Table 2 of Annex A of the SoR provides a description of the land which would be subject to the acquisition of rights or the imposition of restrictive covenants. These rights are necessary for the purposes of constructing the works and the maintenance of the works thereafter, ensuring that the operator of the finished proposed development is able to fulfil their functions.

- 6.3.4. Other CA powers are sought in the DCO and these similarly relate to land and would, or may, interfere with property rights and interests.
- 6.3.5. In addition, powers are sought in the preferred DCO to enable the TP and use of land to carry out and thereafter maintain the proposed development and Table 3 of Annex A of the SoR provides a description of such land.
- 6.3.6. In each case the owner of the land, or the interest or right in the land, would or may be entitled to compensation.

6.4. LEGISLATIVE REQUIREMENTS

- 6.4.1. CA powers can only be granted if the conditions set out in sections (s) 122 and 123 of PA2008 are met. Guidance Related to Procedures for the Compulsory Acquisition of Land September 2013 (the Former Department for Communities and Local Government (DCLG)) (the CA Guidance) sets out the purposes for which CA may be authorised.
- 6.4.2. S122(2) of PA2008 requires that land subject to CA must be required for the development to which the development consent relates, or must be required to facilitate or be incidental to that development, or is replacement land which is given in exchange for the Order land under s131 or s132. The CA Guidance states that in respect of land required for development, the land to be taken must be no more than is reasonably required and proportionate.
- 6.4.3. S122(3) of the PA2008 requires that there must be a compelling case in the public interest to acquire the land compulsorily. The CA Guidance advises for this condition to be met the Secretary of State (SoS) will need to be persuaded that there is compelling evidence that the public benefit derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 6.4.4. An order granting development consent may include provision authorising the CA of land only if the SoS is satisfied that one of the conditions in s123(2) to (4) is met. These are:
- The application includes a request for CA to be authorised (s123(2)).
 - All persons with an interest in the land consent to the inclusion of the provision (s123(3)).
 - The prescribed procedure is followed (s123(4)).
- 6.4.5. The ExA is satisfied that the condition in s123(2) is met because the application for development consent includes a request for CA of the land to be authorised and thus one of the conditions is met.
- 6.4.6. A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with the legal duties on decision-makers:
- All reasonable alternatives to CA must have been explored.
 - The applicant must have a clear idea of how it intends to use the land subject to CA powers and to demonstrate that adequate funds are likely to be available to meet the compensation liabilities that might flow from the exercise of CA powers.

- The decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with human rights of those affected.

- 6.4.7. These matters were tested in the Examination and are reported on below.
- 6.4.8. S127 of PA2008 applies to land acquired by a SU for the purposes of their undertaking where a representation is made about the application for the DCO and not withdrawn. S127(5) states that an Order granting development consent may include provision authorising the creation of a new right over SU's land providing that it can be done without serious detriment to the carrying out of the undertaking or any detriment can be made good by undertakers by the use of other land belonging to or available for acquisition by them.
- 6.4.9. S131 of the PA2008 applies to any land forming part of a common, open space or fuel or field garden allotment and to which CA is proposed. It provides for a special parliamentary procedure to be followed unless the SoS is satisfied that replacement land has been or will be given in exchange for the land and the replacement land has or will be vested in the prospective seller and subject to the same rights, trusts and incidents. Further matters which would allow for the special parliamentary procedure not to be followed are set out in subsequent subsections and include: in respect of open space, and none of the other descriptions, if there is no suitable available land to be given in exchange or any suitable land is available only at prohibitive cost and it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject to special parliamentary procedure. Subsection 5 also allows for the CA of such land that does not exceed 200 sq m or is required for the widening or drainage of an existing highway or partly for such and the giving of land is unnecessary.
- 6.4.10. S132 of the PA2008 has similar provisions to s131 except in respect of the CA of rights rather than land and that the order land when burdened with the order rights will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public.
- 6.4.11. S135 of the PA2008 provides for an order to include provision authorising the CA of an interest in Crown land only if it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and the appropriate Crown authority consents to the acquisition. An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.
- 6.4.12. S138 of PA2008 provides for an order to include provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus of SUs, only if the SoS is satisfied that such actions are necessary for the purposes of carrying out the development to which it relates.
- 6.4.13. With reference to s120 and Part 1 of Schedule 5 to PA2008 at paragraph 2 and the previous (now withdrawn) model provisions for preparing DCOs, TP powers are capable of being within the scope of a DCO. PA2008 and the associated CA Regulations do not contain the same level of specification and tests as for CA to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or permanently interfere with a person's interests in

land. The need for the powers and their implications for human rights are considered below.

6.5. EXAMINATION OF THE CA AND TP CASE

- 6.5.1. The Examination of the proposed development included consideration of all submitted written material relevant to CA and TP. All relevant guidance and legislation is taken into account in the reasoning below and relevant conclusions are drawn at the end of this Chapter in relation to both CA and TP.
- 6.5.2. Written questions were posed to the applicant and Affected Persons (AP) in respect of CA and TP in our First Written Questions (ExQ1) [[PD-007](#)], Second Written Questions (ExQ2) [[PD-009](#)], and Third Written Questions (ExQ3) [[PD-011](#)].
- 6.5.3. An initial CAH was held on 9 October 2024 to examine the applicant's strategic case for compulsory purchase and temporary possession [[EV2-002](#), [EV5-001](#) and [EV5-002](#)]. This hearing was attended by NSDC and various individual objectors including representatives of the Charity of Thomas Brewer and John Miller. No Statutory Parties attended. The applicant was asked about its strategic case for compulsory acquisition and temporary possession of land and or rights. This included the justification for the powers sought in respect of the relevant legal and policy tests applicable to compulsory acquisition and temporary possession proposals. In examining the applicant's strategic case the hearing focused on, whether the conditions relating to the land being required for the proposed development are required to facilitate or be incidental to the proposed development are met, and whether there is a compelling case in the public interest for the compulsory acquisition provisions overall.
- 6.5.4. A further CAH (CAH2) was held on 3 December 2024 [[EV2-003](#), [EV6-002](#) and [EV6-003](#)] to examine the individual cases of objectors to the CA or TP of their land to afford an opportunity to appear in front of the Examining Authority for those who had expressed a desire to do so. This was attended by representatives of NSDC, Mr James Sumsion and representative, Mr John Miller, representatives of the Charity of Thomas Brewer, representatives of Peridot Solar and representatives of Lindum Developments Ltd.
- 6.5.5. The land subject to powers of CA and TP required in order to enable the applicant to construct, operate and maintain the proposed development comprises approximately 211 hectares. 182 hectares of land would be acquired permanently for the proposed development. The total area of land over which rights would be acquired permanently for the proposed development is circa 9 hectares and the total area of land that would be used temporarily implementing the proposed development is circa 20 hectares. The above figures are correct as of the close of the examination and detailed in the SoR ([AS-108](#)). The applicant also seeks permanent rights of air space above or subsoil below in respect of various plots of SU (Network Rail, Canal & River Trust and others) but which does not affect the surface land ownership and therefore it has not ascribed an area figure (see response to ExQ1 Q5.0.1 [[REP2-037](#)]).
- 6.5.6. No currently used or occupied residential properties are to be acquired for the proposed development. The applicant notes that it has recently been made aware that there is a residential unit forming part of the closed, boarded up and derelict former Mint Leaf restaurant (Plot 5/13a). It is also unoccupied. The applicant's investigations with the owners of the Property confirmed that the whole of the building is unoccupied. The applicant understands that the unit was a flat tied to the

use of the commercial premises. On further investigation of the council tax records, the applicant confirms that the council tax banding for the 'Flat above Mint Leaf Indian Restaurant' was 'Deleted' with effect from 16th November 2023. Accordingly for the purpose of this assessment the applicant has proceeded on the basis that there are no residential properties to be acquired for the proposed development.

6.6. THE APPLICANT'S CASE FOR CA AND TP

GENERAL CASE

- 6.6.1. The applicant's case is set out in the SoR [[AS-108](#)], which includes various annexes. Annex A provides three tables which set out the specific purposes for which each plot of land is required for CA, TP and acquisition of permanent rights, and TP of land. The applicant considers that the land subject to CA requests is either needed for the development, or is needed to facilitate the development, or is incidental to the development (paragraph 5.3.1).
- 6.6.2. The applicant considers that the land subject to CA and TP is the minimum necessary to construct, operate, maintain and mitigate the proposed development necessary to achieve its objectives (paragraph 5.3.7 of the SoR). The applicant further confirms that the limits of deviation have been drawn as tightly as possible so as to avoid unnecessary land-take and that if less land proves necessary to be required in a particular area, the applicant would only seek to acquire that part of the land that is required. In all events, it would seek to minimise the effects on land interests, suggesting that that would also apply in situations where it transpires that land is only required temporarily rather than permanently (paragraph 5.3.7 the SoR [[AS-108](#)]).
- 6.6.3. The applicant has sought powers of compulsory acquisition (or rights of use) in respect of all plots of land required for the proposed development even where it already holds an interest or presumes it holds an interest in the land. This approach has been taken to ensure that the applicant has the right to acquire the interest it needs in all of the land, even where an unknown or unregistered interest later asserts an interest in land which the applicant believes it owns and clearing the title would be necessary.
- 6.6.4. The applicant states the CA powers are also required to override any existing rights and interests in the land as well as grant the right to take TP of land for construction and maintenance purposes. Again, without these rights over the land, the applicant states the proposed development cannot be delivered (paragraph 5.3.8 of the SoR).
- 6.6.5. In general terms the applicant considers that there is a compelling case in the public interest for CA. The need and benefits of the proposed development are set out in the SoR Chapter 2 and the Case for the Scheme [[REP7-074](#)]. The applicant notes that the NPSNN 2015 identifies a "*critical need*" to improve national networks and 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. The applicant also identifies reference to the impact on quality of life and environmental factors.
- 6.6.6. The applicant notes the proposed development has been identified in the National Infrastructure Plan and the government's Road Investment Strategy for 2020 – 2025 period (RIS2) published in 2020. The applicant notes RIS2 outlines the long-term strategic vision for the Strategic Road Network, and the proposed development is

included as a committed scheme to improve the single carriageway and junctions of the A46 at Newark and to provide better links to the A1.

6.6.7.

The need for and benefits of the proposed development according to the applicant demonstrate that there is a compelling case in the public interest for it to be delivered. The benefits of the proposed development are set out in chapter 2 of the SoR and other application documents, including the Case for the Scheme. In summary these include:

- Improving the performance of the A46 around Newark and addressing the delays and congestion. Following the completion of the Newark to Widmerpool and Newark to Lincoln schemes, the underperformance of the A46 around Newark is now even more pronounced. This includes poor journey times and reliability; lower and unpredictable speeds; lack of resilience, especially during incidents; and other adverse impacts, such as queuing on the A1 off-slip.
- Improving journey time reliability. Poor journey time reliability is a key characteristic, with the section ranked as the third least reliable in the North and East Midlands. This is essentially a consequence of this being the last remaining section of single carriageway of A46 and the presence of at-grade junctions.
- Improving safety through compliance with layout and design standards. There are concerns about current compliance with design standards and observed collision and injury rates. There is a high number of low-speed shunts and accidents which impact on the resilience of the route.
- Supporting and helping to unlock local economic aspirations. Newark is categorised as a Levelling Up Category 1 area by the government, meaning Newark is deemed to be one of the places most in need of investment through the Levelling Up Fund, with major development proposed which would create new employment and housing, with resulting social benefits. Developments within and around Newark would be aided by the progression of the proposed development.
- Boosting strategic connectivity. The proposed development would reinforce wider strategic connectivity including by providing access to and from the Humber Ports to the Midlands, providing an alternative to the M1, as well as better supporting certain economic sectors, such as distribution and food which have stronger need for route reliability.
- Achieving better environmental outcomes. The proposed development would help improve the local environment in and around Newark through the provision of greater biodiversity through the delivery of the FCAs and the creation of blue-green corridor along the length of the proposed development.

6.6.8.

The applicant highlights (paragraph 2.4.4 of the SoR) that the initial Benefit to Cost Ratio (BCR) for the proposed development and the inclusion of the wider economic impacts and journey time reliability benefits gives an adjusted BCR of 1.20. This means that for £1 spent on the proposed development there would be a £1.20 return to society in benefits, this is for a 'core' scenario. A sensitivity test of a higher economic growth scenario, where increased traffic flows exacerbate congestion around Newark, indicates a higher BCR of 1.76. Conversely, a lower economic growth scenario would have a BCR of 0.92 which, according to the applicant, suggests a 'break-even' position where costs and benefits are similar. Impacts which cannot be monetised have also been considered. These include adverse

impacts on landscape, townscape, the historic environment and biodiversity, and beneficial impacts from improved journey quality, physical activity and severance.

CONSIDERATION OF ALTERNATIVES

- 6.6.9. The SoR [\[AS-108\]](#) sets out the applicant's case in relation to the consideration of alternatives at section 5.5. It refers to Chapter 2 of the Consultation Report [\[APP-028\]](#); Environmental Statement (ES) Chapter 3 Assessment of Alternatives [\[REP7-018\]](#) and Chapter 2 of the Case for the Scheme [\[REP7-074\]](#). Reference is made to the initial sifting exercise which identified a total of three potential areas (referred to as corridors) of interest. At the Options Identification stage for the proposed development, a further two corridor options were identified. Therefore, five potential corridor options were identified to ensure a wide range of possibilities were considered. More detail on that process and the corridor alternatives considered is set out in our consideration of alternatives in section 2 of chapter 3 above. From that exercise Corridor C, the most direct route, following the existing A46 corridor, scored highest for economic growth, movement, accessibility, journey time, resilience and customer groups. Corridor C was the best performing corridor in terms of user benefits, providing the greatest reductions in journey times, delays and incidents, and improvement in reliability. In addition, Corridor C performed better overall in environmental terms in achieving improvements in terms of carbon, noise and the local water environment. It was also more preferential in terms of impact on key environmental constraints. Further options were then evaluated to ensure mitigation of potential impacts.
- 6.6.10. Two options within Corridor C for the proposed development were taken forward to public consultation. Following Options consultation, and as discussed in the consideration of alternatives above, the applicant selected the most appropriate option which was also the preferred option in the public consultation. This selection took into account a number of factors, including safety, improved journey time reliability, and the level of overall support from the local community.
- 6.6.11. At CAH1, the applicant confirmed that Corridor C is the option that requires the applicant to take the least amount of land [\[REP1-013\]](#) through CA and TP. The applicant has also stated that none of the alternatives or modifications considered would obviate the need for the compulsory acquisition and temporary possession of the land.
- 6.6.12. The applicant advises that it has sought to acquire by agreement land and rights in land for the purposes of the proposed development and would continue to do so. The applicant further advises it has engaged in extensive consultation and negotiations with all persons with an interest in the Order land in order to try to avoid the need for compulsory acquisition wherever possible.
- 6.6.13. Detailed consideration of objections to specific plots in relation to matters raised by Affected Persons are addressed below and in appendix D to this report which includes a table addressing individual objections to interference with land and rights. Where this includes matters related to the necessity for and issues related to Flood Compensation Areas and Landscaping, this relies upon conclusions reached in the relevant sections above (Flood Compensation Areas – section 3.13 of the Water Environment Section and areas for Landscaping in Landscape and Visual – section 3.8 above).

- 6.6.14. In terms of the broad strategic case, the ExA is satisfied that the applicant has sought to minimise the land take and the necessity for CA through the consideration of alternative routes and design development for the proposed development.

FUNDING

- 6.6.15. The Funding Statement [\[APP-026\]](#) sets out that the proposed development has an estimate of £686.4m. The applicant confirms the estimate includes an allowance for compensation payments relating to the compulsory acquisition of land interests in, and rights over, land and the temporary possession and use of land. It also takes into account potential claims under Part 1 of the Land Compensation Act 1973, Section 10 of the Compulsory Purchase Act 1965 and Section 152(3) of the 2008 Act.
- 6.6.16. The applicant further confirms the estimate has been prepared in accordance with National Highways procedures and, in combination with the approved budget, provides sufficient cost certainty to enable the applicant to confirm the viability of the proposed development.
- 6.6.17. The Funding Statement [\[APP-026\]](#) sets out that funding had been agreed for the proposed development in RIS2.
- 6.6.18. The applicant sets out the chronology of the funding position and how it has developed. The government published the first RIS (RIS1) on 1 December 2014. RIS1 provided certainty of government funding with over £15 billion to be invested in major roads between 2015/16 and 2020/21. The proposed development was first announced in RIS2 as a committed and therefore funded scheme. The funding commitment was reiterated in the National Highways five-year Delivery Plan 2020 - 2025, which was published in March 2015, and in subsequent annual delivery plans. The Delivery Plan noted this scheme was expected to be delivered in roads period 2 (RP2) and Delivery Plan for 2016-2017 further committed to supporting the Midlands Connect in developing a transport strategy, listing the A46 Newark Bypass as one of the projects being supported.
- 6.6.19. On 11 March 2020 the government published its second Road Investment Strategy for the period 2020-2025. RIS2 commits the government to spending £27.5 billion to both build new road capacity and improve the quality and reduce the negative impacts of the existing Strategic Road Network (SRN). Part 3: The Investment Plan sets out the government's expenditure priorities which confirms the ongoing commitment to the proposed development. Further detail on the commitment to the A46 Newark Bypass in RIS2 are addressed in the need section above at section 2 of Chapter 3.
- 6.6.20. The funding commitment was reiterated in the National Highways five-year Delivery Plan 2020-2025, which was published in August 2020. In summary this advises at page 34: *"We will increase the capacity of the single carriageway and junctions of the A46 at Newark and provide better links to the A1."*
- 6.6.21. The applicant has confirmed that to date no blight notices have been served in respect of the proposed development.
- 6.6.22. The applicant notes therefore that the proposed development would be fully funded by the Department for Transport including any compensation liabilities that may arise from the CA and is not dependant on funding contributions from other parties.

ACQUISITION BY AGREEMENT

- 6.6.23. Through section 4 and Annex B of the SoR, the applicant has outlined discussions that have taken place with landowners and occupiers to acquire the land necessary for the proposed development by agreement. Annex B was superseded early in the examination by the Land Rights Tracker which was regularly updated at each deadline. The Final Land Rights Tracker can be found at [\[REP8-018\]](#). The applicant is satisfied that CA and TP powers are required to ensure that the proposed development can be delivered in a reasonable timescale and in the event that it does not prove possible to acquire all of the land by agreement.

ExA CONCLUSIONS ON THE GENERAL CASE FOR CA AND TP

- 6.6.24. The ExA agree with the applicant's conclusions on the generality of the case, including its overarching approach to dealing with alternatives and ensuring that there are no outstanding interests that have not been previously identified in land that the applicant already owns. The consideration of alternatives has been undertaken in greater detail in various sections as noted above and no substantive evidence has been submitted that would lead us to a different conclusion.
- 6.6.25. The ExA also agree that, in order to ensure delivery of the proposed development is not delayed by negotiations, CA, TP with permanent rights or TP would be appropriate. However, the overarching conclusion on CA and TP cannot be reached until individual objections and all other relevant and important considerations have been addressed.

6.7. INDIVIDUAL OBJECTIONS AND ISSUES

- 6.7.1. Annex B to the initial SoR set out in the table the status of objections with the individual owners and others with an interest in land. A Land Rights Tracker was submitted at DL1 and updated during the examination detailing the discussions that were ongoing with all freeholders and those who have an interest in the Order lands and which categorised the discussions on the current status of negotiations, the final version of which is [\[REP8-018\]](#). The SoR and the Land Rights Tracker have been updated throughout the Examination and the final versions were submitted at DL8 tracking the change in objections. The applicant also entered into SoCG with various parties and a number of the APs responded to the ExA's written questions or attended the CAHs.
- 6.7.2. The objections that remain outstanding at the close of the examination are considered individually in appendix D of this report and which identifies the objections raised, the various submissions to the examination and the parties' final positions. The conclusions in appendix D represent the situation the ExA considered at the close of the examination related to APs who have objected to the CA or TP of their land.
- 6.7.3. As a point of confirmation and clarity, NCC did not object to the CA of land, only submitting a RR, [\[RR-057\]](#). The Objection on behalf of Edmund Thornhill [\[RR-005\]](#) was withdrawn see [\[AS-104\]](#). Objections on behalf of two parties that initially raised objections through their RRs (James Miller (Kelham) Ltd [\[RR-033\]](#) and The Right Honourable Francis Michael Earl of Listowel [\[RR-070\]](#)) were subsequently partially withdrawn. The AP's objections were withdrawn to the CA of plot 3/15a following reaching agreement with the applicant, see [\[REP9-013\]](#) (in respect of James Miller (Kelham) Ltd) and [\[REP9-012\]](#) (in relation to The Right Honourable Francis Michael Earl of Listowel).

- 6.7.4. Many of the objections or matters concerned in the objections in support of CA and or TP objections related to planning merits that are considered in the main report in chapters 3 and 4. Findings in relation to the planning merits are made in those chapters and sections and are referenced here to enable understanding of the basis for the ExA's consideration and conclusions on CA and/ or TP matters and are not repeated in detail. Generally, these included matters related to environmental mitigation, flood compensation areas, consideration of alternatives, interference with future land use, the ability to achieve the same end by an alternative agreement or management approach.
- 6.7.5. In relation to the individual objections as considered in appendix D, 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 CA, TP and rights acquisition and the tests set out in s122 of the PA2008 would be satisfied. In each case, we consider that TP is required to ensure the delivery of the proposed development and that this is required for purposes ancillary to the development being sought (see s120 of the PA2008).
- 6.7.6. The ExA has reviewed the negotiation processes documented in the SoR and Land Rights Tracker and is satisfied that the expectation in the CA Guidance that all reasonable efforts should be made to acquire land or rights by agreement has been pursued by the applicant. However, not all matters have been brought to a conclusion and a number of negotiations are still ongoing. The ExA is content that the requirement of the guidance has been met.
- 6.7.7. The request for CA and/ or TP of land or rights is broadly supported by the ExA but there are a number of negotiations where the parties have identified that these are close to a conclusion and indeed may be concluded before the decision is made. In those circumstances we are still satisfied that the tests are met.

Table 9: Outstanding agreements with APs

Affected Person	Status
Francis Michael Hare 6th Earl of Listowel	Advanced stage of negotiations with the parties commenting may be concluded before decision made.
Winthorpe Family Settlement 1990 (including Jacqueline Suzanna Caroline Spencer & Lachlan Alastair Stewart)	Advanced stage of negotiations with the parties commenting may be concluded before decision made.
James Miller (Kelham) Limited	Advanced stage of negotiations with the parties commenting may be concluded before decision made.
John James Miller	Advanced stage of negotiations with the parties commenting may be concluded before decision made.
Lindum Developments Limited	Advanced stage of negotiations with the parties commenting may be concluded before decision made.
Newark and Sherwood District Council	Advanced stage of negotiations with the parties commenting may be concluded before decision made.

6.8. SPECIAL CONSIDERATIONS

6.8.1. This section addresses the ExA's consideration of the applicant's case and matters raised during the examination with respect to:

- Crown Land;
- Special Category Land; and
- Statutory Undertakers.

6.8.2. The applicant's SoR [\[AS-108\]](#) at section 7 addresses Special Considerations including matters related to Crown Land, Special Category Land and SU.

Crown Land

6.8.3. Plot 2/6a on the Crown land plans [\[AS-017\]](#) and referenced in the part 4 of the BoR [\[REP8-008\]](#) is the only plot in which it is identified that the Crown has an interest. This derives from the liquidation and dissolution of the currently registered owner, which was a limited company, and the applicant has presumed that the interest in land now vests in the Crown as bona vacantia land. The applicant also notes that the SoST is included as it is the beneficiary of a historical agreement dated 16 April 1991 which is still subsisting on the title.

6.8.4. Accordingly, this land is included within the Crown Land designation. The preferred DCO [\[AS-106\]](#), at Article 52 (Crown Rights), includes provision for the acquisition of those interests in Crown Land. In accordance with section 135 of PA2008, the consent of the Crown (in this case the Secretary of State) to the compulsory acquisition of these land interests would be required.

6.8.5. The applicant noted during the examination that it was seeking the necessary consents to the compulsory acquisition of Crown Land and would update the ExA by the close of the examination. During the examination, the applicant explained that it was investigating other options including adverse possession through the Land Registry or an application to the Crown to acquire the Bona Vacantia land. In response to the ExA's third set of written Questions (ExQ3), the applicant confirmed at Q5.2.1 [\[REP7-103\]](#) that:

The Applicant confirms plot 2/6a currently forms part of the existing adopted highway. The Applicant has not been able to progress its application with the Land Registry and so has reverted to focus on the application to the Crown to acquire the Bona Vacantia land. The Applicant's response is as follows:

a) An application was made on 2 May 2024 to the Government Legal Department (GLD) to request a transfer of the land subject to payment of consideration. Following appointment of external legal advisers by GLD the Applicant is making the necessary payment for the external legal advisers' legal fees before matters can progress.

b) The Applicant is focused on the application to the Bona Vacantia division for the transfer of the land and not through an application to the Land Registry.

c) The Applicant has been informed by GLD that "as the freehold in this matter has been disclaimed, the freehold title will be extinguished, and the property will "escheat" to the Crown Estate". The Applicant has not yet concluded the necessary transaction with the Crown although as noted in the question, where land is disclaimed and can become subject to escheat it

is capable of being acquired compulsorily without the need for Section 135 of the Planning Act 2008 consent.

d) The Applicant has not sought consent under section 135 of the Planning Act 2008 on this basis.

e) As it is considered that there is no need for Section 135 of the Planning Act 2008 consent, it is possible to acquire the interest compulsorily and there is no need to remove the plot from the order land. The Applicant would wish to see Article 52 (Crown Rights) retained in the event that any subsequent interests belong to the Crown are created across the order land.

- 6.8.6. On the basis of the information before the ExA, it appears that the Crown Estate has already disclaimed the freehold but the final steps in the escheat process may not yet have happened. The ExA cannot tell from the applicant's response whether the land has become completely ownerless yet. If it has, it is no longer Crown Land and consent from the appropriate Crown authority is no longer required for its CA under s135 PA 2008.
- 6.8.7. On this basis, there remains a residual uncertainty that the SoST may wish to make enquiries on. Dependant on the outcome of those enquiries, there are two outcomes available.
- 6.8.8. If the land is completely ownerless (subject to escheat), it can be subject to CA without s135 consent and Article 52 from the rDCO can be removed as superfluous as there is no other Crown land or rights within the Order limits. The ExA is satisfied that the land is necessary for the construction, operation and maintenance of the proposed development and would meet the necessary tests.
- 6.8.9. If, however, the land has not completed the process to become escheat and remains with the Crown the SoST will need to ensure that Crown consent is obtained for the CA of the interests and retain Article 52 in the rDCO to ensure s135 is complied with.

Special Category Land

- 6.8.10. The proposed development includes the following types of Special Category Land:

- Land which is Open Space (as defined in section (s) 19 of the Acquisition of Land Act 1981, as applied by s131(12) and s132(12) of the PA2008).

- 6.8.11. None of the land to be acquired for the proposed development is National Trust "inalienable" land and therefore s130 of the 2008 Act is not engaged.

Land forming part of a common, open space, or fuel or field garden allotment – including any exchange land arrangements

- 6.8.12. The applicant identifies special category land comprising open space on the special category land plans [\[REP7-004\]](#) and in part 5 of the BoR [\[REP8-008\]](#). The plots identified are: 1/5h, 1/5i, 1/5j, 1/5k, 1/5q, 1/5r, 1/9b, 1/9c, 1/10b, 1/12a, 1/13a, 1/14c, 1/17a, 4/2a, 4/2b, 4/2c, 4/2d, 4/2f, 4/2f1, 4/2f2, 4/3a, 4/4a, 4/5a, 4/5e and 4/6a. The plots comprise 2.3 hectares of land to be permanently acquired; 0.6 hectares required temporarily; and 0.7 hectares of land where permanent rights are required for access/ maintenance etc.
- 6.8.13. S131 of the PA2008 applies to compulsory acquisition of any land forming part of a common, open space, fuel or field garden allotment. S132 applies to the compulsory

acquisition of any rights over land forming part of a common, open space, fuel or field garden allotment.

6.8.14. Plots 1/5j, 1/5r and 1/5i are required for the construction of the new Windmill Viaduct, a temporary works area and the construction of an access track. They are being permanently acquired and therefore Section 131 of the 2008 Act is engaged.

- Plot 1/5i is required for the permanent footing of the new bridge which would occupy an area of approximately 22 sq m and which would facilitate the widening of the A46 over the River Trent. The new footing would replicate what currently exists for the existing bridge. Once constructed, the new footing would occupy an extremely limited area, the surrounding land on the river bank would remain accessible by the public and the proposed works would not interfere with the rights of the public to access the land. Therefore, the giving of replacement land is deemed unnecessary by the applicant.
- the applicant only requires permanent acquisition of the airspace in plot 1/5j for the construction of a new highway bridge together with temporary use of the land beneath the bridge during construction. The airspace is required for the widening of the existing highway. On the basis that the permanent acquisition only relates to the airspace above the land, no land is being acquired permanently, the open space would remain accessible by the public and therefore the applicant is of the view no replacement land is required.
- the applicant requires permanent acquisition of the airspace in plot 1/5r for the construction of a new highway bridge together with permanent acquisition of rights over the land below the bridge. As the open space at plot 1/5r would only be used by the applicant temporarily and the rights sought are to secure its use as public right of way, the public would be able to continue to use the land as recreational space in the same way as before the acquisition. On the basis that the permanent acquisition only relates to the airspace above the land and to permanent rights over the land below the bridge, the open space would remain accessible by the public and therefore the applicant is of the view no replacement land is required.

6.8.15. The applicant considers that in relation to plots 1/5i 1/5j and 1/5r, the exemption at Section 131(5) of the 2008 Act therefore applies and development consent can be granted in respect of these plots without reference to Special Parliamentary Procedure (SPP).

6.8.16. Plots 4/5e, 4/6a 4/2f, 4/2f1 and 4/2f2 are required permanently for the construction of a new bridge over the River Trent to carry the A46 dual carriageway, two access tracks, attenuation basins and associated drainage; and for environmental mitigation, maintenance and monitoring commitments. The applicant understands that public use of this land is prohibited by the landowner and there are signs to this effect, nevertheless the land is occasionally used by the public for recreation. Although there have been no objections from members of the public, the applicant has therefore taken a precautionary approach in determining that these plots are open space for the purposes of s131 of the 2008 Act. They are required for the widening of the existing highway, or for the drainage of an existing highway. The works being carried out in these plots, which are situated underneath the existing bridge along the bank of the River Trent, consist of mitigation planting, a new track and an attenuation pond. Once complete, the works as constructed would not interfere with any rights of the public to operate on this land that may exist, although the attenuation pond would be inaccessible to the public for safety reasons. The

character of the land would also be greatly improved by the proposed works. For these reasons, the applicant considers that the giving of replacement land is unnecessary. Therefore, the applicant considers the exemption in s131(5) of the 2008 Act applies and development consent can be granted in respect of these plots without reference to SPP.

- 6.8.17. Plots 1/5q, 1/10b, 1/12a, 1/13a 1/14c and 1/17a are required for works to facilitate the temporary diversion of Newark BW2. As the open space is only required for a temporary purpose and the land is only to be subject to temporary possession, the applicant considers that the exception in s131(4B) of the 2008 Act applies and that development consent can be granted in respect of these plots without reference to SPP.
- 6.8.18. Plots 1/5h, 1/5k, 1/9b and 1/9c are required for works to construct a new access track (including provision of a footpath and bridleway) and a temporary works area. Permanent new rights are being acquired over these plots, so s132 of the 2008 Act is engaged. As the open space would only be used by the applicant temporarily and the rights sought are to secure its use as a public right of way, the public would be able to continue to use the land as recreational space in the same way as before the acquisition. Therefore, when burdened with the new rights, the land would be no less advantageous than it was before it was acquired. The applicant therefore considers that the exception in s132(3) of the 2008 Act applies and that development consent can be granted in respect of these plots without reference to SPP.
- 6.8.19. Plots 4/2a, 4/2b, 4/2c, 4/2d, 4/3a, 4/4a and 4/5a are required for access during construction with permanent rights being acquired for the purposes of inspecting and maintaining structures on adjoining land. The public would be able to continue to use the land as recreational space in the same way as before the acquisition. Therefore, when burdened with the new rights, the land would be no less advantageous than it was before it was acquired. The applicant therefore considers that the exception in s132(3) of the 2008 Act applies and that development consent can be granted in respect of these plots without reference to SPP.
- 6.8.20. The proposed development involves undertaking works on or over land to facilitate the proposed development and which would require the permanent acquisition of land temporary use of land and the imposition or interference with existing and new rights. There are a variety of ownerships affected which are identified in the BoR and which include the applicant itself, the Canal & River Trust, Network Rail, Newark Branch Line as well as some private ownership. The applicant in the SoR [\[AS-108\]](#) has sought to set out the effect and reason for the CA or TP required with reference to s131 and s132 of the PA2008 and which has been summarised above.
- 6.8.21. The ExA has had no significant objection from any of the affected landowners in respect of the applicant's conclusions in relation to its consideration and assessment of the purposes for which the land is to be put and whether this is consistent with s131 and s132 in this regard and whether SPP would be required. Canal & River Trust has commented that CA should be a last resort and it is willing to engage with National Highways and to enter into an agreement in respect of the rights it requires to deliver the project. It does not however raise specific issue relating to the consideration and conclusions in respect of SPP. Its concerns are further addressed below as it is an SU. Similarly with regard to Network Rail and again as an SU, its objections are addressed below. The ExA accepts the conclusions of the applicant and also confirms that we agree with its conclusions that where relevant, the Open Space land required permanently is required in

relation to widening or drainage works of an existing highway, with the interests of the public not adversely affected. The provision of replacement land is therefore unnecessary because the land would be able to be accessed by the public in the same, or a similar way to the current situation following construction of the proposed development. Therefore, the test in s131(5) is met. We further accept that in respect of land required temporarily the land meets all limbs of the test in section s131(4B) and in respect of the land where permanent rights are required the test in s132(3) is met.

6.8.22. Accordingly, the ExA concludes that the DCO should not be subject to SPP.

Statutory Undertaker Land

6.8.23. The applicant confirms in the SoR [[AS-108](#)] that if made the DCO would authorise the permanent compulsory acquisition of land held by and rights over SUs' land as well as land to be temporarily used. Permanent acquisition would be of plots: 1/18a1, 1/18b, 1/18c, 3/1t, 3/2u, 3/2y, 3/2z, 3/2aa, 3/2cc, 3/2hh, 3/2ii, 3/2jj, 3/2kk, 3/2ll, 3/2mm, 4/2a, 4/2b, 4/2c, 4/2d, 4/2f, 4/2h, 4/2i, 4/2j, 4/2l, 4/2m, 4/2n, 4/4a, 4/5a, 4/5c, 4/5e, 4/5f, 4/5g, and 5/16a. Plots to be temporarily used would be 1/18a, 1/18d, 2/2j, 2/2k, 2/2m, 2/2p, 3/1u, 3/2x, 3/2ff, 3/2gg, 4/2e, 4/2g, 4/2k, 4/2o, 4/2p, 4/2q, and 4/5h.

6.8.24. The plots are identified in the BoR [[REP8-008](#)] and the Land Plans [[REP8-002](#)].

6.8.25. The applicant confirms that plots 1/18a, 1/18a1, 1/18b, 1/18c, 1/18d, 4/2a, 4/2b, 4/2c, 4/2d, 4/2e, 4/2f, 4/2g, 4/2h, 4/2i, 4/2j, 4/2k, 4/2l, 4/2m, 4/2n, 4/2o, 4/2p, 4/2q, 4/4a and 4/5a are held by Canal and River Trust, plots 2/2e, 2/2f, 2/2g, 2/2j, 2/2k, 2/2m, 2/2n, 2/2p, 2/4c, 2/4d, 3/1r, 3/1s, 3/1t, 3/1u, 3/2u, 3/2x, 3/2y, 3/2z, 3/2aa, 3/2cc, 3/2dd, 3/2ee, 3/2ff, 3/2gg, 3/2hh, 3/2ii, 3/2jj, 3/2kk, 3/2ll, and 3/2mm, are held by Network Rail Infrastructure Limited and plot 5/16a is held by National Grid Electricity Distribution (East Midlands) plc.

6.8.26. SUs' apparatus is also present and affected and the applicant confirms that it has engaged in discussions with the SUs listed in the BoR regarding the impacts of the proposed development on the interests and or apparatus of those parties within the Order limits.

6.8.27. S127(3) of the PA2008 provides that a DCO may only authorise the CA of SUs' land where a representation has been made by the SU objecting to the acquisition if the SoS is satisfied that:

- the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- if purchased, the land can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.

6.8.28. S127(5) of PA2008 provides that a DCO may only authorise the CA of rights over SUs' land where a representation has been made by the SU objecting to the acquisition and the SoS is satisfied that:

- the rights can be acquired without serious detriment to the carrying on of the undertaking; or
- any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of other land belonging to or available for acquisition by the undertaker.

- 6.8.29. S138 of the PA2008 provides that a DCO may include provision for the extinguishment of a relevant right, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which the order relates. A relevant right is defined in s138(2) as meaning a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which, (a) is vested in or belongs to SUs for the purpose of the carrying on of their undertaking, or (b) is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.
- 6.8.30. The applicant has identified the following SUs that may be affected by the proposed development:
- Canal & River Trust.
 - Network Rail Infrastructure Limited.
 - National Grid Electricity Distribution (East Midlands) plc.
 - Cadent Gas.
 - Indigo Gas Services Limited.
- 6.8.31. Canal & River Trust, Network Rail and National Grid have formally objected to the acquisition of its land and rights and therefore sections 127(3) and 127(5) are engaged in relation to those SUs. Cadent Gas and Indigo Gas have not formally objected to the CA/TP of their land or interests.
- 6.8.32. The applicant notes that protection for SUs' assets is included within the protective provisions in Schedule 9 to the dDCO and/ or in asset protection agreements between the applicant and the undertaker (see ExQ1 Q5.2.3, Q6.3.3 - Q6.3.6). The applicant considers that the SUs would not suffer serious detriment to the carrying out of their undertaking as a result of the CA of the land or as a result of the acquisition of rights over land. The SUs have agreed the final form of the Protective Provisions. Although we have not seen any asset protection agreements, we are satisfied that the protective provisions in Schedule 9 of the rDCO would provide adequate protection. The tests set out in s127(3) and s127(5) of the PA2008 are therefore satisfied as there would be no serious detriment to the carrying out of any SU's function. In addition, proposals for the extinguishment or removal of apparatus are wholly necessary for the carrying out of the proposed development. The apparatus lies within or close to existing highway that would be extended or widened and would be replaced or moved to the extended widened or new offline sections. The requirements of s138 of the PA2008 are also therefore met.
- 6.8.33. The specific objections and concerns, and the final position at the close of the examination in respect of CRT, National Rail Infrastructure Limited and National Grid Electricity Distribution (East Midlands) Plc, are set out in appendix D of this report where the ExA has addressed all outstanding objections to CA and TP. We have concluded in respect of each that the agreed PPs which are included in the rDCO provide adequate protection for the SUs. We have further noted that the SoS may wish to enquire of the applicant and SUs whether they have reached final agreement on the asset agreements and are in a position to withdraw their objections that although they had not reached that point as at the close of the examination given, it was indicated this would be likely to be reached before the decision was issued.
- 6.8.34. The ExA is therefore satisfied that the recommended DCO (rDCO) meets the requirements of s127(3), 127(5) and 138 of the PA2008 in respect of those SUs and that the protective provisions in the rDCO are acceptable.

Other Consents and Agreements

- 6.8.35. The applicant notes that the Consents and Agreements Position Statement [\[REP7-010\]](#) sets out the additional consents outside of the draft DCO and the current position as to the status of securing those consents. The statement was updated during the course of the examination and Appendix A identifies the permits, consents and agreements that may need to be sought separately from the DCO. The statement also identifies other possible forms of agreement including legal agreements regulating land and works powers, undertakings, memoranda of understanding and letters of comfort.
- 6.8.36. The applicant is satisfied that all necessary consents to enable the proposed development to proceed have been identified and that there is no reason why such consents should not be secured or granted pursuant to the DCO.
- 6.8.37. The ExA has no reason to believe that there are any impediments in terms of outstanding consents or agreements that would prevent the implementation of the proposed development. No statutory party has identified any concerns or issues which would prevent any necessary future consents from being issued.
- 6.8.38. The agreements that the applicant has concluded including the Pelham Street agreement and the Doddington Hall agreement have been concluded and are addressed in the relevant sections of the report.
- 6.8.39. Under paragraph 19 of the CA Guidance, the applicant needs to demonstrate that any potential risks or impediments to implementation have been properly managed and that any legal matters, including the need for any operational or other consents, have been taken into account.
- 6.8.40. The ExA is satisfied that all necessary consents and licences to enable the proposed development to proceed have been identified and that there is no reason why such consents and licences should not be secured or granted should development consent be granted for the proposed development.

6.9. LAND TO WHICH NO OBJECTION HAS BEEN RECEIVED

- 6.9.1. There are a number of other Category 1 landowners in the Order lands whose land would be subject to CA, TP with Permanent Rights or TP who have not raised objections to the proposed development during the Examination. The Land Rights Tracker [\[REP8-018\]](#) sets out a schedule of all objections made and the progress of negotiations. A number are being resolved through negotiations but have not yet completed and others relate to TP or TP with rights where discussions are ongoing to address concerns which would be resolved at the detailed design stage.
- 6.9.2. The Land Rights Tracker sets out the ongoing communication with these persons and they had every opportunity to engage with the examination.
- 6.9.3. The BoR identifies that there is land in the ownership of National Highways and the SoR states there is land in which the SoST has an interest, which would not represent an impediment to the delivery of the proposed development. As the applicant explains in the SoR, the comprehensive approach to CA is to ensure 'clean title' so that no unexpected delays occur.
- 6.9.4. There are a number of other plots of land where land rights would be interfered with, and where no correspondence has been received to indicate that there is an objection to the CA, TP with Permanent Rights or TP of the relevant plots.

- 6.9.5. In all cases, we have considered and conclude that the land is required for the development to which the development consent would relate or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The same considerations apply to that land which is sought to be acquired for TP, whether or not with permanent rights thereafter.

6.10. FUNDING

- 6.10.1. In accordance with CA Guidance, the applicant submitted a Funding Statement [APP-026] with the application and reiterated that the government was still committed to funding the proposed development in response to questions at ExQ1 [REP2-037] ExQ2 [REP5-060] and ExQ3 [REP7-103]. Towards the conclusion of the examination, the government published a document entitled 'Interim settlement: Investment and management of the strategic road network from April 2025 to March 2026'. In this, the A46 Newark bypass is identified as in development during 2025/26 with future delivery subject to 2025 spending review. The ExA issued a Rule 17 request [PD-012] for the applicant to respond to the publication of the Interim Settlement and comment on any implications for the funding for the proposed development. The applicant responded at [REP8-033] as follows:

"The Applicant confirms that the position remains as that set out in our response to ExA Q5.2.1 [REP2-037] and ExA Q.5.1.1 [REP7-103].

The Government has said that it is determined to build the transport infrastructure to drive economic growth and opportunities in every part of the country, and to deliver value for money for taxpayers. Road's investment in 2025-26 will be funded through an interim roads' settlement, and the third Road Investment Strategy will be set out in the next phase of the Spending Review.

The Spending Review is expected to complete in late Spring 2025. Whilst the Spending Review is ongoing, the Road Investment Strategy commitment to deliver the Scheme remains in place."

- 6.10.2. The Funding Statement estimates that the cost of the proposed development would be about £686.4m. This estimate includes an allowance for compensation payments relating to the CA of land interests in, and rights over, land and the TP and use of land. It also takes into account potential claims under Part 1 of the Land Compensation Act 1973, s10 of the Compulsory Purchase Act 1965 and s152(3) of the PA2008.
- 6.10.3. The proposed development would be fully funded by the Department for Transport (DfT) and it is not dependent on funding contributions from other parties. On the basis of the evidence submitted by the applicant, no changes to the Funding Statement have been requested by the ExA, albeit we sought further assurance during the course of the examination in respect of the government's evolving spending priorities, following the change in government. The applicant confirmed that the SoST has commissioned a review of the Department for Transport's spending portfolio, including current and future road schemes. While the review is ongoing, the commitment to the proposed development has not been withdrawn and remains in place. This remained the position at the close of the Examination. With the interim statement still identifying the A46 in development and included in the schemes whose delivery will be determined in the 2025 spending review and RIS3. There is no evidence before the ExA that would confirm that funding is not available. The SoST may wish to review whether the spending review has further advanced

prior to their decision being made and take account of any implications this may have on funding for the proposed development. On the basis of the information before the ExA, we are satisfied that should the DCO be confirmed there would be adequate funding in place to ensure its delivery.

- 6.10.4. Consistent with previous SoST decisions on DCOs relating to Highways England/ National Highways and having regard to the CA Guidance in respect of the adequacy and security of financial resources, we are satisfied that there are adequate funds for CA and TP compensation and no additional or special steps are required to secure or guarantee those funds.

6.11. ExA REASONING AND CONCLUSION

- 6.11.1. Our approach to the question as to whether and which CA powers the ExA should recommend to the SoST 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; and, in the 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.
- 6.11.2. The preferred DCO [\[AS-106\]](#) deals with both the proposed development itself and CA and TP powers. We conclude above that when the adverse effects of the proposed development are weighed against its public benefits the DCO should be confirmed. The consideration of the CA issues must be consistent with that view.
- 6.11.3. If the SoST concludes that the case for the grant of development consent is made, the ExA is satisfied that the legal interests in all the plots of land included in the revised BoR [\[REP8-008\]](#) and shown on the Land Plans [\[REP8-002\]](#) would be required for the development to which the development consent relates or is required to facilitate or is incidental to that development. The purpose for each of the plots in the BoR is clearly defined and the need for the development in each of the plots has been demonstrated.
- 6.11.4. We are satisfied that if development consent were to be granted for the proposed development, there would be a need to acquire the rights and interests in the CA land. On this basis, the proposed development would comply with s122(1) insofar as it also meets s122(2).
- 6.11.5. We recognise that the applicant has sought to reduce the effect on private property and to obtain all land and interests required privately by negotiation where possible. The extent of private loss has been considered and weighed appropriately in looking at alternatives, and in some instances has led to changes in the design of the proposed development.
- 6.11.6. We consider that the applicant has made an adequate and proportionate assessment of private loss that would be experienced by APs to weigh in the balance between public benefits and private losses. We are content that the applicant has endeavoured to minimise the impact that CA would have on those individuals who would be affected by the proposed development and hence the extent of their private loss.
- 6.11.7. The private loss to those affected would be mitigated by limiting the use of CA powers to land necessary to deliver the proposed development and by the use of TP powers wherever possible to minimise both land-take and the extent of rights and interests to be acquired.

- 6.11.8. We are satisfied that the applicant has explored all reasonable alternatives to CA, including modifications to the proposed development and acquisition by negotiation and agreement. We conclude that there are no alternatives to the CA powers sought which ought to be preferred.
- 6.11.9. We conclude that the public benefits associated with the proposed development would strongly outweigh the private loss that would be suffered by those whose land would be affected by CA powers to enable the construction, operation, and maintenance of the proposed development.
- 6.11.10. The applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there is a reasonable prospect of the requisite funds both for acquiring the land and implementing the proposed development becoming available.
- 6.11.11. If the SoST decides that the case for the proposed development is made out we conclude that:
- the need to secure the land and rights required and to construct the proposed development within a reasonable timeframe, and to ensure that its operation and maintenance is not thereafter impeded, represents a significant public benefit to weigh in the balance;
 - the private loss to those affected has been mitigated including through route selection, review of the existing land use and ownership, design alterations in consultation with APs, the approach to CA powers and the extent of the rights and interests proposed to be acquired, and engaging with all persons with an interest in land affected with a view to reaching a voluntary agreement;
 - the applicant has explored all reasonable alternatives to the CA of the rights and interests sought and there are no alternatives which ought to be preferred; and
 - adequate and secure funding would be available to enable the CA within the statutory period following the Order being made.
- 6.11.12. Taking these various factors together, there would be a compelling case in the public interest for the CA powers sought in respect of each and every plot of the CA land shown on the Land Plans (as amended). There would therefore be compliance with s122(3) PA2008 and the land-related powers in the dDCO would be necessary and justified for the proposed development to proceed.
- 6.11.13. The dDCO seeks, in a number of instances, to apply s120(5)(a) and apply, modify or exclude a statutory provision. For example, Article 35, in relation to the Compulsory Purchase Act 1965. Since the dDCO is in the form of a statutory instrument, it would comply with s117(4) PA2008. Furthermore, no provision would contravene the provisions of s126 PA2008 which relates to the modification or exclusion of a compensation provision.
- 6.11.14. In the case of each s127 representation, adequate protection for the relevant SUs' assets is included in the PPs in the rDCO, Schedule 9 Parts 1 to 6. We conclude that the SoST can be satisfied that the CA of the SUs' land or rights over that land would meet the prescribed tests set out in subsections 127(3) or (5). In the case of each s138 representation, we are content that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the development to which the rDCO relates. Therefore, in the event that development consent is granted for the proposed development, the DCO could include the CA powers sought in relation to SUs' land.

- 6.11.15. As indicated above, for some land plots TP has been sought as an alternative to CA. The rDCO includes powers for TP which we consider are appropriate for inclusion to support the delivery of the proposed development in respect of all plots noted for TP in the final BoR [\[REP8-008\]](#).
- 6.11.16. These powers are not CA powers and accordingly the tests under s122 and s123 PA2008 are not applicable. However, the request for the powers to enable the proposed development to be implemented and maintained must be justified. Any interferences with human rights must also be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 6.11.17. We are satisfied that the relevant land is required for the purposes indicated by the applicant and is necessary to implement the proposed development. The exercise of these rights of TP and use of land would infringe rights under the Human Rights Act 1998. However, the ExA considers that they are proportionate in relation to the proposed development, legitimate and in the public interest. We are also satisfied that adequate compensation provisions would be in place.
- 6.11.18. The ExA concludes that should the SoST grant development consent, then it would be appropriate to grant the TP powers sought as part of the DCO.
- 6.11.19. The updated Consents and Agreements Position Statement [\[REP7-010\]](#) sets out the other required consents and the position as to the status of securing those consents. We are satisfied that all necessary consents to enable the proposed development to proceed have been identified and that there is no reason why such consents should not be secured or granted should development consent be granted for the proposed development.

6.12. HUMAN RIGHTS ACT 1988 and PUBLIC SECTOR EQUALITY DUTY CONSIDERATIONS

Human Rights Act

- 6.12.1. The applicant acknowledges in the SoR [\[AS-108\]](#) that the DCO engages a number of the articles of the ECHR as brought into UK law by the Human Rights Act 1988 but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.
- 6.12.2. The DCO if granted would affect Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with).
- 6.12.3. Article 6 entitles those affected by CA powers sought for a project to a fair and public hearing of their objections. The provision of CAH1 and CAH2 enabled any AP who wished to be heard to be heard fully, fairly and in public. The applicant states that all owners and occupiers of land affected by the proposed development have been contacted and that representations could be made in response to notice under s56 PA2008 or at any CAH advertised or held in public by the ExA.
- 6.12.4. If the DCO is made, a person aggrieved may challenge the DCO by judicial review in the High Court if they consider that the grounds for doing so are made out pursuant to section 118 of the 2008 Act.
- 6.12.5. Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law

and is necessary in the interests of national security, public safety or the economic well-being of the country.

- 6.12.6. In relation to both Articles 1 and 8, the applicant argues that the compelling case in the public interest for the compulsory acquisition powers included within the DCO has been demonstrated. The applicant also states that the land included over which compulsory acquisition powers are sought as set out in the draft DCO is the minimum necessary to ensure the delivery of the proposed development. Furthermore, the applicant notes that the proposed development has been designed to minimise harm whilst achieving its publicly stated objectives. The applicant therefore concludes that in this respect the interference with human rights is both proportionate and justified.
- 6.12.7. The applicant has proceeded on the basis that there is no occupied residential property being subject to CA, see above. The ExA concludes that as the mint leaf restaurant is unoccupied and has been for some time that the building (including the associated residential unit) is nobody's 'home' and agrees that the applicant was reasonable in proceeding on the basis that no occupied residential unit was included in the CA. Consequently, in respect of this plot Article 8 would not be engaged.
- 6.12.8. Any person affected by the exercise of compulsory acquisition powers or by the exercise of temporary possession, may be entitled to compensation. This entitlement to compensation is provided for by the existing compensation code and relevant article provisions of the draft DCO. The applicant has the resources to pay such compensation and has demonstrated in the Funding Statement [[APP-026](#)] that these resources would be available.
- 6.12.9. In each of these cases, while rights would be interfered with, we consider that the interference would be proportionate and justified in the public interest, and consequently the CA, TP with permanent rights and TP would be compatible with the Human Rights Act 1988 and the ECHR.

Public Sector Equality Duty

- 6.12.10. The applicant has conducted an Equality Impact Assessment (EqIA) and this was updated during the examination [[REP7-080](#)] to consider how the proposed development may have direct and indirect impacts and contribute to equality effects for equality groups. The EqIA concludes that the mitigation measures embedded into the proposed development, in combination with the ongoing actions outlined in the EqIA, should minimise any adverse impacts of the proposed development and provide benefits for a number of equality groups.
- 6.12.11. The applicant advises that the EqIA and associated Inclusion Action Plan would continue to be developed throughout the remaining design and construction stages of the proposed development. It would ensure that due regard is made towards the needs of people with protected characteristics under the Equality Act 2010. It would also help identify opportunities for enhancing equality of opportunity and fostering good relations between those who have protected characteristics and those who do not. The EqIA concludes that the proposed development is likely to have some temporary negative effects generated by the construction phase of the proposed development. However, these would be minimised through the mitigation measures embedded into the proposed development, and overall the proposed development would provide long term benefits that can be shared by equality groups. These include direct benefits such as improved road safety, and new and improved

walking and cycling routes. The proposed development is also likely to improve access to community facilities and education, as well as improving access to recreational facilities and green space.

6.12.12. The ExA asked in ExQ1 [\[PD-007\]](#), ExQ2 [\[PD-009\]](#), and ISH4 [\[EV10-001\]](#), [\[EV10-002\]](#), [\[EV10-003\]](#) about the effects of the proposed development on a potential traveller site at Old Stable Yard and the effect that the proposed development could have on the occupants of properties at that site in relation to various matters including noise and air quality and in the context of the PSED. The applicant's responses are recorded in [\[REP2-037\]](#), [\[REP4-034\]](#), [\[REP5-060\]](#) and the updated EqIA [\[REP7-080\]](#) confirmed that full regard had been had to the occupants of the site and that the EqIA was updated to clarify and reflect the engagement with that community. In [\[REP5-060\]](#), in response to Q2.0.3 the applicant notes that the EqIA assesses the impact of the proposed development (adverse or beneficial) on people with characteristics protected under the Equality Act 2010. This includes the Old Stable Yard GRT community. The EqIA concludes that it is unlikely there would be adverse impacts as a result of changes to air quality or changes to noise exposure for these groups. The EqIA also notes that in the context of engagement with the Gypsy, Roma and Traveller community that representatives of the Old Stable Yard community confirmed verbal support for the proposed development. No objections were received from the occupants.

6.12.13. The ExA is satisfied that due to the characteristics of the proposed development and the mitigation that has been proposed by the applicant, there would be no harm to the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and any persons who do not have a protected characteristic. We are satisfied that the Public Sector Equality Duty (PSED) on the applicant has been discharged and that the ExA has conducted the examination with full regard to our requirement to discharge this duty.

6.13. OVERALL CONCLUSIONS AND RECOMMENDATIONS ON CA AND TP POWERS

6.13.1. We conclude as follows:

- Whilst there are a number of matters where final positions, side agreements etc have not been concluded but there was a suggestion they may be concluded before the SoST makes their decision, they remain as outstanding objections. We are however satisfied that in all cases relating to individual objections and issues that CA, TP with permanent rights and TP is justified to enable implementation of the proposed development and a compelling case in the public interest has been made out. For information those APs are:
 - **Francis Michael Hare 6th Earl of Listowel**: Given the advanced stage of negotiations and the parties comments the SoST may wish to enquire whether acquisition by agreement has occurred before issuing the decision.
 - **Winthorpe Family Settlement 1990 (including Jacqueline Suzanna Caroline Spencer & Lachlan Alastair Stewart)**: Given the advanced stage of negotiations and the parties comments the SoST may wish to enquire whether acquisition by agreement has occurred before issuing the decision.
 - **James Miller (Kelham) Limited**: Given the advanced stage of negotiations and the parties comments the SoST may wish to enquire whether acquisition by agreement has occurred before issuing the decision.

- **John James Miller:** Given the advanced stage of negotiations and the parties comments the SoST may wish to enquire whether acquisition by agreement has occurred before issuing the decision.
 - **Lindum Developments Limited:** Given the advanced stage of negotiations and the parties comments the SoST may wish to enquire whether the proposed agreement has been concluded including acquisition of the necessary land (outside the Order lands) by agreement has occurred before issuing the decision.
 - **Newark and Sherwood District Council:** Given the advanced stage of negotiations and the parties comments the SoST may wish to enquire whether a side agreement has been concluded and whether NSDC would withdraw its objection before issuing the decision.
 - **Canal & River Trust (CRT):** The SoST may wish to enquire whether a voluntary agreement has been reached between the applicant and CRT, as a statutory undertaker, as it is suggested this may occur after the close of the examination and before the decision.
 - **National Grid Electricity Distribution (East Midlands) plc (NGED):** The SoST may wish to enquire whether the asset protection agreement has been reached between the applicant and NGED, as a statutory undertaker, as this is close to completion and may occur after the close of the examination and before the decision, which may allow NGED to withdraw its objection.
 - **Network Rail Infrastructure Limited:** The SoST may wish to enquire whether the basic asset protection agreement has been reached between the applicant and National Rail, as a statutory undertaker, as this is close to completion and may occur after the close of the examination and before the decision, which may allow National Rail to withdraw its objection, which it has indicated it would do.
- In respect of Crown land, there remains a residual uncertainty that the SoST may wish to make enquiries on. Dependant on the outcome of that enquiry there are two outcomes available:
 - If the land is completely ownerless (subject to escheat), it can be subject to CA without s135 consent and Article 52 from the rDCO can be removed as superfluous as there is no other Crown land or rights within the Order limits. The ExA is satisfied that the land is necessary for the construction, operation and maintenance of the proposed development and would meet the necessary tests.
 - If, however, the land has not completed the process to become escheat and remains with the Crown the SoST will need to ensure that Crown consent is obtained for the CA of the interests and retain Article 52 in the rDCO to ensure s135 is complied with.
 - In terms of funding, the SoST may wish to review whether the spending review has further advanced prior to their decision being made and take account of any implications this may have on funding for the proposed development.
 - Notwithstanding the above clarifications and further enquiries, the ExA is satisfied and concludes on the basis of the information before it at the end of the examination that:
 - The CA powers sought would accord with s122(2) and (3) and s123 of the PA2008.
 - We are satisfied that in all cases relating to individual objections and issues that CA, TP with permanent rights and TP is justified to enable

- implementation of the proposed development and a compelling case in the public interest has been made out.
- The CA of land and rights and the TP of Open Space land is required in relation to widening or drainage works of an existing highway, with the interests of the public not adversely affected and replacement land is not necessary. Where the land is required temporarily, it is Open Space and not any other description of land in s131(1) and is acquired for a temporary purpose. Where rights are acquired, the land would be no less advantageous than it was before to the persons in whom it is vested, other persons entitled to rights of common (there are none) and the public. Consequently, sections s131(5), s131(4B) and s132(3) of the PA2008 are met, and the Order does not need to be subject to SPP.
 - The DCO meets the requirements of s127(3), s127(5) and s138 of the PA2008 in respect of SUs.
 - There is adequate funding in place for the proposed development.
 - The proposed development would be compatible with the Human Rights Act 1988 in terms of being a proportionate interference with property and family life.
 - The Public Sector Equality Duty (PSED) has been discharged in the conduct of the Examination and by the applicant and the ExA is not aware of any breach of the duty.
- Overall, subject to the outcome of any further enquiries, the SoS can be satisfied that:
 - the tests in s122(2) and s122(3) PA2008 are met and recommend acceptance of the CA and TP powers proposed in the rDCO;
 - the conditions in s123(2) and s123(4) PA2008 are met;
 - the relevant tests in s131 and s132 PA2008 are met, and the DCO does not need to be subject to SPP; and
 - all of the powers for CA and TP, over all of the plots shown on the Land Plans, as provided for in the articles and schedules of the rDCO, are justified.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. A draft Development Consent Order (dDCO) [\[APP-021\]](#) and Explanatory Memorandum (EM) [\[APP-022\]](#) were submitted by the applicant as part of the application for development consent. The EM describes the purpose of the dDCO as originally submitted, with each of its articles and Schedules 1 to 10.
- 7.1.2. The submission version dDCO was broadly based on the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 along with other DCOs that have been made up to the date of the application. The original dDCO [\[APP-021\]](#) and subsequent iterations are in the form of a Statutory Instrument as required by section (s) 117(4) of the Planning Act 2008 as amended (PA2008).
- 7.1.3. This chapter starts by providing an overview of the dDCO, the changes made to the dDCO during the examination process between the original application dDCO and the final dDCO submitted by the applicant and accepted by the ExA as an additional submission before the close of the examination [\[AS-106\]](#). This final dDCO will be referred to as ‘the preferred DCO’ as it is the version preferred by the applicant at the end of the examination.
- 7.1.4. A final EM was submitted by the applicant and accepted by the ExA as an additional submission before the close of the examination [\[AS-110\]](#) which incorporated changes to that date. This chapter considers whether any changes are required to be made to the preferred DCO in order to arrive at the Examining Authority’s (ExA’s) recommended DCO (rDCO), which is attached in Appendix C to this report in the event that the Secretary of State for Transport (SoST) is minded to make the DCO.
- 7.1.5. The applicant explained the necessity for the final change to the dDCO in its cover letter [\[AS-105\]](#), noting that additional plots were required to be added to Schedule 5 (Land in which only new rights and restrictive covenants etc. may be acquired). This resulted from a land review with Network Rail and which had resulted in changes to the BoR at DL6 [\[REP6-008\]](#). The changes to the BoR were not reflected in Schedule 5 at that time and therefore it was necessary to update Schedule 5 to reflect that in many cases air space rights are to be acquired in place of the acquisition of railway land and that these are agreed matters with Network Rail. The ExA accepted the Additional Submissions as doing so would not prejudice any parties and would ensure the dDCO properly reflected the agreed position with Network Rail.
- 7.1.6. The sections of this Chapter describe:
- the DCO as applied for;
 - changes during the examination;
 - wording of requirements (R);
 - matters in contention; and
 - conclusions.

7.2. THE DCO AS APPLIED FOR

- 7.2.1. The first version of the dDCO [\[APP-021\]](#) included a number of provisions to enable the construction, operation and maintenance of the proposed development. As

explained, it was modified during the Examination. Its final general structure is set out below:

- Part 1 (Preliminary): Articles 1 and 2 set out how the DCO may be cited, when it would come into force and the meaning of various terms used in the DCO. Provisions are included for the disapplication of certain requirements that would otherwise apply under general legislation (Article 3) and to clarify responsibilities for the maintenance of drainage (Article 4).
- Part 2 (Principal Powers): Articles 5 and 6 provide development consent for the proposed development and allow it to be carried out and maintained. Article 7 provides that any temporary works are granted planning permission for a limited period. Article 8 provides that any subsequent development granted planning permission within the Order limits not the subject of the DCO would not constitute a breach of the DCO. Article 9 ensures nothing in the order prejudices the undertakers' powers and duties under various acts and statutory instruments. Article 10 deals with limits of deviation and Articles 11 and 12 set out who has the benefit of the DCO and how that benefit can be transferred.
- Part 3 (Streets): Articles 13 to 22 provide powers in relation to street works. These include the ability for the undertaker to construct and maintain new, altered or diverted streets and other structures, provide for the classification of roads and powers for temporary and permanent stopping up and restriction of streets, ensure access to works, and deal with traffic regulation, including the use of clearways.
- Part 4 (Supplemental Powers): Article 23 relates to the discharge of water, with Articles 24 and 25 addressing protective works to buildings and authority to survey and investigate land.
- Part 5 (Powers of Acquisition and Possession): Articles 26 through to 44 provide powers in relation to the Compulsory Acquisition (CA) and Temporary Possession (TP) of land, along with powers in relation to statutory undertakers (SU). It includes provisions for time limits for acquisition, public rights of way, private land, acquisition of subsoil or airspace only, rights under and over streets, compensation, and modifications to the compulsory purchase and compensation provisions under general legislation.
- Part 6 (Operations): Articles 45 and 46 contain powers in relation to trees and hedgerows, including those trees protected by tree preservation orders.
- Part 7 (Miscellaneous and General): Articles 47 to 58 relate to matters including the application of landlord and tenant law, operational land under the Town and Country Planning Act 1990, appeals relating to the control of pollution act 1974, removal of human remains, Crown Rights, use of private roads for construction, protective provisions, document certification, the serving of notices, arbitration and temporary suspension of navigation in connection with the authorised development.

7.2.2. There are ten schedules to the dDCO. These provide for:

- a description of the Authorised development (Schedule 1);
- requirements (Schedule 2);
- classification of roads etc (Schedule 3);
- permanent stopping up of highways and private means of access and provision of new highways and private means of access (Schedule 4);
- land in respect of which only new rights etc may be acquired (Schedule 5);
- modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants (Schedule 6);
- land of which TP may be taken (Schedule 7);
- hedgerows and trees (Schedule 8);

- protective provisions (Schedule 9); and
- documents to be certified (Schedule 10).

7.2.3. Although there were numerous changes made to the dDCO during the examination, as described below, its broad structure did not change.

7.3. CHANGES DURING THE EXAMINATION

7.3.1. During the Examination, the applicant made various changes to the dDCO. These changes were in response to questions raised by the ExA in ExQ1 [\[PD-007\]](#), ExQ2 [\[PD-009\]](#), and ExQ3 [\[PD-011\]](#); discussion at Issue Specific Hearing 1 (ISH1) [\[EV7-002\]](#) and [\[EV7-003\]](#), and to resolve matters raised in other issue specific hearings or to address matters raised by the host authorities or other Interested Parties (IPs) including statutory bodies.

7.3.2. There were numerous minor changes, corrections and drafting changes. These were recorded in a 'Schedule of Changes to Draft DCO' document which set out a table of amendments to the dDCO each time the applicant submitted a revised dDCO. At each deadline that a revised copy of the draft DCO was submitted, the 'Schedule of Changes to Draft DCO' document was provided in both clean and tracked change versions. The changes can be easily reviewed in the tracked changes versions of the dDCO.

7.3.3. As part of the examination process, the ExA did not publish a schedule of proposed changes to the dDCO given that the applicant had sought to accommodate changes requested by various parties and there were no outstanding substantive matters in contention that required us to adjudicate.

7.3.4. There were 10 revisions of the dDCO up to the close of the examination. Table 10: History of Draft DCOs sets out the version number, dates of the submission and examination event, along with the Examination Library numbers of the clean and tracked change versions of the dDCO and the document of the table of amendments to the dDCO.

Table 10: History of Draft DCOs

Revision	Date	Event	Clean version reference	Tracked Changed version reference	Table of amendments to the draft DCO
1	April 2024	Application submission	APP-021	N/A	N/A
2	October 2024	Deadline 1	REP1-001	REP1-002	REP1-018
3	November 2024	Deadline 2	REP2-002	REP2-003	REP2-024
4	November 2024	Deadline 3	REP3-003	REP3-004	REP3-041
5	December 2024	Deadline 4	REP4-003	REP4-004	REP4-016
6	February 2025	Deadline 5	REP5-002	REP5-003	REP5-044

Revision	Date	Event	Clean version reference	Tracked Changed version reference	Table of amendments to the draft DCO
7	February 2025	Deadline 6	REP6-004	REP6-005	REP6-024
8	March 2025	Deadline 7	REP7-006	REP7-007	REP7-087
9	April 2025	Deadline 8	REP8-004	REP8-005	REP8-019
10	April 2025	Additional Submission	AS-106	AS-107	AS-110

7.3.5. We are satisfied that the majority of these changes are justified by the evidence before us and can be recommended for inclusion in the DCO if the SoST concludes that development consent should be granted. Where there have been significant areas of contention or there was some debate as to the content of the provisions, we set this out below along with our commentary and recommendation. The rDCO sets out various approval processes provided for in the requirements and the Environmental Management Plan (EMP) and which require the approval of the SoS. These are not unusual in road schemes of this nature. There were no submissions from any IPs contending the approval processes or deemed consent provisions set out within the DCO articles, requirements or schedules, including from the host local authorities which included the local highway authority. The applicant accommodated all requests to amend requirements to include additional consultation requests from Host Authorities or Statutory Undertakers.

7.3.6. The more significant main changes to the articles, schedules and requirements are summarised below.

Articles

7.3.7. **Article 2** was amended during the examination to update and clarify various interpretations.

7.3.8. **Article 3** on disapplication of legislative provisions was amended at DL5 to remove the disapplication of Nottinghamshire County Council's permitting scheme following agreement between the applicant and NCC.

7.3.9. **Article 10** on limits of deviation was amended to include consultation with the local highway authority.

7.3.10. **Article 29** on CA was amended to ensure reference included to TP and crown rights following questions from the ExA.

7.3.11. **Article 40** on TP was amended to clarify the relationship with CA following questions from the ExA.

7.3.12. **Article 53** on use of private roads for construction – The ExA questioned, at ExQ2, whether this could not be addressed through article 40 on TP. The applicant responded to justify the inclusion with amongst other points noting that unlike the land impacted by temporary possession powers, the applicant does not require exclusive use of these areas (unless they are specifically identified in the draft Development Consent Order as being subject to temporary possession powers) and as such using the powers in Article 40 would be unnecessarily restrictive on the other uses of that private street. Further, given that Article 53 applies to all private

roads within the Order limits it is not necessary to list them within the Order. The Applicant also notes that previously made Orders containing this provision do not include a schedule identifying the private roads to which they relate, for example the A428 Black Cat to Caxton Gibbet Development Consent Order 2022. On the basis of the response, the ExA are satisfied that the Article is necessary and appropriate and has retained it in the rDCO.

- 7.3.13. **Article 58** was substantively altered, primarily at DL4. The changes came following discussion with The Canal & River Trust (CRT). The final version included in the rDCO is as agreed between the applicant and CRT.

Schedules

- 7.3.14. Various schedules were updated to take account of comments from the highway authority and statutory parties. Schedule 9 in respect of protective provisions has been updated to include the latest protective provisions with the relevant statutory undertakers, CRT, Network Rail Infrastructure Limited and National Grid Electricity Distribution (East Midlands) plc. These are agreed between the applicant and the respective SUs. The preferred dDCO includes amendments to Schedule 5 as explained earlier to address inconsistencies in respect of the land in relation to which only new rights and restrictive covenants etc may be acquired, to ensure consistency with the BoR and the agreed position with Network Rail.

Requirements

- 7.3.15. During the examination, the wording of various requirements was subject to detailed discussion and submissions. There were numerous amendments and adjustments to take account of various comments from the host authorities, statutory parties and IPs. The applicant adjusted the wording to include additional consultees when requested to do so and made adjustments to ensure better clarity and precision. Overall, the ExA is satisfied that the requirements included in the rDCO are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. On that basis, the ExA is of the view that paragraph 4.9 of the NPSNN 2015 (and 2024, which is an Important and Relevant matter) is satisfied.
- 7.3.16. The main changes to the various requirements are summarised as follows:
- 7.3.17. **Paragraph 3** Second Iteration EMP – amended to include Natural England and Environment Agency as consultees.
- 7.3.18. **Paragraph 4** Third Iteration EMP – Environment Agency and Natural England added as consultees.
- 7.3.19. **Paragraph 5** Construction Hours – substantially amended to take account of matters raised by NSDC in respect of construction working hours and to clarify the works that may be undertaken outside those hours, subject to agreement with NSDC. The final version of the requirement included in the preferred dDCO and in the rDCO is as agreed between the applicant and NSDC.
- 7.3.20. **Paragraph 8** Contaminated Land and Ground Water – amended to address matters raised by Environment Agency and questions from the ExA in relation to concerns if contaminated land is found at any time then no further works are carried out in that area until a risk assessment is carried out.

- 7.3.21. **Paragraph 9** Archaeology and Built Heritage – substantially amended to reflect the submission of a detailed archaeological mitigation strategy. It now requires the proposed development to be carried out in accordance with the strategy with written schemes of investigation to be submitted for approval. It also makes provision for additional trial trenching if required.
- 7.3.22. **Paragraph 19** Langford Hall Estate – an additional requirement added following discussions between the applicant and the owners of Langford Hall and following requests from the ExA to ensure the final design of the new entrance at Langham Hall Estate is appropriate to the setting of the listed building.
- 7.3.23. **Paragraph 21** Offsite Barn Owl Boxes – an additional requirement in case the s253 agreement to secure the boxes is not in place before the SoST makes their decision. The applicant cites this approach was adopted on the A303 (Amesbury to Berwick Down) Development Consent Order 2023 in relation to stone curlew plots. The ExA is satisfied, given its inclusion in a previous made DCO, that this is an appropriate mechanism and meets the relevant tests.
- 7.3.24. **Paragraph 22** Offsite Bat Boxes – an additional requirement as the applicant intends to enter into a s.253 agreement with the relevant landowner to provide for the installation, on-going maintenance and management of the offsite bat box required to mitigate the impact of the demolition of the former Mint Leaf restaurant as part of Work No. 95. The applicant has confirmed it is progressing this agreement with the landowner, and it is the applicant's hope that it will be in place before the DCO is made. However, if the applicant has been unable to provide the SoST with a completed copy of the agreement before they make their decision, the applicant has provided this wording for inclusion in the draft DCO to ensure that demolition of the former Mint Leaf restaurant cannot be commenced until the SoST is satisfied that the agreement is in place. Again, the applicant has cited the A303 (Amesbury to Berwick Down) Development Consent Order 2023 in relation to stone curlew plots. Similarly, the ExA is of the view that, given the inclusion in a previous made DCO, this is an appropriate mechanism and meets the relevant tests.
- 7.3.25. **Paragraph 23** Agricultural Land classification surveys – an additional requirement added to secure agricultural land classification surveys requested by Natural England.
- 7.3.26. **Paragraph 24** Façade design of the split block facing of the structure at Cattle Market – an additional requirement submitted following agreement between the applicant and NSDC and NCC. The requirement's purpose is to address a specific concern raised by the local authorities in relation to the detailed design of the façade of the elevated road structure at Cattle Market. The applicant understands that the wording of this requirement is agreed with both Nottinghamshire County Council and Newark and Sherwood District Council. The ExA is satisfied that the wording meets the relevant tests and is necessary and appropriate.

7.4. MATTERS IN CONTENTION

- 7.4.1. By the close of the examination, there were no substantive matters in contention in relation to the substance of the dDCO. The host authorities and statutory parties did not raise any further matters on the articles and were satisfied with the adjustments made to the requirements and the schedules including in relation to protective provisions, insofar as they were affected.

- 7.4.2. One matter remained outstanding in respect of R19 which relates to the Langford Hall Estate. Mr and Mrs Sumsion [\[REP9-007\]](#) supported the specific provision however requested the inclusion of a specific timetable for the provision of the detailed design. The applicant in response [\[REP9-002\]](#) contended that this was unnecessary and that there were mechanisms already in the dDCO to address any concerns regarding delays. The applicant's view being that the wording of R19 of the draft Development Consent Order contains enough detail to secure the approval of the detailed design after consultation. The timing of this would be determined somewhat by the timing of any decision regarding the consent of the proposed development and whether or not there are any legal challenges. The ExA is satisfied that the wording of R19 is sufficiently detailed including a mechanism for approval and agrees with the applicant that it would be inappropriate to impose a strict dated timetable. On this basis, the ExA does not propose any changes to R19 and it is included in the rDCO in the form proposed in the applicant's preferred DCO.

7.5. RECOMMENDED CHANGES

- 7.5.1. In light of the evidence submitted and heard, we have not made any recommended substantive changes to the applicant's final version preferred DCO submitted at [\[AS-106\]](#). We have however reviewed the document and made a number of changes to address typographical errors, grammatical errors, correction of section headings (where used), punctuation, capitalisation, and to resolve other consistency issues. These have not all been tabulated as they are not material. Where we have made an alteration which is potentially more noteworthy we have set it out in Table 11: Recommended changes to preferred dDCO which identifies the provision, the change and the reason for the change. The rDCO is set out in Appendix C to this report.

Table 11: Recommended changes to preferred dDCO

Provision	Examination Issue	ExA Reasoning	Recommendation
Article 3 heading	Paragraph (2) refers to a modification rather than disapplication.	The heading should more correctly identify the provisions and reference modification.	Amend title to read "Disapplication and modification of legislative provisions"
Article 13(1)(a)	Wording in brackets unclear.	To improve clarity	Amend wording in the brackets to read "(which defines which works by a highway authority are defined as major highway works)"
Article 19(1) and 19(3)	Whether the definition of 'street' includes PRow?	Amend to include PRow to ensure captured.	Add ", public rights of way" after 'streets' in second line of 19(1) and first line of 19(3).
Article 19(5)	Only parts of the public rights of way	To improve clarity.	Insert words "parts of the between 'The' and

Provision	Examination Issue	ExA Reasoning	Recommendation
	are to be extinguished.		'public rights of way' in first line.
Article 19(6)	Only parts of the public rights of way are to be extinguished.	To improve clarity.	Insert the words "of the parts" after 'of each' and before 'of the rights of way' on the first line of (6).
Article 21(10)(b)(i) and (ii)	To ensure clarity.	To accord with definition.	Insert word "parking" before disc in both 21(10)(b)(i) and (ii).
Article 22(5)(a)	Notification should apply to (i) and (ii) but does not because of its omission from (i) and use of 'or' between (i) and (ii).	Detach the element of who notification goes to and include as separate element so applies to both.	Add comma after temporarily in (5)(a)(ii) and move "to the chief officer of police and to the traffic authority in whose area the road is situated; and" to new line.
Schedule 2 Part 1 paragraph 1 Interpretation	Second Iteration EMP to be refined version of First Iteration EMP but does not require it to be substantially in accordance with. The recommendation is based on ensuring the mitigation proposed in the First Iteration EMP is secured.	To ensure the Second Iteration EMP is substantially in accordance with the First Iteration EMP to secure the necessary mitigation. Also to ensure consistency with the Third Iteration EMP definition and with Part 1 (3) Second Iteration EMP requirement which require the authorised development to be substantially in accordance with the First Iteration EMP there is therefore no	Insert words ", and substantially in accordance with" after 'refined version of' and before 'the first iteration EMP' in the second line.

Provision	Examination Issue	ExA Reasoning	Recommendation
		additional burden.	
Schedule 2 Part 1 requirement 3	Clarity of expression.	Various amendments to ensure clarity and consistency	3(1) change “its statutory function” to “their statutory functions” as there is more than one statutory body. 3(2) insert “of the authorised development” after ‘part’ and before ‘must’ in the first line. 3(2) change ‘Environmental Statement’ to “environmental statement” to be consistent with Interpretation at article 2.
Schedule 2 Part 1 requirement 4	Clarity of expression.	A number of amendments to wording to clarify the intention and ensure typing convention consistency.	4(1) change “its statutory function” to “their statutory functions” as there is more than one statutory body.
Schedule 2 Part 1 requirement 5	Clarity of expression.	A number of amendments to wording to clarify the intention and ensure typing convention consistency.	5(2)(a) replace ‘start’ with “starting”. 5(2)(c) replace ‘material deliveries’ with “delivery of materials”. 5(3)(f) change ‘bridge’ to “Bridge”. 5(4)(d) change ‘24hr’ to “24-hour”. 5(5) insert missing full stop at end of sentence.
Schedule 2 Part 1 requirement 9	Clarity of expressions.	A number of amendments to wording to clarify the intention and ensure typing convention consistency	Replace ‘Archaeological Mitigation Strategy ’ with “archaeological mitigation strategy, ” in the first line of 9(1), the second line of 9(2) and the second and 4/5 line of (3).

Provision	Examination Issue	ExA Reasoning	Recommendation
		and consistency with defined terms including the inappropriate use of capitalisation.	Replace 'Site Specific Written Schemes of Investigation' with "site specific written schemes of investigation" in line 3/4 of (3).
Schedule 2 Part 1 requirement 10	Clarity of expression.	10(2) restricts construction until necessary licences are obtained however effect may result from more than just construction need to widen out the exclusion to any works.	10(2) replace word 'construction' with "any works".
Schedule 2 Part 1 requirement 19	Clarity of expression.	Amend to ensure consistency of name and replace contained within to add clarity.	19(1) replace 'estate' with "Estate" in first line. 19(1) replace 'contained within' with "forming part of".
Schedule 1 and Schedule 2 Part 1 requirement 22	Mint Leaf restaurant is closed and not existing.	For clarity replace existing with former. This is how it is referred to in the application documents and report.	In Schedule 1, Work No. 95 replace word 'existing' with word "former" in the second line; 22(1) of Schedule 2 replace word 'existing' with word "former" in the first line; and in 22(2)(a) of Schedule 2 replace word 'existing' with word "former" in the first line
Schedule 3 Parts 1, 2, 3 4 and 5.	Incorrect parish council naming used.	To improve clarity	A number of parish council names were incorrect; amended to refer only to administrative area as has been done in other made DCOs.

Provision	Examination Issue	ExA Reasoning	Recommendation
Schedule 10	Amend numbers and document titles.	Numbers of documents incorrect and document titles do not accurately reflect the document titles on the referenced documents, including capitalisation.	Agricultural land plan change reference number from 'TR010065/EXAM/7.71' to "TR010065/EXAM/7.69". Barn owl box specification, change reference number from 'TR010065/EXAM/7.69' to "TR010065/EXAM/7.71". Amended document titles to reflect the document title on the identified document including capitalisation.

7.6. CONCLUSIONS

- 7.6.1. The ExA has considered all iterations of the dDCO submitted by the applicant set out in Table 10: History of Draft DCOs and has noted the changes made in response to representations during the examination.
- 7.6.2. In light of the evidence submitted and heard, we have included a recommended Development Consent Order with changes to the applicant's final version preferred DCO submitted at [\[AS-106\]](#). The rDCO is set out in Appendix C to this report.
- 7.6.3. We are satisfied that the rDCO adequately defines the scope of the consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the assessments provided in the Environmental Statement.
- 7.6.4. We consider that the rDCO 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 National Policy Statement for National Networks 2015 (NPSNN 2015) is satisfied. Similar provisions are reflected in NPSNN 24 at Paragraph 4.9 (which is an important and relevant matter) and it follows that the ExA are of the view that these are also satisfied.
- 7.6.5. If the SoST is minded to make the DCO, we recommend that it is made in the form set out in Appendix C subject to the SoST being satisfied with the conclusion on the Case for Development Consent in Chapter 5.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. This Chapter summarises the ExA's conclusions arising from the Report as a whole and sets out a recommendation to the Secretary of State for Transport (SoST).

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 8.2.1. In relation to section (s) 104 of the Planning Act 2008 as amended (PA2008) we conclude that making the recommended Development Consent Order (DCO) would be in accordance with the National Policy Statement for National Networks 2015 (NPSNN 2015). There is nothing to indicate that the application should be decided other than in accordance with the relevant NPS (NPSNN 2015).
- 8.2.2. We have also had regard to the Local Impact Reports from the Host Authorities in reaching our conclusions. The recommendation is also consistent with NPSNN 2024 which we have concluded to be an important and relevant matter and we have concluded that the proposed development would not substantially conflict with relevant development plan policy and other relevant policy, all of which have been taken into account in our report as important and relevant matters.
- 8.2.3. Whilst the SoST is the competent authority under the Habitats Regulations and will make the definitive assessment under those regulations, we are satisfied that, subject to the mitigation measures to be secured in the rDCO, adverse effects on the integrity of the Humber Estuary SAC and Humber Estuary Ramsar European sites from the proposed development when considered alone or in-combination with other plans or projects can be excluded. These findings have been taken into account in making our recommendation.
- 8.2.4. With regard to all other matters and representations received, we are satisfied that there are no important and relevant matters that would individually or collectively lead to a different recommendation from that set out below.
- 8.2.5. We have considered whether the determination of this application, in accordance with the relevant National Policy Statement (NPS), would lead the United Kingdom (UK) to be in breach of any of its international obligations where relevant. We are satisfied this would not be the case. Similarly it would not lead to the SoST being in breach of any duty imposed on the SoST by or under any enactment, or be otherwise unlawful by virtue of any enactment.
- 8.2.6. The proposed development would deliver a number of benefits which are specific to this proposal. These include:
- A decrease in congestion, improved journey times and enhanced highway safety which would make an important contribution to the improvement and enhancement of the existing strategic road network, considerations to which we attach substantial weight.
 - Economic and social benefits from improved connectivity, both regionally and in the immediate vicinity of the proposed development, improved journey reliability and improvements to road safety.
 - Improvements to air quality, biodiversity and noise and vibration, albeit these are minor benefits which only attract a little weight in support of the proposed development.

- 8.2.7. The proposed development would also comply with Local Development Plan policies and allocations for delivery of transport infrastructure, the LPA also stating that it is pivotal to the delivery of the Local Plan.
- 8.2.8. With the mitigation proposed through the rDCO in Appendix C of this report, taking into account s104(7) of the Planning Act 2008 (PA2008), there are no adverse impacts arising from the proposed development that would outweigh its benefits.
- 8.2.9. We have considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights in order to implement the proposed development and are satisfied that the CA and TP powers sought by the applicant are justified and should be granted. They are necessary to enable the applicant to complete the proposed development. In addition, there is a compelling case in the public interest for land and interests to be compulsorily acquired. The applicant has demonstrated that funds are available for the implementation of the proposed development.
- 8.2.10. We are satisfied that the applicant's case is made and the CA and TP of land is justified and necessary as set out and provided for in the rDCO. The areas where the SoST may wish to seek further clarity are set out in the recommendation below.
- 8.2.11. We have also had regard to the provisions of the Human Rights Act 1998. We consider that the opportunity for objectors to make their cases through the CA hearings fully, fairly and in public has ensured compliance with Article 6. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998. No occupied residential dwellings are included for CA.
- 8.2.12. However, with the weight of national policy in favour of the proposed development, the wider public interest justifies any interference with the human rights of the owners and occupiers affected by CA and TP. The interference in their human rights would be proportionate and justified in the public interest.
- 8.2.13. We have had regard to the Public Sector Equality Duty (PSED). The proposed development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, the ExA is not aware of any breach of the PSED.
- 8.2.14. As required by Regulation 3(1), (2) and (3) of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess, had regard to the desirability of preserving or enhancing the character or appearance of any conservation area and had regard to the desirability of preserving scheduled monuments or their setting.
- 8.2.15. Where we have found that there would be harm to the significance of designated heritage assets (as set out in section 7 of Chapter 3 of this report), we consider that this would result in less than substantial harm in each instance. In Chapter 5 we conclude that, taking account of the public benefits of the proposed development and applying the heritage balance, the benefits of the proposed development would outweigh the harm, to which we have given great weight where harm is identified to the designated heritage assets.

- 8.2.16. Overall, in our view, the proposed development would accord with Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 relating to the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- 8.2.17. We have concluded that the proposed development would, as per the Environmental Statement (ES), lead to an increase in greenhouse gas emissions of 683,200tCO₂e (net) over the relevant carbon budgets. However, given that the proposed development, once operational, would only lead to a minor increase in emissions contributing towards any of the legislated carbon budgets (less than 0.007% of the total emissions in any five-year UK carbon budget), it is unlikely that the project's emissions, in isolation, would be so significant as to affect the ability of the government to meet its carbon reduction plan targets or international obligations.
- 8.2.18. The proposed development also meets the Sequential and Exception tests in the NPSNN 2015 in respect of flood risk.
- 8.2.19. The proposed development would cause harm to designated heritage assets as identified above, would result in the permanent loss of Best and Most Versatile (BMV) agricultural land, have negative impacts on landscape and visual amenity and in terms of material assets and waste as well as in terms of population and human health. The less than substantial harm to the significance of designated heritage assets is, in each case outweighed by the public benefits of the proposed development and would therefore meet the test at 5.134 of the NPSNN 2015 in this regard. We are confident that there are compelling reasons for the new road and its enhanced capacity, and that the benefits outweigh the disbenefits very significantly. The proposed development would be carried out to a high environmental standard, including measures that would enhance the environment and biodiversity and these are secured through appropriate requirements in the rDCO.
- 8.2.20. We are satisfied that the proposed development meets the tests in s104 of PA2008.

8.3. RECOMMENDATION

- 8.3.1. In respect of Crown land, the ExA is satisfied that the land is necessary for the construction, operation and maintenance of the proposed development and would meet the necessary tests. There remains a residual uncertainty that the SoST may wish to make enquiries on. Dependant on the outcome of that enquiry, there are two outcomes available:
- If the land is completely ownerless (subject to escheat), it can be subject to CA without s135 consent and Article 52 from the rDCO can be removed as superfluous as there is no other Crown land or rights within the Order limits.
 - If, however, the land has not completed the process to become escheat and remains with the Crown, the SoST will need to ensure that Crown consent is obtained for the CA of the interests and retain Article 52 in the rDCO to ensure s135 is complied with.
- 8.3.2. In terms of funding, the SoST may wish to review whether the spending review has further advanced prior to their decision being made and take account of any implications this may have on funding for the proposed development.
- 8.3.3. For all of the above reasons, and in the light of our findings and conclusions on important and relevant matters set out in the report, we recommend that the SoST

makes the 'A46 Newark Bypass Development Consent Order' in the form recommended at Appendix C of this report.

APPENDICES

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APPENDIX A: THE EXAMINATION

Table A 1 - The Environmental Statement and other Documents

ES Chapter/ Figures/ Appendix	EL Reference
ES Non-Technical Summary	~~APP-183, REP3-020, REP5-024, REP7-068.~~
Chapter 1 Introduction	~~APP-045, REP7-014.~~
Figures	~~APP-062~~ ~~AS-023~~
Appendices	N/A
Chapter 2 The Scheme	~~APP-046, REP7-016.~~
Figures	~~APP-063, APP-064, APP-065, APP-066~~ ~~AS-024, AS-025, AS-026, AS-027,~~ ~~REP2-009, REP7-042.~~
Appendices	N/A
Chapter 3 Assessment of Alternatives	~~APP-047, REP7-018.~~
Figures	N/A
Appendices	N/A
Chapter 4 Environmental Assessment Methodology	APP-048
Figures	N/A
Appendices	APP-125, ~~APP-126~~ , APP127, REP7-044.
Chapter 5 Air Quality	~~APP-049, AS-021, REP5-073, REP7-020.~~
Figures	~~APP-067, APP-068, APP-069, APP-070, APP-071, APP-072~~ ~~AS-028, AS-029, AS-030, AS-031, AS-032, AS-033, REP5-018.~~
Appendices	APP-128, ~~APP-129, APP-130, APP-131, REP7-046, REP7-048.~~
Chapter 6 Cultural Heritage	~~APP-050, REP7-022.~~
Figures	~~APP-073, APP-074, APP-075~~ ~~AS-034, AS-035, AS-036~~
Appendices	~~APP-132, APP-133, APP-134, APP135, AS-099.~~
Chapter 7 Landscape and Visual Effects	~~APP-051, REP7-024.~~
Figures	~~APP-076, APP-077, APP-078, APP-079, APP-80~~ ~~AS-037, AS-038, AS-039, AS-40, AS-041.~~

ES Chapter/ Figures/ Appendix	EL Reference
Appendices	APP-136, APP-137, ~~APP-138~~ , APP-139, ~~APP-140~~ , ~~APP-141~~ , ~~APP-142~~ , ~~APP-143~~ , ~~APP-144~~ AS-086, AS-087, AS-088, AS-089, REP7-052, REP7-054.
Chapter 8 Biodiversity	~~APP-052~~ , REP7-026.
Figures	~~APP-081~~ , ~~APP-082~~ , ~~APP-083~~ , ~~APP-084~~ , ~~APP-085~~ AS-042, AS-043, AS-044, AS-045, AS-046
Appendices	APP-145, APP-146, APP-147, APP-148, APP-149, APP-150, APP-151, APP-152, APP-153, APP-154, APP-155, APP-156, APP-157, APP-158, ~~APP-159~~ , APP160, REP7-056.
Chapter 9 Geology and Soils	~~APP-053~~ , ~~REP3-009~~ , ~~REP5-010~~ , REP7-028.
Figures	~~APP-086~~ , ~~APP-087~~ , ~~APP-088~~ , ~~APP-089~~ , ~~APP-090~~ , ~~APP-091~~ AS-047, AS-048, AS-049, AS-050, AS-051, AS-052
Appendices	APP-161, APP-162, APP-163, APP-164, APP-165, APP-166, APP-167, APP-168, APP-169, ~~APP-170~~ , ~~APP-171~~ , ~~REP3-016~~ , ~~REP5-027~~ , REP7-058, REP7-060.
Chapter 10 Material Assets and Waste	~~APP-054~~ , ~~REP5-012~~ , REP7-030.
Figures	~~APP-092~~ , ~~APP-093~~ ~~AS-053~~ , AS-054, REP2-008.
Appendices	N/A
Chapter 11 Noise and Vibration	~~APP-055~~ , REP7-032.
Figures	~~APP-094~~ , ~~APP-095~~ , ~~APP-096~~ , ~~APP-097~~ , ~~APP-098~~ , ~~APP-099~~ , ~~APP-100~~ , ~~APP-101~~ , ~~APP-102~~ , ~~APP-103~~ , ~~APP-104~~ AS-055, AS-56, AS-057, AS-058, AS-059, AS-060, AS-061, AS-062, AS-063, AS-064, ~~AS-065~~ , REP7-043.
Appendices	APP-172, APP-173.
Chapter 12 Population and Human Health	~~APP-056~~ , ~~REP3-011~~ , ~~REP5-014~~ , REP7-034.
Figures	~~APP-105~~ , ~~APP-106~~ , ~~APP-107~~ , ~~APP-108~~ , ~~APP-109~~ , ~~APP-110~~ , ~~APP-111~~ AS-066, AS-067, ~~AS-068~~ , AS-069, ~~AS-070~~ , ~~AS-071~~ , AS-072, REP5-019, REP5-020, REP3-015.

ES Chapter/ Figures/ Appendix	EL Reference
Appendices	~~APP-174~~ , ~~APP-175~~ , REP4-009, REP3-018.
Chapter 13 Road Drainage and Water Environment	~~APP-057~~ , REP7-036.
Figures	~~APP-112~~ , ~~APP-113~~ , ~~APP-114~~ , ~~APP-115~~ AS-073, AS-074, AS-075, AS-076.
Appendices	~~APP-176~~ , ~~APP-177~~ , APP-178, APP-179, APP-180, REP7-063, REP6-010, REP7-064.
Chapter 14 Climate	APP-058
Figures	N/A
Appendices	N/A
Chapter 15 Combined and Cumulative Effects	~~APP-059~~ , REP7-040.
Figures	~~APP-116~~ , ~~APP-117~~ , ~~APP-118~~ , ~~APP-119~~ , ~~APP-120~~ , ~~APP-121~~ , ~~APP-122~~ , ~~APP-123~~ , ~~APP-124~~ AS-077, AS-078, AS-079, AS-080, AS-081, AS-082, AS-083, AS-084, AS-085.
Appendices	APP-181, ~~APP-182~~ , REP7-066
Chapter 16 Summary	~~APP-060~~ , ~~REP3-013~~ , REP5-016.
Chapter 17 Glossary and Abbreviations	APP-061.
Environmental Statement – First Iteration Environmental Management Plan	~~APP-184~~ , REP2-010, REP3-022, ~~REP4-010~~ , ~~REP5-025~~ , REP6-012.
Environmental Statement - Habitats Regulation Assessment	~~APP-185~~ , REP3-024.
Environmental Statement - Statement Relating to Statutory Nuisance	~~APP-186~~ , REP7-070.
Environmental Statement – Archaeological Management Plan	~~APP-187~~ , REP2-012, REP2-062, REP5-026.
Environmental Statement – Pre-Commencement Plan	~~APP-188~~ , ~~REP4-012~~ , ~~REP5-028~~ , ~~REP6-014~~ , REP7-072.
Environmental Statement – Scoping Opinion	APP-189.

ES Chapter/ Figures/ Appendix	EL Reference
Transport Assessment Report	~~APP-193~~ , ~~REP5-034~~ , REP7-076.
Case for the Scheme	APP-190, REP5-030, REP7-074.

~~Strike through~~ identifies superseded documents.

Table A 2 - Summary of Relevant Legislation for the Proposed Development

Relevant Legislation
▪ Air Quality (England) Regulations 2000 ▪ Air Quality Standards Regulations 2010, as amended ▪ Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 ▪ Ancient Monuments and Archaeological Areas Act 1979 ▪ The Anti-Pollution Works Regulations 1999 ▪ Building Act 1984 ▪ Building Regulations 2010 (as amended) ▪ Carbon Budget Order 2009 ▪ Carbon Budget Order 2011 ▪ Carbon Budget Order 2016 ▪ Carbon Budget Order 2021 ▪ Climate Change Act 2008 ▪ Climate Change Act 2008 (2050 Target Amendment) Order 2019 ▪ Climate Change Act 2008 (Credit Limit) Order 2021 ▪ The Commons Registration Act 1965 ▪ Conservation of Habitats and Species Regulations 2017 (the 'Habitat Regulations 2017') (as amended) ▪ Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations') ▪ Control of Pollution Act 1974 (as amended) ▪ Control of Pollution (Applications, Appeals and Registers) Regulations 1996 ▪ Countryside and Rights of Way Act 2000 ▪ Ditches and Watercourses Act 1989 ▪ Eels (England and Wales) Regulations 2009 ▪ The Environment Act 1995 ▪ Part IV of the Environment Act 1995 ▪ Environment Act 2021 ▪ Environment (Amendment etc.) (EU Exit) Regulations 2019 ▪ Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 ▪ Environmental Damage (Prevention and Remediation) Regulations 2009 ▪ Environmental Noise (England) Regulations 2006 (as amended) ▪ Environmental Permitting (England and Wales) Regulations 2016 ▪ Environmental Permitting (England and Wales) (Amendment) Regulations 2016/1154 ▪ Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 ▪ Environmental Protection Act 1990 (as amended) ▪ Environmental Protection Act 1990 s79(1)(d)

Relevant Legislation

- Environmental Protection Act 1990 (as amended by the Environmental Act 1995 Part 2A)
- Environmental Targets (Biodiversity) (England) Regulations 2023
- The Environmental Targets (Woodland and Trees Outside Woodland) (England) Regulations 2023
- European Commission Circular Economy Package Environmental Protection Act 1990
- European Landscape Convention (ELC) (Council of Europe, 2016)
- Flood Risk Regulations 2009
- Flood and Water Management Act 2010
- Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Groundwater (Water Framework Directive) (England) Direction 2016
- Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- The Health and Social Care Act 2012
- Hedgerow Regulations 1997
- Highways Act 1980
- The Highways Noise Payments and Movable Homes Regulations 2000
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- The Invasive Alien Species (Enforcement and Permitting) Order 2019
- The Kyoto Protocol
- The Land Compensation Act 1973
- Land Drainage Act 1991
- Localism Act 2011
- National Parks and Access to the Countryside Act 1949 (as amended)
- Natural Environment and Rural Communities (NERC) Act 2006
- Nitrate Pollution Prevention Regulations 2015
- Noise Insulation Regulations 1975 (amended 1988)
- The Paris Agreement
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Pollution Prevention and Control Act 1999
- Protection of Badgers Act 1992 (as amended)
- Salmon and Freshwater Fisheries Act 1975 (as amended)
- Town and Country Planning Act 1990 (as amended)
- Town and Country Planning (Environmental Impact Assessment) Regulations 2017
- Town and Country Planning (General Permitted Development) (England) Order 2015 (2015 Order)
- Town and Country Planning (Tree Preservation) England Regulations 2012
- The Urban Waste Water Treatment (England and Wales) Regulations 1994
- Waste (England and Wales) Regulations 2011 (as amended)
- Water Act 2003 (as amended)
- Water Act 2014
- Water Industry Act 1991
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD)
- Water Framework Directive (2000/60/EC) (as amended)
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009
- The Water Resources (Abstraction and Impounding) Regulations 2006
- Water Abstraction and Impounding (Exemptions) Regulations 2017

Relevant Legislation

- Water Resources Act 1991 (WRA 1991) (as amended)
- Water Supply (Water Quality) Regulations 2018
- Wild Mammals (Protection) Act 1996
- Wildlife and Countryside Act (WCA) 1981 (as amended)

Table A 3 - Regional and Local Plans

Local Authority	Identified Documents and / or Relevant Policies
Newark and Sherwood District Council	▪ Amended Core Strategy Development Plan Document (DPD) (March 2019) ○ Spatial Policy 1: Settlement Hierarchy ○ Spatial Policy 2: Spatial Distribution of Growth ○ Spatial Policy 3: Rural Areas ○ Spatial Policy 5: Delivering the Strategy ○ Spatial Policy 7: Sustainable Transport ○ Core Policy 9: Sustainable Design ○ Core Policy 10: Climate Change ○ Core Policy 10A: Land Drainage Designations ○ Core Policy 12: Biodiversity and Green Infrastructure ○ Core Policy 13: Landscape Character ○ Core Policy 14: Historic Environment ○ NAP1: Newark Urban Area ○ NAP2A: Land South of Newark ▪ Allocations and Development Management Development Plan Document (July 2013) ○ Policy DM5: Design ○ Policy DM7: Biodiversity and Green Infrastructure ○ Policy DM8: Development in the Open Countryside ○ Policy DM9: Protecting and Enhancing the Historic Environment ○ Policy DM10: Pollution and Hazardous Materials ○ Policy DM12: Presumption in Favour of Sustainable Development ○ Policy NUA/OB/1: Newark Urban Area Open Breaks ▪ Amended Allocations and Development Management DPD Policies (published for a period of representation from 14 November 2022 to 9 January 2023, as part of NSDC Plan Review) ▪ Landscape Character Assessment SPD (Supplementary Planning Documents) (December 2013) ▪ Green Infrastructure Strategy for Newark & Sherwood

Local Authority	Identified Documents and / or Relevant Policies
Nottinghamshire County Council	▪ The Nottinghamshire Plan 2021-2031 ▪ Nottinghamshire Local Transport Plan 2011-2026 ▪ Nottinghamshire Minerals Local Plan adopted March 2021 ○ Policy DM13: Incidental Mineral Extraction ○ Policy DM15: Borrow Pits ○ Policy SP7: Minerals Safeguarding, Consultation Areas and Associated Minerals Infrastructure ▪ Nottinghamshire and Nottingham Waste Core Strategy, 2013 ○ Policy WCS1: Presumption in favour of sustainable development ○ Policy WCS2: Waste awareness, prevention and re-use ▪ Nottinghamshire and Nottingham Waste Local Plan, submitted 5 March 2024 ○ Draft Policy SP1: Waste prevention and re-use

Table A 4 - Made DCOs

Other Made DCOs Identified by the Applicant
▪ A19/A1058 Coast Road (Junction Improvement) Order 2016 (A19/A1058 Order) ▪ A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (A14 Order), ▪ Silvertown Tunnel Order 2018 ▪ A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (A428 Black Cat Order). ▪ The M42 Junction 6 Development Consent Order 2020 ▪ A57 Link Roads Development Consent Order 2022 (A57 Link Roads Order) ▪ A47 Wansford to Sutton Development Consent Order 2023 (A47 Wansford Order) ▪ A47 Blofield to North Burlingham Development Consent Order 2022 (A47 Blofield Order) ▪ M20 Junction 10a Development Consent Order 2017 (M20 Junction 10a Order) ▪ A30 Chiverton to Carland Cross Development Consent Order 2020 (A30 Chiverton Order); ▪ A63 (Castle Street Improvement, Hull) Development Consent Order 2020; ▪ A585 Windy Harbour to Skippool Highway Development Consent Order 2020 (A585 Windy Harbour Order) ▪ The A19/A184 Testo's Junction Alteration Development Consent Order 2018 ▪ M25 Junction 28 Development Consent Order 2022 (M25 Junction 28 Order) ▪ A303 (Amesbury to Berwick Down) Development Consent Order 2023

Other Made DCOs Identified by the Applicant

- M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016
- A47/A11 Thickthorn Junction Development Consent Order 2022.
- the Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015
- Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013
- M25 Junction 10/ A3 Wisley Interchange Development Consent Order 2022
- Great Yarmouth Third River Crossing 2020
- Burbo Bank Extension Offshore Wind Farm Order 2014
- National Grid (Richborough Connection Project) Development Consent Order 2017
- A12 Chelmsford to A120 Widening Development Consent Order 2024

APPENDIX B: LIST OF ABBREVIATIONS

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
2015 Regs	Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015
AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
AEoI	Adverse Effect on the Integrity
AIL	Abnormal Indivisible Loads
ALA 1981	Acquisition of Land Act 1981
ALC	Agricultural Land Classification
AM	Ante meridiem (morning)
AMP	Archaeological Management Plan
ANCB	Appropriate Nature Conservation Body
AONB	Area of Outstanding Natural Beauty
AP	Affected Person
APIS	Air Pollution Information System
Applicant	National Highways
AQMA	Air Quality Management Area
AQS	Air Quality Strategy
AQS Regulations	Air Quality Standards Regulations 2010 (as amended)
ARCADY	Assessment of Roundabout Capacity And Delay
ARN	Affected road network
ARSI	Access Required Site Inspection
Art	Article
ASI	Accompanied Site Inspection
ATC	Automatic Traffic Counts
ATE	Active Travel England
ATP	Active Travel Partnership
BAP	Biodiversity Action Plan
BCR	Benefit to cost ratio
BMV	Best and most versatile (agricultural land)
BNG	Biodiversity net gain
BOAT	Byway Open to All Traffic
BoR	Book of Reference
BW	Bridleway
CA	Compulsory Acquisition
CA Guidance	Guidance Related to Procedures for the Compulsory Acquisition of Land, the former Department for Communities and Local Government (DCLG), September 2013
CA Regulations	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CAH	Compulsory Acquisition Hearing
CCA2008	Climate Change Act 2008
CCMP	Construction Communications Management Plan
CCTV	Closed Circuit Television
CEPP	Climate Emergency Policy and Planning
CftS	Case for the Scheme
CH ₄	Methane
CIEEM	Chartered Institute of Ecology and Environmental Management

Abbreviation or usage	Reference
CMP	Carbon Management Plan
CO ₂	Carbon dioxide
COBALT	Cost and Benefit to Accidents – Light Touch
ComMA	Combined Modelling and Appraisal Report
COP26	2021 UN Climate Change Conference in Glasgow
CPRE	Campaign to Protect Rural England
CRT	Canal & River Trust
CRTN	Calculation of Road Traffic Noise
CSM	Conceptual site model
CTMP	Construction Traffic Management Plan
CWTAP	Construction Worker Travel and Accommodation Plan
DL	Deadline
dB	Decibel(s)
DCLG	Department of Communities and Local Government
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
DMRB	Design Manual for Roads and Bridges
DQRA	Detailed Quantitative Risk Assessment
DS	Do-something
DSR	Drainage Strategy Report
DVS	District Valuer Services
DWMP	De-Watering Management Plan
EA	Environment Agency
EAST+	Early Assessment and Sifting Tool
EA2010	Equalities Act 2010
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EEA	European Economic Area
EFT	Emissions Factor Toolkit
EIA	Environmental Impact Assessment
EIA development	Development for which an Environmental Impact Assessment (EIA) is required
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
EL	Examination Library
EM	Explanatory Memorandum
EMP	Environmental Management Plan
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EqIA	Equality Impact Assessment
ES	Environmental Statement
EU	European Union
EV	Electric Vehicle
ExA	Examining Authority
ExQ1	The ExA's First Written Questions
ExQ2	The ExA's Second Written Questions
ExQ3	The ExA's Third Written Questions

Abbreviation or usage	Reference
FC	Forestry Commission
FCA	Flood Compensation Area
FIEMP	First Iteration EMP
FP	Footpath
FPMR	The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023
FRA	Flood Risk Assessment
FZ	Flood zone
GCN	Great crested newt
GHG	Greenhouse gas
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GNR	Great North Road
GRT	Gypsy, Roma and Traveller
ha	Hectare(s)
HA DDMS	Highways Agency Drainage Data Management System
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
HAM	Highway Assignment Model
HDV	Heavy Duty Vehicle
HE	Historic England
HER	Historic Environment Record
HEWRAT	Highways England Water Risk Assessment Tool
HFC	Hydrofluorocarbons
HGV	Heavy goods vehicle
HLC	Historic Landscape Characterisation
HLCA	Historic Landscape Character Area
HPI	Habitat of Principal Importance
HQ	Headquarters
HRA	Habitats Regulations Assessment
IAP	Inclusion Action Plan
IAPI	Initial Assessment of Principal Issues
ID	Identity
IEMA	Institute of Environmental Management Assessment
INNS	Invasive Non-Native Species
IP	Interested Party
ISH	Issue Specific Hearing
kg	Kilogram(s)
kg N/ha/yr	Kilograms of nitrogen per hectare per year (nitrogen yield)
km	Kilometre(s)
KSI	Killed or seriously injured
LB	Listed building
LBAP	Local Biodiversity Action Plan
LCA	Landscape Character Area
LCRM	Land contamination risk management
LCT	Landscape character type
LCWIP	Local Cycling and Walking Infrastructure Plan
LDL	Lindum Developments Ltd
LEMP	Landscape and Ecological Management Plan
LI	Landscape Institute

Abbreviation or usage	Reference
LIR	Local Impact Report
LI	Landscape Institute
LNR	Local Nature Reserve
LOAEL	Lowest Observed Adverse Effect Level
LoD	Limits of Deviation
LOS	Level of Service
LPA	Local Planning Authority
LSE	Likely significant effects
LT	Long term
LTN	Local Transport Note
LUP	Late Upper Palaeolithic
LWS	Local Wildlife Site
LV	Limit values
LVIA	Landscape Visual Impact Assessment
LPZ	Landscape Policy Zone
m	Metre(s)
m ²	Metre(s) squared
m ³	Metre(s) cubed
MCC	Manual classified counts
MMC	Modern Methods of Construction
mph	Miles per hour
MSA	Mineral Safeguarding Area
N/ha/year	Nitrogen load per hectare per year
N ₂ O	Nitrous oxide
NCA	National Character Area
NCC	Nottinghamshire County Council
NDHA	Non-designated heritage asset
NE	Natural England
NF ₃	Nitrogen trifluoride
NH	National Highways
NIA	Noise Important Area
NF ₃	Nitrogen Trifluoride
NH ₃	Ammonia
NHDP	National Highways Development Plan
NMU	Non-motorised user
NNAS	Newark & Notts Agricultural Society
NO ₂	Nitrogen dioxide
NOEL	No Observed Effect Level
NO _x	Mono-nitrogen oxides/ Nitrogen Oxides
NPPF	National Planning Policy Framework
NPPW	National Planning Policy for Waste
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NPSNN 2015	National Policy Statement for National Networks 2015
NPSNN 2024	National Policy Statement for National Networks 2024
NSDC	Newark & Sherwood District Council
NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
NT	National Trust
NTC	Newark Town Council

Abbreviation or usage	Reference
NTEM	National Trip End Model
NVZ	Nitrate Vulnerable Zone
NZS	Net Zero Strategy
OAMP	Outline Archaeological Management Plan
OAMS	Outline Archaeological Management Strategy
OAQDMP	Outline Air Quality and Dust Management Plan
OFH	Open Floor Hearing
OSMP	Outline Soil Management Plan
OSWMP	Outline Site Waste Management Plan
OTMP	Outline Traffic Management Plan
PA2008	Planning Act 2008
PCP	Pre-commencement Plan
PFC	Perfluorocarbons
PHI	Priority Habitat Inventory
PIA	Personal injury accidents
PM	Particulate Matter
PrMtg	Preliminary Meeting
PM ₁₀	Particulate matter with an aerodynamic diameter smaller than 10 µm
PM _{2.5}	Particulate matter with an aerodynamic diameter smaller than 2.5 µm
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R	Requirement
RCA	Regional Character Area
rDCO	recommended Development Consent Order
RDWE	Road Drainage and Water Environment
REAC	Register of Environmental Actions and Commitments
RIES	Report on Implications for European Sites
RIGS	Regionally Important Geological Sites
RIS1	Road Investment Strategy (2015-2020)
RIS2	Road Investment Strategy 2 (2020-2025)
RNAG	Reason for Not Achieving Good
RPA	Root Protection Area
RR	Relevant Representation
RSA	Road Safety Audit
RSI	Road surface influence
s	Section
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SAP	Species Action Plan
SATURN	Simulation and Assignment of Traffic to Urban Road Networks
SF ₆	Sulphur hexafluoride
SI	Statutory Instrument
SIAA	Statement to Inform Appropriate Assessment
SLR	Southern Link Road
SM	Scheduled monument
SMP	Soil Management Plan
SO ₂	Sulphur dioxide

Abbreviation or usage	Reference
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoP	Standard of Protection
SoR	Statement of Reasons
SoS	Secretary of State
SoST	Secretary of State for Transport
SPA	Special Protection Area
SPD	Supplementary Planning Document
SPI	Species of Principle Importance
SPP	Special parliamentary procedure
SPZ	Source Protection Zone
sq km	Square kilometre(s)
sq m	Square metre(s)
SRN	Strategic Road Network
SSEW	Soilscales England and Wales
SSSI	Site of Special Scientific Interest
ST	Short term
SU	Statutory Undertaker
SuDs	Sustainable drainage systems
TAG	Transport Appraisal Guidance or Transport Analysis Guidance
TAR	Transport Assessment Report
TAWAG	Think Again Winthorpe Action Group
tCO ₂ e	Tonnes of carbon dioxide equivalent
TDP	Transport Decarbonisation Plan
TMP	Traffic Management Plan
TP	Temporary Possession
TPO	Tree Preservation Order
TTM	Temporary Traffic Management
UK	United Kingdom
UKCP18	UK Climate Projections 2018
UKHSA	UK Health Security Agency
UNEP	United Nations Environment Programme
USI	Unaccompanied Site Inspection
VDM	Variable Demand Model
VISSIM	<i>Verkehr In Städten – SIMulationsmodell</i> (Traffic in cities – simulation model)
VP	Viewpoint
WACA 1981	Wildlife and Countryside Act 1981
WCH	Walking, cycling and horse-riding
WCHAR	Walking, Cycling and Horse-riding Assessment & Review
WebTAG	Web-based Transport Analysis Guidance
WebTRIS	Web-based traffic information service
WFD	Water Framework Directive
WMPE	The Waste Management Plan for England
WPPE	The Waste Prevention Programme for England
WR	Written Representation
WRA 1991	Water Resources Act 1991
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility
µg	micrograms

APPENDIX C: THE RECOMMENDED DCO

202[X] No. [XX]

INFRASTRUCTURE PLANNING

A46 Newark Bypass Development Consent Order 202[X]

Made - - - - - ****

Laid before Parliament ****

Coming into force ****

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PART 1

PRELIMINARY

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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 appointed as an examining authority (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 74 of the 2008 Act has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report and recommendation of the panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(d), 115(e), 117(f), 120(g), 122(h) and 123(i) of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5(a) to, the 2008 Act, makes the following Order—

-
- (a) 2008 (c.29). Parts 1 to 7 were amended by Chapter 6 of Part 6 and Schedule 13, Para 5 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, S.I. 2019/734, S.I. 2020/764, S.I. 2020/1534 and S.I. 2021/978; there are other amending instruments but none is relevant.
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011 (c.20).
- (e) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011 (c.20) and section 160 of Part 6 to the Housing and Planning Act 2016 (c.22) and section 43 of Part 2 to the Wales Act 2017 (c.4).
- (f) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011 (c.20).
- (g) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011 (c.20).
- (h) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011 (c.20).
- (i) Section 123 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011 (c.20).

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the A46 Newark Bypass Development Consent Order 202[X] and comes into force on 202[X].

Interpretation

2.—(1) In this Order except where provided otherwise—

- “the 1961 Act” means the Land Compensation Act 1961**(b)**;
- “the 1965 Act” means the Compulsory Purchase Act 1965**(c)**;
- “the 1980 Act” means the Highways Act 1980**(d)**;
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981**(e)**;
- “the 1984 Act” means the Road Traffic Regulation Act 1984**(f)**;
- “the 1990 Act” means the Town and Country Planning Act 1990**(g)**;
- “the 1991 Act” means the New Roads and Street Works Act 1991**(h)**;
- “the 2004 Act” means the Traffic Management Act 2004**(i)**;
- “the 2008 Act” means the Planning Act 2008**(j)**;
- “the 2016 Regulations and Directions” means the Traffic Signs Regulations and General Directions 2016**(k)**;
- “the 2017 Regulations” means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017**(l)**;
- “address” includes any number or address for the purposes of electronic transmission;
- “agricultural land plan” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the agricultural land plan for the purposes of this Order;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “authorised development” means the development and associated development described in Schedule 1 (authorised development) 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 of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;
- “bridleway” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act;

(a) Part 1 of Schedule 5 was amended by paragraph 4 of Part 1 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c.23), paragraph 71 of Part 1 of Schedule 13 to the Localism Act 2011 (c.20) and paragraph 76 of Part 3 of Schedule 6 to the Wales Act 2017 (c.4).

(b) 1961 c.33.
(c) 1965 c.56.
(d) 1980 c.66.
(e) 1981 c.66.
(f) 1984 c.27.
(g) 1990 c.8.
(h) 1991 c.22.
(i) 2004 c.18.
(j) 2008 c.29.
(k) S.I. 2016/362.
(l) S.I. 2017/3.

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

“Cadent Gas” means Cadent Gas Limited (company number 10080864), whose registered address is Cadent, Pilot Way, Ansty, Coventry, England, CV7 9JU or a related or subsidiary company of Cadent Gas;

“Canal & River Trust” means Canal & River Trust (company number 07807276), whose registered address is National Waterways Museum Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire, England, CH65 4FW or a related or subsidiary company of the Canal & River Trust;

“carriageway” has the same meaning as in the 1980 Act;

“classification of roads plans” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the classification of road plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4)(a) of the 1990 Act) forming part of the authorised development other than an operation consisting of pre-commencement works, and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in section 329(1) (further provision as to interpretation) of the 1980 Act^(a) and for the purposes of this Order includes parts of a cycle track and a right of way on foot;

“Crown land plans” means the plans listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the Crown land plans for the purposes of this Order;

“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) of the Communications Act 2003^(b);

“engineering plans and sections” means the document listed in Schedule 10 (documents to be certified) certified as the highways engineering section drawings and the engineering plans and sections by the Secretary of State for the purposes of this Order;

“Environment Agency” means the body of that name created by the Environment Act 1995^(c) or any successor in function to it;

“environmental masterplan” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the environmental masterplan for the purposes of this Order;

“environmental statement” means the document of that description listed in Schedule 10 (documents to be certified) certified as the environmental statement by the Secretary of State for the purposes of this Order;

“euNetworks” means euNetworks Fiber UK Limited (Company No. 04840874) whose registered office is at 5 Churchill Place, London, England, E14 5HU or a related or subsidiary company of euNetworks;

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

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

“highway” has the same meaning as in section 328(1) (meaning of “highway”) of the 1980 Act and includes part of a highway;

(a) The definition of “cycle track” in section 329(1) of the 1980 Act was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 2003 (c.21). Section 32(1) was amended by paragraph 9(a)(ii) of Schedule 1 to S.I. 2011/1210.

(c) 1995 (c.25).

“highway authority” means the undertaker;

“land plans” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the land plans for the purposes of this Order;

“lead local flood authority” means Nottinghamshire County Council in its function as lead flood authority;

“limits of deviation” means the limits of deviation referred to in article 10 (limits of deviation);

“local highway authority” means Nottinghamshire County Council;

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

“National Grid” means National Grid Electricity Distribution PLC (Company No. 09223384) whose registered office is at Avonbank, Feeder Road, Bristol, Avon, BS2 0TB or a related or subsidiary company of National Grid;

“Natural England” means the body of that name created by the Natural Environment and Rural Communities Act 2006^(a) or any successor in function to it;

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at Waterloo General Office, London, United Kingdom, SE1 8SW or a related or subsidiary company of Network Rail;

“Openreach” means Openreach Limited (Company No. 10690039) whose registered office is at 6 Gracechurch Street, London, United Kingdom, EC3V 0AT or a related or subsidiary company of Openreach;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;

“Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development as shown on the works plans and utilities works plans may be carried out;

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

“permanent speed limit plans” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the permanent speed limit plans for the purposes of this Order;

“pre-commencement works” means—

- (a) archaeological investigations and mitigation works;
- (b) utilities works comprising utilities protection works or fencing and protection slabs or diversions;
- (c) baseline monitoring and investigations for the purpose of assessing and monitoring ground and water conditions and levels;
- (d) construction compound establishment including welfare facilities and temporary buildings;
- (e) construction of the temporary bridge over the River Trent;
- (f) site clearance;
- (g) preparation work for flood compensation areas;

^(a) 2006 (c.16).

^(b) 1981 (c.67). The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

- (h) laying down of haul roads and access works;
- (i) environmental surveys, mitigation and monitoring;
- (j) diversion of public rights of way;
- (k) demolition;
- (l) erection of temporary fencing;
- (m) establishment of vehicle recovery areas;
- (n) installation of temporary CCTV and speed enforcement cameras;
- (o) vegetation planting;
- (p) remedial work in respect of any contamination or other adverse ground conditions;
- (q) receipt and erection of construction plant and equipment; and
- (r) temporary display of site notices, information and advertisements.

“relevant planning authority” means in any given provision of this Order, either one or both Newark and Sherwood District Council or Nottinghamshire County Council to the extent relevant to their planning functions;

“road” has the same meaning as in section 142(1) (general interpretation of act) of the 1984 Act;

“Secretary of State” means the Secretary of State for Transport;

“Severn Trent Water” means Severn Trent Water Limited (company number 02366686) whose registered office is at Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ or a related or subsidiary company of Severn Trent Water;

“special category land plans” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the special category land plans for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48(a) (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 document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the streets, rights of way and access plans for the purposes of this Order;

“structures plans and sections” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the structures engineering drawings and sections for the purposes of this Order”;

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

“traffic regulation measures plans” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the traffic regulation measures plans for the purposes of this Order;

“tree protection plans” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the tree protection plans for the purposes of this Order;

(a) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c. 26).

(b) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the New Roads and Street Works Act 1992 (c. 22), and amended paragraph 95(2) and (3) of Schedule 1 to, the Infrastructure Act 2015 (c. 7). There are other amendments to section 121A which are not relevant to this Order.

“the tribunal” means the Lands Chamber of the Upper Tribunal;

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

- (a) section 10(a) (general provision as to trunk roads) or section 19(1)(b) (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 number 09346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“utilities works” means those works shown on the utilities works plans and described as utilities works in Schedule 1 (authorised development);

“utilities works plans” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the utilities works plans for the purposes of this Order;

“Virgin Media” means Virgin Media Limited (company number 2591237) whose registered office is at 500 Brook Drive, Reading, RG2 6UU or a related or subsidiary company of Virgin Media;

“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 document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface.

(3) 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.

(4) 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 the Order, at the direction of the undertaker, either—

- (a) to an affected person directly, where that affected person’s land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the 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 purposes of their undertaking.

(5) 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.

(6) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(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 relevant plans.

(8) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

(9) References in this Order to the expression “includes” may be construed without limitation.

(a) 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 (c.29), and by section 1 of, and paragraph 10 of Schedule 1 to, the Infrastructure Act 2015 (c.7).

(b) Section 19 was amended by section 21(1) of the 1991 Act (c.22), and paragraph 15 of Schedule 1 to, the Infrastructure Act 2015 (c.7).

(10) References to any statutory body includes that body's successor or replacement body that may from time to time be primarily responsible for the functions, duties and responsibilities currently exercised by that statutory body over the authorised development.

(11) For the purposes of this Order, references to "days" are to be construed as references to calendar days unless otherwise specified.

Disapplication and modification of legislative provisions

3.—(1) The provisions of the Neighbourhood Planning Act 2017^(a) insofar as they relate to temporary possession of land under articles 40 (temporary use of land for carrying out the authorised development) and 41 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of 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 41, any maintenance of any part of the authorised development.

(2) Regulation 6 of the Hedgerows Regulations 1997^(b) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) or for carrying out or the maintenance of development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”

(3) Section 32 (variation of awards) of the Land Drainage Act 1991^(c) does 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.

Maintenance of drainage works

4.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72(1) (interpretation) of the Land Drainage Act 1991^(d).

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

6. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(a) 2017 (c.20).

(b) S.I. 1997/1160, there are amendments to this regulation but none are relevant to this Order.

(c) 1991 (c.59).

(d) 1991 (c.59), the definition of "drainage" was substituted by section 100(2) of the Environment Act 1995 (c.25).

Application of the 1990 Act

7.—(1) This article applies where the Order land is used for the temporary works.

(2) Where this article applies, section 57(2) (planning permission required for development) of the 1990 Act applies as if the development consent granted by this Order were planning permission granted for a limited period.

Planning permission

8.—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the authorised development,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order and does not prevent the remainder of the authorised development from being implemented.

(2) Anything done by the undertaker in accordance with the terms of this Order does not constitute a breach of any planning permission that is issued pursuant to the 1990 Act.

Existing powers and duties of the undertaker

9. Except as previously provided, nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under, the 1980 Act, the 1991 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015(a).

Limits of deviation

10.—(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 utilities plans and works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections—
 - (i) in respect of Work No. 33 to a maximum of 1 metre upwards or 2.5 metres downwards;
 - (ii) in respect of Work Nos. 34, 36, 51 and 52 to a maximum of 1 metre upwards or 2 metres downwards;
 - (iii) for all other works to a maximum of 1 metre 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 the local highway authority, certifies, that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement.

(a) S.I. 2015/596.

Benefit of Order

11.—(1) Subject to article 12 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which 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

12.—(1) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—

- (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;
- (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 (4), include references to the transferee or the grantee, or any other person who may exercise, enjoy or be responsible for any functions of the undertaker pursuant to that agreement, as the case may be.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker, save where those benefits or rights are exercised by a statutory undertaker (which for the purposes of this article includes any entity listed in paragraph (5)), or by an owner or occupier of land pursuant to paragraph (3) of article 29 (compulsory acquisition of rights and imposition of restrictive covenants) of this Order, in which case liability for the payment of compensation remains with the undertaker.

(4) The consent of the Secretary of State under this article is not required where the powers of article 29 (compulsory acquisition of rights and imposition of restrictive covenants) are, with the consent of the undertaker given under article 29(3), proposed to be exercised by a statutory undertaker rather than by the undertaker, or are proposed to be exercised for the express benefit or accommodation of owners and occupiers of land, as identified in column (4) of the table in Part 4 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to this Order.

(5) The consent of the Secretary of State is not required under this article, where the transfer or grant is made to—

- (a) Openreach for the purposes of undertaking any works relating to its apparatus set out in Work Nos. U4, U8, U9, U11, U14, U20, U23, U25 and U31;
- (b) Cadent Gas for the purposes of undertaking any works relating to its apparatus set out in Work Nos. U5, U18 and U32;
- (c) National Grid for the purpose of undertaking any works relating to its apparatus set out in Work Nos. U1, U2, U3, U10, U12, U13, U15, U19, U24, U28, U29 and U30;
- (d) euNetworks for the purpose of undertaking any works relating to its apparatus set out in Work No. U26;
- (e) Virgin Media for the purposes of undertaking any works relating to its apparatus set out in Work Nos. U7, U21, U27; and
- (f) Severn Trent Water for the purposes of undertaking any works relating to its apparatus set out in Work Nos. U6, U16, U17, U22 and U33.

PART 3

STREETS

Application of the 1991 Act

13.—(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^(a); or
- (b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64^(b) (dual carriageways and roundabouts) of the 1980 Act or section 184^(c) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers of this Order—

- (a) section 56^(d) (power to give directions as to timing of street works);
- (b) section 56A^(e) (power to give directions as to placing of apparatus);
- (c) section 58^(f) (restrictions on works following substantial road works);
- (d) section 58A^(g) (restriction on works following substantial street works);
- (e) section 73A^(h) (power to require undertaker to re-surface street);
- (f) section 73B⁽ⁱ⁾ (power to specify timing etc. of re-surfacing);
- (g) section 73C^(j) (materials, workmanship and standard of re-surfacing);
- (h) section 78A^(k) (contributions to costs of re-surfacing by undertaker); and
- (i) Schedule 3A^(l) (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 restriction on the use, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 18 (temporary alteration, diversion, prohibition and restriction of the use of streets) whether or not the restriction on the use, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

- (a) section 54^(a) (advance notice of certain works), subject to paragraph (6);

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- (a) There are amendments to section 86 of the Act which are not relevant to this Order.
 - (b) 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.
 - (c) Section 184 was amended by sections 35 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 Paragraph 9 of Schedule 8 to the 1991 Act.
 - (d) Section 56 was amended by sections 40 and 43 and Schedule 1 of the 2004 Act.
 - (e) Section 56A was amended by Section 44 of Part 4 to the 2004 Act.
 - (f) Section 58 was amended by section 51(1) – (8) of and Schedule 1 to the 2004 Act.
 - (g) Section 58A was inserted by section 52(1) of Part 4 of the 2004 Act.
 - (h) Section 73A is to be inserted into the 1991 Act by section 55 of the 2004 Act.
 - (i) Section 73B is to be inserted into the 1991 Act by section 55 of the 2004 Act.
 - (j) Section 73C is to be inserted into the 1991 Act by section 55 of the 2004 Act.
 - (k) Section 78A is to be inserted into the 1991 Act by section 57(1) of the 2004 Act.
 - (l) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the 2004 Act.

- (b) section 55**(b)** (notice of starting date of works), subject to paragraph (6);
- (c) section 57**(c)** (notice of emergency works);
- (d) section 59**(d)** (general duty of street authority to co-ordinate works);
- (e) section 60**(e)** (general duty of undertakers to co-operate);
- (f) section 68**(f)** (facilities to be afforded to street authority);
- (g) section 69**(g)** (works likely to affect other apparatus in the street);
- (h) section 75**(h)** (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a restriction, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 14 (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.

(8) Any order made by the Secretary of State under section 74A(2)(i) (charge determined by reference to duration of works) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012**(j)** does not have effect in relation to the construction or maintenance of the authorised development.

Construction and maintenance of new, altered or diverted streets and other structures

14.—(1) Subject to paragraph (2) below, any highway (other than 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 highway lies and, unless otherwise agreed in writing with the local highway authority, the highway, 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) Unless otherwise agreed in writing with the local highway authority, the culvert constructed under Work No. 50B, must be maintained by and at the expense of the undertaker from its completion.

(3) Where a highway (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that

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- (a) Section 54 was amended by section 49(1) of, and Schedule 1 to, the 2004 Act.
 - (b) Section 55 was amended by section 49(2) and 51(9) of, and Schedule 1 to, the 2004 Act.
 - (c) Section 57 was amended by section 52(3) of, and Schedule 1 to, the 2004 Act.
 - (d) Section 59 was amended by section 42 of the 2004 Act.
 - (e) Section 60 was amended by Schedule 1 to, the 2004 Act.
 - (f) Section 68 was amended by Schedule 1 to, the 2004 Act.
 - (g) Section 69 was amended by Schedule 1 to, the 2004 Act.
 - (h) Section 75 was substituted by section 58(2) of the 2004 Act.
 - (i) 1991 c.22, inserted by section 255(1) of Part V to the Transport Act 2000 (c.38), as amended by Paragraph 120(2) of Part 2 of Schedule 1 to the Infrastructure Act 2015 (c. 7).
 - (j) S.I. 2012/425, as amended by S.I. 2015/377, S.I. 2018/215 and S.I. 2022/831.

part of the highway, 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.

(4) Where a footpath or cycle track (not comprised in a highway) is constructed under this Order it must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and the competent person had carried out those instructions.

Classification of roads, etc.

15.—(1) On the date on which the roads described in Part 1 (trunk roads) of Schedule 3 (classification of roads etc.) are completed and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2)(a) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On the date on which the roads described in Part 2 (classified A roads) and Part 3 (classified B roads) of Schedule 3 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(3) On and after the date on which the roads described in Part 4 (unclassified roads) of Schedule 3 are completed and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to roads which are not classified roads.

(4) On such day as the undertaker may determine, the orders specified in column (3) of Part 9 (revocations & variations of existing traffic regulation orders) of Schedule 3 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(a) Section 10(2) was amended by section 22(2)(a) of Part 1 of the 1991 Act, and by Paragraph 10(2) of Schedule 1 to, the Infrastructure Act 2015 (c.7).

(5) Unless otherwise agreed in writing with the local highway authority, the cycle tracks, set out in Part 10 (cycle tracks) 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 last of the roads described in Parts 1 to 4 of Schedule 3 (classification of roads etc.) is completed and open for traffic.

(6) On and after the date on which the roads specified in the table in Part 5 (speed limits) of Schedule 3 (classification of roads etc) are open for traffic—

- (a) no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that table along the lengths of road identified in the corresponding row of column (2) of that table;
- (b) where the words “national speed limit” appear in column (3) of the table in that Part the national speed limit applies to the length of road described in the corresponding row of column (2) as if it is a dual carriageway and no person is to drive any motor vehicle at a speed exceeding the national speed limit along those lengths of road;
- (c) where the words “Removal of restricted road status” appear in column (3) of those tables, those lengths of road will cease to be restricted roads as if, on that date, a direction had been made under section 82(2)(a)(a) (what roads are restricted roads) of the 1984 Act.

(7) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(b) when used in accordance with regulation 3(5) of those Regulations.

(8) In this article—

“national speed limit” has the same meaning as in Schedule 1 (definitions) of the 2016 Regulations and Directions;

“road” includes the adjacent hard shoulder and verge and any lay by.

(9) The application of paragraphs (1) to (7) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Power to alter layout etc. of streets

16.—(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days’ notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which receives an application for consent under paragraph (3) 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.

(a) Section 82(2)(a) was amended by Paragraph 59(3) of Part 2 of Schedule 8 to the 1991 Act.

(b) S.I. 2011/935.

(5) Any application to which this article applies must include a statement that the provisions of paragraph (4) apply to that application.

(6) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street Works

17.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in or under the street;
- (e) maintain, renew or alter apparatus in the street or change its position;
- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for, or incidental to, any works referred to in subparagraphs (a) to (j).

(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)(a) (prohibition of unauthorised street works) of the 1991 Act.

Temporary alteration, diversion, prohibition and restriction of the use of streets

18.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street where the use has been temporarily prohibited 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 alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily alter, divert, prohibit or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the temporary alteration, diversion, prohibition or restriction of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act(b).

(a) 1991 c.22. There are amendments to section 48(3) and 51(1) which are not relevant to this Order.

(b) 1961 c.33, Part 1 as amended by S.I. 2009/1307, and Section 192(1) of Part 7 of the Housing and Planning Act 2016 (c.22).

(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) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

Permanent stopping up and restriction of use of streets and private means of access

19.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up each of the streets, public rights of way and private means of access shown on the streets, rights of way and access plans and specified in columns (1) and (2) of Parts 1, 2, 4 and 6 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 2 and 4 of Schedule 4 (being a highway or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 1 and 6 of Schedule 4 (being a highway or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street or private means of access concerned; or
- (c) there is a reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) The parts of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (being highways to be stopped up) and shown on the streets, rights of way and access plans, are extinguished on the date of the expiry of the notice given under paragraph (6).

(6) The undertaker must erect a site notice at each end of each of the parts of the rights of way to be extinguished in accordance with paragraph (5) no less than 28 days prior to the extinguishment of the right of way in question.

(7) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(8) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) This article is subject to article 43 (apparatus and rights of statutory undertakers in stopped up streets).

(10) The lengths of highway which may be provided under this Order are described in Part 3 of Schedule 4.

(11) The new private means of access which may be provided under this Order are described in Part 5 of Schedule 4.

Access to works

20. 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.

Clearways, prohibitions and restrictions

21.—(1) Except as provided in paragraph (4), on and after such day as the undertaker may determine, no person is to cause or permit any vehicle to stop on any part of the lengths of road described in column (2) of Part 6 (traffic regulation measures (clearways)) of Schedule 3 (classification of roads, etc.) and identified on the traffic regulation measures plans where it is identified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, or that the stopping of vehicles is otherwise prohibited, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Except as provided in paragraphs (4) to (6), on and after such a day as the undertaker may determine, no person is to cause or permit any vehicle to wait on any part of the length of road described in column (2) of Part 7 (traffic regulation measures (waiting restrictions)) of Schedule 3 (classification of roads etc.) and identified on the traffic regulation measures plans during the periods specified in column (3) of that Part, except upon the direction of, or with the permission of, a uniformed constable or civil enforcement officer.

(3) Except as provided in paragraph (8) on and after such day as the undertaker may determine, no person is to proceed or cause or permit any vehicle to enter a road specified in column (2) of Part 8 (traffic regulation measures (no entry)) of Schedule 3 (classification of roads, etc.) and identified on the traffic regulation measures plans from the road which is identified in column (3) of that Part where it is identified in the corresponding row of column (4) of that Part that there is a prohibition on such entry except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(4) Nothing in paragraphs (1) and (2) applies—

- (a) to render it unlawful to cause or permit a vehicle to stop or wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable, or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—

(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c.30).

- (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991^(a); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services (Universal Postal Service) Order 2012^(b); or
 - (c) in relation to a vehicle stopping or waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person’s control.
- (5) Nothing in paragraph (2) applies in relation to a vehicle waiting—
- (a) to enable a person to board or alight from the vehicle;
 - (b) while any gate or other barrier at the entrance to premises to or from which the vehicle requires access, or from which it has emerged, is opened or closed, if it is not reasonably practicable for the vehicle to wait otherwise;
 - (c) to enable goods to be loaded or unloaded to or from the vehicle;
 - (d) where a disabled person’s badge and a parking disc are displayed in the relevant position, and the driver or the person in charge of the vehicle has marked the time at which the period of waiting began, for a period not exceeding three hours (not being a period separated by an interval of less than one hour from a previous period of waiting by the same vehicle in the same road) but only if that vehicle has been or is about to be driven or used by the person to whom the badge has been issued or, as the case may be, used for the carrying of a disabled person as a passenger (except where the prohibition of waiting does not relate to “no waiting except taxis, ambulances or police vehicles”);
 - (e) where the traffic authority for the road has given permission by means of a dispensation issued under paragraph (6) to be displayed in the front or nearside of the vehicle and which includes information to enable the driver to be contacted in an emergency and provided the vehicle is not causing an obstruction by doing so, and that the vehicle can be moved if the driver is requested to do so by a uniformed constable or a civil enforcement officer;
 - (f) where the vehicle is being used in connection with essential work at adjacent premises for the purpose of undertaking emergency glazing repair to those premises; or
 - (g) where the vehicle is being loaded or unloaded while it is in actual use in connection with the removal of furniture from one office or house to another, or the removal of furniture from such premises to a depository, or such premises from a depository, if it is not practicable to be used for such purpose in any other road.
- (6) Upon written application on a form issued by and obtainable from the traffic authority any person duly authorised by the traffic authority may issue a dispensation to exempt that vehicle from a prohibition of waiting on any part of the roads described in paragraph (2).
- (7) No person is to cause or permit any vehicle to wait on any part of the lengths of roads described in paragraph (2) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.
- (8) Nothing in paragraph (3) applies to render it unlawful to cause or permit a vehicle to enter a road in contravention of that paragraph, if it is necessary to do so to enable that vehicle to be used in connection with—

(a) 1991 c.56.

(b) S.I. 2012/936, amended by S.I. 2013/3108 and S.I. 2015/643.

- (a) the removal of any obstruction to traffic; or
- (b) the maintenance, improvement, reconstruction or operation of the road in question.

(9) Paragraphs (1) to (8) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(10) In this article—

“civil enforcement officer” means an individual employed as a civil enforcement officer under section 76 (civil enforcement officers) of the 2004 Act;

“disabled person’s badge” and “parking disc” have the same meaning as in the Local Authorities’ Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000(a);

“in the relevant position”—

- (a) in respect of a disabled person’s badge or parking ticket, means—
 - (i) the badge or parking ticket is exhibited on the dashboard or fascia of the vehicle so that the front of the badge or parking ticket is clearly legible from the outside of the vehicle; or
 - (ii) where the vehicle is not fitted with a dashboard or fascia, the badge or parking ticket is exhibited in a conspicuous position on the vehicle, so that the front of the badge or parking ticket is clearly legible from the outside of the vehicle;
- (b) in respect of a disabled person’s parking disc, means—
 - (i) the parking disc is exhibited on the dashboard or fascia of the vehicle; or
 - (ii) where the vehicle does not have a dashboard or fascia, the parking disc is exhibited in a conspicuous position on the front near side of the vehicle, so that when marked to show the quarter hour period during which a period of waiting began, that period is clearly legible from the outside of the vehicle; and

“traffic officer” means an individual designated under section 2 (designation of traffic officers) of the 2004 Act.

Traffic Regulation

22.—(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—

- (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 vehicles, or vehicles of any class, or pedestrians 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)

(a) S.I. 2000/683. See regulations 3(1) and 8(5).

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 the undertaker has—

(a) given not less than—

(i) 12 weeks' notice in writing of the undertaker's 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 the undertaker's 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 its receipt of notice of the undertaker's intention in the case of subparagraph (a)(i) or within 7 days of its receipt of notice of the undertaker's intention in the case of subparagraph (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 (power of local authorities to provide parking places) of the 1984 Act^(a),

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 conferred by 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 the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker 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.

(12) Any application to which this article applies must include a statement that the provisions of paragraph (1) apply to that application.

(a) Section 32 was amended by sections 1, 2, 8(1) and paragraph 4(6)(d) of Schedule 5 to the Local Government Act 1985 (c.51), paragraph 39 of Part 2 of Schedule 8 to the New Roads and Street Works Act 1991 (c.22).

(b) 2004 c. 18. Schedule 7 was implemented by Article 2 of S.I. 2007/2053, Article 2 and Schedule 1 of S.I. 2007/3174, as amended by Regulation 28 of S.I. 2013/362 and Regulation 2 and 3 of S.I. 2018/488.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

23.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or 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 except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) 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.

(7) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

(8) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(9) 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 used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(10) In relation to any works executed under this Order, section 66 (powers to make byelaws) of the Land Drainage Act 1991(c) is amended after paragraph (9) to insert:

“(10) Where an application is made to an internal drainage board for its consent under a byelaw made under this section—

- (a) the consent is not to be unreasonably withheld; and

(a) 1991 c.56. Section 106 was amended by section 35(1) and (8)(a), 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99(2), (3), (4) and (5) 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, amended by S.I. 2018/110.

(c) 1991. c. 23. Section 66 was amended by Paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29), paragraphs 14(2) and 14(3) of Schedule 2 to the Local Government Byelaws (Wales) Act 2012 (anaw 2), and section 86(3) of Part 5 to the Water Act 2014 (c. 21).

- (b) if the internal drainage board fails within 28 days after receipt of the application to notify the application in writing of their determination, the internal drainage board is deemed to have consented to the application.”

Protective work to buildings

24.—(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 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), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 57 (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) Without affecting article 34 (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) 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, in case of dispute, 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

25.—(1) The undertaker may for the purposes of the construction, operation or maintenance of the authorised development enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to, but outside the Order limits, and—
 - (i) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);
 - (ii) without limitation on the scope of sub-paragraph (i), make any excavations or trial holes and boreholes and other investigations 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 from sampling operations on to the land;
 - (iii) without limitation on the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making excavations or trial holes on the land for such purposes; and
 - (iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making 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 at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take into 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 are to be made under this article—

(a) Section 152 was amended by S.I. 2009/1307.

(b) Section 13 was amended by Section 139 of Part 7, paragraph 28(2) of Schedule 13 and paragraph 1 of Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).

- (a) in land located within the highway boundary without the consent of the local highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

(7) 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.

(8) If either a local highway authority or a 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 local highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

26.—(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 paragraph (4) of article 29 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (10) of article 40 (temporary use of land for carrying out the authorised development) and article 52 (crown rights).

Compulsory acquisition of land – incorporation of the mineral code

27. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”; and
- (c) for “undertaking” substitute “authorised development”.

Time limit for exercise of authority to acquire land compulsorily

28.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act(a) as applied by article 36 (application of the 1981 Act).

(a) 1981 c.67.

(2) The authority conferred by article 40 (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

29.—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land or impose 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 26 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) This article is subject to paragraph (9) of article 40 (temporary use of land for carrying out the authorised development) and article 52 (crown rights).

(3) The powers of paragraph (1) may be exercised by a statutory undertaker or by an owner or occupier of land identified in column (4) of the table in Part 4 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to this Order, instead of by the undertaker in any case where the undertaker has given its prior consent to that in writing, and that consent may be given subject to terms and conditions.

(4) Where in consequence of paragraph (3), a statutory undertaker or an owner or occupier of land exercises the powers in paragraph (1) in place of the undertaker, the statutory undertaker or the owner or occupier of land, as the case may be, is to be treated for the purposes of this Order, and by any person with an interest in the land affected, as being the undertaker in relation to the acquisition of the rights and the imposition of the restrictive covenants in question, except in relation to the payment of compensation the liability for which remains with the undertaker.

(5) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights and restrictive covenants 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 purposes 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.

(6) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 5 for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as are required for the benefit of any other statutory undertaker or any other person.

(7) Subject to section 8(b) (other provisions as to divided land) of, and Schedule 2A(c) (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 paragraph (1) or (3), the undertaker is not required to acquire a greater interest in that land.

(a) 1981 c.66, as amended by section 184 and 185 of Part 7 and paragraph 2 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(b) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 (c.22) and paragraph 62, Schedule 1, of S.I.2009/1307.

(c) Schedule 2A was added by paragraph 3 of Part 1 of Schedule 17 of the Housing and Planning Act 2016 (c. 22).

(8) 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.

Private rights over land

30.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished on—

- (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,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is earlier.

(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 when any material operation comprised in the authorised development interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152(b) (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act(c).

(6) This article does not apply in relation to any right to which section 138(d) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 42 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or

(a) Section 11 was amended by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure (2006 No. 1); paragraph 64 of Schedule 1 of Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and sections 186(1) and (2), 187 and 188 of Part 7, paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 of the Housing and Planning Act 2016 (c. 22).

(b) Section 152 as implemented by paragraph 293 of Schedule 1 of S.I. 2009/1307.

(c) 1961 c.33, Part 1 as amended by S.I. 2009/1307, and section 192(1) of Part 7 of the Housing and Planning Act 2016 (c.22).

(d) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and paragraph 12(2) of Part 1 of Schedule 1 of S.I. 2017/1285.

- (iv) the undertaker's taking temporary possession of it, that any or all of those paragraphs do not apply to any right specified in the notice; and
 - (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

(10) From such date as the undertaker may determine, which may not be later than the date on which the private means of access listed in column 2 of Part 4 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) is stopped up, the owners and occupiers, their agents contractors and any person with the permission of the owner or occupier of the land to be accessed by the private means of access to be substituted or provided on the Order land and listed in column 4 of Part 4 of Schedule 4, will be entitled to take access to their land at all times with or without vehicles across or along the private means of access to be substituted or provided on the Order land listed in column 4 of Part 4 of Schedule 4.

Power to override easements and other rights

31.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) The interests and rights to which this article applies include any 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 the virtue of a contract.

(3) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10(a) (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(4) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (3); and
- (b) fails to discharge that liability,

(a) Section 10 was amended by section 4 and paragraph 13(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 63 of Schedule 1 of S.I 2009/1307.

the liability is enforceable against the undertaker.

(5) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(6) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

Disregard of certain interests and improvements

32.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Set-off for enhancement in value of retained land

33.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 29 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

No double recovery

34. 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.

Modification of Part 1 of the 1965 Act

35.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125(a) (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (grounds for application to High Court), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent(c) of the Planning Act 2008), the five year period mentioned in article 28 (time limit for exercise of authority to acquire land compulsorily) of the A46 Newark Bypass Development Consent Order 202[X]”.

(3) In section 11A(d) (powers of entry: further notices of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”;

(b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 28 (time limit for exercise of authority to acquire land compulsorily) of the A46 Newark Bypass Development Consent Order 202[X]”.

(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 38 (acquisition of subsoil or airspace only) on the A46 Newark Bypass Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule;” and

(b) after paragraph 29, end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 24 (protective work to buildings), article 40 (temporary use of land for carrying out the authorised development) or article 41 (temporary use of land for maintaining the authorised development) of the A46 Newark Bypass Development Consent Order 202[X].”

Application of the 1981 Act

36.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5(e) (earliest date for execution of declaration) in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(f) (time limit for general vesting declaration).

(a) Section 125 was amended by section 190 of, and paragraph 17, of Schedule 16 to the Housing and Planning Act 2016 (c. 22).

(b) Section 4A(1) was inserted by section 202(1) of Part 7 to the Housing and Planning Act 2016 (c. 22).

(c) Section 118 was amended by paragraph 59(2) of Part 1 of Schedule 13 and paragraph 1 of Part 20 of Schedule 25 to the Localism Act 2011 (c.20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c.2).

(d) Section 11A was inserted by section 186(3) of Part 7 to the Housing and Planning Act 2016 (c. 22).

(e) Section 5 was amended by paragraph 6 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(f) Section 5A was inserted by section 186(2) of Part 7 to the Housing and Planning Act 2016 (c. 22).

(6) In section 5B(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (grounds for application to High Court), 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 28 (time limit for exercise of authority to acquire land compulsorily) of the A46 Newark Bypass Development Consent Order 202[X]”.

(7) In section (6)(b) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 2 to, the Acquisition of Land Act 1981” substitute “section 134(c) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7(d) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Section 11 (recovery of compensation overpaid) for subsection (1) substitute—

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the Acquisition of an interest in land by virtue of the declaration and the acquiring authority pay compensation in respect of that interest.”

(10) In Schedule A1(e) (counter-notice requiring purchase of and not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 38(3) (acquisition of subsoil or airspace only) of the A46 Newark Bypass Development Consent Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(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 35 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Modification of the 2017 Regulations

37.—(1) Schedule 1 to the 2017 Regulations is modified as follows.

(2) In paragraph (3) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—

“(1A) The [insert land or rights or both] described in Part [] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the third parties in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed.”

(3) References in Form 2 to “in themselves” is substituted with “in themselves and any identified third parties”.

(4) In paragraph (b) of the notes on use of Form 2—

- (a) after “Insert the name of the authority” insert “and where the context requires insert a reference to third parties”; and
- (b) omit “Thereafter rely on that definition wherever “(b)” appears in the text”.

(a) Section 5B was inserted by section 202(2) of Part 7 to the Housing and Planning Act 2016 (c. 22).

(b) 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 (c. 22).

(c) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c.22).

(d) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22) and amended by paragraph 3 of Part 1 of Schedule 18 to the Levelling-up and Regeneration Act 2023 (c. 22).

(e) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

Acquisition of subsoil or airspace only

38.—(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 26(1) of article 26 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 35 (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

39.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, 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 a statutory undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

40.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 28 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take possession of—

(a) Section 153(4A) was inserted by section 200(1) and (2) of the Housing and Planning Act 2016 (c. 22).

- (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 mentioned in Schedule 1 (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 may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken); or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works 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;
- (e) remove or reposition any apparatus installed for or belonging to statutory undertakers;
- (f) remove or reposition any necessary mitigation or accommodation works; or
- (g) remove any temporary works where this has been agreed with the owners of the land.

(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 as if it were a dispute 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 34 (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 any land or rights in respect of the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 38 (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) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 26 (compulsory acquisition of land) or article 29 (compulsory acquisition of rights and imposition of restrictive covenants).

Temporary use of land for maintaining the authorised development

41.—(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 and must explain 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 practical 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.

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and part of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) 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 as if it were a dispute under Part 1 of the 1961 Act.

(10) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right 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 acquiring authority) of the 1965 Act applies to the temporary use of land under 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

42.—(1) Subject to the provisions of article 29 (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 43(2) (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

43.—(1) Where a street is stopped up under article 19 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 19 (permanent stopping up and restriction of use of streets and private means of access) any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“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).

(a) There are amendments to section 151 which are not relevant to this Order.

Recovery of costs of new connections

44.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 42 (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 41 (temporary use of land for maintaining the authorised development), 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 43 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

45.—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (4) the undertaker must—

- (a) do no unnecessary damage to any tree or shrub; and
- (b) pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2)—

- (a) remove any hedgerow described in Part 1 of Schedule 8 (hedgerows and trees); and
- (b) remove any hedgerow within the Order limits that may be identified and that is not otherwise set out within Part 1 of Schedule 8.

(a) There are amendments to section 151 which are not relevant to this Order.

(5) In this article “hedgerow” includes a hedgerow to which the Hedgerows Regulations 1997^(a) apply and includes important hedgerows.

Trees subject to tree preservation orders, etc.

46.—(1) The undertaker may fell or lop any tree described in Part 2 of Schedule 8 (hedgerows and trees), cut back its roots or undertake such other works as the undertaker reasonably believes to be necessary to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed.

(3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) The powers in paragraph (1) may be exercised in relation to any tree or shrub that is situated within a conservation area designated under Section 69^(b) (designation of conservation areas) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

(5) Action may not be taken under paragraph (4) unless the undertaker has given written notice to the relevant planning authority of the intended action (with sufficient particulars to identify the tree), and either—

- (a) the relevant planning authority has indicated in writing that it has no objection to the works or that they fall within an exemption in paragraph (6) or (7), or
- (b) six weeks have elapsed from the date of the notice and a tree preservation order has not been made in respect of the tree or shrub.

(6) Paragraph (4) does not apply where consent would not be needed for the proposed action if the tree or shrub were subject to a tree preservation order.

(7) Paragraph (4) does not apply to any action which would be exempt in accordance with regulations under section 212^(c) (power to disapply s.211) of the 1990 Act.

(8) The duty contained in section 213(1) (enforcement of controls as respects trees in conservation areas) of the 1990 Act does not apply to the undertaker in carrying out any activity authorised by paragraphs (4) and (5).

(9) The authority given by paragraphs (4) and (5) constitutes an authorisation by an order granting development consent for the purposes of section 211(1A) of the 1990 Act.

(10) In carrying out any activity authorised by this article, the undertaker must not unnecessarily damage any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(11) Any dispute as to a person’s entitlement to compensation under this article, or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 (of the 1961 Act).

(a) S.I. 1997/1160 as amended by S.I. 2003/2155, S.I. 2015/1997, S.I. 2015/377, S.I. 2009/1307 and S.I. 2013/755.

(b) Section 69 was amended by section 5 and paragraph 13 and 14 of Schedule 3 to the Planning (Consequential Provisions) Act 1990 (c. 11) and sections 28, 54 and 178(3) and paragraph 3(a) of Part 3 of Schedule 2 of the Town and Country Planning Act 1990 (c. 8).

(c) Section 212 was amended by paragraph 1 of Schedule 13 to the Planning Act 2007 (c. 29).

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

47.—(1) This article applies to—

- (a) any agreement for lease 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

48. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

49.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990^(a) in relation to a nuisance falling within paragraph (d), (fb), (g) and (ga) of section 79(1) ^(b) (statutory nuisances and inspections therefor.) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974^(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

^(a) 1990 c.43. There are amendments to this sub-section which are not relevant to this Order.

^(b) There are amendments to section 79(1) which are not relevant to this Order.

^(c) 1974 (c.40). Section 61 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43), there are other amendments to section 61 of the Act but none are relevant to this Order

- (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)(a) (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(b)) 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.

Appeals relating to the Control of Pollution Act 1974

50.—(1) Except as otherwise provided for in this Order the undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not give consent or grants consent but subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice or the decision, or the date by which a decision was due to be made, as the case may be;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(a) Section 61(9) was amended by Section 162(1) and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43) and Schedule 24 of the Environment Act 1995 (c. 25).
(b) Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990. There are further amendments to section 61 which are not relevant to this Order.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

(8) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(10) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(11) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(12) Except where a direction is given under paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(14) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Ministry of Housing, Communities and Local Government or such guidance as may from time to time replace it.

Removal of human remains

51.—(1) In this article, “the specified land” means any land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subject to paragraph (12), before any such remains are removed from the specified land the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by—

- (a) publishing a notice for two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (14) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) The removal and subsequent treatment of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(16) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(a) does not apply to a removal carried out in accordance with this article.

(17) Section 239(b) (use and development of burial grounds) of the 1990 Act applies—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 40 (temporary use of land for carrying out the authorised development) or 41 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order, and in section 240(1) (provisions supplemental to ss 238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or right over land acquired under this Order, paragraphs (2) to (15) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

Crown Rights

52.—(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—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description—
 - (i) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.
- (b) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Use of private roads for construction

53.—(1) 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 of the authorised development.

(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1).

(b) Section 239 was amended by section 87(6) of the National Health Service Act 1977 (c. 49), section 5 and paragraphs 13 and 14 of Schedule 3 to the Planning (Consequential Provisions) Act 1990 (c. 11).

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Protective provisions

54. Schedule 9 (protective provisions) has effect.

Certification of documents, etc.

55.—(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 (documents to be certified) 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 an amendment to reflect the terms of the Secretary of State's decision to make this 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 is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

56.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1978 c. 30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 of Road Traffic Regulation Act 1984 (c. 27).

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

57.—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) This article does not apply where any difference under any provision of this Order is between any person and the Secretary of State.

Temporary suspension of navigation in connection with the authorised development

58.—(1) The undertaker may, subject to part 5 of Schedule 9 (protective provisions for the protection of the Canal & River Trust), in connection with the construction and operation of the authorised development, temporarily interfere with the relevant part of the river for the purposes of the construction, inspection and maintenance of Work No.7 and Work No.56 of Schedule 1 (authorised development) and any associated development in connection with it.

(2) Without limitation on the powers conferred by paragraph (1) but subject to paragraphs (3) and (4) the undertaker may, in a case of emergency only, temporarily close to navigation the relevant part of the river.

(3) The power conferred by paragraphs (1) and (2) must be exercised in such a way which secures—

- (a) that no more of the relevant part of the river is closed to navigation at any time that is necessary in the circumstances and wherever possible the full closure of the navigation is

avoided so that the general availability of the Trust's waterways for public use under s105 Transport Act 1968 is not prejudiced for any period of time; and

- (b) that, if complete closure to navigation of the relevant part of the river becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) During the period of any closures referred to in paragraph (2) all rights of navigation and other rights relating to and any obligations of the Trust to manage the relevant part of the river so closed are to be suspended and unenforceable against the Trust.

(5) Any person who as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private rights of navigation is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 of the 1961 Act(a).

(6) In this article, "the relevant part of the river" means so much of the River Trent as is within the Order limits and the "Trust" means the Canal & River Trust.

(7) In this article "emergency" means any circumstance existing or imminent which the undertaker considers is likely to cause danger to—

- (a) any person or property, including the new bridge, any vessel and any person using, working on, or intending to use or work on the new bridge or aboard any vessel passing the new bridge; or
- (b) the environment.

Signed by authority of the Secretary of State for Transport.

Name
Head of the Transport and Works Act Orders Unit
Department for Transport

Address

Date

SCHEDULES

SCHEDULE 1

Articles 2, 5 and 6

AUTHORISED DEVELOPMENT

The authorised development is a nationally significant infrastructure project as defined in sections 14(b) and 22(c) of the 2008 Act and associated development within the meaning of section 115(2)(d) of the 2008 Act, comprising—

In the County of Nottinghamshire, in the administrative area of Newark and Sherwood District Council

Works

-
- (a) 1961 (c.33)
 - (b) Section 14 as implemented by Article 2(2) of S.I. 2012/1645, Article 2(2) of S.I. 2015/949, Article 2(2) of S.I. 2019/12 and section 6(10) of Part 1 to the Public Order Act 2023 (c. 15).
 - (c) Section 22 as amended Article 3 of S.I. 2013/1883 and paragraph 153 of Part 2 of Schedule 1 to the Infrastructure Act 2015 (c. 7).
 - (d) Section 115(2) was amended by section 160(3) of Part 6 of the Housing and Planning Act 2016 (c. 22) and There are other amendments to section 115(2) which are not relevant to this Order.

Work No. 1 - As shown on sheet 1 of the works plans the construction of tie-ins between the existing A46 and Farndon Roundabout (Work No. 2) of approximately 120 metres in length.

Work No. 2 - As shown on sheet 1 of the works plans, the alteration of Farndon Roundabout of approximately 370 metres in length, including:

- (a) the construction of a third gyratory lane;
- (b) widening to the inside of the gyratory on the northern side of the roundabout; and
- (c) tie-in works to each arm of the roundabout.

Work No. 3 - As shown on sheet 1 of the works plans, resurfacing works to facilitate the temporary diversion of Newark Bridleway No. 2 of approximately 520 metres in length, including the installation of temporary signage and gates.

Work No. 4 - As shown on sheets 1, 2, and 3 of the works plans, the construction of the new A46 dual carriageway through widening the existing A46 between Farndon Roundabout (on sheet 1) and Cattle Market Junction (on sheet 3) approximately 2,000 metres in length, including:

- (a) the construction of two new lanes on the western side of the existing A46 to provide a new northbound carriageway;
- (b) alteration of the existing A46 carriageway; and
- (c) the construction of a new central reserve with a concrete barrier.

Work No. 5 - As shown on sheet 1 of the works plans, the construction of a retaining wall approximately 95 metres in length for the northbound carriageway embankment of the A46 dual carriageway (Work No. 4).

Work No. 6 - As shown on sheet 1 of the works plans, the construction of a new access track approximately 410 metres in length, including approximately 240 metres of shared access track and footpath, and approximately 170 metres of shared access track and bridleway, commencing on Farndon Road, north-east of Farndon Roundabout.

Work No. 7 - As shown on sheet 1 of the works plans, the construction of a new bridge (the new Windmill Viaduct) to carry the new northbound carriageway of the A46 (Work No. 4) over the River Trent, parallel to the existing Windmill Viaduct.

Work No. 8 - As shown on sheets 1 and 2 of the works plans, the construction of a new access track approximately 661 metres in length, commencing at the track to the west of the extension of the existing Farm Access Underpass (Work No. 20) on sheet 2.

Work No. 9 - As shown on sheet 1 of the works plans, a temporary compound of approximately 2,392 square metres in the centre of Farndon Roundabout.

Work No. 10 - As shown on sheet 1 of the works plans, a temporary works area to hold construction vehicles of about 1,700 square metres located west of Farndon Roundabout (Work No.2).

Work No. 11 - As shown on sheet 1 of the works plans, a temporary works area with welfare units and hardstanding areas for material storage of approximately 4,700 square metres, north-west of the new Windmill Viaduct (Work No.7).

Work No. 12A - As shown on sheets 1 and 2 of the works plans, borrow pits (Farndon West Borrow Pits Area) including access routes, utility protection slabs, water management, soil storage and material processing areas to the north-west of the new Windmill Viaduct (Work No.7).

Work No. 12B - As shown on sheets 1 and 2 of the works plans the restoration of the Farndon West Borrow Pits Area (Work No. 12A).

Work No. 12C - As shown on sheets 1 and 2 of the works plans the restoration of the Farndon West Borrow Pits Area (Work No. 12A).

Work No. 13 - As shown on sheets 1 and 2 of the works plans, the construction of a floodplain compensation area (Farndon West Floodplain Compensation Area) and environmental mitigation to the north-west of the new Windmill Viaduct (Work No.7) on sheet 1.

Work No. 14 - As shown on sheet 2 of the works plans, borrow pits (Farndon East Borrow Pits Area) including access routes, utility protection slabs, water management, soil storage and material processing areas to the north-east of existing Windmill Viaduct.

Work No. 15 - As shown on sheet 2 of the works plans, the construction of a floodplain compensation area (Farndon East Floodplain Compensation Area) and environmental mitigation to the north-east of existing Windmill Viaduct.

Work No. 16 - As shown on sheet 2 of the works plans, the construction of a new access track approximately 495 metres in length, commencing at the existing A46 approximately 350 metres north of the existing Windmill Viaduct (on sheet 1).

Work No. 17 - As shown on sheet 2 of the works plans, the construction of an extension to the existing Pipe Culvert No. 5 under the new northbound carriageway of the A46 (Work No. 4).

Work No. 18 - As shown on sheet 2 of the works plans, the construction of attenuation basins and associated drainage infrastructure, to the west of the new northbound carriageway of the A46 (Work No. 4) and south of the new access track (Work No. 16).

Work No. 19 - As shown on sheet 2 of the works plans, the construction of attenuation basins and associated drainage infrastructure, to the east of the existing A46.

Work No. 20 - As shown on sheet 2 of the works plans, the construction of an extension to the existing Farm Access Underpass under the new northbound carriageway of the A46 (Work No. 4).

Work No. 21 - As shown on sheet 2 of the works plans, a temporary works area with welfare units and hardstanding areas for material storage of approximately 2,000 square metres north-east of the existing Farm Access Underpass.

Work No. 22 - As shown on sheet 2 of the works plans, the construction of attenuation basins and associated drainage infrastructure, to the west of the new northbound carriageway of the A46 (Work No. 4) and north of the new access track (Work No. 16).

Work No. 23 - As shown on sheet 2 of the works plans, the construction of an extension to the existing Old Trent Dyke Culvert under the new northbound carriageway of the A46 (Work No. 4).

Work No. 24 - As shown on sheet 2 of the works plans, the construction of a new access track of approximately 475 metres in length, commencing at the track to the north-west of the extension of the existing Farm Access Underpass (Work No. 20).

Work No. 25 - As shown on sheet 2 of the works plans, a temporary works area with welfare units and hardstanding areas for material storage and crange of approximately 5,600 square metres south-west of the new Nottingham to Lincoln Railway Line West Crossing (Work No. 26).

Work No. 26 - As shown on sheet 2 of the works plans, the construction of a new bridge, parallel to the existing Nottingham to Lincoln Railway Line West Crossing, to carry the new northbound carriageway of the A46 (Work No. 4) over the railway line.

Work No. 27 - As shown on sheet 2 of the works plans, the construction of an access track approximately 120 metres in length, north-west of the existing Nottingham to Lincoln Railway Line West Crossing.

Work No. 28 - As shown on sheet 2 of the works plans, a temporary works area with welfare units and hardstanding areas for material storage and crange of approximately 11,000 square metres north-west of the new Nottingham to Lincoln Railway Line West Crossing (Work No. 26).

Work No. 29 - As shown on sheets 2 and 3 of the works plans, the construction of an access track, north of the existing Nottingham to Lincoln Railway Line West Crossing approximately 650 metres in length, commencing at the new access track (Work No. 27).

Work No. 30 - As shown on sheet 3 of the works plans, the construction of attenuation basins and associated drainage infrastructure, to the west of the new northbound carriageway of the A46 (Work No. 4).

Work No. 31 - As shown on sheet 3 of the works plans, the construction of an extension to the existing Pipe Culvert No. 7 under the new northbound carriageway of the A46 (Work No. 4) and the new access track (Work No. 29).

Work No. 32 - As shown on sheet 3 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, to the west of the new northbound carriageway of the A46 (Work No. 4).

Work No. 33 - As shown on sheet 3 of the works plans, the construction of the new A46 dual carriageway between the Cattle Market Junction and the existing Nottingham to Lincoln Railway Line East Crossing, approximately 1,060 metres in length, including a concrete barrier in the central reserve.

Work No. 34 - As shown on sheet 3 of the works plans, the construction of the A46 northbound off-slip to the Cattle Market Junction, approximately 455 metres in length.

Work No. 35 - As shown on sheet 3 of the works plans, the construction of retaining wall approximately 55 metres in length to retain the embankment of the A46 dual carriageway (Work No. 33).

Work No. 36 - As shown on sheet 3 of the works plans, the construction of the A46 southbound on-slip from the Cattle Market Junction, approximately 355 metres in length.

Work No. 37 - As shown on sheet 3 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, to the south of the A46 southbound on-slip road from the Cattle Market Junction (Work No. 36).

Work No. 38 - As shown on sheet 3 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, to the north of the A46 northbound off-slip road to the Cattle Market Junction (Work No. 34).

Work No. 39A - As shown on sheet 3 of the works plans, the construction of a retaining wall of approximately 315 metres in length to accommodate the Cattle Market Junction grade separation.

Work No. 39B - As shown on sheet 3 of the works plans, the construction of a retaining wall of approximately 243 metres in length to accommodate the Cattle Market Junction grade separation.

Work No. 39C - As shown on sheet 3 of the works plans, the construction of a retaining wall of approximately 80 metres in length to accommodate the Cattle Market Junction grade separation.

Work No. 39D - As shown on sheet 3 of the works plans, the construction of a retaining wall of approximately 80 metres in length to accommodate the Cattle Market Junction grade separation.

Work No. 39E - As shown on sheet 3 of the works plans, the construction of a retaining wall of approximately 202 metres in length to accommodate the Cattle Market Junction grade separation.

Work No. 39F - As shown on sheet 3 of the works plans, the construction of a retaining wall of approximately 212 metres in length to accommodate the Cattle Market Junction grade separation.

Work No. 40 - As shown on sheet 3 of the works plans, the construction of the Cattle Market Junction Circulatory, approximately 390 metres in length, including:

- (a) a cycle track comprised in the highway between the realigned A617 and altered B6326 Great North Road;
- (b) the removal of the existing Cattle Market roundabout; and
- (c) the demolition of the existing maintenance shed.

Work No. 41 - As shown on sheet 3 of the works plans, the construction of the Cattle Market West Bridge to carry the A46 dual carriageway (Work No. 33).

Work No. 42 - As shown on sheet 3 of the works plans, the realignment of the A617 to tie into the Cattle Market Junction Circulatory (Work No. 40) of approximately 205 metres in length including a cycle track of approximately 30 metres in length at the Cattle Market Junction.

Work No. 43 - As shown on sheet 3 of the works plans, the construction of an extension to the existing culvert under the realigned A617 (Work No. 42).

Work No. 44 - As shown on sheet 3 of the works plans, the construction of highway underground storm water attenuation within the Cattle Market Junction Circulatory (Work No. 40) to the north of the new A46 dual carriageway (Work No. 33).

Work No. 45 - As shown on sheet 3 of the works plans, the realignment of the A616 Great North Road to tie into the Cattle Market Junction Circulatory (Work No. 40) approximately 70 metres in length including a cycle and pedestrian crossing and associated cycle track.

Work No. 46 - As shown on sheet 3 of the works plans, the construction of an extension on the western side of the existing causeway arches, known as “Smeaton’s Arches”, to accommodate the realigned A616 Great North Road.

Work No. 47 - As shown on sheet 3 of the works plans, a temporary works area with a hardstanding area and small welfare unit of approximately 1,600 square metres north-west of the extension to Smeaton’s Arches (Work No. 46).

Work No. 48 - As shown on sheet 3 of the works plans, the construction of the Cattle Market East Bridge to carry the A46 dual carriageway (Work No. 33).

Work No. 49 - As shown on sheet 3 of the works plans, the alteration of the B6326 Great North Road to tie-in to the Cattle Market Junction Circulatory (Work No. 40) approximately 250 metres in length, including:

- (a) the widening of the existing carriageway;
- (b) a cycle track comprised in the highway of approximately 250 metres in length leading south from the Cattle Market Junction;
- (c) a cycle and pedestrian crossing; and
- (d) the formation of means of access to adjoining land.

Work No. 50A - As shown on sheet 3 of the works plans, the construction of an extension to the south of the existing Flood Relief Culvert under the existing Cattle Market Roundabout, to carry the Cattle Market Junction Circulatory (Work No. 40).

Work No. 50B - As shown on sheet 3 of the works plans, the construction of an extension to the north of the existing Flood Relief Culvert under the existing Cattle Market Roundabout, to carry the Cattle Market Junction Circulatory (Work No. 40).

Work No. 51 - As shown on sheet 3 of the works plans, the construction of the A46 southbound off-slip road to the Cattle Market Junction approximately 240 metres in length including a cycle and pedestrian crossing and a cycle track comprised in the highway.

Work No. 52 - As shown on sheet 3 of the works plans, the construction of the A46 northbound on-slip road from the Cattle Market Junction approximately 305 metres in length, including a cycle and pedestrian crossing and a cycle track comprised in the highway.

Work No. 53 - As shown on sheet 3 of the works plans, a temporary compound of approximately 19,000 square metres south-west of the B6326 Great North Road.

Work No. 54 - As shown on sheet 3 of the works plans, the construction of an access track approximately 375 metres in length, commencing at the A616 Great North Road.

Work No. 55 - As shown on sheet 3 of the works plans, the construction of attenuation basins, associated drainage infrastructure and access tracks, to the north of the A46 northbound on-slip road to the Cattle Market Junction (Work No. 52).

Work No. 56 - As shown on sheets 3, 4, and 5 of the works plans, the construction of the new A46 dual carriageway through widening the existing A46 between the existing Nottingham to Lincoln Railway Line East Crossing and Brownhills Junction (on sheet 5), approximately 1,650 metres in length, including:

- (a) the construction of two new lanes on the western side of the existing A46 to provide a new northbound carriageway;
- (b) alteration of the existing A46 carriageway; and
- (c) the construction of a new central reserve with a concrete barrier.

Work No. 57 - As shown on sheet 4 of the works plans, the construction of an extension to the existing Pipe Culvert No. 12 under the new northbound carriageway of the A46 (Work No. 56).

Work No. 58 - As shown on sheet 4 of the works plans, the widening of the existing Nottingham to Lincoln Railway Line East Crossing to facilitate the new northbound carriageway of the A46 (Work No. 56).

Work No. 59 - As shown on sheet 4 of the works plans, a temporary works area with welfare units and hardstanding areas for material storage of approximately 850 square metres north of the existing Nottingham to Lincoln Railway Line East Crossing.

Work No. 60 - As shown on sheet 4 of the works plans, the construction of a retaining wall approximately 420 metres in length to support the new northbound carriageway of the A46 (Work No. 56).

Work No. 61 - As shown on sheet 4 of the works plans, the construction of an access track approximately 550 metres in length, commencing at the existing access track on the north bank of the River Trent.

Work No. 62 - As shown on sheet 4 of the works plans, a temporary compound of approximately 8,500 square metres east of the existing Nether Lock Viaduct and the River Trent.

Work No. 63 - As shown on sheet 4 of the works plans, the construction of a temporary bridge over the River Trent to accommodate the movement of construction plant and materials between the temporary construction compound (Work No. 62) and the authorised development.

Work No. 64 - As shown on sheet 4 of the works plans, the construction of a new bridge parallel to the existing Nether Lock Viaduct to carry the new northbound carriageway of the A46 (Work No. 56) over the River Trent.

Work No. 65 - As shown on sheet 4 of the works plans, a temporary works area with office and welfare units and hardstanding areas for bridge fabrication, material and plant storage of approximately 7,000 square metres under and north-west of the existing Nether Lock Viaduct.

Work No. 66 - As shown on sheet 4 of the works plans, the construction of an access track approximately 110 metres in length, commencing at the Nether Lock access track (Work No. 61) to provide access to the existing hydroelectric power station.

Work No. 67 - As shown on sheet 4 of the works plans, the construction of attenuation basins and associated drainage infrastructure, east of the existing Nether Lock Viaduct.

Work No. 68 - As shown on sheet 4 of the works plans, a temporary works area with office and welfare units of approximately 500 square metres north-west of the new Nether Lock Rail Bridge (Work No. 64).

Work No. 69 - As shown on sheet 4 of the works plans, the construction of an access track approximately 210 metres in length and passing place, commencing at Quibell's Lane.

Work No. 70 - As shown on sheet 4 of the works plans, the construction of an extension to the existing Sewage Treatment Works Underpass under the new northbound carriageway of the A46 (Work No. 56).

Work No. 71 - As shown on sheet 4 of the works plans, a temporary compound of approximately 23,000 square metres south of the existing A46.

Work No. 72 - As shown on sheet 4 of the works plans the construction of a retaining wall (240 metres in length) for the embankment of the A46 southbound carriageway.

Work No. 73 - As shown on sheet 4 of the works plans the construction of an extension to the existing Pipe Culvert No. 16 under the new northbound carriageway of the A46 (Work No. 56).

Work No. 74 - As shown on sheets 4 and 5 of the works plans, the construction of attenuation basins, access tracks and associated drainage infrastructure, north of the new northbound carriageway of the A46 (Work No. 56).

Work No. 75 - As shown on sheets 4 and 5 of the works plans, the construction of an access track approximately 550 metres in length, commencing on Winthorpe Road.

Work No. 76 - As shown on sheet 5 of the works plans, the construction of the new dual carriageway on an embankment through the new Brownhills Junction, approximately 1,040 metres in length including a concrete barrier in the central reserve.

Work No. 77A - As shown on sheet 5 of the works plans, borrow pits (Brownhills Borrow Pits Area) including access routes, utility protection slabs, water management, soil storage and material processing areas to the west of Brownhills Junction.

Work No. 77B - As shown on sheet 5 of the works plans the restoration of the Brownhills Borrow Pits Area (Work No. 77A).

Work No. 78 - As shown on sheet 5 of the works plans, the construction of the A46 southbound on-slip road from the Brownhills Roundabout approximately 620 metres in length.

Work No. 79 - As shown on sheet 5 of the works plans, the construction of the A46 northbound off-slip road to the new Brownhills Junction Roundabout (Work No. 83) approximately 250 metres in length.

Work No. 80 - As shown on sheet 5 of the works plans, the construction of a new cycle track comprising a highway approximately 50 metres in length.

Work No. 81 - As shown on sheet 5 of the works plans, the construction of a new cycle track comprising a highway approximately 145 metres in length.

Work No. 82 - As shown on sheet 5 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, between the A46 southbound on-slip road from the Brownhills Roundabout (Work No. 78) and the new A46 dual carriageway (Work No. 76).

Work No. 83 - As shown on sheet 5 of the works plans, the construction of the new Brownhills Junction Roundabout approximately 170 metres in length.

Work No. 84 - As shown on sheet 5 of the works plans, the construction of a new link between the new Brownhills Junction Roundabout (Work No. 83) and Winthorpe Road approximately 60 metres in length.

Work No. 85 - As shown on sheet 5 of the works plans, a temporary works area with welfare units and hardstanding areas for fabrication of the A1 bridge deck and material and plant storage of approximately 12,800 square metres in the same location as the proposed Brownhills Junction Roundabout (Work No. 83).

Work No. 86 - As shown on sheet 5 of the works plans, the construction of Brownhills Underbridge to carry the new A46 dual carriageway (Work No. 76) over the Brownhills Junction Link Road (Work No. 87).

Work No. 87 - As shown on sheet 5 of the works plans, the construction of the Brownhills Junction Link Road, approximately 300 metres in length, to connect the Brownhills Roundabout with the new Brownhills Junction Roundabout (Work No. 83).

Work No. 88 - As shown on sheet 5 of the works plans, the construction of a new right turn connection from the A46 southbound on-slip road from the Brownhills Roundabout (Work No. 78) to the Brownhills Junction Link Road (Work No. 87).

Work No. 89 - As shown on sheet 5 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, south-east of the Brownhills Underbridge (Work No. 86).

Work No. 90 - As shown on sheet 5 of the works plans, the construction of a new bridge to carry the new A46 dual carriageway (Work No. 76) over the existing A1 dual carriageway.

Work No. 91 - As shown on sheet 5 of the works plans the construction of a new cycle track comprising a highway approximately 520 metres in length passing beneath the new A1 Crossing (Work No. 90).

Work No. 92 - As shown on sheet 5 of the works plans, a temporary works area with welfare units and hardstanding areas for material and plant storage of approximately 850 square metres south-east of the new A1 Crossing (Work No. 90).

Work No. 93 - As shown on sheet 5 of the Work plans, the construction of a new track to be used jointly as a cycle track comprising a highway and as an access track approximately 415 metres in length, commencing at the north-eastern end of the cycle track comprising a highway (Work No. 91).

Work No. 94A - As shown on sheet 5 of the works plans, the construction of an embankment between the shared access track and cycle track (Work No. 93) and the new A46 dual carriageway (Work No. 76).

Work No. 94B - As shown on sheet 5 of the works plans, the construction of an embankment between the shared access track and cycle track (Work No. 93) and the new A46 dual carriageway (Work No. 100).

Work No. 94C - As shown on sheets 5 and 6 of the works plans, the construction of an embankment between the shared access track and cycle track (Work No. 93) and the new dual carriageway (Work No. 100).

Work No. 95 - As shown on sheet 5 of the works plans, the construction of the A46 northbound off-slip road to the service area, including the demolition of the former Mint Leaf restaurant approximately 150 metres in length.

Work No. 96 - As shown on sheet 5 of the works plans, the construction of an extension of to the existing Bleach House Culvert to carry the new A46 dual carriageway (Work No. 76) and the A46 northbound off-slip road to the service area (Work No. 95).

Work No. 97 - As shown on sheet 5 of the works plans, the construction of a new culvert to carry the new shared access track and cycle track (Work No. 93) across the Fleet Ditch.

Work No. 98 - As shown on sheet 5 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, west of the A46 northbound off-slip road to the service area (Work No. 95).

Work No. 99 - As shown on inset A of sheet 5 of the works plans, a temporary construction compound of approximately 3,300 square metres to the north and south of the A46 northbound off-slip road to the service area (Work No. 95).

Work No. 100 - As shown on sheets 5 and 6 of the works plans, works to improve the existing A46 dual carriageway including the installation of new highway drainage between a point 450

metres north of the A1 Crossing (Work No. 90) and the new Winthorpe Roundabout (Work No. 108) on sheet 6.

Work No. 101 - As shown on sheet 5 of the works plans, the construction of the A46 northbound on-slip road from the service area approximately 180 metres in length.

Work No. 102 - As shown on sheet 5 of the works plans the construction of a new cycle track comprising a highway, approximately 360 metres in length, commencing from the new Friendly Farmer Link Road (Work No.104).

Work No. 103 - As shown on sheet 5 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, north of the A46 northbound on-slip road from the service area (Work No. 101).

Work No. 104 - As shown on sheets 5 and 6 of the works plans, the construction of a new road between the Friendly Farmer Roundabout and the new Winthorpe Roundabout (Work No. 108) approximately 1,080 metres in length, including:

- (a) tie-in works to the Friendly Farmer Roundabout;
- (b) construction of an access to the service station adjacent to the Friendly Farmer Roundabout;
- (c) construction of an access to the Newark Showground;
- (d) tie-in works to the new Winthorpe Roundabout (Work No. 108); and
- (e) the construction of a new concrete barrier.

Work No. 105 - As shown on sheets 5 and 6 of the works plans, the construction of a cycle track comprising a highway approximately 375 metres in length, commencing at the realigned A1133 (Work No. 109) on sheet 6.

Work No. 106 - As shown on sheets 5 and 6 of the works plans, a temporary works area for laydown of construction materials and plant of approximately 12,600 square metres south of the new Winthorpe Roundabout (Work No. 108) on Sheet 6.

Work No. 107 - As shown on sheet 6 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, south-west of the new Winthorpe Roundabout (Work No. 108).

Work No. 108 - As shown on sheet 6 of the works plans, the construction of the new Winthorpe Roundabout, approximately 350 metres in length including new gyratory lanes and tie-in works to the roads joining the roundabout.

Work No. 109 - As shown on sheet 6 of the works plans, the construction of the realigned A1133, approximately 320 metres in length, to connect to the new Winthorpe Roundabout (Work No. 108).

Work No. 110 - As shown on sheet 6 of the works plans, the construction of a new access track approximately 415 metres in length to the realigned A1133 (Work No. 109).

Work No. 111 - As shown on sheet 6 of the works plans, a temporary area for material lay-down and soil stockpiling of approximately 24,000 square metres directly north of the new Winthorpe Roundabout (Work No. 108).

Work No. 112A - As shown on sheet 6 of the works plans, the construction of an embankment north-west of the new Winthorpe Roundabout (Work No. 108).

Work No. 112B - As shown on sheet 6 of the works plans, the construction of an embankment north of the realigned A1133 (Work No. 109).

Work No. 113 - As shown on sheet 6 of the works plans, the construction of attenuation basins, access track and associated drainage infrastructure, north of the new Winthorpe Roundabout (Work No. 108).

Work No. 114 - As shown on sheet 6 of the works plans, a temporary construction compound of approximately 3,900 square metres east of the new Winthorpe Roundabout (Work No. 108).

Work No. 115 - As shown on sheet 6 of the works plans, the realignment of Drove Lane, approximately 185 metres in length, to tie into the new Winthorpe Roundabout (Work No. 108).

Work No. 116 - As shown on sheet 6 of the works plans, the construction of a new sign gantry at the new Winthorpe Roundabout (Work No. 108).

Work No. 117 - As shown on sheet 6 of the works plans, the construction of an access track of approximately 585 metres in length, commencing at Drove Lane (Work No. 115).

Work No. 118 - As shown on sheet 6 of the works plans, the construction of through lanes approximately 100 metres in length to accommodate the new layout of the new Winthorpe Roundabout (Work No. 108).

Work No. 119 - As shown on sheet 6 of the works plans, works to tie in the existing A46 and new Winthorpe Roundabout (Work No. 108) of approximately 205 metres in length.

Work No. 120 - As shown on sheet 6 of the works plans, a temporary area for material lay-down and soil stockpiling of approximately 14,000 square metres north-east of the new Winthorpe Roundabout (Work No. 108).

Work No. 121 - As shown on sheet 6 of the works plans, the construction of a cantilever sign gantry over the southbound carriageway of the existing A46 east of the new Winthorpe Roundabout (Work No. 108).

Work No. 122 - As shown on sheet 7 of the works plans, the construction of an access track approximately 25 metres in length, commencing at the A617.

Work No. 123 - As shown on sheet 7 of the works plans, the construction of an access track approximately 550 metres in length, connected to Work No. 122.

Work No. 124 - As shown on sheet 7 of the works plans, the construction of a new drainage culvert of approximately 25 metres in length under the A617.

Work No. 125 - As shown on sheet 7 of the works plans, the construction of a flood plain compensation area (the Kelham and Averham Flood Compensation Area) to the north of Averham.

Work No. 126 - As shown on sheet 7 of the works plans, a temporary works area for soil stockpiling of approximately 9,800 square metres north of Averham.

Work No. 127 - As shown on sheet 1 of the works plans, a temporary works area with welfare units and hardstanding areas for material storage of approximately 3,178 square metres, south-west of the new Windmill Viaduct (Work No.7).

Work No. 128 - As shown on sheet 1 of the works plans, a temporary works area with welfare units and hardstanding areas for material storage of approximately 204 square metres, south-east of the new Windmill Viaduct (Work No.7).

Utilities Works

Work No. U1 – As shown on sheet 1 of the utilities works plans, the diversion of low voltage electric cables of approximately 22 metres in length north of the Farndon Underpass.

Work No. U2 - As shown on sheet 2 of the utilities works plans, the diversion of electricity overhead 33kV distribution cables.

Work No. U3 - As shown on sheet 2 of the utilities works plans, the diversion of overhead 11kV electricity distribution cables to underground buried cable to the south of the Nottingham to Lincoln Railway.

Work No. U4 - As shown on sheet 2 of the utilities works plans, the diversion of electronic communications equipment.

Work No. U5 - As shown on sheet 3 of the utilities works plans, the diversion of a medium pressure gas main north of Newark Cricket Ground.

Work No. U6 - As shown on sheet 3 of the utilities works plans, the diversion of water pipes north of Newark Cricket Ground.

Work No. U7 - As shown on sheet 3 of the utilities works plans, the diversion of low voltage cables and electronic communications equipment North of Newark Cricket Ground and at Cattle Market Junction.

Work No. U8 - As shown on sheet 3 of the utilities works plans, the diversion of low voltage cables and electronic communications equipment at Cattle Market Junction.

Work No. U9 - As shown on sheet 3 of the utilities works plans, the diversion of electronic communications equipment at Cattle Market Junction.

Work No. U10 - As shown on sheet 3 of the utilities works plans, the diversion of low voltage cables and 11kV electricity distribution cables at Cattle Market Junction.

Work No. U11 - As shown on inset A of sheet 4 of the utilities works plans, the diversion of electronic communications equipment under the Nether Lock Viaduct.

Work No. U12 - As shown on sheet 4 of the utilities works plans, the diversion of 11kV electricity cables under Nether Lock Viaduct.

Work No. U13 - As shown on sheet 4 of the utilities works plans, the diversion of high voltage electricity distribution cables under the Nether Lock Viaduct.

Work No. U14 - As shown on sheet 4 of the utilities works plans, the diversion of electronic communications equipment at the Sewage Treatment Works Underpass.

Work No. U15 - As shown on sheet 4 of the utilities works plans, the potential protection or diversion of electricity distribution cables north-east of the Sewage Treatment Works Underpass.

Work No. U16 - As shown on sheets 4 and 5 of the utilities works plans, the potential protection or diversion of a sewer north and west of Pipe Culvert No. 16 (on sheet 4).

Work No. U17 - As shown on inset A of sheet 5 of the utilities works plans, the diversion of a water pipe at Winthorpe Road.

Work No. U18 - As shown on sheet 5 of the utilities works plans, the diversion of medium pressure gas main at Winthorpe Road and Brownhills Underbridge.

Work No. U19 - As shown on inset A of sheet 5 of the utilities works plans, the diversion of electricity cables at Winthorpe Road and Brownhills Underbridge.

Work No. U20 - As shown on sheet 5 of the utilities works plans, the diversion of electronic communications equipment at Winthorpe Road and Brownhills Underbridge.

Work No. U21 - As shown on sheets 5 and 6 of the utilities works plans, the diversion of electronic communications equipment between Friendly Farmer Roundabout (on sheet 5) and the new Winthorpe Roundabout (on sheet 6).

Work No. U22 - As shown on inset B of sheet 5 of the utilities works plans, the diversion of water pipe north of the Friendly Farmer Roundabout.

Work No. U23 - As shown on sheets 5 and 6 of the utilities works plans, the diversion of electronic communications equipment between the Friendly Farmer Roundabout (on sheet 5) and the new Winthorpe Roundabout (on sheet 6).

Work No. U24 - As shown on sheets 5 and 6 of the utilities works plans, the diversion of 11kV overhead electricity distribution cables between the Friendly Farmer Roundabout (on sheet 5) and the new Winthorpe Roundabout (on sheet 6).

Work No. U25 - As shown on sheet 6 of the utilities works plans, the diversion of electronic communications equipment at the new Winthorpe Roundabout.

Work No. U26 - As shown on sheet 6 of the utilities works plans, the diversion of electronic communications equipment at the new Winthorpe Roundabout starting at the A1133.

Work No. U27 - As shown on sheet 6 of the utilities works plans, the diversion of apparatus for electronic communications equipment north of the new Winthorpe Roundabout.

Work No. U28 - As shown on inset A of sheet 6 of the utilities works plans, the diversion of electricity cables at the new Winthorpe Roundabout.

Work No. U29 - As shown on sheet 7 of the utilities works plans, the diversion of electricity cables in the A617 north-east of Averham.

Work No. U30 - As shown on sheet 7 of the utilities works plans, the diversion of overhead electricity distribution cables north of Averham.

Work No. U31 - As shown on inset A of sheet 7 of the utilities works plans, the diversion of electronic communications equipment in the A617 north-east of Averham.

Work No. U32 - As shown on inset B of sheet 7 of the utilities works plans, the diversion of a medium pressure gas main in the A617 north-east of Averham.

Work No. U33 - As shown on inset C of sheet 7 of the utilities works plans, the diversion of water pipe in the A617 north-east of Averham.

Other associated development

For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development within the Order limits which does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, consisting of—

- (a) alteration to 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 reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) parking laybys and emergency laybys;
- (d) refurbishment works to any existing bridge;
- (e) the strengthening, alteration or demolition of any building or highway bridge or structure;
- (f) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (g) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, attenuation tanks, outfalls, ditches, wing walls, highway lighting, gantries, fencing and culverts;
- (h) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (i) works to place, alter, divert, relocate, protect, maintain, decommission or remove street furniture, traffic signals and apparatus in a street, or apparatus in other land, including mains, sewers, drains, tanks, pipes, cables, connections, ducts, conduits and lights, CCTV, radar and traffic detection equipment and speed cameras;
- (j) works to alter the course of or otherwise interfere with a watercourse;

- (k) landscaping, noise and visual bunds and barriers, works associated with the provision of ecological mitigation (including artificial badger setts) and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (l) works for the benefit or protection of land and apparatus affected by the authorised development;
- (m) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (n) the felling of trees;
- (o) the establishment of construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction lighting, haulage roads, protective works to apparatus, and other buildings, machinery, apparatus, works and conveniences;
- (p) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures, temporary roads, temporary widening of carriageways and such other works as are associated with the construction of the authorised development;
- (q) temporary crossings of footpaths, bridleways, footways, cycle tracks, carriageways and watercourses with associated plant crossings or bridging structures (at grade or grade separated);
- (r) pumping for the purposes of dewatering excavations (including borrow pits) and the management of surface water flows and temporary storage, settlement and treatment of surface water flows;
- (s) removal of surfaces for closed or redundant carriageways, accesses or streets; and
- (t) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 5

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“archaeological management plan” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the archaeological management plan for the purposes of this Order;

“archaeological mitigation strategy” means Chapter 6 of the archaeological management plan;

“contaminated land” has the same meaning as that given in section 78A(a) of the Environmental Protection Act 1990;

(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and as amended by section 86(2) of the Water Act 2003 (c. 37).

“County Archaeologist” means the individual or individuals appointed as such by the relevant county council in whose capacity it is to advise in relation to the historic environment;

“design principles” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the design principles for the purposes of this Order;

“District Archaeologist” means the individual or individuals appointed as such by the relevant planning authority in whose capacity it is to advise in relation to the historic environment;

“DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

“European protected species” has the same meaning as in regulations 40 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017^(a);

“First Iteration EMP” means the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage listed in Schedule 10 (documents to be certified) certified as the First Iteration EMP by the Secretary of State for the purposes of this Order;

“flood risk assessment” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“outline traffic management plan” means the document of that description listed in Schedule 10 (documents to be certified) certified as the outline traffic management plan by the Secretary of State for the purposes of this Order;

“pre-commencement plan” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the pre-commencement plan for the purposes of this Order;

“protected species” means species which are subject to protection under the laws of England or which are European protected species;

“REAC” means the register of environmental actions and commitments contained in the First Iteration EMP;

“Second Iteration EMP” means the second iteration of the environmental management plan produced in accordance with the DMRB which is to be a refined version of, and substantially in accordance with, the First Iteration EMP including more detailed versions of the outline plans and method statements contained or listed within the First Iteration EMP or any other plans required;

“Third Iteration EMP” means the third iteration of the environmental management plan produced in accordance with the DMRB containing detailed plans relating to the operational and maintenance phase of the authorised development substantially in accordance with the First Iteration EMP and Second Iteration EMP.

Time limits

2. The authorised development must not begin later than the expiration of 5 years beginning with the date on which this Order comes into force.

Second Iteration EMP

3.—(1) No part of the authorised development is to commence until the Second Iteration EMP for that part, substantially in accordance with the First Iteration EMP, has been submitted to and

(a) S.I. 2017/1012.

approved in writing by the Secretary of State, following consultation with the relevant planning authority, Natural England and the Environment Agency on matters related to their statutory functions.

(2) The Second Iteration EMP for a part of the authorised development must be produced in accordance with DMRB and so far as is relevant to that part of the authorised development, must reflect the mitigation measures required by the REAC and set out in the environmental statement and must include the following management plans and method statements as are applicable to the part of the authorised development to which it relates—

- (a) Site Waste Management Plan;
- (b) Materials Management Plan;
- (c) Soils Management Plan;
- (d) Arboricultural Method Statement;
- (e) Air Quality and Dust Management Plan;
- (f) Noise and Vibration Management Plan;
- (g) Energy and Resource Use Management Plan;
- (h) Biodiversity Net Gain Management and Monitoring Plan;
- (i) Biodiversity Net Gain Audit Report;
- (j) Invasive Non-Native Species Management Plan and Bio-Security Risk Assessment, including an Invasive Non-Native Species Method Statement;
- (k) Landscape and Ecological Management Plan;
- (l) Construction Communications Management Plan;
- (m) Pollution Prevention Management Plan;
- (n) Erosion and Sediment Management Plan;
- (o) Carbon Management Plan;
- (p) Emergency Response Plan for Flood Events;
- (q) Education, Employment and Skills Plan;
- (r) Inclusion Action Plan;
- (s) Construction Worker Travel and Accommodation Plan;
- (t) Badger Method Statement;
- (u) Piling Works Method Statement;
- (v) Earthworks Method Statement;
- (w) Topsoil Strip Method Statement;
- (x) Storage of Oil, Fuel and Other Potentially Hazardous Substances Method Statement;
- (y) Designated Refuelling and Maintenance Areas and Concrete Batching Method Statement;
- (z) Welfare of Staff Method Statement; and
- (aa) Dewatering Management Plan.

(3) The authorised development must be constructed in accordance with the Second Iteration EMP.

Third Iteration EMP

4.—(1) Following completion of construction of the authorised development the Third Iteration EMP must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, Natural England and the Environment Agency on matters related to their statutory functions.

(2) The authorised development must be operated and maintained in accordance with the Third Iteration EMP.

Construction hours

5.—(1) Construction work for the authorised development must only take place between 0700 hours and 1800 hours Monday to Friday, and 0800 hours to 1300 hours on Saturdays, with no activity on Sundays or bank holidays, except as specified in paragraphs (2), (3), (4) and (5).

(2) Except where they relate to the activities specified in paragraphs (3) and (4), the following activities may not take place between the hours of 07:00 and 07:30:

- (a) starting or use of construction plant;
- (b) loading and unloading of construction vehicles; and
- (c) delivery of materials.

(3) Outside the hours and days specified in paragraph (1), construction work may be undertaken with the prior written consent of the relevant planning authority for activities comprising—

- (a) bridge installation works to the new bridge structures;
- (b) removal of the existing signal gantries and the installation of new gantry structures;
- (c) highway tie-in works and installation of temporary and permanent road markings;
- (d) installation of signs and streetlights adjacent to live carriageways;
- (e) abnormal load deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation, including the delivery of plant; or
- (f) construction of the Nether Lock Rail Bridge and the works over the Nottingham to Lincoln line.

(4) Outside the hours and days specified in paragraph (1), the undertaker may carry out activities comprising—

- (a) traffic management measures and signal changes;
- (b) any emergency works or operations required for safe working;
- (c) security;
- (d) maintenance of plant and equipment that require 24-hour operation such as dewatering pumps;
- (e) completion of activities already begun which require continuous period of operation, such as completing concrete pouring; or
- (f) environmental and engineering surveys may be carried out outside of core working hours.

(5) Outside the hours and days specified in paragraph (1), the undertaker will consult with the relevant planning authority prior to carrying out certain operations which are season and weather dependent including but not limited to earthworks.

(6) Outside the hours and days specified in paragraph (1), the undertaker may with the prior written consent or deemed consent under paragraph (7) of the relevant planning authority carry out activities (including but not limited to those works set out in paragraph (3)) assessed in the environmental statement or activities which would not give rise to new or materially different effects from those assessed in the environmental statement which do not fall within paragraph (4).

(7) If the relevant planning authority which receives a request to carry out works outside the hours and days specified in paragraph (1) in accordance with paragraphs (3) and (6) fails to notify the undertaker of its decision within 14 days of receiving the request for consent that relevant planning authority is deemed to have granted consent.

Landscaping

6.—(1) No part of the authorised development can come into use until a landscaping scheme for that part which sets out details of all proposed hard and soft landscaping works is submitted to the Secretary of State for approval in writing following consultation with the relevant planning authority on matters related to its functions.

(2) The landscaping scheme for each part must reflect the applicable mitigation measures set out in the First Iteration EMP and the landscaping principles set out in the environmental masterplan.

(3) The authorised development must be landscaped in accordance with the approved landscaping scheme for that part.

(4) A landscaping scheme prepared under paragraph (1) must include details of landscaping works, including—

- (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) proposed finished ground levels;
- (d) existing trees to be retained, with measures for their protection during the construction period; and
- (e) implementation timetables for all landscaping works.

(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 codes of good practice.

(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, gives consent to a variation.

Fencing

7. Any permanent and temporary fencing and other means of enclosure that would be adjacent to the new dual carriageway forming part of the authorised development must be constructed and installed in accordance with the undertaker's Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Contaminated Land and groundwater

8.—(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, then no further development (unless otherwise approved in writing by the relevant authorities) shall be carried out within the identifiable perimeters of the area in which the suspected contamination is located. It must be reported as soon as reasonably practicable to the Secretary of State, the Environment Agency and relevant planning authority, and the undertaker must complete a risk assessment of the contamination in consultation with the Environment Agency and the relevant planning authority.

(2) Where the risk assessment prepared in accordance with paragraph (1) determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose and to prevent any impacts on controlled waters must be submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority on matters related to their functions.

(3) Remediation must be carried out in accordance with the approved scheme.

Archaeology and built heritage

9.—(1) The additional trial trenching set out within the archaeological mitigation strategy must be carried out in accordance with the approved Written Scheme of Investigation contained in Appendix G of the Archaeological Management Plan, unless otherwise agreed with Nottinghamshire County Council.

(2) If the additional trial trenching results in the need for further archaeological investigation, the archaeological mitigation strategy must be updated to include the scope of any further investigation required in the location of the additional trial trenching. This update must be submitted in writing and approved by Nottinghamshire County Council, in consultation with Historic England prior to Work No. 10, Work No. 27, Work No. 28, Work No. 29 or Work No. 30 being started in the location of the additional trial trenching.

(3) The authorised development must be carried out, operated and maintained in accordance with the Archaeological Mitigation Strategy, as updated in accordance with paragraph (2) if required, and, as set out in that strategy, the undertaker must submit individual site specific written schemes of investigation for each phase of mitigation work set out within the archaeological mitigation strategy to Nottinghamshire County Council for approval.

(4) Any archaeological works must be carried out by a suitably qualified and competent person or body previously notified to Nottinghamshire County Council.

Protected species

10.—(1) In the event that any protected or notable species which were not previously identified in the environmental statement are found at any time when carrying out the authorised development the undertaker must—

- (a) cease the relevant parts of the relevant works and report it immediately to the Ecological Clerk of Works; and
- (b) prepare a written scheme for the protection and mitigation measures of such protected or notable species when carrying out the authorised development.

(2) The undertaker must implement the written scheme prepared under paragraph (1)(b) immediately and any works in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Traffic management

11.—(1) No part of the authorised development is to commence until a traffic management plan for the construction of that part of the authorised development, substantially in accordance with the outline traffic management plan, has been submitted to and approved in writing by the Secretary of State following consultation with the local highway authority.

(2) The authorised development must be constructed in accordance with the approved traffic management plan.

Detailed design

12.—(1) The detailed design for the authorised development must accord with—

- (a) the preliminary scheme design shown on the works plans, utilities works plans and the engineering drawings and sections;
- (b) the mitigation principles set out in the environmental masterplan; and
- (c) the design principles,

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant local planning authority and relevant local highway authority on matters related to their functions, provided that the Secretary of State is satisfied that any amendments would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under paragraph (1), those details are deemed to be substituted for the corresponding plans sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface and foul water drainage

13.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures in Chapter 13, Road Drainage and the Water Environment, of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters relating to its function, the lead local flood authority on matters relating to its function, and the Environment Agency on matters relating to its function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details referred to in paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters relating to its function, the lead local flood authority on matters relating to its function, and the Environment Agency on matters relating to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Flood compensatory storage

14.—(1) No part of the authorised development is to commence until a detailed floodplain compensation scheme for that part, that reflects the mitigation within the flood risk assessment, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(2) The schemes prepared under paragraph (1) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 39% climate change allowance fluvial flood event.

(3) The schemes must be implemented as approved and subsequently maintained.

Flood risk assessment

15.—(1) Subject to paragraph (2), the authorised development must be carried out in accordance with the flood risk assessment, including the mitigation measures detailed in it, so that no part of the authorised development is predicted to result in any exceedance of the flood levels to properties and land shown in the flood risk assessment.

(2) Paragraph (1) does not apply in any circumstance where the undertaker proposes to carry out a part of the authorised development otherwise than in accordance with the flood risk assessment but either demonstrates to the Secretary of State's satisfaction, in consultation with the lead local flood authority and the Environment Agency, that the part of the authorised development concerned would not result in an exceedance of the flood levels shown in the flood risk assessment beyond 10mm or demonstrates that all affected landowners accept the predicted exceedance of the flood levels shown in the flood risk assessment.

Noise Mitigation

16.—(1) No part of the authorised development is to commence until written details of the proposed noise mitigation for the use and operation of that part of the authorised development, including noise barriers, noise bunds and low noise surfacing, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The written details referred to in paragraph (1) must:

- (a) reflect the mitigation measures for operation included in Chapter 11, Noise and Vibration, of the environmental statement; or
- (b) where these materially differ from these measures, must demonstrate that the mitigation proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) The noise mitigation measures referred to in paragraph (1) must be retained thereafter.

Pre-commencement works

17. Any pre-commencement works must be carried out in accordance with the pre-commencement plan.

Highway Lighting

18.—(1) No part of the authorised development may be brought into use until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the local highway authority on matters relating to their functions.

(2) The highway lighting scheme referred to in paragraph (1) must encompass the specification, level of provision, energy efficiency, light spillage, intensity and brightness of the highway lighting and must—

- (a) reflect the relevant mitigation measures included in Chapter 7 Landscape and Visual, Chapter 8 Biodiversity and Chapter 14 Climate of the environmental statement; or
- (b) where it materially differs from these measures, must demonstrate that the mitigation proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) The highway lighting must be provided in accordance with the approved details referred to in paragraph (1).

(4) Nothing in this requirement restricts the lighting of the authorised development during its construction or where temporarily required for maintenance.

Langford Hall Estate

19.—(1) The construction of the new entrance at Langford Hall Estate forming part of Work No. 110 cannot commence until the Applicant has submitted to the Secretary of State for its approval in writing, following consultation with the relevant landowner of Langford Hall Estate, Newark and Sherwood District Council and Historic England, the proposed design of the new entrance.

(2) The proposed design referred to in paragraph (1) must accord with the landscaping principles shown on the environmental masterplan and any relevant mitigation identified in the first iteration environmental management plan.

(3) The new entrance must be constructed in accordance with the approved design.

Approvals and amendments to approved details

20. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

Offsite Barn Owl Boxes

21.—(1) No part of the site clearance as part of the pre-commencement works is to begin until—

- (a) written details have been submitted to the Secretary of State—
 - (i) demonstrating that the undertaker has secured the provision of the offsite barn owl boxes in accordance with the barn owl box specification;
 - (ii) including in relation to the offsite barn owl boxes, a regime of management measures substantially in accordance with those contained in the barn owl box specification; and
- (b) the Secretary of State, following consultation with Natural England, has approved the matters listed in sub-paragraph (a).

- (2) The undertaker must—
- (a) provide the offsite barn owl boxes prior to any site clearance as part of the pre-commencement works; and
 - (b) maintain the offsite barn owl boxes,
- in accordance with the details approved by the Secretary of State under sub-paragraph (1)(b).
- (3) In this paragraph—
- “barn owl box specification” means the barn owl box specification listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the barn owl box specification for the purpose of this Order.

Offsite Bat Box

22.—(1) No part of the demolition of the former Mint Leaf restaurant as described in Work No. 95 is to commence until—

- (a) written details have been submitted to the Secretary of State—
 - (i) demonstrating that the undertaker has secured the provision of the offsite bat box in accordance with the bat box specification;
 - (ii) including in relation to the offsite bat box, a regime of management measures substantially in accordance with those contained in the bat box specification; and
 - (b) the Secretary of State, following consultation with Natural England, has approved the matters listed in sub-paragraph (a).
- (2) The undertaker must—
- (a) provide the offsite bat box prior to the beginning of any demolition work to the former Mint Leaf restaurant as described in Work No. 95; and
 - (b) maintain the offsite bat box,
- in accordance with the details approved by the Secretary of State under sub-paragraph (1)(b).
- (3) In this paragraph—
- “bat box specification” means the bat box specification listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the bat box specification for the purposes of this Order.

Agricultural Land Classification Surveys

23. Prior to any works commencing on the land shown hatched green on the agricultural land plan the undertaker must carry out agricultural land classification surveys on that land and update the Soils Management Plan accordingly based on the new data.

Façade design of the split block facing of the structure at Cattle Market

24.—(1) The construction of the split block facing of the reinforced soil walls that form Work Nos. 39A, 39B, 39C, 39D, 39E and 39F cannot commence until the Applicant has submitted to Newark and Sherwood District Council and Nottinghamshire County Council for approval in writing the proposed design of the façade of those soil walls forming part of the structure at Cattle Market.

(2) The proposed design referred to in paragraph (1) must accord with the design principles and not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) The façade must be constructed in accordance with the approved design.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

25.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 26 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in 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 that requirement that considers it likely that the subject matter of the application is to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

26.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within this 21 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.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 25 (applications made under requirements) and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

(a) 1971 c. 80 to which there are amendments not relevant to this Order.

Register of requirements

27.—(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

28. 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.

Details of consultation

29.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report enclosing the written responses received and setting out the consultation undertaken by the undertaker pursuant to that requirement to inform the details submitted and the undertaker's response to that consultation.

(2) Promptly after submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

SCHEDULE 3

Articles 15 and 21

CLASSIFICATION OF ROADS, ETC.

PART 1

TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Classification of roads plans – Sheet 1	
Farndon	The new A46 dual carriageway (northbound) between point 1 and point 2, a distance of 120 metres.
Farndon	The new A46 dual carriageway (southbound) between point 10 and point 11, a distance of 75 metres.
Farndon, Newark	Farndon Roundabout with point 5, a distance of 360 metres.
Averham, Farndon, Newark, Winthorpe	The new A46 dual carriageway (northbound) between point 6 and point 40 (sheet 6), a distance of 6,620 metres.
Averham, Farndon, Newark, Winthorpe	The new A46 dual carriageway (southbound) between point 7 and point 52 (sheet 6), a distance of 6,620 metres.
Classification of roads plans – Sheet 3	
Newark	A46 northbound off-slip road to the Cattle Market Junction between

	point 12 and point 14, a distance of 455 metres.
Newark	A46 southbound on-slip road from the Cattle Market Junction between point 13 and point 24, a distance of 360 metres.
Newark	A46 northbound on-slip road from the Cattle Market Junction between point 19 and point 26, a distance of 300 metres.
Newark	A46 southbound off-slip road to the Cattle Market Junction between point 20 and point 25, a distance of 240 metres.
Classification of roads plans – Sheet 5	
Newark	A46 southbound on-slip road from the Brownhills Roundabout between point 27 and point 36, a distance of 620 metres.
Newark	A46 northbound off-slip road to the new Brownhills Junction Roundabout between point 28 and point 29, a distance of 250 metres.
Newark	The new Brownhills Junction Roundabout with point 32, a distance of 170 metres.
Newark	The northbound Brownhills Junction Link Road between point 34 and point 35, a distance of 180 metres.
Newark	The southbound Brownhills Junction Link Road between point 33 and point 37, a distance of 320 metres.
Winthorpe	The A46 northbound off-slip road to the service area between point 38 and point 58, a distance of 170 metres.
Winthorpe	The A46 northbound on-slip road from the service area between point 59 and point 41, a distance of 130 metres.
Winthorpe	The northbound Friendly Farmer Link Road between point 39 and point 51 (sheet 6), a distance of 1,078 metres.
Winthorpe	The southbound Friendly Farmer Link Road between point 40 and point 49 (sheet 6), a distance of 1,110 metres.
Classification of roads plans – Sheet 6	
Winthorpe, Langford	The new Winthorpe Roundabout with reference 60, a distance of 360 metres.
Winthorpe, Langford	The road through the new Winthorpe Roundabout between point 45 and point 50, a distance of 115 metres.
Langford	The improved A46 dual carriageway (northbound) between the new Winthorpe Roundabout (point 44) and the existing A46 (point 56), a distance of 50 metres.
Langford	The improved A46 dual carriageway (northbound) between point 53 and point 54, a distance of 65 metres.
Langford	The improved A46 dual carriageway (southbound) between point 55 and point 46, a distance of 215 metres.

PART 2

CLASSIFIED A ROADS

(1) Area	(2) Length of road
Classification of roads plans – Sheet 3	
Newark	A617 between point 15 and point 16, a distance of 205 metres.
Newark	The realigned A616 Great North Road between point 17 and point 18, a distance of 40 metres.
Newark	The Cattle Market Junction Circulatory with reference 23, a distance of 390 metres.
Classification of roads plans – Sheet 6	

Winthorpe, Langford	The realigned A1133 between point 42 and point 43, a distance of 320 metres.

PART 3

CLASSIFIED B ROADS

(1) <i>Area</i>	(2) <i>Length of road</i>
Classification of roads plans – Sheet 1	
Newark	Farndon Road between point 8 and point 9, a distance of 78 metres.
Classification of roads plans – Sheet 3	
Newark	B6326 Great North Road between point 21 and point 22, a distance of 225 metres.

PART 4

UNCLASSIFIED ROADS

(1) <i>Area</i>	(2) <i>Length of road</i>
Classification of roads plans – Sheet 1	
Farndon	Fosse Road between point 3 and point 4, a distance of 35 metres.
Classification of roads plans – Sheet 5	
Newark	Winthorpe Road between point 30 and point 31, a distance of 60 metres.
Classification of roads plans – Sheet 6	
Winthorpe, Langford	The realigned Drove Lane from point 47 to point 48, a distance of 185 metres.

PART 5

SPEED LIMITS

Note: where speed limits are indicated on the plans relating to this Part (the permanent speed limits plans) but are not referenced in this Schedule, they indicate that national speed limits apply in accordance with either—

- (a) the national speed limit set out in—
 - (i) section 86 (speed limits for particular classes of vehicles)(a) of and Schedule 6 (speed limits for particular classes of vehicles)(b) to the 1984 Act; and
 - (ii) the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 as varied by the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 and continued indefinitely by Regulation 2 of the 70 Miles Per Hour, 60 Miles Per Hour and 50 Miles Per Hour (Temporary Speed Limit) (Continuation) Order 1978(c); or

(a) There are amendments to section 86 which are not relevant to this Order.
 (b) There are amendments to Schedule 6 which are not relevant to this Order.
 (c) S.I. 1978/1548. The 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 were not statutory instruments.

- (b) sections 81 defines (general speed limits for restricted roads) and 82(a) (what roads are restricted roads) of the 1984 Act (which makes provision about speed limits on ‘restricted roads’ by reference to street lighting),

and are not subject to this order.

(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Speed limit</i>
Speed Limit Plans – Sheet 1		
Farndon	The A46 (northbound) between point 1 and point 3, a distance of 120 metres.	Removal of restricted road status 40 miles per hour
Farndon	The A46 (southbound) between point 2 and point 4, a distance of 75 metres.	Removal of restricted road status 40 miles per hour
Farndon, Newark	The Farndon Roundabout with reference 12, a distance of 360 metres.	Removal of restricted road status 40 miles per hour
Farndon	Fosse Road (south-westbound) between point 15 and point 16, a distance of 30 metres.	Removal of restricted road status 40 miles per hour
Farndon	Fosse Road (north-eastbound) between point 13 and point 14, a distance of 35 metres.	Removal of restricted road status 40 miles per hour
Newark	Farndon Road (south-westbound) between point 5 and point 6, a distance of 20 metres.	Removal of restricted road status 40 miles per hour
Newark	Farndon Road (north-eastbound) between point 8 and point 9, a distance of 30 metres.	Removal of restricted road status 40 miles per hour
Farndon	The A46 (northbound) between point 11 and point 102, a distance of 70 metres.	Removal of restricted road status 40 miles per hour
Farndon	The A46 (northbound) between point 102 and point 17, a distance of 30 metres.	40 miles per hour
Newark	The A46 (southbound) between point 10 and point 18, a distance of 90 metres.	Removal of restricted road status 40 miles per hour
Newark	The A46 (southbound) between point 18 and point 103, a distance of 80 metres.	Removal of restricted road status
Speed Limit Plans – Sheet 3		
Newark	A46 northbound off-slip road to the Cattle Market Junction between point 19 and point 104, a distance of 280 metres.	National speed limit
Newark	A46 northbound off-slip road to the Cattle Market Junction between point 104 and point 21, a distance of 110 metres.	Removal of restricted road status National speed limit

(a) There are amendments to sections 81 and 82 which are not relevant to this Order.

Newark	A46 southbound on-slip road from the Cattle Market Junction between point 20 and point 105, a distance of 300 metres.	National speed limit
Newark	A46 southbound on-slip road from the Cattle Market Junction between point 105 and point 101, a distance of 40 metres.	Removal of restricted road status National speed limit
Newark, Winthorpe	The A46 (northbound) between point 22 and point 110 (sheet 5), a distance of 3,160 metres.	50 miles per hour
Newark, Winthorpe	The A46 (southbound) between point 23 and point 111 (sheet 5), a distance of 3,160 metres.	50 miles per hour
Newark	A46 southbound off-slip road to the Cattle Market Junction between point 29 and point 106, a distance of 120 metres.	Removal of restricted road status 50 miles per hour
Newark	A46 southbound off-slip road to the Cattle Market Junction between point 106 and point 38, a distance of 85 metres.	50 miles per hour
Newark	A46 northbound on-slip road from the Cattle Market Junction between point 32 and point 39, a distance of 215 metres.	50 miles per hour
Newark	A617 between point 36 and point 107, a distance of 85 metres.	50 miles per hour
Newark	A617 between point 107 and point 100, a distance of 80 metres.	Removal of restricted road status 50 miles per hour
Newark	The realigned A616 Great North Road between point 33 and point 34, a distance of 55 metres.	Removal of restricted road status 50 miles per hour
Speed Limit Plans – Sheet 5		
Newark	A46 southbound on-slip road from the Brownhills Roundabout between point 40 and point 109, a distance of 460 metres.	50 miles per hour
Newark	A46 southbound on-slip road from the Brownhills Roundabout between point 109 and point 49, a distance of 160 metres.	Removal of restricted road status 50 miles per hour
Newark	A46 northbound off-slip road to the new Brownhills Junction Roundabout between point 41 and point 108, a distance of 160 metres.	50 miles per hour
Newark	A46 northbound off-slip road to the new Brownhills Junction Roundabout between point 108 and point 42, a distance of 90 metres.	Removal of restricted road status 50 miles per hour
Newark	The new Brownhills Junction Roundabout with reference 45, a distance of 170 metres.	Removal of restricted road status 50 miles per hour
Newark	The new link to Winthorpe Road	Removal of restricted road

	between point 43 and point 44, a distance of 60 metres.	status
Newark	The Brownhills Junction Link Road between point 47 and point 48, a distance of 180 metres.	Removal of restricted road status 50 miles per hour
Newark	The Brownhills Junction Link Road between point 46 and point 60, a distance of 320 metres.	Removal of restricted road status 50 miles per hour
Newark	Lincoln Road north-eastbound between point 50 and point 51, a distance of 30 metres.	Removal of restricted road status 50 miles per hour
Newark	Lincoln Road south-westbound between point 52 and point 53, a distance of 30 metres.	Removal of restricted road status 50 miles per hour
Newark	The Brownhills Roundabout with reference 54, a distance of 185 metres.	Removal of restricted road status 50 miles per hour
Newark	A1 northbound on-slip road between point 58 and point 59, a distance of 30 metres.	Removal of restricted road status 50 miles per hour
Newark	A1 northbound off-slip road between point 57 and point 58, a distance of 30 metres.	Removal of restricted road status 50 miles per hour
Newark, Winthorpe	Existing A1 Crossing (eastbound) between point 56 and point 73, a distance of 340 metres.	Removal of restricted road status 50 miles per hour
Newark, Winthorpe	Existing A1 Crossing (westbound) between point 55 and point 61, a distance of 340 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	The Friendly Farmer Roundabout with reference 70, a distance of 165 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	A1 southbound on-slip road between point 64 and point 65, a distance of 20 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	A1 southbound off-slip road between point 62 and point 63, a distance of 20 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	A17 (westbound) between point 66 and point 67, a distance of 20 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	A17 (eastbound) between point 68 and point 69, a distance of 20 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	A46 northbound off-slip road to the service area between point 74 and point 75, a distance of 170 metres.	50 miles per hour
Winthorpe	A46 northbound on-slip road from the service area between point 76 and point 77, a distance of 130 metres.	50 miles per hour
Winthorpe	The new A46 dual carriageway (northbound) between point 110 and point 95 (sheet 6), a distance of 890 metres.	Removal of restricted road status 50 miles per hour

Winthorpe	The new A46 dual carriageway (southbound) between point 111 and point 78 (sheet 6), a distance of 890 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	Friendly Farmer Link Road (northbound) between point 72 and point 112, a distance of 230 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	Friendly Farmer Link Road (northbound) between point 112 and point 113 (sheet 6), a distance of 740 metres.	50 miles per hour
Winthorpe	Friendly Farmer Link Road (southbound) between point 71 and point 112, a distance of 215 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	Friendly Farmer Link Road (southbound) between point 112 and point 113 (sheet 6), a distance of 740 metres.	50 miles per hour
Speed Limit Plans – Sheet 6		
Winthorpe	Friendly Farmer Link Road (northbound) between point 113 and point 79, a distance of 110 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	Friendly Farmer Link Road (southbound) between point 113 and point 82, a distance of 155 metres.	Removal of restricted road status 50 miles per hour
Winthorpe, Langford	The new Winthorpe Roundabout with reference 81, a distance of 360 metres.	Removal of restricted road status 50 miles per hour
Winthorpe, Langford	The new road through Winthorpe Roundabout between point 80 and point 89, a distance of 115 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	The realigned A1133 (eastbound) between point 91 and point 92, a distance of 40 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	The realigned A1133 (westbound) between point 92 and point 94, a distance of 55 metres.	Removal of restricted road status 50 miles per hour
Winthorpe	The realigned A1133 between point 92 and point 93, a distance of 70 metres.	Removal of restricted road status
Winthorpe, Langford	The realigned Drove Lane (westbound) between point 83 and point 84, a distance of 30 metres.	Removal of restricted road status 50 miles per hour
Langford	The realigned Drove Lane (eastbound) between point 84 and point 86, a distance of 35 metres.	Removal of restricted road status 50 miles per hour
Langford	The realigned Drove Lane between point 84 and point 85, a distance of 80 metres.	Removal of restricted road status
Langford	The A46 (northbound) between point 88 and point 96, a distance of 45 metres.	Removal of restricted road status 50 miles per hour
Langford	The A46 (northbound) between point 90 and point 114, a distance of 50 metres.	Removal of restricted road status 50 miles per hour

Langford	The A46 (northbound) between point 96 and point 98, a distance of 20 metres.	Removal of restricted road status
Langford	The A46 (southbound) between point 87 and point 97, a distance of 55 metres.	Removal of restricted road status 50 miles per hour
Langford	The A46 (southbound) between point 97 and point 99, a distance of 165 metres.	Removal of restricted road status

PART 6

TRAFFIC REGULATION MEASURES (CLEARWAYS)

<i>(1)</i> <i>Parish(es)</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
Traffic Regulations Measures Plans – Sheet 1		
Farndon CP	The new A46 dual carriageway (northbound) from point 1-5 to point 1-6 a distance of 120 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Farndon CP	The new A46 dual carriageway (southbound) from point 1-3 to point 1-4, a distance of 75 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Farndon CP, Newark CP	The Farndon Roundabout; from point 1-1 round to point 1-1, a distance of 360 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Farndon CP, Newark CP, Averham CP, Winthorpe CP,	The new A46 dual carriageway (northbound) from point 1-2 to point 6-8 (sheet 6), a total distance of 6,620 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Farndon CP, Newark CP, Averham CP, Winthorpe CP,	The new A46 dual carriageway (southbound) from point 1-7 to point 6-14 (sheet 6), a total distance of 6,620 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Traffic Regulations Measures Plans – Sheet 3		
Newark CP	The A46 northbound off-slip road to the Cattle Market Junction from point 3-1 to point 3-2, a distance of 455 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Newark CP	The A46 northbound on-slip road from the Cattle Market Junction from point 3-3 to point 3-4, a distance of 300 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Newark CP	The A46 southbound off-slip road to the Cattle Market Junction from point 3-5 to point 3-6, a distance of 240 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Newark CP	The A46 southbound on-slip road to the Cattle Market Junction from point 3-7 to point 3-8, a distance of 360 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Newark CP	The whole of the Cattle Market Junction Circulatory from point 3-9 round to point 3-9, a distance of 390 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Traffic Regulations Measures Plans – Sheet 5		
Newark CP	The A46 southbound on-slip road from the Brownhills Roundabout from point 5-8 to	Clearway (including verges and hard strip but excluding

	point 5-12, for a total distance of 620 metres.	lay-bys).
Newark CP	The A46 northbound off-slip road to the new Brownhills Junction Roundabout from point 5-1 to point 5-2, a distance of 250 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Newark CP	The new Brownhills Junction Roundabout from point 5-3 round to point 5-3, for a total distance of 170 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Newark CP	The Brownhills Junction Link Road from point 5-4 to point 5-7, a distance of 320 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Newark CP	The Brownhills Junction Link Road from point 5-5 to point 5-6, a distance of 50 metres.	Clearway (including verges and hard strip but excluding lay-bys).
Winthorpe CP	The Friendly Farmer Link Road (northbound) from point 5-10 to point 5-9, for a total distance of 190 metres.	Clearway (to include verges and hard strips).
Winthorpe CP	The Friendly Farmer Link Road (southbound) from point 5-9 to point 5-11, for a total distance of 175 metres.	Clearway (to include verges and hard strips).
Winthorpe CP	The Friendly Farmer Link Road (both directions) from point 5-9 to point 6-1 (sheet 6) for a total distance of 780 metres.	Clearway (to include verges and hard strips).
Traffic Regulations Measures Plans – Sheet 6		
Winthorpe CP	The Friendly Farmer Link Road (northbound) from point 6-1 to point 6-3, for a total distance of 105 metres.	Clearway (to include verges and hard strips).
Winthorpe CP	The Friendly Farmer Link Road (southbound) from point 6-2 to point 6-1, for a total distance of 170 metres.	Clearway (to include verges and hard strips).
Winthorpe CP, Langford CP	The new Winthorpe Roundabout from point 6-6 round to point 6-6, for a total distance of 360 metres.	Clearway (to include verges and hard strips).
Winthorpe CP, Langford CP	The road through Winthorpe Roundabout from point 6-9 to point 6-10, for a total distance of 115 metres.	Clearway (to include verges and hard strips).
Langford CP	The new A46 dual carriageway (southbound) from point 6-7 to point 6-4, for a total distance of 215 metres.	Clearway (to include verges and hard strips).
Langford CP	The new A46 dual carriageway (northbound) from point 6-11 to point 6-5, for a total distance of 65 metres.	Clearway (to include verges and hard strips).
Langford CP	The new link between Winthorpe Roundabout and the A46 northbound from point 6-12 to point 6-13, for a total distance of 50 metres.	Clearway (to include verges and hard strips).

PART 7

TRAFFIC REGULATION MEASURES (WAITING RESTRICTIONS)

(1) <i>Parish(es)</i>	(2) <i>Road name, number and length</i>	(3) <i>Measures</i>
Traffic Regulations Measures Plans – Sheet 3		
Newark CP	The altered B6326 Great North Road (both carriageways) from point 3-C to point 3-D, a	No Waiting at Any Time.

	distance of 206m.	

PART 8

TRAFFIC REGULATION MEASURES (NO ENTRY)

<i>(1)</i> <i>Parish(es)</i>	<i>(2)</i> <i>Road name, number and length to which entry is prohibited</i>	<i>(3)</i> <i>Road name, number and length from which entry is prohibited</i>	<i>(4)</i> <i>Measures</i>
Traffic Regulations Measures Plans – Sheet 3			
Newark CP	Reference 3-A The A46 northbound off-slip road from the Cattle Market Junction.	Cattle Market Junction.	No Entry.
Newark CP	Reference 3-B The A46 southbound off-slip road to the Cattle Market Junction.	Cattle Market Junction.	No Entry.
Traffic Regulations Measures Plans – Sheet 5			
Newark CP	Reference 5-A The A46 northbound off-slip road to the new Brownhills Junction Roundabout.	The new Brownhills Junction Roundabout.	No Entry.
Winthorpe CP	Reference 5-B The new Friendly Farmer Link Road – eastbound.	The service area exit.	No right turn.
Winthorpe CP	Reference 5-C The left-in access to the Newark Showground.	Newark Showground.	No Entry.
Winthorpe CP	Reference 5-D The A46 northbound off-slip road to the service area.	The service area	No Entry.
Winthorpe CP	Reference 5-E The service area exit.	The new Friendly Farmer Link.	No Entry.
Traffic Regulations Measures Plans – Sheet 6			
Langford CP	Reference 6-A Drove Lane eastbound.	Newark Showground.	No right turn.
Langford CP	Reference 6-B The A46 southbound.	Winthorpe Roundabout.	No Entry.
Winthorpe CP	Reference 6-C The Friendly Farmer Link Road northbound.	Winthorpe Roundabout.	No Entry.
Winthorpe CP	Reference 6-D The A46 northbound.	Winthorpe Roundabout.	No Entry.
Langford CP	Reference 6-E Winthorpe Roundabout.	The road through Winthorpe Roundabout northbound.	No right turn.
Langford CP	Reference 6-F The left-out egress from the Newark Showground.	Drove Lane.	No Entry.
Langford CP	Reference 6-G	Winthorpe	No Entry.

	The road through Winthorpe Roundabout northbound.	Roundabout.	

PART 9

REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1) Parishes</i>	<i>(2) Road name, number and length</i>	<i>(3) Title of Order</i>	<i>(4) Revocations or Variations</i>
Traffic Regulations Measures Plans – Sheet 1			
Farndon CP	Existing A46 (southbound) carriageway from point 1/5 to point 1/6, a total distance of 75 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012(a))	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Farndon CP	Existing A46 (southbound) carriageway from point 1/5 (inset A) to point 1/6 (inset A), a total distance of 75 metres.	The A46 Trunk Road (Farndon, Nottinghamshire) (40 Miles Per Hour Speed Limit) Order 2019(b)	The variation of the order to exclude the length of road referred to in column (2) from the speed limit in article 2 of the Order.
Farndon CP	Existing A46 (northbound) carriageway from point 1/7 to point 1/8, a total distance of 120 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Farndon CP	Existing A46 (northbound) carriageway from point 1/7 (inset A) to point 1/8(inset A) , a total distance of 120 metres.	The A46 Trunk Road (Farndon, Nottinghamshire) (40 Miles Per Hour Speed Limit) Order 2019	The variation of the order to exclude the length of road referred to in column (2) from the speed limit in article 2 of the Order.
Farndon CP, Newark CP	Farndon Roundabout: from point 1/1 round to point 1/1, a total distance of 360 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.

(a) S.I. 2012/1082

(b) S.I. 2019/1565

Farndon CP, Newark CP	Farndon Roundabout: from point 1/1 (inset A) round to point 1/1(inset A) , a total distance of 360 metres.	The A46 Trunk Road (Farndon, Nottinghamshire) (40 Miles Per Hour Speed Limit) Order 2019	The variation of the order to exclude the length of road referred to in column (2) from the speed limit in article 2 of the Order.
Farndon CP	Existing A46 (northbound) carriageway from point 1/2 to point 1/3, a distance of 105 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark- on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Farndon CP	Existing A46 (northbound) carriageway from point 1/2 (inset A) to point 1/9 (inset A), a distance of 100 metres.	The A46 Trunk Road (Farndon, Nottinghamshire) (40 Miles Per Hour Speed Limit) Order 2019	The variation of the order to exclude the length of road referred to in column (2) from the speed limit in article 2 of the Order.
Newark CP	Existing A46 (southbound) carriageway from point 1/3 to point 1/4, a total distance of 98 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark- on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Newark CP	Existing A46 (southbound) carriageway from point 1/10 (inset A) to point 1/4 (inset A), a total distance of 100 metres.	The A46 Trunk Road (Farndon, Nottinghamshire) (40 Miles Per Hour Speed Limit) Order 2019	The variation of the order to exclude the length of road referred to in column (2) from the speed limit in article 2 of the Order.
Farndon CP, Averham CP, Newark CP	Existing A46 (both directions) from point 1/3 to point 3/3 (sheet 3), a total distance of 2,406 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark- on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Traffic Regulations Measures Plans – Sheet 2			
Newark CP	Reference 2/A Existing layby adjacent to the existing A46 (southbound) carriageway.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark- on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the layby referred to in column (2) from the restriction on waiting for the purposes of selling or dispensing of goods from a vehicle in article 6 of the Order.

Traffic Regulations Measures Plans – Sheet 3			
Newark CP	Reference 3/A Existing layby adjacent to the existing A46 (northbound) carriageway.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the layby referred to in column (2) from the restriction on waiting for the purposes of selling or dispensing of goods from a vehicle in article 6 of the Order.
Newark CP	Existing A46 (northbound) carriageway from point 3/3 to point 3/2, a distance of 60 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Newark CP	Existing A46 (southbound) carriageway from point 3/4 to point 3/3, a distance of 65 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Newark CP	Existing A46 (northbound) carriageway from point 3/8 to point 3/7, a distance of 95 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Newark CP	Existing A46 (southbound) carriageway from point 3/7 to point 3/6, a distance of 92 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Newark CP	The existing Cattle Market Junction Circulatory from point 3/9 round to point 3/9, a distance of 240 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.

Newark CP	Reference 3/B The existing layby adjacent to the A46 southbound carriageway.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the layby referred to in column (2) from the restriction on waiting for the purposes of selling or dispensing of goods from a vehicle in article 6 of the Order.
Newark CP	Existing A46 (both carriageways) from point 3/7 to point 5/1 (sheet 5), a total distance of 2,558 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Traffic Regulations Measures Plans – Sheet 5			
Newark CP	Reference 5/A The existing layby adjacent to the A46 northbound carriageway.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the layby referred to in column (2) from the restriction on waiting for the purposes of selling or dispensing of goods from a vehicle in article 6 of the Order.
Winthorpe CP	Existing A46 (northbound) carriageway from point 5/2 to point 6/1 (sheet 6, inset A), a total distance of 1,117 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Winthorpe CP	Existing A46 (southbound) carriageway from point 5/3 to point 6/2 (sheet 6, inset A), a total distance of 1,106 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Traffic Regulations Measures Plans – Sheet 6			
Winthorpe CP, Langford CP	The existing Winthorpe Roundabout from point 6/3 (inset A) round to point 6/3 (inset A), a distance of 208 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.

		Prohibition of Waiting Order 2012	
Langford CP	Existing A46 (southbound) carriageway from point 6/5 (inset A) to point 6/4, (inset A) a total distance of 210 metres.	The A46 Trunk Road (Newark to Lincoln) (24 Hours Clearway) Order 2013(a)	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.
Langford CP	Existing A46 (northbound) carriageway from point 6/7 (inset A) to point 6/6 (inset A), a total distance of 77 metres.	The A46 Trunk Road (Newark to Lincoln) (24 Hours Clearway) Order 2013	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting in article 3 of the Order.

PART 10

CYCLE TRACKS

(1) <i>Area</i>	(2) <i>Length of Cycle track</i>
Streets, Rights of Way and Access Plans – Sheet 3	
Newark CP	A cycle track comprised in a highway from point F-3A to point F-3B, a distance of 65 metres.
Newark CP	A cycle track comprised in a highway from point F-3C to point F-3D (inset A), a distance of 127 metres.
Newark CP	A cycle track comprised in a highway from point F-3E to point F-3F, a distance of 100 metres (see inset D for detail of the cycle track running under the A46 at the Cattle Market Junction).
Newark CP	A cycle track comprised in a highway from point F-3G to point F-3H, a distance of 175 metres.
Newark CP	A cycle track comprised in a highway from point F-3I to point F-3J, a distance of 30 metres.
Streets, Rights of Way and Access Plans – Sheet 5	
Newark CP	A cycle track comprising a highway from point F-5A (inset C) to point F-5E (inset C), a distance of 52 metres.
Newark CP	A cycle track comprised in a highway from point F-5F (inset C) to point F-5L (inset C), a distance of 112 metres.
Newark CP	A cycle track comprising a highway from point F-5L (inset C) to point F-5B (inset C), a distance of 144 metres.
Winthorpe CP	A cycle track comprised in a highway from point F-5C to point F-5G, a distance of 53 metres.
Winthorpe CP	A cycle track comprising a highway from point F-5H to point F-5I, a distance of 516 metres.
Winthorpe CP	A cycle track comprised in a highway from point F-5I to point F-5N, a distance of 755 metres.
Winthorpe CP	A cycle track comprising a highway from point F-5N to point F-6D (sheet 6), a distance of 385 metres.
Winthorpe CP	A cycle track comprised in a highway from point F-5D to point F-

(a) S.I. 2003/3263

	5O, a distance of 60 metres.
Winthorpe CP	A cycle track comprising a highway from point F-5O to point F-5M, a distance of 300 metres.
Winthorpe CP	A cycle track comprised in a highway from point F-5M to point F-5J, a distance of 287 metres.
Winthorpe CP, Langford CP	A cycle track comprised in a highway from point F-5K to point F-6H (sheet 6), a distance of 494 metres.
Streets, Rights of Way and Access Plans – Sheet 6	
Langford CP	A cycle track comprised in a highway from point F-6A to point F-6B, a distance of 96 metres.
Winthorpe CP, Langford CP	A cycle track comprised in a highway from point F-6C to point F-6E, a distance of 222 metres.
Langford CP	A cycle track comprised in a highway from point F-6F to point F-6G, a distance of 64 metres.

SCHEDULE 4

Article 19

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule to the streets, rights of way and access plans, the provisions described in this Schedule are shown on the streets, rights of way and access plans in the following manner—

- (a) Existing highways are to be stopped up, as described in column (2) of Parts 1 and 2 of this Schedule, are shown—
 - (i) in respect of carriageway highways, by hexagonal black hatching on the streets, rights of way and access plans (as shown in the key on those plans) over the extent of the area to be stopped up; and
 - (ii) in respect of public rights of way by a dark red dashed line on the streets, rights of way and access plans, with the letter “X” in the intervals (as shown in the key on those plans),

which are described in column (3) of Parts 1 and 2 of this Schedule.

- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are specified in column (4) of Part 2 and column (2) of Part 3 of this Schedule, are shown by light blue shading (for trunk roads), dark pink shading (for other classified roads and highways) and a solid magenta line (for cycle tracks) (as shown in the key on the streets, rights of way and access plans) and will be a road unless the word ‘cycle track’ appears in column (4) of Part 2 or column (2) of Part 3 of this Schedule.
- (c) Private means of access to be stopped up, as described in column (2) of Parts 4 and 6 of this Schedule, are shown by light pink shading (as shown in the key on the streets, rights of way and access plans) over the extent of stopping up described in column (3) of Parts 4 and 6 of this Schedule, and are given a reference label.
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are specified in column (4) of Part 4 and column (2) of Part 5 of this Schedule, are shown by green shading.

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Highway to be stopped up</i>	(3) <i>Extent of stopping up</i>
Streets, Rights of Way and Access Plans – Sheet 3		
Newark CP	Footpath, FP14	The existing footpath, from point FX-3A to point FX-3B, a distance of 117 metres.
Newark CP	Footpath, FP14	The existing footpath, from point FX-3C to point FX-3D, a distance of 120 metres.
Streets, Rights of Way and Access Plans – Sheet 5		
Winthorpe CP	Footpath, FP2	The existing footpath, from point FX-5F to point FX-5G, a distance of 87 metres.
Winthorpe CP	Footpath, FP3	The existing footpath, from point FX-5D to point FX-5E, a distance of 16 metres.

PART 2

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Highway to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>New highway to be substituted/provided</i>
Streets, Rights of Way and Access Plans – Sheet 3			
Newark CP	B6326 Great North Road	Reference 3C (inset A) The existing B6326 Great North Road, starting at the existing Cattle Market Roundabout to a point 286 metres south-east.	The altered B6326 Great North Road, from point H-3L to point H-3K, a distance of 243 metres.
Newark CP	A617	Reference 3D (inset A) The existing A617, starting at the existing Cattle Market Roundabout to a point 42 metres west.	The realigned A617, from point H-3E to point H-3F, a distance of 205 metres.
Newark CP	A616 Great North Road	Reference 3E (inset A) The existing A616 Great North Road, starting at the existing Cattle Market Roundabout to a point 86 metres north-west.	The realigned A616 Great North Road, from point H-3I to point H-3H, a distance of 70 metres.

Newark CP	Cattle Market Roundabout	Reference 3F (inset A) The existing Cattle Market Roundabout.	The Cattle Market Junction Circulatory with reference H-3U inset, a distance of 390 metres.
Newark CP	A46	Reference 3K (inset A) The existing A46, starting at the existing Cattle Market Roundabout to a point 60 metres south-west.	The A46 northbound off-slip road to the Cattle Market Junction from point H-3A to point H-3B, a distance of 455 metres. The A46 southbound on-slip road from the Cattle Market Junction from point H-3D to point H-3C, a distance of 360 metres.
Newark CP	A46	Reference 3L (inset A) The existing A46, starting at the existing Cattle Market Roundabout to a point 75 metres east.	The A46 northbound on-slip road from the Cattle Market Junction from point H-3O to point H-3P, a distance of 300 metres. The A46 southbound off-slip road to the Cattle Market Junction from point H-3N to point H-3M, a distance of 240 metres.
Streets, Rights of Way and Access Plans – Sheet 5			
Newark CP	Trent Valley Way/National Cycle Network Route 64	The existing route from point FX-5A to point FX-5B, a distance of 269 metres.	The cycle track comprising a highway from point F-5A (inset C) to point F-5E (inset C), a distance of 52 metres. The cycle track comprised in a highway from point F-5F (inset C) to point F-5L (inset C), a distance of 112 metres. The cycle track comprising a highway from point F-5L (inset C) to point F-5B (inset C), a distance of 144 metres.
Newark CP	Winthorpe Road	Reference 5A (inset C) The existing	The Brownhills Junction Link Road from point H-5F to

		Winthorpe Road, a distance of 167 metres.	point H-5E, a distance of 179 metres. The new Brownhills Junction Roundabout from point H-5E to point H-5P, a distance of 67 metres. The new Winthorpe Road from point H-5P to point H-5O, a distance of 57 metres.
Winthorpe CP	A46	Reference 5J (inset A) The existing A46 (both directions) starting at the Friendly Farmer Roundabout to a point 120m metres northeast.	The Friendly Farmer Link Road from point H-5J to point H-6I (sheet 6), a distance of 1,870 metres.
Winthorpe CP	A46 (southbound)	Reference 5K (inset A) The entrance/exit to/from the service area south of the A46 starting at the A46 to a point 8 metres to the southeast.	The new A46 dual carriageway exit from the service area from point H-5S to point H-5R, a distance of 15 metres.
Winthorpe CP	A46 (northbound)	Reference 5L (inset A) The entrance to the service area north of the A46 starting at the A46 to a point 15m to the north.	The A46 northbound off-slip road to the service area from point H-5K to point H-5L, a distance of 170 metres.
Winthorpe CP	A46 (northbound)	Reference 5M (inset A) The exit from the service area north of the A46 starting at the A46 to a point 15 metres to the west.	The A46 northbound on-slip road from the service area from point H-5M to point H-5N, a distance of 130 metres.
Streets, Rights of Way and Access Plans – Sheet 6			
Winthorpe CP, Langford CP	Winthorpe Roundabout	Reference 6A (inset A) The existing Winthorpe Roundabout.	The new Winthorpe Roundabout from point H-6M round the roundabout to point H-6M, a distance of 360 metres.
Winthorpe CP, Langford CP	A1133	Reference 6B (inset A) The existing A1133 starting at Winthorpe Roundabout to a point 348 metres north-west.	The realigned A1133 from point H-6C to point H-6B, a distance of 320 metres.
Winthorpe CP,	Drove Lane	Reference 6D (inset	The realigned Drove

Langford CP		A) The existing Drove Lane starting at the existing Winthorpe Roundabout to a point 195 metres south-east.	Lane from point H-6F to point H-6G, a distance of 185 metres.

PART 3

NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

(1) Area	(2) New highway to be provided
Streets, Rights of Way and Access Plans – Sheet 1	
Farndon CP	The A46 (northbound) from point H-1A to point H-1B, a distance of 120 metres.
Farndon CP	Fosse Road from point H-1C to point H-1D, a distance of 35 metres.
Farndon CP, Newark CP	Farndon Roundabout with from point H-1G round the roundabout to point H-1G, a distance of 360 metres.
Newark CP	Farndon Road from point H-1M to point H-1N, a distance of 65 metres.
Farndon CP	The A46 (southbound) from point H-1I to point H-1H, a distance of 75 metres.
Farndon CP, Newark CP, Averham CP, Winthorpe CP, Langford CP	The A46 (northbound) from point H-1Q to point H-6A (sheet 6), a distance of 6,620 metres.
Farndon CP, Newark CP, Averham CP, Winthorpe CP, Langford CP	The A46 (southbound) from point H-1P to point H-6K (sheet 6), a distance of 6,620 metres.
Streets, Rights of Way and Access Plans – Sheet 5	
Newark CP	The A46 northbound off-slip road to the new Brownhills Junction Roundabout from point H-5A to point H-5B, a distance of 250 metres.
Newark CP	The A46 southbound on-slip road from the Brownhills Roundabout from point H-5G to H-5Q, a distance of 620 metres.
Newark CP	The new Brownhills Junction Roundabout from point H-5I round the roundabout to point H-5I, a distance of 170 metres.
Newark CP	The Brownhills Junction Link Road from point H-5C to point H-5D, a distance of 320 metres.
Winthorpe CP	The new cycle track comprised in a highway from point F-5C to point F-5G, a distance of 53 metres.
Winthorpe CP	The new cycle track comprising a highway from point F-5H to point F-5I, a distance of 516 metres.
Winthorpe CP	The new cycle track comprised in a highway from point F-5I to point F-5N, a distance of 755 metres.
Winthorpe CP	The new cycle track comprising a highway from point F-5N to point F-6D (sheet 6), a distance of 385 metres.
Winthorpe CP	A cycle track comprised in a highway from point F-5D to point F-5O, a distance of 60 metres.
Winthorpe CP	A cycle track comprising a highway from point F-5O to point F-5M, a distance of 300 metres.
Winthorpe CP	The new cycle track comprised in a highway from point F-5M to point F-5J, a distance of 287 metres.

Winthorpe CP & Langford CP	The new cycle track comprised in a highway from point F-5K to point F-6H (sheet 6), a distance of 494 metres.
Streets, Rights of Way and Access Plans – Sheet 6	
Langford CP	The new A46 (northbound) from point H-6N to point H-6E, a distance of 65 metres.
Langford CP	The new A46 (southbound) from point H-6J to point H-6L, a distance of 215 metres.

PART 4

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Private means of access to be stopped</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted or provided</i>
Streets, Rights of Way and Access Plans – Sheet 1			
Farndon CP & Newark CP	Reference 1A (inset A) The existing private means of access to Windmill Viaduct (sheet 1) from Farndon Road.	Existing private means of access, a distance of 337 metres.	The realigned private means of access from point P-1A to point P-1B (inset B), a distance of 345 metres.
Streets, Rights of Way and Access Plans – Sheet 2			
Averham CP	Reference 2A (inset A) The existing private means of access to the land adjacent to the A46 from the A46 (southbound).	Existing private means of access, a distance of 478 metres.	The realigned private means of access from point P-2A to point P-2B, a distance of 462 metres.
Newark CP	Reference 2B (inset D) The existing private means of access to the land north of the Nottingham to Lincoln Railway line	Existing private means of access, a distance of 62 metres.	The realigned private means of access from point P-2C to point P-2D (inset C), a distance of 117 metres.
Streets, Rights of Way and Access Plans – Sheet 3			
Newark CP	Reference 3A (inset C) The end of existing private means of access to the land between the A46 and A617 from the A617.	Existing private means of access, a distance of 29 metres.	The new private means of access from point P-3A to point P-2H (sheet 2), a distance of 659 metres.
Newark CP	Reference 3B (inset A) The existing private means of access to the land north of the	Existing private means of access, a distance of 38 metres.	The new private means of access to the Nottingham to Lincoln Line East Crossing from point

	existing Cattle Market Roundabout from the existing A616 Great North Road.		P-3F to point P-3G, a distance of 528 metres.
Newark CP	Reference 3G (inset A) The existing private means of access to the flood defence from the existing Cattle Market Roundabout.	Existing private means of access, a distance of 55 metres.	The new private means of access from point P-3B to point P-3C, a distance of 345 metres.
Newark CP	Reference 3H (inset A) The existing private means of access to the lorry park from the existing B6326 Great North Road.	Existing private means of access, a distance of 41 metres.	The new private means of access from point P-3J to point P-3K, a distance of 15 metres.
Newark CP	Reference 3I (inset A) The existing private means of access to the old council depot site from the existing B6326 Great North Road.	Existing private means of access, a distance of 9 metres.	The new private means of access from point P-3H to point P-3I, a distance of 10 metres.
Newark CP	Reference 3J (inset B) The existing private means of access to the land between the existing A617 and the existing A46 from the A617.	Existing private means of access, a distance of 22 metres	The new private means of access from point P-3D to point P-3E, a distance of 157 metres.
Streets, Rights of Way and Access Plans – Sheet 4			
Newark CP	Reference 4A The existing private means of access to the land beneath the existing Nether Lock Viaduct from Mather Road.	Existing private means of access, a distance of 105 metres.	The new private means of access from point P-4B (inset A) to point P-4D (inset A), a distance of 168 metres.
Newark CP	Reference 4B (inset B) The existing private means of access to land to the north-west of the existing A46 between the railway line and the existing A46 from the A46.	Existing private means of access, a distance of 23 metres.	The new private means of access from point P-4G to point P-5K (sheet 5), a distance of 561 metres.
Newark CP	Reference 4C (inset C) The existing private means of access to the land between the A46 and the railway line from Quibell's Lane.	Existing private means of access, a distance of 26 metres.	The new private means of access from point P-4E to point P-4F, a distance of 201 metres.

Streets, Rights of Way and Access Plans – Sheet 5			
Winthorpe CP	Reference 5D (inset A) The existing private means of access to the service area south of the A46 from the A46.	Existing private means of access, a distance of 15 metres	The new private means of access from point P-5G to point P-5H, a distance of 40 metres.
Newark CP	Reference 5N (inset C) The existing private means of access to land north of the A46 and near Bridge House from Winthorpe Road.	Existing private means of access, a distance of 7 metres.	The new private means of access from point P-5K to point P-5J, a distance of 410 metres. The new private means of access from point P-5J to point P-5I, a distance of 106 metres.
Streets, Rights of Way and Access Plans – Sheet 6			
Langford CP, Winthorpe CP	Reference 6C (inset A) The existing private means of access to land south of the A1133 from the A1133.	Existing private means of access, a distance of 4 metres.	The new private means of access from point P-6I to point P-6J, a distance of 8 metres.
Langford CP, Winthorpe CP	Reference 6E (inset A) The existing private means to land south of the A1133 from the A1133.	Existing private means of access, a distance of 4 metres.	The new private means of access from point P-6K to point P-6L, a distance of 16 metres.
Winthorpe CP, Langford CP	Reference 6F (inset A) The existing private means of access to the Newark Showground from Drove Lane.	Existing private means of access, a distance of 13 metres.	New left-in only private means of access from the Friendly Farmer Link Road between point P-5W (sheet 5) and point P-5X (sheet 5), a distance of 40 metres. New left-out only private means of egress onto Drove Lane between point P-6C and point P-6D, a distance of 5 metres.
Langford CP	Reference 6G (inset A) The existing private means of access to the Langford Hall Estate from the A46.	Existing private means of access, a distance of 10 metres.	The new private means of access from point P-6A to point P-6B, a distance of 415 metres.
Langford CP	Reference 6H The existing private	Existing private means of access, a	The realigned private means of access from

	means of access to land north-east of Winthorpe Roundabout from Drove Lane.	distance of 196 metres.	point P-6E to point P-6F, a distance of 184 metres.

PART 5

NEW PRIVATE MEANS OF ACCESS WHICH ARE TO BE PROVIDED

(1) Area	(2) <i>New private means of access to be substituted or provided</i>
Streets, Rights of Way and Access Plans – Sheet 1	
Averham CP	New private means of access to the new Windmill Viaduct from point P-1C to point P-2E (sheet 2), a distance of 1,178 metres.
Streets, Rights of Way and Access Plans – Sheet 2	
Newark CP, Averham CP	New private means of access to the Nottingham to Lincoln Line West Crossing from point P-2F to point P-2G, a distance of 462 metres.
Streets, Rights of Way and Access Plans – Sheet 4	
Newark CP	The new private means of access from point P-4A to point P-4C (shown on inset A), a distance of 592 metres.
Streets, Rights of Way and Access Plans – Sheet 5	
Newark CP	The new private means of access to attenuation basins from point P-5L to point P-5M, a distance of 113 metres.
Newark CP	The new private means of access to attenuation basins from point P-5N to point P-5O, a distance of 248 metres.
Winthorpe CP	The new private means of access to attenuation basins from point P-5S (shown on inset B) to point P-5T (shown on inset B), a distance of 240 metres.
Winthorpe CP	The new private means of access to attenuation basins from point P-5Q (shown on inset B) to point P-5R (shown on inset B), a distance of 47 metres.
Winthorpe CP	The new field access from point P-5AC (shown on inset B) to point P-5AD (shown on inset B), a distance of 8 metres.
Winthorpe CP	The new field access from point P-5AA (shown on inset B) to point P-5AB (shown on inset B), a distance of 8 metres.
Winthorpe CP	The new field access from point P-5Y (shown on inset B) to point P-5Z (shown on inset B), a distance of 8 metres.
Winthorpe CP	The new field access from point P-5E (shown on inset B) to point P-5F (shown on inset B), a distance of 8 metres.
Streets, Rights of Way and Access Plans – Sheet 6	
Langford CP & Winthorpe CP	The new private means of access to attenuation basins from point P-6G to point P-6H, a distance of 71 metres.
Streets, Rights of Way and Access Plans – Sheet 7	
Averham CP	The new private means of access to the Kelham and Averham Flood Compensation Area from point P-7A to point P-7B, a distance of 547 metres.
Averham CP	The new private means of access to the Kelham and Averham Flood Compensation Area from point P-7C to point P-7D, a distance of 36 metres.

PART 6

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Private means of access to be stopped up</i>	(3) <i>Extent of stopping up</i>
Streets, Rights of Way and Access Plans – Sheet 5		
Winthorpe CP	Reference 5G (inset A) The existing private means of access to land north of the A46 and east of the A1 from the A46.	Existing private means of access, a distance of 110 metres.
Winthorpe CP	Reference 5H (inset A) The existing private means of access to land north of the A46 and east of the A1 from the A46.	Existing private means of access, a distance of 25 metres.
Newark CP	Reference 5I (inset C) The existing private means of access to land north of the A46 between the Winthorpe Road and the A1 off Winthorpe Road.	Existing private means of access, a distance of 6 metres.
Winthorpe CP	Reference 5E (inset A) The existing private means of access to the service area north of the A46 from the A46.	Existing private means access, a distance of 13 metres.
Winthorpe CP	Reference 5F (inset A) The existing private means of access from the service area north of the A46 to the A46.	Existing private means access, a distance of 8 metres.
Streets, Rights of Way and Access Plans – Sheet 6		
Langford CP	Reference 6I (inset A) The existing private means of access to land north-east of the A1133 from the A1133.	Existing private means of access, a distance of 8 metres.

SCHEDULE 5

Article 30

LAND IN WHICH ONLY NEW RIGHTS AND RESTRICTIVE COVENANTS ETC. MAY BE ACQUIRED

(1) <i>Plot reference number shown on land plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/5d	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 6
1/5h	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining	Work No. 6 Work No. 4

	land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 7 Work No. 127
1/5k	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 6 Work No. 4 Work No. 7 Work No. 128
1/5m	Rights of access to the river for deploying safety boat in association with construction of the new bridge over the River Trent. Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 7
1/8a	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery to maintain structures on adjoining land and in the airspace above the land.	Work No. 6
1/8b	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 6
1/9b	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 6 Work No. 127
1/9c	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 6
1/18a1	Rights of access to the river for deploying safety boat in association with construction of the new bridge over the River Trent. Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 7
Land Plans – Sheet 2		
2/2a	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 13
2/2e	Rights for the construction of a new bridge over the railway line and construction of the A46 dual carriageway and the diversion of electronic communications equipment.	Work No. 4 Work No. 26 Work No.U4
2/2f	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line, and for environmental mitigation, maintenance and monitoring commitments.	Work No. 4 Work No. 26

2/2g	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line.	Work No. 4 Work No. 26
2/2i	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove overhead electricity cables and supports, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. U3 Work No. U4
2/2n	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery to maintain structures on adjoining land and in the airspace above the land. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove overhead electricity cables and supports, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 26 Work No. U3 Work No. U4
2/2r	Rights of access over land for the purposes of	Work No. 27

	inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 26
2/4c	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line.	Work No. 4 Work No. 26
2/4d	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line, and diversion of overhead electricity distribution cables to underground buried cable and diversion of electronic communications equipment.	Work No. 4 Work No. 26 Work No. U3 Work No. U4
Land Plans – Sheet 3		
3/1r	Rights for the widening of the existing railway line crossing to facilitate construction of the A46 dual carriageway.	Work No. 56 Work No. 58
3/1r1	Rights for the widening of the existing railway line crossing to facilitate construction of the A46 dual carriageway.	Work No. 56 Work No. 58
3/1s	Rights for the widening of the existing railway line crossing to facilitate construction of the A46 dual carriageway.	Work No. 56 Work No. 58
3/2c	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery to maintain structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable a pipeline for the distribution or storage of gas or other ancillary materials, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried water pipes, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 37 Work No. U5 Work No. U6 Work No. U7 Work No. 35 Work No. 36
3/2cc1	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line.	Work No. 58
3/2cc2	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line.	Work No. 58

3/2cc3	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line.	Work No. 58
3/2cc4	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line.	Work No. 58
3/2dd	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 56 Work No. 58
3/2ee	Rights for the construction of the A46 dual carriageway and a new bridge over the railway line.	Work No. 58
3/2f	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 49 Work No. U7 Work No. U10 Work No. U9 Work No. U8
3/2g6	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. U9
3/2g8	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining	Work No. U9 Work No. U10

	retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	
3/2j	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 45 Work No. 46 Work No. 54 Work No. U7 Work No. U10 Work No. U9 Work No. U8
3/2ll	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 56 Work No. 58
3/2n1	Rights of access over land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable a pipeline for the distribution or storage of	Work No. 29 Work No. 32 Work No. 34 Work No. U5 Work No. U6

	gas or other ancillary materials, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried water pipes, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	
3/2o	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 29 Work No. 34
3/2t	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. U8
3/2v	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 56 Work No. 58
3/2w	Rights for the construction of the A46 dual carriageway and for environmental mitigation, maintenance and monitoring commitments.	Work No. 56
3/2y	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 56 Work No. 58
3/3a	Access for inspection, maintenance, repair and cleaning of culvert and retaining structures including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 31
3/4d	Rights of access over land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation,	Work No. U5 Work No. U6

	damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable a pipeline for the distribution or storage of gas or other ancillary materials, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried water pipes, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	
3/4f	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 34
3/5a	Rights of access over land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable a pipeline for the distribution or storage of gas or other ancillary materials, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried water pipes, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. U5 Work No. U6
3/7b	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery to maintain structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation,	Work No. 37 Work No. U5 Work No. U6 Work No. U7 Work No. 35

	damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable a pipeline for the distribution or storage of gas or other ancillary materials, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried water pipes, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	
3/7c	Rights of access over land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried water pipes, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. U6 Work No. 35 Work No. 36 Work No. 37
3/10a	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery to maintain structures on adjoining land.	Work No. 35 Work No. 36 Work No. 37
3/11b	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery to maintain structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 53 Work No. U8
3/11f	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery to maintain structures on adjoining land. To lay, install, construct, retain, inspect, maintain,	Work No. U7 Work No. U8

	protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	
3/13b	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery to maintain structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. U8
3/14b	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining embankment/retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or	Work No. 51 Work No. U9 Work No. U10

	apparatus being made materially more difficult.	
3/14c	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 49 Work No. U9 Work No. U10
3/14d	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 49 Work No. U9
3/14f	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 49 Work No. U9
3/14i	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the	Work No. 49 Work No. U9

	purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	
3/14k	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 40 Work No. 49 Work No. 51 Work No. U9 Work No. U10
3/16c	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 56 Work No. 58
3/17a	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 63 Work No. 66 Work No. 67
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4/1a	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 62
4/1e	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 65 Work No. U13

	To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	
4/1f1	Rights for the construction of a new bridge over the River Trent and the A46 dual carriageway, a temporary works area with office, welfare units and storage and the diversion of HV electricity distribution cables.	Work No. 56 Work No. 64 Work No. 65 Work No. U13
4/1f2	Rights for the construction of a new bridge over the River Trent and the A46 dual carriageway, a temporary works area with office, welfare units and storage and the diversion of HV electricity distribution cables.	Work No. 56 Work No. 64 Work No. 65 Work No. U13
4/1g	Rights for the construction of a new bridge over the River Trent and the A46 dual carriageway.	Work No. 56 Work No. 64
4/2a	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 63 Work No. 66 Work No. 67
4/2b	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 63 Work No. 66 Work No. 67
4/2c	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 63 Work No. 66 Work No. 67
4/2d	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 63 Work No. 66 Work No. 67
4/2h	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 64
4/2m	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 64
4/2n	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 64
4/3a	Rights of access over land for the purposes of	Work No. 63

	inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 66 Work No. 67
4/4a	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 63 Work No. 66 Work No. 67
4/5a	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 63 Work No. 66 Work No. 67
4/5b	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 62
4/5c	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 62
4/5f	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	Work No. 65 Work No. U13
4/5g	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	Work No. 65 Work No. U13

4/5i	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 71
4/5j	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 71
4/5l	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	Work No. U11 Work No. U12
4/5n	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	Work No. U11 Work No. U12
4/5o	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 62
4/7a	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain,	Work No. 65 Work No. U11 Work No. U12 Work No. U13

	protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	
4/7f	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	Work No. 65 Work No. U11 Work No. U12 Work No. U13
4/7j	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	Work No. 71 Work No. U14
4/7k	Rights of access over land for the purposes of	Work No. 71

	inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	Work No. U15
4/8b	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 62
4/9a	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 62
4/9b	Right of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 62
4/10a	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 64 Work No. 65 Work No. 56
4/12a	Rights for the construction of a new bridge over the River Trent, the A46 dual carriageway and a temporary works area with office, welfare units and storage.	Work No. 56 Work No. 64 Work No. 65
4/12b	Rights for the construction of a new bridge over the River Trent, the A46 dual carriageway and a temporary works area with office, welfare units and storage.	Work No. 56 Work No. 64 Work No. 65
4/12c	Rights for the construction of a new bridge over the River Trent, the A46 dual carriageway and a temporary works area with office, welfare units and storage.	Work No. 56 Work No. 64 Work No. 65
4/12c1	Rights for the construction of a new bridge over the River Trent, the A46 dual carriageway and a temporary works area with office, welfare units and storage.	Work No. 56 Work No. 64 Work No. 65
4/12d	Rights for the construction of a new bridge over the River Trent and the A46 dual carriageway.	Work No. 56 Work No. 64
4/12e	Rights for the construction of a new bridge over the River Trent and the A46 dual carriageway.	Work No. 56 Work No. 64
4/12f	Rights for the construction of a new bridge over the	Work No. 56

	River Trent and the A46 dual carriageway.	Work No. 64
4/12g	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 64 Work No. 65 Work No. 56
4/12g1	Rights of access over land for the purposes of inspecting and maintaining structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 56 Work No. 64 Work No. 65
4/12i	Rights for the construction of a new bridge over the River Trent, the A46 dual carriageway and a temporary works area with office, welfare units and storage.	Work No. 56 Work No. 64 Work No. 65
4/12i1	Rights for the construction of a new bridge over the River Trent, the A46 dual carriageway and a temporary works area with office, welfare units and storage.	Work No. 56 Work No. 64 Work No. 65
Land Plans – Sheet 5		
5/3a	Rights of access over land for the purposes of inspecting and maintaining structures and landscaping on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Work No. 77A Work No. 77B
5/3p	Access / working room to enable future maintenance.	Work No. 93 Work No. 105
5/11a	Rights of access over land for the purposes of inspecting and maintaining cables, ducts, apparatus and structures on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried cables, pipes and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed apparatus; and to prevent access to the installed apparatus being made materially more difficult.	Ancillary works
5/12a	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove overhead electricity cables and supports, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain	Work No. U21 Work No. U22 Work No. U23 Work No. U24

	on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable water pipes, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	
5/14a	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable water pipes, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. U21 Work No. U22
5/17e	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove overhead electricity cables and supports, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. U24
Land Plans – Sheet 6		
6/2c	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render	Work No. U26 Work No. U28

	unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	
6/4a	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove overhead electricity cables and supports, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 115 Work No. U24 Work No. U26 Work No. U25
6/6e	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. U27
6/7a	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land.	Work No. U24

	To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove overhead electricity cables and supports, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	
6/7d	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove overhead electricity cables and supports, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 121 Work No. U24 Work No. U25
6/9a	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove overhead electricity cables and supports, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and	Work No. 106 Work No. U24 Work No. U25 Work No. U26 Work No. U28

	to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	
Land Plans – Sheet 7		
7/1a	Maintenance access for drainage works.	Ancillary
7/2a	Maintenance access for drainage works.	Ancillary
7/2c	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures and drainage infrastructure on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable a pipeline for the distribution or storage of gas or other ancillary materials, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried water pipes, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 124 Work No. 125 Work No. U29 Work No. U31 Work No. U32 Work No. U33
7/2i	Rights of access over land for the purposes of inspecting and maintaining existing drainage infrastructure on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Ancillary
7/3a	Rights of access over land for the purposes of inspecting and maintaining existing drainage infrastructure on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Ancillary
7/4a	Rights of access over land for the purposes of inspecting and maintaining existing drainage infrastructure on adjoining land including rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery.	Ancillary
7/4c	Rights of access over land for the purposes of inspecting and maintaining existing drainage infrastructure on adjoining land including rights to	Ancillary

	pass and repass and to remain on the land, with or without vehicles, plant or machinery.	
7/5b	Rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery for the purposes of inspecting, repairing and maintaining retaining structures and drainage infrastructure on adjoining land. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable buried communications cables and ducts together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried electricity cables and ducts, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To lay, install, construct, retain, inspect, maintain, protect, use, enlarge, replace, renew, remove or render unusable a pipeline for the distribution or storage of gas or other ancillary materials, together with rights to pass and repass and to remain on the land, with or without vehicles, plant or machinery. To install, construct, retain, inspect, maintain, protect, use, replace, renew or remove buried water pipes, together with rights to pass and repass and to remain on the land with or without vehicles, plant or machinery. To include restrictive covenants for protecting the installed cables, ducts or apparatus from excavation, damage or injury; to not materially reduce the depth of soil above any installed cables, ducts or apparatus; and to prevent access to the installed cables, ducts or apparatus being made materially more difficult.	Work No. 124 Work No. U29 Work No. U32 Work No. U33 Work No. U31

SCHEDULE 6

Article 29

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply in respect of compensation on 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 paragraph (2).

(2) For section 5(1) (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) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) to the A46 Newark Bypass Development Consent Order 202[X] (“the A46 Newark Bypass 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 A46 Newark Bypass Order 202[X]) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in 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 35 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 26 (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 29(1) (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 particular context) as referring to, or as including references to—

- (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 restriction is or is to be enforceable.

(3) For Section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land

(a) 1973 c. 26.

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) (refusal to convey, failure to make title etc);
- (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 a compulsory acquisition under article 26 (compulsory acquisition of land)), 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 dated, 12(d) (unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) 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(g) (interests omitted from purchase) of the 1965 Act as modified by article 35(4) (modification of Part 1 of the 1965 Act) 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, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

-
- (a) Section 11 was amended by paragraph 14(3) of Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), paragraph 64 of Schedule 1 of S.I. 2009/1307, and sections 186(2), 187 and 188 of Part 7 and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 of the Housing and Planning Act 2016 (c. 22)..
 - (b) Section 11A was inserted by section 186(3) of Part 7 to the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(2) of Part 7 to the Housing and Planning Act 2016 (c. 22).
 - (d) Section 12 was amended by paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
 - (e) Section 13 was amended by section 139(5) to (9), and paragraph 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 paragraph 70 of Schedule 1 of S.I. 2009/1307.
 - (g) Section 22, there are amendments to this section which are not relevant to the Order.

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT

IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 36(5) (application of the 1981 Act) of the A46 Newark Bypass Development Consent Order 202[X] in respect of the land to which the notice to treat relates.

(2) But see article 38(3) (acquisition of subsoil or airspace only) of the A46 Newark Bypass Development Consent Order 202[X] 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 are 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 the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
 (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
 (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 7

Article 40

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		
1/1n	Temporary access and working area to facilitate the temporary diversion of Newark Bridleway No.2.	Work No. 3
1/5e	Temporary access and working room needed to facilitate Work No. 6.	Work No. 6
1/5f	Temporary access needed to implement new road signage.	Ancillary
1/5l	Temporary access needed to the river for deploying safety boat in association with Work No. 7.	Work No. 7
1/5p	Temporary access needed for the construction of a new bridge to carry the A46 over the River Trent including deployment of a safety boat in association with Work No. 7.	Work No. 7
1/5q	Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3
1/7a	Temporary working space required to tie in with the construction of new Farndon Roundabout.	Ancillary

1/10a	Temporary works area and access to facilitate the construction of new Farndon Roundabout.	Work No. 10
1/10b	Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3
1/12a	Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3
1/12b	Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3
1/13a	Temporary storage, welfare unit, and access to Work Nos. 6 and 7. Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3 Work No. 6 Work No. 7 Work No. 127
1/14a	Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3
1/14b	Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3
1/14c	Access to Work No. 3 to accommodate bridleway diversion.	Work No. 3
1/15a	Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3
1/17a	Temporary storage, welfare unit, and access to Work Nos. 7 and 6. Temporary access and works to facilitate the temporary diversion of Newark Bridleway No. 2.	Work No. 3 Work No. 6 Work No. 7 Work No. 127
1/18a	Temporary access needed to the river for deploying safety boat in association with Work No. 7.	Work No. 7
1/18d	Temporary access needed to the river for deploying safety boat in association with Work No. 7.	Work No. 7
Land Plans – Sheet 2		
2/2j	Temporary access needed for the construction of a new bridge to carry the A46 over the railway line. Temporary access needed for monitoring the railway line in association with Work No. 26. The diversion of 11kV electricity distribution cables to underground buried cable, diversion of electronic communications equipment.	Work No. 26 Work No. U3 Work No. U4
2/2k	Temporary access needed for the construction of a new bridge to carry the A46 over the railway line. Temporary access needed for monitoring the railway line in association with Work No. 26.	Work No. 26
2/2m	Temporary access needed for the construction of a new bridge to carry the A46 over the railway line. Temporary access needed for monitoring the railway line in association with Work No. 26. The diversion of 11kV electricity distribution cables to underground buried cable, diversion of electronic communications equipment.	Work No. 26 Work No. U3 Work No. U4
2/2p	Temporary access needed to Work No. 27.	Work No. 27
2/3a	Temporary working room for Work Nos. 22 and 24.	Work No. 22 Work No. 24
2/5a	Temporary access needed for clearing of Old Trent Dyke for installation of Work No. 23.	Work No. 23
2/5b	Temporary access needed for clearing of Old Trent Dyke for installation of Work No. 23.	Work No. 23

2/7a	Temporary storage, welfare unit, and access to facilitate construction of access tracks, the A46 dual carriageway and a new bridge to carry the A46 over the railway line.	Work No. 28 Work No. 26 Work No. 4 Work No. 29
2/7c	Temporary access needed to Work No. 4.	Work No. 4
Land Plans – Sheet 3		
3/1u	Temporary works area to facilitate widening of railway line to facilitate A46 construction.	Work No. 58
3/2e	Temporary construction compound.	Work No. 53
3/2ff	Access needed for monitoring railway line in association with Work No. 58.	Work No. 58
3/2g	Temporary working area for alteration of the B6326 Great North Road to tie-in to the Cattle Market Junction Circulatory.	Work No. 49
3/2g4	Temporary working area for alteration of the B6326 Great North Road to tie-in to the Cattle Market Junction Circulatory.	Work No. 49
3/2gg	Access needed for monitoring railway line in relation to Work No. 58.	Work No. 58
3/2nn	Temporary access needed to Work No. 4.	Work No. 4
3/2r	Temporary access needed to Work No. 32.	Work No. 32
3/2x	Temporary Access needed for monitoring railway line in relation to Work No. 58.	Work No. 58
3/4e	Temporary working space for environmental mitigation and access to utilities.	Ancillary
3/7a	Access needed to Work No. 4.	Work No. 4
3/10d	Temporary working area needed for environmental mitigation works.	Environmental Mitigation
3/11a	Temporary construction compound.	Work No. 53
3/11c	Temporary working area for alteration of the B6326 Great North Road to tie-in to the Cattle Market Junction Circulatory.	Work No. 49
3/11e	Temporary construction compound.	Work No. 53
3/13a	Working area needed for environmental mitigation works.	Environmental Mitigation
3/14a1	Temporary working area and access required for turning circle for works vehicles.	Ancillary
3/14b1	Required for access and working room to facilitate the construction of Work No. 51	Work No. 51
3/14h	Access needed to Work No. 49. Temporary working space for environmental mitigation.	Work No. 49 Environmental Mitigation
Land Plans – Sheet 4		
4/2e	Temporary access needed for the construction of a new bridge to carry the A46 over the River Trent and a temporary bridge to accommodate movement of plant and materials to temporary compound. Temporary access needed for construction of attenuation basins and drainage infrastructure.	Work No. 63 Work No. 64 Work No. 67
4/2g	Access needed for deployment of safety boat in the River Trent and working area associated with Work No. 64.	Work No. 64
4/2k	Access needed for deployment of safety boat in the River Trent and working area associated with Work	Work No. 64

	No. 64.	
4/2o	Access needed for deployment of safety boat in the River Trent and working area associated with Work No. 64.	Work No. 64
4/2p	Access needed for deployment of safety boat in the River Trent and working area associated with Work No. 64.	Work No. 64
4/2q	Access needed for deployment of safety boat in the River Trent and working area associated with Work No. 64.	Work No. 64
4/5d	Temporary access needed to Work No. 71.	Work No. 71
4/5h	Temporary access needed for the construction of a new bridge to carry the A46 over the River Trent. Temporary works area, welfare unit and access to facilitate the construction of a new bridge parallel to Nether Lock Viaduct. Access needed for monitoring railway line in relation to Work Nos. 64 and 65.	Work No. 64 Work No. 65
4/7g	Temporary works area, welfare unit and access to facilitate the construction of a new bridge parallel to Nether Lock Viaduct.	Work No. 65
4/7h	Temporary construction compound.	Work No. 71
4/7i	Temporary construction compound.	Work No. 71
4/8a	Temporary construction compound and access between construction compound and works.	Work No. 63 Work No. 62
4/8c	Temporary construction compound.	Work No. 71
4/11a	Temporary access needed to Work No. 71.	Work No. 71
Land Plans – Sheet 5		
5/1d	Land required for working room and access to tie in with new roundabout layout.	Ancillary
5/1m	Land required for working room and access to tie in with new roundabout layout.	Ancillary
5/3d	Access required for potential reprofiling of drainage ditches.	Ancillary
5/3h	Land required for working room and access to tie in with new roundabout layout.	Ancillary
5/3i	Land required for working room and access to tie in with new roundabout layout.	Ancillary
5/3j	Access required for potential reprofiling of drainage ditches.	Ancillary
5/7d	Temporary working space for environmental mitigation.	Ancillary
5/8a1	Temporary working space for environmental mitigation.	Ancillary
5/17d	Temporary construction compound and laydown area.	Work No. 114 Work No. 106
Land Plans – Sheet 6		
6/1c	Temporary working space for environmental mitigation.	Ancillary
6/2b	Temporary working space for environmental mitigation.	Ancillary
6/2d	Temporary working space for environmental mitigation.	Ancillary
6/4b	Temporary working space and access to facilitate	Work No. 115

	realignment of Drove Lane and tie in to the new Winthorpe Roundabout.	
6/6a1	Temporary working space for environmental mitigation.	Ancillary
6/6c	Temporary storage and lay-down area to facilitate construction of new Winthorpe Roundabout.	Work No. 111
6/6c1	Temporary working space for environmental mitigation.	Ancillary
6/6d	Temporary working space for environmental mitigation.	Ancillary
6/7c	Temporary storage, lay-down area, access and working area to facilitate construction of new Winthorpe Roundabout and the construction of an temporary access track.	Work No. 120 Work No. 117
6/8a	Temporary access needed for construction of new signage.	Work No. 121
Land Plans – Sheet 7		
7/2b	Temporary access and working room to facilitate the construction of an access track and floodplain compensation area.	Work No. 122 Work No. 125

SCHEDULE 8 HEDGEROWS AND TREES

Articles 45 and 46

PART 1 REMOVAL OF HEDGEROWS

(1) <i>Reference No. (Location of hedgerow)</i>	(2) <i>Work to be carried out</i>	(3) <i>Relevant part of the authorised development</i>
Tree Protection Plans – Sheet 2		
Tree Reference H263 (Mixed Hedgerow) Newark Relief Road Farndon Roundabout Newark Nottinghamshire	Fell a section of the hedge	Work Nos. 2 and 10
Tree Reference H267 (Mixed Hedgerow) Newark Relief Road Farndon Roundabout Newark Nottinghamshire	Fell a section of the hedge	Work Nos. 2 and 10
Tree Protection Plans – Sheet 5		
TPO/11/00099 Tree Reference H237 (Hawthorn) Newark Relief Road Farndon Roundabout to Nether	Fell a section of the hedge	Work Nos. 4, 23 and 24

Lock Bridge Newark Nottinghamshire		
Tree Protection Plans – Sheet 7		
TPO/11/00099 Tree Reference H178 (Blackthorn) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the hedge	Work Nos. 34, U5 and U6
TPO/11/00099 Tree Reference H212 (Mixed Hedgerow) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the hedge	Work Nos. 36, 37 and U6
Tree Protection Plans – Sheet 10		
Tree Reference H108 (Mixed Hedgerow) Newark Relief Road Cattle Market Roundabout to Brownhills Roundabout Newark Nottinghamshire	Fell hedge	Work No. 56
Tree Protection Plans – Sheets 11 and 12		
Tree Reference H087 (Mixed Hedgerow) Newark Relief Road Cattle Market Roundabout to Brownhills Roundabout Newark Nottinghamshire	Fell a section of the hedge	Work Nos. 76, 89 and 90
Tree Reference H091 (Hawthorn) Newark Relief Road Cattle Market Roundabout to Brownhills Roundabout Newark Nottinghamshire	Fell hedge	Work Nos. 76 and 79
Tree Protection Plans – Sheet 13		
Tree Reference H018 (Mixed Hedgerow) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell hedge	Work No. 100
Tree Reference H021 (Mixed Hedgerow)	Fell hedge	Work Nos. 93 and 94C

Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire		
TPO/11/00100 Tree Reference H027 (Mixed Hedgerow) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell hedge	Work Nos. 100, 101, 103, U21 and U23
Tree Reference H034 (Mixed Hedgerow) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell a section of the hedge	Work Nos. 76 and 100
Tree Reference H060 (Hawthorn) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell hedge	Work No. 104
Tree Reference H063 (Mixed Hedgerow) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell hedge	Work No. 104
Tree Protection Plans – Sheet 14		
Tree Reference H007 (Mixed Hedgerow) Winthorpe Roundabout Newark Nottinghamshire	Fell hedge	Work Nos. 109 and 113
Tree Reference H008 (Mixed Hedgerow) Winthorpe Roundabout Newark Nottinghamshire	Fell hedge	Work Nos. 108, 110 and 113
Tree Reference H010 (Hawthorn) Winthorpe Roundabout Newark Nottinghamshire	Fell a section of the hedge	Work Nos. 113 and 119
Tree Reference H011 (Hawthorn) Winthorpe Roundabout	Fell hedge	Work Nos. 115, 117 and 119

Newark Nottinghamshire		
Tree Reference H013 (Mixed Hedgerow) Winthorpe Roundabout Newark Nottinghamshire	Fell hedge	Work Nos. 94C, 100 and 108
Tree Reference H014 (Mixed Hedgerow) Winthorpe Roundabout Newark Nottinghamshire	Fell a section of the hedge	Work Nos. 94C and 105
Tree Reference H017 (Hawthorn) Winthorpe Roundabout Newark Nottinghamshire	Fell a section of the hedge	Work Nos. 93 and 94C
Tree Reference H063 (Mixed Hedgerow) Winthorpe Roundabout Newark Nottinghamshire	Fell hedge	Work No. 104
Tree Reference H079 (Mixed Hedgerow) Winthorpe Roundabout Newark Nottinghamshire	Fell hedge	Work No. 104
Tree Reference H996 (Hawthorn) Winthorpe Roundabout Newark Nottinghamshire	Fell a section of the hedge	Work No. 109
Tree Protection Plans – Sheets 17 and 20		
Tree Reference H1010 (Hawthorn) Land to the West of the A617 Kelham Nottinghamshire	Fell a section of the hedge	Work No. 122, 123, 124 and 125
Tree Reference H1011 (Hawthorn) Land to the West of the A617 Kelham Nottinghamshire	Fell a section of the hedge	Work Nos. 122 and 125
Tree Reference H1012 (English Elm) Land to the West of the A617 Kelham Nottinghamshire	Fell a section of the hedge	Work Nos. 123 and 125
Kelham Conservation Area Tree Reference H1013 (Mixed Broadleaved) Land to the West of the A617 Kelham	Fell a section of the hedge	Work Nos. 124, 125, U29, U31, U32 and U33

Nottinghamshire		
Tree Reference H1022 (Hawthorn) Land to the West of the A617 Kelham Nottinghamshire Area	Fell hedge	Work Nos. 123 and 125

PART 2

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) <i>Reference and description from confirmed Tree Preservation Order</i>	(2) <i>Work to be carried out</i>	(3) <i>Relevant part of the authorised development</i>
Tree Protection Plans – Sheet 6		
TPO/11/00099 Tree Reference G234 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the group	Work No. 28
TPO/11/00099 Tree Reference G235b (Common Ash) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Work No. 26
TPO/11/00099 Tree Reference G236 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell group of trees	Work No. 26
TPO/11/00099 Tree Reference G277 (Common Ash) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell group of trees	Work Nos. 26 and 27
TPO/11/00099 Tree Reference G283 (Common Ash) Newark Relief Road Farndon Roundabout to Nether	Fell group of trees	Work Nos. 26 and 27

Lock Bridge Newark Nottinghamshire		
TPO/11/00099 Tree Reference T371 (Common Ash) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Category U – fell for reasons of sound arboricultural management
Tree Protection Plans – Sheet 7		
TPO/11/00099 Tree Reference G165 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the group	Work Nos. 42 and U8
TPO/11/00099 Tree Reference G166 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell group of trees	Work Nos. 38 and 42
TPO/11/00099 Tree Reference G168 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell group of trees	Work Nos. 38 and 42
TPO/11/00099 Tree Reference G169 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell group of trees	Work Nos. 34, 38 and 39A
TPO/11/00099 Tree Reference G170 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell group of trees	Work No. 38
TPO/11/00099	Fell a section of the group	Work Nos. 38 and 42

Tree Reference G171 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire		
TPO/11/00099 Tree Reference T173 (Common Ash) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Category U – fell for reasons of sound arboricultural management
TPO/11/00099 Tree Reference G179 (Common Ash) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the group	Work Nos. 29, 34, U5 and U6
TPO/11/00099 Tree Reference G184 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell group of trees	Work Nos. 33, 34, U5 and U6
TPO/11/00099 Tree Reference G193 (Crack Willow) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the group	Work Nos. 29, 30, 31 and 32
TPO/11/00099 Tree Reference G218 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the group	Work Nos. 36, 37 and U7
Tree Protection Plans – Sheet 8		
TPO/11/00099 Tree Reference G131 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge	Fell a section of the group	Work Nos. 54 and 55

Newark Nottinghamshire		
TPO/11/00099 Tree Reference W133 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the group	Work Nos. 52, 54 and 55
TPO/11/00099 Tree Reference T137 (Common Ash) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Work Nos. 33, 39F, 52 and 54
TPO/11/00099 Tree Reference G138 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Work Nos. 33, 39F and 52
TPO/11/00099 Tree Reference G140 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Work No. 33, 52 and 56
TPO/11/00099 Tree Reference G141 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell a section of the group	Work Nos. 54, 56 and 57
TPO/11/00099 Tree Reference G142 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell group of trees	Work Nos. 56, 58, 60 and 61
Tree Protection Plans – Sheets 8 and 9		
TPO/11/00099 Tree Reference G143 (Mixed	Fell a section of the group	Work Nos. 60 and 61

Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire		
TPO/11/00099 Tree Reference G143 (Mixed Species) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Work Nos. 60 and 61
Tree Protection Plans – Sheet 9		
Newark Conservation Area Tree Reference T350 (Apple) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Work Nos. 62 and 63
TPO/11/00099 Tree Reference T145 (Common Ash) Newark Relief Road Farndon Roundabout to Nether Lock Bridge Newark Nottinghamshire	Fell single tree	Work Nos. 56, 60 and 61
Tree Protection Plans – Sheet 10		
TPO/11/00100 Tree Reference G103 (Mixed Species) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell a section of the group	Work Nos. 74 and U16
TPO/11/00100 Tree Reference T113 (White Poplar) Land To The North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work No. 56
Tree Protection Plans – Sheet 11		
TPO/11/00100 Tree Reference T084 (Sycamore) Land To the North-east of South Airfield Farm Lincoln Road	Fell single tree	Work Nos. 81, 82, U17, U18, U19 and U20

Winthorpe Nottinghamshire		
TPO/11/00100 Tree Reference G085 (Mixed Species) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell a section of the group	Work Nos. 76, 81, 82, 85, U17, U18, U19 and U20
TPO/11/00100 Tree Reference T086 (Common Ash) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 79, 80, 85 U17, U18, U19 and U20
Tree Protection Plans – Sheet 12		
TPO/11/00100 Tree Reference T082 (Horse Chestnut) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work No. 89
TPO/11/00100 Tree Reference T081 (Common Ash) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 81, 82, U18, U19 and U20
TPO/11/00100 Tree Reference G083 (Mixed Species) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell a section of the group	Work Nos. 81, 82, 87, 88, U17, U18, U19 and U20
Tree Protection Plans – Sheet 13		
TPO/11/00100 Tree Reference G024 (Mixed Species) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell a section of the group	Work Nos. 100, 103, U21 and U23
TPO/11/00100	Fell single tree	Work Nos. 93, 94C, 100,

Tree Reference G024b (Sycamore) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire		103, U21 and U23
TPO/11/00100 Tree Reference G024c (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference G024d (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference G024f (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference G024i (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference G024j (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference G024k (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23

TPO/11/00100 Tree Reference G024l (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference G024p (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference G024q (Corsican Pine) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference G024t (Common Oak) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference T025 (Common Horse Chestnut) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00100 Tree Reference T026 (Common Oak) Land To the North-east of South Airfield Farm Lincoln Road Winthorpe Nottinghamshire	Fell single tree	Work Nos. 93, 94C, 100, 103, U21 and U23
TPO/11/00226 and Winthorpe Conservation Area Tree Reference G900 (Scots Pine) Winthorpe Hall Gainsborough Road Winthorpe	Prune tree	Work Nos. 93 and 94B

SCHEDULE 9

PROTECTIVE PROVISIONS

Article 54

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in that 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 water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works at future date) of that Act(e),

and includes a sludge main, disposal main (within the meaning of section 219(f) (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;

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- (a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by section 108 of, and 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(2) 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) and section 56 of, and paragraph 90 of Schedule 7 to, the Water Act 2014 (c. 21).
 - (e) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37); section 42(3) of the Flood and Water Management Act 2010 (c. 29); and sections 11(1) and (2) and 56 of, and paragraphs 2 and 91 of Schedule 7 to, the Water Act 2014 (c. 21).
 - (f) There are amendments to section 219 which are not relevant to this Order.

“Cadent” means Cadent Gas Limited (company number 10080864), whose registered office is at Pilot Way, Ansty, Coventry, CV7 9JU, and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 (introductory) of the Gas Act 1986(a);

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” 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 the works to be executed; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986 except for Cadent;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) 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 19 (permanent stopping up of highways and private means of access & provision of new highways and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary alteration, diversion, prohibition and restriction of the use of streets under the powers conferred by article 18 (temporary alteration, diversion, prohibition and restriction of the 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 24 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

(a) 1986 c.44.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3) afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) If 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 57 (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 57 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the

undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 57 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any

new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 57 (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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(7) 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 (8) excuse the undertaker from liability under the provisions of sub-paragraph (6).

(8) Nothing in sub-paragraph (6) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(9) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such

consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

11.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker’s undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) 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

12. For the protection of any operator, the following provisions have effect unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications, networks and services) of Part 2 (networks, services and the radio spectrum) 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 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) (infrastructure system) of that code; and

“operator” means the operator of an electronic communications code network.

14.—(1) The exercise of the powers conferred by article 42 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

(a) 2003 c.21.

(b) See section 106 of the 2003 Act, which was amended by section 4(4) to (9) of the Digital Economy Act 2017 (c.30). See also Schedule 3A to the 2003 Act, which was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(2) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(4) 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) 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 57 (arbitration).

(6) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(7) 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 AS GAS UNDERTAKER

Application

15. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

16. 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 (company number 10080864), whose registered office is at Pilot Way, Ansty, Coventry, CV7 9JU, and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 (introductory) 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(a) (licensing of public gas transporters) of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” has the same meaning as in Paragraph 1 of Part 1 of Schedule 2 (Requirements) of this 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 conditions, 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 undertaker and Cadent 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 the 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, requires 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 have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use, improve, landscape, preserve, decommission, refurbish or replace;

“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 subparagraph 21(2) (removal of apparatus) or otherwise; or

(a) Section 7 was substituted by the Gas Act 1995 (c.45) and the term “gas transporter” was substituted by section 76(2) of Part V of the Utilities Act 2000 (c. 27).

- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 21(2) (removal of apparatus) or otherwise.

On Street apparatus

17.—(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) 18 (apparatus of Cadent in stopped up streets), 23 (retained apparatus: protection of Cadent), 24 (expenses) and 25 (indemnity); and
- (b) where sub-paragraph (2) applies, paragraphs 21 (removal of apparatus) and 22 (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 24 (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

18.—(1) Where any street is stopped up under article 19 (permanent stopping up and restriction of use of streets and private means of access), 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 21 (removal of apparatus).

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 18 (temporary alteration, diversion, prohibition and restriction of use of street), 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 building

19. The undertaker must exercise the powers conferred by article 24 (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

20.—(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) 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 23 (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 21 (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

21.—(1) If in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 20 (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's satisfaction (taking into account paragraph 22(1) (facilities and rights for alternative apparatus)) 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

22.—(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) 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 29 (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

23.—(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 15 to 17 and 20 to 22 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 21(1) (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 59 (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

24.—(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 paragraph 21(1) (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; and
- (g) any watching brief pursuant to sub-paragraph 23(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 29 (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

25.—(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 24 (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) 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 Cadent, its officers, servants, contractors or agents; and
- (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 12 (consent to transfer benefit of the Order),
- (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

26. Except where 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

27.—(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 paragraph 21(2) (removal of apparatus) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 23 (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

28. If in consequence of any agreement reached in accordance with paragraph 20(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

29. Save for difference or disputes arising under paragraph 21(2) and 21(4) (removal of apparatus) and 23(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 57 (arbitration).

Notices

30. Notwithstanding article 56 (service of notices) any plans submitted to Cadent by the undertaker pursuant to paragraph 23(1) (retained apparatus: protection of Cadent) must be sent by email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as by 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 RAILWAY INTERESTS

31. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 46 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

32. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment.

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works.

33.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(a) 1993 c.43. Section 8 was amended by Part I of Schedule 2, paragraph 4 of Schedule 17 and Part IV of Schedule 31 to, the Transport Act 2000 (c.38), by section 16(5) of, and paragraph 3 and 5 of Schedule 2 to, the Railways and Transport Safety Act 2003 (c.20), by sections 1 and 60 of, and paragraph 43(3) and 4(b) of Schedule 1 and Part 1 of Schedule 13 to, the Railways Act 2005 (c.14) and Schedule 1 of S.I. 2015/1682.

(b) 2006 c.46.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

34.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 5 (development consent etc. granted by the Order);
- (b) article 6 (maintenance of authorised development);
- (c) article 23 (discharge of water);
- (d) article 25 (authority to survey and investigate the land);
- (e) article 26 (compulsory acquisition of land);
- (f) article 29 (compulsory acquisition of rights and imposition of restrictive covenants);
- (g) article 30 (private rights over land);
- (h) article 31 (power to override easements and other rights);
- (i) article 38 (acquisition of subsoil or airspace only);
- (j) article 40 (temporary use of land for carrying out the authorised development);
- (k) article 41 (temporary use of land for maintaining the authorised development);
- (l) article 42 (statutory undertakers);
- (m) article 45 (felling or lopping of trees and removal of hedgerows);
- (n) article 46 (trees subject to tree preservation orders, etc.);
- (o) the powers conferred by section 11(3)(a) (powers of entry) of the 1965 Act;
- (p) the powers conferred by section 203 (power to override easements and other rights) of the Housing and Planning Act 2016(b);
- (q) the powers conferred by section 172(c) (right to enter and survey land) of the Housing and Planning Act 2016; and
- (r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271(d) or 272(e) of the 1990 Act, article 42 (statutory undertakers), article 31 (power to override easements and other rights) or article 30 (private rights over land), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(a) Section 11(3) was amended by paragraph 6 of Schedule 14 to the Housing and Planning Act 2016 (c.22) and by paragraph 64 of S.I. 2009/1307.

(b) 2016 c.22. Section 203 was amended by section 37(2) of the Neighbourhood Planning Act 2017 (c.20) and paragraph 5(2) of Schedule 20 to the Environment Act 2021 (c.30).

(c) 2016 c.22. Section 172 was amended by section 26(8)(b) of the Neighbourhood Planning Act 2017 (c. 20).

(d) Section 271, there are amendments to this section which are not relevant to this Order.

(e) Section 272 was amended by paragraph 103 (1) and (2) of Schedule 17 to the Communications Act 2003 (c.21). There are other amendments to this section which are not relevant to this Order.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

35.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 14 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

36.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 35(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 35;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and

- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

37. Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

38. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

39. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

40.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 35(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 41(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

41. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 35(3) or in constructing any protective works under the provisions of

paragraph 35(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

42.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 35(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 35(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 35(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the

testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 36.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 46(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 41(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 57 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

43. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

44. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

45. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice

of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

46.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 34 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; and
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must –

- (a) give the undertaker reasonable written notice of any such claims or demands
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

47. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 46) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

48. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

49. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

50. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

51. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 12 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

52. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 55 (certification of documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

53. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 42(11)) the provisions of article 57 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, 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) to the President of the Institution of Civil Engineers.

PART 5

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

Application

54. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

Interpretation

55. In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2024) or any updates or amendments thereto;

“Construction” in relation to any Specified Work or Protective Work, includes:

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work; and “Construct” and “Constructed” have corresponding meanings;

“Canal & River Trust’s Network” means the Canal & River Trust’s network of waterways;

“Detriment” means any damage to the Waterway or any other property of the Canal & River Trust’s Network caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes:

- (a) any material obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the Waterway (including towing paths) unless such interference is authorised by this Order or otherwise agreed with the Canal & River Trust;
- (b) the erosion of the bed or banks of the Waterway, or the impairment of the stability of any works, lands or premises forming part of the Waterway;
- (c) the deposit of materials or the siltation of the Waterway so as to damage the Waterway;
- (d) the pollution of the Waterway;
- (e) any significant alteration in the water level of the Waterway, or significant interference with the supply of water thereto, or drainage of water thereon;
- (f) any harm to the ecology of the Waterway (including any adverse impact on any site of special scientific interest comprised in the Canal & River Trust’s Network); and
- (g) any material interference with the exercise by any person of rights over Canal & River Trust’s Network;

“the Engineer” means an engineer appointed by the Canal & River Trust for the purpose in question;

“Plans” includes navigational risk assessments, topographical surveys, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“Practical Completion” means practical completion of all of the Specified Work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expressions “practically complete” and “practically completed” are to be construed accordingly;

“Prior Notice” means a minimum of 6 weeks’ prior notice;

“Protective Works” means a work considered under paragraph 58 (approval of plans, protective works etc.);

“Specified Work” means so much of any authorised development (including any temporary works) as defined in article 2 of this Order that is situated upon, across, under, over or within 15 metres of, or may in any reasonable way affect, the Waterway; and

“the Waterway” means each and every part of the River Trent within the Order limits, and any works, lands or premises within the Order limits belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with Canal & River Trust’s Network and/or its statutory functions.

56. Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the Protective Works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply.

Powers requiring the Canal & River Trust's Consent

57.—(1) Article 10(1)(b) and 10(2) (in respect of vertical deviations only) (limits of deviation) shall not apply in relation to the Waterway unless such exercise is with the consent of the Canal & River Trust.

(2) Save as authorised by the powers conferred by this Order the undertaker must not materially obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(3) The undertaker must not exercise any power conferred by this Order to discharge water into the Waterway under article 23 (discharge of water) unless such exercise is with the consent of the Canal & River Trust **PROVIDED THAT** such consent shall not be required where the undertaker demonstrates to the Engineer that the maximum discharge velocity of such discharge is less than or equal to 0.3 metres per second.

(4) The undertaker must not exercise any power conferred by this Order to interfere with the existing supply of water to or the drainage of water from the Waterway unless such exercise is with the consent of the Canal & River Trust.

(5) The undertaker must not exercise the powers conferred by article 25 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the Waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The undertaker must not exercise any power conferred by article 26 (compulsory acquisition of land), article 29 (compulsory acquisition of rights and imposition of restrictive covenants), 38 (acquisition of subsoil or airspace only) or 42 (statutory undertakers) in respect of the Canal & River Trust's interests in the Waterway, except with the consent of the Canal & River Trust.

(7) The undertaker must not exercise any power conferred by article 40 (temporary use of land for carrying out the authorised development), article 41 (temporary use of land for maintaining the authorised development) or article 45 (felling or lopping of trees and removal of hedgerows) in respect of the Waterway unless such exercise is with the consent of the Canal & River Trust.

(8) Without prejudice to sub-paragraphs (1) to (7) (inclusive) the undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, the Canal & River Trust's Network, or extinguish any existing rights of the Canal & River Trust in respect of any third party property, except with the consent of the Canal & River Trust.

(9) The consent of the Canal & River Trust pursuant to (1) to (8) (inclusive) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (Requirements).

(10) The undertaker must not under the powers of this Order do anything which would directly result in the Waterway being incapable of being used or maintained or which would affect the safe operation of the Canal & River Trust's Network, in the Canal & River Trust's reasonable opinion.

(11) This paragraph 57 does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property **PROVIDED THAT** in such circumstances the undertaker must notify the Canal & River Trust as soon as reasonably practicable.

Approval of Plans, Protective Works etc.

58.—(1) The undertaker must before commencing Construction of any Specified Work supply to the Canal & River Trust proper and sufficient Plans of that work (on the Canal & River Trust's own forms or as otherwise agreed in writing) having regard to the Canal & River Trust's Code of Practice, together with such further particulars as the Canal & River Trust may within 21 days of initial receipt of such plans reasonably require for the approval of the Engineer.

(2) The approval of the Engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 35 days after all such Plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the Engineer has not given notice of the approval or disapproval of those Plans and the grounds of such disapproval the Engineer is deemed to have approved the Plans as submitted.

(3) Construction of a Specified Work must not commence until Plans of that work have been approved in writing by the Engineer, deemed approved pursuant to sub-paragraph (2), or settled by arbitration.

(4) When signifying approval of the Plans the Engineer (or the arbitrator) may specify (in relation to land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act)—

- (a) any Protective Work (whether temporary or permanent) which in the reasonable opinion of the Engineer should be carried out before the commencement of a Specified Work to prevent Detriment; and
- (b) such other requirements as may be reasonably necessary to prevent Detriment.

(5) Any Protective Work required under this paragraph must be:

- (a) constructed by the undertaker or by the Canal & River Trust at the undertaker's request within 28 days of notification of a Protective Work by the Engineer in accordance with sub-paragraph (4)(a) or in accordance with an agreed programme to be agreed within 14 days of notification of a Protective Work by the Engineer in accordance with paragraph (4)(a); and
- (b) the undertaker must not commence the Construction of a Specified Work unless approved by the Engineer (such approval to be provided within 14 days of request by the undertaker) or until the Engineer has notified the undertaker that the Protective Work has been Practically Completed to the Engineer's reasonable satisfaction (such approval to be provided within 14 days of notification of completion of the Protective Work by the undertaker).

(6) The withholding of an approval of the Engineer under this paragraph 58 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (Requirements) to this Order.

(7) The undertaker must pay to the Canal & River Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any Specified Works or any permanent Protective Works provided under sub-paragraph (3) and sub-paragraph (5) respectively above, for which the Canal & River Trust is liable to maintain, and of carrying out any additional dredging of the Waterway reasonably necessitated by the exercise of any of the powers under this Order **PROVIDED THAT** if the cost of maintaining the Waterway, or of works of renewal of the Waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(8) In the event that the undertaker fails to Practically Complete the Construction of, or part of, a Specified Work the Canal & River Trust may, if it is reasonably required in order to avoid Detriment, serve on the undertaker a notice in writing requesting that Construction be Practically Completed. Any notice served under this sub-paragraph must state the works that are to be Practically Completed by the undertaker and lay out a reasonable timetable for the works' Practical Completion. If the undertaker fails to comply with this notice within 35 days) or the timescales set out in the timetable, whichever is the longer), the Canal & River Trust may undertake Protective Works to make safe the area and avoid Detriment and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of Works

59.—(1) Save in respect of any works or plans already agreed in writing between the undertaker and the Canal & River Trust prior to the date of this Order, and without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

(2) the design and appearance of any Specified Works and/or any Protective Works;

(3) the environmental effect of any Specified Works and/or any Protective Works, having regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways.

(4) amendments or alterations to any management plan or action plan as may be approved pursuant to Schedule 2 of this Order in respect of or in connection with a Specified Work or a Protective Work; and

(5) the structural monitoring plan in respect of the Fiddler's Elbow Bridge (as identified in the First Iteration Monitoring Plan (Ref: CH2)).

Fencing

60. Where so required by the Engineer the undertaker must to the reasonable satisfaction of the Engineer fence off a Specified Work or a Protective Work or take such other steps as the Engineer may require to be taken for the purpose of separating a Specified Work or a Protective Work from the Waterway, whether on a temporary or permanent basis or both.

Notice of Works

61.—(1) Without prejudice to sub-paragraphs (2) and (3), the undertaker must give to the Engineer 30 days' notice of its intention to commence the Construction of any of the Specified Works or Protective Works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication notices bringing those works to the attention of users of the Canal & River Trust's Network.

(2) Unless Prior Notice is given by the undertaker to the Canal & River Trust, the undertaker must not completely close to navigation any part of the Waterway between—

(a) 10pm and 6am during the months April to October; or

(b) 7pm and 7am during the months November to March.

(3) The undertaker will not construct or, to the extent that it would affect the Waterway or any function of the Canal & River Trust, maintain any specified work outside of the timescales provided for within subparagraph (2) unless otherwise agreed in writing between the undertaker and the Canal & River Trust in accordance with the notice periods contained within the Code of Practice.

(4) This paragraph 61 does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property **PROVIDED THAT** in such circumstances the undertaker must notify the Canal & River Trust as soon as reasonably practicable.

Lighting

62. Provided that such lighting does not result in any adverse environmental effects (as assessed and evidenced by the undertaker to the Canal & River Trust's reasonable satisfaction), the undertaker must provide and maintain as its own expense in the vicinity of the Specified Works or Protective Works such temporary lighting and such signal lights for the control of navigation as

the Engineer may reasonably require during the Construction or failure of the Specified or Protective works.

Survey of Waterway

63.—(1) Before the commencement of the initial Construction of any part of the Specified Works and again following Practical Completion of the Specified Works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified surveyor (the “Surveyor”), to be approved by the Canal & River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the Waterway (“the Survey”) of so much of the Waterway and of any land and existing works of the undertaker which may provide support for the Waterway as will or may be affected by the Specified Works.

(2) For the purposes of the Survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the Surveyor for access to the site of the Specified Works and to any land and existing works of the undertaker which may provide support for the Waterway as will or may be affected by the Specified Works; and
- (b) supply the Surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the Specified Works or the method of their Construction.

(3) The reasonable costs of the Survey must include the costs of any dewatering or reduction of the water level of any part of the Waterway (where reasonably required) which may be effected to facilitate the carrying out of the Survey and the provisions of this Part will apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were Specified Works.

(4) Copies of the Survey must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

Construction of Specified Works

64.—(1) Any Specified Works or Protective Works must, when commenced, be constructed—

- (a) as soon as reasonably practicable in accordance with the Plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraphs 58 (approval of plans, protective works, etc.) and 59 (design of works) of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the Engineer;
- (c) in such manner as to cause as little Detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the Waterways (including members of, and those authorised by, the Newark & District Piscatorial Federation), except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;
- (e) in such a manner as to ensure that no materials are discharged or deposited into the Waterway; and
- (f) in compliance with the Code of Practice where relevant.

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the Waterway so as to impede or prevent (whether by reducing the width of the Waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(a) to maintain the Waterway.

(a) 1968 c. 73. Sections 105(1) and (2) were amended by paragraph 39 of Schedule 2 to S.I. 2012/1659.

(3) Following the Practical Completion of the Construction of the Specified Works the undertaker must restore the Waterway to a condition (save in respect of the Specified Works themselves) no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust.

(4) In assessing whether the condition of the Waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3) the Canal & River Trust and the undertaker must take account of any Survey issued pursuant to paragraph 63 (survey of waterway) and any other information agreed between them pursuant to this Part.

Prevention of Pollution

65. The undertaker must not in the course of constructing a Specified Work or a Protective Work or otherwise in connection therewith do or permit anything which may result in the pollution of the Waterway or the deposit of materials therein and must take such steps as the Engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to Work – Provision of Information

66.—(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow reasonable facilities to the Engineer for access to a Specified Work during its Construction; and
- (b) supply the Engineer with all such information as the Engineer may reasonably require with regard to a Specified Work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their Construction; and
- (b) supply the undertaker with such information as it may reasonable require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

Alterations to the Waterway

67.—(1) If during the Construction of a Specified Work or a Protective Work or during a period of twenty four (24) months after the Practical Completion of those works any alterations or additions, either permanent or temporary, to the Waterway are reasonably necessary in consequence of the Construction of the Specified Work or the Protective Work in order to avoid Detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the Waterway is reduced in consequence of any such alterations or additions where reasonably justified a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

Maintenance of Works

68.—(1) If at any time after the Practical Completion of a Specified Work or a Protective Work, not being a work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the Specified

Work or Protective Work appears to be such that the work is causing or likely to cause Detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such Detriment.

(2) The Canal & River Trust shall at all reasonable times afford reasonable access to its land or premises as is required by the undertaker in order to take such steps as are required by sub-paragraph (1).

Repayment of the Canal & River Trust's Fees, etc.

69.—(1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any Protective Works under the provisions of paragraph 58 (approval of plans, protective works etc.).
- (b) in respect of the approval by the Engineer of Plans submitted by the undertaker and the supervision by the Engineer of the Construction or repair of a Specified Work and any Protective Works;
- (c) in respect of the employment during the Construction of the Specified Works or any Protective Works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the Construction or failure of the Specified Works or any Protective Works;
- (d) in bringing the Specified Works or any Protective Works to the notice of users of the Canal & River Trust's Network; and
- (e) in constructing and/or carrying out any measures related to any Specified Works or Protective Works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the Waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

Making Good of Detriment, Compensation and Indemnity etc.

70.—(1) If any Detriment is caused by the Construction or failure of the Specified Works or the Protective Works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such Detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the Detriment.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

- (a) by reason of the Construction of a Specified Work or a Protective Work of the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the Construction of a Specified Work or Protective Work; and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (2)(a) and (2)(b).

(3) The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with Plans approved by the Engineer or in accordance with any requirement of the Engineer or under the Engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any Detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The aggregate cap of the undertaker's gross liability for consequential losses under this Part shall be limited to £50,000,000.00 (fifty million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

Arbitration

71. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 57 (arbitration) of this Order.

Capitalised Sums

72. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the Waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

As-Built Drawings

73. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as-built drawings of any Specified Works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the Waterway.

PART 6

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

Application

74. For the protection of National Grid Electricity Distribution (East Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and National Grid Electricity Distribution (East Midlands) plc, have effect.

Interpretation

75.—(1) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by NGED;

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“NGED” means National Grid Electricity Distribution (East Midlands) plc (Company No. 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the Electricity Act 1989(b);

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“undertaker” means National Highways Limited (Company No. 09346363) or such other person as has the benefit of the Order; and

other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

76. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition except by agreement

77. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

78.—(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 apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land or gain access to it must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGED written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(a) 1989 c. 29. The definition of “electricity plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

(b) Section 6 was amended by section 30 of Part IV of the Utilities Act 2000 (c.27); section 136(1) and (2) Chapter 1 and 145(5), (6) and (7) of Chapter 2 of Part 3, Paragraph 5 of Schedule 19, Part 1 of Schedule 23 of the Energy Act 2004 (c.20); paragraph 2 of Schedule 8 of the Climate Change Act 2008 (c.27); regulation 19 of Part 5 of the S.I. 2011/2704; Article 6 of Part 2 and Article 21 of Part 3 of S.I. 2012/2400; paragraph 1(3)(a) and (b) of Schedule 1 of Nuclear Energy (Financing) Act 2022 (c.15); and section 166(4) to (9) of Part 5 and section 186(7) to (9) of Part 6 of the Energy Act 2023 (c.52).

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 83.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 83, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 83; and
- (b) without unnecessary delay under the superintendence, if given and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection of such apparatus or alternative apparatus.

Facilities and rights for alternative apparatus

79.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of

the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as shall be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 83.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

80.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under sub-paragraph 5, the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the specified works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with NGED's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables* (2014), the Energy Network Association's *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding Danger from Overhead Power Lines* and the Health and Safety Executive's *HSG47 Avoiding Danger from Underground Services (Third Edition)* (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub-paragraph (2) and in consequence of the specified works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 78(2).

(7) Nothing in this paragraph (80) precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any specified works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

81.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the reasonable expenses reasonably incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any new connection or alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to NGED 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 NGED any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Liability

82.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NGED the undertaker is to—

- (a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and
- (b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

83.—(1) Article 57 (arbitration) shall apply to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) NGED's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 57.

SCHEDULE 10

DOCUMENTS TO BE CERTIFIED

Articles 2 and 55

(1) <i>Document</i>	(2) <i>Reference number</i>
Agricultural Land Plan	TR010065/EXAM/7.71
Archaeological Management Plan	TR010065/APP/6.8
Bat Box Specification	TR010065/EXAM/7.70
Barn Owl Nest Box Specification	TR010065/EXAM/7.69
Book of Reference	TR010065/APP/4.3
Classification of Roads Plans	TR010065/APP/2.9
Crown Land Plans	TR010065/APP/2.11
Engineering Plans and Sections	TR010065/APP/2.6
Environmental Masterplan	Figure 2.3 in TR010065/APP/6.2
Environmental Statement	TR010065/APP/6.1-6.3
First Iteration EMP	TR010065/APP/6.5
Flood Risk Assessment	Appendix 13.2 in TR010065/APP/6.3
Land Plans	TR010065/APP/2.2
Outline Traffic Management Plan	TR010065/APP/7.7
Pre-commencement Plan	TR010065/APP/6.9
Streets, Rights of Way and Access Plans	TR010065/APP/2.4
Traffic Regulation Measures Plans	TR010065/APP/2.7
Tree Protection Plans	TR010065/APP/2.13
Utilities Works Plans	TR010065/APP/2.10
Works Plans	TR010065/APP/2.3
Permanent Speed Limit Plans	TR010065/APP/2.8
Design Principles	Annex A of TR010065/APP/7.5
Special Category Land Plans	TR010065/APP/2.12

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises National Highways Ltd to undertake works to widen 6.5km of the existing single carriageway to a dual carriageway, to provide two lanes in each direction between Farndon and Winthorpe roundabouts near Newark-on-Trent and carry out all associated works.

The Order permits National Highways Ltd to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, engineering plans and sections, book of reference and environmental statement mentioned in this Order and certified in accordance with article 55 (certification of documents, etc.) may be inspected free of charge during working hours at National Highways, 2 Colmore Square, Birmingham B4 6BN.

APPENDIX D: CA & TP INFORMATION

Table D 1: CA, TP, Land and/ or Rights Objections

IP/AP	Nature of Objection		ExA Consideration
Adrian Peter Hatton	Interests	BoR Part 1 (Category 1)	The land is required for environmental mitigation maintenance and monitoring. The environmental mitigation includes flood compensation areas which also require new drainage culverts; the land is also necessary for the diversion of utilities. We have considered the necessity for and appropriateness of the flood compensation areas in the environmental considerations above and concluded that they are necessary and appropriate. The EA has engaged and concluded the FCAs are acceptable and the culverts to create linkages to the wider drainage network are acceptable given the stage in the design process. The land take is justified to facilitate the proposed development and provide necessary environmental mitigation and flood compensation, with the necessary access and diversion of utilities in the area. The ExA notes that the parties are continuing to negotiate on a side agreement which may result in TP of the interest but this is still to be concluded. Based on the final submissions of the parties, this is close to agreement with commercial matters being the final point to address.
	Plots	CA of all rights and interests: 7/4b, 7/4d, 7/4e, 7/2d. TP of: 7/2i, 7/4a, 7/4c.	
	Objection	Concerns are expressed about the Flood Compensation approach of the Applicant. Including the choice of areas, access, impact on minerals, flooding events, etc. The AP considers there is no requirement for permanent acquisition and Temporary Possession with land to be handed back for future management would suffice. The AP are prepared to reach a deal that does not leave Mr Hatton financially worse off. Objections are set out in RR-002 and RR-003. Mr Hatton	

IP/AP	Nature of Objection	ExA Consideration
		attended CAH2, the recordings of which are available at EV6-002 and EV6-003. Mr Hatton's final position at close of the examination is set out in REP9-005
	Status summary	The Applicant's Final position summary is set out in the Land Rights Tracker version 8 (REP8-018) and in which it states: Both parties are continuing to work towards a finalised agreement, the key outstanding matter is now one of compensation and confirmation of the final land plan on a by agreement basis. It is hoped that agreement can be reached by the end of the examination but if not, the parties will seek to reach a voluntary agreement within the post examination window ahead of any DCO decision. Negotiations continue to reach a side agreement. As there is no side agreement concluded before the conclusion of the examination, the applicant maintains the necessity to require the CA and TP of the interests as identified in the dDCO. It is normal practice for side agreements to include provisions for the acquiring body not to implement the CA provisions if the side agreement is concluded. The applicant has stated in its SoR (paragraph 5.3.7) in general terms that it will seek the least interference with parties land and interests and if agreements are reached which remove the necessity for CA it would not proceed with CA. The ExA is satisfied that acquisition of this land is necessary, proportionate and that there is compelling justification for CA and TP of the land and rights identified and that these should not be changed.

IP/AP	Nature of Objection		ExA Consideration
		The representations have not been withdrawn.	
Andrew Jonathan Fearn (in association with Newark Ransome and Marles Cricket Club). and Newark Ransome and Marles Cricket Club (Including Luc Chignell, Patrick John Burke & Robert Doncaster in association with Newark Ransome & Marles Cricket Club)	Interests	Part 1 (Category 1) Part 1 (Category 2) and Part 3 (interests clarified in RR-080 that individuals were trustees and that the Cricket Club was the owner).	The land interests to be affected would include temporary possession and the acquisition of rights by the creation of new rights or the imposition of restrictive covenants on the Cricket Club land. The parties have been in discussion with regard to easement/licence. This will be dependent on detailed design later in the process and engagement during the development of the second iteration EMP. The parties are engaging and appear to have made progress towards agreement, albeit this has not been reached or concluded by the close of the examination. The flood compensation areas and connections have been considered in the relevant sections above and we have concluded that they are necessary and appropriate. The ExA is satisfied that the land and interests identified in the BoR, land plans and dDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed. If lesser interference is agreed, the applicant in the SoR indicates it would only move to CA as a last resort.
	Plots	TP with rights to be permanently acquired: 3/5a, 3/2c, 3/7c, 3/7b.	
	Objection	Concerns raised relate to drainage and flooding, impact of access and maintenance track and boundary fencing. The full concerns and matters raised are set out in RR-080 . The representations have not been withdrawn.	
	Status Summary	The Applicant's Final position summary is set out in the Land Rights Tracker version 8	

IP/AP	Nature of Objection	ExA Consideration
	(REP8-018) and in which it states: Unlikely to reach agreement in all aspects before the end of the examination as some elements are dependent on the detailed design and further technical information. No permanent land acquisition required but easement/licence will be progressed as far as is possible at this stage and those discussions will continue beyond the examination. It is also noted that that valuers have agreed a way forward and that Heads of Terms and an offer to settle was issued in March 2025.	
James David Sumsion and Beth Anne Sumsion	Interests	Part 1 (Category 1)
	Plots	CA of all rights and interest: 6/6a, 6/6b, 6/6d1, 6/6a1. TP: 6/6c, 6/6c1, 6/6d, 6/6e.
	Objection	Concerns and objections to the interference with land rights are set out in RR-032 . These were
The SoR AS-108 at Appendix A sets out the purposes for which each plot of land is required to facilitate the construction operation and maintenance of the proposed development. The final position statements of the parties and the summary status from the final version of the Land Rights Tracker REP8-018 confirm that the parties are working to reach a voluntary agreement. This has not been able to be concluded as it is dependent on detailed designs of the		

IP/AP	Nature of Objection	ExA Consideration
	resubmitted as a written representation at REP2-057. Mr and Mrs Sumsion attended CAH2, the recordings of which are available at EV6-002 and EV6-003. A final position statement was submitted at DL9 REP9-007. The main areas of concern raised related to the extent of CA proposed, the justification for CA, whether lesser interference could suffice in terms of Temporary Possession with rights where necessary, rather than CA and this can be secured through a voluntary agreement. Concerns were also raised with the proposed new access arrangements and design given the Listed Building. Other matters raised include mineral rights, light and noise attenuation/ mitigation, and footway rights of way and access.	proposed development which have not yet come forward. The detailed design of the access has been addressed in the dDCO through the inclusion of Requirement 19 and which the Sumsions have indicated they support. Concerns remain from the Sumsions that a specific timetable should be introduced to ensure matters are moved forward expeditiously. The applicant however references the provisions of the requirement which secures the approval of the detailed design after consultation. The ExA is satisfied that requirement 19 is framed such that the works to the entrance cannot proceed without the detailed design having been submitted for approval and that it must be constructed in accordance with the approved design. In terms of the footway linkage with the Winthorpe roundabout, the streets rights of way and access plan REP4-002 has been updated and this forms part of the certified documents, this will ensure the linkage is part of the proposed development. The Sumsions maintain their objection as they note the land plans have not been updated to accord with the basis on which they are progressing the voluntary agreement. However, as noted by the applicant, the land plans will not be updated to reflect any private negotiations between

IP/AP	Nature of Objection	ExA Consideration
	Summary Status The Applicant's Final position summary is set out in the Land Rights Tracker version 8 (REP8-018) and in which it states: Significant progress has been made with provisional agreement in respect of alternatives to CA/TP. It is however unlikely that all matters will be agreed by the end of the examination as some are reliant on detailed design information. The parties are continuing to engage and seek agreement on a voluntary basis subject to further detailed design information. Likely to reach agreement after the examination window and before the DCO decision. The Applicant's case is detailed in its response to RRs REP1-009, its summary of oral submissions at CAH2 REP4-030, the recordings of CAH2, which are available at EV6-002 and EV6-003, and a response to the Sumsions' final position	parties unless and until such negotiations have concluded. The private agreement has not been concluded by the close of the examination and therefore the applicant retains its position in relation to the request for the CA and TP powers as set out in the documents. The applicant does comment that it is a standard practice for any private land agreement to preclude the applicant from exercising its compulsory acquisition powers after such an agreement has been completed and it expects the same to be the case here. The ExA has considered the impact of the proposed development on the heritage assets in the relevant section of the Report. We are satisfied that the effect is less than substantial and outweighed by the public benefits of the proposed development. We are further satisfied that the proposed extent of the land take as identified in this location is necessary and proportionate. Whilst guidance indicates that where voluntary agreement can be reached this should be progressed and CA should be the last option. There has been no concluded agreement. The applicant needs to have certainty that it can construct operate and maintain the proposed development and in the absence of a voluntary agreement, the CA powers are necessary and proportionate. The applicant has noted that should the private agreement be concluded, it would expect to include provisions to preclude the exercise of its CA powers. The ExA is satisfied that the land and interests identified in the BoR, land plans and dDCO are necessary and

IP/AP	Nature of Objection		ExA Consideration
		statement submitted at DL9 REP9-007 .	proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed.
Canal & River Trust (CRT)	Interests	Part 1 (Category 1) Part 1 (category 2) and Part 3	The applicant and CRT have been in detailed discussion and made significant progress towards resolving outstanding issues. However, at the close of the Examination, a voluntary agreement had not been concluded. Protective Provisions have been agreed between the parties and the agreed version included in the rDCO. Also the wording of article 58, which addresses temporary suspension of navigation in connection with the proposed development, has been agreed between the parties and the agreed wording is included in the rDCO. Given these points, the ExA is satisfied that there would not be serious detriment to CRT carrying out its undertaking as the Protective Provisions will safeguard any activities with the applicant. Article 58 places further safeguards in relation to navigation and suspension of activities. CRT is confident that agreement will be reached and do not see any impediment to ensuring and protecting its interests. Whilst agreement has not yet been reached and therefore the applicant needs the certainty to ensure it can construct operate and maintain the proposed development or removal of any relevant rights or apparatus, the ExA is satisfied that
	Plots	CA: 1/5n, 1/5o, 1/18b, 1/18c, 4/2f, 4/2f1, 4/2f2, 4/2i, 4/2j, 4/2l. TP: 1/5l, 1/5p, 1/18a, 1/18d, 4/2e, 4/2g, 4/2k, 4/2o, 4/2p, 4/2q. TP with rights permanently acquired: 1/5m, 1/18a1, 3/17a, 4/2a, 4/2b, 4/2c, 4/2d, 4/2h, 4/2m, 4/2n, 4/4a, 4/5a, 4/6a, 4/6b, 4/3a.	
	Objection	The CRT objection is set out in RR-009 . The applicant and CRT entered into a SoCG the final version of which was REP7-090 . CRT also responded to the ExA's first set of written questions in REP2-039 , responded to comments made	

IP/AP	Nature of Objection	ExA Consideration
	to ExQ1 in REP3-043, attended ISH1 and provided a written summary of its comments at REP4-043, responded to the ExA's further written questions ExQ2 at REP5-064 and provided comments at REP7-107 and answers to ExQ3 REP7-108. A final position statement was provided REP9-00x. CRT has agreed Protective Provisions with the applicant and which are included in the rDCO. CRT has agreed the wording of Article 58 included in the final rDCO in relation to navigation. The Trust has confirmed that the updated Book of Reference accurately describes the Trust's Category 2 interests over the access track, which are necessary to enable the Trust to access and maintain its assets on the east side of the River Trent in the vicinity of Nether Lock. The relevant Plot	the proposals are proportionate and necessary and would not prejudice the undertaker carrying out its undertaking without serious detriment. Moreover, we are satisfied that the extinguishment of rights is necessary for the purpose of carrying out the development to which the order relates. The ExA is satisfied that the land and interests identified in the BoR, land plans and dDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that the CA and TP provisions in the dDCO should not be changed.

IP/AP	Nature of Objection	ExA Consideration
	References (in respect of which National Highways has updated the BoR to reflect the Trust's interests) are 4/5n, 4/5o, 4/8a, 4/8b, 4/9a, 4/9b and 4/10a. The Trust confirmed that it will require access to Nether Lock throughout both the construction and operational phases of the project, whether via the right of way referenced in respect of the above plots or via an alternative agreed route. Both the Trust's and National Highways' respective surveyors are in discussions regarding this issue and neither party has identified any problem with the Trust's requirement for access to Nether Lock. The Trust is content that suitable arrangements can be agreed as part of a wider agreement between National Highways and the Trust regarding land interests and rights.	

IP/AP	Nature of Objection		ExA Consideration
	Status Summary	The applicant's final position is stated in the land Rights Tracker version 8 (REP8-018), and in which it is stated: Following a meeting on 31 March 2025 draft heads of terms will be issued for acquisition by agreement will be issued by 4 April 2025. Compensation discussions are ongoing. Awaiting final agreement from landowner in respect of plan for the reduction in the land to be permanently acquired. Likely to reach agreement after the examination window and before the DCO decision.	
Trustees of Thomas Brewer Charity (Including David Barthorpe, Lee Cammack, Neil Moran, Patricia Applewhite, Reverend Amanda	Interests	Part 1 (Category 1)	The land is required for environmental mitigation, utilities, construction of the proposed development and for inspecting maintaining and repairing the proposed development. The parties have entered into some dialogue with a potential to reach an agreement on acquisition. At the end of the examination, no agreement had been concluded.
	Plots	CA: 6/2a TP: 6/2b, 6/2d TP and rights to be permanently acquired: 6/2c	

IP/AP	Nature of Objection		ExA Consideration
Cartwright & Sue Masheder as Trustees of The Charity of Thomas Brewer)	Objection	Concerns relating to the impact on the charity and its assets initially identified in RR-069 . These were expanded upon in REP1-053 . Representatives of the Trustees also attended CAH2 the recordings of which are available at EV6-002 and EV6-003 .	The proposed CA is needed for the construction of Winthorpe roundabout temporary possession and Temporary possession with rights are required for environmental mitigation working space future maintenance and repair etc of the proposed development. The applicant has demonstrated the necessity of the land and its purposes in the SoR and appendix A. The ExA is satisfied that the land identified is proportionate and necessary. The applicant requires certainty that it can construct operate and maintain the proposed development and the interest sought are necessary for those matters. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed. If lesser interference is agreed the applicant in the SoR indicates it would only move to CA as a last resort.
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018) in which it is stated: An offer was made 12/11/24 in respect of acquisition by agreement. To date, a response has not been received to either accept or reject the offer. In the absence of any response, it is unlikely that matters will be agreed before the end of the examination. The applicant remains willing to reach agreement ahead the DCO decision. The applicant further notes that The Trustees of the Thomas	

IP/AP	Nature of Objection		ExA Consideration
		Brewer Charity attended the CA hearing on 03/12/2024. They raised questions around the use of the land required on a temporary basis with permanent rights. The project will be liaising directly with the affected party on this matter to outline the nature of these rights, which are required for utilities.	
Francis Michael Hare 6 th Earl of Listowel	Interests	Part 1 (Category 1)	The land is required for attenuation ponds and therefore in connection with the construction and operation of the proposed development. The land is necessary and proportionate.
	Plots	CA: 3/2k, 3/15a	
	Objection	Objection submitted under RR-070 . The AP wished to enter into acquisition by agreement. The purpose of the land is to be used for attenuation ponds which will require excavation concern was also expressed in terms of ensuring mineral rights were reflected in any agreement. Further comment was included in REP7-115 in respect of this AP indicating that it is close to	According to the applicant, the parties are in agreement and the AP has suggested heads of terms agreed with only minor matters outstanding. The applicant’s position statement suggests that acquisition by agreement may be concluded before the decision albeit this had not occurred by the close of the examination. The ExA is satisfied the land is necessary for the construction operation and maintenance of the proposed development and the extent is proportionate and necessary. The principle issues and justification are

IP/AP	Nature of Objection		ExA Consideration
		finalising Heads of Terms for an Option to dispose of the landowners land by agreement: Heads of Terms are agreed, however Lord Listowel’s solicitor is requesting we include in the Heads of Terms that an undertaking for their fees will be provided to cover legal costs. At REP9-012, it was noted that I refer to my Representation on behalf of The Right Honourable Francis Michael Earl of Listowel in connection with parcels 3/15a. We are content to remove this representation as we have an agreement for Option for sale to National Highways. As this only directly referenced plot 3/15a and the objection included 3/2k the objection was not taken to be withdrawn.	accepted and impacts on the water environment are addressed in the Report. Albeit acquisition by agreement may be forthcoming, the applicant needs certainty and it has justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed.
	Status Summary	The applicant’s final position is set out in the Land Rights Tracker version 8 (REP8-018),	

IP/AP	Nature of Objection	ExA Consideration
		and in which it is stated: All matters agreed and HoTs signed by both parties. Option agreement to be put in place beyond the examination but before the DCO decision.
Winthorpe Family Settlement 1990 (including Jacqueline Suzanna Caroline Spencer & Lachlan Alastair Stewart)	Interests	Part 1 (Category 1)
	Plots	CA: 5/7a, 5/7b, 5/7c, 6/1a, 6/1b. TP: 5/7d, 6/1c
	Objection	Objections were made in RR-077 , these included the extent of the land needed and justification, an expression that the landowner would be willing to provide land under licence and comments about other interests in the land.
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), in which it is stated: Draft heads of terms have been issued on
		Land and interests are required for construction, maintenance and operation of the proposed development as well as environmental mitigation, utilities works and working space for the proposed development as set out in appendix A of the SoR. Matters related to the need for environmental mitigation, drainage and footpaths are dealt with in the relevant sections of the Report. In summary, the ExA has concluded that the proposals for these matters are appropriate and necessary and are supported. Discussions are progressing with HoTs having been issued. Acquisition by agreement whilst progressing has not been secured by the close of the examination, although the applicant suggests this may well be concluded before the decision. Albeit acquisition by agreement may be forthcoming, the applicant needs certainty and it has justified the proposed interference with land and interests.

IP/AP	Nature of Objection		ExA Consideration
		28 March 2025. A response is awaited. It is likely that agreement will be reached after the examination window and before the DCO decision. It is further clarified that discussions include a sec 253 agreement as part of the acquisition by agreement.	The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed.
James Miller (Kelham) Limited	Interests	Part 1 (Category 1) and Part 1 (Category 2) and Part 3.	Land and interests are required for construction maintenance and operation of the proposed development as well as environmental mitigation, utilities works and working space for the proposed development as set out in appendix A of the SoR. The land includes land to be used for FCA. Matters related to the need for flood compensation the appropriateness and need for biodiversity and environmental mitigation (including BNG), the effect on agricultural land and farm enterprises and mineral extraction have been addressed and agreed with in the Report. Matters related to compensation are not within the remit of this decision and are for consideration elsewhere.
	Plots	CA: 1/5n, 1/5o, 1/19a, 1/19b, 2/1a, 3/15a. TP: 1/5l, 1/5p. TP and rights to be permanently acquired: 1/5m, 1/1r, 1/5n, 1/5o, 2/4a	
	Objection	Objections were submitted in RR-033 on behalf of James Miller (Kelham) Ltd owned by John Miller. REP1-051 provided comments on BNG issues.	

IP/AP	Nature of Objection	ExA Consideration
	Mr Miller attended OFH1 and made representations, the recordings of which are available at EV4-001, following which he submitted a written summary of his oral submissions, REP1-050. Mr Miller attended CAH2 and made representations the recordings of which are available at EV6-002 and EV6-003. Following which he submitted a written summary of his oral submissions, REP4-051. REP7-115 provided an update on his current position. REP9-008 was a final position statement which confirmed that the applicant and AP are in agreement to the disposal of the land parcels, however the acquiring authority has yet to agree the commercial package. Until this is agreed, we are not in a position to move forward. The land parcels included all	Matters related to detailed design will be addressed as the proposed development design evolves and can be addressed during the consideration of further details to be submitted under various requirements included within the rDCO. The parties are at an advanced position and close to completing acquisition by agreement or other appropriate terms with HoTs substantially agreed. Albeit acquisition by agreement may be forthcoming, the applicant needs certainty and it has justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed.

IP/AP	Nature of Objection	ExA Consideration
		land referenced in relation to John James Miller and James Miller (Kelham) Ltd. REP9-013 provides a further update but removes representation on behalf of James Miller (Kelham) Ltd in connection with parcels 3/15a (ONLY), and confirms that the representations on behalf of John Miller (Kelham) Ltd in connection with Land parcels 1/1r, 1/5l, 1/5m, 1/5n, 1/5o, 1/5p, 1/19a, 1/19b, 2/1a, 2/2a and 2/5b and also the representations in connection with John Miller (Objector ID number 20049385) for the same parcels remain.
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: Matters substantially agreed and HoTs issued, the key issue is now one of compensation and if agreement isn't reached before

IP/AP	Nature of Objection		ExA Consideration
		the end of the examination, the parties will continue to engage to reach agreement.	
John James Miller	Interests	Part 1 (Category 1) and Part 1 (Category 2) and Part 3.	The objections raised by the landowner and plots referenced between James Miller (Kelham) Limited and John James Miller relate to the same plots and are similar, and Mr Miller attended and engaged with the examination in reference to his interests in all the plots. Therefore, our assessment and conclusions are similar and repeated here for convenience. Land and interests are required for construction maintenance and operation of the proposed development as well as environmental mitigation, utilities works and working space for the proposed development as set out in Annex A of the SoR. The land includes land to be used for FCA. Matters related to the need for flood compensation the appropriateness and need for biodiversity and environmental mitigation (including BNG), the effect on agricultural land and farm enterprises and mineral extraction have been addressed above and the ExA has concluded they are necessary and appropriate. Matters related to compensation are not within the remit of this decision and are for consideration elsewhere.
	Plots	CA: 1/5n, 1/5o, 1/19a, 1/19b, 2/1a, 3/15a. TP: 1/5l, 1/5p. TP and rights to be permanently acquired: 1/5m, 1/1r, 1/5n, 1/5o, 2/4a	
	Objection	Objections were submitted on behalf of John James Miller in RR-034. REP1-047 provided comments on BNG issues. Mr Miller attended OFH1 and made representations the recordings of which are available at EV4-001, following which he submitted a written summary of his oral submissions, REP1-050.	

IP/AP	Nature of Objection	ExA Consideration
	Mr Miller attended CAH2 and made representations the recordings of which are available at EV6-002 and EV6-003. Following which, he submitted a written summary of his oral submissions, REP4-051. REP7-115 provided an update on his current position. REP9-008 was a final position statement which confirmed that <i>"we are in agreement to the disposal of the land parcels, however the AA have yet to agree the commercial package with my client. Until this is agreed, we are not in a position to move forward. The land parcels included all land referenced in relation to John James Miller and James Miller (Kelham) Ltd "</i>. REP9-013 provides a further update but removes representation on behalf of	Matters related to detailed design will be addressed as the proposed development design evolves and can be addressed during the consideration of further details to be submitted under various requirements included within the rDCO. The parties are at an advanced position and close to completing acquisition by agreement or other appropriate terms with HoTs substantially agreed. Albeit acquisition by agreement may be forthcoming, the applicant needs certainty and it has justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed.

IP/AP	Nature of Objection	ExA Consideration
		James Miller (Kelham) Ltd in connection with parcels 3/15a (ONLY), and confirms that the representations on behalf of John Miller (Kelham) Ltd in connection with Land parcels 1/1r, 1/5l, 1/5m, 1/5n, 1/5o, 1/5p, 1/19a, 1/19b, 2/1a, 2/2a and 2/5b and also the representations in connection with John Miller (Objector ID number 20049385) for the same parcels remain.
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: Matters substantially agreed and HoTs issued, the key issue is now one of compensation and if agreement isn't reached before the end of the examination, the parties will continue to engage to reach agreement.
	Interests	Part 1 (Category 1)

IP/AP	Nature of Objection		ExA Consideration
Lindum Developments Limited (LDL)	Plots	CA: 5/15a, 5/15b, 5/15c	The plots are required for a new pedestrian and cycle track and environmental mitigation, maintenance and monitoring commitments as described in the SoR Annex A. The main issues revolve around plots that provide for a footway cycleway link through Lindum's site and which is identified as a development site in the Local Plan and which is the subject of outline planning permission. Lindum are concerned that this runs through the middle of the site and has an adverse effect on future development potential of the site. These issues are explored in the Population and Health section in the Report. The ExA has concluded that the provision of the link would result in a benefit that would weigh positively in the balance for the proposed development. It is acknowledged that there are potential alternatives to the route which is in the application and which is the subject of the Compulsory Acquisition. There have been on-going discussions between the parties to secure an alternative route but this has not been concluded by the close of the examination. The applicant's position is that it relies on the CA land but that if an agreement can be completed in respect of an alternative route, it would implement that and that this can be facilitated through amendments to the rights of way plans through Article 15 in the dDCO. LDL are of the view there are alternatives to the CA proposal which are achievable and that the impact of the CA is to significantly affect the development potential of its
	Objection	Objections were initially set out in RR-037. Lindum Developments Ltd (LDL) and the Applicant also entered into a SoCG. This however was not concluded by the end of the examination. The latest version can be found at REP8-024, but this was not signed. LDL also responded to the ExA's written questions at REP2-059 and attended CAH2, the recordings of which are available at EV6-002 and EV6-003. Following the hearing, it submitted a written summary of its oral submissions REP4-052.	
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: Compensation figures have been agreed and the parties solicitors are now working on the final agreement. A further	

IP/AP	Nature of Objection	ExA Consideration
	draft of the agreement was shared with Lindum's solicitor on 31 March 2025 and the applicant is awaiting a response. The applicant's closing statement of final position on outstanding matters not resolved is set out in REP9-002. The position on Lindum is set out at paragraphs 5.2.15 – 5.2.22 and further detail is set out in Annex A to that document.	landholding. LDL and the applicant are in negotiation to include agreement on an alternative route and the use of land outside of the Order limits. The ExA has concluded that the proposals to create linkages would lessen severance and this is in accordance with the aims of the NPSNN for NMUs. The proposed reduction in severance and linkages would result in minor benefits from the proposed development and support the integration of walking and cycling routes and connectivity with other locations in the surrounding area. Albeit acquisition by agreement may be forthcoming, the applicant needs certainty and the ExA is satisfied that it has justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development and to ensure that appropriate mitigation and benefits are derived. We are therefore satisfied that these should not be changed. It is noted that the applicant and LDL still indicate that it is anticipated that an agreement for the alternative would be concluded before the decision on the DCO is issued.
Motor Fuel Group Ltd	Interests	Part 1 (Category 1)
	Plots	CA: 5/14b.
Land is required for the construction, operation and maintenance of the proposed development related to		

IP/AP	Nature of Objection		ExA Consideration
		TP and rights to be permanently acquired: 5/14a	access to the service station, services diversion and environmental mitigation.
	Objection	Objections are set out in RR-041 . Concerns are related to slip road designs and advanced signage and the impact this may have on the operation of the petrol filling station.	The access to the Motor Fuel Group service station at Winthorpe roundabout is addressed in the Traffic and Transport section of the Report. The applicant has confirmed that the detailed design of slip roads and accesses included the advanced signage strategy will be detailed at a later stage in the design evolution of the proposed development. It is noted that the parties are in agreement that draft HoTs can be issued subject to the detailed design to enable acquisition by agreement.
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: Unlikely to reach agreement in all aspects before the end of the examination as a decision around advance warning signage and consultation on the design of the access and egress are the key factors in reaching agreement at this stage. It is also noted that discussion between the Valuers and the landowners' are on-going. Noting that the AP's Valuer has confirmed that it is content for	The ExA has no evidence before it that the accesses and signage strategy cannot be accommodated in the design development of the proposed development and have justified that it needs the land for the intended purposes as set on in the SoR. The design development is likely to be following the decision and therefore it is unlikely acquisition or agreement will have been concluded until after the decision. Albeit acquisition by agreement may be forthcoming, the applicant needs certainty and it has justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed. If lesser

IP/AP	Nature of Objection	ExA Consideration
	HoTs to be issued in respect of the acquisition of land by agreement but that these will be subject to detailed design matters that have not yet been determined.	interference is agreed, the applicant in the SoR indicates it would only move to CA as a last resort.
National Grid Electricity Distribution (East Midlands) plc (NGED)	Interests	Part 1 (Category 1), Part 1 (Category2 and Part 3.
	Plots	CA: 1/1a, 1/1b,1/1c, 1/1d, 1/1g, 1/1h, 1/1i, 1/1m, 1/1o, 1/1r, 1/2a, 1/2b, 1/5a, 1/5b, 1/5g, 1/5j, 1/5o, 1/5r, 1/18b, 1/18c, 1/19a, 2/2o, 2/3b, 2/3c, 2/6a, 3/1l, 3/1m, 3/1m1, 3/1n, 3/2g1, 3/2g2, 3/2g3, 3/2g5, 3/2g9, 3/2h, 3/2j1, 3/11d, 3/14a, 3/14e, 3/14g, 3/14j, 3/15a, 4/1f, 4/1j, 4/1k, 4/1l, 4/1m, 4/5m, 4/7c, 4/7e, 4/12a, 4/12b, 4/12c, 5/1a, 5/1b, 5/1c, 5/1e, 5/1e1, 5/1g, 5/1h, 5/1i, 5/1l, 5/1o, 5/3c, 5/3e, 5/3f, 5/3l, 5/3o, 5/12b, 5/13a, 5/14b, 5/15a, 5/15c, 5/16a, 5/16b, 5/17a, 5/17b, 5/17c, 6/2a, 6/3a, 6/3a1, 6/3d, 6/4c, 6/4f, 6/5a, 6/5c, 6/7b, 7/2d, 7/6a. The land and interests are required to carry out the proposed development and allow for its future operation and maintenance along with enabling diversion of utilities and to allow for environmental mitigation. The applicant has confirmed that the Protective Provisions are agreed and that these have been included in the latest dDCO. The PPs are at part 6 of Schedule 9 of the rDCO and are as agreed between the parties. The applicant has also confirmed that the asset protection agreement is also now agreed and awaiting the final procedural points before execution can occur. However, this will not impact the PPs that are on the face of the Order. On the basis of the information before the ExA, we are satisfied that the proposals are proportionate and necessary and would not prejudice the undertaker carrying out its undertaking without serious detriment. Moreover, we are satisfied that the extinguishment of rights is necessary for the purpose of carrying out the development to which the order relates.

IP/AP	Nature of Objection	ExA Consideration
		The ExA is satisfied that the land and interests identified in the BoR, land plans and dDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed.
	TP: 1/1n, 1/5e, 1/5f, 1/5l, 1/5p, 1/10a, 1/12a, 1/13a, 1/14a 1/18a, 2/2i, 2/3a, 2/5a, 2/5b, 2/7c, 3/2g, 3/2g4, 3/11a, 3/11c, 3/11e, 3/14h, 4/5d, 4/7g, 4/7i, 4/8a, 4/11a, 5/1m, 5/3d, 5/3h, 5/3i, 5/3j, 5/17d, 6/4b. TP and rights to be permanently acquired: 1/5d, 1/5m, 1/8a, 1/8b, 1/9c, 1/18a1, 3/2f, 3/2g6, 3/2g8, 3/2j, 3/11b, 3/11f, 3/14b, 3/14i, 3/14k, 4/1a, 4/1e, 4/5f, 4/5g, 4/5i, 4/5j, 4/5l, 4/5n, 4/5o, 4/7f, 4/7j, 4/7k, 4/8b, 4/9b, 4/10a, 5/3p, 5/11a, 5/12a, 5/14a, 5/17e, 6/4a, 6/7a, 6/7d, 7/4c. Objection A holding objection is set out in RR-043, and in which it is noted the representation is a holding objection to the application until asset protection arrangements have been agreed between the parties. No formal agreement has yet been concluded and accordingly we are lodging this representation to protect	

IP/AP	Nature of Objection		ExA Consideration
		NGED's position pending conclusion of an appropriate agreement.	
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: No objection to CA/TP, concerns were around asset protection. In relation to protective provisions and side agreements, the applicant notes that the PPs are now agreed and have been included in the draft Development Consent Order [AS-106] submitted into the Examination at DL 8. The APA is also now agreed and awaiting the final procedural points before execution can occur. However, this will not impact the PPs that are on the face of the Order.	
	Interests	Part 1 (Category 1, Part 1 (Category 2) and Part 3.	The land and interests are required for the construction, operation and maintenance of the proposed development,

IP/AP	Nature of Objection		ExA Consideration
Network Rail Infrastructure Limited	Plots	CA: 3/1r, 3/2z, 3/2cc, 3/2ii1, 3/2mm, 3/2kk, 3/2ll, 3/16c, 4/1f, 4/5e1, 4/12f. TP: 2/2j, 2/2k, 2/2m, 3/1t, 3/1u, 3/2aa, 3/2bb, 3/2hh, 3/2ii, 3/2jj, 3/2u, 3/2x, 3/2ff, 3/2gg, 4/5h, 2/2n, 3/2y, 3/2dd, 4/5c, 4/5f, 4/5g. TP and rights to be permanently acquired: 2/4c, 2/4d, 2/2e, 2/2f, 2/2g, 3/1r, 3/1s, 3/1t, 3/2cc1, 3/2cc2, 3/2cc3, 3/2cc4, 3/2dd, 3/2ee, 3/2v, 4/1f1, 4/1f2, 4/1g, 4/1g1, 4/1k, 4/5e, 4/5m, 3/1u, 4/1e, 4/1e1, 4/5f, 4/5i, 4/5j, 4/5l, 4/5n, 4/5o, 4/7a, 4/7a1, 4/9a, 4/9b, 4/10a, 4/12a, 4/12b, 4/12c, 4/12c1, 4/12d, 4/12e, 4/12g, 4/12g1, 4/12i, 4/12i1.	including the construction of new bridge over railway, widening of existing railway crossing, utility diversions, environmental mitigation. The applicant and statutory undertaker are in advanced talks and have reached agreement. The SoCG has all matters agreed, PPs are agreed and included in the rDCO at Part 4 of Schedule 9 and the Asset protection agreements are close to completion. Network Rail has indicated that it is close to agreement and that once the Basic Asset Agreement is concluded, it would withdraw its objection. By the close of the examination, the Basic Asset Agreement had not been completed but there is no indication that this will not be done and indeed all indications are that it will be signed imminently. The Protective Provisions will give Network Rail adequate safeguards for its interest and to ensure that there is no serious detriment to it carrying out its functions. On the basis of the information before the ExA, we are satisfied that the proposals are proportionate and necessary and would not prejudice the undertaker carrying out its undertaking without serious detriment. Moreover, we are satisfied that the extinguishment of rights is necessary for the purpose of carrying out the development to which the order relates.
	Objection	Objections are set out in RR-045 , the applicant and Network rail also entered into a SoCG, a final agreed version of which is REP7-119 . Network Rail responded to the Examining Authority's first set of written	

IP/AP	Nature of Objection	ExA Consideration
	questions, REP2-046, and third set of written questions REP7-109. Network Rail also provided comments at DL8 to provide a final position statement REP8-036 and in which it states: Further to discussions with the Applicant with regard to the inclusion of NR's standard protective provisions in the draft Order, we confirm that (subject to completion of the side agreement): ▪ NR and the Applicant have agreed the form of Protective Provisions; and ▪ It has been confirmed that NR's preferred form of Protective Provisions have been submitted to the Examining Authority for inclusion in the Order (if granted). Accordingly, we hope to be able to write to the Examining Authority soon to confirm that the side agreement has been entered into and, following this,	The ExA is satisfied that the land and interests identified in the BoR, land plans and dDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed.

IP/AP	Nature of Objection	ExA Consideration
		we will be in a position to write to the Examining Authority to confirm that NR's objection can be withdrawn.
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: An offer has been made in respect of the bridge easements and Network Rail have been invited to agree those figures. A response is awaited to move that agreement forward. It is unlikely that all matters will be agreed in the examination window. In terms of protective provisions and side agreements, it is stated Agreement reached and waiting for signing of the documents. It is further noted that the PPs are now agreed between the parties and are included in the draft Development Consent Order [AS-106]. There are two

IP/AP	Nature of Objection		ExA Consideration
		Basic Asset Protection Agreements required and one has been completed and one is due for completion imminently.	
Newark & Nottinghamshire Agricultural Society	Interests	Part 1 (Category 1)	The proposed land and interests are required for the construction of the proposed development and its future maintenance and operation. NNAS's concerns relate to traffic and access/egress and the alignment of the proposed footway/cycleway. The applicant has confirmed that these matters have been the subject of various amendments made by the Applicant to the Outline Traffic Management Plan [REP8-014] and the Construction Communications Management Plan (Appendix B.4 of the First Iteration Environmental Management Plan [REP6-012]. NNAS agree to the detail of these amended documents albeit it is marked as not agreed in the SoCG as it is seeking a separate agreement with the applicant to control these matters. The ExA agrees with the applicant that there is a mechanism available for the enforcement of these matters as they would be controlled by certified documents and are noted as such in the rDCO. The additional control sought by NNAS is not required or necessary. Whilst it is noted that the applicant has entered into side Agreements with other parties, these are for specific
	Plots	CA: 5/17a, 5/17b, 5/17c. TP: 5/17d. TP and rights to be permanently acquired: 5/17e, 6/4a, 6/9a.	
	Objection	Objections are set out in RR-046 , a SoCG has been concluded between NNAS and the applicant REP8-026 (albeit some matters remained marked as not agreed), NNAS also provided a response to the ExA's third set of written questions REP7-110 .	
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: Draft heads of terms were sent on 28	

IP/AP	Nature of Objection	ExA Consideration
	March 2025 and discussions regarding compensation are ongoing. It is further noted that draft heads of terms for acquisition by agreement were provided by the applicant's valuer on 28 March 2025 and a response is awaited. The applicant has confirmed with the landowner that it does not agree that a separate legal agreement is required over and above that which would be needed for the transfer of land. The applicant also referenced its position with NNAS in its final position statement on matters not resolved by the close of the examination REP9-002. It addresses NNAS's concerns at paragraphs 5.2.1 to 5.2.14. In essence, this confirms that NNAS agree the details of the controls set out in the Outline Traffic Management Plan [REP8-014] and in the Outline Construction Communication	purposes and not to seek to secure matters already secured and controlled by application documents. The applicant notes it is continuing to negotiate terms to seek to agree land acquisition points with NNAS and any issues of notice or compensation around those aspects would be subject of those discussions or any compensation deemed payable in accordance with the Compensation Code. Albeit acquisition by agreement may be forthcoming, the applicant needs certainty and it has justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed. If lesser interference is agreed, the applicant in the SoR indicates it would only move to CA as a last resort.

IP/AP	Nature of Objection		ExA Consideration
		Management Plan in Appendix B.4 of the First Iteration Environmental Management Plan [REP6-012] . NNAS accept this would address its concerns but do not agree the mechanism as they wish a separate legal agreement to secure these. The applicant's position is that this is unnecessary as these are certified documents in the DCO and would be subject to enforcement powers if not complied with. In terms of the footway/ cycleway issues, cross reference is made to Lindum group discussions.	
Newark and Sherwood District Council	Interests	Part 1 (Category 1), Part 1 (Category 3) and Part 2.	The land and interests are required for the construction operation and maintenance of the proposed development. They are required for environmental mitigation alteration of the existing highway, utilities diversions and temporary working areas and access. The Council was initially concerned about the impact on Newark lorry park and access to its Council offices. The
	Plots	CA: 3/1g, 3/1i, 3/1n, 3/14a, 3/14e, 3/14g, 3/14j, 7/3a, 7/3b. TP: 3/14a1, 3/14b1, 3/14h, 4/11a.	

IP/AP	Nature of Objection		ExA Consideration
		TP and rights to be permanently acquired: 3/14b, 3/14c, 3/14d, 3/14f, 3/14i, 3/14k, 4/11a,	issues related to effects on the Lorry Park generally are dealt with in the Report in the Traffic and Transport section above and we are satisfied that there is no significant effect on overall lorry parking capacity such that would result in an adverse effect.
	Objection	Objections are raised in respect of CA as part of RR-048. The objections relate to the Newark Lorry Park, the reduction in its size and the need for reconfiguration to ensure sufficient capacity. Of particular concern to the Council is the timing and duration of the works proposed. The dDCO also includes powers to temporarily occupy land comprising parts of the main Council offices at Castle House on Great North Road and the adjacent Air Space Institute. The Council requests that the applicant enters into an agreement with it to minimise and mitigate the impact of the proposed development and the	The parties confirm that they have reached agreement and that there is a letter of undertaking between the parties that is agreed. However, by the close of the examination NSDC had not withdrawn its objection and no side agreement had been concluded. The ExA is satisfied that the information before it demonstrates that the concerns expressed by NSDC in respect of planning issues for the lorry park can be addressed and that access and other land issues are agreed. Albeit acquisition by agreement or other mechanism may be forthcoming, the applicant needs certainty and it has justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed.

IP/AP	Nature of Objection	ExA Consideration
	exercise of powers under the dDCO on the operation of the Lorry Park. NSDC attended CAH1 and CAH2 and provided written summaries of its oral submissions REP1-036 and REP4-048. It also responded to the ExA's first set of written questions REP2-050, and made Written Representations REP2-051, as well as making comments on submissions during the examination REP3-046, all of which commented on matters related to CA. Other representations were received but these were made by NSDC as LPA rather than in its capacity as landowner. REP7-113 is a response to ExQ3 and provides NSDC's comments on its final position as landowner, noting that agreement has been reached with the applicant in principle on	

IP/AP	Nature of Objection		ExA Consideration
		most points and it is hoped an agreement can be completed before the end of the examination period. The applicant and NSDC entered into a SoCG, the final signed version of which is at REP8-027.	
	Status Summary	The applicant’s final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: There are no issues between the parties in principle and a letter of undertaking has been agreed that deals with NSDC's main concerns. Subject to agreeing costs, the applicant considers that matters will be agreed within the examination window and the objection withdrawn.	
Newark Branch Line Co Limited	Interests	Part 1 (Category 1)	Rights are required for access over land and to carry out works.
	Plots	TP and rights to be permanently acquired: 4/3a	

IP/AP	Nature of Objection		ExA Consideration
	Objection	Objections are raised in RR-049 , concerned at lack of detail and justification for effect on its land which they wish to develop for another marina.	The land is identified as open space and this is dealt with separately in the Report in the CA chapter. The applicant is in discussion with the AP concerning the necessary access and rights and the proposed compensation. There does not appear to be fundamental issues separating the parties, and compensation is not a matter for the examination.
	Status Summary	The applicant's final position is set out in the Land Rights Tracker version 8 (REP8-018), and in which it is stated: Discussions are ongoing in respect of the rights to be acquired by agreement. Further detail of the summary of comments notes that the applicant's valuer will make an offer by 04/02/2025 in respect of the temporary acquisition and permanent rights to be required. An email response to the offer was received from the landowner 04/02/2025 and discussions are ongoing to reach final agreement. Discussions remain ongoing on compensation matters with the landowner regarding the rights to be acquired.	The information before the ExA demonstrates that the parties are close to reaching agreement with the main issue appearing to be compensation and which is not within the remit of the examination. The AP's intention or desire to develop for a future marina is not advanced in that no planning application has been brought to our attention. The nature of the interference with land and interest has been demonstrated to be necessary and justified for the proposed development and there is no countervailing evidence to demonstrate this would have an unduly significant effect on the landowner's interest. Albeit acquisition by agreement may be forthcoming the applicant needs certainty and it has justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore

IP/AP	Nature of Objection		ExA Consideration
			satisfied that these should not be changed. If lesser interference is agreed, the applicant in the SoR indicates it would only move to CA as a last resort.
Shell U.K. Limited	Interests	Part 1 (Category 1)	Land and interests required for the construction operation and maintenance of the proposed development. This will include diversion of utilities and environmental mitigation.
	Plots	CA: 5/12b. TP and rights to be permanently acquired: 5/12a	The principles in the issues are similar to those in relation to the Motor Fuel Group Ltd in that they relate to detailed design in relation to access and future signage strategy.
	Objection	Objection made in RR-065 , concerns are around the fact the site will be taken offline and will be rendered significantly less accessible. The provision of a package of advance warning signs will be needed to mitigate these adverse effects. It is also evident that the proposals will interfere with traffic flows and drainage arrangements within the service area.	The parties are in discussion and HoTs have been issued but agreement will not be reached until further detail emerges on the detailed design of the access/ egress and the signage strategy. The access to the Shell service station at Friendly Farmer roundabout is addressed in the Traffic and Transport section of the Report. The applicant has confirmed that the detailed design of access and egress including the advanced signage strategy will be detailed at a later stage in the design evolution of the proposed development. It is noted that the parties have issued draft HoTs and are working towards acquisition by agreement subject to the detailed design.
	Status Summary	The applicant's final position is set out in the Land Rights	The ExA has no evidence before it that the access/ egress and signage strategy cannot be accommodated in the design development of the proposed development and the applicant has justified that they need the land for the

IP/AP	Nature of Objection	ExA Consideration
	Tracker version 8 (REP8-018), and in which it is stated: Unlikely to reach agreement in all aspects before the end of the examination as a decision around advance warning signage and consultation on the design of the access and egress are the key factors in reaching agreement at this stage. It is further explained that a meeting held between the Valuers 26/03/2025, the key issue is the provision of advance warning signage for the site. Discussed land requirements and values on a per unit area basis as likely that land area can be reduced subject to detailed design, HoTs to be issued.	intended purposes as set on in the SoR. The design development is likely to be following the decision and therefore it is unlikely acquisition or agreement will have been concluded until after the decision. Albeit acquisition by agreement may be forthcoming the applicant needs certainty and they have justified the proposed interference with land and interests. The ExA is satisfied that the land and interests identified in the BoR, land plans and rDCO are necessary and proportionate to allow the applicant to construct, operate and maintain the proposed development. We are therefore satisfied that these should not be changed. If lesser interference is agreed, the applicant in the SoR indicates it would only move to CA as a last resort.