



Department for Transport

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16 May 2024

National Highways
Bridge House
1 Walnut Tree Close
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Surrey
GU1 4LZ

Dear Sir/Madam,

PLANNING ACT 2008

APPLICATION FOR THE PROPOSED M3 JUNCTION 9 IMPROVEMENT DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport ('the Secretary of State') to say that consideration has been given to:
 - The report dated 16 February 2024 ("the Report") of the Examining Authority ("ExA"), Wendy McKay and Matthew Sims, who conducted an Examination into the application made by National Highways ("the Applicant") for the M3 Junction 9 Development Consent Order ("the Application") under section 37 of the Planning Act 2008 as amended ("the 2008 Act");
 - The responses to the further consultations undertaken by the Secretary of State following the close of the Examination in respect of the Application; and
 - Late representations received by the Secretary of State following the close of the Examination.
2. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116(1)(a) of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 which apply to the Application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

3. Published alongside this letter on the Planning Inspectorate website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the Report"). All "ER" references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form "ER XX.XX.XX" as appropriate. References to "requirements" are to those in Schedule 2 to the Order as the ExA recommended at Appendix D to the Report.
4. This decision was delegated by the Secretary of State to the Minister of State Huw Merriman. While this decision has not been taken by the Secretary of State, by law, it must be issued in the name of the Secretary of State. All references to the Secretary of State are therefore to the Minister of State acting on behalf of the Secretary of State.

THE APPLICATION

5. The Application was accepted for Examination on 15 December 2022. The Examination began on 16 May 2023 and was completed on 16 November 2023. The Examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook accompanied and unaccompanied site inspections [ER 1.4.3].
6. The Development Consent Order ("the Order") as applied for would grant development consent for an improvement to Junction 9 of the M3 motorway. The elements comprising the scheme (collectively referred to as "the Proposed Development") are:
 - widening of the M3 from a dual two-lane motorway (two-lane motorway with hard shoulders) to a four-lane motorway (with hard shoulders) between the proposed M3 Junction 9 gyratory north and south slip roads;
 - a new smaller grade separated gyratory roundabout arrangement within the footprint of the existing roundabout, incorporating new connections over the M3 with improved walking, cycling and horse-riding routes;
 - connector roads from and to the new gyratory roundabout;
 - improved slip roads to/from the M3;
 - new structures (in the form of gyratory bridges, underpasses, retaining walls, subway and a new cycle and footbridge over the River Itchen);
 - a new surface water runoff system with associated drainage and infiltration features;
 - new signage and gantries;
 - utility diversions;
 - new lighting (subways, underpasses and gantries);
 - modifications to topography through cuttings and false cuttings as well as re-profiling of existing landform;
 - new walking, cycling and horse-riding provision; and
 - creation of new areas of chalk grassland, woodland, scrub planting and species rich grassland.

SUMMARY OF THE EXA'S RECOMMENDATIONS

7. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:
 - Principle and Need for the Development
 - Alternatives
 - Agriculture, Geology and Soils
 - Air Quality
 - Biodiversity and Ecology
 - Climate Change and Resilience
 - Flood Risk, Groundwater and Surface Water
 - Historic Environment
 - Landscape Impact, And Visual Effects and Design
 - Noise and Vibration
 - Population and Human Health
 - Traffic, Transport and Non-Motorised User Routes
 - Waste and Material Resources
 - Cumulative Effects
 - Habitats Regulations Assessment
 - Compulsory Acquisition and Related Matters
 - The Draft Development Consent Order and Related Matters
8. For the reasons set out in the Report, the ExA recommended that the Secretary of State should make an Order granting development consent for the Proposed Development [ER 8.3.1] subject to being satisfied in relation to the following matters [ER 8.3.2]:
 - Consideration in relation to the revised wording of requirement 6(4) of the DCO; and
 - Consideration of section 245 of the Levelling-up and Regeneration Act 2023 (LURA) amendment of section 11A of the National Parks and Access to the Countryside Act 1949.
9. The Secretary of State is satisfied that all matters listed above have been resolved, as described below.

SUMMARY OF SECRETARY OF STATE'S DECISION

10. The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this Application. The letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation

31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

SUMMARY OF SECRETARY OF STATE’S CONSIDERATION

11. The Secretary of State’s consideration of the Report, responses to his consultations of 8 March 2024 and 22 March 2024, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses are not otherwise mentioned in this letter, it is the Secretary of State’s view that these representations do not raise any new issues that were not considered by the ExA and do not give rise to an alternative conclusion or decision on the Order.
12. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons given for the Secretary of State’s decision are those given by the ExA in support of the conclusions and recommendations.
13. The Secretary of State is content that the Proposed Development is a National Significant Infrastructure Project in accordance with section 14(1)(h) and section 22(1) to (3) of the 2008 Act for the reasons set out at ER 1.1.4, and that section 104(2) of the 2008 Act has effect in relation to the Proposed Development. In determining this Application, the Secretary of State must therefore have regard to any relevant National Policy Statements (“NPS”), and Local Impact Reports (“LIR”) submitted, any matters prescribed in relation to development of the description to which the Application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision.
14. Under section 104(3) of the 2008 Act, the Secretary of State must decide this Application in accordance with any relevant NPS which in this case is the National Policy Statement for National Networks (“NPSNN”), subject to any of the exceptions in section 104(4) to (8) of the 2008 Act applying [ER 3.7.91]. The Secretary of State notes concerns were raised by the Climate Emergency Policy and Planning (“CEPP”) relating to the application of section 104(4), (5) and (6). CEPP’s concerns are summarised by the ExA at ER 3.7.95 - ER 3.7.97 and the ExA’s consideration of these matters etc. Overall, the ExA concluded that a robust and comprehensive ES assessment had been undertaken on the impact of the Proposed Development on climate in accordance with the DMRB LA 114 Climate (Highways England, 2021) and the NPSNN. This assessment showed that the increased in carbon emissions as a result of the Proposed Development would not be so significant in isolation to have a material impact on the ability of the Government to meet its carbon reduction budgets [ER 3.7.124]. The Secretary of State agrees with the ExA’s conclusions and therefore does not consider any of the exceptions apply to this case. The Secretary of State has also had regard to the environmental information associated with this scheme as defined in regulation 3(1) of the 2017 Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

15. With regard to the NPSNN, in a Ministerial Statement issued on 22 July 2021, the Secretary of State advised that a review of the NPSNN would begin later in 2021 for the reasons given in the Ministerial Statement. A new draft version was published on 14 March 2023 and, following public consultation and scrutiny by the Transport Select Committee, a revised version was laid before Parliament on 6 March 2024 and is subject to Parliamentary requirements set out in section 9 of the 2008 Act. It can only be designated for the purposes of section 104 of the 2008 Act following the completion of this Parliamentary process.
16. The Secretary of State has considered the policies in the draft revised NPSNN and notes that the modifications made to the revised NPS laid before Parliament do not materially affect the policy laid out in the draft revised NPSNN. In any event, the draft NPSNN is not yet adopted policy. The Secretary of State considers that neither the draft revised NPSNN nor the revised NPSNN support a different outcome in this case. For those reasons, he has not given the revised NPSNN or draft revised NPSNN any material weight. The Secretary of State is satisfied that as set out in the Ministerial Statement of 22 July 2021, the currently designated NPSNN remains government policy and continues to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.
17. The Secretary of State has had regard to the LIRs prepared by Winchester City Council (“WCC”), the South Downs National Park Authority (“SDNPA”), Eastleigh Borough Council, and Hampshire County Council (“HCC”) [ER 2.3.1] and the associated local policy documents, including the Local Plans [ER 2.2.5]. The Secretary of State also notes the ExA’s assessment, set out in section 3 of the Report, regarding European Law and related UK Regulations, other relevant legal provisions, previous Development Consent Orders, transboundary effects and other relevant policy statements and agrees these are matters to be considered in deciding this Application.

The Principle of and Need for the Proposed Development

18. The ExA’s consideration of the principle of need for the proposed development is set out in section 3.2 of the ExA’s Report, and the main issues considered by the ExA during the Examination are set out at ER 3.2.34.
19. The Secretary of State notes that the Applicant set out five strategic objectives for the Proposed Development which are supported by the Highways England Delivery Plan 2015-2020 (Highway England 2015). Those objectives are listed at ER 3.2.30. He is aware that, during the Examination, a number of Interested Parties raised concerns regarding the extent to which those objectives are met [ER 3.2.45]. The ExA concluded that the Proposed Development would meet those objectives and that the Applicant has submitted sufficient evidence to support the need for the Proposed Development [ER 3.2.45 – 3.2.46]. The Secretary of State agrees with the ExA and is satisfied that the Proposed Development would meet the strategic need for the development of the national road network as set out in the NPSNN.
20. The Secretary of State notes that a number of Interested Parties raised the question of whether the need for the Proposed Development could be met

through other modes of transport, in particular rail-based options, and that this matter was considered by the ExA during the Examination [ER 3.2.59]. The Secretary of State notes that the Applicant as part of Project Control Framework Stage 0 assessed whether an alternative mode of transport could solve the identified problems at M3 J9 and concluded that the high level of congestion at M3 J9 and the expected growth in freight traffic could only be solved with a junction improvement that provided free flow movement between the M3 and the A34 [ER 3.2.55 & 3.2.60], and therefore he agrees that the identified need for the Proposed Development could not be met through modal alternative such as rail based options [ER 3.2.63].

21. The ExA recorded that HCC and WCC agreed with the principle of the Proposed Development [ER 3.2.100], and that in terms of the broad principles of need there would be no conflict with any Local Plans or Local Transport Policy [ER 3.2.83]. The Secretary of State is aware of the various representations submitted during the Examination on compliance with local policies, including a representation from CEPP which criticised HCC's position that the Proposed Development is consistent with LTP3 and emerging LTP 4 [ER 3.2.67]. For the reasons set out at paragraphs 3.2.79 – 3.2.82 of the Report, the ExA concluded that there would be no material conflict with any Local Plan or Local Transport Policies [ER 3.2.103]. The Secretary of State agrees with the ExA's conclusion.
22. The Secretary of State agrees with the ExA that, since the Application was accepted for Examination before designation of the amendments to the NPSNN which were laid before Parliament in March 2023, the designated NPSNN remains government policy and continues to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent. However, the Secretary of State notes that the ExA had regard to the consultation draft NPSNN as an important and relevant consideration [ER 3.2.99]. The Secretary of State agrees with the ExA's conclusion that overall there is limited conflict between the Proposed Development and the draft NPSNN, which the Secretary of State notes was debated and approved by the House of Commons on 26 March 2024, but, in any case, that it is the NPSNN that was published in 2014 that continues to provide the basis for his decision-making. The Secretary of State has taken into account the ExA's consideration of National Highways Solent to Midlands Route Strategy [ER 3.2.94 – 3.2.98] and agrees with the ExA that the Proposed Development would be consistent with its objectives [ER 3.2.99].
23. The Secretary of State notes that the ExA concluded that the Proposed Development would meet the specific identified need for an improved M3 J9 and would contribute to meeting the strategic need for the development of the national road network in accordance with the NPSNN [ER 3.2.102]. The Secretary of State finds no reason to disagree. The ExA was satisfied that, subject to its consideration of specific design options, the fundamental and the identified need for the Proposed Development could not be met in some other way including modal alternatives such as rail-based options [ER 3.2.102]. The Secretary of State agrees.

The Secretary of State's Conclusion on Need for the Proposed Development

24. As set out above, the Secretary of State notes that the broad principle of need for the Proposed Development was supported by the relevant planning authorities [ER 3.2.100] and where concerns have been raised about compliance with particular policies, these have been considered in the ExA's Report and the relevant sections below. The Secretary of State agrees with the ExA that the Proposed Development is fully in accordance with the compelling need case for the provision of new national network infrastructure established in accordance with the requirements of the NPSNN and reinforced by other relevant national policies and strategies. The Secretary of State has attached substantial positive weight in the planning balance to the need for the Proposed Development.

Consideration of Alternatives

25. Chapter 3 of the ES sets out the Applicant's assessment of alternatives. The ExA's consideration of the Applicant's assessment of alternatives and options appraisals is set out in paragraphs ER 3.3.5 to 3.3.26 of the Report. The Secretary of State notes that the main issues considered during the Examination in relation to alternatives were [ER 3.3.27]:

- The ES approach to alternatives including the selections of the main construction compound ("the construction compound") and the suitability of the alternative locations proposed by Interested Parties.
- Whether the Proposed Development would comply with all specific legal requirements in relation to the Habitats Regulations and the Water Framework Directive.
- Whether the Proposed Development would comply with all policy requirements in any relevant NPSs in relation to the consideration of alternatives including the flood risk sequential test and the assessment of alternatives for development in National Parks.

26. The Secretary of State notes that the ExA was satisfied the Applicant had assessed the alternatives to the Proposed Development in a reasonable and proportionate manner in compliance with Regulation 14 of the 2017 Regulations, including the need to take into account the effects of the development on the environment [ER 3.3.72]. The Secretary of State agrees.

27. The Secretary of State agrees with the ExA that, as the M3 and M3 J9 are either within the South Downs National Park ("the National Park") or within its setting, that there is no scope for developing or meeting the need for the Proposed Development outside of the National Park or in some other way [ER 3.3.73]. In respect of the location of the construction compound, the Secretary of State agrees with the ExA that the Applicant has thoroughly assessed alternative sites during the selection process and agrees that none of the suggested alternative sites would provide a suitable and realistic alternative option [ER 3.3.74].

28. The Secretary of State notes that the ExA was satisfied that the Proposed Development would comply with all specific legal requirements in relation to the consideration of alternatives including in the Environmental Impact Assessment regulations, the Habitats Regulations, and the Water Framework Directive [ER 3.3.75]. The Secretary of State agrees.

The Secretary of State's Conclusion on Alternatives

29. In conclusion, like the ExA, the Secretary of State is satisfied that the assessment of alternative options for the Proposed Development have been rigorously tested by the Applicant and that the requirements of the NPSNN and all other relevant policy requirements have been met and that there are no matters relating to alternatives that weigh for or against the Proposed Development in the planning balance [ER 3.3.76 – 3.3.77].

Agriculture, Geology and Soils

30. The Secretary of State notes the assessment on geology and soils conducted by the Applicant as set out in Chapter 9 of the ES, including the study area [ER 3.4.10], and the matters taken into consideration in that assessment [ER 3.4.11].

31. Like the ExA, the Secretary of State is content that the Applicant's consideration accords with the policy aims of the NPSNN [ER 3.4.46] and he considers that the construction and operation effects of the Proposed Development on geology and soils have been adequately scoped and assessed.

32. He also notes the Agricultural Land Classifications were detailed in accordance with the Design Manual for Roads and Bridge ("DRMB") LA 109 [ER 3.4.12] and the assessment of the impact on agricultural land holdings was undertaken in accordance with DRMB LA 112 and notes that a total of 32.5 hectares of agricultural land will be permanently impacted and a further 16.6 hectares will be temporarily impacted by the Proposed Development [ER 3.4.13].

33. The Secretary of State has had regard to the preliminary Land Stability Appraisal in Chapter 9 of the ES and associated assessments of risk relating to land stability in areas of chalk, alluvium, and clay [ER 3.4.16 – 3.4.18]. The ES states that there are suitable, appropriate, and robust design and mitigation measures to mitigate potential land stability risks and, as such, it is considered unlikely that there would be significant effects in relation to land stability. The Secretary of State notes that the SDNPA generally agreed with the conclusions in the ES and were satisfied that the first iteration EMP and draft Order Requirements adequately addressed the issue of geology and soils, subject to clarification on the consideration of archaeology is considered in the Soil Management Plan [ER 3.4.19]. Like the ExA, the Secretary of State is satisfied that the ground investigations and land stability assessment have been undertaken in accordance with standard practice, with detail on risk management and mitigations contained within the first iteration EMP [ER 3.4.21].

34. As regards contamination, Chapter 9 of the ES states that only potential contamination from current and historic sites was considered [ER 3.4.22]. The Secretary of State notes that it was expected that there would be no contamination from historic landfill sites in the area following consultation with the local authorities, and that contamination was likely removed or remediated in relation to an historic filling station and sites to the north of the Proposed Development which has previously been redeveloped for business and office space [ER 3.4.23]. The Secretary of State notes that the Ground Investigation Report identified one case of marginal exceedance of the assessment criteria for public open space land use and so it is considered that there is a worst-case

low potential for a significant contamination hazard within the boundary of the Proposed Development [ER 3.4.24]. Chapter 9 of the ES also detailed consideration of the potential for new sources of contamination during construction and operation and the mitigation measures proposed are in line with industry best practice [ER 3.4.27]. Like the ExA, the Secretary of State is satisfied that the Applicant's contaminated ground investigations and an assessment of the potential for new contamination pathways has been undertaken in accordance with standard practice and the proposed mitigations, which will be subject to further updates with the second iteration EMP, have been undertaken in line with industry best practice [ER 3.4.29].

35. It is noted that there will be a permanent loss of 18.7 hectares of agricultural land designated Best and Most Versatile ("BMV") grade 2 and 3a soil, and 8 hectares of non-BMV grade 3b and 4 soil [ER 3.4.31], and a temporary loss of some grade 2 and 3a BMV land resulting in a significant temporary adverse effect [ER 3.4.34]. The Applicant states in the ES that it is not possible to mitigate against the permanent loss, and therefore results in a permanent adverse effect for the BMV land which leads to a very large adverse effect on the BMV land. In relation to non BMV land, there is a moderate adverse effect on the grade 3b land, and a slight adverse effect on the grade 4 land [ER 3.4.32]. Whilst the Secretary of State notes that this loss accounts for a relatively small percentage of the total BMV agricultural land within the Winchester City area, he agrees with the ExA that the permanent loss of this land has a large to very large adverse effect which is significant and cannot be mitigated [ER 3.4.36]. As regards the temporary loss of agricultural land required during the construction phase, including 12.1 hectare of BMV land, the Secretary of State notes that the reinstatement of the temporary agricultural land following construction of the Proposed Development is detailed in the soil management plan which is an appendix to the first iteration EMP and is secured through the draft Order in requirement 3 [ER 3.4.37 and 3.4.44].

The Secretary of State's Conclusions on Agriculture, Geology and Soils

36. In conclusion, the Secretary of State agrees with the ExA that, due to the large to very large adverse effect and significant impact of the loss of BMV land as a result of the Proposed Development [ER 3.4.45] that agriculture, geology and soil issues have a moderate weight against the Proposed Development [ER 3.4.47].

Air Quality

37. The Secretary of State notes that the Applicant's assessment of likely significant air quality effects is assessed in accordance with the Design Manual for Roads and Bridges LA105 (air quality) and is set out in Chapter 5 of the ES [ER 3.5.9]. The Secretary of State has had regard to the impacts set out in the ES, detailed at ER 3.5.10 – 3.5.16, on air quality during construction and operation as a result of the Proposed Development noting that, in all instances, these are not considered to be significant, there is no predicted exceedances of the PM2.5 annual mean AQS objectives and the conclusion in the ES that during construction and operation with the proposed mitigation there would be a neutral impact on human health from ambient.

Examination Issues

38. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.5.17.

Assessment Methodology

39. The Secretary of State recognises that WCC stated in its LIR that it had no high level objection to the assessment methodology used by the Applicant, as set out in the ES, and that this position was reaffirmed by WCC when questioned by the ExA during Examination with WCC confirming that the Applicant's approach was in line with the accepted standards and that they had no issues with the approach [ER 3.5.18 – 3.5.20]. As such, the Secretary of State agrees with the ExA's conclusion that the assessment methodology for air quality, including fine particulate matter, in accordance with the required standards and this has been supported by the WCC [ER 3.5.21].

Operational Impacts (NO₂)

40. The Secretary of State notes that the ES details that no significant residual effects during construction or operation of the Proposed Development are identified and that no exceedances of the relevant air quality thresholds are predicted [ER 3.5.22].
41. Although not within an Air Quality Management Area ("AQMA"), the Proposed Development is bordered by the WCC AQMA and Eastleigh AQMA. The Secretary of State notes from Chapter 5 of the ES that the Proposed Development will have some positive and negative impacts on the receptors in the WCC AQMA, with diverging views being expressed by the Applicant and WCC, and, like the ExA, he has accepted that there would be a neutral impact as a minimum on the WCC AQMA [ER 3.5.24]. He further notes Eastleigh Borough Council did not consider that there would be significant adverse effects on the Eastleigh AQMA as a result of the Proposed Development that would warrant additional mitigation measures [ER 3.5.25] and agrees with the ExA's conclusion that neither of the AQMAs would be adversely affected [ER 3.5.30].
42. The Secretary of State notes that there are no anticipated exceedances of the National Air Quality Objective across all 49 receptors used for recording and predicted NO₂ at the year of opening (2027), and that, as there are no significant impacts anticipated, there is no requirement for essential mitigation in addition to embedded mitigation for the Proposed Development in accordance with NPSNN paragraphs 5.10 and 5.11. The Secretary of State notes that, in their SoCG, the Applicant will continue to consult with WCC through detailed design and as part of the development of the second iteration EMP regarding air quality matters [ER 3.5.26 – 3.5.28] as secured by requirement 3(1) of the Order which, like the ExA, he considers to be important [ER 3.5.31].

Operational Impacts (Fine Particulate Matter PM₁₀ and PM_{2.5})

43. The Secretary of State notes the representations made by a number of parties, including Winchester Action on the Climate Crisis, relating to the assessment of particulate matter and the Applicant's responses [ER 3.5.32 – 3.5.35]. Like the ExA, the Secretary of State considers that the Applicant has undertaken all relevant assessments and forecasts in relation to particulate matter in accordance with DEFRA guidelines [ER 3.5.36]. The Secretary of State notes that, as set out in the ES, the changes in annual mean concentrations of PM₁₀

will be imperceptible at almost all receptors and in all cases concentrations will be below the annual and daily mean Air Quality Standard objectives and are not considered significant. He further notes that no predicted exceedances in PM_{2.5} annual mean Air Quality Standard objectives [ER 3.5.37]. The Secretary of State agrees with the ExA's conclusion that the Applicant has assessed the potential impacts on particulate matter in accordance with existing guidelines and is content that the forecast for PM_{2.5} is not likely to have a negative impact on the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 targets of 10 µg/m³ annual mean concentration of PM_{2.5} nationwide by 2040 or the interim target of 12 µg/m³ by January 2028 [ER 3.5.38].

Construction Impacts

44. The Secretary of State has had regard to the concerns raised by parties, including WCC in their LIR, about potential air quality impacts during the construction phase of the Proposed Development from changes that are likely to be seen from direct construction activities and from changes in traffic movements due to road and lane closures [ER 3.5.39 – 3.5.40]. Chapter 5 of the ES shows the modelling and consideration of changes to traffic movements and construction traffic on air quality and states that, in combination with the mitigation measures secured in the first iteration EMP, the predicted changes and increases from these activities will not be sufficient to result in significant air quality impacts [ER 3.5.41].
45. Whilst the overall assessment of air quality impacts was not considered to be significant during construction, the Secretary of State notes WCC's concerns relating to the air quality impacts of traffic using 'unofficial diversion routes' through the WCC AQMA, and further notes the agreement between WCC and the Applicant to continue consultation throughout the detailed design phase regarding monitoring and reporting arrangements secured, as a commitment in the first iteration EMP [ER 3.5.42].
46. The Secretary of State notes the concerns relating to dust and associated construction impacts raised by WCC but agrees with the ExA that these impacts will be subject to industry standard mitigation measures as detailed in the first iteration EMP [ER 3.5.43].
47. The Secretary of State agrees with the ExA that the Applicant has shown that the direct impacts of construction activities on air quality would be mainly from the potential for dust generation, and that the range of standard mitigation measures secured in the first iteration EMP are appropriate at this stage of design and are subject to further consultation during the development of the second iteration EMP. He considers that the effects of dust and the impact of construction on air quality is unlikely to exceed relevant limits across all receptors, and agrees with the ExA that the Applicant has satisfactorily assessed and mitigated the impacts of traffic diversions during construction where possible in the direct control of the Applicant and the first iteration EMP provides that the Traffic Management Plan will include monitoring and reporting arrangements during constructions which will be subject to further consultation prior to construction [ER 3.5.44 – 3.5.46].

Habitat Impacts and Nitrogen Deposition

48. The Secretary of State notes that there are six Sites of Special Scientific Interest within or close to the application boundary of the Proposed Development [ER 3.5.47]. The Secretary of State has had regard to the concerns raised by Natural England regarding the assessment of nitrogen deposition and how in-combination impacts have been considered as set out in Chapter 5 of the ES [ER 3.5.48 – 3.5.49]. At the close of Examination, the ExA considered that the Applicant and Natural England were working to conclude this issue, with the SoCG with Natural England stating that the issue was ‘provisionally agreed’ [ER 3.5.51 – 3.5.57]. In his consultation letter dated 8 March 2024, the Secretary of State requested an update from the Applicant as to the position of the side agreement with Natural England in relation to air quality effects and biodiversity. In response, the Applicant confirmed that agreement with Natural England had been reached and provided evidence by the way of an email from Natural England to the ExA dated 18 December 2023 confirming as much. As such, the Secretary of State considers this matter has been resolved.
49. The Secretary of State has also had regard to the representations from Winchester Friends of the Earth regarding additional nitrogen deposition on sites that have an existing nitrogen overload in the soil and that any increase in anticipated deposition, however insignificant is unacceptable [ER 3.4.50].
50. The updated Appendix 8.3 of the ES following requests from NE states that increases in pollutants are mostly below the 1% threshold of perceptibility or, where exceeding this threshold, are over small areas. As such, and given that Natural England have confirmed they are content in their email to the ExA dated 18 December 2023, the Secretary of State agrees with the ExA that the impact of air quality on habitats will not be significant [ER 3.5.59 – 3.5.60].

The Secretary of State’s Conclusions on Air Quality

51. Like the ExA, the Secretary of State is satisfied that the Applicant has adequately dealt with air quality matters during construction and operation of the Proposed Development through the ES and first iteration EMP, as discussed above [ER 3.5.61] and that the Applicant’s assessment of air quality complies with the policy aims of the NPSNN [ER 3.5.68] as set out at paragraphs 5.6 – 5.11. He agrees with the ExA’s conclusions that air quality effects of the Proposed Development during the construction phase would result in localised, limited negative air quality effects including temporary effects [ER 3.5.62 and 3.5.67] and notes that there will be both positive and negative effects during operation both for NO₂ and particulate matter. As such, the Secretary of State agrees with the ExA that air quality impacts of the Proposed Development carry neutral weight in the planning balance [ER 3.5.67].

Biodiversity and Ecology

52. The Secretary of State notes that the Applicant’s assessment of the effect of the Proposed Development on biodiversity resources is set out in Chapter 8 of the ES and includes a description of the ecological baseline, evaluation of biodiversity, features present and assessment of impacts and effects on important biodiversity resources in line with relevant guidance [ER 3.6.13].

Examination Issues

53. The main issues considered during the Examination were those summarised at ER 3.6.24.

Assessment and Mitigation Approach

54. The Secretary of State notes that the Applicant's approach to the assessment of biodiversity and ecology was broadly accepted by relevant statutory bodies [ER 3.6.25] and that by the close of the Examination there was detailed agreement of the Applicant's approach to the scope and assessment methodology and the mitigation of biodiversity and ecology matters from WCC, NE and EA [ER 3.6.29] but while SDNPA agreed with the scope and assessment methodology, it did not agree to the approach to mitigation [ER 3.6.30].

55. The Secretary of State agrees with the ExA that the Applicant has undertaken the assessment of biodiversity and ecology impacts in accordance with the relevant guidance and legislation. He also agrees that the Applicant has updated the first iteration EMP responsively following ongoing consultation and discussions with IPs and statutory bodies. He considers the residual mitigation concerns of SDNPA later in this section [ER 3.6.31-33].

Designated Sites, Habitat and Future Management

56. The Secretary of State has noted that the ES details the potential impact of the Proposed Development on European Designated Sites within the appropriate study area, being the River Itchen Special Area of Conservation ("SAC") and Mottisfont Bats SAC [ER 3.6.34] The Secretary of State's consideration of these sites is set out section 256 – 260 below.

57. The Secretary of State notes that there were no specific issues raised in Local Impact Reports or relevant representations relating to Special Areas of Conservation or Sites of Special Scientific Interest (SSSI) [ER 3.6.36 and 3.6.40]. No issues were raised as to the integrity of the SSSIs during the Examination [ER 3.6.42] and the Applicant concludes in the ES that following mitigation (as set out in the ES and first iteration EMP) the effects on the River Itchen SSSI and St Catherine's Hill SSSI would not be significant [ER 3.6.43].

58. The Secretary of State notes that a number of non-statutory designated sites were identified with a 2km radius study area [ER 3.6.44] but, by the close of the Examination, there were no outstanding issues relating to non-statutory designated sites [ER 3.6.46].

59. Chapter 8 of the ES details the loss and creation of Habitats of Principle Importance (HPI) [ER 3.6.47] but states that there is no loss of ancient woodland or veteran trees which was confirmed during the Examination [ER 3.6.48]. The Secretary of State has taken account that there would be a net habitat gain of 17.59ha for the loss of existing lowland chalk grassland (which is a feature of the SDNP), a net habitat gain of 1.37ha for other woodland (including broadleaved and mixed woodland) and a net gain of 0.17ha for hedgerow while there would be a net habitat loss of 0.01ha for open mosaic habitat [ER 3.6.47 Table 1: summary of habitats of principle importance]. He notes that at the close of the Examination, WCC, EA and NE had no outstanding issues but that there were issues that were "not agreed" in the SoCG with SDNPA which related to habitats, particularly chalk grassland [ER 3.6.52-53]. SDNPA's issues are considered later in this letter.

60. The Secretary of State notes that SDNPA raised the issue of habitat connectivity and the potential for enhancements in their LIR [ER 3.6.54]. NE was consulted on this matter but did not raise any issues which is reflected in the final SoCG with NE [ER 3.5.56]. The Applicant considered that the Proposed Development would enhance connectivity through good design and the creation of new chalk grassland and connection between various habitats [ER 3.6.55].
61. The Secretary of State notes that the ES states the construction and operation effects on designated sites and habitats as being either slight adverse, neutral or slight beneficial and all effects being not significant [ER 3.6.59 Table 3: summary of effect on designated sites and habitats].
62. The Secretary of State notes that the Applicant and SDNPA differed on whether the proposed 5-year post-opening maintenance period for planting and habitat creation was sufficient [ER 3.6.66-67]. He notes that the ExA proposed that Requirement 6 in the Order should be amended from 5 years to 10 years for the reasons set out at ER 3.6.68 but that the Applicant continued to maintain that a 10-year replacement period would be contrary to the maintenance schedule of the landscaping works and therefore would not be appropriate [ER 3.6.69]. This is considered further at paragraphs 72 and 148.
63. The ExA considers that the Applicant has sought to minimise the impact on designated sites and habitats and overall, the loss of HPI is not significant although it encourages further attention to reducing impacts on hedgerows during detailed design which is stated as commitment reference LV2 in the first iteration EMP and secured by requirement 3 [ER 3.6.72]. While replacement and compensatory habitat has a slight positive impact due to the net increase in area being proposed, the ExA considered that further consultation and clarification is required prior to the finalisation of the second iteration EMP in respect of its maintenance and establishment [ER 3.6.73].

Species-specific impacts

64. The Secretary of State notes that during the early stages of the Examination a number of interested parties had requested additional information regarding mitigation and proposals for specific species and that the Applicant has sought to comply with these requests. The ExA sought to confirm at issue specific hearing 2 whether there were any outstanding concerns or issues with the proposals and mitigation proposals for specific species. The ExA considered that there was no reason to seek further confirmation of potential impacts on specific species. The Secretary of State has had regard to Table 4: summary of effect on identified species [ER 3.6.79] which summarises the conclusions of the ES that there are no significant impacts on any of the identified species. Natural England has issued a Letter of No Impediment (10 November 2023) which sets out NE's requirements for a final dormouse licence application to be submitted in due course together with the licence conditions, all of which have been agreed with the Applicant [ER 3.6.81].
65. In respect of species-specific impacts, the ExA concludes that with the proposed mitigation included in the first iteration EMP and which is secured by requirement 3, there is unlikely to be any significant impact on any identified species either during construction or operation of the Proposed Development [ER 3.6.83]. The Secretary of State agrees.

Biodiversity Net Gain (“BNG”)

66. The Secretary of State notes that the requirements for providing BNG under the Environment Act 2021 is not currently a requirement for NSIP applications until 2025 [ER 3.6.84]. Nevertheless, the Applicant has provided a BNG Assessment as an appendix to Chapter 8 of the ES which shows that the Proposed Development would result in a predicted net gain in biodiversity of +4.14% and a predicted net gain in linear habitats (hedgerows) of +3.60% [ER 3.6.85].
67. Although, as the ExA explains, a BNG of 4.14% is below the potential future threshold of a 10% requirement for BNG, and this is because of the risk factors associated with the provision of chalk grassland and, if “other neutral grassland” were to be provided instead of chalk grassland, the overall BNG score would improve from 4.14% to 14.93%. SDNPA confirmed that it considered establishing chalk grassland is significantly more important in this instance than achieving a target for BNG and that a 4.14% increase with the appropriate habitat is appropriate even though it suppresses the BNG calculation [ER 3.6.87].
68. The ExA accepts that there is currently no legal requirement to provide BNG for this application and it was recognised that a BNG of 4.14% is a positive benefit and accepted by the ExA that providing the preferred habitat in this location is the correct approach [ER 3.6.88]. The Secretary of State agrees with the ExA’s conclusions.

The Secretary of State’s Conclusions on Biodiversity and Ecology

69. The Secretary of State agrees with the ExA that he is satisfied that the Applicant has fully addressed the possible effects for construction and operation of the Proposed Development on biodiversity and ecology, that the overall approach to mitigation is appropriate for construction and operational effects and that the effects associated with the Proposed Development can be satisfactorily mitigated and managed [ER 3.6.89]. He further agrees that the Proposed Development complies with the relevant paragraphs of the NPSNN on conserving and enhancing biodiversity and ecology conservation interests and on mitigation measures [ER 3.6.99].
70. He agrees with the ExA that, with the agreed mitigation, the effects of the Proposed Development on designated sites are not significant [ER 3.6.90] (the Secretary of State’s particular consideration of the European Designated Sites under the Habitats Regulations is set out in paragraphs 251 – 264, below).
71. He agrees with the ExA’s conclusion that the Applicant has sought to implement enhancements to habitat and biodiversity [ER 3.6.93].
72. In respect of requirement 6 of the Order, he agrees that the requirement to replace failed planting of newly established habitats should be extended from a 5 year period to a 10 year period as this would accord with the duty to further the purposes of the National Park which is provided by the amendments to section 11A of the National Parks and Access to the Countryside Act 1949 made by section 245 of the Levelling Up and Regeneration Act 2023.
73. The Secretary of State has had regard to the ExA being satisfied that the opportunities for promoting biodiversity have been identified through the Proposed Development. In relation to habitats and species, he agrees with the ExA that, notwithstanding slight adverse effects in the short term on some types

of habitat, there will be slight beneficial effects on certain habitats and species in the medium term. It is recognised that in most cases the effects are between slight adverse and slight beneficial and in all instances, impacts are seen as not significant. When considering the positive effects of BNG and taking all other matters relating to biodiversity and ecology into account the Secretary of State notes the ExA attributed a little weight in favour of making the Order [ER 3.6.100].

Climate Change

Background

74. Section 104 of the 2008 Act states that the Secretary of State must decide an application for a national networks Nationally Significant Infrastructure Project in accordance with the NPSNN unless he is satisfied that one or more of the following exceptions contained in section 104(4) to (8) apply: doing so would lead to him being in breach of any duty imposed on him by or under any enactment; doing so would be unlawful by virtue of any enactment; the adverse impact of the proposed development would outweigh its benefits; or doing so would lead to the UK being in breach of its international obligations.
75. The UK's international obligations include its obligations under the Paris Agreement, which was ratified by the UK Government in 2016, after the NPSNN was designated in 2014. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008. In June 2019, the Government announced a new carbon reduction 'Net Zero' target for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050.
76. The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the third ("3CB"), fourth ("4CB"), fifth ("5CB") and sixth ("6CB") carbon budgets are 2018-2022, 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas ('GHG') emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement. Article 4(2) of the Paris Agreement requires States Parties to prepare, communicate and maintain successive nationally determined contributions that it intends to achieve and to pursue domestic mitigation measures with the aim of achieving the objectives of such contributions.
77. The Secretary of State notes that the impact assessment methodology applied by the Applicant is set out in Design Manual for Roads and Bridges (DMRB) LA 114 Climate ("DMRB LA 114") as updated in June 2021, which requires the calculation of estimated carbon emissions from the construction and operation of the scheme and assessment of these against the carbon budget period in which they arise, The Applicant's position is that there is no reasonable basis upon which it can assess the potential likely significant effect of the carbon emissions of the Proposed Development at anything other than at a national level [ER 3.7.39].

The Applicant's approach to climate assessment

78. The Applicant's assessment of the impact of the Proposed Development on climate is contained in the Applicant's ES Chapter 14 and is outlined at ER 3.7.17 – 3.7.31, setting out an assessment of GHG emissions compared to UK carbon budgets (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development. The Applicant's ES states in Chapter 14 at table 14.4 that construction phase emissions for the Proposed Development were calculated at 37,070 tCO₂e with the total net operational emissions, excluding land use change benefits (shown at table 14.5) at 4,161,286 tCO₂e for the 2027 annualised (modelled opening year) emissions, which is anticipated to reduce to 3,554,118 tCO₂e for the 2042 annualised (modelled design year DS) emissions [ER 3.7.28]. The Secretary of State is satisfied that the information provided for construction and operation reflects an assessment of the impact of the emissions of the Proposed Development itself. The net carbon emissions would equate to 0.002% of 4CB, 0.001% of 5CB and 0.002% of 6CB [ER 3.7.29]. This means contributions in any of the carbon budgets are expected to be a maximum of 0.002% in the relevant carbon budget. The Secretary of State also considers that the Applicant's approach to cumulative effects is an acceptable way to approach an assessment of the in-combination carbon emission impacts of the Proposed Development for the reasons set out more fully below.
79. The Applicant's climate assessment in the ES concluded that emissions from the Proposed Development, in isolation, would be unlikely to materially affect the UK's ability to meet its carbon budgets and it is not anticipated to give rise to a significant effect on climate in line with paragraph 5.18 of the NPSNN and the DMRB LA 114 [ER 3.7.29].
80. The Secretary of State considers that there is no set significance threshold for carbon but as set out in paragraph 5.18 of the NPSNN, an increase in carbon emissions is not a reason to refuse development unless any increase is so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets. The question of whether there is a material impact is a judgement to be made by the decision maker. In this case, the Secretary of State is satisfied with the assessment of the Proposed Development's impact on carbon emissions (including cumulative effects), that it complies with the requirements of paragraphs 5.16, 5.17 and 5.18 of the NPSNN and, noting the predicted impact on carbon budgets as set out above, is satisfied that the Proposed Development would be unlikely to materially impact the ability of the Government to meet its carbon reduction targets. The Secretary of State further notes the IEMA Guidance, which sets out that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050. The Secretary of State also considers that the Applicant's assessments represent a worst-case scenario [ER 3.7.45 and 3.7.56] and, therefore, as recognised by paragraph 5.18 NPSNN, he considers that the impacts may ultimately be lower than those assessed given the approach taken by the Applicant and the range of non-planning policies adopted by Government which seek to reduce carbon emissions from road transport.

81. The IEMA guidance also addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business as usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant – such a project may have residual emissions but that it is doing enough to align with and contribute to the relevant transition scenario to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory and has minimal residual emissions are considered to have negligible effect that it is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.
82. The Secretary of state notes the measures the Applicant will impose to minimise carbon emissions and that the ExA found these to be adequate and no further mitigation was required (ER 3.7.137 - 3.7.145). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible. Having regard to the foregoing, it is the Secretary of State's opinion that the effects identified in relation to the Proposed Development are considered to be not significant.
83. The Secretary of State notes that the draft revised NPSNN says at paragraph 5.42 that approval of schemes with residual carbon emissions is allowable and can be consistent with meeting net zero. In this respect, insofar as relevant to the Proposed Development, the Secretary of State does not consider there to be a material difference between the requirements of the NPSNN and the revised NPSNN and that emerging policy on carbon emissions does not weigh against granting consent for the Proposed Development.
84. With regard to the Paris Agreement, the UK's Nationally Determined Contributions ('NDC') commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the 5CB, which covers the period 2028-2032. The Government has set out wider policies and proposals for decarbonising all sectors of the UK economy to meet the 2050 target in 'The Net Zero Strategy: Build Back Greener', published by Government in October 2021, and the Carbon Budget Delivery Plan, published in March 2023, (together referred to as the 'Net Zero Strategy'). It identified how the UK will therefore need to overachieve on 5CB to meet its international climate targets and stay on track for 6CB. This Net Zero Strategy sets out the action Government will take to keep the UK on track for meeting the UK's carbon budgets and the 2030 NDC and establishes the UK's longer-term pathway towards net zero by 2050. The Secretary of State notes that there has been a successful challenge to the Secretary of State for Energy Security and Net Zero's assessment for the purposes of s.13 Climate Change Act 2008 reflected in the Carbon Budget Delivery Plan (CBDP) and that Government is required to produce a revised CBDP within the next 12 months (see *R (Friends*

of the Earth) v Secretary of State for Energy Security and Net Zero [2024] EWHC 995). He has also had regard to the representations made by Winchester Friends of the Earth, dated 13 May 2024, Dr Andrew Boswell, dated 14 May 2024, and Transport Action Network, dated 14 May 2024, which drew attention to this judgement. The CBDP was not quashed and remains government policy and sets out Government's commitment to comply with Carbon Budgets and the NDC in the Paris Agreement. The Secretary of State has no reason to consider that the Proposed Development will hinder delivery of the current Net Zero Strategy or any updated strategy. The Secretary of State is satisfied, in light of the net construction and operation emissions that have been identified, that consenting the Proposed Development will not affect the delivery of the Net Zero Strategy, or net zero in principle, nor will it have a material impact on the ability to meet the national targets, including 5CB (and overachievement in the Net Zero Strategy) or 6CB, and it will not lead to a breach of the UK's international obligations in relation to the Paris Agreement or any domestic enactments or duties. Like the ExA, the Secretary of State is satisfied that the Applicant has, in a robust and comprehensive manner, assessed carbon emissions from the Proposed Development against UK carbon budgets, which are a means for the UK to achieve compliance with the Paris Agreement which has shown a small increase in the magnitude of emissions from the Proposed Development. Like the ExA, he is content that assessment against the carbon budgets is sufficient for consideration of compliance with the UK's international obligations and that, with a contribution of 0.002% towards any carbon budget, the Proposed Development, in isolation, would not have a material impact on the ability of Government to meet said obligations [ER 3.7.123 – 3.7.124]. The Secretary of State notes that Interested Parties consider that the Proposed Development should also be assessed against local targets, but there are no legally binding local targets in force and, for the reasons set out by the Applicant [ER 3.7.42] and the ExA [ER 3.7.142-143] the Secretary of State considers that an assessment at a national level is appropriate and sufficient. In considering the current, designated NPS under section 104 of the 2008 Act the Secretary of State agrees with the ExA that the Proposed Development would be unlikely to cause the UK to be in breach of its carbon budgets [ER 3.7.159 and 3.7.165] and, by extension, international obligations including the obligations contained in the Paris Agreement 2015.

85. The Secretary of State notes the progress report of the Climate Change Committee ("CCC") submitted to Parliament on 23 June 2023. The CCC's advice was that the rate of emissions reductions in the UK will need to significantly increase to meet its 2030 NDC and the 6CB. The CCC advice included a recommendation that the Government should carry out a systematic review of current and future road-building schemes to assess their consistency with environmental goals and to ensure that decisions do not lock in unsustainable levels of traffic growth and develop conditions that only permit schemes to be consented where they are consistent with net zero. The Government responded to the CCC's report on 26 October 2023 stating in particular that National Highways already provides environmental impact assessments to allow consenting authorities to take decisions that are consistent with environmental policy and legislation and that, as set out in the Transport Decarbonisation Plan, the Government will continue to adapt and take further action if needed to decarbonise transport. Whilst the Secretary of

State notes this has been raised by CEPP and WCC [ER 3.7.67 – 3.7.68], the Secretary of State notes that the CCC's advice is not planning policy but is advice to Government, which Government is free to accept or reject. Like the ExA, the Secretary of State considers that the degree of weight given to the CCC's advice is for him to determine as the decision-maker [ER 3.7.72]. The CCC's advice is directed at the issue of achieving compliance with carbon budgets overall and the CCC has not set out any recommendations with respect to individual planning decisions or development consent applications. The approach to development consent applications is set out in the NPSNN. There are other policy mechanisms available outside the 2008 Act and the NPSNN which can address any difficulties in meeting the NDC and/or the 6CB. The Secretary of State therefore gives the CCC's advice neutral weight.

Examination Issues

86. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.7.32.

Adequacy of the ES Assessment [ER 3.7.33 – 3.7.62]

87. The Secretary of State has had regard to the concerns put forward by CEPP regarding the use of the Institute of Environmental Management Assessment guidance [ER 3.7.33 – 3.7.38] and the Applicant's response which notes that, whilst recognising that there is more than one way to assess the impact of emissions of the Proposed Development, the current guidance and legal context is that road schemes should only be assessed against National Carbon Budgets [ER 3.7.39 and 3.7.42]. The Applicant went on to explain its methodology and notes that the Proposed Development would be highly unlikely to undermine securing the Carbon Budget Delivery Plan ("CBDP") [ER 3.7.43]. The Secretary of State agrees with the ExA that the methodology used by the Applicant is acceptable and satisfactory regarding the assessment of the cumulative impact [ER 3.7.62] and that the Proposed Development, as a single project, would be highly unlikely to undermine securing the CBDP [ER 3.7.115]. Notwithstanding the *Friends of the Earth* judgment, for the reasons set out in this section of the Decision Letter, the Secretary of State remains of the view that, in light of the scale of the carbon emissions generated by the Proposed Development and the existence of other non-planning policies in the TDP which will reduce emissions further from those assessed in the ES, granting consent is not inconsistent with the Government's legal obligations under the Climate Change Act 2008, or with its international obligations under the Paris Agreement.

88. The Secretary of State notes the concerns raised by WCC and CEPP regarding the impact of changes to policy relating to the sale of new petrol and diesel cars between 2030 and 2035 announced by the Prime Minister on 20 September 2023 [ER 3.7.44]. In its response, the Applicant explained that the GHG assessment was based on fleet projection data which predated the previous policy, which restricted sales of new petrol and diesel cars unless they had significant zero emissions capability from 2030 and, therefore, the announcement to remove this requirement between 2030 and 2035 (by 2035 a full ban on the sales of petrol and diesel cars will be in place) would not affect the GHG assessment in Chapter 14 of the ES [ER 3.7.45].

89. The Secretary of State has had regard to Dr Boswell's submission on behalf of CEPP regarding cumulative impacts of the Proposed Development and compliance with EIA regulations, as noted by the ExA [ER 3.7.46 – 3.7.49]. The lawfulness of the Secretary of State's assessment of cumulative carbon emissions (based on the Applicant's approach) has been challenged in the courts by Dr Boswell following the making of a number of other DCOs, as outlined at ER 3.7.50. In its judgment dated 7 July 2023 (R (on the application of) Andrew Boswell v Secretary of State [2023] EWHC 1710), the High Court dismissed the claims mentioned by the ExA. This decision was upheld by the Court of Appeal in its judgment dated 22 February 2024 (R (on the application of) Andrew Boswell v Secretary of State for Transport [2024] EWCA Civ 145). This makes clear that the approach to assessing cumulative effects was lawful and complied with the 2017 Regulations and that the Secretary of State had not acted unlawfully in concluding that he had sufficient information to assess the cumulative effects of the road schemes in issue in that case. The approach and methodology adopted by the Applicant for the Proposed Development is the same as that adopted for the A47 road schemes that were considered in the Boswell case. While the Secretary of State appreciates these cases may still be appealed to the Supreme Court, the position of the Secretary of State is that this ruling supports his overall view that the Applicant's assessments and methodology are reasonable and provide a sufficient basis for reaching a conclusion on the likely significant effects of the Proposed Development when taken together with other existing and/or approved projects on climate for the reasons set out by the Applicant [ER 3.7.54] and the ExA [3.7.55-3.7.62].
90. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Proposed Development's impact on carbon emissions and its cumulative impact, is adequate and agrees with the ExA that the environmental assessment carried out for the Proposed Development complies with the 2017 regulations and that the cumulative assessment reported in the ES can be relied upon to have met the legal tests required of it [ER 3.7.62].

Effects of the Proposed Development on Climate Change

91. The Secretary of State notes the submissions from CEPP stating their position that it is no longer credible to rely on the delivery of net zero in the making of Development Consent Order decision [ER 3.7.63]. CEPP contend that the Applicant's ES states that the Proposed Development would create additional, and very significant carbon emissions which would have a material effect on the ability of Government to reach its carbon reduction targets [ER 3.7.64]. In response, the Applicant stated that it is for the Secretary of State to consider the question of reliance on the deliverability of national targets when deciding whether to make the Order, which CEPP agreed with [ER 3.7.65 – 3.7.66]. As discussed at paragraph 78 – 80, the Secretary of State considers that the Applicant has provided sufficient environmental impact assessments to allow him to take a decision consistent with environmental policy and legislation and that, as set out in the Transport Decarbonisation Plan, the Government will continue to adapt and take further action if needed to decarbonise transport through other policy mechanisms. The Secretary of State notes that the ZEV mandate, which was still subject to public consultation when the Transport Decarbonisation Plan was published, is now in force.

92. The Secretary of State notes the issues raised by CEPP relating to sectoral reduction strategies in the CBDP and the responses provided by the Applicant [ER 3.7.74 – 3.7.76] and agrees with the ExA’s conclusions at ER 3.7.116. The Secretary of State further notes the issues raised relating to the question of whether the Secretary of State is able to reach an adequately reasoned conclusion in relation to climate change, in the context of the 2017 Regulations. Under regulation 21 of the 2017 Regulations, the Secretary of State must reach a “reasoned conclusion” on the significant effects of the proposed development on the environment, which must be based on his Examination of the environmental information provided, and be up to date at the time of the decision as to whether to grant the order. That conclusion is taken to be up to date if, in the opinion of the Secretary of State, it addresses significant effects of the Proposed Development on the environment that are likely to arise as a result of the development described in the application [ER 3.7.79]. For the reasons given by the ExA at ER 3.7.117, the Secretary of State considers that the information provided by the Applicant as regards the environmental impact of the Proposed Development, including that within the ES, is sufficient to reach a reasoned conclusion.
93. For the reasons given at E.R 3.7.157, the Secretary of State agrees with the ExA that the “*latest evidence and risk analysis of the CBDP*” is not required in order for him to be able to reach a reasoned conclusion on whether approving the Proposed Development would lead to a breach of international obligations or statutory duty or be otherwise unlawful. The Secretary of State considers that any issues in terms of delivery risk of the Government’s overall strategy for achieving carbon budgets do not affect his conclusions in respect of the impacts of the Proposed Development in this case, in light of his conclusions on the significance of carbon emissions set out elsewhere in this section.
94. The Secretary of State has had regard to the points raised by CEPP relating to the case of R (Friends of the Earth) v Secretary of State for Business, Energy, and Industrial Strategy [2022] [ER 3.7.86 – 3.7.87]. He agrees that the assessments applied in the judgement related to the 2021 Net Zero Growth Plan and did not create a test for individual projects or schemes and he does not consider it to be applicable to the Proposed Development.
95. The Secretary of State notes the issues raised relating to section 104 of the Planning Act 2008 and the assertions made by CEPP that the Secretary of State cannot be certain that, by approving the Proposed Development, the UK would not be in breach of its international obligations, or of any statutory duty, or otherwise be in breach of the law [ER 3.7.91 – 3.7.97]. The Secretary of State agrees with the Applicant’s conclusions on the points raised. In relation to the security of carbon budgets, he agrees that even if there were any uncertainty over the delivery of the 2030 NDC or 6CB, that does not create any certainty that there would be such a breach [ER 3.7.99]. In this case, the construction and operation emissions from the Proposed Development are a very small proportion of the relevant carbon budgets and therefore, even in circumstances where a revised CBDP is to be published and delivery risk in the pathway to meeting carbon budgets on a whole-economy basis will be addressed through that process, the Secretary of State is satisfied that granting consent would not have any material impact on the Government’s ability to comply with carbon budgets. In addition, the Secretary of State is satisfied that

the impact on carbon budgets in percentage terms is likely to be lower than assessed in the ES due to the effects of non-planning policies relating to transport which are now in force (such as the ZEV mandate) or likely to come into force in the future through the TDP.

96. The Secretary of State has had regard to the concerns raised in relation to the relevance of the existing NPSNN paragraph 5.17 as it was written prior to the net zero target, the net zero strategy and the CBDP [ER 3.7.102] however, and as noted at paragraph 15, the currently designated NPSNN remains government policy and continues to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent. Furthermore, the Secretary of State agrees that paragraph 5.17 of the designated NPSNN is consistent with the draft revised NPSNN (2024) paragraph 5.39 [ER 3.7.107].

Proposed Mitigation: Effectiveness and Resilience

97. The Secretary of State notes that WCC's aim is for the district's emissions to be carbon neutral by 2030 and that, at the close of the Examination, WCC maintained concerns relating to mitigation measures secured by the Proposed Development as set out in the SoCG between WCC and the Applicant [ER 3.7.126] and provided a view on additional opportunities for further mitigation to be achieved [ER 3.7.127 – 3.7.128]. In response, the Applicant said that the mitigation provided for by the Proposed Development is sufficient to ensure that carbon emissions would not be unnecessarily high and that all reasonable steps have been taken to mitigate carbon emissions in accordance with the NPSNN as set out in the ES and that additional mitigation measures are not required [ER 3.7.129 – 3.7.132]. Whilst the Secretary of State notes WCC's Carbon Neutrality Action Plan [ER 3.7.133], he agrees with the ExA that this is local policy, and that impact assessments on NSIP schemes such as the Proposed Development are rightly considered at a national level, as are carbon budgets, and therefore it is appropriate for the Applicant's assessments to reflect existing Government policy on reaching net zero by 2050 [ER 3.7.142 – 3.7.143]. The Secretary of State agrees with the ExA that the mitigation measures relating to design and construction of the Proposed Development are adequate [ER 3.7.145] and that, on the subject of resilience, based on the information provided in the ES, no critical features of the design would be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections as required by paragraph 4.43 of the NPSNN and would therefore be sufficiently resilient to possible future impacts of climate change [ER 3.7.154].

The Secretary of State's Conclusions on Climate Change

98. The ExA was satisfied that the Applicant has had regard to the applicable law and policy tests relating to carbon emissions and impacts [ER 3.7.163]. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted. Like the ExA, the Secretary of State does not consider WCC's Carbon Neutrality Action Plan represents an appropriate policy document for

assessing or managing carbon emissions of the Proposed Development, or that it provides justification for the offsetting and further mitigation sought by WCC. He is also satisfied that appropriate mitigation measures would be incorporated into the design and construction phase as discussed above [ER 3.7.165].

99. Overall, the Secretary of State considers that the information provided by the Applicant on the impact of the Proposed Development on carbon emissions (including the cumulative effects of carbon emissions from the Proposed Development with other existing and/or approved projects in relation to construction and operation) is sufficient to understand the impact on carbon emissions, to assess the effect of the Proposed Development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge and in light of the information about the national carbon budgets.

100. Overall, the Secretary of State considers that: the carbon emissions from construction and operation of the Scheme on their own and cumulatively would not have a material impact on Government's ability to meet carbon budgets or the Government's international obligations; the magnitude of the increase in carbon emissions resulting from the Proposed Development is predicted to be a maximum of 0.002% of any carbon budget and therefore represents a very small increase in the overall magnitude of carbon emissions [ER 3.7.161 – 3.7.162]. The Secretary of State is therefore satisfied that granting consent would not have a material impact on compliance with carbon budgets. In addition, over time the net carbon emissions resulting from the Proposed Development's operation will decrease as measures to reduce emissions from vehicle usage are delivered. There are also a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time such as the TDP, published in July 2021, and help to ensure that carbon reduction commitments are met such as the Net Zero Strategy and revised CBDP which will be published in the next 12 months. The Secretary of State is satisfied that the very small increase in emissions that will result from the Proposed Development can be managed within Government's overall strategy for meeting net zero and the relevant carbon budgets. The Secretary of State considers that the Applicant has presented evidence of appropriate mitigation measures secured in the Order to ensure carbon emissions are kept as low as possible and that the Proposed Development will not materially impact the Government's ability to meet its net zero targets. The Secretary of State is satisfied that the Proposed Development complies with the NPSNN and will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to net zero.

101. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in a very small increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development needs to be considered in the context of existing and emerging policy and legal requirements to achieve the UK's trajectory towards net zero. The Secretary of State agrees with the ExA that the application should be considered and determined in accordance with existing government policy under the designated NPSNN [ER 3.7.159]. As discussed at paragraph 85 and 91, the Secretary of State considers that the Government has other policy mechanisms by which to meet its legal obligations, and that these policies will

continue to be developed should that be necessary, and agrees with the ExA that the Proposed Development in isolation is unlikely to undermine these efforts [ER 3.7.160].

102. The Secretary of State agrees with the ExA that the proposed mitigation measures are appropriate in both design and construction in accordance with paragraph 5.19 of the NPSNN and would be effective in ensuring the carbon emissions of the Proposed Development will not be unnecessarily high [ER 3.7.165]. Taking this into account the Secretary of State agrees that the Proposed Development would be sufficiently resilient against the possible future impacts of Climate Change [ER 3.7. 166].

103. The Secretary of State notes that the ExA consider that issues relating to climate change were neutral in the decision to make the Order, however, given the increase in emissions that are likely as a result of the Proposed Development, although they are small and not significant in EIA terms, he has instead given them limited negative weight.

Flood Risk, Groundwater, and Surface Water

104. The Secretary of State has had regard to the assessment of the impacts of the Proposed Development on road drainage and the water environment detailed at Chapter 13 of the ES [ER 3.8.14] and notes that it includes the summary and assessment of the Flood Risk Assessment and Water Framework Directive Compliance [ER 3.8.15].

Examination Issues

105. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.8.28.

Watercourses and Groundwater

106. The Secretary of State notes that the principal watercourse with the potential to be impacted by the Proposed Development is the River Itchen. As a result of mitigation measures in the first iteration EMP, other watercourses within the environs of the Proposed Development considered are unlikely to be impacted [ER 3.8.29].

107. The Applicant has minimised the impact of the Proposed Development on the River Itchen through the design process and in consultation with the Environment Agency. The Secretary of State notes that necessary elements of the Proposed Development requiring works in, over, or near to the river have the potential to create residual impacts on the river, however, he further notes that the Environment Agency confirmed that the draft Order and proposed mitigations contained within the first iteration EMP are acceptable and minimise the risk of these potential residual impacts during construction [ER 3.8.30 – 3.8.31].

108. The Secretary of State notes that the Environment Agency confirmed in its SoCG that the Proposed Development meets its requirements, and that the Water Framework Directive Compliance assessment shows that the Proposed Development would not result in a deterioration to the status of the River Itchen, nor prevent it from achieving a 'good' status by 2027 [ER 3.8.33 – 3.8.34].

109. The Secretary of State agrees with the ExA that the Applicant has sought to minimise the impact of the Proposed Development on the watercourses within the Order Limits and in the catchment area of the Proposed Development, with the Environment Agency confirming that risk during construction and operation have been assessed appropriately and that the mitigations proposed are acceptable. [ER 3.8.38].

Drainage Design

110. The Secretary of State notes that, in relation to drainage design, agreement had been reached between the Applicant, HCC and the Environment Agency that the measures proposed were acceptable and the ExA found that the proposed pollution control measures have been accepted by the local authority and the Environment Agency as effectively managing the risk of pollution events in watercourses and groundwater and that these measures are secured in requirement 13 of the Order [ER 3.8.41 – 3.8.42]. As such, the Secretary of State agrees with the ExA that drainage design has been undertaken to the relevant design criteria and complies with requirements for discharge and infiltration rates [ER 3.8.44 – 3.8.45]. The Secretary of State notes that, in its LIR, SDNPA had some concerns regarding the impact of some drainage basins on the landscape character, and has considered these at paragraphs 141 - 142, below [ER 3.8.43 and 3.8.46].

Flood Risk

111. The Secretary of State notes the Flood Risk Assessment carried out by the Applicant and the conclusions contained within the ES which states that, despite a high to very high level of sensitivity to flood risk, with the implementation of mitigation measures detailed in the first iteration EMP and the drainage strategy, the residual effect associated with flood risk is not significant. These conclusions were accepted by HCC as the Lead Local Flood Authority and the Environment Agency [ER 3.8.49].
112. The Secretary of State notes the sequential and exception tests set out in the NPSNN at paragraph 5.105 to 5.109 [and mentioned in draft revised NPSNN at paragraph 5.127 to 5.128 and 5.143 to 5.145]. Both tests apply in this case and the exception test requires that it be demonstrated that the Proposed Development provides wider sustainability benefits to the community that outweigh flood risk and that a flood risk assessment must demonstrate that the Proposed Development will be safe for its lifetime without increasing flood risk elsewhere and, where possible, will reduce flood risk overall [ER 3.8.50 – 3.8.51].
113. The Secretary of State notes that, in the flood risk assessment, the Applicant concludes that the wider community benefit has been met as detailed in the need for the Proposed Development [ER 3.8.52]. He further notes that the flood risk assessment states that modelling has confirmed that flood risk is not increased as a result of the Proposed Development and that users will not be affected by flooding for the lifetime of the Proposed Development [ER 3.8.52 – 3.8.53], with both the Environment Agency and the Lead Local Flood Authority confirming their agreement with the findings of the flood risk assessment in their SoCGs with the Applicant [ER 3.8.54 and 3.8.56].

114. As such, the Secretary of State agrees with the ExA that the Proposed Development does not give rise to unacceptable flood risk and that the flood risk assessment has fulfilled the requirements set out in the NPSNN as regards the sequential and exception tests [ER 3.8.57].

The Secretary of State's Conclusions on Flood Risk, Ground Water, and Surface Water

115. Like the ExA, the Secretary of State is satisfied that the Applicant has adequately addressed the risk and possible effects of flooding, ground water, and surface water for the construction and operation of the Proposed Development and that these can be satisfactorily mitigated and managed [ER 3.8.58]. The Secretary of State agrees with the ExA that the Applicant has shown that the Proposed Development has met the requirements set out in the NPSNN as regards flood risk, groundwater, and surface water, and that the Proposed Development will not result in a deterioration in the Water Framework Directive status of the River Itchen or any other watercourse or prevent achieving Good status by 2027. He notes that there is the potential for temporary negative effects on water quality during construction but there will be an improvement in pollution control in the operational phase due to improved drainage design [ER 3.8.59 – 3.8.64]. As such, the Secretary of State agrees with the ExA that flood risk, groundwater and surface water impacts carry a minor positive weight in favour of the Order being made [ER 5.4.54].

Historic Environment

116. The Secretary of State notes that the Applicant's assessment regarding the historic environment is contained within Chapter 6 of the ES and associated documents and its approach is summarised by the ExA in ER 3.9.14 – 3.9.26. The Secretary of State notes that the Applicant assessment considers the impacts upon designated and non-designated cultural heritage assets (which the Applicant has considered under three subtopics of archaeological remains, historic buildings and historic landscapes) during both construction and operation of the Proposed Development [ER 5.9.14 – 5.9.15].
117. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.9.15.

If the potential harm to historic assets has been adequately assessed

118. The Secretary of State notes SDNPA agreement with the conclusion of the ES Chapter 6 acknowledging that adverse impacts on buried assets will occur but these can be satisfactorily mitigated. WCC in their LIR confirmed it found the ES assessment and conclusions valid and appropriate [ER 3.9.28].
119. The Secretary of State has taken note of the Applicant's consultation with the appropriate authorities, including Historic England, regarding the Historic Environment. Whilst there were some detailed questions and comments from WCC and SDNPA in their LIRs which were subject to further consultation, there were no other specific references or issues raised by Interested Parties (IPs) relating to historic environment [ER 3.9.31] and at the close of the Examination, the SoCGs with WCC, SDNPA and Historic England confirmed that all issues relating to cultural heritage were agreed [ER 3.9.33].

Archaeological remains including Scheduled Ancient Monuments

120. The Secretary of State notes the Applicant has detailed the archaeological remains, and the effect of the Proposed Development on them, within the application boundary and a study area of 1km from the application boundary [ER 3.9.34]. The ES refers only the site of St Gertrude's Chapel Scheduled Ancient Monument (SAM) is likely to be subject to an impact on a small part of the wider setting during both the construction and operational phases [ER 3.9.35]. The Secretary of State notes whilst there were no specific concerns raised by IPs relating to archaeological remains, the ExA was asked to visit St Catherine's Hill SAM and the Dongas Ancient Trackway, which is broadly coincident with the Roman Road SAM detailed in the ES. The ES concluded that neither will be impacted by the Proposed Development [ER 3.9.38]. The ExA also concluded that there would be temporary and permanent slight adverse impacts on the site of St Gertrude's Chapel SAM [ER 3.9.41]. The Secretary of State agrees with the ExA's conclusions.

Built Heritage

121. The Secretary of State notes the Applicant has also considered the historic buildings and conservation areas that are within the application boundary and the study area of 1km from the application boundary [ER 3.9.42]. The Secretary of State notes only Worthy Park House which is a Grade II Listed Building and Abbots Worthy and Kings Worthy conservation areas along with associated Grade II listed buildings (as referenced in Table 6.11 of ES Chapter 6) are likely to be subject to an impact [ER 3.9.43].

122. The Secretary of State agrees with the ExA that the Applicant's assessment in respect of the built heritage effects have considered relevant historic environment aspects [ER 3.9.51] and the Applicant's assessment on the designated built heritage assets in relation to both construction and operation of the Proposed Development and this is supported by agreement from Historic England [ER 3.9.52]. He agrees with the ExA that in respect of both Kings Worthy and Abbots Worth Conservation Areas, there will be a likely temporary and permanent impact which is not significant and in respect of Worthy Park House, he agrees there will be a negligible impact which is not significant [ER 3.9.53].

Historic Landscape

123. The Secretary of State notes there are no designated historic landscapes within the study area of the Proposed Development and agrees with the Applicant's assessment of the effects on the non-designated historic landscapes in relation to both construction and operation phases which is supported by agreement from Historic England [ER3.9.62]. The Secretary of State agrees with the ExA the assessment of the non-designated historic landscapes as having temporary and permanent neutral to moderate impacts which are not significant [ER 3.9.63].

Recording and storage of archaeological assets and finds

124. The Secretary of State notes that concerns were raised by WCC and SNDPA supported by Historic England about the recording and storage of finds and additionally how outreach and public engagement was secured within the

Order. The ExA found the primary issue related to available archive space and funds required to ensure that records and finds could be stored adequately without resources and funding required from local authorities [ER 3.9.68]. The Secretary of State notes during the Examination this was resolved between the parties and addressed in requirement 9 in the Order [ER 3.6.69].

The Secretary of State's Conclusion on Historic Environment

125. The Secretary of State agrees with the ExA that the Applicant has fully addressed the possible effects on the historic environment and assets for the construction and operation of the Proposed Development and has demonstrated that such effects associated with the Proposed Development can be satisfactorily mitigated and managed [ER3.9.72]. Overall, the ExA concluded that for each of the designated heritage assets that the proposed development would result in less than substantial harm to the significance of those assets [ER 3.9.76 and 3.9.77]. The Secretary of State agrees with the ExA that the harm identified falls to be weighed against the public benefits of the proposed Development as required by paragraph 5.134 of the NPSNN [ER 5.4.62] and this is considered in the Planning Balance section below.

Landscape Impact, Visual Effects and Design

Section 245 of the Levelling-up and Regeneration Act

126. Section 245 of the Levelling-up and Regeneration Act 2023 (“the 2023 Act”) amends section 11A of the National Parks and Access to the Countryside Act 1949 (“NPAC Act”) so as to impose a duty on relevant authorities, including the Secretary of State, to seek to further the purposes of National Parks. With regard to National Parks, which are relevant to this matter, the relevant purposes are set out in section 5(1) of the NPAC Act: conserving and enhancing the natural beauty, wildlife and cultural heritage of national parks and promoting opportunities for the understanding and enjoyment of the special qualities of national parks by the public. Before the amendment made by section 245 came into force, there was a duty to “have regard” to those purposes.

127. Chapter 7 of the ES outlines the effects of the Proposed Development in relation to landscape and visual matters, as summarised at ER 3.10.27 – 3.10.36, with the overall outcome of the assessment concluding that there would be a moderate adverse and significant effect on landscape and visual amenity as a result of the Proposed Development in the short to medium term whilst proposed mitigation is establishing, with the effects reducing to slight adverse and not significant in the long term [ER 3.10.36].

128. The Secretary of State notes the design features set out in the ES Non-Technical Summary have avoided adverse effects wherever practicable and reduces residual effects through appropriate mitigation measures identified in Figure 2.3 (Environmental Masterplan) of the ES [ER 3.10.37].

129. In his consultation letter of 8 March 2024, the Secretary of State invited the Applicant to provide comments on the implications of the 2023 Act from their perspective, and how he could be satisfied that the Proposed Development meets the requirements applied by the amendments made by the 2023 Act as regards section 11A of the NPAC Act. In their response dated 15

March 2024, the Applicant considered that some meaning must be applied to the words “seek to” until such a time that there is guidance and regulations to assist in the application of the duty, and the Secretary of State agrees. Furthermore, the Applicant stated that throughout the design of the Proposed Development measures to conserve and enhance the natural beauty, wildlife, and cultural heritage of the National Park and measures to promote understanding and enjoyment had been incorporated.

130. In his consultation letter of 22 March, the Secretary of State invited the SDNPA and other Interested Parties to comment on the Applicants letter of 15 March 2024. The Secretary of State notes that the SDNPA in their response of 5 April 2024 contend that the Applicant cannot have taken all reasonable steps to further the statutory purpose of the National Park and directing him towards Examination submissions which the SDNPA had previously submitted, including the location of, and design of, the construction compound.

Examination Issues

131. The Secretary of State notes that the main issues considered during the Examination were those summarised at ER 3.10.42.

Effects on the Landscape Character During Construction and Operation

132. The Secretary of State notes the SDNPA’s position as set out at ER 3.10.43 – 3.10.48, and notes that, in the opinion of the SDNPA, the Proposed Development would not be in accordance with national policies and a number of the policies within the South Downs Local Plan and would not meet the statutory purpose of conserving and enhancing the National Park. The Secretary of State has had regard to the Local Impact Report provided by the SDNPA wherein it sets out the negative impacts it has identified as a result of the Proposed Development, the seven special qualities of the National Park, and the designated boundary of the National Park. The Secretary of State notes that the designated boundary of the National Park includes the area to the north and west of the M3 due to the high-quality chalk landscape and the River Itchen [ER 3.10.44 – 3.10.46].

133. The Secretary of State notes that, whilst the SDNPA was supportive of the provision of improved access for walking, cycling and horse-riding in to the National Park which would contribute to the second purpose of the SDNP, it was critical of the alignment selected for the proposed bridleway between Easton Land and Long Walk, and consider that the land-take from the National Park as a result of the Proposed Development would result in significant adverse and permanent impacts on its special qualities and is therefore not in accordance with either National or Local policies or the statutory requirement to conserve and enhance [ER 3.10.47 – 3.10.48].

134. The Secretary of State notes the main negative impacts identified by the SDNPA as those summarised at ER 3.10.48, and has considered them each in turn below:

Earthworks/Changes to Topography

135. The Secretary of State notes the concerns of the SDNPA as set out in its Local Impact Report as regards earthworks and changes to topography, wherein it states that greater consideration should be given to landform proposals to ensure more seamless integration with the existing landscape [ER

3.10.49 – 3.10.50]. In response, the Applicant provided additional information on their proposals, contending that the placement of site-gained material provides for the basis of chalk grassland to better integrate the Proposed Development into the existing open rolling chalk downland landscape and to maximise screening of the existing M3 and the Proposed Development from the National Park [ER 3.10.51] which constitutes a positive use of this material to minimise land take, maximise visual screening and respond to the landscape characteristics of the National Park [ER 3.10.58].

136. The Secretary of State notes that, following consultation and engagement with the SDNPA developed proposals to avoid and minimise effects the removal of proposed artificial earthworks and removal of spoil deposition areas. The site-gained material would be used to aid visual screening of the highway corridor through the implementation of sympathetically designed earthworks which reflect the existing landform in supporting visual screening and integrating the highway corridor into its landscape context and this approach has reduced the footprint of the Proposed Development in the National Park [ER 3.10.52]. The Design and Access Statement contains a principle that earthworks would be sympathetic to the downland, and Figure 2.3 Environmental Masterplan of the ES shows the contours of placed material. While there would be a 9m fill in some areas, it would be limited to those areas where there would be a false cut. The design solution is to place the material over a sufficient area size to blend deposits into the landforms, reflecting the existing variable profiles [ER 3.10.54]. The Applicant submits that visibility analysis and the production of visualisations has identified that once landscape mitigation on these slopes has established, the earthworks would not be a dominant feature. This would be further mitigated by proposed woodland features reflective of the surrounding characteristic features found within the river valley and would further integrate the earthworks. The Secretary of State notes the added environmental commitment by the Applicant in the first iteration EMP to further explain the design intent and further develop the earthwork profiles during detailed design [ER 3.10.56].

137. The ExA considered that excavated material would be spread over a sufficient area with an appropriate volume of deposited material so that resulting changes to the topography would be reflective of the existing profiles and blend in to the landforms [ER 3.10.60]. Based on the proposed design and mitigation measures secured in the Order, the Secretary of State agrees with the ExA's conclusion that, whilst there would be a significant adverse effect on the landscape during construction and immediately following the construction of the Proposed Development, but once the mitigation has become established, the earthworks and topography will not have any significant adverse effects on the surrounding landscape [ER 3.10.62].

Loss of Existing Vegetation and Proposed New Planting

138. At the close of Examination, the SDNPA maintained concerns relating to vegetation loss and tree removal along the eastern edge of the M3 which currently provides screening and a buffer between the National Park and the motorway, and that this would have a significant detrimental effect on the landscape when considered in combination with the proposed increased height of the new junction elements [ER 3.10.63 – 3.10.64]. SDNPA also stated that the proposed width of tree planting along the eastern edge of the M3 would be

only 10m wide which they submitted was unlikely to be sufficient to provide a robust level of screening of the road infrastructure and activity and sought strengthening of the requirements in the order to ensure that tree planting along the eastern edge of the motorway would be no less than 25m in width and that at least half of this planting would occur on top where it would be more elevated and would provide a more effective screen [ER 3.10.65 - 3.10.66]. In response, the Applicant stated that the area where planting is less than that currently provided was relatively small, and required by the topography of the location, with planting located on the edge of the defined Open Downland landscape where topography profiles steepen. The first iteration EMP was updated during the Examination to provide additional commitments LV25 and LV26 in the REAC Table 3.2 to provide for additional woodland planting to support environmental visual screening and provide a total width of planting of 25m [ER 3.10.67 – 3.10.70].

139. The Applicant's closing statement points out that the SDNPA acknowledge that most of the proposed vegetation loss was unavoidable as it relates to vegetation within the footprint of the currently proposed works and requested that advanced planting was undertaken to minimise the opening-up of views as much as possible [ER 3.10.72]. In response, the Applicant provided additional materials to confirm the extent and reasoning for the inclusion of advanced planting and further amended LV16 of the first iteration EMP to provide for the advanced planting of new woodland and scrub/shrub planting to be undertaken for specified landscape plots and would be secured by requirements 3, 5 and 6 in the Order [ER 3.10.73 – 3.10.74].

140. The Secretary of State recognises that there would be an unavoidable loss of vegetation as a result of the Proposed Development [ER 3.10.75 – 3.10.76] which will have residual significant effects in the medium term. However, these will reduce to a slight adverse and not significant effect in the long term due to the proposed mitigation [ER 3.10.77]. The Secretary of State agrees with the ExA that the loss of this vegetation will open up views of the motorway corridor and the new infrastructure at the outset resulting in harm to the landscape in the short to medium-term. Whilst he notes the concerns of the SDNPA, he is satisfied that the proposed mitigations will result in effects that in the long term will not be significant [ER 3.10.79 – 3.10.81].

The Impact of the Proposed Swale and Attenuation Ponds upon the Open Downland of the National Park

141. The Secretary of State has had regard to the concerns raised by the SDNPA relating to the swale and attenuation ponds, contending that they would have a negative impact that, even with the proposed planting, would not restore the existing character of the National Park [ER 3.10.82 – 3.10.84]. In response, the Applicant stated that the basins and swale would have a form comparable to the existing chalk landscape and that the Proposed Development requires drainage features to the east of the highway to collect the natural flow of water in the surrounding areas, with two basins within the National Park boundary [ER 3.10.85 – 3.10.86]. The Secretary of State notes the consideration given to ensure sympathetic landform and mitigation of these basins as detailed at ER 3.10.87 – 3.10.92 and the Applicant's position that the introduction of planting at Basin 5 supports the integration of the Proposed Development into its

surroundings, supports the conservation of the wider National Park, and supports habitat connectivity [ER 3.10.93].

142. The Secretary of State agrees with the ExA's conclusion that the area of one of the basins (Basin 5) within the National Park acts as one of transition between two landscape character types and that, therefore, proposed planting could be successfully integrated and provide appropriate mitigation in the context of the existing local character, in contrast to the submissions of the SDNPA [ER 3.10.99 – 3.10.102]. He further notes that, in respect of a second basin, Basin 6, the form would have similar properties to the surrounding landscape and would be imperceptible within the landscape once mitigation had been established [ER 3.10.103 – 3.10.104].

The Landscape Impact of the Proposed Construction Compound

143. The Secretary of State notes that, following statutory consultation, further work was undertaken to reduce the impact of the main construction compound [ER 3.10.105].

144. The Secretary of State has had regard to the Applicant's position explaining how the sensitivity of the National Park has been determined, as detailed in Chapter 7 of the ES, noting the decision to consider the National Park as a whole and adopting a worst-case position considering its qualities and their influence. He has also taken account of the Applicant's contention on the application of paragraph 5.150 of the NPSNN that it does not apply to every individual element of the Proposed Development in isolation but the collective development as a whole which was why greater weight was not afforded to the impact of the construction compound in isolation on the SDNP given the context of the existing junction, the Proposed Development and the construction activity that would take place at this location [ER 3.10.106 – 3.10.107].

145. The SDNPA noted concerns in its Local Impact Report and SoCG with the Applicant relating to the proposed location of the construction compound, stating that it would be an unacceptable incursion beyond the boundary of the existing highway and exacerbate the impact of the Proposed Development on the National Park [ER 3.10.108]. In response, the Applicant identified the Area of Theoretical Visibility of the proposed construction compound as detailed at ER 3.10.109 – 3.10.112 and contended that a sensitive layout of the construction compound would minimise the visual effects as far as reasonably practicable [ER 3.10.113]. The Applicant also explained that they were seeking to minimise temporary reprofiling of the existing topography by locating cabins parallel to contours and ensuring that any static units within the compound would be single storey (not exceeding a height of 4m), as secured at requirement 15 in the Order [ER 3.10.115 – 3.10.116]. The Applicant in its indicative construction compound layout plan demonstrates that the Applicant would be able to locate the fixed elements lower in the landscape to respond appropriate to the site topography and ensure that visual effects would be minimised as far as reasonably practicable and that the proposed mitigation included in requirement 15 would serve to mitigate the adverse impact of the construction compound to an extent [ER 3.10.122 – 3.10.123]. Having consideration of the SDNPA's concerns, the Secretary of State agrees with the ExA that the impact of the construction compound in the proposed location would not materially increase the overall effects on the SDNP arising from the

wider construction activity, but that the overall adverse effects during the construction period and until restoration would be significant, regardless of the mitigation measures in place [ER 3.10.129].

The Provision of Chalk Grassland as Mitigation

146. The Secretary of State notes that chalk grassland is proposed as a form of mitigation and that, whilst supportive of the principle, the SDNPA has expressed some concerns that the proposals for the area east of the M3 to be managed as chalk grasslands would not correspond to the existing landscape and exacerbate the impacts of the Proposed Development. It instead seeks for all fields east of the M3 to be reverted to chalk grassland [ER 3.10.130 – 3.10.132]. Furthermore, the SDNPA questioned the long-term viability of some of the chalk grassland due to management requirements [ER 3.10.133]. In response, the Applicant disagreed with the need to provide additional chalk grassland, stating that the design proposals reflected the need to balance land-take within the National Park, the impacts on agricultural land, and provision of appropriate mitigation [ER 3.10.134 – 3.10.136]. The Applicant considered that further mitigation was not required, and that while it had discussed the use of Designated Funds to provide further grass chalkland, this did not form part of the application as submitted [ER 3.10.140]. The Secretary of State notes that, given the extension of the grassland beyond that proposed by the Applicant would result in the loss of additional BMV agricultural land, the ExA considered the proposed mitigation to be entirely reasonable and appropriate [ER 3.10.143].

147. The Secretary of State notes the Outline Landscape and Ecological Management Plan includes outline requirements for proposed landscape elements, including their management and maintenance, and outlines the rationale for the selection of planting stock [ER 3.10.137] and notes the Applicant's commitment to these measures as secured by the Order, in the ES, and first iteration EMP, the latter of which will be refined and updated in consultation with the SDNPA for inclusion in the second iteration EMP [ER 3.10.138 – 3.10.139]. The ExA was content that the arrangements in relation to management, maintenance and monitoring of the chalk grassland were secured by means of the Outline Landscape and Ecological Management Plan as secured by requirements 3, 5, and 6 of the Order [ER 3.10.144].

148. The ExA did, however, consider that amendments needed to be made to requirement 6(3) of the Order to extend the requirement to replace chalk grassland that had not established from 5 to 10 years [ER 3.10.144]. The Secretary of State consulted the Applicant on changes to requirement 6 in his letter of 8 March 2024, and requested that the SDNPA comment on the response in his letter of 22 March 2024. This is discussed further at paragraph 156 – 157.

149. Like the ExA, the Secretary of State considers that the chalk grassland as proposed by the Applicant is sufficient and would provide ecological mitigation that would contribute to biodiversity net gain for the Proposed Development, and would provide landscape mitigation and enhancement in this location and that these are appropriately secured, as discussed above [ER 3.10.146 – 3.10.147].

The Tranquillity of the National Park

150. The Secretary of State notes that tranquillity is one of the seven special qualities of the National Park, and that SDNPA policy states that development proposals in the National Park will only be permitted where they conserve and enhance relative tranquillity [ER 3.10.148 – 3.10.149]. Whilst noting that construction hours of working have been agreed, the SoCG between SDNPA and the Applicant stated that the extent of low noise road surfacing to be provided has not been agreed, with SDNPA seeking an extension to the use of low noise road surfacing throughout the Order limits. The Applicant's position remained that low noise road surfacing is only proposed for new road surfaces to be laid as a result of the Proposed Development [ER 3.10.150 – 3.10.151]. The Secretary of State has had regard to Chapter 7 of the ES which states that there would be an adverse effect on tranquillity in the immediate environs of the Proposed Development during construction and early in operation, however it is predicted that there will be no adverse effects on tranquillity once landscape mitigation has established [ER 3.10.152]. The Applicant considers that, in combination with this mitigation, landform modifications would result in some reduction in audibility and considers that the Proposed Development seeks to positively respond to the National Park's special qualities, including tranquillity [ER 3.10.153]. The Secretary of State notes, however, that the SDNPA considers that, even at Year 15, there would be a reduction in tranquillity as a result of the Proposed Development [ER 3.10.150].
151. Requirement 14 of the Order as drafted by the Applicant ensured that the Proposed Development could not commence before written details of proposed noise mitigation, including low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authorities. Noting that tranquillity is one of the special qualities of the National Park, the Secretary of State has amended requirement 14(1) to ensure that the SDNPA are consulted not only on the parts of the Proposed Development that fall within the National Park, but also the areas adjacent to it.
152. The Secretary of State agrees with the ExA that the Applicant has evidenced how the special qualities, including tranquillity, have informed the design of the Proposed Development, with the proposed mitigation measures providing satisfactory mitigation for the effects on tranquillity and some beneficial effects in the long term [ER 3.10.155 – 3.10.159].
153. The ExA considered that the provision of low noise surfacing in the Proposed Development was reasonable, and that it was not necessary for all roads in the National Park to be provided this surfacing as sought by the SDNAP. The Secretary of State agrees. Like the ExA, the Secretary of State considers that it is reasonable to specifically provide for consultation on noise mitigation measures and, whilst he accepts the suggested inclusion of such a requirement within the Order, has amended the drafting of this requirement to specifically include the SDNPA as detailed at paragraph 285 of this letter [ER 3.10.158].

The South Downs National Park International Dark Sky Reserve

154. The Secretary of State notes that the National Park is an International Dark Sky Reserve [ER 3.10.160]. The SDNPA were supportive of the general approach by the Applicant to avoid and minimise the impacts of lighting during

construction and operation of the Proposed Development and the commitments in the first iteration EMP that lighting would be designed in consultation with the SDNPA and in accordance with the SDNPA's Dark Skies Technical Advice Note Version 2 (May 2021). However, the Secretary of State notes that there is some disagreement between the Applicant and the SDNPA in relation to the lighting assessment methodology, including the Dark Night Skies [ER 3.10.161 – 3.10.162]. The Secretary of State has had regard to the information in Chapter 7 of the ES and the first iteration EMP as set out at EMP 3.10.163 – 3.10.165, and notes the Applicant's conclusion that there would not be a noticeable or attributable change to the dark sky conditions in the National Park as a result of the Proposed Development [ER 3.10.164]. Like the ExA, the Secretary of State is satisfied that there would be no discernible change in the dark sky conditions, and therefore the Proposed Development is consistent with South Downs Local Plan Strategic Policy on dark night skies [ER 3.10.166].

Long-term Effects on the National Park

155. The Secretary of State has had regard to Chapter 7 of the ES, wherein the Applicant states that, although in the short to medium term there are moderate adverse and significant effects on landscape and visual amenity as a result of the Proposed Development, this reduces to a slight adverse and not significant effect in the long term as landscape mitigation planting establishes to aid landscape integration and provide visual screening [ER 3.10.167]. The Secretary of State notes, however, that this is a source of disagreement between the Applicant and the SDNPA, where the SDNPA questions the reliability of the judgements reached by the Applicant on the long-term impact on the National Park despite additional information provided by the Applicant [ER 3.10.168 – 3.10.169]. The Secretary of State has had regard to the concerns raised by the SDNPA as detailed at ER 3.10.170 – 3.10.175, and notes that it considers there would be a significant residual and permanent adverse effect on the National Park as a result of the Proposed Development [ER 3.10.175].

156. The Secretary of State notes the Applicant's response, stating that it maintained the view that the effects of the Proposed Development on the National Park would not be significant in the long term once mitigation measures had established, with the vegetation belt providing necessary screening effects [ER 3.10.176 – 3.10.177]. The Secretary of State notes the amendments made by the Applicant to secure additional mitigation as discussed at paragraph 136 and 138 above and further notes the amendments sought by the SDNPA to requirement 6(3) of the Order [ER 3.10.178 – 3.10.179]. The Secretary of State notes that the ExA consider the amendments sought by the SDNPA were appropriate to ensure that proposed mitigation becomes successfully established, and therefore considered that a period of 10 years should be required given the sensitivity of the National Park [ER 3.10.183]. Whilst the Secretary of State agrees with this assessment, in his consultation letter of 22 March 2024, he requested that the SDNPA clarify the wording in the proposed requirement 6(3) as he considered the wording to be imprecise and unclear. In response the SDNPA stated that the wording of 'other elements' was intended to capture the other types of planting, such as chalk grassland and confirmed it would be content with the removal of 'other elements' from requirement 6, provided chalk grassland was added. The

Secretary of State has therefore amended requirement 6 in line with this to provide the precision and clarity required of such instruments.

157. The ExA also considered that the addition of a requirement 6(4) was required to provide further clarification on the need to replace vegetation that have not established after ten years to exclude those removed in accordance with approved landscape maintenance. In his consultation letter of 8 March 2024, the Secretary of State asked the Applicant to comment on the inclusion of this additional requirement. In response, the Applicant welcomed the inclusion of the requirement and the additional clarity it provided. When requested to respond on this point in the Secretary of State's consultation letter of 22 March 2024, the SDNPA provided no comment and therefore the Secretary of State considers this matter to be agreeable to all parties and has included requirement 6(4), as drafted, within the Order.

158. Given the above, the Secretary of State agrees with the ExA's conclusion that the reported effects on the National Park would not be significant in the long term once mitigation measures have sufficiently established, and he is content that these are appropriately secured within the Order as previously discussed [ER 3.10.188].

Approach to Design

159. The Secretary of State notes that, at the close of Examination, the SDNPA did not support the current draft Design Principles Report, the development of which would be secured by requirement 12 of the Order, and sought more detailed information that would be used to inform and guide the next design stage and how the different elements of the Proposed Development would support the special qualities of the National Park, specifically Policies SD4: Landscape Character and SD5: Design [ER 3.10.189 – 3.10.191]. The SDNPA and WCC suggested that further iterations of the Design Principles Report should require agreement by the relevant planning authorities and SDNPA prior to the detailed design stage and any construction commencing on site, and that these provisions should be secured within the Order [ER 3.10.192]. In response, the Applicant did not consider that it was necessary to include additional requirements within the Order as the preliminary design was developed in accordance with the Design and Access Statement which sets out design principles [ER 3.10.193].

160. The Secretary of State notes that the Design Principles Report makes a commitment that key design principles will be maintained and further developed in detailed design and delivery of the Proposed Development in accordance with the requirements set out in the NPSNN at paragraphs 4.28 – 4.35 and 5.194 [ER 3.10.194]. Having considered the concerns raised by the SDNPA and WCC in relation to design, the Secretary of State agrees with the ExA that the Design Principles Report is satisfactory for the reasons set out at ER 3.10.196 – 3.10.198. As such, like the ExA, the Secretary of State is content that the approach to design for the Proposed Development reflects the NPSNN guidance and design has been an integral consideration for the Proposed Development from the outset [ER 3.10.201].

Whether the Proposed Development Constitutes Significant Road Widening or the Building of New Roads in a National Park

161. The Secretary of State has had regard to the relevant sections of the NPSNN relating to the construction of new roads and significant road widening schemes, [para 5.152 in the NPSNN] and notes the strong presumption against any significant road widening or the building of new roads and strategic rail freight interchanges in a National Park unless there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly.
162. Whilst he notes that the SDNPA considers that the Proposed Development consists of both significant road widening and the construction of new roads [ER 3.10.202], having had regard to the Applicant's response, he agrees with the ExA that the Proposed Development is distinct from 'significant road widening' due to the relatively short distances of widening that will occur within the National Park, and agrees that the works within the National Park are appropriately defined as new links, alignments, slip roads and a new roundabout, roundabout. He also agrees that the works are distinct from 'new roads' for the same reasons set out by the ExA in ER 3.10.218 and that the most reasonable interpretation of NPSNN paragraph 5.148 is that 'building of new roads' implies the meaning to be entirely new roads that create a new route from one place to another [ER 3.10.216 – 3.10.218]. As such, the Secretary of State agrees that the test set out in NPSNN paragraph 5.152 is not applicable, nor does the Proposed Development fall within the scope of paragraph 5.148 [ER 3.10.219]. Although the tests as described above do not apply in the case of the Proposed Development, the Secretary of State notes that, having considered the overall planning balance in paragraphs 265 - 271 below, the benefits of the Proposed Development would very strongly outweigh the disbenefits.

The Secretary of State's Conclusions on Landscape Impact, Visual Effects and Design

163. As discussed above, the Secretary of State is content that the Applicant's approach to design reflects the NPSNN guidance, and design has been included as an integral element of the Proposed Development from the outset. He agrees with the ExA that, in accordance with NPSNN paragraph 4.32, the Proposed Development will be sustainable and as aesthetically sensitive, durable, adaptable, and resilient as it could reasonably be [ER 3.10.220]. Furthermore, the Secretary of State agrees with the ExA that the design approach taken by the Applicant will minimise the impact of the Proposed Development on the natural beauty, wildlife, and cultural heritage of the National Park over the long-term, consistent with the aims of the policies within the South Downs Local Plan. Like the ExA, he considers that design carries neutral weight in the planning balance [ER 3.10.221].
164. As discussed above, the Secretary of State agrees with the ExA that the Proposed Development should not be considered to be a 'significant road widening scheme' nor does it include 'new roads' for the purposes of the NPSNN. The strong presumption against any significant road widening or the building of new roads does not therefore apply to the Proposed Development [ER 3.10.223].
165. Regarding visual impacts and the character of the landscape of the National Park, like the ExA, the Secretary of State considers that once mitigation has established that the earthworks and associated topographical

changes, there would not be any significant adverse effects on the surrounding landscape [ER 3.10.224]. Whilst acknowledging that, in the short to medium term, there is a series of significant residual effects due to the loss of vegetation, like the ExA, the Secretary of State is content that the long-term effects would not be significant [ER 3.10.225] and considers that mitigation measures for the proposed swales and attenuation ponds will support the integration of the Proposed Development into its immediate surrounding and the conservation of the wider National Park and, in some cases, be imperceptible once mitigation has established [ER 3.10.226 – 3.10.227]. Furthermore, like the ExA, the Secretary of State considers that the proposed chalk grassland is entirely satisfactory and proportionate and provides landscape mitigation, some landscape enhancement and would contribute to an overall biodiversity net-gain for the Proposed Development in accordance with paragraph 5.153 of the NPSNN and paragraph 5.173 of the draft revised NPSNN [ER 3.10.230 – 3.10.231].

166. Regarding the proposed temporary construction compound, whilst the Secretary of State agrees with the ExA that the Applicant has taken appropriate steps to minimise the landscape impact and visual effects on the National Park, he also agrees that the overall adverse effects during construction will be significant even after mitigation measures [ER 3.10.228 – 3.10.229].

167. The Secretary of State agrees with the ExA that the effects of the Proposed Development on tranquillity, though adverse during construction and the early stages of operation, would ultimately result in no adverse effect in the long-term, and therefore this is consistent with the aims of the South Downs Local Plan policy on tranquillity [ER 3.10.232]. Furthermore, the Secretary of State agrees that there would be no discernible change to Environmental Light Zones or the dark skies of the National Park as a result of the Proposed Development [ER 3.10.233].

168. Whilst he notes that there is a significant adverse effect on Landscape and Visual Amenities during construction and the early stages of operation, the Secretary of State agrees with the ExA that these would reduce to slight adverse and not significant in the long-term, once mitigation measures secured in the Order have established to aid landscape integration and provide visual screening [ER 3.10.235 – 3.10.236].

169. Taking into consideration the above, the Secretary of State agrees with the ExA that, overall, and in the long-term, the Proposed Development will conserve the landscape and scenic beauty of the National Park and would not adversely affect its statutory purposes to which the Secretary of State has a statutory duty to have regard [ER 3.10.237]. Furthermore, and whilst he notes the response from the SDNPA and other Interested Parties to his consultation letter of 22 March 2024 as discussed above, the Secretary of State considers that, where possible, the Applicant has sought to enhance the purposes of the National Park and, has evidenced compliance with the policies of the South Downs Local Plan. In particular, the Secretary of State considers that the biodiversity net-gain afforded by the Proposed Development and the associated landscape enhancement provided by the chalk grasslands provide evidence that the Applicant has sought to further the purposes of the National Park. The Secretary of State, in making his decision, has also applied the duty

of seeking to further those statutory purposes. In the absence of further definitive guidance published by the Department for the Environment, Food and Rural Affairs, the Secretary of State is satisfied that the Applicant has sought to do so, for the reasons mentioned above. Whilst the Proposed Development will result in some harms (as identified above) the Secretary of State is satisfied that on the specific facts relating to the Proposed Development and in the absence of viable or less harmful alternatives (as considered at paragraphs 24 - 28), all necessary steps have been taken to seek to further the relevant purposes and to comply with the statutory duty in this particular case.

170. Having had regard to NPSNN paragraph 5.150, the Secretary of State attaches substantial weight to the impact of the Proposed Development on the National Park. Considering the mitigation measures taken by the Applicant discussed above, he considers that the statutory purposes and natural beauty of the landscape of the National Park are not significantly impacted by the Proposed Development in the long term, once mitigation measures have established, but notes the moderate adverse and significant effects in the short to medium term [ER 3.10.238]. The Secretary of State considers that the revised NPSNN would not support a different outcome in this case.

171. Taking in to account the duration of the harms to the National Park as a result of the Proposed Development and in accordance with paragraph 5.150 of the NPSNN, the Secretary of State agrees with the ExA that the issue of landscape impacts, visual effects and design carries moderate weight against making the Order [ER 3.10.239].

Noise and Vibration

172. The Secretary of State notes the assessment on noise and vibration effects conducted by the Applicant as set out in Chapter 11 of the ES, including the mapped study area [ER 3.11.7], and that the assessment has been undertaken in accordance with DMRB LA 111 Noise and Vibration (Highways England, 2020) [ER 3.11.8]. The Secretary of State has had regard to the impacts set out in the ES, detailed at ER 3.11.9 – 3.11.26, on noise and vibration effects during construction and operation as a result of the Proposed Development and associated mitigations.

Examination Issues

173. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.11.27.

Tranquillity of the National Park

174. The Secretary of State has considered the impacts, including noise, of the Proposed Development on tranquillity at paragraphs 150 - 153, in the Landscape Impact, Visual Effects and Design section above.

Construction Noise and Vibration

175. The Secretary of State notes that construction noise and vibration was raised as a concern by some parties during Examination [ER 3.11.32 – 3.11.33]. He further notes that, in their Local Impact Reports, WCC and the SDNPA had no objections to the assessment methodology used by the Applicant [ER 3.11.34]. The Secretary of State has had regard to the noise and vibration mitigations contained within the first iteration EMP following an

indication from WCC of not being willing to confirm their acceptance of the proposed mitigation and notes that the SoCG between the two parties stated that the first iteration EMP contained sufficient mitigation measures and commitments to ensure that noise issues could be managed subject to further consultation and detail in the second iteration EMP [ER 3.11.35].

176. The Secretary of State notes that, whilst it is accepted that a full understanding of the type and number of noise generating activities and plant and machinery is not known at this stage of the design development, the assessment carried out by the Applicant was, in its view, a likely worst-case scenario with further details being presented in the construction noise and vibration plan as part of the consultation for the second iteration EMP [ER 3.11.36 – 3.11.37]. The Secretary of State has noted that Chapter 11 of the ES maps the anticipated areas of adverse impact from each major stage of construction and summarises the receptors anticipated to experience temporary moderate to major adverse noise impacts during construction without mitigation measures in place [ER 3.11.38 – 3.11.39]. The Secretary of State has taken further note that the ES states that when mitigation, as detailed in the first iteration EMP is provided, all major impacts will become moderate, and all moderate impacts will become minor, with minor impacts considered to be not significant [ER 3.11.40]. The ES states that further mitigation measures detailed in the first iteration EMP will be provided for properties still expected to experience moderate impacts, with further detail to be provided in the second iteration EMP alongside a noise and vibration management plan [ER 3.11.41 – 3.11.42].

177. The Secretary of State has taken account that construction traffic is not anticipated to increase noise levels by more than 1dBA and therefore significant effects as a result of construction traffic noise is not anticipated [ER 3.11.43].

178. The Secretary of State has had regard to the information in the ES regarding noise impacts due to temporary traffic diversions as a result of the Proposed Development, concluding that these impacts are not anticipated to be significant. He notes that there were no specific objections or concerns raised during the Examination in relation to noise impacts of traffic diversions, and WCC confirmed that they would expect to see monitoring of traffic during diversions and that they would work with the Applicant to minimise the impacts that may arise [ER 3.11.44 – 3.11.47].

179. The Secretary of State notes that the ES states that vibration as a result of construction is primarily associated with piling and road surfacing activities, detailing the properties which may be impacted. These are considered to have a medium sensitivity to vibration effects, with low risk of damage, and an overall moderate effect which is not considered to be significant [ER 3.11.48 – 3.11.49]. The Secretary of State also notes the mitigation measures contained within the ES and first iteration EMP as relates to vibration effects [ER 3.11.50].

Operational Noise and Vibration

180. The Secretary of State has had regard to the modelled changes to operational noise and vibration impacts in the ES as detailed at ER 3.11.57 – 3.11.60. The Secretary of State notes that, in summary, the ES states that there are short-term significant adverse effects anticipated at twenty dwellings and one commercial property which are predicted to be negligible and not significant

in the long-term, and that there would be a number of short-term, moderate to major benefits to 44 commercial receptors and eight significant benefits to commercial receptors in the long term [ER 3.11.61 – 3.11.62]. The Secretary of State notes that there is expected to be a minor adverse impact in the short terms on noise levels at White Hill Cottage which will reduce over time as mitigation measures establish. He further notes that if further noise screening is required, this will be included in the second iteration EMP [ER 3.11.63]

181. The Secretary of State notes that the sole mitigation measure for reducing the impact of noise during operation is low noise road surfacing, with the threshold by which additional measures would be required having not been met. The inclusion of low noise surfacing was considered beneficial by all of the Local Authorities and was specifically required by WCC and the SDNPA [ER 3.11.64 and 3.11.68]. The Secretary of State further notes that, following questions as to ongoing maintenance of the surfacing, the Applicant and HCC have agreed a commuted sum to ensure the continuation of the embedded mitigation and that this is anticipated to be included in the side agreement between the two parties [ER 3.11.67] [Correspondence to update?]

The Secretary of State's Conclusions on Noise and Vibration

182. Like the ExA, and as discussed above, the Secretary of State is satisfied that the Applicant has fully addressed and mitigated the possible effects from noise and vibration for both the construction and operation of the Proposed Development and the Applicant has considered a standard worst-case scenario has been undertaken in their assessment of construction noise, including noise impacts from construction traffic and temporary traffic diversions [ER 3.11.73 and 3.11.75 – 3.11.76]. Whilst he notes that there is predicted to be some increase in noise level that result in major impacts anticipated at some residential properties, the Secretary of State notes that when mitigated these impacts would be reduced to moderate impacts, and further notes that additional mitigation measures are to be secured in the second iteration EMP where necessary [ER 3.11.74].
183. The Secretary of State agrees with the ExA that the Applicant has considered the worst-case potential impacts of vibration effects during construction of the Proposed Development and has proposed mitigation which would allow these impacts to be managed appropriately ER 3.11.77].
184. As regards the use of low-noise surfacing, the Secretary of State agrees with the ExA that, whilst the use of this form of mitigation is welcomed, with the large percentage of the highway already subject to low noise surfacing, the additional benefit may be limited. As such, he agrees with the ExA's recommendation that he should consider the noise mitigation measures when they are submitted for approval pursuant to requirement 14 of the Order [ER 3.11.78 – 3.11.79]. The Secretary of State agrees with the ExA's conclusion that the overall impact on noise important areas as a result of the Proposed Development will be between slight beneficial to slight adverse, which is not significant [ER 3.11.80].
185. Given the above, the Secretary of State agrees with the ExA that the Applicant has taken all reasonable steps to mitigate the effects of noise and vibration as a result of the Proposed Development [ER 3.11.81] and, whilst noting that there are some beneficial effects that may occur as a result of the

Proposed Development, there are also a number of adverse effects during construction and operation which have been identified lead him to consider that the issue of noise and vibration has minor weight against making the Order for the Proposed Development [ER 3.11.82].

Population and Human Health

186. The Secretary of State notes the assessment of the impacts on land use and accessibility at Chapter 12 of the ES which takes into account the effects of the Proposed Development on private property and housing, community land and assets, business and development land, agricultural land, and walking, cycling and horse-riding provision during both construction and operation [ER 3.12.10 – 3.12.11].

187. The Secretary of State notes that, during construction, there is potential moderate adverse to very large adverse effects as a result of the Proposed Development, particularly for non-motorised users, agricultural land, and businesses, but that these effects are predicted to become moderate beneficial for businesses and moderate to large beneficial for non-motorised users during operation of the Proposed Development [ER 3.12.11]. The Secretary of State notes the ES assesses the impact of the Proposed Development on human health in both construction and operation and summaries the baseline study results as detailed at ER 3.12.12. He has further taken account that during construction and operation the ES details the main potential impacts of the Proposed Development on population and human health to be air quality, noise and vibration, visual amenity, disturbance and stress caused by construction activity, changes to accessibility to open spaces or facilities and services, and changes to physical activity levels. However, these impacts are considered to be neutral during construction following mitigation with the exception of temporary negative effects on ambient noise, and all effects are predicted to be either neutral or positive during operations [ER 3.11.13].

Examination Issues

188. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.12.14.

Land Use Effects on Private Property and Businesses

189. The Secretary of State has had regard to Chapter 12 of the ES, which details that one private property, White Hill Cottage, would experience a direct, temporary moderate impact on land use at the Cottage which would result in a significant adverse effect as during the operational phase the land use need at the property will be required for maintenance of a electricity cable, though he notes that the Applicant has stated this is anticipated that this would be an irregular and temporary impact and that the ES states this would result in a slight adverse effect. The Applicant explained that the land requirement from this property relates to the re-routing of overhead electricity cables and would not require intrusive work on the property [ER 3.12.15 – 3.12.18]. The ExA agreed that this property would see a temporary moderate adverse effect during construction and a slight adverse impact during operation [ER 3.12.24]

190. The Secretary of State notes that there are other private properties that may experience indirect effects as a result of the Proposed Development, but further notes that the ExA accepted the findings of the ES that these will not be

significant and in the case of the construction phase impacts, they are temporary [ER 3.12.19].

191. The Secretary of State notes that the ES details a moderate positive impact of the Proposed Development on a number of businesses when in operation as a result of improved journey time reliability [ER 3.12.21]. He does however agree with the ExA that there is likely to be some temporary adverse effects on these business during construction as a result of temporary traffic flow changes and diversions [ER 3.12.25].

192. The Secretary of State notes that there is no allocated development land within the study area of the Proposed Development, and the ExA considers that there will be no impact in this regard [ER 3.12.22 and 3.12.25]

Community Assets

193. Chapter 12 of the ES states that there are no community assets within the application boundary, however, there are a number of high usage sensitive sites within the study area which is 500m from the application boundary. The Secretary of State notes that there will be no effect on access to community assets or open access land during the operation of the Proposed Development, and that any temporary impacts during construction will be mitigated to ensure access remains [ER 3.12.26].

194. The ES concludes that the area of the National Park affected by the Proposed Development is agricultural land, and therefore does not constitute public open space [ER 3.12.27]. However, the Secretary of State notes the obvious recreational access opportunities afforded with the network of public rights of way and non-motorised user routes which allow access to the National Park and other locations surrounding the Proposed Development. It is accepted that there will be temporary impacts on access to the National Park as a result of the Proposed Development during construction, and that the Applicant is engaging in consultation regarding temporary diversions and the need for effective communication of changes to access [ER 3.12.28]. The Secretary of State notes that at the close of Examination and in their SoCG, the SDNPA retained concerns relating to the temporary diversion of public rights of way and non-motorised users, all these matters have been resolved with HCC [ER 3.12.29]. The Secretary of State agrees with the ExA that the Applicant has sought to provide suitable alternative routes and will continue to develop mitigations through consultation in the detailed design stage [ER 3.12.31].

Human Health

195. The Secretary of State notes that Chapter 12 of the ES has assessed the potential impacts on human health during the construction and operation of the Proposed Development as described at ER 3.12.32.

196. The Secretary of State notes that in their local impact report, HCC broadly accepted that the Proposed Development would provide positive outcomes on human health relating to reduced stress and reduced exposure to noise and air pollution, as well as possible improvements to access to recreational opportunities, including improvements for walking, cycling, and active travel [ER 3.12.34]. The summary of the assessments undertaken by the Applicant in the ES state that the only negative outcomes on human health would be ambient noise environment in two wards during construction, with all

other outcomes being neutral and during operation the health outcomes are predicted to be neutral or positive [ER 3.12.37], with which the ExA agreed [ER 3.12.40].

197. The Secretary of State notes that HCC were satisfied that the consolidated approach taken by the Applicant regarding health considerations met the same criteria as would be expected of a full Health Impact Assessment and were reassured that all matters had therefore been assessed and were satisfied on the acceptability of the assessment [ER 3.12.38]. Therefore, like the ExA, the Secretary of State considers that the ES has satisfactorily addressed the required health determinants to assess the impact of the Proposed Development on human health [ER 3.12.39].

The Secretary of State's Conclusion on Population and Human Health

198. Like the ExA, and as discussed above, the Secretary of State is satisfied that the Applicant has fully addressed the possible effects of the Proposed Development on population and human health and that these can be satisfactorily mitigated and managed [ER 3.12.41]. He agrees with the ExA's summary of the impact of these effects as detailed at ER 3.12.42 – 3.12.43 and their conclusion that the overall assessment is mostly neutral during construction, with some temporary negative effects, but which result in neutral or positive outcomes for human health during operation [ER 3.12.45].

199. The ExA concluded that, when considering the long-term benefits to health and the beneficial impacts on businesses during operation of the Proposed Development, the issue of population and human health had a moderate weight in favour of the Order being made [ER 3.12.47]. The Secretary of State agrees with this conclusion.

Traffic, Transport, and Non-Motorised User Routes

200. The Secretary of State notes that the Applicant's assessment of traffic and transport matters is set out within the Transport Assessment and its purpose is to assess the impact of the Proposed Development on the strategic and local highway network, road safety and local sustainable modes of transport [ER 3.13.13].

Examination Issues

201. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.13.46.

The Traffic Model

202. The Secretary of State notes that the ExA considered the modelling information as presented by the Applicant accords with Transport Analysis Guidance ("TAG") and further notes the details within the Transport Assessment. WCC queried the use of the pre-pandemic traffic models by the Applicant but the ExA accepts that this is appropriate as the 2022 National Trip End Models data was released after the application was submitted [ER 3.13.47 – 3.13.48]. The Secretary of State has had regard to the concerns raised by 'Winchester Friends of the Earth' and 'Winchester Action on the Climate Crisis' relating to Variable Demand Model traffic modelling and induced demand as summarised at ER 3.13.49 – 3.13.50. In response, the Applicant stated that Variable Demand Model was in accordance with the correct TAG requirements

and that it had considered the modal shift between private cars and public transport, noting a predicted limited impact from induced demand [ER 3.13.51]. The Secretary of State notes that HCC, as the local highway authority, considered that the traffic modelling for the Proposed Development was acceptable, stating that they had no residual concerns and considered that the model was suitable for its intended use [ER 3.13.52]. For the reason set out in the report, like the ExA, the Secretary of State considers that the traffic model developed to forecast potential impacts as a result of the Proposed Development to be acceptable and reliable [ER 3.13.53 - 3.13.56].

Journey Times

203. The Secretary of State notes that journey time reliability and reduced delays are a primary objective of the Proposed Development [ER 3.13.57]. A number of Interested Parties contended that the journey time savings as a result of the Proposed Development were not significant and as a primary objective for the Proposed Development believed they do not show a significant benefit, with the SDNPA and Winchester Action on the Climate Crisis questioning specifically the benefits to journey time [ER 3.13.58 – 3.13.59].

204. The Secretary of State notes the summary of the journey time savings from the Transport Assessment as detailed at ER 3.13.61 – 3.13.65. Like the ExA, and as discussed above, the Secretary of State considers that the traffic modelling for the Proposed Development is reliable and, therefore, the journey time savings in the Transport Assessment can be accepted, noting the ExA considers that the strategic aim to reduce journey time is met, the ExA's comments on whether the savings can be considered substantial [ER 3.13.67 – 3.13.69].

Delays and Road Volume Capacity

205. The Secretary of State has had regard to the forecast delays at the proposed M3 J9 gyratory as detailed at ER 3.13.73, and which is accepted by the ExA as being the primary location for delays and thus the focus on it is proportionate. He notes that, in its LIR, HCC concluded that there is a reduction in traffic flows as a result of the Proposed Development which they considered to have a mainly positive impact or neutral impact on the local highway network [ER 3.13.74]. The Secretary of State has noted that the ExA requested additional information from the Applicant [ER 3.13.77], with their response summarised at ER 3.13.77 – 3.13.80, including the provision of 'heatmap' visualisation of predicted delays.

206. The Secretary of State has taken note that Winchester Friends of the Earth raised concerns in relation to an increased volume of traffic on the M3 south of Junction 9 in the PM peak. In response, the Applicant stated that this increase is caused by the predicted increase in traffic associated with increased capacity and reduction of delay resulting strategic traffic rerouting to the M3, noting that a post-opening project evaluation will be undertaken three years after opening [ER 3.13.82].

207. Like the ExA, the Secretary of State considers that the evidence within the application shows that there will be a reduction to delays and, in most locations, road capacity improvements as a result of the Proposed Development and that the reduction in delay at M3 J9 will have a direct

beneficial impact on the Winnall industrial and employment area [ER 3.13.85 – 3.13.88].

Road Safety

208. The Secretary of State notes that road safety is one of the five primary objectives of the Proposed Development [ER 3.13.89]. He notes that, with the exception of the A33/B3047 (Cart and Horses) Junction which is discussed at paragraphs 223 - 225, there were no concerns raised by interested parties regarding the assessment and presentation of road safety data. In their local impact report HCC suggested that updating the collision data beyond the five year period 2015 to 2019 would be beneficial and the Applicant provided details for the available years between 2012 and 2021. This showed less collisions during 2020 and 2021 and this is likely to be consistent with the changes of traffic patterns during the Covid-19 pandemic [ER 3.13.91].

209. The ExA found the collision data as presented led to a certain amount of confusion and ambiguity [ER 3.13.92] although in principle there was not considered to be errors in how the data was used but that the presentation may lead the reader to conclude the predicted collision savings and related cost savings are in direct relation to the observed data [ER 3.13.93]. The ExA sought to understand the forecast collision savings within the application boundary to allow a direct comparison with observed data and forecast data [ER 3.13.94]. The data presented indicates that there is a prediction of increased collisions of all severities at junctions within the application boundary as a direct result of the Proposed Development. The ExA understood from the Applicant's explanation that the Proposed Development will add a number of new nodes or junctions which increases the potential for collisions [ER 3.13.97].

210. The Secretary of State notes the ExA's concerns relating to the increase in predicted collisions at junctions within the Order limits. He accepts that this is a function of new junction nodes being introduced and agrees with the ExA that close attention should be paid to safe design and comprehensive safety audit during the detailed design [ER 3.13.101]. Like the ExA, the Secretary of State agrees that collision data and predictions have been undertaken in accordance with TAG requirements [ER 3.13.100] and notwithstanding the issues raised by the ExA during the Examination with regard to safety analysis it was accepted by the ExA that there is a predicted improvement in road safety and a forecast reduction in collisions across the wider area [ER 3.13.102 – 3.13.103].

Economic Benefits

211. The Secretary of State notes that supporting economic growth is one of the five primary objectives of the Proposed Development [ER 3.13.104].

212. The Secretary of State notes that during Examination a number of parties raised concerns relating to the value for money of the Proposed Development, including the SDNPA, Winchester Action on the Climate Crisis, and Winchester Friends of the Earth [ER 3.13.108 – 3.13.110]. He has had regard to the assessment of value for money as detailed at ER 3.13.111 – 3.13.115 which showed an adjusted benefit-cost ratio of 1.72 when wider economic benefits were considered, including journey time reliability, wider structural and context specific impacts and social impacts.

213. The Secretary of State notes that the wider economic benefits of the Proposed Development include the potential stimulus of local development sites and land value uplift at the Winnall Industrial Estate and collisions savings [ER 3.13.117 – 3.13.123].
214. The Secretary of State notes that the Applicant has included costed risks in the estimate as required by the Treasury's Green Book and, whilst this has not been quantified, the Secretary of State accepts that this is in line with TAG requirements [ER 3.13.124 – 3.13.126].
215. Like the ExA, the Secretary of State considers that the Proposed Development provides medium value for money when wider economic benefits are considered [3.13.131].

Construction Phase Traffic and Traffic Management

216. The Secretary of State has had regard to the Applicant's Outline Traffic Management Plan which HCC have been consulted on and at the close of Examination the SoCG between the Applicant and HCC showed that issues on this matter had been addressed by the Applicant and are shown as agreed by HCC [ER 3.13.132 – 3.13.134]. The Secretary of State notes the concern raised by HCC regarding the use of unofficial diversion routes as a result of the Proposed Development. However, there is limited opportunity for the Applicant to manage this and has worked with HCC to mitigate the impact during construction. The Applicant and HCC agreed in the SoCG that they would maintain dialogue throughout construction of the Proposed Development to manage emerging issues [ER 3.13.135 – 3.13.136].
217. The Secretary of State notes that, at the close of Examination, there remained a disagreement with the SDNPA regarding the opportunity to reduce traffic generation from the construction workforce through the development of a site travel plan. At the close of the Examination the Applicant had committed to a travel plan secured through the first iteration EMP to address these concerns which will be included in detail in the second iteration EMP [ER 3.13.137].
218. Like the ExA, the Secretary of State considers that HCC acceptance of the Outline Traffic Management Plan and agreements in the SoCG show that there is a general consensus on the proposals and means of managing diversions, pending further consultation with other local authorities and stated as a commitment in the first iteration EMP which is secured by requirement 3 of the Order [ER 3.13.139 – 3.13.140].

Local Highway Network – Local Highway Authority Interface

219. The Secretary of State notes that HCC raised a number of issues regarding the impact and legal status of changes that would be required to the local highway network which HCC are responsible for including de-trunking, stopping-up of highways, future ownership and maintenance responsibilities, and requested a number of changes to the draft Order to reflect their concerns [ER 3.13.141 – 3.13.142]. HCC and the Applicant prepared a side agreement to address these concerns [ER 3.13.143 – 3.13.144] and in their letter of 15 March 2024 in response to the Secretary of State's consultation, the Applicant confirmed and provided evidence that the side agreement with HCC had been agreed, and that the only item in the SoCG which is not agreed is the issue

relating to the A33/B3047 (Cart and Horses) Junction. HCC confirmed this in its letter of 27 March 2024 in response to the Secretary of State's second consultation. In its letter, the Applicant said that the side agreement has no implications for the drafting of the proposed Order submitted at Deadline 8 of the Examination.

220. The draft Order as provided by the ExA had been drafted on the assumption that this side agreement was not complete. While the Secretary of State has taken note from the confirmation received from HCC that the side agreement now addresses the matters marked as 'provisionally agreed' in the Statement of Common Ground with Hampshire County Council, there remains the outstanding matter concerning the Cart and Horse Junction. In light of the Applicant's response detailed above, the Secretary of State has decided no drafting changes are needed.

Impact on the B3335 and the Villages of Twyford and Colden Common

221. The Secretary of State notes that the potential impact on the B3335 on the villages of Twyford and Colden Common were raised by a number of parties [ER 3.13.145]. In response, the Applicant stated that there was a small increase in the average daily traffic flows of less than 200 passenger car units 2-way per day in 2027 as a result of the Proposed Development [ER 3.13.147].

222. The ExA considered that the issues raised by interested parties were predominantly pre-existing issues which were known to the local highway authority. However, they did examine the issue of the uncontrolled crossing of the B3335 in the vicinity of M3 Junction 11 [ER 3.13.149 – 3.13.150]. Interested parties contended that this crossing is unsafe and therefore any additional traffic as a consequence of the Proposed Development would result in a further deterioration in safety. It was further argued that the Applicant should provide upgrades to a controlled crossing to improve safety [ER 3.13.151]. In response, the Applicant stated that the suggested improvements fell outside the scope of the Proposed Development and should be raised with HCC [ER 3.13.152]. The Secretary of State agrees with the ExA that changes to this crossing are not within the scope of the Proposed Development whilst noting HCC's comments in respect of review during approval of the TMP is acceptable and is covered by a commitment in the first iteration EMP which is secured by requirement 3 of the order [ER 3.13.157].

A33/B3047 (Cart and Horses) Junction

223. The A33/B3047 (Cart and Horses) Junction ("the Cart and Horses Junction") was raised as a significant concern by a number of interested parties, including HCC, WCC and the SDNPA who all strongly considered that improvements to this junction should have been included in the Proposed Development due to effects on its operation and safety [ER 3.13.159]. Whilst it was acknowledged that there would be a predicted increase in traffic flows on the A33, the Applicant contended that there would be decreases in peak flows, a decrease in traffic flows on the B3047 and a decrease in the number of turning movements which could lead to a reduction in potential collisions [ER 3.13.160]. To include the Cart and Horses junction within the Application would require significant further design, assessment and consultation and require a revised DCO application [ER 3.13.161].

224. The Secretary of State notes that, at the close of Examination, it remained the position of HCC that mitigation was required at the Cart and Horses junction, with the SoCGs between the applicant, HCC, WCC, and SDNPA all highlighting the outstanding disagreement on the issue [ER 3.13.162 and 3.13.164]. HCC also contended in their closing comments on the Examination that the Proposed Development would have a detrimental impact on safety at the Cart and Horses Junction [ER 3.13.165].

225. Whilst the Secretary of State acknowledges the concerns detailed above, the ExA considered that the impact of the Proposed Development on the Cart and Horses Junction would be slightly negative or neutral, and not of sufficient significance to set a requirement of or expectation on the Applicant to amend or add to the Application [ER 3.13.167 – 3.13.168]. The Secretary of State agrees with this assessment.

Public Rights of Way and Non-Motorised Users – Operational Phase

226. The Secretary of State notes that a number of parties including HCC, the SDNPA and Cycle Winchester commented on the public rights of way (“PROW”) and non-motorised user (“NMU”) provision within the Proposed Development [ER 3.13.171]. In their local impact reports, HCC and the SDNPA considered the proposed improvements to the existing PROW and NMU network would be positive, with Cycle Winchester agreeing that they represented an improvement [ER 3.13.174]. The Secretary of State notes that both HCC and the SDNPA will continue to be consulted on PROW and NMU in detailed design development to ensure that all positive opportunities are considered [ER 3.13.176].

227. However, the Secretary of State notes that there were some concerns raised by parties relating to NMU provision relating to routes, design standards, and legal status [ER 3.13.175]. As regards design, the Secretary of State notes that the Applicant stated all NMU routes had been designed in accordance with the DMRB, which HCC confirmed it was in agreement with, as reflected in their SoCG [ER 3.13.177 – 3.13.178].

228. As regards the legal status of some of the proposed and amended NMU routes, the Secretary of State notes that this had been contested by Cycle Winchester, primarily relating to the status of users who would legally be able to use the proposed routes. The proposed routes preclude use by horse-riders of the proposed Kings Worthy route and the National Cycle Network Route 23 to meet the bridleway at Easton Lane [ER 3.13.179]. The Secretary of State has had regard to the letters from Cycle Winchester of 8 April 2024 and the British Horse Society of 4 April 2024 regarding this issue. Whilst he notes the concerns detailed above, HCC have confirmed the legal status and design standard of the NMU routes for the proposed Development and, as the authority with responsibility for PROWS and local highway, the Secretary of State sees no reason to disagree with their assessment. He further notes that, overall, the Proposed Development will have beneficial effects for walking, cycling and horse-riding [ER 3.13.180 – 3.13.182]. The Secretary of State therefore finds that the proposed provision of NMU routes during the operational phase is acceptable.

Public Rights of Way and Non-Motorised Users – Construction Phase

229. The Secretary of State notes that a number of interested parties raised concerns regarding the temporary impact on NMUs relating to the length of disruption, practical issues, and safety of proposed diversions [ER 3.13.183]. The Secretary of State has had regard to the concerns relating to National Cycle Network 23 diversions raised by Cycle Winchester and the SDNPA, including the suggestion from the SDNPA that requirements within the Order should be amended to ensure consultation on any temporary routes for NMUs [ER 3.13.184 – 3.13.185]. The Applicant clarified the proposed diversion routes in response to these concerns, however, at the close of Examination Cycle Winchester were not in agreement with the Applicant on this issue [ER 3.13.186 – 3.13.187]. The Secretary of State notes that further discussions on a PROW management plan will be developed during detailed design as stated in the SoCG with HCC and secured in the first iteration EMP [ER 3.13.187]. As such, like the ExA, the Secretary of State considers that the proposed management of NMU routes during construction is acceptable [ER 3.13.188].

The Secretary of State's Conclusions on Traffic, Transport, and Non-Motorised Users

230. The Secretary of State agrees with the ExA that the Proposed Development is in accordance with the NPSNN strategic objectives and that all modelling has been conducted in accordance with relevant guidance, with the findings supported by HCC as the local highway authority, with the exception of the Cart and Horses Junction, as discussed above. [ER 3.13.189 – 3.13.190].

231. As discussed above, the ExA considered that although there will be temporary negative impacts during construction of the Proposed Development, it has been demonstrated that the Proposed Development would deliver a number of benefits relating to transport matters, including reduced journey times and delays, and improvements to NMU provision. As such, the ExA concluded that traffic, transport, and non-motorised user carries great weight in favour of making the Order [ER 3.13.198 – 3.13.199]. The Secretary of State agrees.

Waste and Material Resources

232. The Secretary of State has had regard to the assessment of the impacts of materials and waste associated with the Proposed Development at Chapter 10 of the ES, which states that the operational phase has not been considered as it is unlikely there will be any significant effects with respect to waste or material assets [ER 3.14.8 – 3.14.9].

233. The Applicant's assessment confirmed that the predicted reasonable worst-case scenario was that the predicted excavation waste required to be removed from site would be 65,000m³ (135,300 tonnes) which equates to 65% of the construction material requirement for the Proposed Development and far exceeds the regional target of 26% [ER 3.14.11]. The ES goes on to state that waste generated by the Proposed Development is expected to be primarily non-hazardous and inert, but that any hazardous waste encountered would be handled at established construction site compounds prior to removal off-site [ER 3.14.12].

Examination Issues

234. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.14.17.

Waste Management and Recycling

235. The Secretary of State notes that no specific issues relating to waste management were raised by Interested Parties, including HCC as the Local Waste Authority [ER 3.14.19]. In the ES, the Applicant has stated that removal of the material mentioned above to registered sites would reduce the regional landfill void capacity by 0.2% [ER 3.14.21]. The Secretary of State notes that the ExA explored whether this could be further reduced but, by the close of Examination, this had not been possible [ER 3.14.22]. The Secretary of State agrees with the ExA that this can be considered to be slight adverse on the regional landfill void capacity and is not significant [ER 3.14.26].
236. The Secretary of State notes that the 95% of inert waste is committed to being diverted from landfill, as secured through the first iteration EMP and by means of requirement 3 of the Order, resulting in 125m³ to be disposed to landfill [3.14.23 – 3.14.25]. Regardless, the Secretary of State agrees with the ExA that he would expect to see further clarification from the Applicant on the commitments to waste management and recycling in further iterations of the EMP to ensure the intended outcomes are deliverable [ER 3.14.27 – 3.14.28].

Materials to be used in Construction and Mineral Safeguarding

237. The Secretary of State has had regard to Chapter 10 of the ES which details the type of materials expected to be used in the construction of the Proposed Development, commits to the application of the Waste Hierarchy but notes that material will be imported. The first iteration EMP, provides a draft Material Management Plan which sets the expectations for future iterations of the EMP [ER 3.14.29 – 3.14.30].
238. The Secretary of State notes the concerns raised by Winchester Action on the Climate Crisis relating to the demolition of existing concrete structures. In response, the Applicant stated that design requirements for the Proposed Development meant that the existing structures could not be retained. The ExA found this approach to be appropriate [ER 3.14.31]. The Secretary of State agrees with the ExA's conclusion.
239. Like the ExA, the Secretary of State considers the commitments within the first iteration EMP to be non-specific but acceptable at this stage. It is expected that these will be solidified in future iterations of the EMP to include specific, measurable targets and recording and reporting criteria [ER 3.14.32 and 3.14.35].

The Secretary of State's Conclusions on Waste and Material Resources

240. The Secretary of State agrees with the ExA that the Applicant has assessed the possible impacts of the Proposed Development on waste and material resources in line with the policy aims of the NPSNN but, as discussed above, expects the commitments relating to waste and material resources to be strengthened in future iterations of the EMP [ER 3.14.36 – 3.14.39].
241. Like the ExA, the Secretary of State considers that the issue of waste and material resources carries neutral weight in the planning balance [ER 3.14.41].

Cumulative Effects

242. The Secretary of State notes the Applicant's cumulative and combined assessment as set out in Chapter 15 of the ES. It assesses the effects that would occur due to changes caused by other developments acting cumulatively with the effects of the Proposed Development and the effects from the combined effects of several different impacts acting together on a single receptor [ER 3.15.6]. The Secretary of State notes that the ES concluded that there would be an anticipated increase in traffic on the local network during construction as a result of developments ID 72 and ID 79 as identified in ES Appendix 15.2 which results in a minor impact on journey time reliability and that minor impact continues during operation [ER 3.15.16]. The Secretary of State further notes that the combined effects on residential dwellings is acknowledged by the ES to be significant, but it is not anticipated to result in greater significance of effect than for individual topic assessments so that mitigation measures discussed previously and as set out in the first iteration EMP on individual topics are considered by the Applicant to be appropriate to respond to these effects [ER 3.15.18].

Examination Issues

243. The Secretary of State notes the main issues considered during the Examination were those summarised at ER 3.15.21.

The Combined Effects During Construction and Operation

(a) White Hill Cottage

244. The Secretary of State notes that the ES identifies that there will be a temporary significant combined effect at White Hill Cottage due to the combination of visual, noise, and land-take effects during construction [ER 3.15.19 and ER 3.15.22]. This is considered in the mitigation measures set out in the first iteration EMP, including the need for a stakeholder communications plan with community engagement, specifically noting engagement with the occupant/owner of White Hill Cottage to ensure they are provided with the contact details for a site representative and would be kept up to date on the construction works programme and the implementation of relevant mitigation [ER 3.15.20].

245. The Secretary of State notes the concerns raised by the SDNPA that the mitigation measures in the first iteration EMP are not sufficient to address the negative impacts of the Proposed Development on the occupants of White Hill Cottage and that it would be in contradiction with a number of the South Downs Local Plan policies [ER 3.15.23]. The Secretary of State has had regard to the responses from the Applicant as detailed at ER 3.15.24 – 3.15.29 and the commitments within the first iteration EMP as discussed above and secured through the Register of Environmental Actions and Commitments [ER 3.15.54].

(b) Worthy Park Historic Park and Garden

246. The Secretary of State notes that the ES concludes that there would be a temporary slight adverse effect on the Park due to long-distance views of a small part of the main works between the A34 and M3, but that this would not materially alter the quality of the Park's characteristics, and that no cumulative effect would result in a greater level of significance than for the individual ES topic assessments, and therefore a slight adverse and not significant overall effect is anticipated [ER 3.15.30 – 3.15.32]. The ExA concurred with the

Applicant's assessment of this issue, and the Secretary of State sees no reason to disagree [ER 3.15.55].

(c) South Downs National Park

247. The Secretary of State notes that the SDNPA disagrees with the conclusion of the ES that the combined effects on the National Park are not anticipated to be significant, contending that this assessment was based on the Applicant's conclusion that there would be no long-term significant landscape effects, something the SDNPA disagrees with as discussed at paragraphs 155 – 157 [ER 3.15.33 – 3.15.34]. In its response, the Applicant stated that 15 years after opening the ES identifies that the overall impact on the National Park would be slight adverse and not significant due to the effects being localised and resulting in a very small change to the National Park as a whole [ER 3.15.35 – 3.15.37]. Like the ExA, the Secretary of State agrees that overall, the combined effects on the National Park would be slight adverse and are not anticipated to be significant over the long-term [ER 3.15.56].

The Cumulative Effect of the Proposed Development Together With Other Developments

248. The Secretary of State notes that, following questions from the ExA and input from WCC, the Applicant updated the list of developments considered in the ES for cumulative assessment [ER 3.15.38]. As discussed above, the ES states that developments ID 72 and ID 79 are both anticipated to increase traffic on the local network during construction resulting in minor impacts on journey times. These increases were not considered to be severe for ID 79 due to comparatively low existing traffic [ER 3.15.40 – 3.15.41]. This was further shown to have only a minor adverse effect with the addition of the Travel Plan submitted with the application for development ID 79 to reduce use of cars to the site [ER 3.15.42]. The Secretary of State notes that there is some overlap with the construction of ID 72 and the Proposed Development which will result in increase in journey times, however these are considered to result in a minor cumulative effect due to the scale of traffic flow increases as a result of ID 72 [ER 3.15.43]. The ExA concurred with the assessment that the impacts on journey time reliability as a result of the cumulative impact of the Proposed Development and ID 72 and ID 79 were minor [ER 3.15.51]. The Secretary of State agrees.

Whether Additional Mitigation Measures are Required

249. The Secretary of State has had regard to Chapter 15 of the ES on cumulative effects and understands the relevant mitigation measures to be those that are included in the first iteration of the EMP as detailed at ER 3.15.45. Like the ExA, and considering the above, the Secretary of State does not consider that additional mitigation measures beyond that for which provision has been made through the first iteration EMP and requirements 3, 5, 6 and 14 of the Order would be appropriate for any of the cumulative adverse impacts identified above [ER 3.15.57].

The Secretary of State's Conclusions on Cumulative Effects

250. Like the ExA, the Secretary of State has no reason to disagree with the reasoning of the Applicant as to the scope of the ES assessment of cumulative effects [ER 3.15.47 – 3.15.48]. He agrees with the ExA that the information

provided shows that the cumulative effects of the Proposed Development in combination with other projects would be minor and not significant, and that the assessment accords with paragraph 4.16 of the NPSNN [ER 3.15.58]. Having noted the significant cumulative effect on White Hill Cottage, however, the Secretary of State notes that this is a temporary impact during construction and agrees with the ExA that it should be attributed only minor negative weight in the planning balance [ER 3.15.60]. The Secretary of State has separately considered cumulative carbon emissions at paragraph 87, above.

Habitats Regulations Assessment (HRA)

251. This section should be read alongside the Secretary of State's Habitats Regulations Assessment for an Application under the Planning Act 2008 – M3 Junction 9 Improvement (16 May 2024).
252. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, as amended ("the Habitats Regulations"), the Secretary of State as the competent authority is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a likely significant effect on a European site forming part of the National Site Network. The purpose of the likely significant effects test is to identify the need for an Appropriate Assessment and the activities, sites or plans and projects to be included for further consideration in the Appropriate Assessment.
253. The Applicant submitted a 'Habitats Regulations Assessment Report'¹ (the Applicant's HRA report) as part of its Application which detailed two designated sites that are relevant to the HRA:
- River Itchen Special Area of Conservation ("SAC")
 - Mottisfont Bats SAC [ER 4.2.1].
254. The Secretary of State notes that no IPs raised concerns about the scope of the European sites considered or their qualifying features [ER 4.3.1].

Assessment of likely significant effects (LSE)

255. Section 3 of the Applicant's HRA report identified the European sites which met the DMRB screening criteria and requiring assessment of likely significant effects. The following impact pathways associated with construction and operation of the Proposed Development were identified as having potential to give rise to LSE:
- Changes in water quality;
 - Changes in hydraulic / hydrological conditions;
 - Other habitat degradation (including physical modification of habitat, spreading invasive species, increase in air-borne pollutants; increased shading of River Itchin, and inappropriate habitat management;
 - Species disturbance;

¹ [TR010055-001012-M3J9 7.5 Habitats Regulations Assessment \(Rev 3\) \(clean\).pdf \(planninginspectorate.gov.uk\)](#)

- Disturbance to otter;
- Mortality of white-clawed crayfish;
- Impacts of air quality [ER 4.3.2, Table 16: summary of Applicant's Assessment of LSE].

256. The Secretary of State notes that during the construction phase, the primary impact would be on the River Itchen SAC as construction would be adjacent to that SAC except for the installation of two new drainage outfall structures and one altered drainage outfall which would take place within the SAC itself [ER C.1.10]. The Proposed Development includes a new bridge over the SAC, although the abutments will be located outside the SAC and set back from the riverbank.

257. For the Mottisfont Bats SAC, the Applicant concluded that LSE from the Development alone and in combination with other plans and projects can be ruled out. The ExA noted that this conclusion was not disputed by any IPs during the Examination [ER C.2.22]. The Secretary of State agrees with this conclusion.

258. For the River Itchin SAC and its qualifying features, the Applicant concluded that LSE could not be ruled out in respect of a number of impact-effect pathways. The ExA notes that it was also agreed during Examination that impacts from air quality should be progressed to Stage 2 Appropriate Assessment [ER C.2.23].

259. The Secretary of State notes that the ExA was satisfied that, based on the information provided, the correct impact-effect pathways on each site were assessed and was satisfied with the approach to the alone and in combination assessment [ER C.2.24]. The Secretary of State has no reason to disagree.

260. The Secretary of State agrees with the ExA's conclusion that the Development was likely to have a significant effect both alone and in combination with other plans and projects on the qualifying features of the River Itchin SAC [ER C.2.25] and that therefore an Appropriate Assessment was necessary.

Appropriate Assessment

261. The Secretary of State has undertaken an assessment of the implications of the Proposed Development on the qualifying features of the River Itchen SAC having regard to the conservation objectives for the SAC to determine whether there would be any adverse effects on the integrity of the European site, including the proposed mitigation measures. This assessment considered the following issues, evidenced in the Applicant's HRA Report in sections 4.2 – 4.10:

- changes in water quality (construction and operation);
- changes in hydraulic conditions (construction and operation);
- other habitat degradation (construction and operation);
- species disturbance (construction);
- disturbance to otter (operation);

- mortality to white-clawed crayfish, if present (construction); and,
 - impacts from air quality (construction).
262. The full details of the Appropriate Assessment are set out in the Secretary of State's Habitats Regulations Assessment for an Application under the Planning Act 2008 – M3 Junction 9 Improvement (16 May 2024).
263. Having carried out the Appropriate Assessment, the Secretary of State is satisfied that given the relative scale and magnitude of the identified effects on the qualifying features of this European site and where relevant, the measures in place to avoid and reduce the potential harmful effects, there would not be any implications for the achievement of the conservation objectives for the River Itchin SAC and that the Proposed Development would not affect the integrity of the SAC.
264. Based on the submissions to the Examination as summarised in the ExA's REIS and Recommendation Report together with further consultations undertaken by the Secretary of State after the close of Examination, the Secretary of State is satisfied that the views of Natural England, as the appropriate nature conservation body have been considered and that Natural England are in agreement with the scope and conclusions of the Applicant's HRA Report in that adverse effect on integrity of the River Itchen SAC can be excluded.

Planning Balance

265. Like the ExA, and as discussed above, the Secretary of State considers that the Proposed Development would meet the specific identified need for an improved M3 J9 and would contribute to meeting the strategic need for the development of the national road network in accordance with the NPSNN ER 5.5.3].
266. The ExA considered that the following matters weigh in favour of the Proposed Development:
- In respect of Traffic, Transport and NMU Routes, the Secretary of State agrees with the ExA that, although there will be temporary negative impacts during construction and although the ExA expressed some reservation about this in relation to the extent of journey time saving and the value of the safety cost benefits over the wider area, it has been demonstrated that the Proposed Development would deliver a number of benefits relating to transport matters, including a reduction in congestion and delays, safety improvements, support for economic growth, particularly in and around the Winnall Industrial Estate, and improvements to NMU provision [ER 5.5.8]. As such, the Secretary of State agrees that that the benefits to traffic, transport, and non-motorised user routes carries great weight in favour of making the Order.
 - In respect of BNG and all other matters relating to biodiversity and ecology, the Secretary of State agrees with the ExA that this should be attributed a little positive weight in favour of the Order being made. In respect of Flood Risk, Ground Water and Surface Water effects, the Secretary of State with

the ExA that those effects carry a minor positive weight in favour of the Order being made.

- In respect of effects on Population and Human Health, the Secretary of State agrees with the ExA that those effects carry moderate positive weight in favour of making the Order.

267. The following are considerations the ExA has weighed against the Proposed Development:

- The Secretary of State agrees with the ExA that the issue of landscape impacts and visual effects carries moderate weight against making the Order. The Secretary of State agrees with the ExA that, due to the adverse effect and significant impact of the loss of BMV land that agriculture, geology and soil issues have a moderate weight against making the Order. [The Secretary of State considers that the issue of noise and vibration has minor weight against making the Order. The Secretary of State notes that the ExA considers that issues relating to climate change were neutral in the planning balance. However, given the increase in emissions that are likely as a result of the Proposed Development, although small, he has instead given limited negative weight against making the Order.
- The Secretary of State agrees with the ExA that cumulative impacts should be attributed limited negative weight in the planning balance.
- In respect of the historic environment, the Secretary of State agrees with the ExA that for each of the identified designated historic assets, the Proposed Development would result in less than substantial harm to the historic significance of those assets. The Secretary of State considers that in all instances the substantial public benefits of the Proposed Development would outweigh that less than substantial harm. He therefore considers the loss of significance is justified. He gives a little negative weight against making the Order to the identified harm to the designated and non-designated assets including the historic landscape.

268. For the reasons given above, the Secretary of State considers that the following other matters carry neutral weight in favour or against making the Order:

- Air Quality;
- Alternatives;
- Design;
- Waste and Material Resources.

269. As discussed above, the Secretary of State considers that the small increase in carbon emissions as a result of the Proposed Development should be given limited negative weight against making the Order, as opposed to the neutral weight prescribed by the ExA. Other than this, he agrees with the conclusions of the ExA on the weight of matters, above.

270. The Secretary of State has had regard to the consideration of alternatives to the Proposed Development and, given the junction already exists within the National Park, like the ExA, he considers that none of the proposed

alternatives would provide a suitable and realistic alternative option to the Proposed Development [ER 5.5.17 – 5.5.18].

271. As set out in paragraphs 18 – 24, above, the Secretary of State is satisfied that there is a need for the Proposed Development which accords with the need case established by the NPSNN and therefore affords substantial weight to the contribution the Proposed Development would make to meeting the need set out in the NPSNN. Like the ExA, the Secretary of State considers that the overall balance of benefits and adverse impacts falls very strongly in favour of the grant of development consent [ER 5.5.39]

COMPULSORY ACQUISITION

272. The Secretary of State notes that ER 6.2 describes in general terms the Compulsory Acquisition (“CA”) and Temporary Possession (“TP”) powers sought for the Proposed Development. It is further noted that a full description of the extent and existing nature of land required for construction, operation and maintenance is set out in the Applicant’s Statement of Reasons, the Land Plans, and the Book of Reference and, in general terms, at ER 6.2. The Secretary of State has noted the legislative requirements and national guidance set out by the ExA at ER 6.5.

273. The Secretary of State notes that article 30 of the Order amends provisions of the Compulsory Purchase Act 1965 to be consistent with the terms and timeframes under the Order and the 2008 Act [ER 6.6.1].

274. The Secretary of State notes that the Applicant considers the land within the Order limits is considered to be the minimum land-take required for the construction, operation, maintenance and mitigation for the Proposed Development and that in all events the Applicant would seek to minimise the effects on land interests, particularly following detailed design, where less land is shown to be required [ER 6.8.6]. The Secretary of State notes that, where possible, the Applicant has sought to minimise the impact of CA on the National Park and that land-take has reduced throughout Examination [ER 6.8.24 – 6.8.25 and 6.8.30]. Where possible, the Applicant has sought and would seek to acquire land by negotiation [ER 6.8.44 – 6.8.47]. Like the ExA, the Secretary of State agrees that there are sufficient measures within article 24 of the Order and clear financial disincentive to acquiring more land than is ultimately required for the Proposed Development to ensure that the powers would be exercised in a proportionate manner [ER 6.10.12].

275. The Secretary of State agrees with the ExA that the relevant land subject to TP is required to implement and maintain the Proposed Development and, whilst interference with human rights is inevitable, that there is adequate compensation in place, and that all TP sought is proportionate, legitimate and in the public interest [ER 6.10.67 – 6.10.68].

276. The Secretary of State has had regard to the Applicant’s arguments as to the public benefit of the Proposed Development compared to the private loss as detailed at ER 6.10.41 – 6.10.44, and agrees with the ExA that the public benefits can only be sacrificed from the CA of the land required as detailed

above, and that the public benefits associated with the Proposed Development greatly outweigh the private loss [ER 6.10.48 – 6.10.49].

277. The Secretary of State notes the ExA's consideration of individual objections at ER 6.9.1 – 6.9.35 and agrees with the reasoning and conclusions on each of these matters. The Secretary of State is satisfied that the ExA has considered all the objections received. He concurs with the ExA that in each case, the relevant powers are necessary in order to implement the Proposed Development, that it would be reasonable and proportionate to exercise them, and that none of these objections lead to the view that its conclusion in relation to the Applicant's general case for CA and TP powers should be changed in any way.

Statutory Undertakers

278. The Secretary of State agrees with the ExA's considerations regarding undertakers at ER 6.9.36 – ER 6.9.60 and with its conclusions that:

- the CA powers sought for the Proposed Development would, in accordance with section 127 of the 2008 Act, not lead to any serious detriment to statutory undertakers undertaking their functions; and
- the rights sought by the Applicant from statutory undertakers would, in accordance with section 138 of the 2008 Act, be necessary for the purposes of the Proposed Development [ER 6.10.82].

279. Regarding Protective Provisions, the ExA considered that there were no outstanding concerns relating to Protective Provisions that would prevent the granting of CA powers [ER 6.9.60].

Crown Land and Special Category Land

280. The Secretary of State notes that there is no Crown Land included in or affected by Proposed Development and therefore there is no requirement for Crown Land Plans, and that there is no open space, common land or fuel or field garden allotments included in or affected by the Proposed Development and therefore there is no requirement for Special Category Land Plans [ER 6.1.3].

Availability and Adequacy of Funding

281. The Secretary of State has had regard to the ExA's consideration on the availability and adequacy of funding for CA at ER 6.10.32 – 6.10.39. Like the ExA, the Secretary of State is satisfied that the Applicant has demonstrated that there is a reasonable prospect of the requisite funds for CA being available within the statutory period following the making of the Order and also content that the availability of funding of the Proposed Development more widely would not be a potential impediment to implementation [ER 6.10.40].

Human Rights

282. The Secretary of State considers that the ExA's procedural decisions gave the owners/occupiers of the property whose rights would be interfered with a fair opportunity to participate in the Examination. And notes that there were no requests from affected parties to attend a compulsory acquisition hearing. For the reasons mentioned by the ExA, the Secretary of State agrees with its conclusion, that in relation to human rights, the Examination has ensured a fair and public hearing and the requirements of Article 6 of the

European Convention on Human Rights (“ECHR”), as incorporated in the Human Rights Act 1998 have been met [ER 6.10.59].

283. Like the ExA, the Secretary of State considers that the inclusion of CA and TP powers in the Order do not constitute any unlawful interference with rights under the Human Rights Act 1998 and that the powers sought are appropriate and proportionate [ER 6.10.60].

Public Sector Equality Duty

284. The Secretary of State has had regard to the Equality Impact Assessment submitted by the Applicant as detailed at ER 6.10.61 – 6.10.63. Whilst he notes that the Proposed Development has the potential to disproportionately affect age, disability, and pregnancy and maternity characteristics during construction as a result of temporary diversions, he agrees that the upgrades to walking, cycling and horse-riding facilities within the Proposed Development would likely benefit the elderly, disabled, children, and during pregnancy and maternity by providing safer and more accessible facilities [ER 6.10.63]. The Applicant has confirmed that these impacts would be considered when confirming diversion routes with HCC in order to limit the potential effect [ER 6.10.64].

285. Like the ExA, the Secretary of State is satisfied that the Applicant has complied with its duties under the Equality Act 2010 and he agrees that the ExA has due regard to the Public Sector Equality Duty when exercising its functions. He considers his duties under the Equality Act 2010 below. He concludes that the implementation of the Proposed Development would not disproportionately affect those with protected characteristics [ER 6.10.65].

The Secretary of State’s Conclusions on Compulsory Acquisition

286. Like the ExA, the Secretary of State considers that in respect of every plot of the CA land shown in the Land Plans, there is a compelling case in the public interest for the exercise of CA powers, and therefore the exercise of these powers is in compliance with the 2008 Act, including in relation to Statutory Undertaker’s land [ER 6.10.80 – 6.10.82]. Similarly, the Secretary of State agrees that the TP powers sought are necessary [ER 6.10.83].

287. The ExA was satisfied that all necessary consents to enable the Proposed Development to proceed have been identified by the Applicant and that there is no reason why such consents should not be secured or granted [ER 6.10.86]. For the reasons given by the ExA, the Secretary of State agrees.

DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

288. The Secretary of State has made a number of minor textual amendments to the Order in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications:

- the preamble setting out the vires has been amended to include a reference to paragraph 16 of Schedule 5 of the 2008 Act on the basis that paragraph (f) of the list of further developments in relation to the works set out (at the end of Schedule 1) allows for the alteration of the course of any watercourse;

- article 2(1) (interpretation) has been amended to:
 - remove the definitions of “general arrangement plans”, “the environmental management plan” and “the tribunal” as those terms are only used in one place elsewhere in the Order, and
 - vary the definition of “includes” in order to provide for a limitation on any construction that would result in materially different environmental effects from those reported in the ES;
- article 8, schedule 1, and requirements 12(1)(b) and 17(3)(c) have all been amended to amend the phrase “worse adverse” in relation to environmental effects with “new or materially different”;
- article 14(1) (construction and maintenance of new, altered or diverted streets and other structures) has been amended to provide that the obligation of the local highway authority to maintain highways under that paragraph is “subject to paragraph (6)”. It is the Secretary of State’s view that the inclusion of the words “or supporting it” with regards to other structures created a conflict between paragraphs (1) and (6) where the highway concerned a supporting bridge. The latter provides that the surface of a highway over a bridge constructed under the Order (i.e. a structure supporting a highway) over a special or trunk road is to be maintained by and at the expense of the undertaker, which would have been inconsistent with the generality of paragraph (1);
- articles 16, 20, 21 and 23 have been amended so that it provides for an obligation to issue correspondence containing certain information when applying for consent under those articles. This new provision will ensure the recipient of the request is made fully aware of the process being applied and will thus ensure fairness in the way it is to operate;
- article 34(8) (temporary use of land for carrying out the authorized development) has been amended to remove sub-paragraph (a) pertaining to the circumstances in which new rights may be compulsorily acquired over specified land for specified purposes. Without knowing the nature of the new rights it is difficult to see how a judgement can be made on whether there is a compelling case in the public interest for authorising the compulsory acquisition of the new rights because the burden of the right on the landowner and other persons with an interest in the land cannot be understood;
- article 44(1) (defence to proceedings in respect of statutory nuisance) has been amended to remove the reference to paragraph (h) of section 79(1) of the Environmental Protection Act 1990, as the Secretary of State is not satisfied that the explanatory memorandum justifies including this form of statutory nuisance;
- article 45 (Appeals relating to the Control of Pollution Act 1974) has been removed in full. It is the Secretary of State’s view that the appeal mechanisms under the 1974 Act and the provisions under article 48 (arbitration) are sufficient;
- Schedule 2, paragraph 1 (interpretation):

- the definition of “Environmental Management Plan” has been amended to adopt the language of the document referred to in the Examination library, and
- a definition of “protected species” has been inserted, which encompasses a wider definition than that provided by the definition of “European protected species”;
- Schedule 2, requirement 6(3) has been amended to remove the phrase “or other element” following consideration of the consultation response provided by the SDNPA on 5 April 2024 which conveyed the SDNPA’s intention that the phrase was to ensure the inclusion of chalk grassland. Given chalk grassland is now referred to in the requirement, and no other element is in contemplation, this phrase has been removed;
- Schedule 2, requirement 12 (detailed design) has been amended to insert a new paragraph (2) which requires, in relation to the detailed design, the undertaker to have regard to the amended duty introduced by section 245 of the Levelling up and Regeneration Act 2023;
- Schedule 2, requirement 14 has been amended to remove paragraph (4), and insert SDNPA as one of the consultees under paragraph (1) of that requirement. The Secretary of State notes that, as a planning authority for its area, the SDNPA is already required to be consulted under paragraph (1), irrespective of paragraph (4). In order to ensure that the SDNPA is consulted not merely in relation to its area as a planning authority, but in principle in relation to areas adjacent to it, the Secretary of State has modified this requirement to ensure there is consultation with the SDNPA in general;
- schedule 10, part 3, paragraph 32 (arbitration) has been amended to remove a reference to paragraph 11(5). This particular paragraph does not exist, and it was unclear to the Secretary of State what it was intended to refer to. As a general observation, the Secretary of State brings to the attention of the relevant parties that the cross-references for Schedule 10 had a significant number of errors, presumably due to misnumbering across versions of the document. These have been addressed where the error is obvious, but the parties should nevertheless review the provisions as amended.

LATE REPRESENTATIONS AND CONSULTATION RESPONSES

289. Following the close of the Examination, the Secretary of State received late representations and responses to his consultation questions (that were outside of the questions posed). The Secretary of State has treated these correspondence as late representations and has published them as such alongside this letter on the Planning Inspectorate website.
290. The Secretary of State has had regard to the letter from Hampshire Chamber of Commerce dated 8 April 2024, where, whilst noting their general support for the improvements to M3 Junction 9, it states concerns relating to the impact of diversion routes on Winchester City Centre, the monitoring of the impacts of reduced speed limits during construction, and the impact of concurrent works on the M3 and M27. The Secretary of State is satisfied that the points raised by Hampshire Chamber of Commerce are adequately

addressed, as discussed in the Traffic, Transport and Non-Motorised Users section and the Cumulative Effects sections of the ExA's Report and this letter.

291. The Secretary of State notes the letter from the Winchester District Green Party regarding the economic appraisal of the Proposed Development and its alignment with local policies. As discussed above, the Secretary of State considers that the Proposed Development aligns with several of the policy aims of the relevant local plans and, like the ExA, considers that the Proposed Development provides medium value for money, as discussed at paragraphs 25 - 29, above.
292. The Secretary of State notes the response to his consultation from Winchester Friends of the Earth which contends that the Proposed Development is "economically unsound, contrary to the UK's climate commitments under the Paris Agreement, significantly damaging to the natural environment and damaging to the health of the local population." The Secretary of State is satisfied that all of these matters have been considered appropriately both by the ExA and in this letter as detailed above. They go on to raise concerns regarding the Applicant's consideration of alternatives to the Proposed Development, however, as set out at paragraphs 25 - 29, the Secretary of State is satisfied that the question of alternatives has been appropriately considered. Finally, the response provides comment on the application of the 2023 Act and the response from National Highway dated 15 March 2024. The Secretary of State has considered the comments made by Winchester Friends of the Earth on this matter when reaching his conclusions on the 2023 Act which is discussed at paragraphs 299 - 307.
293. The Secretary of State has had regard to the letter from Ruth Bradshaw dated 10 April 2024 on behalf of the Campaign for National Parks ("CNP") and the attached legal opinion which was provided for the A66 Northern Trans-Pennine Project DCO ("the A66 DCO") and the implications of the 2023 Act. The Secretary of State considers his duty in respect of the National Park at paragraphs 306 - 307.
294. The British Horse Society and Cycle Winchester both requested sight of the confidential side agreement made between the Applicant and Hampshire County Council. The Secretary of State considers that non-motorised user issues have been fully examined and considered by the ExA and does not consider that disclosure of the side agreement is necessary.
295. Unless addressed above, the Secretary of State considers that these late representations do not raise any new issues that are material to the decision on the Proposed Development which have not previously been considered by the ExA or in this letter. As such, the Secretary of State is satisfied that there is not any new evidence or matter of fact in these late representations that need to be referred again to Ips under rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

GENERAL CONSIDERATIONS

Public Sector Equality Duty

296. The Equality Act 2010 established the public sector equality duty. Which requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race.
297. The Secretary of State has complied with the public sector equality duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not.

Natural Environment and Rural Communities Act 2006

298. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 has to consider what action he can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective and, in accordance with regulation 7 of the Decisions Regulations, have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992. He has had regard to both of these when deciding on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and biodiversity duty in the relevant sections of the Report but did so with regard to the section 40(1) duty prior to it being amended by section 102(3) of the Environment Act 2021. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

Levelling Up and Regeneration Act 2023

299. The Secretary of State notes that the Levelling Up and Regeneration Act 2023 (“the 2023 Act”) took effect from 26 December 2023. Section 245 of the 2023 Act amends (insofar as is relevant to this matter) section 11A of the National Parks and Access to the Countryside Act 1949 (“NPAC Act”) and so as to impose a duty on relevant authorities, including the Secretary of State, to seek to further the purposes of National Parks. With regard to National Parks, as is applicable here, the relevant purposes are set out in section 5(1) NPAC Act: conserving and enhancing the natural beauty, wildlife and cultural heritage of national parks and promoting opportunities for the understanding and enjoyment of the special qualities of national parks by the public.
300. The ExA was unable to examine this issue as the duty came into effect after the close of the Examination. However, in reaching its conclusions in relation to the purposes of the National Park, the ExA identified potential long-term enhancements to the National Park’s special qualities of tranquility, landscape and public access provision which it drew to the Secretary of State’s attention [ER 8.2.15].

301. As this issue had not been considered in the Examination, the Secretary of State consulted on it in order to give the Applicant and Ips the opportunity to comment.
302. In his consultation letter of 8 March 2024, the Secretary of State invited the Applicant to provide comments on the implications of the 2023 Act from their perspective, and how he could be satisfied that the Proposed Development meets the requirements applied by the amendments made by the 2023 Act as regards section 11A of the NPAC Act. In their response dated 15 March 2024, the Applicant considered that some meaning must be applied to the words “seek to” until such a time that there is guidance and regulations to assist in the application of the duty. Furthermore, the Applicant stated that throughout the design of the Proposed Development measures to conserve and enhance the natural beauty, wildlife, and cultural heritage of the National Park and measures to promote understanding and enjoyment had been incorporated.
303. In his consultation letter of 22 March 2024, the Secretary of State invited the SDNPA and other Interested Parties to comment on the Applicants letter of 15 March 2024. The Secretary of State notes that the SDNPA in their response of 5 April 2024 contend that the Applicant cannot have taken all reasonable steps to further the statutory purposes of the National Park and directed him towards Examination submissions which the SDNPA had previously submitted, including the location of, and design of, the construction compound.
304. Winchester Friends of the Earth consider that the Proposed Development does not seek to further the purposes of the National Park but rather “impacts negatively on the ‘natural beauty, wildlife and cultural heritage of the area comprised in the National Park’”.
305. The Campaign for National Parks responded to the consultation attaching legal advice. In the light of that advice, it considers that the Applicant has to show how it has taken all reasonable steps to seek to further the purposes of the South Downs National Park as part of developing proposals for M3 Junction 9, including showing how it has considered alternative approaches which might better further the purposes, and why these alternatives were rejected.
306. The Secretary of State has given careful consideration to his duty under section 11A of the NPAC Act and taken into account the representations received from the Applicant and Ips following his consultation on the matter. He has borne this duty in mind throughout his consideration of the potential benefits and impacts of the Proposed Development on the SDNP, for instance when considering landscape and tranquillity impacts in the relevant section above. While the ExA was unable to directly consider this matter during the Examination, the Secretary of State agrees with it that the Proposed Development has potential benefits for the National Park in terms of long-term enhancements to the National Park’s special qualities of tranquillity, landscape and public access provision which he considers would further the purposes of the National Park. He further agrees with the Applicant that it has demonstrated that the Scheme is justified and that its benefits cannot be delivered by any alternative route or means and there is no further mitigation that can be reasonably required to mitigate its effects on the National Park. This accords

with the conclusions of the ExA outside of any direct consideration of the section 11A duty which the ExA was unable to offer.

307. The Secretary of State considers that the requirements of the statutory duty have been satisfied, as discussed above, in the context of this decision. Regardless, as the Secretary of State attaches great weight to the importance of the National Park and the duties imparted by the 2023 Act, he has made provision in requirement 12 of the Order to ensure that at the detailed design stage the Applicant is to have regard to the amendments made by section 245 to the duty to seek to further the purpose of conserving and enhancing the protected landscapes. This is detailed at paragraph 288, above.

SECRETARY OF STATE'S OVERALL CONCLUSION AND DECISION

308. For all the reasons set out in this letter, the Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

CHALLENGE TO DECISION

309. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A of this letter.

PUBLICITY FOR THE DECISION

310. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Gareth Leigh

ANNEX A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The M3 Junction 9 Improvements Development Consent Order 2024 (as made) is being published on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR010055>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

M3 Junction 9 Improvement

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

Wendy McKay LLB (Hons), Solicitor (non-practising); Lead Member of the ExA

Matthew Sims B.Eng (Hons), C.Eng, MICE

16 February 2024

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OVERVIEW

File Ref: TR010055

The application, dated 21 November 2022, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 21 November 2022.

The Applicant is National Highways.

The application was accepted for examination on 15 December 2022.

The examination of the application began on 16 May 2023 and was completed on 16 November 2023.

The development proposed is for an improvement to Junction 9 of the M3 motorway, the proposal comprises:

- Widening of the M3 from a dual two-lane motorway (two-lane motorway with hard shoulders) to a four-lane motorway (with hard shoulders) between the proposed M3 Junction 9 gyratory north and south slip roads.
- A new smaller grade separated gyratory roundabout arrangement within the footprint of the existing roundabout, incorporating new connections over the M3 with improved walking, cycling and horse-riding routes.
- Connector roads from and to the new gyratory roundabout.
- Improved slip roads to/ from the M3.
- New structures (in the form of gyratory bridges, underpasses, retaining walls, subway and a new cycle and footbridge over the River Itchen).
- A new surface water runoff system with associated drainage and infiltration features.
- New signage and gantries.
- Utility diversions.
- New lighting (subways, underpasses and gantries).
- Modifications to topography through cuttings and false cuttings as well as re-profiling of existing landform.
- New walking, cycling and horse-riding provision.
- Creation of new areas of chalk grassland, woodland, scrub planting and species rich grassland.

Summary of Recommendation:

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

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1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. This Report details the Examining Authority's (ExA) findings, conclusions, and recommendation as to the decision to be made on this application by the Secretary of State for Transport (SoST) as required under The Planning Act 2008 (PA2008) s74(2). The Report sets out the ExA's consideration of the submissions that it received up to the end of the Examination and its subsequent conclusions and recommendations regarding compliance with relevant legislation, policy and guidance in relation to the planning issues, the Habitats Regulations, the case for making a Development Consent Order (DCO), land rights and the form of the DCO.
- 1.1.2. The Proposed Development comprises changes to junction 9 of the M3 (M3 J9), the motorway which connects London and the Solent. M3 J9 is also the southern interchange for the A34 trunk road which connects the Solent to the Midlands via Oxford. M3 J9 is the principal motorway access to the City of Winchester and is also at the Western entrance to the South Downs National Park (SDNP).
- 1.1.3. The main elements of the Proposed Development are summarised in the Overview of this Report and include new connector roads between the M3 and the A34 with localised widening of the M3 from a two-lane motorway to a four-lane motorway (with hard shoulders) and a remodelled gyratory. Improvements to walking, cycling and horse-riding (WCH) routes are also proposed.
- 1.1.4. The Proposed Development meets the definition of a Nationally Significant Infrastructure Project (NSIP) set out in s14(1)(h) of PA2008. The Proposed Development is wholly within England, is an alteration to a highway within s22(1)(b), s22(3) and s22(4) of PA2008, and so requires development consent pursuant to s31 of PA2008. An application for an order granting development consent was therefore made in accordance with s37 PA2008.
- 1.1.5. During the course of the Examination, the ExA considered all important and relevant matters arising from both oral and written submissions.
- 1.1.6. The Report makes references to documents which are catalogued in the Examination Library (EL). Each document in the EL has a unique reference and this will be shown in square brackets (eg [APP-010]) which will also serve as a hyperlink to the document itself. The EL can be obtained from the following link to the Planning Inspectorate National Infrastructure Planning Website [M3 Junction 9 - Examination Library](#).

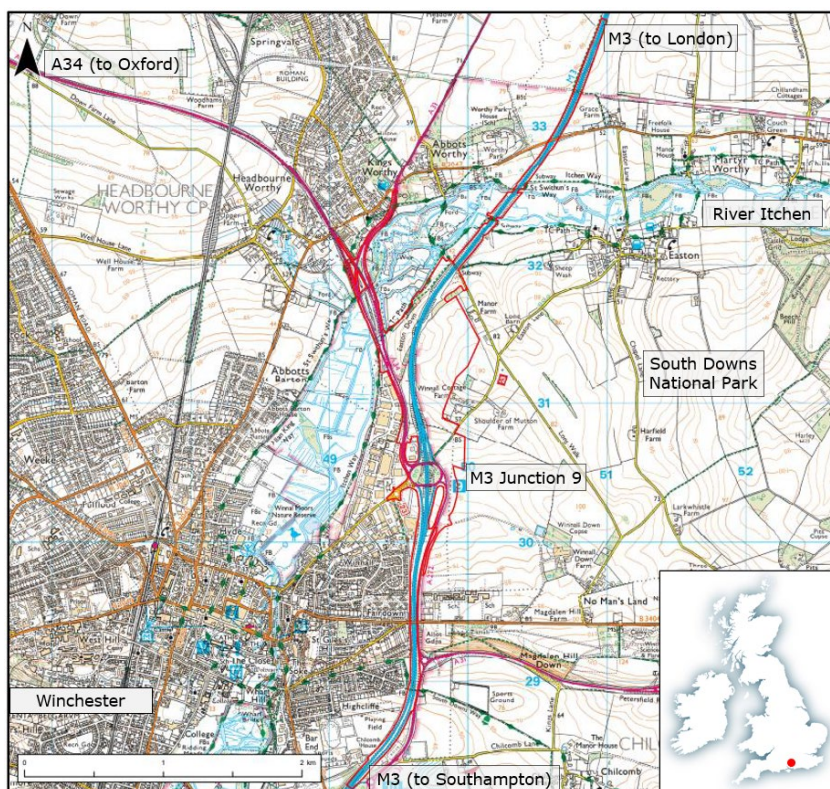
1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 13 January 2023, Wendy McKay and Matthew Sims were appointed as the Examining Authority under s61 and s65 of PA2008 [[PD-004](#)].

1.3. THE APPLICATION

- 1.3.1. The Proposed Development lies to the east of the City of Winchester and is located within the administrative boundaries of Winchester City Council (WCC), South Downs National Park Authority (SDNPA) and Hampshire County Council (HCC).
- 1.3.2. The area in the vicinity of the Proposed Development is primarily urban to the west of the M3 and primarily rural to the east. There are residential areas close to the A34 to the north in Headbourne Worthy, Kings Worthy and Abbots Worthy with residential areas of Winchester bordering the M3 to the south of the application boundary. A small number of isolated farm holdings or rural dwellings lie to the east and south-east of the application boundary. West of the application boundary, there is an area of commercial development. The River Itchen Special Area of Conservation (SAC) is located (in part) beneath the existing alignment of the existing A34, the A33 and the M3 and lies within the application boundary.
- 1.3.3. The application boundary covers an area of approximately 109 hectares (ha) of which 64ha is within the South Downs National Park (SDNP). The area of the existing highway boundary within the application equates to approximately 20ha, some of which is also within the SDNP.
- 1.3.4. Further details of the Proposed Development can be referenced in paragraphs 3.1 to 3.4 of The Case for the Scheme [[REP1-019](#)].

Figure 1 : Application Location Plan



- 1.3.5. The application was submitted by National Highways (the Applicant) and was received in full by The Planning Inspectorate on 21 November 2022 and was made under section 37 of PA2008. The application was accepted for examination on 15 December 2022. The examination of the application began on 16 May 2023 and was completed on 16 November 2023.
- 1.3.6. The Applicant has stated that there are 5 strategic objectives for the Proposed Development:
- To reduce delays at the M3 J9 on all links to the M3, the A33 and the A34.
 - To smooth the flow of traffic by improving journey time reliability and reducing delays at the M3 J9 and the exit and entry roads for the A33 and the A34.
 - To improve the safety for all road users and reduce the annual collision frequency and severity ratio on the M3 J9.
 - To support economic growth and ensure the junction can accommodate additional traffic.
 - To deliver improvements for walkers and cyclists including connecting the National Cycle Network (NCN) Route 23 which is severed by the current junction layout.
- 1.3.7. The area of land for the principal works does not appear to have any relevant planning history. In their Local Impact Reports (LIRs) neither SDNPA [[REP2-071](#)], WCC [[REP2-083](#)] nor Eastleigh Borough Council [[REP2-064](#)] identified any relevant planning history. HCC [[REP2-066](#)] stated that the planning history provided in the Applicant's Planning Statement accompanying the submission is considered to sufficiently capture the relevant planning history within Hampshire.

1.4. THE EXAMINATION

- 1.4.1. The Examination began on 16 May 2023 and concluded on 16 November 2023.
- 1.4.2. One hundred and six Relevant Representations (RRs) were received [RR-001 to RR-106]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as an Interested Party (IP). All RRs have been fully considered by the ExA.
- 1.4.3. The following meetings, hearings and site inspections were undertaken; full details and transcripts can be referenced via the EL (hyperlinks are to meeting transcripts):
- Preliminary Meeting (PM), 16 May 2023 [[EV-005](#)].
 - Open Floor Hearing (OFH), 17 May 2023 [[EV-008](#)].
 - Issue Specific Hearing 1 (ISH1), 11 July 2023 [[EV-011](#), [EV-013](#)].
 - Issue Specific Hearing 2 (ISH2), 1 and 2 August 2023 [[EV-017](#), [EV-019](#), [EV-021](#), [EV-023](#), [EV-025](#), [EV-027](#)]

- Issue Specific Hearing 3 (ISH3), 8 August 2023 [[EV-029](#), [EV-031](#), [EV-033](#)].
- Accompanied Site Inspection 1 (ASI1), 10 June 2023. [[EV2-002](#)]
- Accompanied Site Inspection 2 (ASI2), 10 September 2023 [[EV2-004](#)].
- Unaccompanied Site Inspection 1 (USI1), 9 March 2023. [[EV-001](#)].
- Unaccompanied Site Inspection 2 (USI2), 28 April 2023. [[EV-002](#)].
- Unaccompanied Site Inspection 3 (USI3), 23 August 2023. [[EV-034](#)].

- 1.4.4. All public meetings and hearings were held at The Mercure Wessex Hotel, a location in the centre of Winchester being approximately 1.5km (1 mile) from the application boundary and in a location central for most IPs with good access by various transport means. All events were held as blended events with the opportunity to attend in person or virtually via Microsoft Teams.
- 1.4.5. The procedural decisions set out in the Rule 8 Letter [[PD-007](#)] related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development.
- 1.4.6. No procedural decisions were made that affected the Examination timetable. All procedural decisions can be referenced via the [Examination Library](#) [PD-001 to PD-015].

1.5. CHANGES TO THE APPLICATION

- 1.5.1. There were no changes to the application during the Examination.

1.6. OTHER UNDERTAKINGS, AGREEMENTS, AND CONSENTS

- 1.6.1. The updated Consents and Agreements Position Statement [[REP5-006](#)] sets out the other required consents and the position as to the status of securing those consents. The outstanding matter in relation to required consents at that stage was the issuing of a Letter of No Impediment (LoNI) in anticipation of submission of a final dormouse licence application to Natural England (NE).
- 1.6.2. The Applicant's Cover Letter at Deadline 8 [[REP8-029](#)] confirms that NE provided a LoNI in relation to the dormouse licence on 10 November 2023 and it is attached as Appendix A to the Statement of Common Ground (SoCG) [[REP8-021](#)]. This sets out NE's requirements for a final dormouse licence application to be submitted in due course, together with conditions relating to the content of the licence application.

1.7. THE STRUCTURE OF THIS REPORT

1.7.1. The structure of this Report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes how the application is determined, summarising the legal and policy background and identifies the LIRs and Environmental Impact Assessment.
- **Chapter 3** sets out the planning issues that arose from the Application and during the Examination.
- **Chapter 4** considers effects on European Sites and Habitats Regulations Assessment (HRA).
- **Chapter 5** sets out the balance of planning considerations arising from Chapters 3 and 4, in the light of the factual, legal and policy information.
- **Chapter 6** sets out the ExA's examination of Compulsory Acquisition (CA) and Temporary Possession (TP) proposals.
- **Chapter 7** considers the implications of the matters arising from the preceding chapters for the DCO.
- **Chapter 8** summarises all relevant considerations and sets out the ExA's recommendation to the SoST.
- This Report is supported by the following Appendices:
 - Appendix A** – Abbreviations.
 - Appendix B** – Key Legislation and Policy.
 - Appendix C** – Habitats Regulations Assessment.
 - Appendix D** – The Recommended Development Consent Order

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

- 2.1.1. This Chapter sets out the legal and policy context for the application which was considered and applied by the Examining Authority (ExA) in undertaking the Examination and in making its findings and recommendations to the Secretary of State for Transport (SoST).
- 2.1.2. As required by section 88 of The Planning Act 2008 (as amended) (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an Initial Assessment of Principal Issues (IAPI) arising from the Proposed Development and of the Relevant Representations (RRs) received. This was done within 21 days of the day after receipt of the s58 certificate of compliance with s56 of the PA2008 provided by the Applicant [[OD-002](#)]. The IAPI were published in Annex C of the Rule 6 letter [[PD-006](#)].

2.2. LEGISLATION AND POLICY

- 2.2.1. PA2008 is the principal legislation governing the Examination of an application for a Nationally Significant Infrastructure Project (NSIP). The Proposed Development qualifies as an NSIP as it falls within s22 of PA2008. Furthermore, s104 of PA2008 has effect as the National Policy Statement for National Networks (NPSNN) applies.
- 2.2.2. S104(3) of PA2008 requires the Secretary of State (SoS) to decide the application in accordance with any relevant National Policy Statement (NPS), except to the extent that one or more of the exceptions in subsections 104(4) to (8) apply. This creates a presumption in favour of NPS compliant development. The exceptions are if the SoS is satisfied that deciding the application in accordance with any NPS would lead to: the United Kingdom (UK) being in breach of any of its international obligations, the SoS being in breach of any duty imposed on the SoS by or under any enactment, would be unlawful by virtue of any enactment, the adverse impact of the Proposed Development would outweigh its benefits or if the SoS is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.
- 2.2.3. The following lists the key legislation considered by the ExA:
- The Planning Act 2008 (as amended).
 - The South Downs National Park Authority (Establishment) Order 2010.
 - UK Law and Regulations including Assimilated Law.
- 2.2.4. The following lists the key national policy documents considered by the ExA:
- The National Planning Policy Framework (NPPF)
 - National Policy Statement for National Networks (NPSNN)

- The National Infrastructure Strategy
- Road Investment Strategy 1 (2015-2020)
- Road Investment Strategy 2 (2020-2025)
- English National Parks and the Broads - UK Government Vision and Circular 2010

2.2.5. The following lists the key local policy documents considered by the ExA:

- Winchester Local Plan 1 – Joint Core Strategy (March 2013).
- Winchester Local Plan Part 2 – Development Management and Site Allocations (April 2017).
- Winchester District Local Plan 2018 – 2039 (Emerging).
- Hampshire Minerals and Waste Plan (adopted October 2013).
- The Hampshire Local Transport Plan 3 (adopted 2011).
- The Hampshire Local Transport Plan 4 (draft)
- The South Downs Local Plan (SDLP).
- The City of Winchester Movement Strategy

2.2.6. A schedule of the key legislation, other legislation and policy documents considered by the ExA can be seen in Appendix B.

2.2.7. The ExA has taken the relevant legislation and policies into consideration in its assessment of the Proposed Development.

2.3. LOCAL IMPACT REPORTS

2.3.1. Local Impact Reports (LIR) were invited and submitted to the ExA under s60 PA2008 and have been received from the following relevant local authorities:

- Eastleigh Borough Council [[REP2-064](#)].
- Hampshire County Council [[REP2-066](#)].
- South Downs National Park Authority [[REP2-071](#)].
- Winchester City Council [[REP2-083](#)].

2.3.2. The LIRs detailed broad acceptance of the need for an improved interchange at junction 9 of the M3 (M3 J9) while recognising potential impacts, in particular in relation to the South Downs National Park (SDNP). There was general acceptance of economic benefits and broad support for the proposed improvements to non-motorised user (NMU) facilities.

2.3.3. The LIRs have been taken fully into account by the ExA in all relevant Chapters of this Report.

2.4. ENVIRONMENTAL IMPACT ASSESSMENT

2.4.1. The Proposed Development is a development for which an Environmental Impact Assessment (EIA) is required (EIA development).

2.4.2. On 28 January 2019, the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs), in order to request an opinion about the scope of the Environmental Statement (ES) to be

prepared. On 8 March 2019 the Planning Inspectorate provided a Scoping Opinion [[APP-031](#)] and in accordance with Regulation 6(2)(a) of the EIA Regs, the Proposed Development was determined to be EIA development.

- 2.4.3. Subsequent to this determination, the Applicant undertook further statutory consultation and undertook design changes following feedback during this period. It was deemed that this resulted in a material change to the proposed scheme and the Scoping Report was amended and resubmitted to the Planning Inspectorate on 19 October 2020 in order to request a second opinion about the scope of the ES [[APP-031](#)]. It follows that the Applicant is deemed to have notified the SoS under Regulation 8(1)(b) of the EIA Regs that it proposes to provide an ES in respect of the Project.
- 2.4.4. On 27 November 2020 the Planning Inspectorate provided a second Scoping Opinion [[APP-031](#)]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regs, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES.
- 2.4.5. On 14 March 2023 the Applicant provided the Planning Inspectorate with certificates confirming that s56 of PA2008 had been complied with. and s59 of PA2008 and Regulation 13 of the EIA Regs had been complied with.
- 2.4.6. Consideration is given to the adequacy of the ES and matters arising from it in all relevant Chapters of this Report.

2.5. HABITATS REGULATIONS ASSESSMENT

- 2.5.1. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and hence is subject to a Habitats Regulations Assessment (HRA).
- 2.5.2. Under Regulation 63 of the Habitats Regulations, the competent authority must consider whether a development will have Likely Significant Effects (LSE) on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an Appropriate Assessment (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.
- 2.5.3. A summary of the HRA can be seen in Chapter 4 of this Report, with the HRA detailed in Appendix C.

2.6. TRANSBOUNDARY EFFECTS

- 2.6.1. During the Pre-application stage, and under the EIA Reg 32 process, the Planning Inspectorate undertook transboundary screening of the Proposed Development on behalf of the SoS [[OD-001](#)] and in March 2021 reported that the likelihood of transboundary effects resulting from the Proposed Development was so low that it did not warrant the issue of a detailed transboundary screening.

- 2.6.2. Subsequent to this screening, the Applicant undertook further statutory consultation and undertook design changes following feedback during this period. It was deemed that this resulted in a material change to the proposed scheme and the EIA Scoping Report was amended and resubmitted to the Planning Inspectorate on 19 October 2020. The Planning Inspectorate undertook a further transboundary screening of the updated Proposed Development and in March 2021 concluded that it was unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area (EEA) State; it was therefore concluded that the likelihood of transboundary effects resulting from the Proposed Development was so low that it did not warrant the issue of a detailed transboundary screening.
- 2.6.3. The ExA has had regard to the ongoing duty of the SoST under Regulation 32 to have regard to transboundary matters throughout the Examination. No new information or evidence has come before this Examination which gives rise to the need to reconsider the transboundary screening decision.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

- 3.1.1. This Chapter addresses potential effects and benefits of the Proposed Development which were raised in the Examining Authority's (ExA's) identification of issues and in submissions to the Examination. The Chapter is structured to first examine matters of principle, including policy, need and alternatives, following which the planning issues are considered under generic topic headings. These subsequent topics are arranged in alphabetical order except for Cumulative Effects which is most logically placed at the end of this Chapter. The order in which all these section headings are presented should not be taken to imply any order of merit.
- 3.1.2. Each section of this Chapter generally consists of the following parts:
- Introduction.
 - The policy background and relevant policy and legal tests.
 - A summary of the Applicant's case as described in the application documents including the Environmental Statement (ES).
 - Issues arising during the Examination.
 - The ExA's considerations setting out our reasoning on the issues including any further mitigation we are proposing in the recommended draft Development Consent Order (rDCO).
 - The ExA's overall conclusions on each issue to be carried forward to Chapter 5.
- 3.1.3. Matters relating to the overarching legal and policy context and the ExA's findings in relation to these matters are considered in Chapters 1 and 2 respectively and will not be repeated in this Chapter.
- 3.1.4. The term 'impact' is used throughout this Chapter. However, to clarify, environmental 'impacts' and 'effects' are both considered in this Report to be 'environmental effects'.
- 3.1.5. In addition to aid the reader and to aid consistency we have set out the following regime for applying/ assessing the weight to be attached to the different aspects of the proposal in the following manner:
- Neutral weight: The ExA considers that there are no matters relating to that issue which would weigh for or against the making of the Order.
 - First Level: The ExA ascribes a little weight to matters relating to the issue for/ against the making of the Order.
 - Second Level: The ExA ascribes moderate weight to matters relating to the issue for/ against the making of the Order.
 - Third level: The ExA ascribes great weight to matters relating to the issue for/ against the making of the Order.

3.2. THE PRINCIPLE OF AND NEED FOR THE PROPOSED DEVELOPMENT

Policy considerations

The National Planning Policy Statement for National Networks (NPSNN)

- 3.2.1. The need for the development of the national networks and relevant wider Government policy is detailed in Chapters 2 and 3 of the NPSNN.
- 3.2.2. Paragraph 2.2 of the NPSNN refers to there being a critical need to improve the national networks to address road congestion and crowding on the railways.
- 3.2.3. Paragraph 2.10 states that: *"The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The Examining Authority and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this NPS on that basis"*.
- 3.2.4. The importance of improving the road network is confirmed by paragraph 2.22, as without doing so: *"... it will be difficult to support further economic development, employment and housing and this will impede economic growth and reduce people's quality of life. The Government has therefore concluded that at a strategic level there is a compelling need for development of all national road networks."*
- 3.2.5. Paragraph 2.23 explains that enhancements to the existing national road network will include: junction improvements, new slip roads and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion.
- 3.2.6. It is recognised by paragraph 2.27 that in some cases simply expanding capacity on the existing network may not be sufficient to meet this need. In those circumstances, it indicates that new alignments and corresponding links, including alignments which cross a river or estuary, may be needed to support increased capacity and connectivity.
- 3.2.7. Paragraph 4.2 of the NPSNN states that: *"Subject to the detailed policies and protections in this NPS, and the legal constraints set out in the Planning Act 2008, there is a presumption in favour of granting development consent for national network Nationally Significant Infrastructure Projects (NSIPs) that fall within the need for infrastructure established in this NPS."*
- 3.2.8. Paragraph 4.3 states that: *"In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:*

- *its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;*
- *its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts."*

3.2.9. NPSNN paragraph 4.27 requires all projects to be subject to an options appraisal. However, it states that: "*For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process. It is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken.*"

3.2.10. In addition to sections 2 and 3 of the NPSNN, and where development is proposed within nationally designated areas including National Parks, paragraph 5.151 of the NPSNN states that: "*The Secretary of State should refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest*". Consideration of such applications should include an assessment of specified matters including the need for the development; the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way and the detrimental effect on the environment, the landscape and recreational opportunities.

The March 2023 NPSNN Consultation Draft

3.2.11. The NPSNN is currently the subject of a review process in accordance with the PA2008. The written ministerial statement dated 22 July 2021 (WMS) explains that it was written in 2014, before the government's legal commitment to net zero, the 10-point plan for a green industrial revolution, the new sixth carbon budget, and most directly the new, more ambitious policies outlined in the transport decarbonisation plan. The WMS makes it clear that whilst the review is undertaken, the NPSNN remains relevant government policy and has effect for the purposes of the PA2008.

3.2.12. The March 2023 Consultation Draft also makes it clear that the designated NPSNN continues to provide a basis on which:

- applicants can prepare applications for development consent;
- the planning inspectorate can examine them; and
- the Secretary of State (SoS) can make decisions on them.

3.2.13. It states that the SoS has decided that for any application accepted for examination before designation of the amendments to the NPSNN, the original NPSNN should have effect. The amended NPSNN will therefore only have effect in relation to those applications for development consent accepted for examination after the designation of those amendments. It also states that any emerging draft NPS is potentially capable of being important and relevant to considerations in the decision-making process.

The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework PA2008 and with regard to the specific circumstances of each Development Consent Order (DCO) application.

- 3.2.14. The Consultation document outlines the changes made to the NPSNN as part of the review process and the rationale for making them. Chapter 2 outlines the role and importance of national networks, recognising the broader context that national networks operate in. This includes outlining the continued role national networks play in a greener world and the measures that government is taking to decarbonise transport.
- 3.2.15. Chapter 3 of the draft NPSNN establishes that there is a compelling need for development of the national networks at the strategic level. The statement of need has been updated to move away from the focus on congestion and network overcrowding in the existing NPSNN, and instead identifies a range of challenges that national networks face and that can act as a driver for needing to bring forward interventions.
- 3.2.16. Chapter 4 sets out general policies in accordance with which applications relating to national networks infrastructure are to be decided. Changes have focused on future proofing, reducing repeated narrative, and updating text. For example, the 'Good design' section has been updated to include the national infrastructure design principles. Chapter 4 also includes the addition of an accessibility section and biodiversity net gain (BNG) section.
- 3.2.17. On 17 October 2023, the House of Commons Transport Committee published a report on the draft NPSNN. This is provided at Appendix C to the Deadline (DL) 6 submission of Climate Emergency Policy and Planning [[REP6-028](#)].

The National Planning Policy Framework published in September 2023 (NPPF)

- 3.2.18. The NPPF sets out the Government's planning policies for England and how these should be applied strategically in the development plan system and in the management of development. Paragraph 5 of the NPPF makes clear that it does not contain specific policies for NSIPs. These are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs for major infrastructure, as well as any other matters that are relevant to the that project (which may include the NPPF). At Issue Specific Hearing 3 (ISH3), no issues were raised in relation to any potential inconsistency between the overall strategic aims of the NPPF and the NPSNN.
- 3.2.19. The NPPF was revised in response to the Levelling-up and Regeneration Bill: reforms to national planning policy consultation on 19 December 2023. This revised Framework replaces the previous NPPF that was last updated in September 2023. Since this revision took place following the close of the Examination, it was the September 2023 update that was considered during the Examination. However, we note that paragraph 5

of the revised document also clarifies that it does not contain specific policies for NSIPs.

Local Plan policies

- 3.2.20. The Winchester Local Plan; Hampshire Transport Plan; Hampshire Minerals and Waste Plan; and the South Downs Local Plan (SDLP) were provided at DL2 in response to Examining Authority Questions (ExQ) 14.1.5 [[REP2-051](#)].
- 3.2.21. The Hampshire Local Transport Plan 3: 2011-2031 (LTP3) identifies that the junction of the A34 and the M3 at Winnall, which acts as a gateway to the South Hampshire sub-region, presents particular difficulties. The LTP states that as well as capacity problems at this key intersection, there are also significant difficulties for local traffic wishing to join the strategic network at this point, particularly from nearby employment areas. Further increases in traffic may necessitate changes to the layout of the junction to offer increased capacity to reduce congestion at this location. The potential options identified are to provide a well-maintained, resilient highway network and over the longer-term, to work with National Highways to explore scope for affordable and environmentally acceptable solutions to address congestion at junction 9 of the M3 (M3 J9).
- 3.2.22. The emerging Hampshire Local Transport Plan (LTP4) identifies the M3 J9 as an international gateway and part of the Strategic Road Network (SRN) which is a strategic transport infrastructure priority for Hampshire.
- 3.2.23. The Winchester District Local Plan Part 1: Joint Core Strategy was adopted in 2013. Policy CP10 Transport seeks to reduce demands on the transport network, manage existing capacity efficiently and secure investment to make necessary improvements.
- 3.2.24. The City of Winchester Movement Strategy was adopted by Winchester City Council (WCC) and Hampshire County Council (HCC) in 2019. It aims to create a more liveable cleaner, greener city through the delivery of a co-ordinated set of improvements that will encourage more use of Park and Ride, bus, walking and cycling and help reduce dependence on car travel. The three priorities are to reduce city centre traffic, support healthier lifestyle choices and to invest in infrastructure to support sustainable growth.
- 3.2.25. The South Downs National Park Local Plan (2019) Core Policy SD3: Major Development provides that planning permission will be refused for major developments in the National Park except in exceptional circumstances, and where it can be demonstrated they are in the public interest. Strategic Policy SD4 relates to landscape character and Strategic Policy SD5 relates to design.

The Solent to Midlands Route Strategy (May 2023)

- 3.2.26. The Solent to Midlands route is a strategic route connecting the Solent coastal region with the Midlands and beyond. The Solent to Midlands

Route Strategy (May 2023) published by National Highways details the route context, current constraints on the route, and opportunities for improved connections with local roads and rail links. It concludes with locations for further consideration to achieve the route objectives. It explains that the route objectives and locations for further consideration will be presented to the Department for Transport (DfT) to inform future decision-making about investment planning through the Road Investment Strategy (RIS). It notes that one of the main sections of the network that will be affected by future development is the Winchester A34/M3 Junction to the M27 at Portsmouth.

3.2.27. The Route Objectives include:

- Route objective A: Facilitate improved strategic access to the corridor from the wider road network by managing issues related to safety and congestion.
- Route objective C: Maintain the strategic function of the corridor and manage the integration of local traffic needs to improve customer service. This notes particular congestion and delay issues at specified locations including the A34 at Winchester.
- Route objective D: Enable more efficient freight movements along the corridor, M3 and A27 to and from key gateways with a focus on Southampton, Portsmouth, and the wider Freeport.
- Route objective H: To support sustainable transport options for the South of the Route.

The Applicant's approach

3.2.28. The need for an improvement to the M3 J9 was first detailed in the London to Solent Route Strategy in April 2015 with the stated aim 'to allow free movement from the A34 to the M3'. The scheme has been referenced in both the subsequent M25 to Solent Routes strategies in 2017 and 2023 and the Solent to Midlands Route Strategies in 2017 and 2023. The ExA finds there to be a slight lack of consistency between the route strategies in relation to the improvement scheme, with some strategies placing greater emphasis on need than others. However, we accept that this is a function of drafting and the need, as detailed in the April 2015 London to Solent Route Strategy, was effectively transferred to the later published strategies.

3.2.29. Following the April 2015 route strategies, an improvement scheme for the M3 J9 was included as a committed scheme within the RIS which set out road projects to be delivered between 2015 and 2020. The scheme was detailed in the RIS as "*upgrade to the junction to allow free movement from the A34 to the M3.*" The scheme was subsequently confirmed to have been 'carried forward' to the Road Investment Strategy 2020 – 2025 (RIS2).

3.2.30. The Case for the Scheme, section 3 'Need for the Scheme', includes the reasons for the enhanced capacity sought. The Case for the Scheme [[REP1-019](#)], paragraph 3.5, states that the Proposed Development has five strategic objectives which are supported by the Highways England Delivery Plan 2015-2020 (Highways England, 2015):

- To reduce delays at the M3 J9 on all links to the M3, the A33 and the A34.
- Smooth the flow of traffic by improving journey time reliability and reducing delays (time lost per vehicle per mile) at the M3 J9 and the exit and entry roads for the A33 and the A34.
- Improve the safety for all road users and reduce the annual collision frequency and severity ratio on the M3 J9.
- Support economic growth and ensure the junction can accommodate additional traffic.
- Improvements for walkers and cyclists including connecting the National Cycle Network (NCN) Route 23 which is severed by the current junction layout.

3.2.31. The Case for the Scheme [[REP1-019](#)], paragraph 3.5.2, Table 3.1, considers the Proposed Development against those objectives. The ES concludes that it performs well when assessed against the scheme objectives. Furthermore, paragraph 3.6.10, Table 3.2, addresses the conformity of the Proposed Development with the strategic objectives of the NPSNN. The National Policy Statement for National Networks Accordance Table [[REP5-017](#)] sets out the Applicant's latest assessment of the conformity of the Proposed Development with the NPSNN.

3.2.32. The Case for the Scheme, section 9.2, concludes that there is a need case for the Proposed Development in order to address the significant existing congestion and road safety issues on the M3. While it is recognised that great weight is attached to conserving the South Downs National Park (SDNP), the Applicant considers that addressing the existing road safety issues and removing an impediment to strategic economic growth is in the public interest and also supports the need for the Proposed Development.

3.2.33. Further detail on the issues identified with the operation of M3 J9 are provided in paragraphs 3.1.3 – 3.1.9 of the Case for the Scheme [[REP1-019](#)]. Section 3 of the Transport Assessment Report (TA) [[REP1-028](#)] also provides further detail on the existing highway conditions in terms of traffic flows and journey times.

Issues arising in the Examination

3.2.34. The main issues that arose during the Examination in relation to the need for the Proposed Development in the light of the relevant policy background were:

- The need for the Proposed Development in the light of the NPSNN strategic policies including the reasons for seeking the proposed improvements to the existing national road network.
- The scope for meeting the need in some other way with particular regard to modal alternatives.
- Whether the Proposed Development would conflict with any Local Plan, or LTP policies.
- The NPSNN March 2023 consultation draft and the weight (if any) to be afforded to it.

- The implications of any other recent updates/reviews of relevant planning policy documents and publications including the May 2023 update to the Solent to Midlands Route Strategy.

The need for the Proposed Development in the light of the NPSNN strategic policies

3.2.35. Winchester Action on Climate Crisis [[REP6-035](#)] refer to policies on the Solent to Midlands Corridor and in the NPSNN (both existing and especially the new draft) that appear to conflict with the application. They advocate the replacement of the application with one that seeks to solve the congestion problem at M3 J9 with a scheme to increase rail freight capacity between the Solent and the Midlands.

3.2.36. The Local Authorities (LAs) acknowledge that there is a need to improve M3 J9. In the SoCGs and LIRs, all three LAs support the principle of the need for an improvement, and the position of the LAs is summarised as:

- WCC – Statement of Common Ground (SoCG) at the close of the Examination [[REP8-018](#)] states that: *“The City of Winchester Movement Strategy (2019) strongly supports enhancing the strategic road network capacity on the M3 to:*
 - *sustaining future growth of the national, regional, and local economy*
 - *improving the resilience of the strategic network and*
 - *reducing through traffic in the city leading to improved air quality.*

However, consideration of the impact of incidents and accidents north and south of the junction outside of the red line area has not been acknowledged, accident data continues to be confined to the red line. Further strategic work is required by the Applicant to ensure that in the event of incidents, regional traffic avoids the area (using more suitable routes on the wider strategic network, rather than diverting through the city).”

- HCC – SOCG at the close of the Examination [[REP8-019](#)] states that: *“Based on the County Council’s current understanding of the Scheme, support is offered for the principle. This will address the existing issues of congestion, noise and air quality impacts associated with Junction 9. The Scheme is considered to be essential to the success of the Winchester Movement Strategy and therefore the County Council as local highway authority supports the principle of the Scheme.”*
- South Downs National Park Authority (SDNPA) – Local Impact Report (LIR) [[REP2-071](#)] acknowledges there is a need to improve, in some way, the M3 J9 (and surrounding roads) and given the various boundary constraints around the existing highway infrastructure, (including the National Park boundary being to the east and west of it), there is limited scope for developing outside the National Park.

- 3.2.37. The Applicant's written summaries of oral case for ISH3 [REP4-036] in relation to the NPSNN and the strategic need to improve the National Road Network confirms that its position, as expressed in the Case for the Scheme [REP1-019], is that the need for the Proposed Development has been established by its inclusion in the RIS. This means that the government has concluded that there is a strategic need for the Proposed Development [REP4-036].
- 3.2.38. The Applicant's Closing Statement [REP8-028] section 2 'Need for the Scheme and Benefits' highlights that the problems at M3 J9 have been recognised for many years. In 2013, HCC identified that infrastructure improvements were necessary to reduce congestion levels and assist with the strategic movement of traffic at M3 J9 to make sure that traffic congestion and increased journey times do not compromise the scale of potential future economic growth in the sub-region.
- 3.2.39. The Applicant's position is that the need for the Proposed Development is well-established. The relevant route strategy reports and supporting technical annexes prepared by the Applicant document the issues identified above. As outlined in the post hearing note in relation to Item 2(I) – Sixth Bullet of Applicant written summaries of oral case for ISH3, [REP4-036] improvements to M3 J9 were identified in both the M25 to Solent Route Strategy 2015 and Solent to Midlands Route Strategy 2015 (and the subsequent updates to these strategies published in 2017 and 2023). These strategies have informed the government's RIS programme, and the DfT included improvements to M3 J9 as part of the Road Investment Strategy 2015 – 2020 (RIS1) and in RIS2.
- 3.2.40. The Applicant submits that at a strategic level there is support for the Proposed Development, subject to it meeting the tests set by the other relevant policies in the NPSNN which in this case include those relating to development within nationally designated areas. The Applicant contends that taking both the strategic need recognised in the NPSNN, and the existing problems identified with the operation of M3 J9, there is a clear need for an improvement scheme.

The ExA's consideration of the need for the Proposed Development in the light of the NPSNN strategic policies

- 3.2.41. It is government policy, as outlined in section 2 of NPSNN, that at a strategic level there is a compelling need for development of the national networks to address road congestion and facilitate national and local economic growth. The government's policy is to bring forward improvements and enhancements to the existing SRN, which includes junction improvements to address congestion and improve performance and resilience (see paragraphs 2.22, and 2.23 of the NPSNN).
- 3.2.42. Therefore, at a strategic level there is support for the Proposed Development, subject to it meeting the tests set by the other relevant policies in the NPSNN which in this case include those relating to development within nationally designated areas. The ExA will consider

those tests in the relevant sections of this Chapter which follow and in our conclusions on the case for Development Consent in Chapter 5.

- 3.2.43. The Applicant has provided further details on the issues identified with the operation of M3 J9 in the Case for the Scheme, paragraphs 3.1.3 to 3.1.9 [REP1-019]. HCC, SDNPA and WCC acknowledge that there is a need to improve M3 J9 and all three LAs support the principle of the need for an improvement.
- 3.2.44. To address these issues, the Applicant has identified five key objectives which are set out above. Table 3.1 of the Case for the Scheme [REP1-019] explains how the Proposed Development would meet the five strategic objectives. Table 3.2 of the Case for the Scheme [REP1-019] illustrates how the Proposed Development would fulfil those strategic objectives in section 2 of the NPSNN. Given the strategic need recognised in the NPSNN, and the existing and acknowledged problems identified with the operation of M3 J9, the ExA finds that there is a clear need for an improvement scheme in this location.
- 3.2.45. Whilst several Interested Parties (IPs) raise concerns as to the extent to which those objectives are met, or state they have not been proven, the ExA can see no reason to disagree with the scope of those objectives for identifying a solution to the existing highlighted problems. Furthermore, we are satisfied, in the light of the Applicant's evidence on this matter that the Proposed Development would indeed meet those objectives. The detailed examination of these objectives is shown primarily in Section 3.13, the Traffic and Transport Section, of this Report and the findings are taken into account in the overall planning balance in Chapter 5 of this Report.
- 3.2.46. In conclusion, the ExA considers that there is sufficient evidence including from national strategies and the inclusion within the RIS as a committed scheme, to find that there is a need for an improved M3 J9. We conclude that the Proposed Development would contribute to meeting the strategic need for the development of the national road network in accordance with the NPSNN. We shall now consider whether that need could, alternatively, be met in some other way.

The scope for meeting the need in some other way with particular regard to modal alternatives

- 3.2.47. Both Winchester Friends of the Earth [REP5-039, REP6-037] and Winchester Action on the Climate Crisis [REP2-082, REP4-049] submit that modal shift and demand management opportunities would sufficiently address the problems rather than through the Proposed Development and question the Applicant's consideration of modal alternatives.
- 3.2.48. Winchester Action on the Climate Crisis [REP4-049] submit that the Applicant has so far not provided evidence that it has complied with guidance and appraised a scheme for increasing the mode share of modes other than road transport. The impact of modes other than roads

could be fundamental to removing the need for the Proposed Development.

- 3.2.49. Winchester Action on Climate Crisis make further detailed submissions in relation to conflict with national policy documents and the assessment of modal alternatives in their response to [REP5-026](#) and [REP5-027](#) [[REP6-035](#)] and question whether a meaningful rail freight option appraisal was carried out at RIS Stage 0.
- 3.2.50. Winchester Friends of the Earth [[REP5-039](#)] submit that if a modal assessment has been undertaken, then the Applicant will be able to deposit documents to show how the decision was arrived at. They contend that it cannot be taken for granted that any real multi-modal analysis has been done in defining the RIS programmes.
- 3.2.51. At ISH3 [[EV-029](#)], SDNPA accepted that in “*broad terms*” there was a need to do something with the junction and for it to be developed in the SDNP by virtue of the junction already existing in the SDNP but submitted that there remained additional alternatives that would have reduced impact on the SDNP.
- 3.2.52. During the Examination, questions surrounding modal alternatives were raised, particularly consideration of a rail-based solution. The Applicant has responded to this in section 1.3.4 of Appendix A (Further information regarding alternatives), in the written summaries of oral case for ISH3 [[REP4-036](#)] and reiterated the case in response to question ExAQ3 4.3.2 [[REP6-023](#)] and the Closing Statement paragraphs 4.4.14 to 4.4.16 [[REP8-028](#)].
- 3.2.53. The Applicant’s position on this matter remains that the appraisal process informing the DfT decision reflects the wording contained within paragraph 4.27 of the NPSNN. Given the Proposed Development’s status as a national road project included within an investment strategy, the Applicant submits that the ExA can reasonably rely on the assumption that a suitable and proportionate assessment of alternative modes has taken place.
- 3.2.54. At ISH3, the Applicant confirmed that the assessment of alternatives for viable modal alternatives would likely have been considered by the DfT prior to including the Proposed Development in the RIS portfolio. Once the scheme is designated as a RIS scheme, the Applicant then pursues it as a road scheme and its alternative assessment looks at the Proposed Development from a road optioneering basis.
- 3.2.55. In response to ExQ2 4.2.14 [[REP5-026](#)], the Applicant confirmed that it had been unable to source documentary evidence that would report on the assessment of modal alternatives undertaken by the DfT prior to the inclusion of the Proposed Development within the RIS. However, the Applicant understands from its dealings with the DfT that this assessment would have been made as a matter of course. The modelling approach used by the DfT would have ensured that alternative modes of transport were taken into account before schemes were included in the RIS. The

Applicant submits that the combination of the assessment undertaken by the DfT and the work undertaken by the Applicant at Project Control Framework (PCF) Stage 0 satisfies the requirement of paragraph 4.27 of the NPSNN.

- 3.2.56. The PCF Stage 0 assessment concluded that, on balance, a Junction improvement was necessary to solve the complex congestion and safety issues at the Junction and to facilitate economic growth in the region. RIS1 and associated evidence was reviewed and approved by ministers prior to publication. At the end of Stage 0, the project documentation, including the alternative modal assessment, was reviewed and the decision was made to progress the scheme as a Junction improvement.
- 3.2.57. In response to ExQ2 4.2.17, the Applicant states that the Proposed Development is consistent with the draft NPSNN and an assessment against the specific policies has been provided at DL2 within the Draft NPSNN Accordance Table [[REP2-053](#)]. The assertion that the rejection of the rail freight option at Stage 0 is counter to this aspect of the draft NPSNN does not recognise the other aspects of the draft NPSNN (notably paragraphs 3.22 and 3.46) which recognise that the need to improve and enhance the SRN includes junction improvements, and that the government has, at a strategic level concluded that there is a compelling need for development of the national networks.

The ExA's consideration of the scope for meeting the need in some other way with particular regard to modal alternatives

- 3.2.58. The NPSNN, paragraph 2.21, Table 1 details the options available to address the identified need, including maintenance, demand management and modal shift. Paragraph 4.27 of the NPSNN states that all projects should be subject to an options appraisal. The appraisal should consider viable modal alternatives and may also consider other options (in light of paragraphs 3.23 to 3.27 of the NPSNN).
- 3.2.59. The main thrust of the argument put forward by IPs in relation to 'meeting the need in some other way' was directed at the consideration of modal alternatives, particularly rail-based options. The Applicant has responded to the ExA's questions on this topic and confirmed that an assessment of alternatives for viable modal alternatives would have been considered by the DfT before the Proposed Development was included in the RIS portfolio.
- 3.2.60. Although the Applicant has not been able to source documentary evidence that would report on the assessment of modal alternatives undertaken by the DfT prior to the inclusion of the scheme within the RIS, it has provided further details of the process in response to ExQ2 4.2.14 and 4.2.17. The ExA is content that such an assessment would have been made by the DfT as a matter of course and that data from the National Transport Model (NTM) multi modal model would have been used to inform their decision making. Furthermore, the Applicant as part of PCF Stage 0 assessed whether an alternative mode of transport could

solve the identified problems at M3 J9. It was concluded that the high level of congestion at M3 J9 and the expected growth in freight traffic could only be solved with a Junction improvement that provided free flow movement between the M3 and the A34.

- 3.2.61. Given the Proposed Development's status as a national road project included within RIS1 and RIS2, we are satisfied, as required by NPSNN paragraph 4.27, that the assumption can safely be made that a proportionate option consideration of alternatives has been undertaken as part of the investment decision-making process and that as part of that process appropriate consideration was given to viable modal alternatives.
- 3.2.62. As regards other options, although suggestions were also made during the Examination that a lesser scheme, for example, one that would involve a much simpler re-configuration of the roundabout, were mentioned, no specific or coherent proposal was put forward for consideration. Such vague and inchoate proposals do not represent any realistic alternative option for assessment and examination. We shall consider other matters raised in relation to alternatives, such as the proposed location of the construction compound within the SDNP later in the 'Alternatives' Section 3.3 of this Chapter.
- 3.2.63. The ExA concludes that, subject to our consideration of those specific design options, the fundamental and the identified need for the Proposed Development could not be met in some other way including modal alternatives such as rail-based options.

Whether the Proposed Development would conflict with any Local Plan, or Local Transport Plan

- 3.2.64. In response to ExQ2 14.2.22 [[REP5-032](#)], and at ISH3, HCC confirmed that it considered the Proposed Development to be consistent with both the current LTP3 which was adopted in 2011, and the emerging draft LTP4 [[REP4-045](#)].
- 3.2.65. LTP3 identifies the need to explore options to address congestion at M3 J9 as a potential option that could be considered for delivery in support of the highway network. HCC also considers the scheme to be in accordance with the following transport policies within LTP3:
- Policy B: Work with the Highways Agency, Network Road, ports and airports to ensure reliable access to and from South Hampshire's three international gateways for people and freight.
 - Policy C: To optimise the capacity of the highway network and improve journey time reliability for all modes.
 - Policy E: To deliver improvements in air quality.
 - Policy H: To promote active travel modes and develop supporting infrastructure.
- 3.2.66. HCC regards the Proposed Development as being in accordance with the LTP4 draft policies:

- C5: Support local living and reduce demands on transport – specifically e) which states that we will ‘support investment in walking, cycling...to make local trips easier and reduce the need for private car ownership’; and
- C8: Managing the harmful health effects of poor air quality and noise disturbance due to transport.

- 3.2.67. The Climate Emergency Planning and Policy (CEPP) Post Hearing submissions [[REP4-042](#)] section 4 include strong criticism of the HCC’s position, as stated at ISH3, that the Proposed Development is consistent with the policies in the current LTP3 and the emerging LTP4. They submit that the emerging LTP4 has profound implications for the SoS decision making in understanding whether the scheme could be consistent with local transport policy. These matters are set out in detail in their submissions. They also point out that LTP3 identifies the need to explore options to address congestion at M3 J9 as a potential option that could be considered for delivery in support of the highway network.
- 3.2.68. As regards LTP4, the strategic transport infrastructure priorities for Hampshire, as identified in the policy, currently include improvements to M3 J9 as an International Gateway. One of the key objectives in the draft LTP was to reduce car use by 10%. CEPP do not see how the Proposed Development could in any way be consistent with that objective. They submit that HCC has not tested even the high-level objectives of the LTP4 against the Proposed Development. They contend that a genuine assessment of LTP4’s consistency with the Proposed Development is required if the true local impacts are to be correctly determined, assessed, and understood by the SoS when making their decision.
- 3.2.69. WCC confirmed that the City of Winchester Movement Strategy strongly supports enhancing the strategic road network capacity on the M3 to:
- sustain future growth of the national, regional and local economy;
 - improve the resilience of the strategic network; and
 - reduce through traffic in the city leading to improved air quality [[REP4-051](#)].
- 3.2.70. At ISH3, Councillor Porter for WCC expressed the view that whilst the Proposed Development met the City of Winchester Movement Strategy first priority, and could potentially meet the third priority, she did not consider that there would be improvement in the second priority.
- 3.2.71. The WCC post hearing submissions for ISH3 [[REP4-051](#)] state that as regards economic and tourism growth, on a local level the proposed enhancements to the junction would improve the economic vitality and competitiveness of the adjacent Winnall Industrial Estate. Transport links are also considered crucial to the ongoing vitality of the visitor economy of the Winchester District. In addition, an Employment and Skills Plan has been proposed by the Applicant which is supported by WCC to ensure local firms and employment would benefit from the Proposed Development.

- 3.2.72. In response to ExQ3 14.3.1 WCC [[REP6-036](#)] confirmed that the outstanding matters identified in their LIR had been resolved following receipt of further information and updates to the Requirements within the Draft Development Consent Order (dDCO). The sole topic area which WCC consider to be contrary to the Local Plan is in relation to climate matters.
- 3.2.73. At ISH3, the Applicant, in response to WCC and the relevance of the Climate Neutrality Action Plan (2019) (CNAP), highlighted that the scope of that Action Plan (as outlined on Page 8 of the document) excludes motorways because this requires a national response. The Applicant confirmed that it had given limited weight to the CNAP as a result. The Applicant also confirmed that it had given limited weight to Policy DS1 in the Winchester Local Plan but that it would discuss this in further detail when dealing with climate change issues.
- 3.2.74. SDNPA's [[REP4-047](#)] position is that the SDLP and specifically Policy SD3: Major Development should be given significant weight as it is consistent with both the NPPF and NPSNN, as regards 'major developments' within a National Park.
- 3.2.75. The Applicant points out that both HCC and WCC consider the principle of development to be acceptable and that the Proposed Development is regarded as consistent with the joint Winchester Movement Strategy (2019) as outlined in paragraph 6.3.3 of HCC LIR [[REP2-066](#)] and Table 1.2 of WCC's LIR [[REP2-083](#)].
- 3.2.76. SDNPA as set out in paragraph 6.7 – 6.9 of their LIR [[REP2-071](#)] and in the SoCG [[REP8-040](#)], have raised concerns with the impacts of the Proposed Development on the SDNP and the perceived conflicts arising from these impacts with the duty to conserve and enhance the National Park. However, at paragraph 6.6 of their LIR [[REP2-071](#)] they acknowledge that: *"there is a need to improve, in some way, the M3 Junction 9 (and surrounding roads) and given the various boundary constraints around the existing highway infrastructure, (including National Park boundary being to the east and west of it), there is limited scope for developing outside the National Park."*
- 3.2.77. The Applicant agrees with the SDNPA that the Proposed Development is a major development and therefore the major development test of Policy SD3 is engaged. The second part of this policy test mirrors paragraph 5.151 of the NPSNN. The third part of the test relates to conserving and enhancing the special qualities of the SDNP.
- 3.2.78. The Applicant's position is that it meets the tests set out in paragraph 5.151 of the NPSNN and hence those set out in Part 2 of Policy SD3. With respect to Part 3 of Policy SD3 the Applicant has provided details of how the Proposed Development would conserve and enhance the National Park in response to ExQ2 and as outlined in Table 7.1 of the Case for the Scheme [[REP1-019](#)]. The Applicant therefore considers the Proposed Development, when taken as a whole, to be consistent with Policy SD3 of the SDLP (see response to ExQ2 14.2.16 [[REP5-026](#)]).

The ExA's consideration of whether the Proposed Development would conflict with any Local Plan, or LTP

- 3.2.79. The ExA notes that both HCC and WCC consider the principle of development to be acceptable. HCC confirms that the Proposed Development would be consistent with both the current LTP3 and the emerging draft LTP4 [[REP4-045](#), [REP5-032](#)] and provides a response to the criticism made by CEPP on that matter at ISH3. That response includes reference to LTP4 Policies C2 and SI1.
- 3.2.80. The Strategic Infrastructure Policy SI1 c) states that HCC will support targeted improvements to the wider strategic road network (SRN) and major road network (MRN) where there is a clear safety, economic, health or wider social case. The implementation of the policy will be supported by working closely with National Highways and Network Rail/Great British Railways to inform their delivery plans with robust evidence-led transport assessments to secure improvements to the SRN and the rail network that runs through the county. The strategic transport infrastructure priorities for Hampshire, as identified in the policy, currently include improvements to Junction 9 of M3 as an International Gateway. Whilst we note the concerns raised by CEPP in relation to the consistency of the Proposed Development with LTP3 and LTP4, we prefer the position of HCC on this matter for the reasons set out in its submissions on this topic.
- 3.2.81. WCC has confirmed that the Proposed Development would be consistent at least two of the three priorities of the joint Winchester Movement Strategy (2019) as outlined in paragraph 6.3.3 of HCC LIR [[REP2-066](#)] and Table 1.2 of WCC's LIR [[REP2-083](#)]. At the end of the Examination, the sole topic area WCC considered to be contrary to the Local Plan was in relation to Climate matters. The CNAP and its relevance in relation to the application will be considered later in the Climate Change Section 3.7 of this Chapter.
- 3.2.82. Both the Applicant and the SDNPA agree that the Proposed Development should be considered as major development within the context of the SDLP and specifically Policy SD3: Major Development and the relevant tests within that policy and NPSNN paragraph 5.151 are applicable. This will be considered further in the Landscape and Visual Impact Section of this Chapter, and we shall conclude in relation to compliance in Chapter 5 of this Report. However, as indicated above, SDNPA acknowledges the need to improve, in some way, the M3 Junction as set out in their LIR [[REP2-071](#)].
- 3.2.83. In terms of the broad principle of and need for the Proposed Development we find no material conflict with any Local Plan or LTP policies. Indeed, we find there to be strong policy support at local level including within LTP3 and LTP4 and most aspects of the City of Winchester Movement Strategy for the Proposed Development. We shall consider the detailed application of local policies, including those within the SDLP, where relevant under the generic topic headings later in this Chapter and in Chapter 5 of this Report.

The NPSNN March 2023 consultation draft and the weight (if any) to be afforded to it

- 3.2.84. As regards to the March 2023 NPSNN Consultation Draft, the SDNPA acknowledge that this document is at an early stage and the weight to be given to the draft is relatively limited. However, they point out that the current NPSNN is dated and there are a number of fundamental changes in the draft that would bring the NPSNN more in line with other Government policies. For example, the increased focus on good design.
- 3.2.85. The Winchester Action on the Climate Crisis [[REP4-049](#)] state that the NPSNN March 2023 draft heralds a significant shift in policy on the priority to be given to rail freight in transport infrastructure. They contend that the apparent failure of the Applicant to sufficiently consider modes other than road extends beyond rail freight to other sustainable modal options including the potential of important new elements in the revised NPSNN (encouragement of intermodal rail freight, and logistics rail freight from warehouses to multi-modal transshipment centres).
- 3.2.86. CEPP in section 5 of their DL6 submissions [[REP5-031](#)] contend that no weight should be given to the draft NPSNN by the ExA, or the SoS in his/her decision making. This is in the light of the substantive recommendations in the Transport Committee report which they submit require a substantive ministerial response, and most likely significant changes to a further draft revised NNNPS, especially on residual greenhouse gas (GHG) emissions.
- 3.2.87. The Applicant recognises that the NPSNN Consultation Draft is an early draft and whilst it is out for consultation, there has been no further output and therefore it should be attributed limited weight particularly as the transition provisions currently set out explicitly disapply its relevance to the schemes currently going through determination. This is because it would be too late for those schemes to address the changes in policy within that draft. Despite this, the Applicant has undertaken an assessment of the new wording of the draft and has not identified any areas of significant conflict. This is set out in the Draft National Policy Statement for National Networks Accordance Table [[REP2-053](#)].

The ExA's consideration of the NPSNN March 2023 consultation draft

- 3.2.88. Whilst the SDNPA highlight the increased focus on good design in the draft NPSNN, they acknowledge that this document is at an early stage and the weight to be given to the draft should be relatively limited. Winchester Action on the Climate Crisis [[REP4-049](#)] also refer to various aspects of the draft NPSNN in support of their case
- 3.2.89. We have considered the prospective policy change in emphasis within that document, including in relation to good design and the paragraph 3.100 encouragement given to the transfer of freight from road to rail and the important part that would play in a low carbon economy and in helping to meet net zero targets. In addition, we note that paragraph 5.29 of the draft NPSNN states that a whole life carbon assessment

should be used to measure greenhouse gas emissions at every stage of the proposed development to ensure that emissions are minimised as far as possible as we transition to net zero.

- 3.2.90. The Applicant has undertaken an assessment of the new wording of the draft NPSNN and contends that this has not identified any areas of significant conflict as set out in the Draft National Policy Statement for National Networks Accordance Table [[REP2-053](#)].
- 3.2.91. As regards the criteria for good design for national network infrastructure, the Applicant has set out its position in relation to compliance with paragraphs 4.24 to 4.29 of the draft NPSNN. On the topic of GHG and paragraph 5.29 of the draft NPSNN, the Applicant acknowledges that whilst a whole life carbon assessment was undertaken at the current stage, whole life carbon assessments were not undertaken at earlier stages of the proposed scheme, as there was no requirement to do so under the NPSNN.
- 3.2.92. Whilst we have considered the aspects of the draft NPSNN from which IPs including the SDNPA and Winchester Action on the Climate Crisis [[REP4-049](#)] draw support, we find the Applicant's overall assessment in relation to potential areas of conflict to be sound. Whilst we have had regard to the draft NPSNN as an important and relevant consideration, in the light of the information set out in the Applicant's Draft National Policy Statement for National Networks Accordance Table [[REP2-053](#)], we find that overall there is limited conflict with the draft NPSNN.
- 3.2.93. In any event, the draft NPSNN makes it clear that the SoS has decided that for any application accepted for examination before designation of the amendments to the NPSNN, the original NPSNN should have effect. The amended NPSNN will therefore only have effect in relation to those applications for development consent accepted for examination after the designation of those amendments. Since this application falls within the first category, it is the designated NPSNN which continues to provide a basis on which we can examine and the SoS can make a decision on the application.

The implications of any other recent updates/reviews of relevant planning policy documents and publications including the May 2023 update to the Solent to Midlands Route Strategy

- 3.2.94. The Winchester Action on the Climate Crisis [[REP4-049](#)] contend that the decision not to opt for a rail freight option appears to be contrary to Solent to Midlands Route and the National Highways policy for the Solent to the Midlands corridor. They submit that the apparent failure of the Applicant to consider sufficiently modes other than road also extends beyond rail freight to other sustainable modal options set out in Objective H of the Solent to the Midlands route strategy. They also draw support from Objective D.

- 3.2.95. At ISH3, Winchester Friends of the Earth drew attention to a National Highways M4 to South Coast study which they state is currently with the Secretary of State for Transport (SoST). They submit that the consideration of an alternative corridor from M4 Junction 17 effectively through the A36 to Southampton would seem to be relevant to the consideration of movements north south from Southampton.
- 3.2.96. At ISH3, the Applicant explained that there is no requirement to review schemes when they are passed between RIS1 and RIS2; and that once a scheme has been allocated it does not get re-reviewed against updated strategies. The Applicant confirmed with reference to the specific objectives outlined in the 2023 Solent to Midlands Route Strategy that the Proposed Development remains consistent, as Objective B refers to improvements to the NCN route 23 and cycle routes, Objective C addresses congestion of the A34 and Objective D relates to enabling more freight movements and makes specific reference to supporting the SRN to better manage the future growth of the ports. The Applicant's position is that the scheme is consistent with those objectives.
- 3.2.97. In response to ExQ2 4.2.16, the Applicant indicates that route strategies are a rolling programme setting out National Highways' plan for the SRN. They are a key research element underpinning the RIS, which informs the process of future road investment. The 2023 Route Strategies will underpin the next RIS3 2025-2030. The Solent to Midlands Route Strategy (2023) is not a planning policy document with which the Proposed Development is assessed against, but it will inform decisions made as part of RIS3. The Route Strategies for Solent to Midlands published in 2015, 2017, and in 2023 identify issues within the strategic road network and include reference to M3 J9. They submit that the Proposed Development is consistent with these strategies taken as a whole.

The ExA's consideration of the implications of any other recent updates/reviews of relevant planning policy documents and publications

- 3.2.98. The ExA recognise the scope and purpose of the route strategies which form the basis for investment decisions made as part of the RIS process. The 2023 Route Strategy will underpin the next RIS3 2025-2030. The Applicant's post hearing note for ISH3 [[REP4-036](#)] details where reference to M3 J9 was included within the various route strategies. The Route Strategies for Solent to Midlands published in 2015, 2017, and in 2023 include reference to M3 J9 in identifying issues within the SRN. We are content that the Proposed Development would be consistent with the objectives outlined in the 2023 Solent to Midlands Route Strategy taken as a whole.

The ExA's Conclusions on the Principle of and Need for the Proposed Development

- 3.2.99. Since this application was accepted for examination before designation of the amendments to the NPSNN, it is the designated NPSNN which

continues to provide a basis on which we can examine it and the SoST can make a decision. We have nevertheless had regard to the consultation draft NPSNN as an important and relevant consideration. Whilst we have noted various changes in policy emphasis within that document, we find overall that there is limited conflict between the Proposed Development and the draft NPSNN. We are also satisfied that the Proposed Development would be consistent with the objectives of the 2023 Solent to Midlands Route Strategy.

- 3.2.100. It is Government policy, as outlined in section 2 of NPSNN, that at a strategic level there is a compelling need for development of the national networks to address road congestion and facilitate national and local economic growth. HCC, SDNPA and WCC acknowledge that there is a need to improve M3 J9 and all three LAs support the principle of the need for an improvement. The ExA considers that there is sufficient evidence including from the national strategies and the inclusion within the RIS as a committed scheme, to find that there is a need for an improved M3 J9.
- 3.2.101. In order to achieve the necessary improvements to the junction, the Applicant has identified five key objectives for the Proposed Development. We can see no reason to disagree with the scope of these objectives for identifying a solution to the existing highlighted problems. Furthermore, we are satisfied, in the light of the Applicant's evidence on this matter and our conclusions in the Traffic and Transport Section 3.13 of this Chapter that the Proposed Development would indeed meet those objectives.
- 3.2.102. We conclude that the Proposed Development would meet the specific identified need for an improved M3 J9 which, in turn, would contribute to meeting the strategic need for the development of the national road network in accordance with the NPSNN. We also find that, subject to our consideration of specific design options later in this Report, the fundamental and the identified need for the Proposed Development could not be met in some other way including modal alternatives such as rail-based options.
- 3.2.103. In terms of the broad principle of and need for the Proposed Development we find no material conflict with any Local Plan or LTP policies. We shall consider the detailed application of local policies including those within the SDLP under the relevant generic topic headings later in this Chapter and in Chapter 5 of this Report.

3.3. ALTERNATIVES

Introduction

- 3.3.1. Alternatives were identified as a principal issue in the ExA's initial assessment [\[PD-006\]](#). We have already given consideration to the scope for meeting the need for the Proposed Development in some other way with particular regard to modal alternatives, in Section 3.2 of this Chapter. We conclude that, subject to our consideration of specific design

options, the fundamental and the identified need for the Proposed Development could not be met in some other way through the use of modal alternatives. In this Section, we consider those specific design matters and address other issues raised in relation to alternatives that we have not yet concluded upon.

Relevant matters of policy and law

National Policy Statement for National Networks (NPSNN)

- 3.3.2. The NPSNN paragraph 4.26 states that applicants should comply with all legal requirements and any policy requirements set out in it on the assessment of alternatives, in particular, those required by the EIA Directive, specific legal requirements for the consideration of alternatives such as those under the Habitats and Water Framework Directives (WFDs) and specific NPSNN policy requirements including the flood risk sequential test and the assessment of alternatives for developments in National Parks.
- 3.3.3. As set out above in Section 3.2 of this Report, NPSNN paragraph 4.27 relates to the consideration of viable modal alternatives. NPSNN paragraph 5.151 states that the consideration of applications within National Parks should include an assessment of, amongst other things, the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way.

The principles of common law relevant to the consideration of alternatives in planning decision-making

- 3.3.4. The judgment in *R (Save Stonehenge World Heritage Site Limited) v Secretary of State (Holgate J, 30 July 2021) 2021 EWHC (Admin)* highlighted the need to apply the principles of common law regarding the relevance of alternatives to planning decision-making.

The Applicant's approach

- 3.3.5. The ES Chapter 3 Assessment of Alternatives [[REP4-007](#)] presents a summary of the alternative options considered and reports the scheme evolution which has resulted in the Proposed Development as presented within ES Chapter 2 (The Scheme and its Surroundings) [[APP-043](#)]. It provides a chronology of the options considered to meet the key objectives outlined in Section 2.3 of the ES.
- 3.3.6. The assessment of alternatives has been considered in accordance with the guidance in DMRB LA 104 Environmental Assessment and Monitoring (Highways England, 2020).
- 3.3.7. Paragraph 3.2.3 indicates that the Proposed Development has been subject to a process of staged development. This has involved the identification, appraisal and evaluation of different options throughout the Applicant's PCF process from the identification of the need case in 2013 to the design changes following a ministerial announcement on 12 January 2022, announcing a pause to all lane running (ALR) schemes not

yet constructed. During the evaluation of the alternatives at the different project stages reference has been made to performance against the strategic objectives of the Proposed Development.

- 3.3.8. In relation to paragraph 5.151 of the NPSNN, the Applicant's response to ExQ1 4.1.1 [[REP2-051](#)] points out that the M3 and A34 in this location are within the SDNP, and M3 J9 is within its setting. In order to address the congestion at M3 J9 and the flow of traffic between the M3 and A34 the Applicant's case is that it is necessary to develop in this location. Given that the M3, M3 J9, and the A34 are already located in this context, the Applicant submits that there is no realistic alternative location for development that would address the issues identified. Paragraphs 7.3.85 to 7.6.1 of the Case for the Scheme provides further assessment against paragraphs 5.151 – 5.153 of the NPSNN.
- 3.3.9. As stated in response to ExQ2 14.2.15 [[REP5-026](#)], the options appraisal focused on assessing reasonable alternatives consistent with the relevant case law and policies (see Appendix A of Applicant's summary of oral submission for ISH3 [[REP4-036](#)]). The extent to which there are alternative routes, including new roads, that would avoid the SDNP (or its setting) in its entirety, that are also appropriate for investment, and that would address the issues identified with traffic travelling from Southampton to the Midlands and London M25 via the M3 and A34 (and vice versa), was not considered as a reasonable alternative to the Proposed Development. This was not therefore considered to be a factor in the options appraisal.

The preferred route

- 3.3.10. After non-statutory consultation was undertaken, the Preferred Route Announcement (PRA) was made in July 2018. The comments received during the 2019 statutory consultation, and the Applicant's regard to the responses at that time are summarised in section 9 and Appendix K of the Consultation Report [[APP-025](#) and [APP-038](#)].
- 3.3.11. Following the statutory consultation, a report considering 'solutions' to the concerns raised was prepared by Jacobs in May 2020. The methodology used in the report is set out in section 7 of the Solutions Summary Report (Jacobs 2020). The key outcomes of the Assessment Matrix are reproduced in Table 3.3. Solution 2 was considered the preferred option because it was the best performing solution overall and it was recommended that it be taken forward as the preferred option for the Proposed Development. Following the identification of Solution 2 as the preferred option, the Applicant progressed design feasibility work and identified a number of changes to the 'Solution 2' scheme. Various elements underwent an optioneering exercise to consider reasonable alternatives in relation to location or alignment.

The main construction compound

- 3.3.12. The ES chapter 3 section 3.13 considers the construction compound options. The seven main construction compound options selected as most suitable options following the second sift were compared against the

headline criteria for a third sift, namely, location of areas in relation to internationally and nationally important ecological designations; location of areas in relation to nationally important cultural heritage assets, and viability of access. These sites are shown on inset 3.9 within section 3.13.

- 3.3.13. Paragraph 3.13.7 explains that direct impact on the SDNP was not a headline criterion in the third sift of sites. It was considered that impacts on the SDNP should be addressed for the fourth sift when assessment of potential impacts in relation to the National Park could be undertaken with more information available for the remaining construction compound options, such as potential layouts, existing topography, and ability to screen. Based on the application of those headline criteria, areas A, B, C and D were all retained for further consideration owing to their accessibility benefits.
- 3.3.14. Paragraph 3.13.10 states that the remaining areas (A, B, C and D) were then subject to a fourth sift. The criteria at that stage included the impact on the SDNP. Areas A and B went forward as options for consideration for the main construction compound within the scheme's Second Scoping Opinion.
- 3.3.15. The ES Chapter 3 Assessment of Alternatives, paragraph 3.13.3 [[REP4-008](#)], states that a compound to the north of the scheme at Christmas Hill (located outside the SDNP) was considered in earlier iterations of the scheme but this was reconsidered when all aspects of the scheme were reviewed by the newly appointed contractor.
- 3.3.16. In response to ExQ2 4.2.5 [[REP5-026](#)] the Applicant clarified that the Christmas Hill site is 'Area B' referenced within Chapter 3 of the ES. Area B was first considered as a potential main construction compound location in the 2019 Consultation Brochure. When VolkerFitzpatrick and Stantec were instructed to progress the scheme in May 2020, the compound location was reconsidered. However, there was significant concern about the distance of Area B from the works site and its accessibility. It also did not fulfill the key requirements of a main construction compound (as set out in response to ExQ2 4.2.2).
- 3.3.17. Following the statutory public consultation in 2021, further work was undertaken to reduce the impact of the main construction compound at Area A through examining location, size, and configuration options. This resulted in the footprint being reduced within the SDNP through more detailed work to understand the main construction compound requirements. Insert 3.10 of ES Chapter 3 shows the extent and location of the revised site compound. The revised position also allows planting, including advanced planting, to take place between the main site compound area and the gyratory.
- 3.3.18. The Applicant's post hearing summary for ISH1 note: An update to Chapter 3 (Assessment of Alternatives) of the ES [[REP4-034](#)] provided further information relating to the construction compound including details relating to the following documents:

- Appendix C – Construction compound position paper
- Appendix D – Construction compound layout plan
- Appendix E – Zone of Theoretical Visibility (ZTV) of the construction compound
- Appendix F – Cross-section of the construction compound

- 3.3.19. These documents outline the nature of activities that would take place within the construction compound and the rationale for the proposed layout, including the considerations with respect to landscape and visual impacts on the SDNP.
- 3.3.20. Appendix E (ZTV of the construction compound) of the Applicant’s written summaries of oral case for ISH1 [[REP4-034](#)] provides a plan showing the ZTV which illustrates the limited views of the construction compound from within the SDNP beyond 1km, with more longer views from the west outside the SDNP.
- 3.3.21. During the Examination, the Applicant conducted a post submission review including an assessment of the suitability of the Badger Farm site. As part of the May 2023 consideration of Badger Farm, a sensitivity check was undertaken to review whether any other land parcels outside the SDNP were now available. These would be at a reduced size of approximately 3ha and may have been previously discounted in the 2020 review of construction compound sites. No new 3ha land parcels were identified during this survey. The review is set out at paragraphs 3.13.27 to 3.13.16 of ES Chapter 3. It concludes that Area A remains the preferred option for the main construction compound.

Walking, cycling and horse-riding route options

- 3.3.22. Section 3.14 of ES Chapter 3 considers the walking, cycling and horse-riding (WCH) route engineering options. The optioneering was undertaken to determine the best performing options to meet the Proposed Development’s objective to make improvements for walkers and cyclists including connecting the NCN Route 23 which is severed by the current junction layout. This section of the ES summarises the optioneering work undertaken to identify the preferred routes for each of the three new proposed WCH routes.

Design changes following Statutory Consultation 2021

- 3.3.23. Section 3.16 explains the design changes following the 2021 statutory consultation. The comments are noted in the Consultation Report [[APP-025](#) to [APP-041](#)]. Those from SDNPA and NE were considered to result in the need to revisit key aspects of the design of the Proposed Development. The SDNPA concerns related to the proposed reprofiled earthworks and undulating chalk grassland screening feature along the eastern flank of the M3 between Easton Lane and Long Walk. The SDNPA considered that the design would interrupt and truncate views to the higher ground to the east, and NE considered that the scheme could be much more ambitious in providing landscape enhancements.

- 3.3.24. The design of the earthworks between Easton Lane and Long Walk was revisited and redesigned to create a more sympathetic feature and reinforce the existing characteristics of the SDNP whilst balancing visual screening requirements. This design was progressed in consultation with SDNPA who confirmed they were generally content with the progress the design was showing to respond to some of the concerns, specifically changes to landform and topography.
- 3.3.25. Following the re-profiling of the landform in this area, it was calculated that the excess spoil predicted to be raised during the construction phase would be sufficient to construct the new earthworks. This, in turn, prevented the need for the areas of search for excess spoil deposition which resulted in a reduction in the application boundary, reduced visual and acoustic intrusion into the SDNP well as the need to affect less BMV agricultural land.

Design changes following ministerial announcement January 2022

- 3.3.26. Following a ministerial announcement on 12 January 2022, ALR schemes not yet constructed were paused, which included the M3 J9 to Junction 14 ALR Scheme. Although the ALR scheme has been paused, the Applicant is progressing with plans to upgrade the existing central reservation barrier to concrete to deliver safety benefits, which were originally included in the ALR scheme. This work will be completed prior to the M3 J9 Improvement Scheme construction work starting should Development Consent be granted for the Proposed Development.

Issues arising in the Examination

- 3.3.27. The key issues considered during the Examination were:
- The ES approach to alternatives including the selection of the main construction compound site within the SDNP and the suitability of the alternative locations for that site proposed by IPs.
 - Whether the Proposed Development would comply with all specific legal requirements in relation to the consideration of alternatives including the Habitats Regulations and the WFD.
 - Whether the Proposed Development would comply with all policy requirements in any relevant NPSs in relation to the consideration of alternatives including the flood risk sequential test and the assessment of alternatives for development in National Parks.

The ES approach to alternatives including the selection of the main construction compound site within the SDNP and the suitability of the alternative locations

The ES assessment of alternatives

- 3.3.28. The SDNPA raise the issue of the location of the central construction compound and submit that there are alternatives outside the National Park. They highlight that within the Assessment of Alternatives [[APP-044](#)], the impact to the SDNP was not headline criterion when

undertaking the third sift for compound at a stage when some compounds outside the SDNP were discounted. The impact to a highly important landscape designation only comes in at the fourth sift.

- 3.3.29. The SoCG between SDNPA and the Applicant [[REP8-040](#)] records the assessment of alternatives and the question of the location of the construction compound is a matter that is not agreed. This is set out in paragraphs 6.14(c) of SDNPA'S LIR [[REP2-071](#)] and 3.1.17 (c) of their WR [[REP2-075](#)].
- 3.3.30. The SDNPA contend that there are alternative locations for the compound outside the SDNP such as at Badger Farm which would make the significant adverse harm caused by the current proposal entirely avoidable. In addition, the SDNPA is concerned that Easton Lane is currently a well-used route and 'gateway' into the SDNP and there would be the potential for conflict between walkers/ cyclists and heavy machinery accessing the compound.

The Applicant's consideration of the SDNP location in the light of relevant planning policy and statute

- 3.3.31. The SDNPA DL7 submission [[REP7-006](#)] comments on the Applicant's response to ExQ2 and ExQ3 [[REP5-026](#), [REP6-023](#)]. They note that the Applicant admits that the SDNP was not given 'higher weighting' due to the alleged reversibility of the compound. The SDNPA contend that the fact that a harm may be temporary is a matter to take into account when balancing that harm against other matters, but it does not justify reducing the importance of conserving and enhancing the SDNP.
- 3.3.32. The SDNPA submit that the Applicant seems to be suggesting that not all parts of the SDNP should be treated equally, by proposing that its qualities are weaker at the edge. However, the NPSNN, NPPF and National Parks and Access to Countryside Act 1949 give protection to the SDNP in its entirety. The fact that the existing M3 has an influence on this edge of the SDNP was recognised at the time it was designated, but the full extent of it was still designated with the high level of policy protection that that brings.
- 3.3.33. The SDNPA submit that it is clear from the Applicant's responses that, throughout this process, they have not given great weight to conserving the landscape of the SDNP. They have instead, avoided SACs and SSSIs and then chosen the compound location for convenience and highways matters rather than by affording great weight, or the highest level of protection, to the SDNP. This is evidenced in the closing summary of the Applicant's response to ExQ3 14.3.2 [[REP6-023](#)] where it refers to having given 'due weight' and not 'great weight'.

The ES assessment and the May 2023 review

- 3.3.34. The Applicant's Closing Statement [[REP8-028](#)] provides a summary of its position on this matter. In preparing and assessing the options for the location of the construction compound, a number of factors were considered as outlined in response to ExAQ2 4.2.1 to 4.2.11 and 4.2.13

[[REP5-026](#)]. This explains the reasons for the need for a construction compound in this location and assesses the impact of the proposed temporary construction compound.

- 3.3.35. In response to ExQ2 4.2.13, the Applicant considers the relevance of the Stonehenge judgment in the context of the Badger Farm site. The Applicant's position is that the landscape and visual impact to the SDNP is not the only relevant factor, and other elements including carbon emission from increased travels, welfare facilities, and increased use of local road networks also need to be balanced. Even if part of the remaining compound were to be relocated there would remain a requirement to have welfare facilities in the currently proposed location. The 'alternative' solution of Badger Farm would not remove the impacts from the SDNP but increase impacts on other receptors, including the local road network. Further details of the impact on productivity due to travel time to and from the main construction site and a carbon emission comparison for Area A and Badger Farm are set out in response to ExAQ2 4.2.7.
- 3.3.36. The Applicant's response to ExQ2 4.2.1 considers the prospect of the R & W Environmental Yard, and Four Dells Farm, Winchester being a reasonable alternative to taking additional land from the SDNP to provide a construction compound. The Applicant explains that during the first sift of the compound assessment in Summer 2020, the R&W yard had an area of 1.3ha and as such was not taken any further as an option. Following the reduction in compound size to 3ha since the initial assessment the R&W yard is still too small. The yard would also have safety concerns relating to access to and from the A272.
- 3.3.37. Four Dells Farm was outside the search area (see response to ExAQ2 4.2.2) and is further away at 11km one-way on the road network to the works site. The issues regarding proximity to the site that applied to Badger Farm and Area B would also apply to Four Dells Farm with the increased journey times exacerbating its negative factors. Therefore, the Applicant submits that Four Dells Farm would not offer a benefit over any of the areas that were previously assessed.
- 3.3.38. The ExQ2 4.2.2 in relation to ES Chapter 3 Assessment of Alternatives [[REP4-008](#)] Table 3.4 questions the criteria used in the sifting process at that stage which took into account the proximity to the site, utility connections and why was the exercise not principally landscape-led at all stages and greater weight not afforded to the impact on the SDNP in the light of the NPSNN paragraph 5.150.
- 3.3.39. In response, the Applicant indicates that landscape was not afforded higher weighting in this process, due to the short-term temporary and reversible nature of the effects arising from the use of this site as a construction compound. The Applicant confirms that great weight has been given to conserving landscape and scenic beauty in the SDNP but asserts that the local landscape has been substantially altered by the existing highways estate development and urbanisation.

- 3.3.40. The Applicant considers that the policy does not apply to every individual element of the Proposed Development in isolation but the collective development as a whole. As a result, greater weight was not afforded to the impact on the SDNP from the construction compound in isolation given the context of the existing junction, the Proposed Development and the construction activity that would take place at this location.
- 3.3.41. Given the necessary adjacency to the Proposed Development for certain elements, the anticipated construction activity at this location, and the resulting effects from this on the SDNP, the Applicant considers that the effects from the use of the construction compound at this location would not materially increase the effects on the SDNP when compared to those resulting from the main construction activity.

The Badger Farm site

- 3.3.42. The ES Chapter 3 Assessment of Alternatives [[REP4-008](#)] paragraphs 3.13.27 and 3.13.30 explain that since the cancellation of the Smart Motorway Programme by the Government in April 2023, that included the ALR M3 J9 to 14 upgrades, the Badger Farm site is currently being utilised as a construction compound for the M3 J9 to 14 Safety Barrier Improvement Scheme. However, it is expected to become available for occupation from October 2023.
- 3.3.43. In response to ExQ2 4.2.7 the Applicant states that it obtained clarification from the Smart Motorway Contractor on its chosen criteria for Badger Farm as a construction compound for the smart motorway project. Badger Farm was chosen for the smart motorway project as it was central to the 14km length scheme. The Applicant's response sets out why the staff resource and hence welfare locality of the Smart Motorway project are not comparable to the needs of the Proposed Development. The two schemes are fundamentally different.
- 3.3.44. The Applicant's response to ExQ2 4.2.8 explains that the sifting process for the potential construction compound locations was undertaken in stages, as set out in Chapter 3 of the ES [[REP4-007](#)]. At the request of SDNPA and the ExA the DL4 Review included Badger Farm as a potential location for the main construction compound, which was not originally included because it was already being used as a construction compound for the ALR J9 to 14 upgrades, and the construction periods were due to overlap.
- 3.3.45. As part of the consideration of Badger Farm in May 2023, a sensitivity check was also undertaken to review whether any other land parcels outside the SDNP had become available. These would be at a reduced size of approximately 3ha and may have been previously discounted in the 2020 review of construction compound sites. However, no new 3ha land parcels were identified during this survey. Table 3.5 of Chapter 3 (Assessment of Alternatives) of the ES provides the assessment of Badger Farm against the relevant criteria, namely, proximity to construction site and accessibility, utility connections, and the SDNP. The conclusion of this exercise as outlined in paragraphs 3.13.31 – 3.13.36 of ES Chapter 3 (Assessment of Alternatives) was that Area A which is the

area included in the Application remains the preferred option for the main construction compound.

- 3.3.46. Further information was provided in response to ExAQ3 4.3.6 [[REP6-023](#)] regarding the meaning of operational staff and the practical issues relating to material storage at an off-site location outside the order limits. The Applicant submits that a further reduction in the size of the main construction compound, as suggested by the SDNPA, is not reasonable for the reasons set out in the responses to ExAQ3 4.3.4 - 4.3.8 [[REP6-023](#)].
- 3.3.47. In summary, the Applicant has set out in response to ExAQ3 14.3.2 [[REP6-023](#)], why it considers the approach taken to determining the appropriate siting of the construction compound was proportionate and reasonable. It submits that considering the high level of protection afforded to the SDNP by policy and the duty to have regard to the statutory purposes of the SDNP, appropriate weight has been given to balancing the temporary impacts arising from construction against the permanent impacts of the Proposed Development.

The ExA's consideration of the ES approach to alternatives including the selection of the main construction compound site within the SDNP and the suitability of the alternative locations

- 3.3.48. In relation to the broader application of NPSNN paragraph 5.151, and the general question as to whether the cost of and scope for, developing elsewhere, outside the designated area or meeting the need in some other way, the SDNPA LIR paragraph 6.6 acknowledges that there is a need to improve, in some way, the M3 J9 (and surrounding roads).
- 3.3.49. As noted on the Applicant's response to ExQ1 4.1.1, the M3, and M3 J9 are either within the SDNP itself or within its setting. The issue the Proposed Development is aimed at is to alleviate the congestion at M3 J9 itself. To address the identified traffic issues at M3 J9 and the flow of traffic between the M3 and A34 we accept that it is necessary to develop in this location. Given these significant pieces of existing infrastructure are already located in the National Park and the various boundary constraints around the existing highway infrastructure, we recognise that there is limited scope for developing outside the National Park. We conclude that there is no realistic alternative location for development that would address the issues identified.
- 3.3.50. On the specific question of the location of the proposed construction compound, the ExA agrees with the SDNPA that the policy requirement is for great weight to be attached to conserving landscape and scenic beauty of the nationally designated area and that this highest status of protection is afforded to all parts of the National Park. Against that broad planning policy background, we accept that it is relevant to consider whether there is a more appropriate site outside the SDNP.

- 3.3.51. In relation to the ES assessment of alternatives locations for the construction compound, we take the view that the Applicant has applied relevant criteria and appropriately and proportionately assessed the cost of and scope for developing elsewhere. The Applicant has provided valid reasons in ES chapter 3, and in response to our questions, for the criteria relied upon at different stages of the sifting and assessment process.
- 3.3.52. We also consider it relevant to assess other factors relating to its intended function such as size and access together with the effects of the development on the environment to assist in the overall selection process. Although the impacts on the SDNP were not addressed until the fourth sift, we do not regard that as an unreasonable approach for the reasons provided by the Applicant and in the context of the selection of a site for a functioning temporary construction compound.
- 3.3.53. The ExA notes that the proposed compound started out as a 5ha site and has already been reduced through design review to 3ha. The ES chapter 3 Assessment of Alternatives [[REP4-008](#)] paragraph 3.13.19 refers to the fact that as part of the consideration of Badger Farm in May 2023, a sensitivity check was undertaken to review whether any other land parcels were now available, but no new 3ha land parcels were identified during this survey.
- 3.3.54. In relation to the need for a construction compound in this location, whilst it is the SDNPA's position that a compound is not required in this location, they accept there may be a need for some welfare facilities (see response to ExQ2 4.2.12). The Applicant has sought to illustrate in more detail the nature of the activities that would take place within the construction compound to facilitate the construction of the Proposed Development. We recognise the advantages of the construction compound being proximate to the location of the construction works themselves. None of the alternatives considered would benefit from being adjacent to the location of the works required to construct the Proposed Development.
- 3.3.55. As regards the Badger Farm alternative, the Applicant's response to ExQ2 4.2.7 [[REP5-026](#)] outlines why that site (and by proxy other alternative sites located outside the application boundary) would not be suitable for reasons relating to: workforce welfare; material storage; and operational staffing requirements. In addition, in the response to ExQ2 4.2.11 the Applicant explains that there would be impacts on productivity resulting in delays to the progress of works and disruption to the existing road network together with an associated increase in CO₂ emissions.
- 3.3.56. Further information was provided in response to ExQ3 4.3.6 [[REP6-023](#)] regarding the operational staff requirements and the practical issues relating to material storage at an off-site location outside the Order limits. This includes the need to manage a working construction site safely and effectively reduce the risks of accidents and damage to materials, as well as other considerations, such as the procurement process and the logistics associated with receiving delivery of materials in

a co-ordinated fashion to ensure works are not stopped or unnecessarily delayed.

- 3.3.57. The ExA has considered the site selection process for the construction compound in the light of the *Save Stonehenge* case, the historic information available, and the evidence which has emerged during the Examination. We have had regard to the criticisms made by the SDNPA of the ES approach to site selection and the concern that greater weight was not attached during that process to the SDNP but overall, we find the Applicant's assessment of alternatives to be acceptable. The ES Chapter 3 has thoroughly assessed the alternative sites that were considered in selecting the proposed construction compound site. The May 2023 review considered not only the Badger Farm site but also looked again at whether there were any other suitable options with the lesser site area of 3ha. We are satisfied that none of the suggested alternatives would provide a suitable and realistic alternative option.
- 3.3.58. In reaching that conclusion, we have borne in mind the great weight attached to conserving landscape and scenic beauty in nationally designated areas such as the SDNP by paragraph 5.150 of the NPSNN. Taking that factor into account, we are nevertheless content that the proposed site represents the most satisfactory option for the temporary construction compound site. The assessment of any residual harm to the SDNP and the extent to which that could be moderated will be considered in the Landscape and Visual Impact Section 3.10 of this Chapter against the background of the NPSNN tests and weighed in the balance of considerations in Chapter 5 of this Report.

Whether the Proposed Development would comply with all specific legal requirements in relation to the consideration of alternatives including the Habitats Regulations and the Water Framework Directive.

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs), the WFD and the Habitats Regulations

- 3.3.59. The EIA Regs, 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.
- 3.3.60. The WFD (2000/60/EC), Article 4.7, provides that in considering whether derogation is justified and applying the derogation tests, the 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.
- 3.3.61. The Applicant considers this policy requirement in the response to ExQ1 4.1.1. In compliance with this requirement, the Water Framework Directive Assessment Report [[APP-160](#)] has assessed how the Proposed Development in operation could impact the water bodies in the study

area. The WFD Assessment shows that the Proposed Development would not result in a deterioration of the status of the WFD or prevent them from achieving 'Good' status by 2027. This assessment has been agreed by the Environment Agency (EA) as detailed in the SoCG [[REP8-020](#)].

- 3.3.62. 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"*.
- 3.3.63. The Habitats Regulations Assessment (HRA) [[APP-158](#)] 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 Itchen SAC, the Mottisfont Bats SAC, and Kennet and Lambourne Floodplain SAC.
- 3.3.64. Following ongoing consultation with NE on HRA matters, the Applicant resubmitted the HRA [[REP4-028](#)] and supporting information including Appendix 8.3 (Assessment of Operational Air Quality Impacts on Biodiversity) of the ES [[REP4-021](#)] and Chapter 5 Air Quality [[REP4-009](#)]. The HRA [[REP5-021](#)] was further updated at DL5.
- 3.3.65. The EA agrees with the scope, method and conclusions (including mitigation) of the HRA screening and AA undertaken for the Proposed Development [[REP8-020](#)]. Furthermore, NE has confirmed that adverse effects on the integrity of the River Itchen SAC, resulting from the scheme alone, can be excluded [[REP8-021](#)].

The ExA's considerations of whether the Proposed Development would comply with all specific legal requirements in relation to the consideration of alternatives

- 3.3.66. For the purposes of the EIA Regs, and the required consideration of alternatives, we are content that Regulation 14 has been complied with by the Applicant and the ES approach is reasonable and proportionate in that respect.
- 3.3.67. The ExA has given detailed consideration and concluded in relation to the WFD in the Section 3.8 of Chapter 3 of this Report. We are satisfied that the Applicant has demonstrated compliance with the WFD.
- 3.3.68. We have also considered the HRA, including the prospect of alternatives in that context, in the HRA Chapter 4 of this Report. The ExA's findings are that, subject to the mitigation measures secured in the dDCO, Adverse Effects on Integrity (AEoI) on the River Itchen SAC from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed. It is not therefore necessary to identify and assess alternative solutions and to consider their acceptability.

- 3.3.69. The ExA is content that the Proposed Development would comply with all specific legal requirements in relation to the consideration of alternatives including the EIA Regs, the Habitats Regulations and the WFD.

Whether the Proposed Development would comply with all policy requirements in any relevant National Policy Statement (NPS) in relation to the consideration of alternatives

The policy requirement in relation to the flood risk sequential test

- 3.3.70. The Applicant considers this policy requirement in the response to ExQ1 4.1.1. The SoCG between the EA and the Applicant records as agreed that the Flood Risk Assessment (FRA) [[APP-157](#)] has been prepared in accordance with the relevant national, regional, and local planning policy and statutory authority guidance. The findings and conclusion of the ES and FRA state that although the receptor sites have a high to very high sensitivity to flood risk and with the inclusion of climate change factors, the residual effect associated with flood risk is not significant. Both the Lead Local Flood Authority (LLFA) and the EA accept the findings and conclusion of the ES and FRA. It is agreed by the EA and the Applicant that the proposed works and their mitigation measures would not result in increased flood risk to the nearby residents, and therefore there will be no detrimental impacts on third parties.

The ExA's consideration of whether the Proposed Development would comply with all policy requirements in any relevant NPS in relation to alternatives

- 3.3.71. The issue of flood risk and the application of the Sequential and Exception Tests is considered in the Flood Risk Section 3.8 of this Report. The ExA concludes that the Applicant has fully addressed the flood risk associated with construction and operation of the Proposed Development. We consider that the Applicant's assessment of flood risk complies with the relevant policy requirements in relation to alternatives.

The ExA's Conclusions on Alternatives

- 3.3.72. The ExA considers that the Applicant has correctly identified all legal and policy requirements relating to the assessment of alternatives applicable to this project in its response to ExQ1 4.1.1 [[REP2-051](#)]. We find the ES assessment of alternatives to be reasonable, and proportionate and in compliance with Regulation 14 of the EIA Regs, including the need to take into account the effects of the development on the environment.
- 3.3.73. We note in paragraph 3.5.50 that the M3, and M3 J9 are either within the SDNP itself or within its setting. For the reasons set out in that paragraph, we conclude that in relation to NPSNN paragraph 5.151, that there is no scope for developing elsewhere outside the SDNP or meeting the need for the Proposed Development in some other way. We shall consider the other aspects of paragraph 5.151 in Section 3.10 of this Chapter.

- 3.3.74. In relation to the specific issue of the location of the proposed construction compound, ES Chapter 3 has thoroughly assessed the alternative sites during the selection process. We find the criterion utilised during the sifting process to be acceptable. The May 2023 review considered not only the Badger Farm site but also looked again at whether there were any other suitable options with the lesser site area of 3ha. We are satisfied that none of the suggested alternatives would provide a suitable and realistic alternative option. We shall consider the impact on the SDNP landscape that would result from the construction compound in the light of the great weight that must be given to conserving landscape and scenic beauty in such nationally designated areas in Section 3.10 of this Chapter.
- 3.3.75. The ExA has also considered alternatives in the context of the Habitats Regulations in Chapter 4 and the WFD in Section 3.8 of Chapter 3 of this Report. We are content that the Proposed Development would comply with all specific legal requirements in relation to the consideration of alternatives including the EIA Regs, the Habitats Regulations and the WFD.
- 3.3.76. As regards compliance with policy requirements in any relevant NPS in relation to alternatives, the application of the Sequential and Exception Tests is considered in the Flood Risk Section 3.8 of this Chapter. We consider that the Applicant's assessment of flood risk complies with the relevant policy requirements in relation to alternatives.
- 3.3.77. We conclude that the Applicant has complied with all legal requirements and any policy requirements set out in the NPSNN on the assessment of alternatives, as required by NPSNN paragraph 4.26. There are no other common law or policy requirements which demand further consideration of alternatives to the Proposed Development or that would lead us to recommend that development consent be refused for it in favour of another alternative. Consequently, there are no matters relating to alternatives that would weigh for or against the making of the Order.

3.4. AGRICULTURE, GEOLOGY AND SOILS

Introduction

- 3.4.1. This Section sets out the effects of the Proposed Development as they relate to agriculture, geology and soils.

The Relevant Policy Tests

- 3.4.2. Section 5 of the NPSNN considers the impact of national networks on land stability, geotechnics, geology and soils.
- 3.4.3. Paragraph 5.22 states that the ES should set out the likely significant effects on designated sites of geological conservation importance with Paragraph 5.25 stating that as a general principle, development should avoid significant harm to these sites. Paragraph 5.26 further states that

the SoS should ensure appropriate weight is attached to geological interests within the wider environment.

- 3.4.4. Paragraph 5.117 of NPSNN states that if land stability could be an issue, Applicants should seek appropriate technical and environmental expert advice to assess the likely consequences of proposed developments on sites where subsidence, landslides and ground compression is known or suspected.
- 3.4.5. Paragraph 5.118 of NPSNN requires Applicants to carry out preliminary assessment of ground instability at the earliest possible stage and undertake any necessary investigations to ascertain that the site will remain stable or can be made so as part of the development. It also requires Applicants to complete a land stability or slope stability risk assessment report, taking into account the surrounding areas where subsidence, landslides and land compression could threaten the development/ neighbouring land or property. Paragraph 5.119 details a summary of the range of options that the Applicant can use in terms of mitigation against land instability.
- 3.4.6. Paragraph 5.168 of NPSNN requires Applicants to consider the economic and other benefits of the best and most versatile (BMV) agricultural land and, where significant development of agricultural land is demonstrated to be necessary, to seek to use areas of poorer quality land in preference to that of a higher quality. It also requires Applicants to minimise impacts on soil quality and consider the risks of land contamination and how to address this.
- 3.4.7. Paragraph 5.176 states that the decision-maker should take into account the economic and other benefits of the best and most versatile agricultural land with little weight given to the loss of agricultural land in grades 3b, 4 and 5, except in areas where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy.
- 3.4.8. Paragraph 174 of the NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination, with adequate site investigation information, prepared by a competent person, available to inform these assessments. Paragraph 184 states that where a site is affected by contamination or land stability issues the responsibility for securing a safe development rests with the Applicant.
- 3.4.9. The SDLP policy SD55 details that proposals for sites with known or suspected contaminated land, or the potential to contaminate, will require robust proposals and measures to reduce the risk to human health.

The Application

- 3.4.10. Chapter 9 of the ES [[APP-050](#)] concerns the assessment of the Proposed Development on geology and soils. It confirms that the Applicant has carried out an assessment with regards to geology and soils for the

Proposed Development and a 250m buffer zone from the Order limits. In addition, for surface water receptors, where the sensitivity is very high, and potential pathways have been identified, the study area extends to 1km and in relation to specific groundwater receptors, the study area has been extended to 2km.

- 3.4.11. The assessment comprises geology, contamination, land stability and soils during both the construction and operation of the Proposed Development. Chapter 9 of the ES also details that geological designations are present in the application boundary and the surrounding area being Principle and Secondary Aquifers underlying the study area. The ES states that suitable mitigation measures will be implemented to protect these designated sites.
- 3.4.12. In Chapter 9 of the ES [[APP-050](#)], the Applicant has detailed the Agricultural land Classifications (ALC) in accordance with paragraph 3.9 of the Design Manual for Roads and Bridges (DMRB) LA 109.
- 3.4.13. Chapter 12 of the ES [[APP-053](#)] details the assessment of the impact on agricultural land holdings and has been undertaken in accordance with DMRB LA 112. The ES states that four agricultural holdings, all of which are arable farms, will be permanently impacted by the Proposed Development with a total of 32.5 hectares (ha) of agricultural land permanently impacted and a further 16.6ha temporarily impacted. The assessment details that two farms, Itchen Down Farm and Winnall Down Farm, will experience a large effect with The Dairy House and Winnall Down Farm experiencing a slight effect.
- 3.4.14. Chapter 12 of the ES also states that within the application boundary and the wider study area, there would be no anticipated severance of land, ie land which would remain with no available access.

Issues Considered in the Examination

- 3.4.15. The key issues considered during the Examination were:
- Ground investigations and land stability.
 - Contamination.
 - Agricultural land, including severance.

Ground Investigations and Land Stability

- 3.4.16. Chapter 9 of the ES [[REP4-011](#)] states that a preliminary Land Stability Appraisal has been undertaken. The ES details that the study area is predominantly underlain by chalk which can be affected by both natural erosion features and manmade cavities. A number of chalk pits and natural features (solution pipes) have been identified within the study area. A Cavities Occurrence Assessment has been undertaken to assess the risk from natural cavities and non-coal mining cavities. The assessment identified a medium risk for the majority of the road development area, with much of the surrounding areas having a low or very low risk rating.

- 3.4.17. In addition to chalk, the study area has areas of alluvium and the ES states that it is considered that there is a moderate risk of compressible ground associated with this soil and any non-engineered made ground.
- 3.4.18. The baseline data relating to land stability indicates a worst-case low risk of landslide and running sand potential, and a very low risk of shrinking/swelling clay or collapsible ground. The ES states that there are suitable, appropriate and robust design and mitigation measures readily available to mitigate potential land stability risks and it is considered unlikely that there would be significant effects in relation to land stability.
- 3.4.19. The SDNPA generally agrees with the conclusions of the Applicant's Environmental Assessment and is satisfied that the first iteration of the Environmental Management Plan (fiEMP) and dDCO Requirements adequately addresses the issue of geology and soils, including contaminated land, subject to the clarification ensuring that archaeology is considered in the Soil Management Plan. Therefore, the proposal accords with SDLP Policy SD55
- 3.4.20. The ExA asked a number of questions at ExQ1 [[PD-008](#)]. These were in respect to the effect of a change in the application boundary subsequent to the ground investigation works, and details relating to the adoption of piling as a foundation design and the impact of this. We were satisfied with the responses received [[REP2-051](#)] and no further questions were deemed necessary.

ExA's consideration regarding ground investigations and land stability

- 3.4.21. The ExA is satisfied that the ground investigation and land stability assessments have been undertaken in accordance with standard practice, with risk management and mitigation proposals detailed in the fiEMP.

Contamination

- 3.4.22. Chapter 9 of the ES [[REP4-011](#)] states that only potential contamination from current and historic sites has been considered. These sources include a historical fuel filling station located on both sides of the A33 and two known historic landfill sites within the application boundary and a further three within the 250m study area.
- 3.4.23. The ES states that in relation to the historic filling station, some underground petroleum tanks were removed and that any remaining tanks within were filled with concrete slurry. Further information states that the northern side site has been redeveloped for business/ office use and it is expected that any underground tanks and soil contamination were removed or remediated. It also states that following investigation and consultation with the local authorities, there is no expected contamination from the historic landfill sites.
- 3.4.24. The Ground Investigation Report [[APP-164](#)] has identified that all of the soil geoenvironmental laboratory test results (126 No.) were below the selected assessment criteria for public open space land use, with one

exception of a marginal exceedance, therefore, it is considered that there is a worst-case low potential for a significant contamination hazard within the application boundary.

- 3.4.25. At ISH2 during the agenda item relating to air quality the issue of airborne nitrogen deposits and the impact on soil and chalk grassland was raised. The Applicant responded to this in their written summary of ISH2 [[REP4-035](#)] stating that records at the nearby St. Catherine's Hills Site of Special Scientific Interest (SSSI) show that road traffic contributes less than 10% of total nitrogen deposits and that any increase in the existing levels from the proposal are predicted to be small and mostly seen at the roadside. The Applicant stated that this leads to the effect not being significant.
- 3.4.26. The matter of airborne pollution is detailed in the Chapter 3.4 - Air Quality, of this Report in relation to designated habitats and those findings equally apply to the whole of the Proposed Development and surrounding study area. We will not repeat the matters in this part of the Report, but in summary, Natural England (NE) accepted that the impact of the Proposed Development on airborne pollution had been assessed and the findings were found to be acceptable to them.
- 3.4.27. Chapter 9 of the ES has considered the potential of new sources of contamination both during construction and operation. It has been assessed that although there is the potential for new sources of contamination, including from spillages and mobilisation of existing sources, the mitigation measures proposed are in line with industry best practice.
- 3.4.28. The ExA asked a number of questions at ExQ1 [[PD-008](#)] in respect of the potential contamination risks from historic land use and piling operations. We were satisfied with the responses received [[REP2-051](#)] and no further questions were deemed necessary.

ExA's consideration regarding Contamination

- 3.4.29. The ExA is satisfied that contaminated ground investigations and an assessment of the potential for new contamination pathways has been undertaken in accordance with standard practice. The Applicant has relied upon mitigation proposals detailed within the fiEMP which will be subject to further updates; the ExA accepts that the proposed mitigation is in line with industry best practice.
- 3.4.30. The ExA confirms that there is no requirement for a deemed hazardous substance consent pursuant of section 6 of The Infrastructure Planning (Decisions) Regulations 2010.

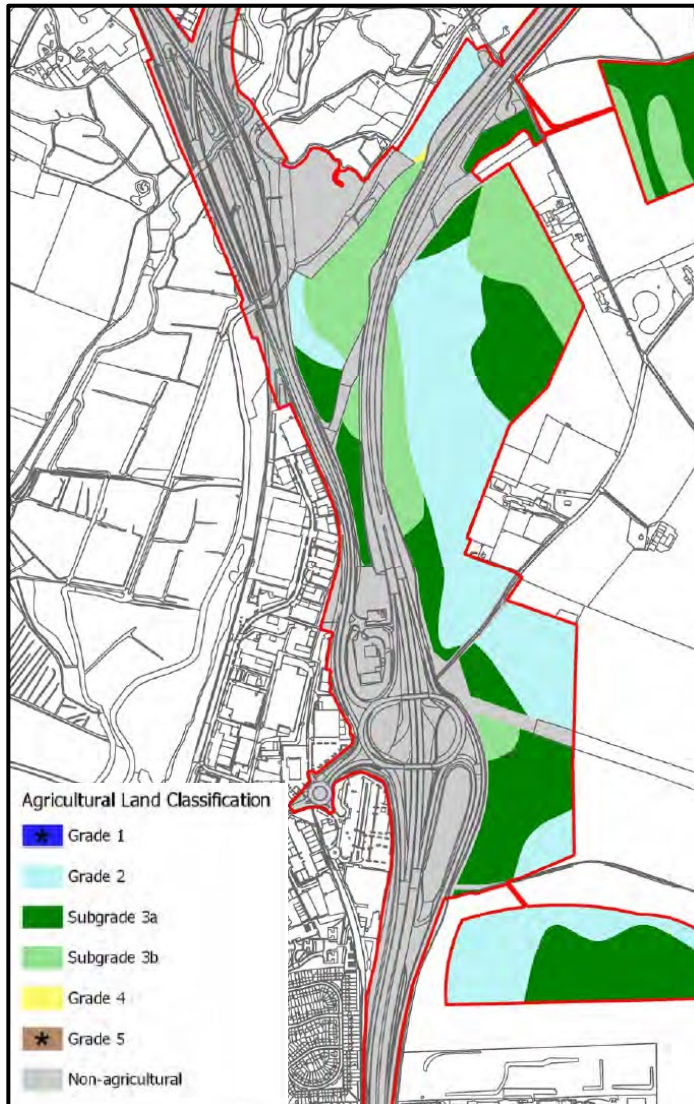
Agricultural Land, Including Severance

- 3.4.31. Chapter 9 of the ES [[REP4-011](#)] identifies that there will be permanent loss of agricultural land within the Order limits. This has been classified as grade 2, 3a, 3b and 4 of which 18.7ha is designated BMV (grade 2 and 3a) and 8ha non-BMV (grades 3b and 4). Figure 2 is an extract from ES

Appendix 9.2 [APP-135] ALC and Soil Resources which shows the location of the soil classes.

- 3.4.32. The ES states that it is not possible to mitigate against this loss and therefore the result is a permanent adverse effect for the BMV land which would lead to a very large adverse effect. Of the non BMV land, the grade 3b land would see a moderate impact leading to a moderate adverse effect and the grade 4 land would lead to a slight adverse impact.

Figure 2 : Agriculture Land Classification



- 3.4.33. Within the WCC area, there is approximately 62,000ha of agricultural land with 44%, approximately 28,000ha assumed to be BMV agricultural land.

- 3.4.34. There will also be a temporary loss of grade 2 and 3a BMV land which would result in a temporary adverse effect which is also considered to be significant. The reinstatement of temporary agricultural land following construction is detailed in the Soil Management Plan which is an appendix to the fiEMP.

- 3.4.35. The potential of severance impacts on agricultural land is detailed in Chapter 12 of the ES [[APP-053](#)]. It is stated that there are no areas of land which will be left without a means of access and details the consultation and ongoing dialogue that is being undertaken with relevant parties regarding this.

ExA's consideration regarding Agricultural Land, Including Severance

- 3.4.36. The ExA acknowledges that there will be a permanent loss of agricultural land, including 18.7ha of BMV agricultural land permanently lost. The ExA considers that although this is a relatively small percentage of loss in the context of the BMV agricultural land within the Winchester City area, the ES states that a permanent loss of BMV land has a large to very large adverse effect, which cannot be mitigated, and is significant, which the ExA agrees with.
- 3.4.37. There will also be a temporary loss of agricultural land required during the construction phase, including 12.1ha of BMV land. The reinstatement of temporary agricultural land following construction is detailed in the Soil Management Plan which is an appendix to the fiEMP.
- 3.4.38. The ExA has reviewed the land plans [[REP8-003](#)], works plans [[REP2-003](#)] and Figure 9.2 of the ES [[REP2-032](#)] and is satisfied that the statement regarding severance of agricultural land is acceptable. Further to this, there have been no Relevant Representations (RRs) or Compulsory Acquisition (CA) representations regarding severance. Therefore we accept that no land parcels will remain without access or be economically unviable.

ExA Conclusions on Agriculture, Geology and Soils

- 3.4.39. The ExA is satisfied that the Applicant has fully addressed the possible effects on agriculture, geology and soils associated with the construction and operation of the Proposed Development and has demonstrated that such risks associated with the Proposed Development can be satisfactorily mitigated and managed.
- 3.4.40. The ExA is satisfied that the ground investigation and land stability assessments have been undertaken in accordance with standard practice with risk management and mitigation proposals in place.
- 3.4.41. The ExA is satisfied that contaminated ground investigations and an assessment of the potential for new contamination pathways has been undertaken in accordance with standard practice and mitigation proposals are acceptable, in line with standard practice and are adequately secured in the dDCO.
- 3.4.42. The ExA concludes that there is no requirement for a deemed hazardous substance consent pursuant of section 6 of The Infrastructure Planning (Decisions) Regulations 2010.

- 3.4.43. The ExA agrees that there are no issues relating to land severance and no land parcels will remain without access or economically unviable.
- 3.4.44. We also agree that there will be a temporary loss of agricultural land required during the construction phase, including 12.1ha of BMV land. The reinstatement of temporary agricultural land following construction is detailed in the Soil Management Plan which is an appendix to the fiEMP which in turn is secured in the dDCO in Requirement 3.
- 3.4.45. The ExA concludes that there will be a permanent loss of agricultural land including 18.7ha of BMV agricultural land. The ExA acknowledges that this is a relatively small percentage of loss in the context of the BMV agricultural land within the Winchester City area but agree that the permanent loss of BMV land has a large to very large adverse effect and the impact is significant, which weighs negatively against making the Order.
- 3.4.46. The ExA considers that the Applicant's assessment of agriculture, geology and soils complies with the policy aims of the NPSNN.
- 3.4.47. Overall, we conclude, giving consideration to the significance of the permanent impact on BMV land, that agriculture, geology and soils issues have a moderate weighting against the making of the Order.
- 3.4.48. The findings in respect of agriculture, geology and soils will be taken into account in the overall planning balance in Chapter 5 of this Report.

3.5. AIR QUALITY

Introduction

- 3.5.1. This Section sets out the effects of the Proposed Development as they relate to air quality.

The Relevant Policy Tests

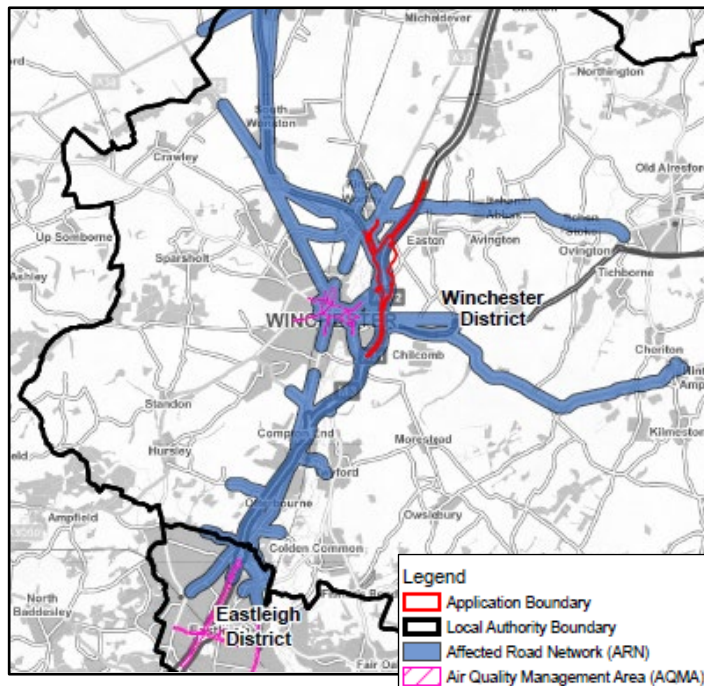
- 3.5.2. Paragraph 5.6 of NPSNN states that where the impacts of the project are likely to have significant air quality effects, the Applicant should undertake an assessment of the impacts of the proposed project as part of the ES. The NPSNN paragraphs 5.7 to 5.9 set out the methodological requirements for this assessment.
- 3.5.3. Paragraph 5.10 of NPSNN states that where a project is likely to lead to a breach of the air quality thresholds, the Applicant should work with the relevant authorities to secure appropriate mitigation measures with a view to ensuring so far as possible that those thresholds are not breached. Paragraph 5.11 considers this further stating that air quality assessments are particularly relevant where schemes are located within or adjacent to Air Quality Management Areas (AQMAs) or nature conservation sites.

- 3.5.4. Paragraph 5.12 states that the SoS must give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact in relation to Environmental Impact Assessment (EIA) and/ or where they lead to a deterioration in air quality in a zone/ agglomeration.
- 3.5.5. Paragraph 5.13 of NPSNN states that the SoS should refuse consent where, after taking into account mitigation, the air quality impacts of the Proposed Development will: result in a zone/ agglomeration which is currently reported as being compliant with the Air Quality Directive becoming noncompliant; or affect the ability of a non-compliant area to achieve compliance within the most recent timescales.
- 3.5.6. Paragraph 5.14 and 5.15 states that the SoS should consider the acceptability of mitigation measures put forward by the Applicant and that any measures may require working with partners to support their delivery.
- 3.5.7. Paragraph 186 of the NPPF states that planning 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, such as through traffic and travel management, and green infrastructure provision and enhancement. Planning decisions should ensure that any new development in AQMAs and Clean Air Zones is consistent with the local air quality action plan.
- 3.5.8. The Winchester Local Plan details policy references DM17 and DM19 states that only development which do not cause unacceptable levels of pollution will be allowed and any development that is allowed and which generates pollution will be required to meet acceptable environmental standards during operation and construction.

The Application

- 3.5.9. Chapter 5 of the ES [[APP-046](#)] assesses the effects of the Proposed Development on air quality matters in accordance with DMRB LA 105 Air Quality (Highways England, 2019). It details the AQMAs in the vicinity of the application boundary; details of assessment areas can be seen in Chapter 5 - Air Quality - Figures [[APP-065](#)] and an extract of Figure 5.2 of the ES is shown in Figure 3.
- 3.5.10. The ES states that during construction, there is the potential for increased emissions, dust deposition and dust soiling at properties within 200m of the Order limits. However, with the application of appropriate mitigation measures such as regular water spraying and sweeping of unpaved roads; using wheel washes for vehicles; sheeting vehicles leaving site; and enforcing speed limits, significant adverse effects at nearby receptors would be unlikely.

Figure 3 : Air Quality Management Areas



- 3.5.11. Additional traffic during construction and the effects of temporary diversion routes is considered unlikely to have a significant adverse effect on air quality, and it is not expected to meet the criteria for assessment. The ES states that the forecast change in traffic flow from construction vehicles is considered unlikely to significantly affect air quality, given that the criteria for assessment would not be met, that being 200 Heavy Goods Vehicle (HGV) per day and 1,000 Annual Average Daily Traffic. In addition, the ES suggests that the reduction of the speed limit on the M3 during construction is likely to lead to more free-flowing traffic and a reduction in vehicle emissions to air.
- 3.5.12. Chapter 5 of the ES further stated that during operation, the assessment shows that overall there is not considered to be a predicted significant adverse effect on air quality. Six receptors are expected to have a perceptible (greater than 1%) increase in nitrogen dioxide (NO₂) concentrations at the opening year compared to a do-minimum scenario however, none of these receptors is predicted to see the total annual average NO₂ concentrations exceed the air quality threshold.
- 3.5.13. Conversely, 13 receptors primarily in the Winchester City Centre are predicted to have a perceptible decrease in NO₂ concentrations with the Proposed Development as a result of decreased traffic flows. All other receptors are predicted to experience an imperceptible change in NO₂ concentrations with the Proposed Development, including at locations within the AQMAs. There are four receptors predicted to see an increase of greater than 1% above the air quality threshold however, overall concentrations are below the threshold for consideration and are considered not to be significant.
- 3.5.14. The ES states in paragraph 5.11.15 that the changes in annual mean concentrations of PM₁₀ will be imperceptible at all receptors with the

exception of an increase of greater than 1% at four receptors and decrease of greater than 1% at two receptors; in all cases, concentrations are below the annual and daily mean Air Quality Standard (AQS) objectives and are not considered significant. Paragraph 5.9.45 of the ES also states that there are not predicted to be any exceedances of the PM_{2.5} annual mean AQS objectives.

- 3.5.15. Chapter 12 of the ES [[APP-053](#)] considers the impact of the Proposed Development on population and human health of which ambient air quality is a health determinant. The ES concluded that during construction and operation, and with the mitigation proposed, there would be a neutral impact on human health from ambient air quality.
- 3.5.16. Chapter 8 of the ES [[APP-049](#)] states that air quality impacts on the River Itchen Special Area of Conservation (SAC) and the River Itchen SSSI are below the screening threshold and would not be significant. The ES has stated that for all nearby SSSIs outside the scheme, other non-statutory designation sites and habitats, the effect of change is predicted to be not significant. The ES states that during construction, dust could give rise to potential temporary impacts on designated and non-designated sites and habitats. Mitigation measures as detailed in fiEMP including localised dust control would result in no predicted direct impacts.

Issues Considered in the Examination

- 3.5.17. The key issues considered during the Examination were:
- Assessment Methodology.
 - Operational Impacts (NO₂).
 - Operational Impacts (Fine Particulate Matter PM₁₀ and PM_{2.5}).
 - Construction Impacts.
 - Habitat Impacts and whether Nitrogen Deposition have been adequately assessed and mitigated.

Assessment Methodology

- 3.5.18. The assessment for air quality in the ES follows the approach set out in DMRB LA 105 Air Quality (Highways England, 2019) and makes an assessment of changes in NO₂, PM₁₀ and PM_{2.5}.
- 3.5.19. In its LIR [[REP2-083](#)], WCC stated that they had no high level objection to the assessment methodology. This was questioned further at ISH2 and was reaffirmed by WCC.
- 3.5.20. The ExA specifically sought independent view from WCC's Environmental Health Officers at ISH2 relating to the Applicant's assessment of fine particulate matter PM_{2.5}. The ES states that PM_{2.5} emissions were not measured but were calculated as a derivation of the PM₁₀ readings. WCC confirmed that this was the accepted standard for calculation and that they had no further issues with this approach.

ExA's consideration regarding assessment methodology

- 3.5.21. The ExA considers that the assessment methodology for air quality, including fine particulate matter, is in accordance with required standards and this has been supported by WCC.

Operational Impacts (NO₂)

- 3.5.22. A number of RRs made a general comment about potential impacts on air quality, and a concern was raised by Mrs Rosewell in her written summary of oral submissions at the Open Floor Hearing (OFH) [[REP1-035](#)]. In response to this concern from Mrs Rosewell [[REP3-020](#)], the Applicant states that the ES details that no significant residual effects during construction or operation are identified and no exceedances of the relevant air quality thresholds have been predicted. Consequently, there is not predicted to be a significant effect on Air Quality at this receptor during operation.
- 3.5.23. The Proposed Development is not within an AQMA however, the Winchester City Centre AQMA commences approximately 0.5km west of the application boundary and is within the affected road network (ARN).
- 3.5.24. In Chapter 5 of the ES [[REP4-009](#)] it is stated that there would be some positive and some negative impacts on receptors within the WCC AQMA. The ExA examined this in written questions and also at ISH2 where we asked WCC if they felt there would be an overall adverse impact on the AQMA in the operational phase. WCC confirmed that they believed the impact would be neutral and in response to this the Applicant contested that the impact would be slightly beneficial. The ExA accepted that there would be a neutral impact as a minimum and did not seek to question this in further detail.
- 3.5.25. The Eastleigh AQMA is within the southern extremity of the ARN, primarily affecting the M3 corridor south of junction 12. In its LIR, Eastleigh Borough Council [[REP2-064](#)] acknowledged that the application boundary was approximately 7km north of the borough boundary and although the AQMA is within the ARN, they stated that air quality was not considered to have significant adverse impacts that warrant additional mitigation measures. The ExA did not seek further information or clarification regarding the Eastleigh AQMA.
- 3.5.26. Of the 49 receptors used for recording and predicting NO₂, there were no anticipated exceedances of the 40 µg/m³ air quality threshold, as detailed in the National Air Quality Objective, at the year of opening (2027).
- 3.5.27. The ES states that, as no significant impacts are anticipated from the Proposed Development, there is no requirement for essential mitigation (in addition to embedded mitigation) and also no requirement for ongoing monitoring. The ExA sought clarification with regard to this with WCC, who in response to ExQ2 13.2.5 [[REP5-037](#)] state that they expect a post construction validation report and further proposals from the applicant which will be subject to consultation of the Second Iteration of the Environmental Management Plan (siEMP).

- 3.5.28. At the end of the Examination the SoCG with WCC [[REP8-018](#)] reference 3.5 details that there is agreement to continue to consult through the detailed design phase and as part of the development of the siEMP.

ExA's consideration regarding Operational Impacts (NO₂)

- 3.5.29. The ExA consider that the proposed impact on air quality in the operational phase from NO₂ would be below the National Air Quality Objectives threshold for annual mean limit and also below the 1-hour mean limit.
- 3.5.30. The ExA has considered the impact of the Proposed Development on the AQMAs and consider that they will not be adversely affected.
- 3.5.31. The ExA considers that the proposed mitigation is adequate to reduce the potential harm however, it will be important for the Applicant to continue to liaise with WCC on mitigation through the development of the siEMP.

Operational Impacts (Fine Particulate Matter PM₁₀ and PM_{2.5})

- 3.5.32. A number of RRs and WRs detailed the assessment and mitigation of particulate matter. During the Examination the primary focus of this related to PM_{2.5} and how the application as submitted conformed with The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023, which was made on 30th January 2023, being after the application was submitted. Winchester Action on the Climate Crisis detailed in their Written Representation (WR) [[REP2-082](#)] that the proposal would be close to exceeding the determined target of 10 µg/m³ annual mean concentration of PM_{2.5} nationwide by 2040, with an interim target of 12 µg/m³ by January 2028.
- 3.5.33. This was examined in detail at ISH2. The Applicant highlighted that the compliance assessment is expected to be at a national level with no regional targets, they also stated that the assessment of PM_{2.5} in the application has been made for the year of opening, as the assumed worst-case year. ES Appendix 5.2 : Human Receptor Backgrounds and Operational Phase Results [[APP-086](#)] shows that the greatest predicted PM_{2.5} levels in 2027 with the scheme were 12.8 µg/m³ seen at receptors R03 and R50. WCC agreed that they were satisfied with this assessment.
- 3.5.34. Other non-exhaust emissions potentially resulting in changes to PM_{2.5} were raised by Winchester Action on the Climate Crisis and also referenced by Winchester Friends of the Earth, in particular emerging information on additional tyre and brake deterioration with electric vehicles. This was discussed at ISH2 and further detailed, most extensively in the Applicant's Comments on DL4 Submissions [[REP5-030](#)].
- 3.5.35. The Applicant provided information to the Examination which included academic papers and data from the United Kingdom (UK) Government's Air Quality Expert Group (AQEG). This information details how the likely impacts have been included within the ES assessment and also details

that the Defra 'Emission Factor Toolkit' uses non-exhaust emissions in its calculations. The ExA asked further questions in ExQ2 which gave further information from both the Applicant and WCC and confirmed all outstanding matters relating to recording and assessment of PM_{2.5} were acceptable.

ExA's consideration regarding Operational Impacts (Fine Particulate Matter PM₁₀ and PM_{2.5})

- 3.5.36. The ExA considers that the Applicant has undertaken all relevant assessments and forecasts in relation to PM_{2.5} and PM₁₀ in accordance with DEFRA guidelines in the Local Air Quality Management Technical Guidance (LAQM.TG).
- 3.5.37. The ExA concludes that, as stated in the ES, changes in annual mean concentrations of PM₁₀ will be imperceptible at all receptors with the exception of an increase of greater than 1% at four receptors and a decrease of greater than 1% at two receptors; in all cases, concentrations are below the annual and daily mean AQS objectives and are not considered significant. Regarding predicted PM_{2.5} changes, we also find that there are no predicted exceedances of the PM_{2.5} annual mean AQS objectives.
- 3.5.38. It is accepted that there is new and emerging information relating to fine particulate matter, particularly at 2.5 µg/m³ and below. However, the ExA finds that the ES has assessed the potential impacts in accordance with current guidelines. Furthermore, the ExA is content that the forecast for PM_{2.5} is not likely to have a negative impact on The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 target of 10 µg/m³ annual mean concentration of PM_{2.5} nationwide by 2040 nor the interim target of 12 µg/m³ by January 2028.

Construction Impacts

- 3.5.39. As detailed earlier in this Section, a number of RRs made a general comment about potential impacts on air quality, and a concern was raised by Mrs Rosewell in her written summary of oral submissions at the Open Floor Hearing (OFH) [[REP1-035](#)]. The Applicant in response stated that there is not predicted to be a significant effect on Air Quality during construction at this receptor.
- 3.5.40. During the construction phase of the Proposed Development, air quality changes are likely to be seen from both direct construction activities and from changes in traffic movements due to road and lane closures. Concerns relating to this were raised in a number of RRs and by WCC in their LIR [[REP2-083](#)].
- 3.5.41. Chapter 5 of the ES [[REP4-009](#)] shows the modelling and consideration of the impacts of changes to traffic flow and the resulting effect on air quality from both changes in traffic movement and directly from construction traffic. The ES states that with the implementation of mitigation measures detailed in the fiEMP, the predicted changes and increases from these activities will not be sufficient to result in significant

air quality impacts. Furthermore, the changes are below the threshold stated in DMRB LA105 for quantitative assessment to be considered proportionate. The ExA has found through further questions, both written and at ISH2, that this is an acceptable conclusion when considered in tandem with the proposed mitigation detailed in fiEMP.

- 3.5.42. Although the overall assessment of air quality impacts during construction are considered to be not significant, WCC were particularly concerned about how traffic which may use unofficial diversion routes through the city could impact on air quality in the AQMA. This was explored with the Applicant and WCC at ISH2. Although it was accepted that the Applicant was not in a position to positively influence all diversions undertaken, at the end of the Examination the SoCG with WCC [[REP8-018](#)] reference 3.6 detailed that there is agreement to continue to consult through the detailed design phase regarding how monitoring and reporting arrangements will be developed; this is secured as a commitment in the fiEMP reference G8.
- 3.5.43. In addition to the traffic related impacts during the construction phase, the ES states that there will be short-term impacts directly related to construction activities. The ES highlighted dust as a particular risk, and WCC also raised this as a concern. The ExA accepts that dust and associated construction impacts will be subject to industry standard mitigation which is detailed in the fiEMP. Monitoring and mitigation has been discussed with WCC and at the close of the Examination the SoCG with WCC [[REP8-018](#)] reference 3.5 detailed that there is agreement to continue to consult through the detailed design phase and as part of the development of the siEMP.

ExA's consideration regarding construction impacts

- 3.5.44. The ExA considers the Applicant has shown that the direct impact of construction activities would be mainly from the potential for dust generation. We consider that the fiEMP details a range of standard mitigation measures that would be deployed to manage dust and these are found to be appropriate at this stage of the design and will be subject to further consultation as the siEMP is developed.
- 3.5.45. We also agree that that out with the effects of dust, the impact of air quality during construction is no likely to exceed relevant limits, which includes the receptor raised as a concern by Mrs Rosewell.
- 3.5.46. The ExA also considers that the Applicant has satisfactorily assessed and mitigated for the impacts of traffic diversions during the construction phase. We accept that the issue raised by WCC regarding the potential impact on air quality from 'informal' traffic diversions is a valid concern. We also accept that this is broadly not in the direct control of the Applicant however, the fiEMP at reference G8 states that the Traffic Management Plan (TMP) will include monitoring and reporting arrangements during construction which will be subject to further consultation prior to construction.

Habitat impacts and whether nitrogen deposition has been adequately assessed and mitigated

- 3.5.47. The River Itchen SSSI is partially within the application boundary, St Catherine's Head SSSI is approximately 500m from the application boundary and four other SSSIs are beyond the 2km study area from the Proposed Development, but within 200m of the ARN.
- 3.5.48. The ES Chapter 5 [[REP4-009](#)] details the assessment of air quality impacts on the designated habitats with the study area, specifically addressing the impact of NO₂ and ammonia (NH₃).
- 3.5.49. During the Examination, NE raised concerns relating to the assessment of nitrogen deposition and how in-combination impacts have been considered, with a particular focus on how assessment has been undertaken in combination with a proposed anaerobic digestion plant.
- 3.5.50. Although not raised in the initial issues and statements, Winchester Friends of the Earth raised concerns at DL4 [[REP4-055](#)] about additional nitrogen deposition on the St Catherine's Hill SSSI and the Dongas and Deacon Hill SSSI. They state that, although there is an accepted existing nitrogen overload in the soil and the increase in anticipated deposition is insignificant, that any increase is unacceptable.
- 3.5.51. The ExA explored this issue in both written questions and at ISH2. It was evident to us that the Applicant and NE were working to conclude this and the Applicant duly provided additional information to NE as requested.
- 3.5.52. In our Report on the Implications For European Sites (RIES) [[PD-013](#)] issued on 6 October 2023, we directed specific questions to NE to ensure we had an update directly from them to allow us to understand if progress was being made on this issue. The answers to this were addressed via ExQ3 and in their reply of 25 October 2023 [[REP6-033](#)] NE stated *"In summary it appears that whilst there have been some improvements to the approach there are still some significant gaps in the assessment, the ecological impacts have not been properly considered (over reliance on modelling figures rather than consideration of impacts on the habitats of concern) and justifications for conclusions have not been comprehensively provided."*
- 3.5.53. Further to this, the Applicant, in their cover letter to DL7 submissions [[REP7-005](#)] dated 3 November 2023, expressed "surprise" that NE had remaining concerns regarding this issues, and committed to continue to work with NE prior to the close of the Examination.
- 3.5.54. At DL8, the Applicant submitted the SoCG with NE [[REP8-021](#)]. Issue ref 3.1 details that the cumulative effects assessment is agreed. The SoCG also covers the air quality assessment and shows that the issue is "provisionally agreed" (defined as both parties expecting the issues to be "agreed" shortly after the close of the Examination).

- 3.5.55. Further to this, the ExA accepted a late DL8 submission from the Applicant on 16 November 2023, being the last day of the Examination [REP-043]. This details final discussions between the Applicant and NE, stating that the Applicant issued updated information to NE on 14 November 2023 and on 16 November 2023 NE responded to conclude they are broadly satisfied with the updates provided.
- 3.5.56. The ExA also accepted a late submission of the ES Appendix 8.3 – Assessment of Operation Air Quality Impacts on Biodiversity [REP8-041] on 16 November 2023. This has been updated at the request of NE and this third revision at the end of the Examination concludes that *“increases in pollutants are below the 1% threshold, or if above the 1% threshold the increases are over small areas of the designated site or ancient woodland and are below the level at which a theoretical reduction in species diversity might occur. As such, effects from changes in traffic emissions from the Scheme will be not significant”*.
- 3.5.57. The information provided at, and accepted after DL8, was submitted on the final day of the Examination therefore the ExA has not been able to obtain confirmation from NE that this issue is satisfactorily concluded from NE.

ExA’s consideration regarding habitat impacts and whether Nitrogen Deposition has been adequately assessed and mitigated

- 3.5.58. The ExA considers that the Applicant has continued to engage proactively with NE and has responded to their concerns and requests for further information throughout the Examination.
- 3.5.59. We consider that with regard to the highlighted issues of in-combination effects and assessment of nitrogen deposition, the Applicant has updated Appendix 8.3 following requests from NE throughout the Examination. At the close of the Examination this part of the ES states that increases in pollutants are mostly below the 1% threshold, or if above this threshold they are over small areas.
- 3.5.60. The ExA considers the conclusion of the impact on habitats is acceptable, and subject to final confirmation from NE, which we anticipate will be provided following the close of the Examination, we agree that the impact of air quality on habitats will be not significant.

ExA Conclusion on Air Quality

- 3.5.61. The ExA is satisfied with the responses to the questions we posed in ExQ1 [PD-008] and ExQ2 [PD-011] from the Applicant [REP2-051] and [REP5-026]. We are further satisfied that the fiEMP adequately deals with mitigation and dust matters during construction which will be subject to further development and detail during detailed design. We are equally satisfied with the scope and assessment work undertaken to assess the effects of the Proposed Development on air quality matters in the operational phase.

- 3.5.62. We conclude that the air quality effects of the Proposed Development during the construction phase would result in localised, limited negative air quality effects, including temporary effects from dust on approximately 580 properties located within 200m of construction activities.
- 3.5.63. We also conclude that during the operational phase, there would be some improvement in air quality seen, with a perceptible improvement (greater than 1% of the relevant air quality threshold) at 13 of the 55 modelled receptors which are primarily in Winchester city centre. There will also be localised net worsening in local air quality (greater than 1% of the relevant air quality threshold) seen at 9 of the 55 modelled receptors, primarily in Easton Lane / Wales Street
- 3.5.64. The ExA concludes that, as stated in the ES, changes in annual mean concentrations of PM₁₀ will be imperceptible at all receptors with the exception of an increase of greater than 1% at four receptors and decrease of greater than 1% at two receptors; in all cases, concentrations are below the annual and daily mean AQS objectives and are not considered significant. Regarding predicted PM_{2.5} changes, we also find that there are no predicted exceedances of the PM_{2.5} annual mean AQS objectives.
- 3.5.65. Regarding the assessment of PM_{2.5}, the ExA is satisfied that the Applicant has undertaken an assessment which forecasts PM_{2.5} levels in 2027 as the worst-case year. It is accepted that the 2040 requirements under the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 are not defined by specific location or development and therefore the Applicant cannot have a significant impact on managing this target. We also accept that the ES shows predicted levels of PM_{2.5} in 2027 are broadly compliant with the required interim target of 12 µg/m³ by January 2028 and exceed the 2040 target of 10 µg/m³ at the majority of modelled receptor points.
- 3.5.66. The ExA concludes that the impact of air quality on habitats and designated sites has been assessed appropriately and increases will be below the 1% threshold, or where they are above the 1% threshold this will be over a small area. We conclude that, although final confirmation of agreement to all issues relating to nitrogen deposition from NE was not presented by the close of the Examination, all indications are that this will be forthcoming shortly after the close of the Examination, and we have assumed this within our conclusions.
- 3.5.67. In overall summary, the ExA therefore finds that there will be limited and temporary negative effects from the Proposed Development during construction along with both positive and negative effects during operation for both NO₂ and fine particulate matter. We also find that the AQMAs will not be adversely affected. Therefore, we find that the issue of air quality does not weigh for or against the Order being made.

3.5.68. Taking account of the conclusions in the Section, the ExA considers that the Applicant's assessment of air quality complies with the policy aims of the NPSNN.

3.5.69. The findings in respect of air quality will be taken into account in the overall planning balance in Chapter 5 of this Report.

3.6. BIODIVERSITY AND ECOLOGY

Introduction

3.6.1. This Section sets out the effects of the Proposed Development as they relate to biodiversity and ecology.

The Relevant Policy Tests

3.6.2. Paragraphs 5.20 to 5.37 of NPSNN outline the national policy position with regard to biodiversity and the natural environment.

3.6.3. Paragraphs 5.22 and 5.23 of NPSNN state 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. The ES should also consider the full range of potential impacts on ecosystems. The Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

3.6.4. Paragraph 5.25 of NPSNN further states that as a general principle, and subject to the specific policies, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. The Applicant may also wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought. Paragraph 5.26 further states that in taking decisions, the SoS should ensure that appropriate weight is attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity, and to biodiversity and geological interests within the wider environment.

3.6.5. Paragraph 5.29 of the NPSNN states that where a proposed development is likely to have an adverse effect on an SSSI development consent should not normally be granted. Where an adverse effect on the site's notified special interest features is likely, an exception should be made only where the benefits of the development at this site clearly outweigh both the impacts that it is likely to have on the features of the site that

make it of special scientific interest. The SoS should ensure that the Applicant's proposals to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest, are acceptable. Where necessary, requirements and/ or planning obligations should be used to ensure these proposals are delivered. Paragraph 5.31 further states that sites of regional and local biodiversity and geological interest have a fundamental role to play in meeting overall national biodiversity targets and in contributing to the quality of life and the well-being of the community and as such, the SoS should give due consideration to such regional or local designations. However, given the need for new infrastructure, these designations should not be used in themselves to refuse development consent.

- 3.6.6. Paragraph 5.32 of NPSNN states the SoS should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss. Aged or veteran trees found outside ancient woodland are also particularly valuable for biodiversity and their loss should be avoided. Where such trees would be affected by development proposals, the Applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons for this.
- 3.6.7. Paragraph 3.34 and 5.35 of the NPSNN states many individual wildlife species have statutory protection and that other species and habitats have importance for the conservation of biodiversity. The SoS should ensure that Applicants have taken measures to ensure these species and habitats are protected from the adverse effects of development and should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits of the development (including need) clearly outweigh that harm.
- 3.6.8. Paragraphs 5.36 to 5.38 state that appropriate mitigation measures should be an integral part of the proposed development and that the SoS should consider what appropriate requirements should be attached to any consent in order to ensure that mitigation measures are delivered. This includes taking account of what mitigation measures may have been agreed between the Applicant and NE and whether NE has granted or refused, or intends to grant or refuse, any relevant licences, including protected species mitigation licences.
- 3.6.9. Paragraph 180 of the NPFF states that planning decisions should contribute to and enhance the natural and local environment by protecting sites of biodiversity and providing net gain for biodiversity.
- 3.6.10. Paragraph 186 states that when determining an application, the following principles should apply:

- If significant harm to biodiversity resulting from a development cannot be avoided, 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 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 Sites of Special Scientific Interest.
- Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons (for example NSIPs) where the public benefit would clearly outweigh the loss or deterioration of habitat and a suitable compensation strategy exists.

3.6.11. The Winchester Local Plan details in policy references CP15 and CP16 that green infrastructure and biodiversity should be maintained, protected and enhanced and that public access to the natural environment should be encouraged. It also states that developments should deliver a BNG. DM24 states that development should not result in the loss of ancient woodlands, important hedgerows, special trees, distinctive ground flora and the space required to support them.

3.6.12. The SDLP states in policies SD9 and SD45 that development proposals should only be permitted where they conserve and enhance biodiversity and where they demonstrate they maintain or enhance green infrastructure and where they harm green infrastructure, they must incorporate measures that sufficiently mitigate or off set effects.

The Application

3.6.13. Chapter 8 of the ES [[APP-049](#)] submitted by the Applicant considers biodiversity and outlines that an assessment has been undertaken of the effect of the Proposed Development on biodiversity resources. This includes a description of the ecological baseline, evaluation of biodiversity features present and assessment of impacts and effects on important biodiversity resources (in line with relevant guidance).

3.6.14. The Applicant states that a number of important biodiversity resources within and adjacent to the application area have been identified through desk based and field survey work.

3.6.15. Chapter 8 of the ES [[APP-049](#)] details two European Designated Sites which are of international nature conservation importance. The Proposed Development lies within the River Itchen SAC and the Mottisfont Bats SAC lies approximately 16km to the west of the Proposed Development. In addition to the European Designated Sites, the application lies within the River Itchen SSSI with St Catherine's Hill SSSI outside of the application boundary but within the 2km study area for the ES.

- 3.6.16. The ES further identifies other non-statutory designated sites within the 2km study area which includes 26 locally designated Sites of Importance for Nature Conservation (SINC) and 2 road verges of ecological importance (RVEI). The ES also details the Habitats of Principal Importance (HPI) within the 2km study area, of which lowland calcareous grassland, lowland mixed deciduous woodland, rivers, hedgerows, and OMH occur within the application boundary.
- 3.6.17. The ES states that no parcels of ancient woodland, ancient trees, or veteran trees have been identified within the application boundary. A number of parcels of ancient woodland within the 2km study area have been identified, with the closest being 475m north-west of the Proposed Development.
- 3.6.18. The ES details the proposed mitigation measures that will be required to ensure accidental degradation of habitat or direct impacts on species is not seen. This includes the creation of habitat and associated planting, pollution prevention during construction and operation, dust and noise reduction measures and removal of existing invasive species. The Applicant has stated that there will be an ecological clerk of works employed during construction and an ecological management plan will be implemented once the Proposed Development is operational. The full set of mitigation measures are set out within the fiEMP [[REP8-023](#)].
- 3.6.19. Chapter 8 of the ES [[APP-049](#)] has assessed that following the inclusion of the mitigation strategy the potential impacts on the River Itchen SAC from construction would be 'slight' and in operation there would be no direct impacts. In accordance with Guidelines for Ecological Impact Assessment in the UK and Ireland (CIEEM 2018), this is stated as resulting in the effects on the River Itchen SAC being not significant. The ES also concludes that the effect of the Proposed Development on the Mottisfont Bats SAC, all SSSIs and all non-statutory designated sites within the study area would be not significant.
- 3.6.20. Chapter 8 of the ES states that the Proposed Development would result in habitat losses and gains of both a temporary and permanent nature, with no irreplaceable habitats present within the application boundary. The ES states that there would be approximately 36ha of new habitat created, which would be a net increase of approximately 18ha along with 2.87ha of enhancement to retained grassland. The ES states that there would be no loss of habitat from within the River Itchen. However, the construction/ refurbishment of the three drainage outflows would result in the permanent loss of approximately 2m² of woodland and scrub on the riverbank at each location. The ES concludes that with the inclusion of mitigation measures the effects on habitats overall would be not significant.
- 3.6.21. Chapter 8 of the ES details the field surveys undertaken in relation to species identified through the EIA Scoping Report. It states that some of these surveys were started prior to the selection of the preferred option and where necessary, the survey coverage has been updated in later survey periods. The ES has assessed the impact of the Proposed

Development on fauna and flora and all identified effects have been deemed as not significant.

3.6.22. The ES identifies a potential for short-term fragmentation and/ or loss of habitat will potentially result in a neutral or slight adverse impact for bats, hazel dormice, breeding and wintering birds, reptiles, terrestrial invertebrates, aquatic invertebrates and notable plants; all of which are of local or county importance. The ES states that the effect of the Proposed Development after mitigation on all species identified is not significant.

3.6.23. In summary, the ES [[APP-049](#)] confirmed that, subject to the measures set out in the fiEMP[[REP8-023](#)] which is secured by Requirement 3 of the dDCO, the likely adverse effects identified can be successfully mitigated and the residual effects on all biodiversity receptors are not significant.

Issues Considered in the Examination

3.6.24. The key issues considered during the Examination were:

- Assessment and mitigation approach.
- Designated Sites, Habitat and future management.
- Species-specific impacts.
- Biodiversity Net Gain.

Assessment and Mitigation Approach

3.6.25. The Applicant's approach to the assessment of biodiversity and ecology has broadly been accepted by the relevant statutory bodies. During the course of the Examination a number of requests were made for updated and supplementary information and survey results which by the end of the Examination were met.

3.6.26. A number of IPs raised concerns about ecology, biodiversity and mitigation in their RRs however, with the exception of the statutory agencies and local authorities, these comments were generalised and not specific.

3.6.27. The ExA asked a number of questions in ExQ1 [[PD-008](#)] regarding mitigation proposals and ongoing future management of replacement ecology and landscape features. The Applicant explained that the mitigation proposals in the application are based on a reasonable worst-case assessment and would be developed further through the detailed design stage. They also highlighted that the commitments and mitigation included in the ES and fiEMP are secured through the dDCO and are subject to further consultation and approval.

3.6.28. The ExA explored this further at various stages of the Examination and found that although the overall mitigation strategy was considered to be acceptable, a number of issues required clarification and additional information. These are detailed further in this Section of this Report.

- 3.6.29. By the close of the Examination, the SoCGs with WCC, NE and the EA detailed agreement with the Applicant's approach to the assessment and mitigation of biodiversity and ecology matters.
- 3.6.30. In contrast, the SoCG with the SNDPA details that the scope and assessment methodology is agreed however, the mitigation approach is not agreed.

ExA's consideration regarding assessment and mitigation approach

- 3.6.31. The ExA considers that the Applicant has undertaken the assessment of the impacts on biodiversity and ecology in accordance with the relevant guidance and legislation and this is widely supported by the relevant statutory bodies and local authorities.
- 3.6.32. Mitigation is secured through the fiEMP which has been updated five times during the Examination to take account of ongoing consultation and discussions that have been undertaken by the Applicant with various IPs and statutory bodies. The ExA finds that the Applicant has been responsive to these consultations, and this is reflected in the final submitted version of the fiEMP.
- 3.6.33. At the end of the Examination, the SDNPA had residual specific mitigation concerns which were not agreed within their SoCG. These are discussed later in this Section.

Designated Sites, Habitat and future management

European designated sites

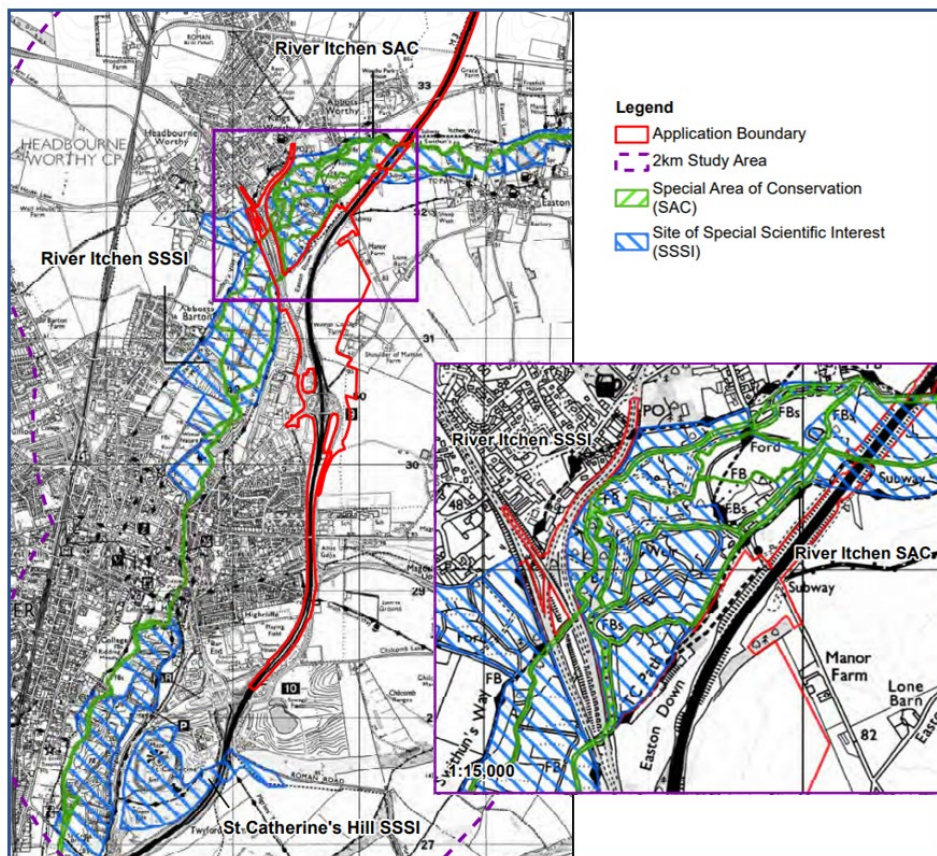
- 3.6.34. The ES details the potential impact of the Proposed Development on the European Designated Sites within the appropriate study area, being the River Itchen SAC and Mottisfont Bat SAC. The HRA assessment of these sites is shown in Chapter 4 and Appendix C of this Report.
- 3.6.35. Following the submission of the initial HRA Report [[APP-158](#)] the Applicant continued to consult with the relevant LAs and statutory bodies during the course of the Examination. This resulted in amendments to the final HRA report submitted at the close of the Examination [[REP8-041](#)].
- 3.6.36. There were no specific issues raised in LIRs relating to the SACs and there were no other specific issues raised by RRs. During the Examination the ExA asked a number of questions to ensure that relevant IPs confirmed their positions.
- 3.6.37. There were two issues that were raised by NE during the Examination, these being related to cumulative impacts and air quality deposition. These matters are detailed in the Section 3.5 of this Report.
- 3.6.38. The ExA's conclusions on the HRA are detailed in Chapter 4 and Appendix C of this Report. In summary, we find that there are no Likely Significant Effects (LSE) on the Mottisfont Bat SAC and, subject to the mitigation

measures secured in the dDCO, AEoI of the River Itchen SAC from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded.

Other statutory designated sites

3.6.39. The River Itchen SSSI is partly within the application boundary and St Catherine’s Hill SSSI is located approximately 500m south of the application boundary; these are shown in Figure 4. There are a further four SSSIs that are outside the 2km study area but within 200m of the ARN.

Figure 4 : Location of River Itchen SAC and SSSI and St Catherine’s Hill SSSI



3.6.40. There were no specific issues raised in LIRs relating to the SSSIs and there were no other specific issues raised by RRs. Most of the River Itchen SSSI qualifying features and issues are coincidental with the River Itchen SAC and are not repeated in detail here.

3.6.41. Although there were no specific comments from IPs regarding the impact of the Proposed Development on the St Catherine’s Hill SSSI, the ExA were asked to visit this location during ASI1 to observe the location in relation to the Proposed Development.

3.6.42. During the Examination the ExA asked a number of questions to ensure that relevant statutory bodies confirmed their positions relating to the potential impact on habitats. There were no issues raised as to the

integrity of the SSSIs and there is general support for the mitigation measures detailed within the fiEMP and Chapter 8 of the ES [[APP-049](#)].

3.6.43. The ES Chapter 8 states that following mitigation detailed in the fiEMP and the ES, the Applicant concludes that the effects on both the River Itchen SSSI and St Catherine’s Hill SSSI would be not significant.

Non-statutory designated sites

3.6.44. A number of non-statutory designated sites have been identified within the 2km radius study area with only one, the Easton Down SINC being partly within the application boundary. Similarly to the matters detailed in this Chapter regarding statutory designated sites, a small number of general comments were made in RRs and no specific issues were raised in LIRs, although these locally designated sites were mentioned as requiring consideration.

3.6.45. The ES states that all non-statutory designated sites have the potential to be affected by dust during construction however, with the implementation of mitigation measures detailed in the fiEMP, the impacts will be controlled and will be not significant.

3.6.46. At the close of the Examination, there were no outstanding issues relating to non-statutory designated sites.

Habitats

3.6.47. ES Chapter 8 [[APP-049](#)] details the loss and creation of HPI, Figure 5 and Table 1 replicate information shown in the ES Chapter 8 figures [[REP2-031](#)] which details the anticipated impact on HPIS:

Figure 5 : Habitats of Principle Importance

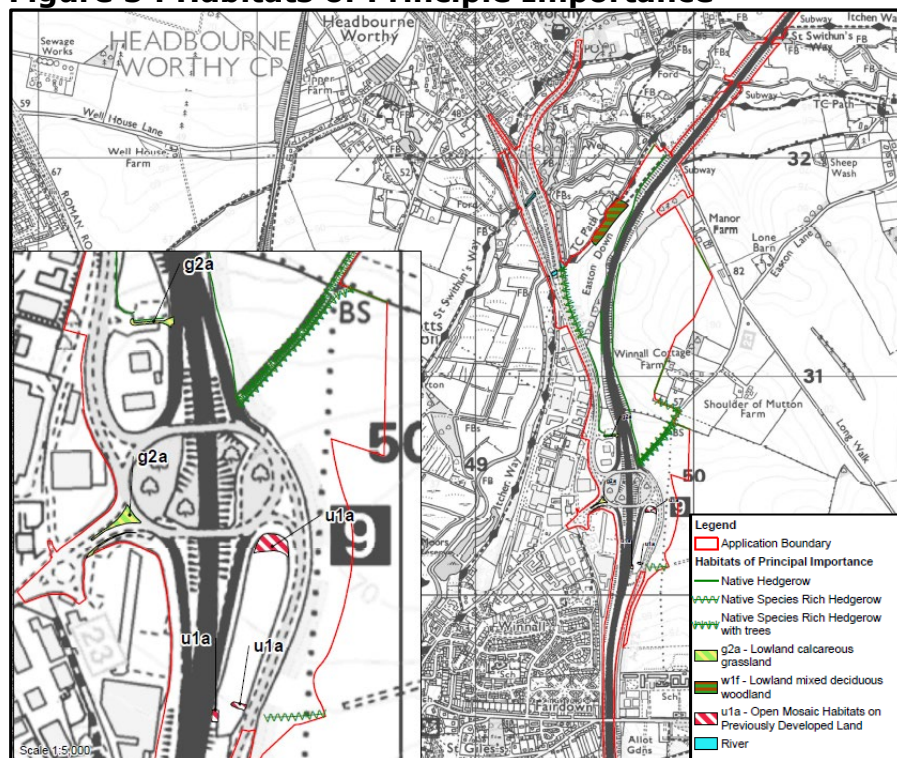


Table 1: Summary of Habitats of Principle Importance

Existing Habitat	Habitat Loss (ha)	New Habitat	Habitat Gain (ha)	Net Habitat Gain (ha)
Lowland chalk grassland	0.10	Chalk grassland	9.6	17.59
		Species rich grassland	8.09	
Other woodland (including broadleaved and mixed woodlands)	8.73	Native broadleaved woodland	10.10	1.37
Open Mosaic Habitat	0.01	n/a	0.00	-0.01
Linear Habitat	Habitat Loss (km)	New Habitat	Habitat Gain (km)	Net Habitat Gain (km)
Hedgerow	1.07	Species rich hedgerow	1.25	0.17

3.6.48. The ES states that there is no loss of ancient woodland or veteran trees, which has been confirmed during the Examination.

3.6.49. As can be seen in Table 1, there is a loss of woodland which is proposed to be reinstated with an overall gain of 1.37ha (16%). The loss of existing lowland grassland, which is a feature of the SDNP, is restricted to the road infrastructure with a proposal to provide compensatory grassland of 17.7ha. The proposed areas of habitat creation are shown in detail in Figure 2.3 – Environmental Masterplan found in ES Chapter 2 – The scheme and its Surroundings – Figures Part 2 of 4. [REP2-029].

3.6.50. The Proposed Development would also see the removal of hedgerows, including those identified as Important Hedgerows in the NERC Act 2006. The ES states that these hedgerows would be removed or translocated. The ExA sought to understand how translocation would be achieved and the Applicant suggested that under the correct conditions this would be appropriate and commitments in the fiEMP reflected this, and full detail of hedgerow translocation would be set out in the siEMP.

3.6.51. Paragraph 8.9.37 of the ES Chapter 8 states the total area of new habitats proposed to be created by the Proposed Development, these are summarised in Table 2:

Table 2 : Summary of habitats to be created

New Habitat	Habitat Gain (ha)
Chalk grassland	9.60
Other woodland (including broadleaved and mixed woodlands)	10.10
Species rich grassland	8.09
Scrub	5.88
Retained grassland to be enhanced	2.87

- 3.6.52. The Applicant has consulted with the relevant nature bodies and local authorities regarding replacement habitat, and this has been reflected in the Application. Most IPs and statutory bodies broadly welcome the additional habitat proposals and at the close of the Examination WCC, the EA and NE had no outstanding issues and all references to such in the SoCGs with these parties were agreed.
- 3.6.53. There were issues raised by SDNPA which at the close of the Examination were “not agreed” in their SoCG which relate to habitats, particularly chalk grassland. These are detailed in Section 13.11 of this report and also later in this Section.

Connectivity and enhancements

- 3.6.54. Habitat connectivity and the potential for enhancements has been raised as an issue by the SDNPA in their LIR [[REP2-071](#)] and WR [[REP2-074](#)]. Although they do not raise specific objections or concerns, they have stated that opportunities to improve habitat and wildlife connectivity are present.
- 3.6.55. In their responses to WR [[REP3-022](#)] the Applicant stated that they considered the Proposed Development would enhance connectivity through good design and creation of substantial areas of chalk grassland and connection between various habitats.
- 3.6.56. The ExA also sought to understand the position of NE in regard to habitat connectivity and in their reply to ExQ1 5.1.4 [[REP2-051](#)] the Applicant stated that the NE had been consulted and no issues had been raised; this is reflected in the final SoCG with NE [[REP8-021](#)].
- 3.6.57. The ES details proposed enhancements which the Applicant considers would provide improvements to the wider area in association with the Proposed Development. These include:
- Improved drainage discharge to remove more pollutants and improve the quality of water discharged into the River Itchen.
 - New areas of woodland and scrub would enhance connectivity for bats, dormice and other wildlife.
 - New areas of chalk grassland would improve wildlife connectivity.
 - Retained woodland would see the removal of invasive species.
 - Enhancements to parts of the River Itchen, eg planting and channel narrowing.
- 3.6.58. The Applicant has detailed potential further enhancements from the National Highway fund and a number of IPs consider these should be included within the Proposed Development as additional mitigation. The Applicant does not rely on these further enhancements and they have not been considered by the ExA.

Impact Summary of designated sites and habitats

- 3.6.59. Following the examination of the impact of the Proposed Development on designated sites and habitat, the ExA has reviewed the impacts as stated in the ES which are summarised in Table 3.

Table 3 : Summary of effect on designated sites and habitats

Area	Effects Construction	Significance Construction	Effects Operation	Significance Operation
European Designated Sites	slight adverse or neutral	not significant	slight beneficial or neutral	not significant
Other Statutory designated Site	slight adverse or neutral	not significant	neutral	not significant
Non-statutory Designated Sites	neutral	not significant	neutral	not significant
Habitats	slight adverse (short-term) slight beneficial (long-term)	not significant	neutral	not significant

Habitat future management

- 3.6.60. There has been significant concern from the SDNPA regarding the establishment of the mitigation areas and moreover the ongoing management and maintenance of them. The ExA examined this aspect in detail with a particular focus on the establishment of the chalk grassland and new woodland areas.
- 3.6.61. In their LIR [[REP2-071](#)] the SDNPA state that they consider a 5 year post-opening maintenance period for planting and habitat creation to be insufficient and state that the ES shows there is an anticipated 15 year negative landscape harm from the Proposed Development and therefore the maintenance period does not reflect this.
- 3.6.62. In their reply to the LIRs [[REP3-023](#)] the Applicant states that the management of all new landscape planting is detailed in Appendix 7.6, Outline Landscape and Ecological Management Plan (OLEMP) of the ES [[APP-102](#)] and this includes the appropriate establishment and management of new landscape planting and features in accordance with relevant best practice and standards. They go on to state that the duration of management and monitoring for each landscape/ ecology element created or enhanced is 25 years from completion of the authorised development.
- 3.6.63. The dDCO [[REP8-004](#)] Requirement 6 states that *“Any tree or shrub or chalk grassland planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, 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”*.
- 3.6.64. On review of the time periods stated in the OLEMP and dDCO, there is a clear distinction between the 5 years ‘replacement’ period and 25 year ‘maintenance and monitoring’ period. Although there is a requirement on the Applicant via the OLEMP to maintain the new landscaping for 25

years post completion, which is secured through Requirement 5 of the dDCO, there is no requirement for failed landscaping to be replaced after the initial 5 years post completion.

- 3.6.65. The Applicant has stated in the dDCO Explanatory Memorandum (EM) [[REP8-006](#)] that Requirement 6 was included in the model provisions and has been included as such in a number of approved DCOs.
- 3.6.66. The ExA asked a number of questions relating to the 5 year replacement, including ExQ1 9.1.48 [[PD-008](#)] where we asked directly if a 10 year period may be more appropriate. The Applicant's response [[REP3-023](#)] remained consistent in that they say a 5 year period is standard practice and following that a further 20 year maintenance and monitoring period would be undertaken.
- 3.6.67. During the Examination, the SDNPA continued to raise concerns about the potential for planting failures beyond the 5 year replacement period in Requirement 6 of the dDCO and at the end of the Examination the SoCG with the SDNPA concluded that this issue was not agreed.
- 3.6.68. On 6 October 2023, the ExA published its Proposed Changes to the Draft Development Consent Order [[PD-014](#)] and we proposed that Requirement 6 should be amended from 5 years to 10 years. Our comments stated *"The ExA considers that given the location of part of the site within the SDNP it is necessary for the scope of 6. (3) to include all elements planted as part of the scheme and that the reasonable concerns in relation to establishment of various elements justify the extension of the replacement period to 10 years. We do not consider that the extension of this period would place any unduly onerous burden upon the undertaker"*.
- 3.6.69. In their response to the ExA's proposed changes to the dDCO [[REP6-026](#)] the Applicant reiterated that they consider a 10 year replacement period would be contrary to the maintenance schedule of the landscaping works and therefore considers this amendment not to be appropriate.
- 3.6.70. The Applicant also states that if there were issues with the establishment of any elements of the landscaping scheme this would be addressed in the ongoing management plans where steps to secure establishment would be set out.
- 3.6.71. At the close of the Examination, the submitted dDCO retained the original 5 year replacement period in Requirement 6.

ExA's consideration regarding Designated Sites, habitat and future management

- 3.6.72. The ExA acknowledges that the Applicant has sought to minimise the impact on designated sites and habitats and overall, the loss of habitats of principle importance is not significant. However, specific attention should be given to reducing the impact on hedgerows during detailed design and construction which is stated as commitment reference LV2 in the fiEMP and therefore secured in the dDCO via Requirement 3.

- 3.6.73. Replacement habitat and compensatory habitat potentially has a slight positive impact due to the net increase in area being proposed. However, concerns remain, specifically from the SDNPA, in relation to the maintenance and establishment of this and at the end of the Examination the SDNPAs position remained unchanged. The ExA expect that further consultation and clarification is required prior to finalisation of the siEMP and we consider the issue of chalk grassland in Section 3.10 of this Report.
- 3.6.74. Further consideration of the design, impact and visual elements of changes to habitats are detailed in Section 3.10 of this Report.
- 3.6.75. Regarding future management of the newly created habitats and planting and replacement of failed planting, we consider that this Proposed Development should be given additional protection from the 'model order' due to the potential impact on a National Park and the importance of its setting and biodiversity value. To this end we consider that amending the dDCO to ensure there is a requirement on the Applicant to replace failed planting for 10 years is reasonable. However, as set out in Chapter 7 of this Report, we propose an additional sub-paragraph 6 (4) with the aim of avoiding any potential conflict with the approved landscape maintenance works.

Species-specific impacts

- 3.6.76. Supported by the pre-application EIA Screening, the ExA finds that there were no apparent omissions of species which were included in the baseline identification and assessment. ES Chapter 8 [[APP-049](#)] presents full details of the species surveys which were in turn commented upon by relevant bodies in the LIRs, and the EA and NE as part of the ExQs and in ISH2.
- 3.6.77. During the Examination, a number of parties requested updated survey information relating to specific species to enable commentary and consideration of the mitigation measures proposed. The Applicant was receptive to the need to provide these updates and by the end of the Examination the SoCGs with NE, EA and WCC all reported that satisfactory information and updated surveys had been received by the Applicant.
- 3.6.78. The SoCG with SDNPA was an exception and there remained at the close of the Examination a request dated June 2023 (ref 6.6) for further information regarding protected species including bats, dormouse, badgers and birds which was "*not agreed*". However, at ISH2 the ExA specifically asked the SDNPA if they had any further requests for survey information and the statement was that at that stage in the Examination there was some information that they did not receive as they were not deemed to be the relevant local authority (LA), which the Applicant subsequently corrected. With regard to the specific question, the SDNA stated that were content with the surveys if WCC and NE were themselves satisfied. This being the case, the ExA consider this is not an outstanding issue.

3.6.79.

During the early stages of the Examination, a number of IPs requested additional information regarding mitigation and proposals for specific species. The Applicant has sought to comply with these requests and that was confirmed during ISH2 where we sought to confirm if there were any outstanding concerns or issues with the proposals and mitigation proposals for any specific species. The ExA had no reason to seek further confirmation of potential impacts on specific species. Table 4 summarises how the ES states the impact on each identified species.

Table 4 : Summary of effect on identified species

Species	Effects Construction	Significance Construction	Effects Operation	Significance Operation
Badgers	population too low for impact assessment	n/a	population too low for impact assessment	n/a
Bats	slight adverse (short-term) slight beneficial (medium-term)	not significant	neutral	not significant
Dormice	slight adverse (short-term) neutral (medium-term)	not significant	neutral	not significant
Otter	neutral	not significant	neutral (slight benefit from new fencing)	not significant
Water Vole	neutral	not significant	neutral	not significant
Birds (breeding and wintering)	slight adverse (short-term) slight beneficial (medium-term)	not significant	neutral	not significant
Reptiles	slight adverse (short-term) neutral (medium-term)	not significant	neutral	not significant
Freshwater fish	neutral	not significant	neutral	not significant
Terrestrial invertebrates	slight adverse (short-term) slight beneficial (medium-term)	not significant	neutral	not significant
Aquatic invertebrates	slight adverse	not significant	neutral	not significant
Notable plants	slight adverse (short-term) slight beneficial (medium-term)	not significant	neutral	not significant

- 3.6.80. The ES details the requirement for the appropriate licences to be obtained to allow the Applicant to undertake work which impacts on badgers and hazel dormice and their habitat. During the Examination NE requested additional information relating to dormice which was provided by the Applicant. It is noted in the ES that a main badger sett is within the application boundary and appropriate mitigation is provided in the fiEMP which is secured in the dDCO at Requirement 3.
- 3.6.81. At the close of the Examination the Applicant stated in their covering letter at DL8 [[REP8-029](#)] that NE had issued a Letter of No Impediment (LoNI) on 10 November 2023. This can be seen in Appendix A of the SoCG with NE. The LoNI sets out NE's requirements for a final dormouse licence application to be submitted in due course, together with conditions relating to the content of the licence application, all of which have been agreed with the Applicant since DL6.

ExA's consideration regarding species-specific impacts

- 3.6.82. The ExA considers that the Applicant has been cognisant of requests for additional information and updated survey questions made in the EIA screening undertaken during the pre-application stage and through the Examination.
- 3.6.83. The ExA has reviewed the impacts on all species that have been included for study within the ES. Supported by comments from NE, the ExA found that with the proposed mitigation included in the fiEMP, which is secured in the dDCO at Requirement 3, there is unlikely to be a significant impact on any identified species either in the construction or operational phase of the Proposed Development.

Biodiversity Net Gain

- 3.6.84. It is acknowledged that the requirements for providing BNG under the Environment Act 2021 are currently not expected to be a requirement for NSIPs until 2025. However, the Applicant has provided an appendix to ES Chapter 8 for BNG Assessment [[APP-131](#)] which details the BNG calculations for the Proposed Development.
- 3.6.85. The Applicant has concluded in its BNG Assessment that the Proposed Development would result in a predicted net gain in biodiversity of +4.14 and a predicted net gain in linear habitats (ie hedgerow) of +3.60%.
- 3.6.86. As can be seen, a BNG of 4.14% is below the potential future threshold of a 10% requirement for BNG. Notwithstanding that this is not a requirement, the ES detailed that the assessment includes for the currently predicted net increase of 9.6ha of chalk grassland, which is proposed as compensatory habitat as this is a defining feature of the SDNP and is appropriate to the local area. The ES states that when used in BNG calculations, this type of habitat suppresses the overall result of the metric, due to risk factors associated with this habitat type. The ES states that, if 'other neutral grassland' was provided in place of 'chalk grassland' then the overall BNG score for the Proposed Development would change from +4.14% to +14.93%.

3.6.87. The ExA examined this divergence at ISH2. It was acknowledged that the assessment is a likely reflection of the true BNG and the SDNPA confirmed that establishing chalk grassland was significantly more important than achieving a target for percentage BNG and they would agree that a 4.14% increase with the appropriate habitat is appropriate, even though it suppresses the BNG calculation.

ExA's consideration regarding biodiversity net gain

3.6.88. The ExA accepts that the Applicant is not legally required to comply with the BNG requirements of the Environment Act 2021 at present however, we recognise that delivering a BNG of 4.14% is a positive benefit. We note that a higher BNG figure could have been seen if 'other neutral grassland' were used in the calculation instead of 'chalk grassland' as mitigation in the SDNP. Nevertheless, it is accepted by the ExA that providing the preferred habitat in this location is the correct approach.

ExA Conclusion on Biodiversity and Ecology

3.6.89. In summary, the ExA is satisfied that the Applicant has fully addressed the possible effects on biodiversity and ecology for the construction and operation of the Proposed Development. We conclude that, notwithstanding the outstanding issues raised by the SDNPA, the overall approach to mitigation is appropriate and the fiEMP contains details of the applied mitigation proposals for both construction and operational phases; this is agreed by the relevant statutory bodies ie WCC, the EA and NE. We therefore agree that the Applicant has demonstrated that such effects associated with the Proposed Development can be satisfactorily mitigated and managed.

3.6.90. The ExA finds that the Applicant has detailed appropriate mitigation, which has been agreed by the relevant statutory bodies, to conclude that the effects on the River Itchen SAC and on the River Itchen SSSI are likely to be not significant. In addition, ES Chapter 15 : Cumulative Effects [[APP-056](#)] states in paragraphs 15.5.9 and 15.5.13, that the combined effect on the River Itchen SAC and SSSI during the construction and operation phases will not be more significant than the individual topic areas, which we agree with.

3.6.91. The ExA finds that there are no anticipated effects on the internationally important Mottisfont Bats SAC and nationally important site of the St Catherine's Hill SSSI. Further SSSIs within 2km of the ARN are also anticipated to have no effects.

3.6.92. The ExA also finds that the effects on HPI and locally important sites have been subject to appropriate mitigation which is agreed by the relevant statutory bodies.

3.6.93. The ExA concludes that the Applicant has sought to implement enhancements to habitat and biodiversity both within the application boundary and in the surrounding area and further measures may be proposed during the design phase which will provide further enhancements.

- 3.6.94. In relation to habitats we consider that, with the inclusion of the stated habitat enhancement measures, the Proposed Development would give rise to a slight overall benefit to habitats in the medium to long-term.
- 3.6.95. The impact on specific species has been assessed and mitigated where required in consultation with the appropriate statutory bodies. The ExA finds that the Applicant has taken measures to ensure these species and habitats are protected from the adverse effects of the Proposed Development. The ExA is satisfied that conditions for licenses to manage badger and dormouse impacts are in place and agreed by NE as the licencing body.
- 3.6.96. In relation to species, we conclude that no significant benefits or disbenefits are seen. With the inclusion of the stated enhancements, we consider there will be slight benefit and has been afforded a little weight in the planning balance.
- 3.6.97. The ExA accepts that the Applicant is not legally required to comply with the BNG requirements of the Environment Act 2021 at present however, we also recognise that delivering a BNG of 4.14%, is a positive benefit.
- 3.6.98. The ExA considers that the requirement to replace failed planting of newly established habitats in Requirement 6 of the dDCO is amended from a 5 year period to a 10 year period.
- 3.6.99. Taking these conclusions into consideration, the ExA is satisfied that the Proposed Development would comply with paragraphs 5.23, 5.26, 5.29, 5.31, 5.32, 5.33 and 5.35 of the NPSNN on conserving and enhancing biodiversity and ecology conservation interests, and paragraphs 5.36 and 5.38 regarding the mitigation measures.
- 3.6.100. In summary, the ExA is satisfied that opportunities for promoting biodiversity have been identified through the Proposed Development. Whilst there would be slight beneficial effects on certain habitats and species in the medium-term, the ExA notes that there would be slight adverse effects on other types of habitat in the short-term. However, in most cases the effects are between slight adverse and slight beneficial and in all instances, impacts are seen as not significant. When considering the positive effects of BNG and taking all other matters relating to biodiversity and ecology into account, we attribute a little weight in favour of making the Order.
- 3.6.101. The findings in respect of biodiversity and ecology will be taken into account in the overall planning balance in Chapter 5 of this Report.

3.7. CLIMATE CHANGE AND RESILIENCE

Introduction

- 3.7.1. This Section sets out the effects of the Proposed Development as they relate to climate change and considers its resilience to such change.

The Relevant Legal and Policy background

UK Legislation and associated Government publications

- 3.7.2. The Paris Agreement 2015 provides a framework for keeping global warming well below 2°C above pre-industrial levels and to pursue efforts to limit it to 1.5°C. It was ratified by the UK Government in November 2016, after the NPSNN was designated in December 2014.
- 3.7.3. The ES assessment was undertaken considering current legislation including:
- Climate Change Act 2008 and Climate Change Act 2008 (2050 Target Amendment) Order 2019.
 - The Carbon Budget Order 2009, Carbon Budget Order 2011, Carbon Budget Order 2016 and Carbon Budget Order 2021.
- 3.7.4. On 28 June 2023, the Climate Change Committee (CCC) submitted its Progress in reducing Emissions - 2023 Report to Parliament.
- 3.7.5. On 30 March 2023, the Government published a revised Net Zero Strategy (NZS) with the overarching title Powering Up Britain (PUB), and the Carbon Budget Delivery Plan (CBDP). This was updated on 4 April 2023.
- 3.7.6. On 26 October 2023, the Government published its response to the CCC Progress Report 2023.
- 3.7.7. On 28 September 2023, the Government set out the percentage of new zero emission cars manufacturers will be required to produce each year up to 2030, following the Prime Minister's announcement to delay the ban on new diesel and petrol cars from 2030 to 2035. The zero-emission vehicle (ZEV) mandate requires 80% of new cars and 70% of new vans sold in Great Britain to be zero emission by 2030, increasing to 100% by 2035.

NPSNN

- 3.7.8. NPSNN paragraph 5.17 states that: *"Where the development is subject to EIA, any Environmental Statement will need to describe an assessment of any likely significant climate factors in accordance with the requirements in the EIA Directive. It is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. However, for road projects applicants should provide evidence of the carbon impact of the project and an assessment against the Government's carbon budgets"*.
- 3.7.9. In terms of decision-making, NPSNN paragraph 5.18 refers to the Government's overarching national carbon reduction strategy (as set out in the Carbon Plan 2011) which it is legally required to meet. It states that: *"Therefore, any increase in carbon emissions is not a reason to refuse development consent, unless the increase in carbon emissions*

resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets”.

3.7.10. In relation to mitigation, NPSNN paragraph 5.19 states that: *“the Secretary of State will consider the effectiveness of such mitigation measures in order to ensure that, in relation to design and construction, the carbon footprint is not unnecessarily high.”*

3.7.11. NPSNN, paragraph 4.36, states that s10(3)(a) PA2008 requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. Paragraph 4.40 indicates that: *“... applicants must consider the impacts of climate change when planning location, design, build and operation. Any accompanying environment statement should set out how the proposal will take account of the projected impacts of climate change.”*

3.7.12. NPSNN, paragraph 4.42, requires applicants to take into account the potential impacts of climate change using the latest UK Climate Projections available at the time and ensure any ES that is prepared identifies appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure. Paragraph 4.44 provides that adaptation measures should be based on the latest set of UK Climate Projections, the Government’s national Climate Change Risk Assessment and consultation with statutory consultation bodies.

Relevant Local Plan Policies

3.7.13. WCC declared a Climate Emergency in June 2019. The Carbon Neutrality Action Plan 2020 – 2030 (CNAP) focuses on carbon emission reduction and elimination, with mitigation/off setting used as a means to balance carbon emissions to achieve net zero gain. The baseline year of 2017 is used as this is the most currently available data. WCC has two net zero targets: one is to be carbon neutral as a council by 2024 and the second to be carbon neutral as a district by 2030. These are set out in the current Council Plan, the emerging Local Plan and in the CNAP. For the purposes of the CNAP the scope excludes motorways as these are national infrastructure and it is considered that they will require a national response.

3.7.14. The Winchester Local Plan Part 1 Policy DS1 Development Strategy and Principles provides that development proposals will be expected to demonstrate conformity with certain principles including the requirement to: *“addressing the impact on climate change, renewable energy, air quality, green infrastructure, recycling/waste, flooding issues and the water environment”*.

3.7.15. The SDNPA LIR [[REP2-071](#)] does not raise any specific climate change issues. The SDLP Policy SD3: Major Development in the third part of that policy requires development proposals to be sustainable as measured against specified factors including:

- Zero Carbon - Making buildings energy efficient, supplying energy from on-site renewable sources, where possible, and seeking to deliver all energy with renewable technologies; and
- Sustainable Transport – Reducing the need to travel and dependence on fossil fuel use and encouraging low and zero carbon modes of transport to reduce emissions.

3.7.16. The HCC LIR [[REP2-066](#)] confirms that HCC is content with the planning policy context as presented by the Applicant in the Planning Statement, and as supplemented by the individual LIRs of WCC and SDNPA.

The Applicant's approach

3.7.17. The climate assessment is reported in ES chapter 14 (Climate) [[REP1-005](#)]. In accordance with the EIA Regs, the assessment covers both the potential impact of the Proposed Development on climate (in terms of changes in GHG emissions) and the potential impacts of future changes in climate on the project itself (ie, the vulnerability of the project to climate change).

3.7.18. The ES Chapter 14 is supported by Figure 14.1 (Climate Change: Road Network) of the ES [[APP-076](#)] and Appendices 14.1 to 14.4 of the ES which comprise:

- ES Appendix 14.1: Construction GHG Assessment Calculations [[REP2-036](#)]
- ES Appendix 14.2: Operation GHG Assessment Calculations [[REP1-015](#)]
- ES Appendix 14.3: GHG Benchmarking [[APP-148](#)]
- ES Appendix 14.4: Climate Projections Data [[APP-149](#)].

3.7.19. Section 14.3 sets out relevant legislation, policy framework and guidance.

3.7.20. Sections 14.9 and 14.16 set out the embedded and essential mitigation measures for the construction and operation stages of the Proposed Development for respectively GHG and Climate Change.

3.7.21. Embedded mitigation during construction relates mainly to the design of the Proposed Development and the associated embodied carbon emissions. During operation, the Proposed Development has been designed to minimise the requirement for energy consuming operational equipment such as intelligent transport systems wherever possible. The selection of appropriate materials could also help to reduce the need for maintenance and replacement and GHGs associated with this.

3.7.22. In relation to GHG impacts, the Proposed Development has been designed using PAS 2080:2016 Carbon management in Infrastructure (British Standards Institute (BSI), 2016) to manage and reduce

embodied carbon and has been iteratively updated to refine and improve the proposals in relation to a range of design requirements and criteria, including the consideration of sustainability, material use and construction efficiency. The embedded mitigation measures include those listed at paragraph 14.9.4 of section 14.9.

- 3.7.23. For GHG, during operation, the embedded mitigation includes measures such as the use of energy efficient light emitting diodes (LEDs) and weathering steel is proposed for the gyratory bridges which eliminates the need for a paint system and associated maintenance.
- 3.7.24. The essential GHG mitigation during construction includes the adoption of the principles of the waste management hierarchy which would be implemented throughout to reduce GHG emissions associated with waste management.
- 3.7.25. The ExA notes that the essential mitigation measures set out at paragraph 14.9.10 to reduce GHG emissions that would be secured through the fiEMP have not been taken into account within the GHG assessment given that specifics of, for example the proportion of recycled material, is not known at this stage.
- 3.7.26. In relation to Climate Change, embedded mitigation measures include those relating to structural design, flood risk and the landscape and planting strategy to build in climate change resilience. During operation, essential mitigation includes areas of new ecologically valuable habitat as outlined in ES Chapter 8 (Biodiversity).
- 3.7.27. Section 14.10 presents the assessment of likely significant effects for construction and operation on climate and paragraph 14.10.15 provides a comparison to the UK carbon budgets which are set out in Table 14.7. During construction, the main source of GHG emissions is anticipated to be associated with construction materials embodied carbon. In total, it is anticipated that an estimated 37,070 tonnes of carbon dioxide emissions (tCO₂e) would be emitted during construction.
- 3.7.28. During operation, the main source of GHG emissions would be from 'end-users' ie, traffic. Based on the transport model for the Proposed Development, in 2027, end-user and operational energy is anticipated to emit 4,161,286 tCO₂e annually and by 2042 this is anticipated to reduce to 3,554,118 tCO₂e annually. When compared to the baseline, net emissions from traffic and operational energy use are anticipated to result in 3,319 tCO₂e annually and by 2042, 4,691 tCO₂e annually.
- 3.7.29. The Proposed Development for both construction and operation is expected to contribute approximately 0.002% of the UK's 4th carbon budget and 0.001% of the 5th carbon budget and 0.002% of the 6th carbon budget. This is considered a small increase in the magnitude of emissions from the Proposed Development, and the Applicant deems it unlikely that, in isolation, it would materially affect the UK's ability to meet its carbon budgets. Therefore, it is not anticipated to give rise to a significant effect on climate, in line with the position set out within

section 5.18 of the NPSNN and the DMRB LA 114 Climate (Highways England, 2021).

3.7.30. Table 14.3 of ES Chapter 14 sets out the likely significant effects of climate change on the Proposed Development. The ES assessment of effects takes into account the impacts following the implementation of embedded measures to determine the significance of the residual effects. The assessment identified no likely significant effects at either construction or operation stage, both in terms of the impact of the Proposed Development on climate and the impact of climate on the Proposed Development.

3.7.31. The Proposed Development is not anticipating being decommissioned and should decommissioning occur, this would be beyond the period of projected UK Government carbon budgets. The Planning Inspectorate 2020 Scoping Opinion [[APP-031](#)] therefore agreed that impacts from decommissioning could be scoped out of the assessment on this basis.

Issues arising in the Examination

3.7.32. The key issues considered during the Examination were:

- The adequacy of the ES assessment of carbon emissions, including cumulative impact, having regard to the judgment of the High Court in the case of *R (Boswell) v Secretary of State for Transport* [2023] EWHC 1710 (Admin).
- The effects of the Proposed Development on climate change during construction and operation with particular regard to carbon emissions and the ability of Government to meet its carbon reduction plan targets.
- The effectiveness of the proposed mitigation measures relating to design and construction with particular regard to the need to ensure that the carbon footprint of the scheme would not be unnecessarily high.
- The proposed mitigation/adaptation measures and whether these would ensure that the Proposed Development would be sufficiently resilient against the possible future impacts of climate change.

The adequacy of the ES assessment of carbon emissions, including cumulative impact, having regard to the judgment of the High Court in the case of *R (Boswell) v Secretary of State for Transport* [2023] EWHC 1710 (Admin)

The ES Assessment, and the IEMA Guidance

3.7.33. During the Examination, the ES assessment was criticised by IPs including Dr Boswell on behalf of CEPP for not using the Institute of Environmental Management and Assessment (IEMA) guidance on Assessing Greenhouse Gas Emissions and Evaluating their Significance (IEMA, 2022). The IEMA guidance states that it is good practice to

contextualise a project's emissions against multiple sources of evidence such as sector and local emission trajectories, not just national Carbon Budgets as is the methodology within the DMRB LA 114 Climate (Highways England, 2021).

- 3.7.34. The CEPP WR [[REP4-041](#)] submits that the key issue is how the significance of the climate change impacts of carbon emissions associated with the scheme are assessed. They pose two questions "*to what extent does the project contribute, or undermine, securing the Net Zero Strategy ("NZS") - now Carbon Budget Delivery Plan (CBDP) - and the net zero target?*" and "*is there any emissions space available for a project such as M3 Junction 9*".
- 3.7.35. CEPP have provided contextualisation of the Proposed Development against the residual emissions in the CBDP for the surface transport (operation) and industry (construction) sectors and have used the contextualisations to respond to the question as to whether there is any emissions space for the project.
- 3.7.36. CEPP contend that the analysis shows that the emissions of the road transport system in South-East England are approximately 338% of the Tyndall Centre 6th carbon budget for the same area. They contend that this is hugely significant and critical given that the Tyndall Centre budgets are science-based budgets.
- 3.7.37. They conclude that there is not sufficient emissions space in the 4th Carbon Budget (Industry) residual emissions allocation for the project to be constructed, and there is not sufficient emissions space in the 4th Carbon Budget, 5th Carbon Budget and 6th Carbon Budget (Surface Transport) residual emissions allocations for the project to be operated. They submit that if the Proposed Development does not have the available emissions space, then, by definition, it undermines securing the CBDP and the net zero target. They therefore assess it to be "Major Adverse" on the IEMA significance thresholds.
- 3.7.38. CEPP contend that in the context of policy (CBDP) and legislation (the Climate Change Act, the carbon budgets and targets), the evidence of the risk to delivery of the CBDP itself, and the risk to the delivery of the CBDP from the Proposed Development, and the current NPSNN requirement for the scheme not to have a material impact on the ability of Government to meet its carbon reduction targets, the Proposed Development should not be consented.
- 3.7.39. The Applicant's Closing Statement [[REP8-028](#)] acknowledges that there is more than one way to assess the impact of a project's emissions. However, the Applicant's position is that the appropriate standard for motorway and all-purpose trunk roads in the UK is DMRB LA 114 Climate (Highways England, 2021). Under this standard, the policy set out in the NPSNN and the Climate Change Act 2008, the only statutory net zero trajectories are the Carbon Budgets and the 2050 net zero target set at a national level. Accordingly, the Applicant's position is that there is no reasonable basis upon which it can assess the potential likely significant

effect of the Proposed Development's carbon emissions at anything other than at the national level.

- 3.7.40. The Applicant's response to Transport Action Network RR-096 [[REP1-031](#)], sets out how and where the assessment within ES Chapter 14 (Climate) aligns with IEMA guidance methodology. The table within the response to RR-096 (page 64) demonstrates that the same principles set out in the IEMA guidance have been applied throughout the assessment. The response goes on to assess the Proposed Development under the IEMA guidance, concluding that it would have a minor adverse and not significant effect. This is based on the Proposed Development being required to align with the Net Zero Highways Plan (National Highways, 2021), and that the plan in turn aligns with the UK Carbon Budgets.
- 3.7.41. On the basis that the IEMA guidance considers the national budget to only be the starting point for context, the Applicant provided a contextualisation against the indicative CBDP sectoral net zero trajectories for industry and transport in Appendix A of its Comments on DL3 Submissions [[REP4-037](#)]. However, the contextualisation is additional to, but does not provide an alternative assessment of significance to the use of national Carbon Budgets that is provided in ES Chapter 14 (Climate) which follows the required methodology of DMRB LA 114 (Highways England, 2021).
- 3.7.42. The Applicant's response to ExQ2 6.2.12 [[REP5-026](#)] points out that the current guidance and legal context is that road schemes should only be assessed against National Carbon Budgets. On that basis, local carbon budgets, such as the Tyndall Centre budgets, can be used for contextualisation only and cannot be used to assess the significance of effects. Since this is a nationally significant transport infrastructure scheme, it is not appropriate to assess against local budgets as trips enter from and extend beyond the WCC and Hampshire boundaries. Given that the Applicant has provided additional contextualisation against the CBDP, it has not undertaken another contextualisation against the local Tyndall Centre budget, nor is it a requirement to do so in the DMRB LA 114 Climate (National Highways, 2021).
- 3.7.43. The Applicant, in response to the CEPP WR [[REP4-041](#)] and ExQ2 6.2.7 [[REP5-026](#)], contends that the Proposed Development, as a single project for works to the strategic highway, would be highly unlikely to undermine securing the CBDP. In addition, the undertaking of the assessment in accordance with the IEMA guidance would not change the conclusion that the effect would not be significant. The Applicant therefore disagrees that the Proposed Development should be assessed as 'Major Adverse' on the IEMA significance thresholds.
- 3.7.44. WCC [[REP5-037](#)] notes the recent Government announcement (20 September 2023) which delays the sale restrictions on petrol and diesel vehicles and the transition to electric vehicles. The SDNPA response to ExQ2 6.2.3 [[REP5-035](#)] states that the figures for GHG emissions are only likely to increase with the Government's recent decision to push back the ban on the sale of new petrol and diesel cars from 2030 to

2035. The CEPP DL5 submission [[REP5-031](#)] refers to recent updates on the policy and legal framework including the Prime Minister's speech on net zero on 20 September 2023. CEPP [[REP6-028](#)] subsequently withdrew the issue raised in [[REP5-031](#)] for the reasons set out in that submission. The Winchester Friends of the Earth DL5 response to Q 6.2.17 [[REP5-040](#)] also refers to this update.

- 3.7.45. The Applicant responded on the matter of the Prime Minister's announcement to delay the sale restrictions on new petrol and diesel vehicles to 2035 in ExQ3 6.3.7 [[REP6-023](#)]. The Applicant explains that the GHG assessment is based on fleet projection data that pre-dates the previous 2030 petrol and diesel car sale ban which was announced in 2020. The recent announcement is very unlikely to reduce EV uptake to levels below the EFT projections, particularly when noting sale restrictions on new petrol and diesel vehicles are still planned to be phased in with a complete ban in 2035. It is considered that the GHG assessment in ES Chapter 14 is still based on a worst-case scenario and is not affected by the 2023 Government announcement to delay the sale restrictions on new petrol and diesel vehicles to 2035.

The ES assessment of cumulative impact and the case of R (Boswell) v Secretary of State for Transport [2023] EWHC 1710 (Admin)

- 3.7.46. On behalf of CEPP, Dr Boswell submits that the ES does not comply with the EIA Regs which require that the Applicant must provide the cumulative impacts of the project and other existing and/or approved projects. His position is that there is no assessment of the impact of cumulative carbon emissions in the ES [[REP8-030](#)].
- 3.7.47. The WR of CEPP [[REP4-041](#)] repeats what is stated in their RR: *"Significance of GHGs in Chapter 14 is assessed solely on "scheme-only" (Do Something (DS) - Do Minimum (DM)) estimates [percentage figures in Table 14.7]. This does not comply with the EIA Regs which require that the applicant must provide the cumulative impacts of the project and other existing and/or approved projects"*.
- 3.7.48. CEPP contend that once emissions are included from the related cumulative land-based and road developments which the Applicant itself has decided to include in the traffic model, the data clearly shows that the project's GHG emissions when viewed in the context of South-East England do not make a meaningful contribution to the UK's trajectory towards net zero.
- 3.7.49. CEPP in [[REP6-028](#)] section 2, notes that the carbon emissions from other related and locally committed development are expressed in both the Applicant's DS and DM forecasts. However, these carbon emissions are subtracted out before the significance assessment which is based solely upon a carbon emissions figure based on the DS-DM subtraction. CEPP [[REP8-030](#)] further explain the issues involved, and the significance of the data lost by this subtraction procedure, and why this does not comply with the EIA Regs. CEPP at DL8 [[REP8-030](#)] also refer to Schedule 4 of the EIA Regs and submit that CEPP and other IPs have

been prejudiced by the Applicant withholding of information about the traffic model.

- 3.7.50. The same issue on three other DCO schemes was heard at the High Court by Mrs Justice Thornton in the three Judicial Reviews pursued by Dr Boswell in the case of R(Boswell) v Secretary of State for Transport [2023] EWHC 1710 (Admin) on 10 and 11 May 2023. Dr Boswell acknowledges that the judgment went against him at this stage. However, he has appealed this judgment and the matter is due to be heard in the Court of Appeal on 16 February 2024.
- 3.7.51. At ISH3, the Applicant in relation to the judgment of the High Court in the Boswell case submitted that it has met the legal tests required of it and complied with the EIA Regs [[REP4-036](#)]. The Applicant has also responded with specific reference to that High Court case on page 23 of its Comments on DL3 Submissions [[REP4-037](#)]. The three Judicial Review challenges mentioned above found the DMRB LA 114 Climate (Highways England, 2021) methodology to be acceptable given that the assessment of GHG is not limited by a specific geographical boundary and that the UK Carbon Budgets account for cumulative emissions from a number of sectors [[REP4-037](#)].
- 3.7.52. The approach taken to cumulative assessment in accordance with the DMRB is set out in the Applicant's response to ExQ1 6.1.6 and ExQ1 6.1.16 [[REP2-051](#)]. This includes committed development and forecast growth within the area of the traffic model (which covered a variety of development types). The ES Chapter 14 [[REP1-005](#)] paragraph 14.5.27 confirms that the transport model includes traffic flows generated by other locally cumulative developments in the surrounding area. These traffic flows have been used to calculate the DM and DS end-user emissions. Chapter 15 Cumulative effects [[APP-056](#)] paragraphs 15.3.11 and 15.3.12 set out the GHG assessment approach to the consideration of cumulative effects and affirms that the cumulative assessment of different developments together with the scheme is inherent within the GHG methodology.
- 3.7.53. In response to ExQ2 6.2.19 [[REP5-026](#)], the Applicant further explains why it considers that the ES cumulative assessment complies with the EIA Regs and that it was appropriate and lawful to assess the carbon emissions of the Proposed Development against the UK's national carbon budgets rather than in combination with all other schemes in the UK road programme or the local or regional area. The approach to the comparison of the Proposed Development's emissions to the UK carbon budgets, as required in section 3.18 of the DMRB LA 114 Climate (Highways England, 2021), is set out in paragraph 14.5.34 in ES Chapter 14 (Climate). The GHG assessment considers the combined impact of the different direct and indirect sources of GHGs resulting from the Proposed Development on the UK carbon budgets, as set out in Table 14.1 in ES Chapter 14 (Climate). The Applicant contends that the assessment therefore inherently addresses single project cumulative effects.

3.7.54. The High Court decision in the Boswell case on the A47 schemes considered the Inspector's assessment approach, which was that the Applicant through the use of carbon budgets had sufficiently considered the cumulative effects with other projects or programmes. The conclusion of the High Court confirms that that approach to the cumulative assessment was lawful and was not in breach of the EIA Regs. Given that the assessment undertaken within ES Chapter 14 (Climate) follows the same approach as the A47 road scheme's, the Applicant submits that the assessment for the Proposed Development appropriately considered cumulative effects in accordance with the EIA Regs.

The ExA's consideration of the adequacy of the ES assessment of carbon emissions including cumulative impact, having regard to the judgment of the High Court in the case of R (Boswell) v Secretary of State for Transport [2023] EWHC 1710 (Admin)

3.7.55. The assessment of the Proposed Development has been undertaken in accordance with the DMRB LA 114 (National Highways, 2021) methodology. We note that this is the same methodology that was been utilised in those schemes previously challenged in the High Court by Dr Boswell which have been dismissed.

3.7.56. The ExA agrees that the Applicant is not required to follow IEMA guidance given that the DMRB LA 114 (National Highways, 2021) is the appropriate standard for motorway and trunk road schemes in the UK. Furthermore, we do not consider that additional contextualisation over and above that provided by the Applicant is required or necessary. We also agree that the assessment is based on a worst-case scenario and is not affected by the 2023 Government announcement to delay the sale restrictions on new petrol and diesel vehicles to 2035.

3.7.57. DMRB LA 114 Climate (Highways England, 2021), states in paragraphs 3.20 and 3.21 that "*the assessment of projects on climate shall only report significant effects where increases in GHG emissions will have a material impact on the ability of Government to meet its carbon reduction targets.*" The Applicant has also provided a review against the principles of IEMA guidance (IEMA, 2022), which supports the conclusion of effects being not significant.

3.7.58. In using the DMRB LA 114 Climate (Highways England, 2021), the ES Chapter 14 (Climate) concludes that the Proposed Development is not anticipated to give rise to a significant effect on climate. We find no reason to disagree with that conclusion which reflects the position required by section 5.18 of the NPSNN.

3.7.59. During the Examination, both the Applicant and IPs have made submissions on the relevance of recent High Court decisions in R(Boswell) v Secretary of State for Transport [2023] EWHC 1710 (Admin) that have been made on other road schemes. These Judicial Review challenges principally covered criticism on the approach to the assessment of cumulative effects. The conclusion reached by the court

was that DMRB LA 114 Climate (Highways England, 2021) is the appropriate methodology to be used given that the assessment of GHGs is not limited by a specific geographical boundary. Whilst we note that that the judgment of the High Court in the Boswell case is the subject of an outstanding challenge which will shortly be heard in the Court of Appeal, we must apply the law as it stands, and it is not for us to anticipate the outcome of the Court of Appeal hearing.

3.7.60. Paragraph 14.5.37 of ES Chapter 14 (Climate) states that the assessment of climate impacts undertaken is inherently cumulative. This is as a result of: the inclusion of the Proposed Development and other locally committed transport schemes and developments within the traffic model on which the road user carbon emissions calculations are based; the fact that national carbon budgets themselves are cumulative since they address carbon emissions from a wide variety of sources across the different sectors of the economy; and the assessment providing for an overall change in emissions as a result of the Proposed Development which can be set against and in the context of the UK carbon budgets.

3.7.61. The EIA Regs do not specify a methodology for assessment of cumulative effects, just that an ES must report on the 'likely significant effects' of a development on the environment, including cumulative effects arising from other 'existing or approved' development. We are content that the ES assessment has done just that in a satisfactory manner. We agree with the Applicant that the transport model study area is entirely reasonable and corresponds to accepted practice in EIA assessments for such development.

3.7.62. The ExA concludes that the DMRB LA 114 Climate (Highways England, 2021) methodology is acceptable and satisfactory for the assessment of cumulative impact in this case and that the ES assessment complies with the EIA Regs and is lawful. We are satisfied that the ES cumulative assessment has been appropriately undertaken and can safely be relied upon and that the Applicant has met the legal tests required of it.

The effects of the Proposed Development on climate change during construction and operation with particular regard to carbon emissions

The security of carbon budgets

3.7.63. The CEPP post hearing submissions [[REP4-042](#)] section 5.3 'Significance assessment and decision making by the SoS' state that the SoS has always made DCO road decisions on the assumption that net zero, and/or previous climate budgets and targets, is going to be delivered. Dr Boswell's position on behalf of CEPP is that it is no longer credible, to rely upon the delivery of net zero (and the CBDP).

3.7.64. CEPP submit that it is clear from the ES using the Applicant's own data that the Proposed Development would create additional, and very significant, carbon emissions. Their position is that the NZS, the CBDP and the UK carbon budgets are not secured. Further it is contested in the High Court that there has been no adequate or lawful risk assessment of

the policy delivery of the CBDP. They contend that in this situation, any additional emissions from new infrastructure, such as the construction and operation emissions of the M3 J9 scheme, would have a material impact on the ability of Government to meet its carbon reduction targets which is itself dependent on policy delivery of the CBDP.

- 3.7.65. The Applicant's response to ExQ2 6.2.17 summarises Dr Boswell's submissions at [[REP4-042](#)], section 5.3. The Applicant states: "*the question of what reliance that can be made by the Secretary of State on the deliverability of national net zero targets which the Government has a legal duty to deliver is a matter primarily for the Secretary of State*".
- 3.7.66. In reply, CEPP submit that there is clear evidence that the delivery of the carbon budgets and targets "*is not secure*". This comes from CCC Progress Report 2023 and the CBDP itself. It is also clearly evidenced that: "*the assumption that Net Zero, and/or previous climate budgets and targets, and the nationally determined contribution is going to be delivered*", is not safe. However, CEPP agree that these are matters for the SoST and their decision-making process [[REP6-028](#)].

The CCC 2023 Progress Report

- 3.7.67. As to the weight to be attached to the CCC 2023 Progress Report to Parliament, the CEPP DL5 submission [[REP5-031](#)] section 3.2, paragraph 19, submits that significant material weight should be given to that report by the SoST in reaching a reasoned conclusion on the Proposed Development and with respect to s104 PA2008 and that: "*It would be wrong, and challengeable, for the SoS to dismiss the CCC's advice in its report as less than significant material weight*".
- 3.7.68. WCC's response to ExQ2 6.2.9 (iii) [[REP5-037](#)] in relation to NPSNN, paragraph 5.18, refers to the recommendation R2023-148 of the CCC 2023 Report as being evidence that the CCC is concerned about the impact of national road schemes in generating future road traffic growth and demonstrates the impact that this and other schemes have in pushing the UK over its Carbon Budgets.
- 3.7.69. The Applicant's response to ExQ3 6.3.4 acknowledges that the CCC 2023 Report recommends that the Government undertakes a strategic review of road building projects against its environmental goals. The Report recommends that following the review, the Government should develop conditions that can be taken forward into the RIS3 process. The recommendation does not require road building to be put on hold. The M3 J9 Scheme is part of RIS2, not RIS3. The CCC 2023 Report does not change the adopted policy or legal framework for the Proposed Development. The Applicant's position therefore remains that the Proposed Development's GHG emissions have been assessed following the DMRB LA 114 Climate (National Highways, 2021) from which the conclusion is that it would not have a material impact on the ability of Government to meet its carbon reduction targets.
- 3.7.70. The Applicant also comments that the CCC's June 2023 advice to Parliament states that it has less confidence in medium-term targets

being met compared to a year ago, but it does not suggest that net zero will not be achieved, nor does it advise that any development would undermine securing the CBDP. The Applicant considers that the Proposed Development, as a single project for works to the strategic highway, would be highly unlikely to undermine securing the CBDP.

- 3.7.71. In response to ExQ3 6.3.13, the Applicant draws attention to the full quote of Holgate J in R (Friends of the Earth and others) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 which is reproduced in CEPP's submission [[REP5-031](#)] at paragraph 18. The Applicant does not consider that this judgment introduces a legal basis on which significant material weight should be attached to any report made by the CCC. It only demonstrates the weight given to the CCC advice in respect of the challenge to the NZS in that case. It does not create a precedent for attaching significant material weight to the 2023 Progress Report.
- 3.7.72. The CCC's role is to report progress, advise, and make recommendations to the Government on meeting its carbon emissions targets across all sectors, ultimately aiding the Government to take action should concerns on progress against the net zero target arise. The Applicant is entitled to proceed on the basis that the Government will respond to the CCC's Progress Report and will continue to meet its legal obligations that it has set and will continue to set itself. The degree of weight to be attached to the findings of the CCC is a matter for the decision-maker. The Applicant submits that there is no policy or legal position which determines that significant material weight should be attached.
- 3.7.73. Furthermore, the Applicant considers limited weight should be given to the CCC Progress Report because it does not specifically relate to the consideration of s104 PA2008 as set out in ExQ2 6.2.17 [[REP5-026](#)]. The Applicant does not consider that the question over whether the carbon budgets are secured would impact s104. As Dr Boswell's submission suggests, the question over whether the budgets are secured only results in a conclusion that the delivery of the 2030 Nationally Determined Contribution (NDC) or 6th carbon budget may or may not be achieved. This uncertainty does not create a certainty that there is a breach in international obligations, statutory duty or other law, meaning that the circumstances of sections 104(4)-(6) are not met. The difficulties in meeting carbon budgets, or in this case, the relative risk of the CBDP is matter for the SoST to take into account.

Contextualisation with sectoral reduction strategies and breach of statutory duty

- 3.7.74. The Applicant has provided a contextualisation of the Proposed Development's emissions against the residual emissions projections given in the CBDP and noted the limitations and assumptions associated with compiling these projections in Appendix A to Applicant's Comments on DL3 submissions [[REP4-037](#)]. These residual emissions, as CEPP state, form part of the sectoral reduction strategies that were advised by IEMA to be included in GHG assessments.

- 3.7.75. The Applicant in response to ExQ3 6.3.18 [[REP6-023](#)] and CEPP's stance that the contextualisation provided by the Applicant to date is insufficient due the assumptions inherent to it, contends that it is not under a duty to contextualise the Proposed Development against the carbon reduction strategies based on assumptions that sectoral residual emissions will not be met. Neither is the SoST under a duty to determine the application using said contextualisation. CEPP point to the fact that IEMA advise that context should be provided with sectoral reduction strategies, paragraph 32 of its submission [[REP5-031](#)] goes on to state: "*a second vital part of the contextualisation must involve explicitly evaluating the M3 J9 with the risks to those sectors as assessed by the CCC in its progress report and by the CBDP Risk Tables held by the Government*".
- 3.7.76. The Applicant submits that the position regarding evaluation of risk is not expressed in the IEMA guidance referenced by CEPP and this is an opinion of CEPP, not a legal requirement. As CEPP state, the risk tables are not available to the Applicant on the basis that they have not been published by the Government. CEPP has not produced these and is apparently relying on disclosure through separate legal processes to assert that these tables exist. The Applicant notes that even if IEMA did also advise that any contextualisation should take account of delivery risk, that the Applicant is not under an automatic duty to comply with IEMA guidance, and the SoST is not under an automatic statutory duty to comply with independent advice meaning that failure to do so would not create an interaction with s104(5) PA 2008.

Failure to give an adequately reasoned conclusion

- 3.7.77. CEPP [[REP5-031](#)] also submit that a failure to address whether the emissions from the scheme would fit reasonably within the relevant sectoral reduction strategies in the CBDP would amount to a breach of statutory duty under s104(5), or alternatively a failure to give an adequately 'reasoned conclusion' under regulation 21 of the EIA Regs, and/or a breach of the public law duty to give reasons.
- 3.7.78. The Applicant's response to ExQ3 6.3.18 also provides a detailed explanation on the submissions made by CEPP at DL5 as to whether the latest evidence and risk analysis of the CBDP is required to make a reasoned conclusion on whether approving the Proposed Development would lead to a breach of international obligations, statutory duty or be unlawful.
- 3.7.79. Regulation 21 of the EIA Regs states that when deciding whether to make an order granting development consent for EIA development the SoS must reach a "*reasoned conclusion*" on the significant effects of the proposed development on the environment, taking into account the examination of the environmental information provided. The reasoned conclusion must be up to date at the time that the decision as to whether the order is to be granted is taken, and that conclusion shall be taken to be up to date if, in the opinion of the SoS, it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the development described in the application. The case of R (on the application of Suffolk Energy Action Solutions SPV

Limited) v Secretary of State for Business Energy and Industrial Strategy [2023] EWHC 1796 (Admin) considered Regulation 21 and its context in the 2017 Regulations. The relevant section of the judgment is at paragraphs 52-69.

- 3.7.80. The Applicant's position is that it has not failed to address whether emissions from the Proposed Development fits reasonably within the relevant sectoral reduction strategies in the CBDP. Therefore, the SoST would not fail to give a reasoned conclusion based on the information before them. Incorporating the objections of CEPP, that the contextualisation provided is not sufficient due to the assumptions inherent in it which do not account for the risk of delivery of the carbon targets; the Applicant's position would be that even if it were able to provide additional environmental information which incorporated some element of 'delivery risk', this would not alter the conclusions of the environment information on the significant effects of the Proposed Development.
- 3.7.81. As the conclusions of the environmental information would not change, the suggestions made by CEPP do not impact the reasoned conclusion under Regulation 21. However, the adequacy of the information provided is a matter for the SoST (subject to *Wednesbury* unreasonableness). Given the information requested by CEPP would not alter the conclusions of the ES, the Applicant cannot see a reason how the SoST could be said to be acting irrationally if a decision was made without the said information.

Public law duty to give reasons

- 3.7.82. The Applicant's response to ExQ3 6.3.18 states that this public law duty to give reasons has been summarised effectively in South Bucks District Council and another v Porter (No.2) [2004] 4 All ER 775 with paragraph 36 being the principal paragraph on the issue. The duty to give reasons is certainly a matter for consideration by the SoST, and in consideration of this duty the SoST should consider whether explanation of the treatment of IEMA requirements and delivery risk is necessary when providing an adequately reasoned decision.

The case of R (on the application of Transport Action Network Limited) v Secretary of State [2021] EWHC 2095 (Admin)

- 3.7.83. The Applicant's response to ExQ2 6.2.27 comments on the relevance to this Examination of the 'security' of carbon budgets. The Applicant refers to the case of R (on the application of Transport Action Network Limited) v Secretary of State [2021] EWHC 2095 (Admin), which involved a claim which related to the SoS's decision to designate RIS2. It was argued that the SoS was obliged to take into account a quantified assessment of the emissions from the programme in RIS2 and to consider their impact on the ability of the UK to meet the net zero target in 2050 and the carbon budgets running to 2032.
- 3.7.84. In arguing this, the claimants referred to the likelihood that the UK will fail to meet carbon budgets four and five as being a material

consideration for the SoS to take into account. This claim was defended on the basis that SoS had knowledge of the relevant policy. It was held that the SoS would have known the difficulties faced by the UK in meeting carbon budgets four and five and was able to assess this as part of his decision. The Applicant submits that the same logic would apply to any decision taken by the SoS on the Proposed Development's impact on the carbon budgets.

- 3.7.85. CEPP in response on the relevance of 'security' of carbon budgets, submits that the application of the same logic as in the R (on the application of Transport Action Network Limited) v Secretary of State [2021] EWHC 2095 (Admin) decision assists their case. For the Proposed Development, the SoS does know the risk framework for the delivery of the CBDP and the carbon budgets and targets, and the breaches CEPP has identified. CEPP's point is that as the SoS does know this, and it has been presented to them in the CEPP submissions, in the CCC report, in the CBDP itself and its Risk Tables, then the SoS must make a reasoned decision based on all that information.

The case of R (Friends of the Earth) v Secretary of State for Business Energy and Industrial Strategy [2022] EWHC 1841 (Admin)

- 3.7.86. The Post Hearing submission of Winchester Action on Climate Crisis [[REP4-049](#)] at page 13 submits that the project would fail the risk assessment test posed by the judgement in R (Friends of the Earth) v Secretary of State for Business Energy and Industrial Strategy [2022] EWHC 1841 (Admin).
- 3.7.87. The CEPP DL5 submission [[REP5-031](#)] indicates that the Friends of the Earth, Client Earth and Good Law Project, have been given permission to go to a full Judicial Review hearing in the High Court for the second time in under two years because of: "*the Government's failure to include a proper assessment of the delivery risks associated with the policies and proposals in the Carbon Budget Delivery Plan*".
- 3.7.88. In response to ExQ2 6.2.15 the Applicant states that the judgment in that case relates to the Government's 2021 Net Zero Growth Plan particularly in relation to the publishing of the NZS. The October 2021, NZS was laid before Parliament under s14 Climate Change Act 2008 as a report and followed the SoS setting the 6th carbon budget under the Act for the period 2033-2037. The NZS included the government's proposals to meet carbon budgets under the CCA, to achieve its NDC under the Paris agreement and outlined the government's decarbonisation policies.
- 3.7.89. The case was based on a series of grounds relating to breach of sections 13 (Duty to prepare proposals and policies for meeting carbon budgets) and 14 (Duty to report on proposals and policies for meeting carbon budgets) of the CCA and that the NZS was not compatible with the Human Rights Act 1998 (Articles 2, 8 and 14 European Convention on Human Rights (ECHR)), meaning that carbon budgets could not be met under the CCA. Whilst the Court found that the NZS had been unlawfully

adopted, it should be highlighted that the Court was not asked to consider the merits of the NZS, or any individual merits of that strategy.

3.7.90. The case concerned the adequacy of the information before the SoS and the subsequent effect of that information on the strategy as a whole. The Government has since published an updated 2023 Net Zero Growth Plan. It is noted that Friends of the Earth have again filed for judicial review of the 2023 Net Zero Growth Plan however, without knowledge of the detail of that application or foresight as to the outcome of that legal process the Applicant must proceed on the basis that the 2023 Net Zero Growth Plan is legally binding. The key paragraphs of this judgment are 16, 20, 22, 194, 196-7, 204, 206-217, 230, 223, 230-242, 248-260 and 275. The assessments applied in that case related to the 2021 Net Zero Growth Plan and did not create a test for individual projects or schemes. The Applicant does not consider those assessments to be applicable to the Proposed Development.

The application of s104 PA2008

3.7.91. Since the application has an applicable NPS, s104 PA2008 applies to the decision making. This states that the SoS must decide an application in accordance with the relevant NPSs except to the extent s/he is satisfied that to do so would:

- lead to the UK being in breach of its international obligations (s104(4));
- be in breach of any statutory duty (s104(5));
- be unlawful (s104(6));
- result in adverse impacts from the development outweighing the benefits (s104(7));
- or be contrary to regulations about how its decisions are to be taken (s104(8)).

3.7.92. CEPP's WR [[REP4-041](#)] in relation to the CCC Report (June 2023) notes that, in the CBDP, there is a shortfall on the emissions reductions required to meet the UK 6th carbon budget (6CB) and UK's NDC for 2030, an international obligation under the Paris agreement.

3.7.93. CEPP submit that a failure to address whether the emissions from the M3 J9 scheme fits reasonably within the CBDP and its risk framework, and give reasons, would amount to a breach of statutory duty under s104(4), s104(5) or s104(6); alternatively a failure to give an adequately 'reasoned conclusion' under regulation 21 of the EIA Regs, including in respect of the up-to-date position and/or a breach of the public law duty to give reason [[REP6-028](#)].

3.7.94. The CEPP WR section 10 'Comments on Decision-making for M3 J9' headed 'Considerations that must be before the Secretary of State' lists points A to M for such consideration. Points H to M relate to the

application of s104 PA2008. The specific points made at I, K and M are as follows:

- 3.7.95. Point I: s104(4) PA2008 - The Proposed Development is likely to make the shortfall on the NDC worse. Since CBDP contains no fit for purpose risk assessment, the Applicant can provide no evidence that the Proposed Development can be built whilst securing the 2030 NDC. Therefore, the Proposed Development risks the UK being in breach of its international obligations, and the SoST cannot have any legal certainty that approving the Proposed Development would not lead to the UK being in breach of its international obligations.
- 3.7.96. Point K: s104(5) PA2008 - the statutory duty to deliver the 5th and 6th carbon budgets depend upon the successful delivery of the CBDP. By adding new construction and operation emissions to the vital 5th and 6th carbon budget periods the Proposed Development risks the UK being in breach of the Climate Change Act 2008 and the SoST being in breach of his/her statutory duty. The SoST cannot have any legal certainty that approving the Proposed Development would not lead to him/her being in breach of a statutory duty.
- 3.7.97. Point M: s104(6) PA2008 - the legal requirement to deliver the 5th and 6th carbon budgets under the Climate Change Act 2008 depend upon the successful delivery of the CBDP. The Proposed Development risks the UK being in breach of the Climate Change Act 2008, and the SoST being in breach of the law. The SoST cannot have any legal certainty that approving the Proposed Development would not lead to him/her being in breach of the law.
- 3.7.98. In response to ExQ2 6.2.17 [[REP5-026](#)] the Applicant has commented on the relevance of s104 and Dr Boswell's suggestion that various subsections are potentially engaged. The Applicant submits that this is a similar argument to that used in R (on the application of Save Stonehenge World Heritage Site Limited) v Secretary of State for Transport [2021] EWHC 2161 (Admin). That case found that s104(4) does not operate to incorporate international obligations in domestic law. Instead, it operates to permit the discretion of a SoS so that where making a decision pursuant to a NPS would result in a breach of an international obligation, the SoS is no longer obligated to take a relevant NPS into account. Therefore, the extent of the impact of breaching an international obligation under s104 extends to permitting the exercise of discretion as to whether or not to continue to decide an application in accordance with paragraphs 5.17 and 5.18 of the NPSNN. This would apply equally to s104(5) and 104(6) as it does s104(4).
- 3.7.99. The Applicant does not consider that the question over whether the carbon budgets are secured would impact s104. The question over whether the budgets are secured only results in a conclusion that the delivery of the 2030 NDC or 6th carbon budget may or may not be achieved. This uncertainty does not create a certainty that there is a breach in international obligations, statutory duty or other law, meaning that the circumstances of s104(4)-(6) are not met.

- 3.7.100. The Applicant's position is that the context of the carbon emissions of the Proposed Development must be assessed in accordance with the overall UK carbon budgets. This is set out in R (on the application of Transport Action Network Limited) v Secretary of State [2021] EWHC 2095 (Admin), and in particular, Goesa Ltd, R (On the Application Of) v Eastleigh Borough Council [2022] EWHC 1221 (Admin).
- 3.7.101. CEPP's DL6 response to the Applicant's position that it does not consider that the issue of whether the carbon budgets are secured would impact s104, is that on the evidence known today, and which would be before the SoST, the Government's CBDP says that (i) there is a missing 8% of emissions reductions required for the NDC in the year 2030, and (ii) there is the whole economy shortfall of 32 MtCO_{2e} over the 5-year 6th carbon budget. Therefore, two conditions which each engage s104 already exist.

The reliance to be placed on the NPSNN

- 3.7.102. As indicated above, CEPP's position is that the delivery of the carbon budgets and targets is not secure. Therefore, the assumption that net zero, and/ or previous climate budgets and targets, and the NDC is going to be delivered, is not safe. The assumption, which is built into paragraph 5.17 of the NPSNN, is out of date as it was written prior to the net zero target, the NZS and the CBDP stating that the statutory plan required by the Climate Change Act is now the CBDP. Given this, CEPP contend that the SoST cannot depend upon paragraph 5.17 NPSNN without knowledge of the current policy and legal framework and its shortcomings with respect to security of policy delivery.
- 3.7.103. The Applicant in response to ExQ2 6.2.17 disagrees and submits that the wording of the NPSNN continues to be applicable after the adoption of the net zero target. A review of the NPSNN has been carried out and a new draft NPSNN is currently in consultation. This was in part due to change in climate policy: R (on the application of Transport Action Network Ltd) v Secretary of State for Transport [2022] EWHC 503 (Admin) in which Chamberlain J on 9 March 2022 summarised the need of the review for the NPSNN which had been identified as needing a review since the adoption of the net zero target.
- 3.7.104. Chamberlain J stated that as part of the review the SoS had not revised or suspended any part of the NPSNN. Chamberlain J rejected in the judicial review the claim that the SoS was wrong not to suspend the NPSNN in light of changes to carbon policy. He noted that reference to the carbon budgets and targets that were in place at the time the NPSNN was designated cannot be read as directing inspectors to assess carbon impacts against out-of-date budgets as inspectors cannot be required to ignore a change in the law.
- 3.7.105. CEPP submit that as regards the assumption which is built into paragraph 5.17 of the NPSNN being out of date, the Transport Committee report on the draft NNPSNN clearly identified the current NPSNN, and paragraph 5.17, as being "out of date." The Transport Committee recommended that the draft NPSNN should be amended to provide a definition of, and

clear and comprehensive guidance on residual GHG emissions and additional emissions from schemes.

- 3.7.106. The Applicant submits that paragraph 5.17 needs to be read with recent carbon targets and policy which will include the CBDP. The NPSNN remains the basis for decision making in the NSIP process as a designated NPS under s104 PA2008. The draft NPSNN will constitute a relevant planning consideration but cannot be taken to be the relevant policy against which the Proposed Development should be judged.
- 3.7.107. Nevertheless, in response to ExQ2 6.2.18, the Applicant points out that paragraph 5.17 of the NPSNN is consistent with the draft NPSNN (2023) paragraph 5.35. In addition, the draft NPSNN (2023) paragraph 5.37 states that *"approval of schemes with residual carbon emissions is allowable and can be consistent with meeting carbon budgets, net zero and the UK's Nationally Determined Contribution"*.

The application of NPSNN paragraphs 5.17 and 5.18

- 3.7.108. The CEPP ISH3 Post Hearing submissions [[REP4-042](#)] section 5.3 includes criticism of the NPSNN paragraph 5.17 assumption that it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets, given that the NNNPS pre-dates the NZS and the CBDP by seven years and nine years respectively.
- 3.7.109. The Applicant's response to ExQ2 6.2.17 points out that NPSNN does not introduce a test for considering the 'security' of meeting the relevant targets. There is no requirement to assess whether budgets are "secure" before being able to assess the significance of a scheme against those budgets. The NPSNN states that any road project will in isolation be very unlikely to affect the ability of the Government to meet the relevant targets. The reason for this is because the Government has a *"credible plan for meeting carbon budgets"* and the Government is *"legally required to meet this plan"*.
- 3.7.110. The Applicant submits that it is only those road projects that have significant carbon emissions that would have a material impact on the ability of Government to meet its carbon reduction targets which would contribute to being a relevant consideration to weigh in the planning balance. As such, the NPSNN anticipates the argument that has been made by Dr Boswell on behalf of CEPP; by explicitly confirming that the Government is legally required to meet its obligations within the national carbon reduction strategy.

Whether the Proposed Development would have significant impacts on the ability of the Government to meet its carbon reduction targets

- 3.7.111. Dr Boswell's WR in his Post Hearing submissions [[REP4-041](#)], paragraph 142 concludes that any additional emissions from new infrastructure, such as the construction and operation emissions of the M3 J9 scheme,

would have a material impact on the ability of Government to meet its carbon reduction targets.

- 3.7.112. Winchester Action on Climate Crisis [[REP2-082](#)] calculate that the Applicant's estimate of increased emissions is too high when compared with the government's carbon reduction plans for 2027 and 2042. They submit that once full account has been taken of the emissions target reductions set out in the Road to Net Zero, it is clear the calculated increase in emissions caused by the Proposed Development would undermine the Road to Net Zero. It is too far outside the default tolerance suggested in the NPSNN.
- 3.7.113. The Applicant's response to ExQ2 6.2.17 notes that the 2050 Net Zero target, and thereby the carbon budgets, are legal obligations to be met under the Climate Change Act 2008. The way in which the Government is and will plan to deliver the carbon budget will continue to be amended and adapted over the next few decades. Given that a legally binding commitment has been made towards net zero and carbon budgets have been adopted within the UK's legal framework. In addition, the CCC has recently provided up-to date recommendations to Government in its June 2023 report on what actions are required. The Applicant notes that whilst the CCC (in its June 2023 report) cited that it had decreased confidence compared to a year ago that medium-term targets would be met, it did not assert that net zero would not be achieved, nor that the consenting and delivery of road programmes should halt.

The ExA's consideration of the effects of the Proposed Development on climate change during construction and operation with particular regard to carbon emissions

- 3.7.114. The position of CEPP is that there is clear evidence from the CCC Progress Report 2023 and the CBDP that the delivery of the carbon budgets and targets is not secure and that the assumption that net zero, and/ or previous climate budgets and targets, and the NDC is going to be delivered, is not safe. However, both the Applicant and CEPP agree that the question of what reliance can be made by the SoS on the deliverability of national net zero targets which the Government has a legal duty to deliver is a matter primarily for the SoST and their decision-making process. We also agree that this is self-evidently the position.
- 3.7.115. As regards the CCC 2023 Report to Parliament, whilst it recommends that the Government undertakes a strategic review of road building projects against its environmental goals, it does not require road building to be put on hold. The Proposed Development is already part of RIS2 and the CCC 2023 Report does not change the adopted policy or legal framework against which it falls to be considered. We concur with the Applicant that the Proposed Development, as a single project for improvement works to the strategic highway, would be highly unlikely to undermine securing the CBDP.
- 3.7.116. We have already concluded that the DMRB LA 114 Climate (Highways England, 2021) is the appropriate methodology to be used in this case.

We do not consider that the Applicant is under a duty to contextualise the Proposed Development against the carbon reduction strategies based on assumptions that sectoral residual emissions will not be met. The position regarding evaluation of risk is not expressed in the IEMA guidance referenced by CEPP. In any event, the Applicant is not under a duty to comply with IEMA guidance. We do not consider that failure to do so on the part of the SoST would create an interaction with s104(5) PA2008.

- 3.7.117. We do not believe that the “latest evidence and risk analysis of the CBDP” is required to make a reasoned conclusion on whether approving the Proposed Development would lead to a breach of international obligations, statutory duty or be unlawful and thus engage s104(4), (5) or (6) PA2008. We disagree with the stance of CEPP on this point for the reasons provided by the Applicant in response to ExQ3 6.3.18. We are satisfied that the Applicant has complied with Regulation 21 of the EIA Regs and provided a “reasoned conclusion” on the significant effects of the Proposed Development on the environment.
- 3.7.118. We have considered the CCC report to Parliament (June 2023), and the criticisms made of the NPSNN by IPs. However, we believe that the application should continue to be considered and determined in accordance with the NPSNN as existing Government policy in the form of a designated NPS under s104 PA2008. We have set out above in Section 3.2 of this Report the relevance and weight we consider should be attributed to the draft NPSNN.
- 3.7.119. The obligation to carry out an assessment of the likely significant effects of the Proposed Development on GHG emissions is derived from the EIA Regs. In accordance with NPSNN paragraph 5.17, the Applicant has provided evidence of the carbon impact of the project and an assessment against the Government’s carbon budgets. In carrying out its assessment, the Applicant has had regard to the applicable law and policy tests, including under the Climate Change Act 2008, the PA2008 and the NPSNN, as well as DMRB LA 114 (Highways England, 2021).
- 3.7.120. We have had regard to the issues raised by IPs on the need to consider the risk to delivery of the Carbon Budgets, which the Government has a legal duty to deliver, in the context of the legal challenge to the CBDP. We note that the assessments applied in the case of R (Friends of the Earth) v Secretary of State for Business Energy and Industrial Strategy [2022] EWHC 1841 (Admin) related to the 2021 Net Zero Growth Plan. We concur with the Applicant that those assessments are not directly applicable to the Proposed Development.
- 3.7.121. We also agree that the case of R (Friends of the Earth and others) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 does not create a precedent for attaching significant material weight to the 2023 Progress Report. The degree of weight to be attached to the findings of the CCC is a matter for the decision-maker. Whilst the CCC Progress Report is clearly a highly relevant and material consideration in this case, the difficulties in meeting carbon budgets, or

the relative risk of the CBDP is a matter for the SoST to take into account.

- 3.7.122. Existing legislation commits to net zero by 2050 with legally binding carbon budgets set in accordance with legislation. The 2050 net zero target, and thereby the Carbon Budgets, are legal obligations to be met under the Climate Change Act 2008. The way in which the Government plans to deliver the Carbon Budget will no doubt continue to be amended and adapted over the next few decades. We concur that it is not for the Applicant to hypothesise on whether the Government will be able to meet its legal commitments to net zero and deliver on the nationally set carbon budgets. The Applicant is entitled to proceed on the basis that the Government will respond to that and will continue to meet its legal obligations that it has set and will continue to set itself.
- 3.7.123. The Applicant has provided a contextualisation of the Proposed Development's emissions against relevant UK carbon budgets in Table 14.7 of ES Chapter 14: Climate [REP1-006]. The ES finds that the Proposed Development is expected to contribute approximately 0.002% of the UK's 4th carbon budget and 0.001% of the 5th carbon budget and 0.002% of the 6th carbon budget. This represents a small increase in the magnitude of emissions from the Proposed Development. On that basis, it is not anticipated to give rise to a significant effect on climate, in line with the position set out within the DMRB LA 114 Climate (Highways England, 2021).
- 3.7.124. We conclude that a robust and comprehensive ES assessment has been undertaken of the impact of the Proposed Development on climate in accordance with the DMRB LA 114 Climate (Highways England, 2021) and the NPSNN. This assessment has shown that the increase in carbon emissions resulting from the Proposed Development would not be so significant that, in isolation, it would have a material impact on the ability of Government to meet its carbon reduction targets and would meet the NPSNN paragraph 5.18 test.

The effectiveness of the proposed mitigation measures and whether any additional mitigation/ offsetting measures are required

Additional mitigation/ offsetting measures

- 3.7.125. WCC declared a Climate Emergency in 2019. They aim to cut the Council's own emissions to net zero by 2024, and for the whole district's emissions to be carbon neutral by 2030. WCC submits that the Proposed Development must be designed to be carbon neutral as a minimum to meet both the Council's policies and also those of the Climate Change Act 2008.
- 3.7.126. The SoCG [REP8-018] between WCC and the Applicant records the WCC position as being that the increase in emissions resulting from the Proposed Development of 160,624,500 tCO_{2e} over the sixty-year lifespan of the Proposed Development would be significant. At section 10.6 of the SoCG they suggest that one means of mitigation would be to provide the

council with Carbon Offsetting Funds that could reduce emissions by the annual emission

- 3.7.127. WCC's response to ExQ2 6.2.8 [REP5-037] lists additional mitigation measures that are sought including: the creation of a Carbon Fund, consideration of lower speed limits through the zone to lower traffic emissions, consideration of additional design elements to support the Government's Net Zero Growth for Transport such as a compound to be 'design ready' for a hydrogen fuelling hub or EV charging zone for HGVs/ coaches/ cars post construction, a contribution towards cycle routes in the area, tree planting or the purchase of Carbon Credits that would cover the increase in emissions generated by the scheme.
- 3.7.128. These are also referred to in the WCC response to ExQ2 6.2.10 which provides figures for both construction and operation derived from the UK ETS (UK Emissions Trading Scheme). The WCC response to ExQ3 6.3.5 confirms that the concept of the creation of a Carbon Offset Fund to lock in carbon reductions from local projects would seem to fulfil the offsetting requirement over both the construction and operational phases of the junction upgrade and a suggested level of income has been put forward in alignment with UK ETS (UK Emissions Trading Scheme).
- 3.7.129. The Applicant's response to RR-102b [REP1-031] sets out why offsetting is not required. The Applicant submits that the mitigation proposed is adequate such that the carbon emissions would not be unnecessarily high, and that all reasonable steps to mitigate carbon emissions have been taken consistent with NPSNN paragraph 5.19. The Applicant also points out that there is no legal requirement for road transport or the Proposed Development to become net zero nor is there any policy in place that requires schemes to offset residual GHG emissions. The carbon reduction hierarchy, as defined in paragraph 3.22.1 in the DMRB, has been applied to mitigate the Proposed Development's GHG emissions. The carbon hierarchy sets out that measures to avoid/prevent and reduce emissions should be implemented prior to remediation or offsetting.
- 3.7.130. In response to ExQ2 6.2.22 and ExQ3 6.3.2 the Applicant explains further why it does not consider that additional mitigation measures are required and why it does not agree to the provision of additional mitigation in the form of a Carbon Fund or a hydrogen fuelling hub.
- 3.7.131. The requirement of NPSNN, paragraph 5.19, is for the Applicant to provide "*evidence of appropriate mitigation measures (incorporating engineering plans on configuration and layout, and use of materials) in both design and construction*". The Applicant's evidence on this has been provided in ES Chapter 14 (Climate) which sets out the mitigation measures and the use of the DMRB LA 114 Climate (National Highways, 2021) carbon mitigation hierarchy (avoid/prevent, reduce, remediate) to prevent emissions from being unnecessarily high.
- 3.7.132. In response to ExQ3 6.3.1, the Applicant has provided a list which summarises all climate mitigation measures which are included in various

submission documents. The Applicant has also provided responses on the quantification of mitigation measures in ExQ1 6.1.10 [[REP2-051](#)] and RR-102b in Applicant Responses to RRs [[REP1-031](#)].

The WCC Carbon Neutrality Action Plan

- 3.7.133. WCC [[REP5-037](#)] also refers to the CNAP which the Applicant has discounted as motorway emissions are excluded from the Council's Action Plan. WCC states that the reason for this exclusion is because motorway emissions are beyond the scope of the Council's control and motorways are national infrastructure which require a national response. WCC submits that the NSIP process is part of that national response referred to in the CNAP and disagrees that the overall aims of the CNAP should be discounted. That position is also supported by the Winchester Friends of the Earth response to ExQ2 6.2.4 [[REP5-040](#)].
- 3.7.134. The Applicant's response to ExQ3 6.3.9 states that if it is accepted by WCC that carbon emissions arising from motorway schemes that are defined as NSIPs require a national response, then it follows that the emissions are to be managed by Government-led national targets and policies. In this case the NPSNN is the relevant policy document as defined in s104(2)(a) PA2008, and the emissions targets are those determined by the UK carbon budgets.
- 3.7.135. The Applicant points out that the Climate Change Act 2008 does not impose a legal duty to set carbon budgets at a smaller scale than the national level, including the local authority level. The impact assessment has therefore only been undertaken against national level carbon budgets which reflect existing Government policy to reach net zero by 2050 and an analysis against a sector or local 2030 target has not been undertaken in accordance with the DMRB LA 114 Climate (National Highways, 2021) and the NPSNN.
- 3.7.136. The aims and objectives of the CNAP are focused on local measures to reduce carbon emissions that are within the ambit of WCC and as such it is not the appropriate policy document for assessing or managing carbon emissions of the motorway. To reduce all carbon emissions within the district of Winchester would be inappropriate in the context of NSIPs for which there is specific national policy, guidance, and case law, relating to the control of carbon emissions. It is for these reasons that the Applicant's position remains that it is of limited weight in the determination of the application with respect to s104(2)(d) PA2008. At ISH3, the Applicant also confirmed that it had given limited weight to Policy DS1 in the Winchester Local Plan.

The ExA's consideration of the effectiveness of the proposed mitigation measures

- 3.7.137. In relation to the first part of NPSNN paragraph 5.19, the ExA is satisfied that the Applicant has presented evidence of appropriate mitigation in both design and construction and how it would be secured within the dDCO.

- 3.7.138. ES Chapter 14 (Climate) sets out the proposed mitigation measures including design efficiencies, selection of materials that have lower embodied carbon emissions, facilitating active and sustainable travel and tree planting and through the use of the DMRB LA 114 Climate (2021) carbon mitigation hierarchy (avoid/ prevent, reduce, remediate) to prevent emissions from being unnecessarily high. It is also outlined in the Applicant's response to ExQ3 6.3.1 which summarises all Climate mitigation measures which are included in various submission documents and the mechanism whereby they would be secured.
- 3.7.139. Turning now to the effectiveness of such mitigation measures, as set out in response to ExQ3 6.3.2 and at ISH3, item 3(ii) [[REP4-036](#)], the Applicant's position remains that the mitigation proposed is adequate such that the carbon emissions would not be unnecessarily high, and that all reasonable steps to mitigate carbon emissions have been taken.
- 3.7.140. WCC disagree and seek further mitigation measures including the provision of carbon offsetting funds. In support, the WCC refer to the CNAP and submit that the overall aims of the CNAP should not be discounted even though motorway emissions are beyond its scope and the Council's control.
- 3.7.141. On the relevance of the CNAP, the scope of that Action Plan (as outlined on Page 8 of the document) excludes motorways as these are national infrastructure and will require a national response. It states that the Council will focus on measures that reduce the need to travel by car through public transport campaigns and collaborating with the public and private sector to enhance services. In our view, the aims, and objectives of the CNAP are clearly focused on local measures to reduce carbon emissions that are within the ambit of WCC. Furthermore, the Proposed Development's operational road-user emissions would not fall within WCC's target to be a carbon neutral Council by 2030. We do not consider that the CNAP represents an appropriate policy document for assessing or managing carbon emissions of the motorway or that it provides justification for the offsetting and additional mitigation measures sought by WCC.
- 3.7.142. Whilst we recognise the value of WCC's targets which are aimed to achieve carbon neutrality by 2030, the Climate Change Act 2008 does not impose a legal duty to set carbon budgets at a smaller scale than the national level, including the local authority level. Furthermore, there is no requirement in the Climate Change Act 2008 or in Government policy for carbon emissions for all road transport to become net zero. There is also no policy in place that requires schemes to offset residual GHG emissions.
- 3.7.143. We therefore consider it entirely appropriate for the Applicant's impact assessment to have only been undertaken against national level carbon budgets which reflect existing Government policy to reach net zero by 2050 with any net increase in emissions from a particular policy or project to be managed within the Government's overall strategy.

- 3.7.144. That ES assessment sets out the mitigation measures that would be utilised during construction to manage and reduce embodied carbon. The Proposed Development has been designed using PAS 2080 to manage and reduce embodied carbon and the fiEMP includes several mitigation measures which would help to reduce GHG emissions during construction. In addition, a Site Waste Management Plan would be implemented which would help to reduce GHG emissions associated with waste management. During operation, the assessment finds that there would be no significant effect associated with GHG emissions.
- 3.7.145. As indicated above, we agree with the conclusions of the ES assessment that the increase in emissions that would result from the Proposed Development would not have a material impact on the ability of UK Government to meet its carbon budgets. Given that conclusion we do not consider that any additional mitigation is required. In accordance with paragraph 5.19 NPSNN, we find the mitigation measures relating to design and construction to be adequate and we are satisfied that they would be effective in ensuring that the carbon footprint of the Proposed Development would not be unnecessarily high.

Whether the proposed mitigation/ adaptation measures would ensure that the Proposed Development would be sufficiently resilient against the possible future impacts of Climate Change

- 3.7.146. The ES Chapter 14 [[REP1-006](#)] considers the Proposed Development's vulnerability and resilience to Climate Change. UKCP18 climate projections were used to establish evolving baseline climate conditions up to 2099. Section 14.6 of ES Chapter 14 (Climate) sets out the mitigation that has been incorporated into the design of the Proposed Development. The ES concludes that with this mitigation in place, the impact of climate change on the Proposed Development would not be significant.
- 3.7.147. These mitigation measures are summarised in the Applicant's response to ExQ1 6.1.1 [[REP2-051](#)]. They include the drainage system which incorporates flood alleviation measures, including the attenuation storage with a capacity to accommodate a 1 in 100-year flow event with a climate change allowance of 40%, the integration of Sustainable Drainage Solutions (SuDS) such as basins and swales. New landscaping and planting would create multifunctional habitat corridors within the Proposed Development and include the creation of new native woodland grassland and scrub. Consideration would be given to drought and waterlogging tolerant species at the detailed design stage. ES Appendix 7.6 OLEMP [[APP-102](#)] includes the appropriate establishment and management of new landscape planting and features in accordance with relevant best practice and standards.
- 3.7.148. The Applicant's response to EXQ1 [[REP2-051](#)] 6.1.2 provides further information as to why there would be no critical features of the Proposed Development which might be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections. This explains that critical features of the Proposed

Development have been identified in Table 14.11 of ES Chapter 14 (Climate) and include structures, pavements, drainage, signage, end users and landscape and ecology.

- 3.7.149. ES Chapter 14 (Climate) paragraph 14.12.9 confirms that the assessment is based on the highest impact climate projection scenarios available and thereby takes a conservative approach. In addition, the assessment is based on the 50th percentile, but also considers the 5-95th percentile ranges for the Representative Concentration Pathway 8.5 scenario, as set out in Appendix 14.4 (Climate Projections Data) of the ES [[APP-149](#)]. The Applicant considers that there is no available prediction available beyond the scenarios utilised which would change the response to the worst-case predictions adopted.
- 3.7.150. In response to ExQ1 6.1.3 the Applicant provides justification for the conclusion reached in relation to structures including bridges, signage, and end users and the potential effects of an increase in wind speed in winter due to climatic change that any effect would not be significant. The Proposed Development has been designed in accordance with BS EN 1991-1-4:2005, the associated UK national annex and PD 6688-1-4:2015 which specifies wind loading criteria requirements. Given this embedded mitigation, it is considered that high speed wind events would not cause a regional disruption to the strategic network lasting more than one day, and the consequence is therefore considered to be minor adverse. In accordance with Table 3.41 in the DMRB LA 114 Climate (Highways England, 2021), the effect would be not significant.
- 3.7.151. At ISH3, the Applicant confirmed that the design includes building to a standard that would cope with 1:100-year flood events including an allowance of 40% increase due to climate change. This principle has been taken into account for all SuDS, filtration and drainage systems. The Applicant also confirmed that the concrete used would be reinforced against thermal cracking to account for change in weather patterns. The Applicant's planting strategy has also considered droughts and heatwaves and has accordingly selected native species which are suited to a wide range of habitats and weather conditions. This means that the species selected are less susceptible to drought and would require less watering to ensure successful establishment.
- 3.7.152. The SDNPA WR paragraph 3.1.29(b) states that there is scope for the Proposed Development to make a positive contribution to landscape-scale adaptation responses to climate change [[REP2-075](#)]. At ISH3, SDNPA highlighted a point of clarification regarding the Applicant's response to their WR. They submit that the Proposed Development is a missed opportunity to make such a contribution to adaptation for climate resilience, for example, planting that holds water for longer or planting could specifically help with any air quality issues.
- 3.7.153. The Applicant provided a post-hearing response to SDNPA and asserts that substantial green infrastructure provision within Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures (Part 2 of 4)) of the ES [[REP2-029](#)] would create multi-functional habitat corridors across

the Proposed Development and would link to the wider landscape. A diverse selection of species is proposed, including suitable seed mixes of chalk grassland species, native broadleaved woodland and a mosaic of native scrub. The incorporation of a variety of species as well as the selection of low maintenance habitats would provide greater climate resilience as there would be less need to water the planting during periods of low rainfall or drought.

The ExA's consideration of the proposed mitigation/ adaptation measures and resilience

- 3.7.154. The ExA is content that the Applicant has appropriately identified and assessed potential critical features of the design of the Proposed Development taking account of the latest credible scientific evidence. This demonstrates that there are no critical features of the design which might be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections as required by NPSNN paragraph 4.43. We are content that the proposed mitigation and adaptation measures would ensure that the Proposed Development would be sufficiently resilient against the possible future impacts of Climate Change.

The ExA's Conclusions on Climate Change, Mitigation/ Adaptation measures and Resilience

- 3.7.155. In relation to the ES assessment and the IEMA guidance, we conclude that the DMRB LA 114 Climate (Highways England, 2021) represents the appropriate standard for motorway and trunk road schemes in the UK and is the appropriate methodology to be used in this case. The ExA agrees that the Applicant is not under a duty to comply with the IEMA guidance, nor do we consider that failure to do so on the part of the SoST would create an interaction with s104(5) PA2008. Furthermore, we do not consider that additional contextualisation over and above that provided by the Applicant is required or necessary.
- 3.7.156. The EIA Regs do not specify a methodology for assessment of cumulative effects, just that an ES must report on the 'likely significant effects' of a development on the environment, including cumulative effects arising from other 'existing or approved' development. We are content that the ES assessment has done just that in a satisfactory manner. We agree with the Applicant that the transport model study area is entirely reasonable and corresponds to accepted practice in EIA assessments for such development.
- 3.7.157. We do not believe that the "*latest evidence and risk analysis of the CBDP*" is required to make a reasoned conclusion on whether approving the Proposed Development would lead to a breach of international obligations, statutory duty or be unlawful and thus engage s104((4), (5) or (6) PA2008. We disagree with the stance of CEPP on this point for the reasons provided by the Applicant in response to ExQ3 6.3.18. We are satisfied that the Applicant has complied with Regulation 21 of the EIA

Regs and provided a “*reasoned conclusion*” on the significant effects of the Proposed Development on the environment.

- 3.7.158. We also agree that the assessment is based on a worst-case scenario and is not affected by the 2023 Government announcement to delay the sale restrictions on new petrol and diesel vehicles to 2035. We are satisfied that the ES cumulative assessment has been appropriately undertaken and can safely be relied upon and that the Applicant has met the legal tests required of it in that respect. We conclude that a robust and comprehensive ES assessment has been undertaken of the impact of the Proposed Development on climate in accordance with the DMRB LA 114 Climate (Highways England, 2021) and the NPSNN.
- 3.7.159. We have considered the CCC report to Parliament (June 2023), and the criticisms made of the NPSNN by IPs. However, we believe that the application should continue to be considered and determined in accordance with the NPSNN as existing Government policy in the form of a designated NPS under s104 PA2008.
- 3.7.160. In our view, the Applicant is entitled to proceed on the basis that the Government will respond to the CCC Report and will continue to meet its legal obligations that it has set and will continue to set itself. We concur with the Applicant that the Proposed Development, as a single project for works to the strategic highway, would be highly unlikely to undermine securing the CBDP. The question of what reliance can be made by the SoST on the deliverability of national net zero targets which the Government has a legal duty to deliver is a matter primarily for the SoST and their decision-making process.
- 3.7.161. The Proposed Development would result in an increase in carbon emissions. The ES anticipates that an estimated 37,070 tCO₂e would be emitted during construction. During operation, based on the transport model for the Proposed Development in 2027, end-user and operational energy is anticipated to emit 4,161,286 tCO₂e annually and by 2042 this is anticipated to reduce to 3,554,118 tCO₂e annually. The net emissions from traffic and operational energy use when compared to the baseline, net emissions from operational energy use are anticipated to result in 3,319 tCO₂e annually and by 2042 in 4,691 tCO₂e annually.
- 3.7.162. The ES finds that the Proposed Development is expected to contribute approximately 0.002% of the UK’s 4th carbon budget and 0.001% of the 5th carbon budget and 0.002% of the 6th carbon budget. This represents a small increase in the overall magnitude of emissions. We conclude that the increase in carbon emissions resulting from the Proposed Development would not be so significant that, in isolation, it would have a material impact on the ability of Government to meet its carbon reduction targets and would meet the NPSNN paragraph 5.18 test.
- 3.7.163. In accordance with NPSNN paragraph 5.17, the Applicant has provided evidence of the carbon impact of the project and an assessment against the Government’s carbon budgets. In carrying out its assessment, the Applicant has had regard to the applicable law and policy tests, including

under the Climate Change Act 2008, the PA2008 and the NPSNN, as well as DMRB LA 114 (Highways England, 2021).

- 3.7.164. In using the DMRB LA 114 Climate (Highways England, 2021), the ES Chapter 14 (Climate) concludes that the Proposed Development is not anticipated to give rise to a significant effect on climate. We find no reason to disagree with that conclusion which reflects the position required by section 5.18 of the NPSNN.
- 3.7.165. As regards the first part of NPSNN paragraph 5.19, the ExA is satisfied that the Applicant has presented evidence of appropriate mitigation in both design and construction and how it would be secured within the DCO. We do not consider that the CNAP represents an appropriate policy document for assessing or managing carbon emissions of the motorway or that it provides justification for the offsetting and additional mitigation measures sought by WCC. Given our conclusion that the increase in emissions that would result from the Proposed Development would not have a material impact on the ability of UK Government to meet its carbon budgets we do not consider that any additional mitigation is required. In accordance with paragraph 5.19 NPSNN, we find the mitigation measures relating to design and construction to be adequate and we are satisfied that they would be effective in ensuring that the carbon footprint of the Proposed Development would not be unnecessarily high.
- 3.7.166. We conclude that there are no critical features of the design which might be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections as required by NPSNN paragraph 4.43. The proposed mitigation and adaptation measures would ensure that the Proposed Development would be sufficiently resilient against the possible future impacts of Climate Change.
- 3.7.167. There are no outstanding issues relating to Climate Change that weigh for or against the making of the Order and it is a matter to which we ascribe neutral weight.

3.8. FLOOD RISK, GROUNDWATER AND SURFACE WATER

Introduction

- 3.8.1. This Section sets out the effects of the Proposed Development as they relate to flood risk, groundwater and surface water.

The Relevant Policy Tests

- 3.8.2. NPSNN paragraphs 5.90 to 5.115 set out the requirement for a FRA to be submitted with the application and provides guidance on the methodology to be used.

- 3.8.3. Paragraph 5.99 of the NPSNN requires that when determining an application, the SoS should be satisfied that flood risk will not increase elsewhere and will only consider development appropriate in areas at risk of flooding where it can be demonstrated that:
- The most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location.
 - Development is appropriately flood resilient and resistant and any residual risk can be safely managed.
- 3.8.4. Paragraph 5.105 of NPSNN states that preference should be given to locating development in Flood Zone 1 but acknowledges that if there are no reasonably available sites then projects can be located in Flood Zone 2, or if no suitable land is available in Flood Zone 2 the land in Flood Zone 3 can be used subject to the Exception Test.
- 3.8.5. Paragraph 5.106 of NPSNN details the Exception Test which states that following application of the Sequential Test, if it is not possible for the project to be located in zones of lower probability of flooding than Flood Zone 3a, the exception Test can be applied which need to:
- demonstrate that the project provides wider sustainability benefits to the community that outweigh flood risk; and
 - a FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.
- 3.8.6. Paragraph 159 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. Paragraph 160 goes on to state that a strategic flood risk assessment (SFRA) should be undertaken to manage flood risk from all sources.
- 3.8.7. Paragraph 161 of the NPPF sets the requirement for a sequential test followed by an exceptions test to be undertaken for a development location. Paragraphs 163 and 164 state that if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the Exception Test may have to be applied and that the application of the Exception Test should be informed by a strategic or site-specific FRA.
- 3.8.8. NPSNN paragraphs 5.219 to 5.231 set out the requirement for Water Quality and resources which includes prevention of pollution of the water environment and adverse effects on groundwater and surface water in addition to coastal waters.
- 3.8.9. Paragraph 5.225 of NPSNN 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.

- 3.8.10. Paragraph 5.226 of NPSNN 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 daughter directives which has an overall aim that there should be no deterioration of ecological status in watercourses.
- 3.8.11. Paragraph 5.227 of NPSNN states that the ExA and the SoS should consider proposals put forward by the Applicant to mitigate adverse effects on the water environment and that if the EA continues to have concerns and 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, and that the EA is satisfied with the outcome.
- 3.8.12. Paragraph 174 of the NPPF states that 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 water pollution and should, wherever possible, help to improve local environmental conditions for water quality.
- 3.8.13. The SDLP policies SD17 and SD49 collectively are concerned with the protection of the water environment and flood risk management. They state that developments should 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 and provide a FRA and management plan.

The Application

- 3.8.14. Chapter 13 of the ES [[APP-054](#)] concerns the assessment of the Proposed Development on road drainage and the water environment. The Chapter assesses flood risk, surface water, drainage, geomorphology, water quality and groundwater.
- 3.8.15. This chapter of the ES includes the summary and assessment of the FRA and WFD Compliance Assessment, which has been carried out in accordance with the requirements and is submitted in support of the ES.
- 3.8.16. The ES details the surface water features within the application boundary, with main rivers being the River Itchen and The Nuns Walk Stream along with the River Itchen Navigation Canal 5km downstream. These are monitored by the EA and classified as 'moderate' quality with 'good' ecology and 'fail' for chemical elements. Other surface water courses in the application boundary are channels and ditches draining roads or pastures. All watercourses form part of the Test and Itchen Catchment.
- 3.8.17. The ES details the existing surface water drainage system for the road network and shows that there are a number of outfalls into the river catchment in addition to soakaways and one pollution control device. These have been assessed for current pollution risk and detailed in

Appendix 13.1 - Drainage Strategy Report [[APP-142](#)]. The ES summarises this baseline risk to groundwater runoff in paragraph 12.6.26 and 12.6.27 of Chapter 13 of the ES [[APP-054](#)] as follows:

- The existing soakaway ditch risk to groundwater is in the high end of the Medium category, bordering the High category (scoring 245 out of 250).
- The existing return period probability for a spillage incident on the existing M3 corridor is 1 in 297 years, which would pass the 1 in 200-year return period risk expected by the EA in the context of the adjacent River Itchen SAC.
- Pollution risk to the River Itchen for the existing discharge point; an outfall adjacent to the A34/ A33 road bridges, indicates that there is not an unacceptable risk of pollution due to the exceedance of thresholds set for soluble contaminants or sediments.

3.8.18. The ES states that during construction, industry standard pollution and silt control measures will be in place for all watercourses. There will be localised and short-term construction work which will have a direct impact on the River Itchen. This will be subject to permits with agreed mitigation, control and monitoring. The ES states that the residual effects on watercourses during construction is not significant.

3.8.19. During operation direct road discharge will be to the River Itchen via attenuation and filtration features at an agreed discharge rate of 2 l/s/ha. Contaminants on the road surface and accidental spillages can cause pollution incidents by water runoff into watercourses, ponds, ditches and groundwater. The design of the drainage system will comply with all current standards and sustainable drainage best practice techniques. A combination of attenuation dry ponds, ditches, filter drains and sediment catch-pits are the proposed mitigation for surface water quality and sediment mitigation.

3.8.20. A WFD Compliance Assessment has been undertaken which has assessed how the Proposed Development in operation could impact the water bodies in the study area. The assessment indicates that with mitigation measures and improvements to current discharge rates and sediment and pollution retention, the Proposed Development would not change the status of the River Itchen and would not prevent it from reaching 'good' status in the future. The ES states that the residual effects on watercourses during operation is not significant.

3.8.21. The ES shows that the Proposed Development overlies a Principal Aquifer with some areas of Secondary Aquifers primarily in the vicinity of the rivers. The application is also within a 'High' Groundwater Vulnerability Zone and the WFD current classification (Cycle 2, 2019) of the chalk is overall 'Poor'. The ES details limited potential impacts on ground water during construction and considers these will be limited with mitigation implemented. During operation, the Highways England Water Risk Assessment Tool (HEWRAT) screening has shown that one detention basin will require lining to prevent potential infiltration and states that the assessment shows that the lowest return for a spillage incident is 1 in 253 years which meets the minimum 1 in 200-year return period

expected for spillage probability in the context of River Itchen SAC. The ES states that with mitigation and control measures, the residual effect associated with the Proposed Development on ground water in construction and operation is not significant.

- 3.8.22. The application was accompanied by a FRA [[APP-157](#)] which shows that the application primarily lies within flood zone 1 with minor areas in flood zones 2 and 3 in the north and west of the Proposed Development. The FRA states that the application is in an area which is a low risk from pluvial (rainfall) flooding and there is a variable risk of flooding from ground water shown in the SDNP SFRA. Historic flooding records show no recorded flooding within the Order limits but there are records in Winchester and the King's Worthy area which are within the study area.
- 3.8.23. The FRA states that during construction the greatest risk of flooding is from fluvial flooding. Mitigation measures are detailed in the fiEMP and permits will be obtain as required.
- 3.8.24. During operation, the Proposed Development is shown not to encroach upon floodplain and therefore does not impact on flood storage areas. The surface water drainage will drain surface water to ground where possible however, any discharge to the River Itchen will be attenuated to allow controlled discharge to a maximum of 2 l/s/ha.
- 3.8.25. The FRA concludes that the proposed works and their mitigation measures will not result in increased flood risk and the assessed negligible magnitude impact would result in an adverse slight effect.
- 3.8.26. Future climatic conditions have been considered and these would not alter the conclusions of the FRA. The FRA applied the NPPF sequential and exception tests and states that both have been passed and the Proposed Development is appropriate, in flood risk terms.
- 3.8.27. The ES identifies no likely significant effects from construction and operation of the Proposed Development on the water environment with the implementation of mitigation measures on surface water, flood risk, groundwater and WFD compliance.

Issues Considered in the Examination

- 3.8.28. The following issues were considered by the ExA as part of the Examination:
- Watercourses and groundwater.
 - Drainage design.
 - Flood risk.

Watercourses and groundwater

- 3.8.29. The principal watercourse that has the potential to be impacted by the Proposed Development is the River Itchen. Other watercourses that are within the environs of the Proposed Development, namely the Nun's Walk Stream and River Itchen Navigation, have been considered in the ES

Chapter 13 [[REP4-015](#)] however, the ExA found these unlikely to be impacted following mitigation included within the fiEMP.

- 3.8.30. The Applicant has minimised the impact on the River Itchen through the design process and has demonstrably liaised and consulted with the EA regarding the potential residual impacts. These potential residual impacts relate to the construction of a new footbridge over the River Itchen and a new headwall outfall, both of which would require works being undertaken on the river banks and over/ in the river. The other area of works relates to the strengthening of the existing Kingsworthy bridge spanning the river.
- 3.8.31. The ExA explored both the need for these activities and the mitigation and controls being proposed and how they were secured within the dDCO. By the close of the Examination, the EA confirmed that the Applicant had complied with requests for information and that the dDCO and proposed mitigation contained in the fiEMP are acceptable to minimise potential risk during construction.
- 3.8.32. The ES states that the River Itchen and the Nun's Walk Stream are monitored by the EA against the objectives of the WFD. These are both currently classified as at overall '*Moderate*' status, with '*Good*' ecological status and '*Fail*' chemical status. The underlying Itchen Chalk groundwater body is also monitored under the WFD and is currently at '*Poor*' status.
- 3.8.33. The ExA examined how the Proposed Development could potentially impact the quality of watercourses and groundwater both in construction and operational phases. It was found that the Applicant had undertaken consultation with the appropriate bodies and has shown that risks are proposed to be managed and mitigated appropriately, and this is reflected within the fiEMP. The EA have provided information to show that the Proposed Development meets its requirements and this is confirmed within the SoCG [[REP8-020](#)] presented at the close of the Examination.
- 3.8.34. A WFD Compliance assessment has been undertaken and has shown that the Proposed Development would not result in a deterioration of the WFD status or prevent achieving '*good*' status by 2027. The Applicant has also assessed hydrogeology in the WFD compliance assessment. This has been agreed by the EA and detailed in the SoCG [[REP8-020](#)] reference 8.1.
- 3.8.35. The ES shows that the groundwater receptors principally consist of a principal chalk aquifer which is a regionally important resource for groundwater abstraction.
- 3.8.36. The ES details the existing groundwater abstraction points with public abstractions predominantly to the north and south of the Order Limits and states that there is no risk to these from the Proposed Development; the EA accept this baseline assessment. There are nine private boreholes

in the assessment boundary and the ES states that they will suffer a negligible impact due to their location.

- 3.8.37. At the beginning of the Examination the WR from the owners of The Shoulder of Mutton Farm [[REP1-035](#)] on Easton Lane raised concerns about the impact on their personal borehole. The Applicant consulted with the IP further in this regard and we asked for progress on this matter in ExQ2 10.2.3. In their response [[REP5-026](#)] the Applicant stated that the IP had confirmed via email that they had received a copy of the Applicant's hydrological risk assessment and further to that, they had no further comments.

The ExA Considerations relating to Watercourses and groundwater

- 3.8.38. The Applicant has looked to minimise the impact of the Proposed Development on the watercourses both within the Order Limits and in the catchment of the Proposed Development. The EA has confirmed that during operation and during construction the risks have been assessed and the mitigation proposals are acceptable.
- 3.8.39. The ExA considers that a WFD Compliance assessment has been undertaken and has shown that the Proposed Development would not result in a deterioration of the WFD status or prevent achieving 'good' status by 2027.

Drainage Design

- 3.8.40. The drainage design for the Proposed Development has been undertaken in accordance with DMRB LA 113 Road Drainage and the Water Environment with reference to a number of other design guides and standards as detailed in paragraph 13.3.2 of Chapter 13 of the ES [[REP4-015](#)].
- 3.8.41. In their LIR [[REP2-066](#)] HCC, as local highway authority and LLFA, stated that the drainage design was generally acceptable. Following further examination and discussion with the Applicant, HCCs remaining concerns were primarily related to ground infiltration rates. At DL6, HCC confirmed that they had held further discussions with the Applicant and the issue of infiltration rates had been resolved to their satisfaction. At the end of the Examination this was detailed as agreed in the SoCG between the two parties [[REP8-019](#)].
- 3.8.42. In examining the drainage design, the ExA finds that the Proposed Development includes use of sustainable pollution control, for example drainage basins, lagoons and filter beds. The proposed pollution control measures have been accepted by the LA and the EA as effectively managing the risk of pollution events in watercourses and groundwater and are secured in the dDCO at Requirement 13. The ES also shows that there is anticipated to be an improvement in the water quality of the River Itchen from improved pollution control measures that would be implemented.

- 3.8.43. The SDNPA state in their LIR [[REP2-071](#)] that they have concerns regarding the impact of some drainage basins on the landscape character; this is considered in detail within Section 3.10 of this Report.

The ExA Considerations relating to drainage design

- 3.8.44. The ExA considers that the drainage design detailed for the Proposed Development has been undertaken to the relevant design criteria and the Applicant has taken account of consultation comments, with particular regard to those comments from the EA and HCC.
- 3.8.45. The ExA finds that the design complies with the requirements for discharge rates into watercourses and infiltration rates and this is confirmed as acceptable by the relevant authorities.
- 3.8.46. Notwithstanding the issue of the landscape and visual impact of the attenuation features within the SDNP, the ExA considers that if the drainage basins were not present in the design or were to be significantly redesigned, the ability to meet the requirements for flood risk reduction and discharge flow rates would be compromised. We therefore accept that the overall drainage design approach and outcomes are acceptable, and that the drainage basins are an integral part of this design.

Flood Risk

- 3.8.47. The Applicant has undertaken an FRA [[APP-157](#)] in accordance with all relevant national and local policy and guidance. In the SoCG [[REP8-020](#)] submitted at the close of the Examination, the EA state in reference 7.1 that they are content with the scope, methodology and conclusion of the FRA.
- 3.8.48. The ExA examined the flood risks during construction and operational phases of the Proposed Development. It found that the Applicant had consulted widely and productively with both the LLFA and the EA to minimise and mitigate risk of flooding through design, with residual risks being substantially mitigated through the commitments in the fiEMP.
- 3.8.49. The findings and conclusion of the ES and FRA states that although the receptor sites have a high to very high sensitivity to flood risk, after the inclusion of climate change factors, with the implementation of mitigation measure detailed in the fiEMP and the drainage strategy, the residual effect associated with flood risk is not significant. Both the LLFA and the EA accept the findings and conclusion of the ES and FRA.
- 3.8.50. In assessing the sequential test set out in NPSNN paragraph 5.105, the ExA accepts that the application boundary lies partially within flood zones 3, 2 and 1. The sequential test states that preference should be given to development in flood zone 1 if no reasonably available site is available and then flood zone 2, with development in flood zone 3 being acceptable subject to the Exception Test as detailed in paragraph 5.106 to 5.109 of the NPSNN. The ExA acknowledges that as the Proposed Development is a change to the existing junction, it is not possible to provide an

alternative outside of flood zone 3, therefore the Exception Test must be applied.

- 3.8.51. The ExA has considered the requirements of the Exception Test, in particular paragraph 5.108 which states that for the Exception Test to be passed:
- it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh flood risk; and
 - a FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall
- 3.8.52. The Applicant has assessed these matters in paragraph 5.4 of the FRA [[APP-157](#)]. This states that the wider community benefit has been met as detailed in the need for the scheme.
- 3.8.53. In assessing the second bullet point, the FRA states *“The benchmark of what is considered safe is that the Scheme will be able to withstand a 1 in 200 year flood event with an increase of +120% on hydrological inflows factored in for the potential impacts of climate change over the operational lifetime of the Scheme”* and goes on to state that *“The hydraulic modelling assessment contained within the FRA confirms that flood risk is not increased as a result of the development and that users of the Scheme will not be affected by flooding over the lifetime of the development”*
- 3.8.54. The SoCG with the EA and LLFA both confirm that the findings of the FRA are agreed, and therefore by default this statement is deemed to have been agreed by both authorities.

The ExA Considerations relating to Flood Risk

- 3.8.55. The ExA considers that the Applicant has continued to consult and engage with the relevant bodies to minimise the risk of flooding both to the scheme and the surrounding area. The ExA has reviewed the submissions from the EA and LLFA which details an acceptable conclusion relating to design and proposed mitigation.
- 3.8.56. The EA and LLFA in their signed SoCGs [[REP8-020](#) and [REP8-019](#)] confirmed that there were no areas of disagreement with the Applicant on any issues relating to the FRA and therefore we assess that the technical requirements of the exception test are deemed to be agreed with.
- 3.8.57. The ExA concludes that the Proposed Development, which is supported by the FRA, does not give rise to unacceptable risks in terms of flooding. The FRA addresses both the Sequential and Exception Tests required by NPSNN and the ExA have concluded that these tests are met.

ExA Conclusion on Flood Risk, Groundwater and Surface Water

- 3.8.58. The ExA is satisfied that the Applicant has fully addressed the risk and possible effects from flooding, groundwater and surface water for the construction and operation of the Proposed Development and has demonstrated that such risks associated with the Proposed Development can be satisfactorily mitigated and managed.
- 3.8.59. The ExA agrees that the Proposed Development would result in improved pollution control and water quality at the outfalls into the River Itchen and at drainage infiltration points in the operational phase, although the increase in carriageway length would increase the risk profile of pollutants. In addition, there are potential short-term impacts on water quality during construction, although mitigation measures are detailed in agreement with relevant agencies.
- 3.8.60. The ExA accepts the finding of ES Chapter 15 : Cumulative Effects [[APP-056](#)] which states in paragraph 15.5.9 that that the combined effects on the River Itchen water quality during construction are localised, small scale and temporary. There are no combined effects on water quality in the operation phase and in relation to flooding there would be no increase in flood risk due to cumulative impacts of the Proposed Development or in combination with other known developments.
- 3.8.61. The ExA concludes that a WFD Compliance assessment has been undertaken and has shown that the Proposed Development would not result in a deterioration of the WFD status or prevent achieving Good status by 2027.
- 3.8.62. The ExA agrees that the Proposed Development accords with the sequential test and exception test and considers they are passed. Furthermore, we conclude that the Proposed Development does not give rise to unacceptable risks in terms of flooding.
- 3.8.63. Accordingly, the ExA concludes that the requirements in respect of flood Risk, groundwater and surface water as set out in NPSNN are met.
- 3.8.64. The ExA concludes that, although there is the potential of negative effects on water quality during construction there will be an improvement in pollution control in operational phase due to improved drainage design. Therefore, in relation to the issue of flood risk, groundwater and surface we ascribe a little weight in favour of the Order being made.
- 3.8.65. The findings in respect of flood risk, groundwater and surface water will be taken into account in the overall planning balance in Chapter 5 of this Report. The matter of the landscape impact and setting of the drainage basins is detailed in the Landscape and Visual Effects and Design topic in Chapter 5.

3.9. HISTORIC ENVIRONMENT

Introduction

- 3.9.1. This Chapter sets out the effects of the Proposed Development as they relate to the historic environment.

The Relevant Policy Tests

- 3.9.2. NPSNN paragraphs 5.120 to 5.142 consider the impacts on the historic environment.
- 3.9.3. Paragraphs 5.120 and 5.121 of NPSNN recognise that both the construction and operation of national networks has the potential to result in adverse impacts on the historic environment.
- 3.9.4. Paragraph 5.127 of NPSNN 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 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.
- 3.9.5. Paragraph 5.129 of NPSNN states that in considering the impact of a proposed development on any heritage assets, the SoS should take into account 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.
- 3.9.6. 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.
- 3.9.7. Paragraph 5.132 NPSNN 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.
- 3.9.8. Paragraph 5.133 of NPSNN 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.

- 3.9.9. Paragraph 194 of the NPPF states that in determining applications, local planning 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.
- 3.9.10. As a minimum the relevant historic environment record 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.
- 3.9.11. Paragraph 199 of the NPPF 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 202 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.
- 3.9.12. The adopted WCC Local Plan policies CP20, DM25, DM26, DM29 and DM31 are concerned with the conservation of heritage assets and archaeology. Collectively, they state that the Council will continue to conserve and enhance the historic environment and assets and support development which does not have a detrimental impact or cause unacceptable harm to the special interests of heritage assessed. It also states that where heritage assets are affected, permission will be granted to the development if there are provisions for the preservation of remains.
- 3.9.13. The SDLP policies SD12 and SD16 collectively are concerned with historic environment and archaeology. They seek to avoid harm and to preserve the historic heritage and promote access to such for the public.

The Application

- 3.9.14. Chapter 6 of the ES [[APP-047](#)] concerns the assessment of the Proposed Development on cultural heritage. The ES assesses the impacts upon designated and non-designated cultural heritage assets during both the construction and operation of the Proposed Development. The assessment is based on the DMRB LA 106 Cultural heritage assessment (Highways England, 2020b).
- 3.9.15. The assessment of the cultural heritage assets has been divided into three subtopics:
- Archaeological remains.
 - Historic buildings.

- Historic landscapes.

- 3.9.16. The ES defines the study area for cultural heritage assets as 1km from the application boundary for designated assets and 300m from the application boundary for non-designated assets. The study area is shown in the ES Chapter 6 figures [[APP-066](#)]. The ES further states that the Applicant assessed the potential need for a wider study area of up to 3km, as recommended in DMRB LA 106, if the more distant assets have the potential to be impacted either visually or from noise. It is stated that from visual inspection and through consultation with the relevant authorities, this wider study area was not required.
- 3.9.17. Paragraph 6.6.4 of the ES states that there are no designated archaeological remains within the application boundary however, there are nine assets of national interest within the 1km study area. Paragraph 6.6.6 and 6.6.7 goes on to detail information relating to local records of non-designated sites and investigations.
- 3.9.18. Paragraph 6.6.16 of the ES states that there are no listed buildings within the application boundary however, a small part of the Abbots Worthy and Kings Worthy Conservation Areas are within the application boundary.
- 3.9.19. The ES states that there are no designated historic landscapes within the study area. It also states that there are no non-designated historic landscapes within the application boundary however, there are eight HPGs in Kings Worthy and Abbots Worthy, some of which are adjacent to the application boundary.
- 3.9.20. Paragraph 6.6.24 of the ES states that the historic landscape character within the application boundary is recorded as predominately parliamentary enclosure with areas of recent settlement, old settlement, downland and valley floor, this is shown in figure 6.9 of the ES Chapter 6 Figures [[APP-066](#)]
- 3.9.21. The ES details the potential impacts of the Proposed Development on cultural heritage, stating that during both construction and operations there is the potential for impacts. The activities which could lead to impacts are listed in paragraphs 6.7.2 and 6.7.3 and are generally related to excavations and demolition activities during construction which could remove or damage heritage assets and visual, noise and light impacts during operation.
- 3.9.22. The ES Chapter 6 details the impacts predicted to be seen on heritage assets. This shows that all assets detailed would experience either a neutral or slight temporary adverse impact during construction or neutral or slight permanent adverse impact during operation.
- 3.9.23. The ES details a number of mitigation measures that have been included as part of the Proposed Development. It shows that design has been undertaken to avoid harm to assets and references the Archaeological and Heritage Outline Mitigation Strategy [[APP-096](#)] which has been prepared following consultation with various stakeholders. The ES also

details mitigation proposed during construction which includes pre-construction archaeological 'strip', mapping and sampling along with a watching brief at certain intrusive work areas.

- 3.9.24. Paragraph 6.8.6 details the proposed recording and preservation of assets and post-excavation assessment, analysis and reporting.
- 3.9.25. Relating to construction impacts, the ES summary states that there would be no or limited temporary impacts. It highlights that:
- a small section of construction works adjacent to the A33 fall within the Kings Worthy Conservation Area but the works would not affect any of its key attributes;
 - there would be some minor alterations to some historic landscape parcels within the application boundary during construction;
 - an area of downland between the M3 and A34 would receive the biggest impact but much of this would be returned to chalk grassland following construction and would still be legible as an area of downland; and
 - there would be loss of a small part of the historic hedgerows along Easton Lane.
- 3.9.26. Relating to the operational impact, the ES summary states that the Proposed Development would not impact upon any archaeological remains which would have been sufficiently investigated during construction and there is no predicted significant impact upon the setting of any built heritage receptors or HPGs during the operation. It further states that any impacts upon the historic landscape would have occurred during the construction phase and as such no further impacts would occur during operation.

Issues Considered in the Examination

- 3.9.27. The following issues were considered by the ExA as part of the Examination:
- If the potential harm to historic assets has been adequately assessed.
 - Recording and storage of archaeological assets and finds.

If the potential harm to historic assets has been adequately assessed

Introduction

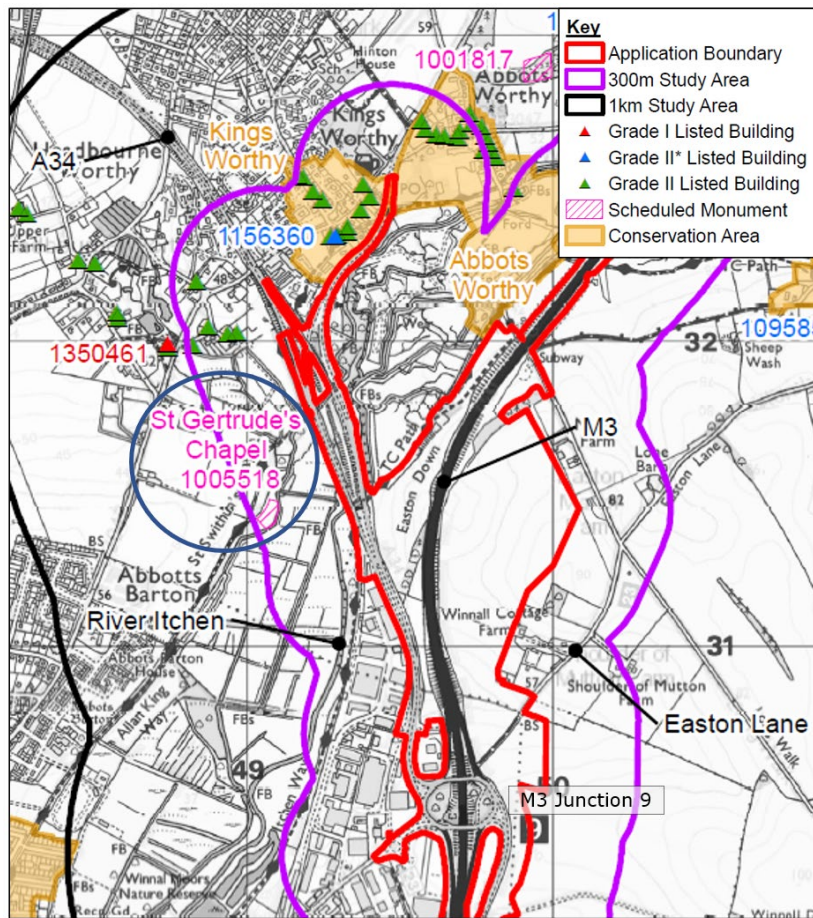
- 3.9.28. In their LIR [[REP2-071](#)], the SDNPA state that they agree with the conclusions of the ES Chapter 6 [[APP-047](#)], acknowledging that adverse impacts on buried assets will occur but these can be satisfactorily mitigated. There is reference to comments made relating to landscape impact and the loss of historic field patterns. Similarly, WCC in their LIR [[REP2-083](#)] state that they found the ES assessment and conclusions valid and appropriate.

- 3.9.29. The Applicant has undertaken comprehensive consultation with the appropriate authorities regarding the historic environment, including with Historic England. At the beginning of the Examination, Historic England submitted a RR [[RR-041](#)] which summarises their consultation with the Applicant. They concluded their RR by stating '*...We are satisfied that the ... matters and proposed mitigation have been satisfactorily addressed within the documents included in the submission by National Highways, including the draft DCO. The matters are also covered and addressed in a Statement of Common Ground (SoCG) that has been agreed between National Highways and Historic England. Notwithstanding the requirement for eventual consultation with Historic England on detailed design, the enhancement opportunities and any changes to the scheme, we do not feel it necessary for us to continue our involvement in the Examination process. As such, this letter stands as an explanation of our decision not to be registered as an interested party*'.
- 3.9.30. The ExA asked Historic England in ExQ1 [[PD-008](#)] to confirm that the SoCG was finalised and therefore, by default, that there were no matters they considered should be included in the Examination. In their reply [[REP2-068](#)] Historic England stated that this was the case.
- 3.9.31. There were some detailed questions and comments raised by WCC and SDNPA in their LIRs [[REP2-083](#) and [REP2-071](#)] and these were all subject to further consultation with the Applicant during the Examination. Further to this, there were no other specific references or issues raised by IPs relating to the historic environment.
- 3.9.32. The ExA asked a small number of clarification questions in ExQ1 [[PD-008](#)] relating to the assessment of assets. Following ExQ1 and due to the absence of IP comments on the impact of historic environment assets, we found no further questions relating to this issue to be required.
- 3.9.33. At the close of the Examination, the SoCGs with WCC, SDNPA and Historic England [[REP8-018](#), [REP8-040](#) and [REP2-049](#)] detailed that all issues relating to cultural heritage were agreed.

Archaeological remains including Scheduled Ancient Monuments

- 3.9.34. In the ES Chapter 6 [[APP-047](#)] table 6.6 and 6.10, the Applicant has detailed the archaeological remains that are listed within the application boundary and a study area 1km from the application boundary and the effect on them in the construction and operation phases respectfully.
- 3.9.35. The ES states that during both the construction and operational phases, only the Site of St Gertrude's Chapel Scheduled Ancient Monument (SAM) is likely to be subject to an impact on a small part of the wider setting. The location of the Site of St Gertrude's Chapel is shown in Figure 6.

Figure 6 : Location of Site St Gertrude’s Chapel



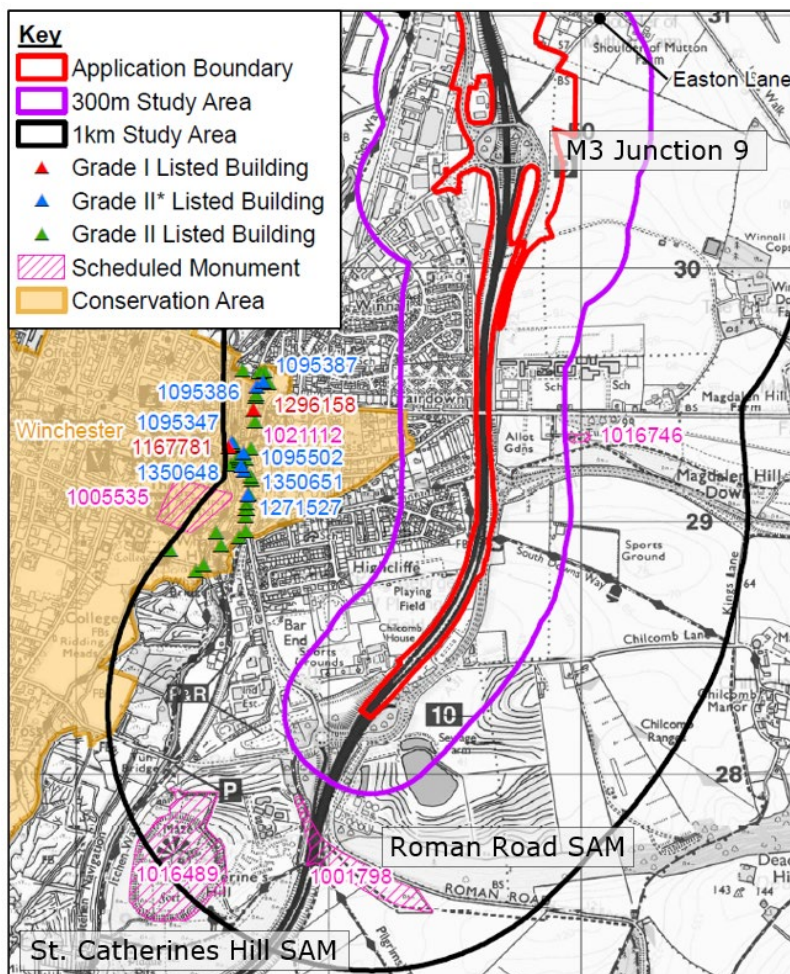
- 3.9.36. During construction, some activities are likely to be partially visible and audible at the Site of St Gertrude’s Chapel however, the impact would be minor resulting in a temporary slight adverse effect which is not significant. Similarly, in the operational phase possible glimpses of the Proposed Development and traffic will be possible resulting in a negligible impact and resulting in a permanent slight adverse effect which is not significant.
- 3.9.37. The ExA visited the Site of St Gertrude’s Chapel in USI2 [EV-002]. We viewed the site and the existing gyratory. This approximate view is also shown in the landscape and visual montage in view location (VL) 03 [REP3-015] and reproduced in Figure 7.

Figure 7 : Approximate view of the Site of St Gertrude’s Chapel Scheduled Ancient Monument - Extract from LV 3 ‘Proposed Winter Visualisation’



3.9.38. As stated, there were no specific concerns raised by IPs relating to archaeological remains, however, as part of ASI1 [EV2-002], the ExA was asked to visit St Catherine’s Hill SAM, and the Dongas Ancient Trackway, which is broadly coincident with the Roman Road SAM detailed in the ES. The ES states that both of these SAMs will not be impacted by the Proposed Development. The location of these are shown in Figure 8.

Figure 8 : Location of SAMs outside of 300m study area



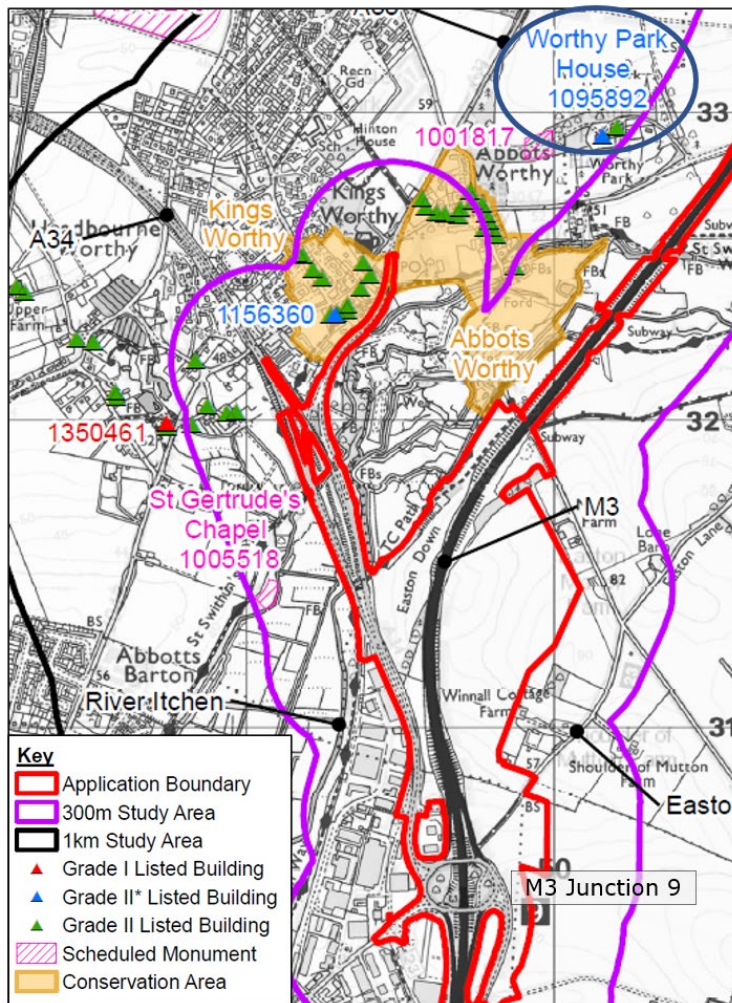
The ExA's Considerations relating to Assessment of the historic environment – Archaeological remains including Scheduled Ancient Monuments

- 3.9.39. The ExA is satisfied that the Applicant's assessment in respect of archaeological effects has considered all relevant aspects of the historic environment and is content with the findings.
- 3.9.40. The ExA agrees with the Applicant's assessment of the effect on designated sites in relation to both construction and operation phases and this is supported by agreement from Historic England in their SoCG [[REP2-049](#)].
- 3.9.41. Following review and an Unaccompanied Site Inspection (USI), the ExA agrees with the assessment of the Site of St Gertrude's Chapel SAM having likely temporary and permanent slight adverse impacts. Furthermore, we agree with the assessment of no likely direct or indirect impact relating to St Catherine's Hill SAM and the Roman Road SAM.

Built Heritage

- 3.9.42. In the ES Chapter 6 [[APP-047](#)] table 6.11, the Applicant has detailed the historic buildings and conservation areas that are within the application boundary and a study area 1km from the application boundary.
- 3.9.43. The ES states that during both construction and operational phases, only Worthy Park House which is a Grade II* Listed Building and the Abbots Worthy and Kings Worthy Conservation Areas along with associated Grade II Listed Buildings are likely to be subject to an impact. The location of these is shown in Figure 9.
- 3.9.44. The ES states that during construction, long distance views of the main works may be seen from these receptors, but general construction activities are unlikely to be visible or audible. The impact would be negligible resulting in a temporary slight adverse effect which is not significant. Similarly, in the operational phase glimpses of the Proposed Development and traffic will be possible resulting in a negligible impact with a permanent slight adverse effect which is not significant.
- 3.9.45. The ES also states that although parts of the Proposed Development would see a short length of new pedestrian and cycleway constructed within the eastern end of the Kings Worthy Conservation Area, there would be no impact upon any key elements of the conservation area during construction or operation, and consequently there would be no impact upon the special character and appearance of the conservation area.
- 3.9.46. The ES concludes that these minor changes to the largely modern setting of the Kings Worthy Conservation Area represent a negligible magnitude of impact which would result in a permanent slight adverse effect upon the conservation area which is not significant.

Figure 9 : Location of Kings Worthy and Abbots Worthy Conservation Areas and Worthy Park House



3.9.47. The Abbots Worthy Conservation Area would not be subject to any direct impacts during the operation phase and would largely be screened by vegetation. Overall, the minor changes to the setting would have a negligible magnitude of impact upon the Abbots Worthy Conservation Area which would result in a permanent slight adverse effect which is not significant.

3.9.48. During our USI1, we visited a number of publicly accessible locations within both the Kings Worthy and Abbots Worthy Conservation Areas along with viewing Worthy Park House and its setting.

3.9.49. The potential impact on the key elements of the conservation areas was subject to questions in ExQ1 [PD-008]. This was also a topic in ISH1 and WCC confirmed in relation to the Kings Worthy Conservation Area for which they have jurisdiction, that they are satisfied that all matters have been concluded to their satisfaction.

3.9.50. At ISH1 the SDNPA were asked if they had any remaining concerns regarding the Abbots Worthy Conservation Area which is in their jurisdiction. The main issues in relation to this were raised in relation to

the setting of drainage ponds and other landscaping features which are discussed in Section 3.10. At the end of the Examination, there were no remaining issues raised by SDNPA in their SoCG [[REP2-071](#)] relating directly to the Conservation Area designation.

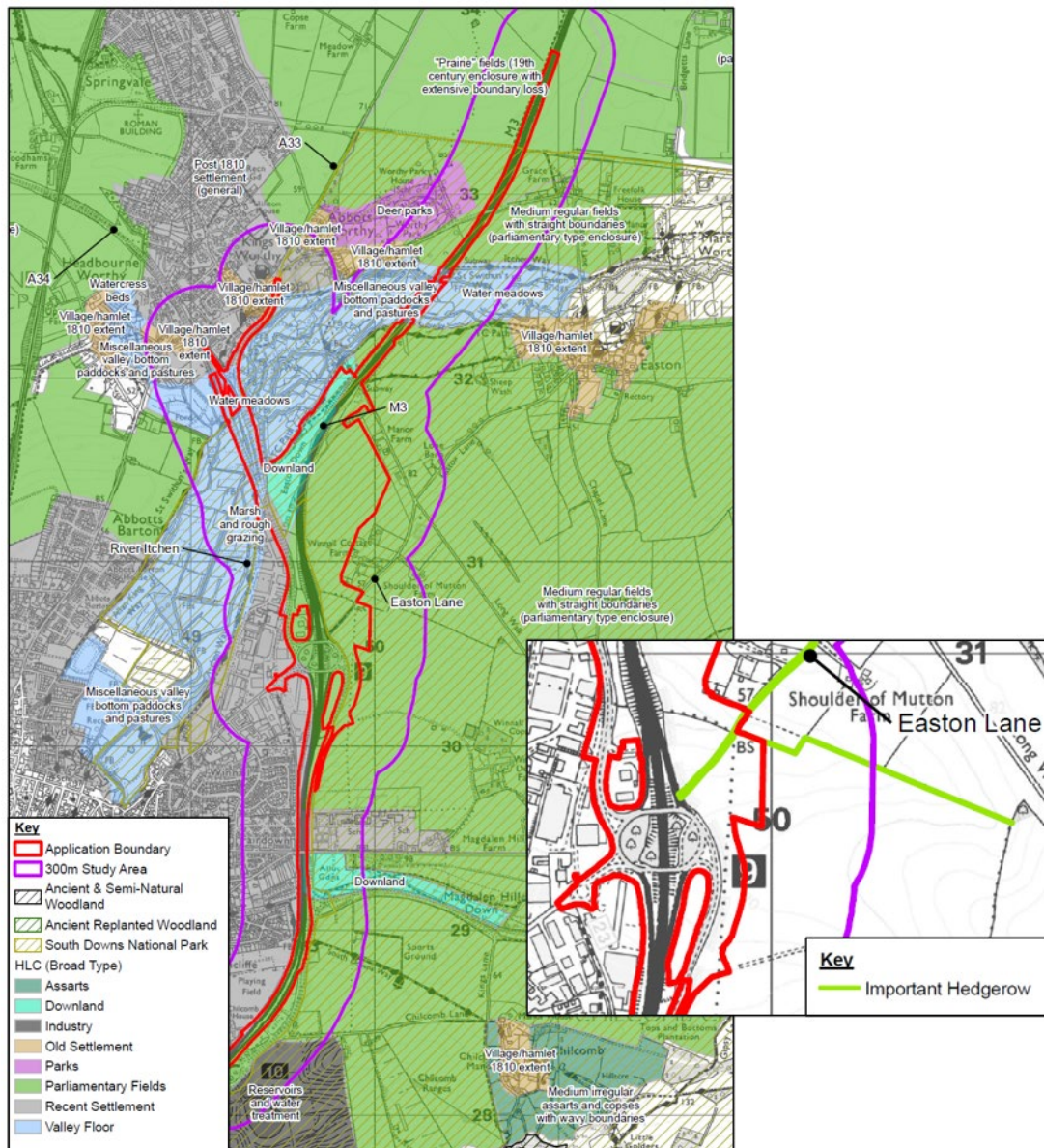
The ExA Considerations relating to Assessment of the historic environment – Built Heritage

- 3.9.51. The ExA is satisfied that the Applicant’s assessments in respect of built heritage effects have considered relevant historic environment aspects and is content with the findings.
- 3.9.52. The ExA agrees with the Applicant’s assessment of effects on the designated built heritage assets in relation to both construction and operation phases and this is supported by agreement from Historic England.
- 3.9.53. Following review and an USI, the ExA agrees with the assessment of the Kings Worthy and Abbots Worthy Conservation Areas having a likely temporary and permanent slight impact which are not significant. Furthermore, we agree with the assessment of ‘negligible impact’ which is not significant relating to Worthy Park House.

Historic Landscape

- 3.9.54. In the ES Chapter 6, the Applicant has detailed the historic landscape areas that are within the application boundary and a study area 1km from the application boundary. An extract of the ES Figure 6.9, Cultural Heritage Landscape Characterisation is shown in Figure 10.
- 3.9.55. Paragraph 6.6.22 of the ES states that there are no designated historic landscapes recorded by Historic England within the study area. It goes on to detail the non-designated historic landscapes, including eight HPGs in the study area but none within the application boundary, although the Abbotsworthy House HPG is adjacent to the application boundary.
- 3.9.56. The historic landscape character is categorised as mainly Parliamentary Fields with areas of Valley Floor, Old Settlement, an area of Park which is outside of the application boundary. There are also two areas of Downland, one inside and one outside of the application boundary.
- 3.9.57. The ES details the potential impact on the non-designated historic landscapes in construction and operational phases. It states that during construction, both Abbotsworthy House and Worthy Park HPG may experience a temporary negligible impact due to an increase in noise. There is unlikely to be a visual impact as construction activities would largely be screened by existing vegetation. In addition, the Valley Floor and Old Settlement areas would experience a minor impact with Parliamentary Fields and downland experiencing a moderate impact.

Figure 10 : Landscape Character Categories (reproduced from ES Chapter 6 figure 6.9)



3.9.58. The ES also details historically important hedgerows, an extract of which is shown in Figure 10. A section of hedgerow is shown to be removed as part of the Proposed Development, which would result in a minor impact resulting in a slight adverse effect which is not significant.

3.9.59. The ES conclusions highlight that the biggest impact on historic landscape would be the Downland between the M3 and A34, but this would be returned to chalk grassland following construction and would still be legible as an area of downland.

3.9.60. The ES continues to state that during operation there will be no further impacts in addition to those during the construction phase.

The ExA's Considerations relating to Assessment of the historic environment – Historic landscape

- 3.9.61. The ExA is satisfied that the Applicant's assessments in respect of historic landscapes have considered relevant historic environment aspects and we are content with the findings.
- 3.9.62. The ExA notes that there are no designated historic landscapes within the study area. Furthermore, we agree with the Applicant's assessment of effect on the non-designated historic landscapes in relation to both construction and operation phases and this is supported by agreement from Historic England.
- 3.9.63. Following review of the areas of landscape during both ASI1 and USI1, the ExA agrees with the assessment of the non-designated historic landscapes as having temporary and permanent neutral to moderate impacts which are not significant.

The ExA's Considerations relating to whether the potential harm to historic assets has been adequately assessed

- 3.9.64. The ExA considers that the ES has adequately assessed the potential impact on all heritage assets which includes archaeology, buildings and landscape.
- 3.9.65. The ExA has undertaken an ASI and USIs which included visits to the locations of the designated and non-designated heritage assets that have been assessed by the Applicant.
- 3.9.66. Historic England have confirmed that they have no issues or concerns regarding the assessment of historic assets, which has been taken into account by the ExA.

Recording and storage of archaeological assets and finds

- 3.9.67. Both WCC and SNDPA, supported by Historic England, raised concerns about the recording and storage of finds and additionally, how outreach and public engagement is secured within the dDCO.
- 3.9.68. The ExA asked some clarification questions regarding these issues in ExQ1 and at the ISH2 session relating to the dDCO. It was apparent that the primary issue related to available archive space and the funds required to ensure records and finds could be stored adequately without resources and funding required from the local authorities.
- 3.9.69. Following consultation during the Examination, it was confirmed that this issue was suitably resolved between the parties. In the SoCG with WCC, reference 4.18 states that Requirement 9 of the dDCO addresses repository requirements and that WCC agree that this now resolves the issue with the dDCO.

The ExA's considerations relating to recording and storage of archaeological assets and finds

- 3.9.70. The ExA considers that through consultation during the Examination, the Applicant has accepted the concerns raised by IPs and has satisfactorily

addressed the issue of recording, storing and public engagement relating to potential archaeological finds and that this is secured in the dDCO at Requirement 9.

ExA Conclusions on Historic Environment

- 3.9.71. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has given specific consideration to the desirability of preserving listed buildings, conservation areas and scheduled monuments or their settings or any features of special architectural or historic interest which they possess, and the desirability of preserving or enhancing the character or appearance of conservation areas.
- 3.9.72. The ExA is satisfied that the Applicant has fully addressed the possible effects on the historic environment and assets for the construction and operation of the Proposed Development and has demonstrated that such effects associated with the Proposed Development can be satisfactorily mitigated and managed.
- 3.9.73. The ExA considers that the necessary monitoring, mitigation, and controls are incorporated within the latest revisions of the dDCO requirements and fiEMP. We are satisfied that they would be adequately secured via Requirement 9 of the dDCO. The ExA agrees with the findings of the Applicant's ES, that following mitigation any residual adverse effects upon the historic environment (archaeology, built heritage or historic landscape) from the construction or operation of the Proposed Development would be reduced or offset to levels considered not significant.
- 3.9.74. The ExA has reviewed the impact of the Proposed Development on the historic environment and historic assets, undertaking site inspections to view all important assets that are potentially impacted.
- 3.9.75. The ExA notes that Historic England has no concerns regarding the Applicant's ES assessment of the historic environment and concluded a SoCG at the beginning of the Examination [[REP2-049](#)]. This confirms that the residual effects and conclusions of the ES and the proposed mitigation during construction and operation have been agreed by the Applicant with Historic England. The SoCG also records that Historic England have reviewed the ES Chapter 15 (Cumulative Effects) and agree with the assessment and conclusions therein.
- 3.9.76. The ExA's conclusions on the effects of the Proposed Development on designated heritage assets are as follows:
- Less than substantial harm should be ascribed to matters relating to effects on archaeological significance in respect of the SAM of The Site of St Gertrude's Chapel;
 - Less than substantial harm should be ascribed to matters relating to effects on archaeological significance in respect of the SAM of St Catherine's Hill;

- Less than substantial harm should be ascribed to matters relating to effects on archaeological significance in respect of the SAM of the Roman Trackway; and
- Less than substantial harm should be ascribed to matters relating to effects on built heritage in respect of the Kings Worthy and Abbots Worthy Conservation Areas.

3.9.77. For each of the individual identified designated heritage assets, the ExA is satisfied that the Proposed Development would result in less than substantial harm to the significance of those assets. Where there is a harm, the SoST must give that harm considerable importance and weight. The ExA considers the slight adverse effects would be at the lower end of the scale of less than substantial harm.

3.9.78. We shall weigh the less than substantial harm to the significance of the designated heritage assets that we have identified against the public benefits to determine whether the loss of significance would be justified in Chapter 5 of this Report.

3.9.79. The ExA is also satisfied that no oversight or omission has occurred in respect of the assessment undertaken which may prejudice the SoST's duty to consider the desirability of preserving listed buildings and their settings. In relation to the Conservation Areas, we are content that the Proposed Development would not affect any of their key attributes and their overall character and appearance would be preserved following the completion of construction works and during operation.

3.9.80. We consider that the Applicant's assessment complies with the policy aims of the NPSNN. The findings in respect of the historic environment will be taken into account in the overall planning balance in Chapter 5 of this Report.

3.10. LANDSCAPE IMPACT, AND VISUAL EFFECTS AND DESIGN

Introduction

3.10.1. Landscape impact, visual effects, and design were identified as a principal issue in the ExA's initial assessment [\[PD-006\]](#). This Section of the Report addresses the landscape, visual and design effects of the Proposed Development.

The Relevant Policy Tests

National Policy

3.10.2. NPSNN paragraph 5.150 provides that: "*Great weight should be given to conserving landscape and scenic beauty in nationally designated areas. National Parks, the Broads and Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic*

beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the Secretary of State has a statutory duty to have regard to in decisions."

- 3.10.3. NPSNN paragraph 5.151 indicates that the: *"Secretary of State should refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest."*
- 3.10.4. NPSNN paragraph 5.152 states that there is: *"a strong presumption against any significant road widening or the building of new roads and strategic rail freight interchanges in a National Park, the Broads and Areas of Outstanding Natural Beauty, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly".*
- 3.10.5. NPSNN paragraph 5.153 emphasises that: *"Where consent is given in these areas, the Secretary of State should be satisfied that the applicant has ensured that the project will be carried out to high environmental standards and where possible includes measures to enhance other aspects of the environment."*
- 3.10.6. Paragraph 5.148 states that: *"For significant road widening or the building of new roads in National Parks and the Broads applicants also need to fulfil the requirements set out in Defra's English national parks and the broads: UK government vision and circular 2010 or successor documents. These requirements should also be complied with for significant road widening or the building of new roads in Areas of Outstanding Natural Beauty".*
- 3.10.7. The NPSNN sets out criteria for 'good design' for national network infrastructure in paragraphs 4.28 to 4.35 of that document. Paragraph 4.32 explains that scheme design will be a material consideration in decision-making. It states that the SoS: *"needs to be satisfied that national networks infrastructure projects are sustainable and as aesthetically sensitive, durable, adaptable and resilient as they can reasonably be (having regard to regulatory and other constraints and including accounting for natural hazards such as flooding)."*
- 3.10.8. Paragraph 4.34 states that: *"Whilst the applicant may only have limited choice in the physical appearance of some national networks infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting and design measures relative to existing landscape and historical character and function, landscape permeability, landform and vegetation."*

The National Planning Policy Framework (September 2023)

- 3.10.9. Chapter 15 of the NPPF contains overarching policies for conserving and enhancing the natural environment. Paragraph 176 states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to

these issues. Paragraph 177 provides that permission in such areas should be refused for major development other than in exceptional circumstances and where it can be demonstrated that it is in the public interest.

- 3.10.10. Chapter 12 of the NPPF contains overarching policies for design. Paragraph 126 states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Other legislation, policy and guidance

- 3.10.11. The legislation, policy and guidance relevant to landscape, and visual effects is set out in ES Chapter 7 section 7.3 [[REP1-003](#)]. A list is provided at paragraph 7.3.1 of those aspects of legislation and policy which have been considered in carrying out the ES assessment. In addition, the assessment was also carried out in accordance with the professional standards and guidance listed in paragraph 7.3.2. The assessment methodology is described in ES chapter 7 section 7.4.
- 3.10.12. The SDNPA LIR paragraph 4.6 [[REP2-071](#)] refers to, as amended by the Environment Act 1995, which sets the following statutory purposes and duty for National Parks:
- To conserve and enhance the natural beauty, wildlife and cultural heritage of the area; and
 - To promote opportunities for the understanding and enjoyment of the special qualities of the Park by the public.
- 3.10.13. The SDNPA also has a duty when carrying out these statutory purposes:
- To seek to foster the economic and social well-being of the local communities within the National Park.
- 3.10.14. In addition, s62 of the Environment Act 1995 also requires all relevant authorities, including statutory undertakers and other public bodies to have regard to these purposes.
- 3.10.15. S245 of the Levelling-up and Regeneration Act 2023 (LURA 2023) came into effect on 26 December 2023 after the close of the Examination. This amended the National Parks and Access to Countryside Act 1949 s11A (duty to have regard to purposes of National Parks) by the insertion of a new subsection (1A) to provide that in exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.

Local Plan policies and SDNP Designation

- 3.10.16. The South Downs National Park Designation Report (see Appendix B to the SDNPA LIR [[REP2-071](#)]) sets out that its natural beauty and the opportunities it affords for open-air recreation, having regard to both its character, and in particular the chalk landscape, and its position in relation to centres of population, makes it especially desirable that it is designated for National Park purposes.
- 3.10.17. The SDLP Core Policy SD3: Major Development provides that planning permission will be refused for major developments in the National Park except in exceptional circumstances, and where it can be demonstrated they are in the public interest. If it is considered that exceptional circumstances exist and development would be in the public interest, all opportunities to conserve and enhance the special qualities should be sought. Development proposals should also be sustainable as measured against the specified factors.
- 3.10.18. SDLP Policy SD4: Landscape Character provides that development proposals will only be permitted where they conserve and enhance landscape character and sets out the criterion whereby that can be demonstrated. The purpose of Policy SD4 is to set out how development proposals will be expected to conserve and enhance landscape character in the National Park.
- 3.10.19. SDLP Policy SD5: Design indicates that development proposals will only be permitted where they adopt a landscape-led approach and respect the local character, through sensitive and high-quality design that makes a positive contribution to the overall character and appearance of the area. It sets out the design principles that should be adopted as appropriate. The purpose of Policy SD5 is to ensure that all development is of the highest possible design quality which reflects and respects the exceptional quality of the natural, agricultural and built environment of the National Park.
- 3.10.20. SDLP Policy SD7 states that development proposals in the National Park will only be permitted where they conserve and enhance relative tranquillity.
- 3.10.21. SDLP Policy SD11 indicates that development proposals will be permitted where they conserve and enhance trees, hedgerows and woodlands and a proposed loss of trees, woodland and hedgerows should be avoided, and if demonstrated as being unavoidable, appropriate replacement or compensation will be required. In addition, opportunities should be identified and incorporated for planting of new trees, woodland and hedgerows.
- 3.10.22. SDLP Policy SD42 sets out an overarching approach for infrastructure development in the National Park. It states that development proposals for new or improved infrastructure will only be permitted where, amongst other things, the design minimises the impact on the natural beauty, wildlife and cultural heritage of the National Park and the general amenity of local communities.

- 3.10.23. The South Downs National Park Partnership Management Plan 2020-2025 sets out the overarching five-year strategy for the management of the SDNP. It states that: "*National infrastructure schemes must take far better account of protected landscapes: There are an increasing number of proposals for new national infrastructure including road and rail schemes, pipelines and cable routes that could cut through the National Park. Solutions must be found to avoid or reduce the impact of such schemes and to achieve net gain for the environment.*"
- 3.10.24. The South Downs Integrated Landscape Character Assessment (SDILCA) was last updated in 2020. It is an aid to decision making, helping to understand the landscape, identifying what is important and special about it, and how it may change in the future. The proposed M3 Junction 9 Improvement Project is within three general landscape types, Open Downland, Major Chalk Valley Floodplains and Major Chalk Valley Sides; and more specifically A5 - East of Winchester Open Downs, F5 - Itchen Floodplain and G5 - Itchen Valley Sides Landscape Character Areas (see SDNPA LIR Figure 3 and in the Appendix A Plans).
- 3.10.25. The SDNP is an International Dark Sky Reserve, designated in May 2016. The quality of dark night skies is also influenced by what takes place beyond the National Park boundary. Within the SDNP planning policies are in place that seek to conserve and enhance the intrinsic quality of dark night skies. SDLP Policy SD8 states that development proposals will be permitted where they conserve and enhance the intrinsic quality of dark night skies.

The Applicant's approach

Landscape and Visual effects

- 3.10.26. The ES Chapter 2: The Scheme and its Surroundings [[APP-043](#)] paragraph 2.8.8 indicates that the construction phase of the Proposed Development is estimated to commence in late 2024, with operation anticipated to commence in winter 2027. The duration of the construction activity within, or visible from, parts of the SDNP is therefore anticipated to occur over a short-term period (3 years).
- 3.10.27. The Applicant's assessment of effects on landscape and visual receptors is set out in ES Chapter 7 [[REP1-004](#)]. The ES chapter is also supported by several technical appendices, figures and visualisations including Appendix 7.3 - Schedule of Landscape Effects [[APP-099](#)] and Appendix 7.4 (Schedule of Visual Effects) of the ES [[APP-100](#)].
- 3.10.28. The assessment was carried out in accordance with various professional standards and guidance and methodologies including the DMRB LA 104 Environmental Assessment and Monitoring (Highways England, 2020) and the DMRB LA 107 Landscape and Visual Effects (Highways England, 2020) and the Guidelines for Landscape and Visual Impact Assessment Revision 3 (Landscape Institute and Institute of Environmental Management and Assessment, 2013) (GLVIA3). It was agreed with key landscape stakeholders.

- 3.10.29. Landscape considerations include landscape features, and landscape character. Visual considerations include visual amenity and views experienced by people from publicly accessible view locations and nearby buildings, including residential properties. Visual amenity receptors assessed within the study area included occupiers of residential properties; users of Public Rights of Way (PRoWs); visitors to recreational areas such as the SDNP, areas of open access land, heritage assets; people travelling on the existing highway network; visitors to hotels; and office workers.
- 3.10.30. The outcomes of these assessments are supported by various documents, namely the Design and Access Statement (DAS) [APP-162]. This sets out the Design Strategy and principles which have informed the design with the aim of avoiding and minimising adverse landscape and visual effects. This design strategy was realised through Figure 2.3 of Chapter 2 (The Scheme and its Surroundings – Figures (Part 2 of 4)) of the ES [REP2-049] which identified a range of embedded and essential environmental mitigation measures.
- 3.10.31. In addition, Appendix 7.6 (Outline Landscape and Ecology Management Plan) of the ES [APP-102] sets out measures for the maintenance and management of the proposed environmental mitigation measures to ensure their success and that they are delivered to a high environmental standard.
- 3.10.32. In terms of enhancement, section 7.8 of the ES Chapter 7, asserts that in landscape and visual terms, the extent of chalk grassland creation on the eastern slopes goes beyond the provision of mitigation for the effects of the Proposed Development and provides landscape enhancement. Furthermore, in landscape and visual terms the provision of improved WCH links to the SDNP goes beyond the provision of mitigation for landscape and visual effects of the Proposed Development and provides landscape enhancement. The location of the WCH route and chalk grassland are identified on Figure 2.3 (Environmental Masterplan) of the ES [REP2-049].
- 3.10.33. As a result of comments received from SDNPA during the Examination, the Applicant has provided additional materials and made appropriate amendments and additions to submission material. This included:
- submission of the Design Principles Report [REP8-025];
 - submission of additional longitudinal cross-sections (north – south) to explain the changes to the topography within the East Winchester Open Downland landscape;
 - updates to the fiEMP [REP8-023] to include two additional commitments (LV25 and LV26) within the REAC (Table 3.2) committing to deliver additional woodland planting on the eastern side of the M3 corridor to provide a minimum of 25m of vegetation on the proposed cut earthworks replacing chalk grassland on the lower slopes, and additional woodland planting replacing species-rich grassland located between the A33 and M3 northbound highway;

- commitments to the establishment phase for chalk grassland to be included within Requirement 6 of the dDCO [[REP8-004](#)], and additional commitments to monitoring landscape measures during the establishment phase as set out in LV22 of the fiEMP [[REP8-023](#)];
- submission of additional visual materials for the proposed compound including cross-sections and a ZTV to show the theoretical visibility of activities located at the facility; and
- submission of additional winter visualisations to aid the understanding of the ExA.

3.10.34. The landscape within the study area falls within either the nationally designated area of the SDNP or within its setting and is located immediately to the east of the historic townscape of Winchester. A small section of the River Itchen passes through the application boundary which is an ecologically important designated feature as set out in Section 3.6 of this Report.

3.10.35. In terms of duration and reversibility, paragraph 7.4.49 of ES Chapter 7 explains that the following terminology is used to describe the duration of landscape and visual effects that would arise from the Proposed Development:

- Temporary – up to 1 year.
- Short-term – between 1 and 5 years.
- Medium-term – between 5 and 15 years.
- Long-term – longer than 15 years.

3.10.36. The ES overall outcome combined to a single conclusion of the likely significance of effect on LVIA, as required by DMRB LA 107 Landscape and Visual Effects (Highways England, 2020) would be that the Proposed Development would have a moderate adverse and significant effect in the short to medium-term. This is during construction and immediately following construction whilst the proposed mitigation is establishing. The overall moderate adverse and significant effect is predicted principally due to the nature of effects in relation to the designated and sensitive landscape of the SDNP. The effects reduce to a slight adverse and not significant effect in the long-term as landscape mitigation planting successfully establishes to aid landscape integration and provide visual screening.

Design

3.10.37. The ES Non-Technical summary (NTS) [[APP-153](#)] paragraph 2.4.1 sets out various environmental design features and mitigation incorporated into the Proposed Development. The design has avoided adverse effects wherever practicable and reduces residual effects through the embedded and essential mitigation measures as identified on Figure 2.3 (Environmental Masterplan) of the ES [[REP2-029](#)].

3.10.38. The DAS [[APP-162](#)] sets out the Design Policy Context in section 3; the Design evolution and engagement in section 4; the Design Narrative in section 5 and the Design Rationale in section 6. The DAS recognises that

the Proposed Development constitutes 'Major Development' within a National Park, and therefore strong justification for the project is required. It notes that where necessary, appropriate mitigation has been included. The DAS concludes that the scheme design complies with its objectives which have been formulated to address identified problems and take advantage of the opportunities that the Proposed Development would provide.

3.10.39. At ISH3, the prospect of a Design Principles document secured by the dDCO was discussed. As indicated above, a Design Principles Report was submitted during the Examination with the last update at DL8 [[REP8-025](#)]. This document describes the Design Principles that would be secured through a Requirement of the dDCO [[REP8-004](#)] and would be certified within Schedule 11.

3.10.40. The Design Principles document is one of a suite of documents that capture the Proposed Development's design and environmental commitments. These documents include:

- The ES [[APP-042](#) to [APP-152](#)], including Figure 2.3 in Chapter 2 (The Scheme and its Surroundings - Figures (Part 2 of 4)) of the ES [[REP2-029](#)] which defines the spatial layout of physical mitigation proposals.
- The fiEMP [[REP8-023](#)], including the REAC which defines commitments on the processes that need to be used in the delivery, management, monitoring and maintenance of the works.
- Engineering and environmental (principally landscape) drawings and sections, and the general arrangement drawings, which together illustrate the preliminary design.

3.10.41. The NPSNN Accordance Table [[REP5-017](#)], sets out how the Proposed Development would comply with the NPSNN criteria for good design outlined in paragraphs 4.28 – 4.35 of the NPSNN.

Issues arising in the Examination

3.10.42. The key issues considered during the Examination were:

- Effects on landscape character during construction and operation with particular regard to any adverse effects on the special qualities of the SDNP and its setting including:
 - Earthworks/changes to topography.
 - Loss of existing vegetation and proposed new planting.
 - Landscape impact of the proposed construction compound.
 - The impact of the proposed swale and attenuation ponds upon the Open Downland of the SDNP.
 - The creation of Chalk Grassland and whether additional Chalk Grassland is required to mitigate the impacts of the proposed scheme with the extension of the Chalk Grassland across the remainder of the fields east of the M3.
 - The effects on the tranquillity of the SDNP.
 - The implications for the SDNP International Dark Sky Reserve.

- The overall landscape impact and visual effects on the SDNP and its setting in the long-term.
- Design considerations and the overall approach to design reflected by the submitted scheme including the Design Principles Report.
- Whether the Proposed Development would constitute significant road widening or the building of new roads in a National Park and thus fall within the scope of NPSNN paragraph 5.152.

Effects on the landscape character during construction and operation

The SDNPA's overall position

- 3.10.43. SDNPA's [[REP4-047](#)] position is that the SDLP and specifically Policy SD3: Major Development should be given significant weight as it is consistent with both the NPPF and NPSNN, on the question of 'major developments' within a National Park.
- 3.10.44. The SDNPA considers that the Proposed Development would not be accordance with SDLP Policies SD1, SD3, SD4, SD5, SD6, SD11 and SD42 (and the associated Design Guide, Supplementary Planning Document, July 2022), nor would the proposal meet the statutory purpose of conserving and enhancing the National Park. The LIR paragraph 6.14 sets out the negative impacts identified by the SDNPA.
- 3.10.45. The seven special qualities of the SDNP are set out in Figure 2 of the LIR [[REP2-071](#)]. Landscape is the key to all the other special qualities and is therefore shown at the centre of Figure 2. In SDNPA's view the aim behind National Park designation must be to conserve and enhance all seven special qualities together.
- 3.10.46. The SDNPA LIR paragraph 4.5 explains that during the SDNP designation process it was argued that the M3 should act as the clear identifiable boundary to the western end of the National Park. However, it was decided that the area to the north and west of the M3 should be included within the boundary of the National Park as not only was the River Itchen an important landscape feature, but the area was also part of a high quality chalk landscape characterised by rolling hills and secluded dry valleys.
- 3.10.47. In relation to Applicant's assertion of landscape and visual enhancement in relation to the provision of improved WCH links to the SDNP, paragraph 3.1.23(d) of the SDNPA WR [[REP2-075](#)] supports such provision as it would contribute to the SDNP's second purpose and policy priority of improving accessibility within and around the National Park. However, the SDNPA criticise the alignment of the proposed bridleway between Easton Lane and Long Walk.
- 3.10.48. The LIR states that the proposal involves land-take from the SDNP which would result in significant adverse and permanent impacts on its special qualities. The SDNPA does not therefore consider that the Proposed Development accords with both National and Local policies, nor with the

statutory requirement to conserve and enhance. The main negative impacts relate to:

- Landscape character including changes to the topography through cuttings and false cuttings as well as re-profiling of existing landform to facilitate the proposed road widening and associated works, including proposed mitigation measures;
- The location and design of the drainage and infiltration features; and
- The location of the central temporary construction compound and associated haul roads/ access tracks.

Earthworks/ Changes to topography

- 3.10.49. The SoCG between SDNPA and the Applicant [[REP8-040](#)], records this topic as a matter of disagreement between the parties. The SDNPA LIR paragraph 6.14(a) [[REP2-071](#)] and paragraph 3.1.17 (a) of their WR [[REP2-075](#)] outline their concerns in this respect. They submit that the overall design of the Proposed Development should have given greater consideration to the landform proposals to ensure that there would be a seamless and appropriate join-up with the existing positive characteristics of the Open Downland landform.
- 3.10.50. SDNPA's LIR [[REP2-071](#)] identifies that its primary concerns in relation to topography relate to the *"cutting into the chalk Open Downland east of the existing M3 and the deposit of the excess spoil into two existing natural depressions / dry valleys in the Downland leading to significant harmful impacts"*.
- 3.10.51. The Applicant's response to ExQ1 12.1.11, 12.1.18 and 12.1.21 [[REP2-051](#)] provides further information on this matter including the proposed depth of the cut and fill for the landform modifications to the east of the M3 corridor, between Easton Lane and Long Walk. The design solution is to place the material over a sufficient area size, so that the volume being deposited is blended into the landforms and is reflective of the existing, variable profiles. The Applicant contends that the placement of fill would provide the basis for the creation of chalk grassland to help to integrate the Proposed Development into the existing open rolling chalk downland landscape. In specific locations, placement would be increased to capitalise on opportunities for the introduction of false cuttings, thus maximising screening of the existing M3 and the Proposed Development.
- 3.10.52. Following the Design Review Panel and statutory consultation, the Applicant, through a series of workshops and open engagement, worked with the SDNPA in developing proposals to avoid and minimise effects including removal of proposed artificial earthworks on the high flank of the downland, and removal of the spoil deposition areas. The site-gained material would be used to aid visual screening of the highway corridor through the implementation of sympathetically designed earthworks which reflect the existing landform in supporting visual screening and integrating the highway corridor into its landscape context. This approach has reduced the footprint of the Proposed Development within the SDNP.

- 3.10.53. At ISH1, the Applicant clarified further the degree of change that would be experienced in the landscape [[REP4-034](#)], because of the Proposed Development. The ES Chapter 2: The Scheme and its Surroundings [[APP-043](#)] paragraphs 2.6.43 to 2.6.45 summarise the position in relation to land reprofiling. The surface levels of land within the application boundary are proposed to vary from existing levels as identified in Figure 2.9 (Finished Level Variance from Existing Levels) of the ES Chapter 2 - The Scheme and its Surroundings - Figures (Part 4 of 4) [[APP-064](#)].
- 3.10.54. The DAS [[APP-162](#)] contains a principle that earthworks would be sympathetic to the downland. Figure 2.3 Environmental Masterplan (The Scheme and its Surroundings – Figures (Part 2 of 4)) of the ES [[APP-062](#)] shows the contours of placed material derived from the sectional drawings. Whilst there would be a 9m fill in some areas, it would be limited to those areas where there would also be a false cut. The design solution is to place the material over a sufficient area size, so that the volume being deposited would blend into the landforms and would be reflective of the existing, variable profiles.
- 3.10.55. At ISH1 [[REP4-034](#)], in relation to the changes of topography around White Hill Cottage, the Applicant maintained that the Landscape and Visual Amenity (LVIA) within section 7.9 Chapter 7 of the ES [[REP1-004](#)] is appropriate. This concludes that there would be a negligible impact against the SDNP designation as a receptor. The Applicant confirmed that the reasons for the National Park designation were considered against the impacts created by the changes in topography.
- 3.10.56. In the SoCG [[REP8-040](#)] with the SDNPA, the Applicant's stated position is that the provision of an elevated area of landform adjacent to the embankment would maximise visual screening of the M3 and the Proposed Development. The Applicant submits that visibility analysis and the production of visualisations has identified that once landscape mitigation on these slopes has established the earthworks would not be a dominant feature. In addition, the proposed woodland features would be reflective of the surrounding characteristic features found within the River Valley and further integrate the earthworks. The Applicant has added an environmental commitment to the fiEMP [[REP8-023](#)] to further explain the design intent and commit to developing the earthwork profiles during detailed design. Further information is provided in the Applicant comments on LIRs [[REP3-023](#)], in response to paragraph 6.14(a) of SDNPA's LIR [[REP2-071](#)].
- 3.10.57. Additional long-sections to the east of the Proposed Development and existing and proposed digital surface model (Appendix A and Appendix B) were submitted as part of Applicant's Comments on WRs [[REP3-022](#)].

The ExA's consideration of the earthworks/ changes to topography

- 3.10.58. The Applicant's Closing Statement [[REP8-028](#)], acknowledges that the Proposed Development would include topographical changes with cut and fill required that would expose and generate chalk. The Applicant explains that the design principles for the landform proposals have been

to utilise the site-gained material in a positive way which would minimise land take, maximise visual screening and reflect and respond to the landscape characteristics. We are content that those design principles are appropriate and the form of the Proposed Development would be in accordance with them.

- 3.10.59. For the open downland to the east of the M3, the Applicant proposes to place the excavated chalk on those eastern slopes with the intention of creating chalk grassland, particularly within the East Winchester Open Downland landscape. The specific modifications are set out in Figure 2.3 Environmental Masterplan (Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures (Part 2 of 4)) of the ES [[APP-062](#)] which shows the contours of placed material on the sectional drawings. There is also the Applicant’s additional and related commitment in the fiEMP [[REP8-023](#)] referred to above.
- 3.10.60. Having regard to the further information on this topic provided by the Applicant, including in relation to the proposed depth of the cut and fill for the landform modifications, we are satisfied that the material would be spread over a sufficient area with an appropriate volume of deposited material so that the resulting changes would be reflective of the existing profiles and blend into the landforms.
- 3.10.61. As regards the landform changes proposed in the immediate vicinity of the highway, and associated infrastructure, we concur with the Applicant that since the types of engineered landform features proposed are already present in the locality, and in the light of the proposed landscaping, these changes would also integrate effectively into the surrounding landscape.
- 3.10.62. Given the proposed design, and the mitigation measures that would be secured through the dDCO, we find the concerns of the SDNPA in relation to this matter to be overstated. We conclude that during construction and immediately following construction whilst the proposed mitigation is establishing, there would be a significant adverse effect on the designated landscape. However, having regard to the Applicant’s visibility analysis and the visualisations provided by both the Applicant and the SDNPA, we consider that once landscape mitigation on these slopes has become established by Year 15, that the earthworks and associated topographical changes would not have any significant adverse effects on the surrounding landscape.

Loss of existing vegetation and proposed new planting

- 3.10.63. The SDNPA identify in their LIR paragraph 6.14(b) [[REP2-071](#)] and 3.1.17 (b) of their WR [[REP2-075](#)] their concerns with vegetation loss including the tree removal along the eastern edge of the M3 as currently the trees and vegetation soften the interface between the motorway and the SDNP.
- 3.10.64. The SoCG between SDNPA and the Applicant [[REP8-040](#)] records this as a matter which was not agreed at the close of the Examination. SDNPA’s position being that the loss of this vegetation that provides existing

screening and buffering and the opening-up of views (in particular of the motorway corridor and new infrastructure) would have a significant detrimental landscape and visual effect on the SDNP and the Winnall Moors Nature Reserve which falls within it. The SDNPA submits that this is especially the case when considered in combination with the proposed increased height of the new junction elements such as the new gantries / Variable Message Signs (VMS) and motorway signage.

- 3.10.65. As regards the proposed planting, paragraph 3.1.23(c) of SDNPA's WR [[REP2-075](#)], expresses concern that in places the width of proposed tree planting alongside the eastern edge of the M3 would only be 10m wide. They submit that this is unlikely to be sufficient to provide a robust level of screening of the road infrastructure and activity, particularly in the short-term, and examples of this include Easton Lane and Long Walk and the proposed bridleway between these lanes. In some areas the proposed tree planting would be narrower than the existing cover, which at present is up to 25m in width.
- 3.10.66. The SDNPA sought the strengthening of the dDCO requirements to ensure that tree planting along the eastern edge of the motorway would be no less than 25m in width and that at least half of this planting would occur on top of the cut batter where it would be more elevated and would provide a more effective screen.
- 3.10.67. The Applicant provided a response to the SDNPA concerns in the Applicant's Comments on LIRs [[REP3-023](#)]. This confirms that a small length (~260m) of planting would be less than 25m wide due to the topography at this location, with planting located on the edge of the defined Open Downland landscape where topography profiles steepen.
- 3.10.68. The fiEMP [[REP8-023](#)] was updated during the Examination to include additional commitments LV25 and LV26 within the REAC Table 3.2 to provide commitments for additional woodland planting on the eastern slopes, and in the land parcel located between the A33 and M3 (adjacent to attenuation basins 1 and 2).
- 3.10.69. LV25 specifies that further opportunities would be sought to deliver additional woodland planting within plot reference 5/3a as identified on the Land Plans [[APP-006](#)] in areas currently identified as species rich grassland on Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures (Part 2 of 4)) of the ES [[REP2-029](#)] to provide additional visual screening features. The objective of this commitment is to support environmental visual screening.
- 3.10.70. LV26 also provides for further opportunities to be sought to increase the woodland and scrubland belt within plot reference 5/3b on the lower slopes of the proposed cut batter in areas currently identified as chalk grassland on Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures (Part 2 of 4)) of the ES. The objective of this commitment is to support environmental visual screening and provide a total width of planting of 25m.

- 3.10.71. SDNPA's response to ExQ3 1.3.2 [[REP6-034](#)] comments on the Applicant's further updates of the fiEMP [[REP8-023](#)] to include two new landscape items LV25 and LV26 and is critical of the details provided and their scope. For example, LV25 is qualified as follows: "*Additional planting would be subject to constraints of utilities, maintenance of highways infrastructure and visibility requirements for the proposed and existing highway*". They submit that the amount of additional woodland planting might therefore be minimal. In relation to LV26 which proposes to replace the proposed chalk grassland on the lower slopes of the proposed cut batter with woodland, they contend that this does not address the reason that they asked for the woodland planning to be consistently wider, as planting on the lower slopes would not assist in visual screening of the highway infrastructure from the wider SDNP.
- 3.10.72. The Applicant's Closing Statement [[REP8-028](#)] points out that the SDNPA acknowledge that: "*it would appear that most of the proposed vegetation loss is unavoidable as it relates to vegetation within the footprint of the currently proposed works*" and request that "*advanced planting is undertaken to minimise the opening up of views as much as possible*".
- 3.10.73. In response to this request, the Applicant has provided additional materials to confirm the extent and reasoning for inclusion of advanced planting in Appendix C (Proposed advanced planting locations and the rationale for each) of the Applicant's Comments on the LIRs [[REP3-023](#)]. Following the SDNPA submission at DL7 [[REP7-006](#)], the Applicant has amended LV16 of the fiEMP [[REP8-023](#)]. This commitment provides for advanced planting of new woodland and scrub/shrub planting to be undertaken for specified landscape plots and would be secured by means of Requirements 3, 5 and 6 of the dDCO. For LV16, the assumption on which it is based is that advanced planting is undertaken at the start of construction works to provide opportunity for establishment during construction period to provide improved mitigation at scheme opening.
- 3.10.74. The Environmental Masterplan Figure 2.3 in Chapter 2 of the ES [[REP2-029](#)] and the OLEMP Appendix 7.6 of the ES [[APP-102](#)] show the advanced planting proposed. This is now secured by the addition a reference to the timing of advance planting as part of the discharge of Requirement 5 (3)(a) of the dDCO.

The ExA's consideration of the loss of existing vegetation and proposed new planting

- 3.10.75. In summary, the SDNPA suggest that that the loss of the existing vegetation would have negative landscape impacts by opening-up views of the motorway corridor and the new infrastructure and the increased activity within it. It would also expose views across the valley towards built up parts of Winchester.
- 3.10.76. At ISH1, in response to questions relating to the significance of landscape effects because of tree loss, the Applicant confirmed that whilst the Proposed Development seeks to minimise vegetation loss, it is recognised that there would be unavoidable losses. Where there would be losses,

this has been considered in the landscape and visual assessment [[REP1-003](#)] and taken into account in the overall conclusion.

- 3.10.77. In that respect, the ES Chapter paragraph 7.11.5 [[REP1-003](#)] finds that the design features including the modified highway network, new gantries/ VMS and motorway signage, and modified M3 J9, would result in a series of noticeable features in the short to medium-term. Given the loss of woodland, existing vegetation, and modification to landform and topography, this would result in a series of residual significant effects in the medium-term. However, the ES concludes that effects reduce to a slight adverse and not significant effect in the long-term as landscape mitigation planting successfully establishes to aid landscape integration and provide visual screening.
- 3.10.78. We consider that the Applicant has responded positively to the SDNP's concerns during the Examination, for example, identifying where information relating to advance planting is located within the application documents and by way of changes to the environmental commitments in the REAC tables. We note that SDNPA [[REP7-006](#)] welcomes the amendment at LV16 to include the additional areas of advanced planting. These commitments would be secured through the dDCO [[REP8-004](#)]. Requirement 5 now includes specific reference to advance planting. These commitments would all support the objective of environmental visual screening.
- 3.10.79. As regards the SDNPA criticism of LV25 and 26, we do not consider the Applicant's caveat to LV25 in recognition of those potential constraints to be unreasonable at this stage of the process nor does it materially detract from the main thrust of the stated objective which is to support environmental visual screening. LV26 proposes to replace the proposed chalk grassland on the lower slopes of the proposed cut batter with woodland and makes specific reference to a minimum total width of planting of 25m in this location. This responds to the SDNPA concerns about the ability to establish chalk grassland on the lower slopes of cut batters in locations where woodland was proposed on the upper slopes. We note that the SDNPA considers that replacing this area of chalk grassland with woodland is a more realistic proposal.
- 3.10.80. We have had regard to the outstanding concerns of the SDNPA in relation to the effectiveness of these additional commitments and their submission that planting on the lower slopes would not assist in visual screening of the highway infrastructure and that is why they seek the woodland planting to be consistently wider. However, we consider that overall, the proposed planting in this location responds positively to the recommendations set out in the SDNPA Landscape Character Assessment. We also find that the Applicant's visibility analysis demonstrates that the effectiveness of the planting and landform proposals would not materially improve if the width of this planting was increased.
- 3.10.81. The ExA concludes that the effect of loss of vegetation would indeed be to open-up views of the motorway corridor and the new infrastructure at

the outset and this would result in harm in the short to medium-term. However, given the proposed landscape mitigation planting, including advance planting, we are satisfied that the effect in the long-term on the SDNP and the Winnall Moors Nature Reserve would not be significant.

The impact of the proposed swale and attenuation ponds upon the Open Downland of the SDNP

- 3.10.82. The SDNPA identified in its LIR [[REP2-071](#)] that the *“form and location of the swale and attenuation ponds (and the associated earthworks required) would have a negative impact and this would be exacerbated by proposals to enclose the pond with scrub and woodland planting”*.
- 3.10.83. In response to ExQ2 12.2.2 [[REP5-035](#)] the SDNPA has submitted at Appendix C an additional response from Michelle Bolger Expert Landscape Consultancy. Appendix A identifies that there is an overlap between the landscape character assessments for Hampshire and the SDNP, being respectively the Hampshire Integrated Landscape Character Assessment (HILCA) and the South Downs Landscape Character Assessment (SDLCA). The area around Attenuation Basin 5 is located within LCA A5: East Winchester Open Downs in the SDNP study and is located within the Itchen Valley LCA in the Hampshire study.
- 3.10.84. The SDNPA Appendix C [[REP5-035](#)] sets out in detail why the SDNPA consider that the Applicant’s proposed woodland planting for the area around Basin 5 would be uncharacteristic. Appendix C is critical of the proposed woodland planting in this location *“to provide visual screening of the highway”*. They accept that the woodland planting should in time be successful in providing visual screening during the summer months and may also have biodiversity benefits. However, they contend that it would not restore the existing character of the SDNP and there would remain permanent harm due to the various factors set out in their response.
- 3.10.85. The Applicant provided a response to the SDNPA’s concerns at ISH1 as summarised in its written summaries of oral case for ISH1 [[REP4-034](#)]. This identified that the basins and swale to the east of the M3 corridor would be wet for several days of the year and would have a form comparable to the existing chalkland landscape.
- 3.10.86. The Proposed Development and position of the highway and modifications to the landform results in the need for drainage features located to the east of the highway, as they would collect the natural flow of water in the surrounding areas. There would be two basins within the National Park. Appendix A of Applicant Comments on LIRs [[REP3-023](#)] provides the additional sections to demonstrate the change of topography for the drainage basins.
- 3.10.87. The two drainage basins, Basins 5 and 6, would be positioned within the East Winchester Open Downland LCA but within areas at lower elevation, when compared to the wider LCA. Basin 5 would accommodate both overland surface water drainage and some highway drainage. The landform has been designed to ensure that the basin has sufficient

volume to accommodate the 1 in 100 year + 40% climate change events whilst minimising land take.

- 3.10.88. Basin 6 has been designed as an infiltration feature, accommodating overland flows from the surrounding landscape. Although it is referred to as a 'basin', it is a surface feature generated to the rear and sides by local topography and contained by the proposed bridleway forming a dam along the downstream end. The proposed location of the basin is within an existing area of depressed topography, and the proposed modifications to landform look to replicate this depression. Basin 6 would have profiles that would be similar to the surrounding landscape. This is shown in Figure 2.7 in Chapter 2 (The Scheme and its Surroundings - Figures (Part 3 of 4)) of the (ES) [[APP-063](#)] and Appendix D (Additional cross-sections through Basins 5 and 6) [[REP3-023](#)].
- 3.10.89. The purpose of the swales is to provide a route for the surface water run off to link to Basins 5 and 6. Without them, the overland flows would simply flow over the bridleway towards and onto the M3 mainline. Once vegetation has been established, it is anticipated that the swales would be imperceptible within the landscape particularly by users on the bridleway. The Applicant has provided cross-sections thorough the proposed swale in Sheet 2 of 2 (Carriageway Sections) in Engineering Plans and Sections [[APP-010](#)].
- 3.10.90. The Applicant's Closing Statement [[REP8-028](#)] acknowledges the variation in the definition of the landscape character at this location between the SDNPA's and HCC's LCA definitions. The Applicant has summarised its response to the proposed landscape mitigation in Appendix A (Attenuation basin 5 and landscape design relationship to landscape character) position paper of the Applicant Written Summaries of Oral Case for ISH1 [[REP4-034](#)].
- 3.10.91. The Applicant's Appendix A explains that in addition to the design function of Basin 5, consideration was given to ensuring that its landform was sympathetic, while also acknowledging that it would be surrounded by proposed planting. The introduction of proposed planting around this attenuation feature would provide visual screening and integration of the basin and highway infrastructure at this location.
- 3.10.92. The Applicant submits that whilst the landform is part of a gentle rolling landform, the continuation of the agricultural landscape as a particular land use is a unifying feature. This land use would cease following implementation of the Proposed Development, and therefore an appropriate alternative land use has been proposed.
- 3.10.93. The Applicant's position is that the introduction of planting at this location as landscape mitigation would serve to support the integration of the Proposed Development into its surroundings and would also support conservation of the wider SDNP. The proposed planting would connect with retained features visible at this location and would also support habitat connectivity.

3.10.94. In response to ExQ3 12.3.2 on this matter [[REP6-023](#)], the Applicant reasserts that, given the introduction of new highway infrastructure and associated infrastructure in this location, the woodland proposals provide appropriate mitigation in the context of the existing character of the local area.

The ExA's consideration of the proposed swale and attenuation ponds upon the Open Downland of the SDNP

3.10.95. The ExA concludes in Section 3.8 of this Report in relation to drainage design that if the drainage basins were not present in the design or were to be significantly redesigned, the ability to meet the requirements for flood risk reduction and discharge flow rates would be compromised. We shall now conclude in this Section on the issue of the landscape and visual impact of the attenuation features within the SDNP.

3.10.96. The proposed woodland planting for Basin 5 would be located in an area defined by the SDNP as being part of the East Winchester Open Downland LCA. However, the same geographical area is also defined by HCC as being located within its Itchen Valley LCA. See Figure 7.3.1 in Chapter 7 (Landscape and Visual – Figures (Part 1 of 3)) of the ES [[APP-067](#)].

3.10.97. The specific location of Basin 5 is depressed (~50m Above Ordnance Datum (AOD)) when compared to the wider LCA (rising to ~100m AOD in the immediate locality). At this lower elevation it occupies a similar elevation to the Itchen Valley Sides and Valley Floodplain as defined by the SDNPA which are more typically vegetated. In that respect, we note that the SDLCA considered that the area in question belonged to neither LCA G5 Itchen Valley sides nor the LCA A5: East Winchester Open Downs but was most characteristic of the open downlands.

3.10.98. Itchen Valley LCA is more typically vegetated, so woodland could be successfully integrated as a landscape element at this location. Furthermore, this position is supported by vegetation being commonplace in this general area with vegetation present along Easton Lane, the M3 corridor and surrounding the group of residential properties to the east.

3.10.99. Whilst we note the SDNPA's submissions that preference should be given to the SDLCA character assessment, our observations at the time of ASI1 confirm that the existing land use at this location comprises a gently rolling large open arable field which is bounded by hedgerow planting (with trees) to the existing M3 corridor and Easton Lane and a woodland group adjacent to White Hill Cottage. Taking those various factors into account we concur with the Applicant that this area is one of transition between two landscape character types.

3.10.100. Against that background, we consider that the proposed woodland planting could be successfully integrated as a visually appropriate element in the landscape at this location. Bearing in mind the proposed introduction of new highway and associated infrastructure in this setting, the woodland proposals would provide appropriate mitigation in the context of the existing character of the local area.

- 3.10.101. We also note that SDNPA accepts that, given the proposed introduction of highway infrastructure, there are no preferential landscape proposals. They acknowledge that the woodland planting should in time be successful in providing visual screening during the summer months and may also have biodiversity benefits. The SDNPA nevertheless consider that the woodland planting would be part of the residual permanent harm, along with the changes in landform, and that it would not mitigate the permanent harm to the landscape character.
- 3.10.102. We disagree and consider that the introduction of planting at this location as landscape mitigation would respect the existing character and would serve to support the integration of the Proposed Development into its immediate surroundings, and the conservation of the wider SDNP.
- 3.10.103. Turning to Basin 6, we note that whilst it is referred to as a basin, this is an existing feature within the existing topography. The topography of the basin has been designed to be sympathetic to the surrounding existing flowing downland topography, with steepened earthworks limited to the area adjacent to the proposed Bridleway. The form of Basin 6 would have similar profiles to the surrounding landscape. Given those design features we are content that Basin 6 would not appear as an incongruous feature but would blend well with the surrounding chalk grassland landscape which would be created at this location.
- 3.10.104. The swale that would run on the east side of the proposed bridleway would take the form of a shallow depression with gradual side slopes. We are satisfied that once vegetation has been established, the swale would be imperceptible within the landscape including by users on the bridleway.

The landscape impact of the proposed Construction Compound

- 3.10.105. The ES Chapter - Chapter 3: Assessment of Alternatives [[APP-044](#)] paragraph 3.13.25 explains that further work was undertaken after statutory consultation to reduce the impact of the main construction compound at Area A through examining location, size and configuration options and paragraph 3.13.26 presents the result of that exercise in Insert 3.10. In response to ExQ1 4.1.5, the Applicant explains how the reduction in footprint has been achieved and indicates the proposed extent and location of the planting that would take place between the main site compound area and the gyratory.
- 3.10.106. In response to ExQ3 4.3.5(I) [[REP6-023](#)] and ExQ2 4.2.2(ii) [[REP5-026](#)], the Applicant expands upon how the sensitivity of the SDNP has been determined. The Applicant's response to ExQ3 4.3.5 confirms that great weight was afforded to the SDNP in accordance with policy. The assessment undertaken in Chapter 7 (Landscape and Visual) of the ES and its associated appendices outlines the Applicant's position on these matters. The sensitivity of the SDNP has been defined considering it as a whole and adopting a worst-case position considering its qualities and their influence.

- 3.10.107. The Applicant contends that NPSNN paragraph 5.150 does not apply to every individual element of the Proposed Development in isolation but the collective development as a whole. As a result, greater weight was not afforded to the impact on the SDNP from the construction compound in isolation given the context of the existing junction, the Proposed Development and the construction activity that would take place at this location.
- 3.10.108. The SDNPA's position, as noted in its LIR [REP2-071] and the SoCG [REP8-040], is that in the proposed location the construction compound would protrude into and exacerbate the impact of the works on the SDNP. They consider that a compound in this location would be an unacceptable incursion beyond the existing highway into the Open Downland landscape of the SDNP beyond the valley side.
- 3.10.109. In response to ExQ2 12.2.6 [REP5-026] the Applicant refers to Appendix E (ZTV of construction compound) of its written summaries of oral case for ISH1 [REP4-034] which identifies the area of theoretical visibility of the proposed construction compound activities and facilities including those from within the SDNP.
- 3.10.110. This identifies isolated areas of visibility extending into the mid-distance (up to 1.5km) to the east of the M3 corridor from the SDNP and from elevated landforms such as Magdalen Hill Down and from areas already anticipated to experience visibility of the Proposed Development. Broadly, visibility beyond Long Walk and from the wider areas of the SDNP would be restricted; visibility would be experienced from Easton Lane (within the SDNP) from its commencement at the M3 J9 until the intersection with Long Walk to the north-east.
- 3.10.111. To the west of the M3 corridor there is very isolated theoretical visibility from the lower lying areas of the Itchen Valley within the SDNP including from the recreational trail of the Itchen Way where there is visibility of the existing highway infrastructure. In general, visibility is restricted from the wider Itchen Valley, which is part of the setting of the SDNP, and from sections of the Itchen Way including north of the A34.
- 3.10.112. Whilst the analysis undertaken does not distinguish between the activities being visible within the compound, it is those activities located on the higher elevation which would experience the greatest degree of visibility, including the proposed car parking and storage areas. The Applicant anticipates that from the eastern side of the M3 corridor within the SDNP and from Easton Lane and Long Walk, the areas with theoretical visibility of the compound would be more extensive and would include views of the proposed cabins, than from the west of the existing M3 (within the SDNP and its setting), where views would be more restricted and limited to features on the elevated ground including the car parking and storage areas. However, these views would be experienced against the backdrop of an operational construction site where there would be significant earthworks being undertaken and vegetation clearance would have occurred.

- 3.10.113. To assist in demonstrating the potential impacts of the main construction compound in this location, the Applicant submitted an indicative plan in Appendix D (Construction compound layout plan) [[REP4-034](#)] showing the layout of the construction compound. This demonstrates that the Applicant would be able to locate the fixed elements lower in the landscape to further reduce the visual effects and respond appropriately to the site topography. The Applicant contends that a sensitive layout of the construction compound would ensure effects would be minimised as far as reasonably practicable.
- 3.10.114. In relation to Appendix D, the SDNPA comment that whilst the degree of cut and fill required does not appear excessive it is a simplified section and a reminder that there would be a constant need to reprofile land within the compound because of the existing rolling topography for features such as access roads, car parking and the like. Although it would be possible to reprofile this at the end of the construction period they submit that it is generally impossible to restore to the natural ground profile.
- 3.10.115. On the degree of cut and fill that is shown Appendix D to enable siting of the cabins (0.36m), the Applicant's response to ExQ2 12.2.7 explains that the indicative compound layout seeks to minimise temporary reprofiling of the existing topography by locating the cabins such that their long dimension would be parallel to contours, thus enabling very minor cut and fill works local to the cabins only. The 0.36m is an anticipated value based upon current topographical survey information.
- 3.10.116. The Applicant submits that whilst it is not reasonable to require it to fix the layout of the main construction compound, Requirement 15 of the dDCO requires that any static unit providing welfare or other facilities within the temporary construction site compound as part of Work No. 38 shall be a single storey unit and shall not exceed a height of 4 metres. In response to ExQ3 12.3.8 [[REP6-023](#)], the Applicant explains why the height restriction is set at a maximum height of 4m and cannot be reduced.
- 3.10.117. The SDNPA has responded to ExQ2 12.2.3 and 12.2.6 to 12.2.8 on this topic [[REP5-035](#)]. In relation to Appendix F (Cross-section of the construction compound) to the Applicant's written summary of oral submissions for ISH1 [[REP4-034](#)], SDNPA comment that both cabins and storage would be visible from Easton Lane within the SDNP. They submit that they would be seen beyond the proposed 2.2m close boarded fence which would, in itself, appear incongruous. However, they accept that the close-boarded fence would screen views of parked cars.
- 3.10.118. In response to ExQ3 12.3.8, SDNPA indicate that should the Applicant's preferred location remain the proposed position of the compound, then without prejudice to the matters of principle in relation to the siting of the construction compound, they welcome the introduction of dDCO Requirement 15 which provides for height restrictions on the site but would wish to see this extended to include the stored materials as well as 'static units'. Furthermore, the SDNPA would also like to see a

commitment to the use of 'living hoardings', and additional mitigation through the use of a Construction Worker Travel Plan to further reduce the amount of car parking required on the site.

- 3.10.119. The Applicant explains in response to ExQ2 12.2.9, why all the parking spaces for visitors and workforce could not be off-site and a park and ride system operated for all visitors and workers, and comments on the extent of the area required and the impact of that upon the SDNP. Since the main construction compound would be immediately adjacent to the construction activities being undertaken to M3 J9 and within the agricultural fields to the north of Easton Lane, the Applicant submits that any visual effects would be experienced in combination with the wider construction activity.

The ExA's consideration of the landscape impact of the proposed construction compound

- 3.10.120. The ES Appendix 7.3 [[REP1-013](#)] assesses the overall significance of effect of construction activities on the SDNP as moderate and hence significant. The construction activities include the provision of the main construction compound. It is anticipated that the construction activity would occur over a short-term period of 3 years.
- 3.10.121. The Applicant's Appendix E plan [[REP4-034](#)] showing the ZTV illustrates that there would be limited views of the construction compound from within the National Park beyond 1km, with more longer views from the west outside the National Park. Although the construction compound activity would be apparent from within the SDNP and its setting, the ZTV demonstrates the fairly limited extent of that visibility that would occur over the short-term period of construction and restoration.
- 3.10.122. The Applicant's Appendix D indicative construction compound layout plan [[REP4-034](#)] demonstrates that the Applicant would be able to locate the fixed elements lower in the landscape to respond appropriately to the site topography and ensure that visual effects would be minimised as far as reasonably practicable.
- 3.10.123. As regards the proposed mitigation, the dDCO now includes Requirement 15 which sets a maximum height of 4m for any static units contained in the main construction compound. This would also serve to mitigate the adverse impact. In the light of the Applicant's response to ExQ3 12.3.8 [[REP6-023](#)] we accept that to attach a height restriction to transitory features such as the on-site storage and plant would amount to a disproportionate restriction on the Applicant's ability to manage its construction compound efficiently and safely. Given the Applicant's response to ExQ3 4.3.5 [[REP6-023](#)], we agree for the reasons set out in that response, that it would also be inappropriate to require the installation of temporary living screen hoardings.
- 3.10.124. Having regard to the Applicant's response to ExQ3 4.3.5 and 4.3.4 (iii) [[REP6-023](#)], we are satisfied that it would not be feasible or reasonable to further reduce the size of the compound. We nevertheless welcome the Applicant's response to the request set out in the SDNPA's DL5

Submission [[REP5-035](#)] for a Travel Plan by adding in entry C15 to the REAC Table 3.2 in the fiEMP. That would be secured by Requirement 3 of the dDCO [[REP8-004](#)].

- 3.10.125. The ExA has considered the extent of the changes that would take place to the land to facilitate this use for the temporary period and the Applicant's proposals for reinstatement. We have considered the SDNPA's concerns in relation to the Applicant's ability to restore to the natural ground profile at the end of the temporary period and the vegetation loss including at the site entrance.
- 3.10.126. The Applicant's response to ExQ3 12.3.8 confirms that the location of the compound entrance from the A272 would utilise an existing farmer's access. Whilst some clearance of the existing vegetation would be required to facilitate the access junction and provide appropriate sight lines, once construction activity is complete the access would be reinstated back to its existing form and the proposed structural landscape planting would be planted to replace features lost as part of the construction of the Proposed Development.
- 3.10.127. The Applicant's written summaries of oral case for Issue Specific Hearing 1 (ISH1) [[REP4-034](#)] Appendix C Construction Compound Position Statement explains that to prepare the compound for use, the area would be stripped of topsoil, but no further reprofiling of the underlying chalk would be required for the car park and storage area. There would be limited areas of local cut to fill earthworks underneath the cabin footprints of 0.3m which would be restored in accordance with the requirements of the dDCO. The Applicant's ISH1 summary at Appendix F provides cross-sections of the construction compound showing the land profile as existing, during construction and following construction and demonstrates the limited changes that would occur in that respect during construction.
- 3.10.128. In the light of the Applicant's ISH1 oral and post-hearing submissions and its responses to ExQ3 4.3.4(iii) and 12.3.8 [[REP6-023](#)], we are content that the adverse effects on the designated landscape from the presence of the construction compound would be temporary and reversible and that those adverse effects would not endure once the construction of the Proposed Development is completed, and the land reinstated.
- 3.10.129. The ExA agrees with the Applicant that the impact of the construction compound at this location would not materially increase the overall effects on the SDNP arising from the wider construction activity. In reaching that conclusion, we have taken into account the context of the existing junction at the boundary of the SDNP, the construction of the Proposed Development, the proposed mitigation and the resulting effects anticipated on this designated landscape during this phase. Nevertheless, the overall adverse effects that would occur during the construction period and until restoration would be significant after mitigation.

The provision of Chalk Grassland as mitigation and whether additional Chalk Grassland is required to mitigate or enhance the adverse impacts

- 3.10.130. The SoCG between the SDNPA and the Applicant [[REP8-040](#)] notes that chalk grassland is proposed on lower slopes of the SDNP open downland slopes, and adjacent to new woodland and scrub areas on cutting/embankment slopes throughout the application boundary.
- 3.10.131. The SDNPA welcomes the principle of the proposed chalk grassland as a form of mitigation for the Proposed Development and state in their LIR [[REP2-071](#)] that the: "*provision of Chalk Grassland is a positive attribute of the proposed scheme*". However, they express concern that: "*the details proposed within the landscape east of the M3 would establish an artificial new line or sub-division within the Open Downland*".
- 3.10.132. The SDNPA submit that the area proposed to be managed as chalk grassland would not correspond with any existing field boundaries and differences in management regimes would establish a new pattern in the landscape which would not correspond to any existing or historic patterns exacerbating the impacts of the Proposed Development. The SDNPA are also concerned that it is unclear how the chalk grassland would be protected from agricultural activities and management practices which might undermine or disturb the proposed chalk grassland. They seek further measures including that the fields east of the M3 should be treated as one and all reverted to chalk grassland to be secured through the dDCO Requirements.
- 3.10.133. The SDNPA's WR, paragraph 3.1.23(a) [[REP2-075](#)], also questions the proposed location of some of the chalk grassland (such as the lower embankments alongside the M3) and how viable it would be in the long-term. They point out that the proposed areas of chalk grassland need to be designed with good management in mind, in terms of access, degree of slope, and if grazing is proposed, water supply and fencing into suitable grazing cells.
- 3.10.134. The Applicant responded to the SDNPA on this topic at ISH1 [[REP4-034](#)] and in its comments on LIRs [[REP3-023](#)] specifically in response to paragraph 6.14(e) of SDNPA's LIR [[REP2-071](#)].
- 3.10.135. The Applicant confirms that 9ha of chalk grassland would be provided in a ~100m strip across the east of the Proposed Development and is focused in the area subject to landform reprofiling. The Applicant disagrees that further chalk grassland would be necessary as mitigation. The Applicant submits that the design proposals reflect the need to balance land-take within the SDNP, the impacts on the BMV agricultural land and provide proportionate mitigation.
- 3.10.136. On the question of whether there should be an extension of the proposed area of chalk grassland to the east of the M3 corridor to include the full agricultural field, the Applicant's response is set out in paragraph 6.14e within section 4 of its Comments on LIRs [[REP3-023](#)]. The SoCG [[REP8-040](#)] also records the Applicant's position.

- 3.10.137. For the management of the chalk grassland, Appendix 7.6 OLEMP [[APP-102](#)] includes outline requirements for proposed landscape elements, as well as their specification, management, and maintenance. Appendix E (Position Paper – Soft Landscaping Specification) outlines the rationale for the selected planting stock sizes specified in Appendix 7.6 (OLEMP) of the ES [[APP-102](#)].
- 3.10.138. Requirements 3 and 5 of the dDCO [[REP8-004](#)] and the REAC entry LV3 within the fiEMP [[REP8-023](#)] set out the requirement to produce a Landscape and Ecological Management Plan (LEMP) prior to implementation of the Proposed Development. Requirement 6 (3) which relates to the implementation and maintenance of landscaping specifically includes chalk grassland within the 5 year establishment phase during which failed chalk grassland must be replaced.
- 3.10.139. In addition, and in response to the SDNPA’s view on chalk grassland not successfully establishing on verges, the Applicant has committed to a range of measures outlined in Appendix 7.6 (OLEMP) of the ES [[APP-102](#)], to ensure its success. The Applicant also amended entry LV22 in the REAC (Table 3.2) within the fiEMP to include additional commitments on monitoring this new habitat. These measures and controls would be refined and updated (in consultation with the SDNP) and included in the siEMP.
- 3.10.140. In response to the SDNPA’s suggestions that additional mitigation measures should be secured in a s106 agreement, the Applicant’s position is that additional mitigation is not required. Whilst the Applicant has discussed the use of Designated Funds to provide further chalk grassland enhancement within the National Park with the SDNPA this does not form part of the application submitted.

The ExA’s consideration of the provision of Chalk Grassland as mitigation and whether additional Chalk Grassland is required to mitigate or enhance the adverse impacts

- 3.10.141. The proposals for proposed chalk grassland would provide substantial areas of new semi-natural habitats within the SDNP and would deliver over 9ha of chalk grassland to the east of the M3. We concur with the Applicant that its introduction would respond to the SDNPA’s LCA development considerations. The provision of chalk grassland within the Open Downland LCA would respond positively to the special qualities of the SDNP.
- 3.10.142. On the question of whether the proposed chalk grassland within the landscape east of the M3 should be extended to include the fields east of the M3, the Applicant has explained that the area in question has been subject to continual change over the past 100 years. Prior to it being in its current form as a large open field, it was subdivided into a number of small and medium-sized land parcels. However, this pattern was oriented in an east-west direction with few boundaries running in a north-south orientation. It was not therefore possible to reflect this former pattern with the new scheme.

- 3.10.143. We agree with the Applicant that the retained arable farmland combined with the chalk grassland within this part of the landscape would still retain the open downland characteristics and its broad scale and would not result in perceptible subdivision. The establishment of the woodland planting on the M3 embankments slopes would also reduce visibility of the delineation from the west. From the east, the rolling topography would reduce the perception of this delineation. We also note that the extension sought would result in additional loss of BMV agricultural land. For those reasons, we consider the proposed mitigation to be entirely satisfactory and proportionate. We believe that extending the chalk grassland beyond the current area identified would represent an unreasonable requirement that would go beyond the mitigation requirements necessary for the Proposed Development.
- 3.10.144. In relation to the management, maintenance and monitoring of the chalk grassland, we are satisfied that satisfactory arrangements would be made by means of the OLEMP and subsequently the LEMP which would be secured by Requirements 3, 5 and 6 of the dDCO [[REP8-004](#)]. However, as explained in Section 3.6 of this Chapter, we consider that Requirement 6 (3) should be amended so that the 5 year establishment phase during which failed chalk grassland must be replaced is extended to 10 years. The rDCO contains an amendment to that effect.
- 3.10.145. In addition, LV22 in the REAC within the fiEMP [[REP8-023](#)] has been updated to include the following additional commitment: *"During the establishment period monitoring for establishment of newly created landscape elements will take the form of quarterly inspection in the first two years, followed by biannual inspections in the following three years after seeding/planting"*.
- 3.10.146. We conclude that the proposed chalk grassland would provide ecological and mitigation that would contribute to an overall BNG for the Proposed Development that we have concluded upon in Section 3.6 of this Report as representing a positive benefit in that context. In addition, we consider that it would provide landscape mitigation and an element of landscape enhancement in this location. We concur with the Applicant that it would not be necessary or reasonable to require the extension of chalk grassland further east as part of the Proposed Development to provide additional landscape mitigation or enhancement.
- 3.10.147. We consider the proposed mitigation in the form of the provision of chalk grassland to be entirely satisfactory and appropriate. In the light of the proposed management, maintenance and monitoring that would be secured by the rDCO, we are content that satisfactory measures have been secured and would be put in place with a view to achieving the viability and success of the new chalk grassland area.

The Tranquillity of the SDNP

- 3.10.148. The SDNPA LIR [[REP2-071](#)] explains that the seven special qualities of SDNP include tranquil and unspoilt places. The LIR states that: *"Tranquillity is considered to be a state of calm and quietude and is associated with a feeling of peace. It relates to quality of life, and there is*

good scientific evidence that it also helps to promote health and well-being. It is a perceptual quality of the landscape and is influenced by things that people can both see and hear in the landscape around them”.

- 3.10.149. The South Downs National Park Tranquillity Study (2017) sets out relative tranquillity across the SDNP. It is acknowledged that the overall sense of tranquillity is diminished nearer to the existing M3. SDLP Policy SD7 states that development proposals in the National Park will only be permitted where they conserve and enhance relative tranquillity.
- 3.10.150. The SDNPA response to ExQ2 12.2.2 [REP5-035] submits that the residual effects at Year 15 would include a reduction in tranquillity. The SDNPA acknowledge that there are proposals to mitigate for noise impacts and welcome the specific reference in the fiEMP [REP8-023], to the use of 'low noise road surfacing' and dDCO Requirement 14. However, the SoCG between the SDNPA and the Applicant records that whilst the construction hours of working are now agreed, the extent of the low noise road surfacing that would be provided is not.
- 3.10.151. The SDNPA seek a commitment to extend the use of 'low noise road surfacing' to existing sections of the M3 throughout the Order limits (or even wherever the M3 runs through or adjacent to the National Park). Paragraph 11.8.2 of Chapter 11 (Noise and Vibration) of the ES [APP-052] indicates that low noise road surfaces are proposed as part of the Proposed Development where new road surfaces are to be laid. The Applicant's position remains unchanged and is as stated in response to ExQ2 13.2.4 [REP5-026].
- 3.10.152. The ES Chapter 7 (Landscape and Visual) [REP1-003] acknowledges that within the immediate environs of the Proposed Development an adverse effect on tranquillity would be experienced during construction and at Year 1 following its opening. At Year 1 there would only be negligible change for the SDNP, and within localised areas some locations would experience a reduction in traffic noise from the baseline condition due to the proposed landform modifications. Following establishment of landscape planting which would be delivered as part of the mitigation package, no adverse effects on tranquillity are predicted to remain by Year 15.
- 3.10.153. The Applicant's position is that the existing M3 corridor is a visible and audible feature on the western edge of the SDNP. The design of the landform proposals on the eastern side of the Proposed Development adjacent to and within the SDNP in combination with proposed soft landscape planting would serve to provide screening of the highway to further minimise effects on tranquillity. The Applicant considers that, following establishment of the proposed landscape mitigation planting, as well as the modifications to landforms, the eastern part of the SDNP would experience beneficial effects through reduced visibility of man-made features, some reduction in audibility, and the enhanced experience of new natural features provided within the SDNP.

3.10.154. The Applicant's response to ExQ1 12.1.1 [[REP2-051](#)], explains further how the Proposed Development seeks to positively respond to the SDNP's special qualities including 'tranquil and unspoilt places'. The Applicant has also provided further information in response to ExQ1 12.1.14, 12.1.15, 12.1.21, 12.1.24 and 13.1.3 on this topic.

The ExA's consideration of the tranquillity of the SDNP

3.10.155. The ExA has carefully considered the effect of the Proposed Development on the SDNP's special quality of tranquillity. The Applicant's response to ExQ1 12.1.21 explains how the SDNP's special qualities have informed the design approach including in relation to 'Tranquil and unspoilt places'. In the light of the ES assessment, and the further explanations provided by the Applicant in response to our questions, we are satisfied that the ES has correctly assessed the effect on tranquillity. Although an adverse effect on tranquillity would be experienced during construction and at Year 1, there would only be negligible change for the SDNP by Year 1 and by Year 15 no adverse effects on tranquillity would remain. Indeed, we agree with the Applicant that by that stage the eastern part of the SDNP would experience some beneficial effects.

3.10.156. We also note that the SDNPA considers the proposed working hours would help to lessen the negative impacts on tranquillity during the construction phase. The SoCG [[REP8-040](#)] records that the proposed construction working hours are now agreed.

3.10.157. The package of mitigation measures includes the design solution for the landform proposals east of the M3 corridor to support visual screening and noise attenuation, the elevation of the Proposed Development being set as low as possible to minimise its visibility and audibility and the introduction of low noise road surfaces as part of the Proposed Development where new road surfaces are to be laid.

3.10.158. As regards the provision of low road noise surfacing for all roads in the SDNP, as sought by the SDNPA, we do not find that it would be necessary, or reasonable to require such provision in association with the Proposed Development. We believe that the mitigation package including the proposed construction hours and the extent of the low noise surfacing to new roads would provide satisfactory mitigation for the effects on tranquillity. Nevertheless, we consider that it is reasonable in this location to specifically provide for consultation on the noise mitigation measures, including low noise road surfacing, with both the SDNPA and the WCC on matters relating to their function and with HCC as the local highway authority. The rDCO includes an amendment to Requirement 14 to this effect. We also consider the prospect of low noise road surfacing in Section 3.11 of this Report, in the context of noise impacts.

3.10.159. The ExA concludes that there would be an adverse effect on tranquillity during construction, but by Year 1 there would only be negligible change for the SDNP and by Year 15 the Proposed Development would conserve and enhance relative tranquillity in accordance with SDNP Policy SD7.

The South Downs National Park International Dark Sky Reserve

- 3.10.160. The SDNP is an International Dark Sky Reserve, designated in May 2016. The quality of dark night skies is also influenced by what takes place beyond the SDNP boundary [[REP2-071](#)].
- 3.10.161. The SDNPA LIR paragraph 6.23 [[REP2-071](#)] welcomes the general approach by the Applicant to avoid and minimise the impacts of lighting during construction and operation and the commitments in the fiEMP [[REP8-023](#)] that lighting would be designed in consultation with the SDNPA and in accordance with the SDNPA's Dark Skies Technical Advice Note Version 2 (May 2021), which accompanies Policy SD8.
- 3.10.162. However, the SoCG between the Applicant and SDNPA [[REP8-040](#)] records an area of disagreement in relation to the lighting assessment methodology, including Dark Night Skies.
- 3.10.163. Following discussion at ISH1, the Applicant updated Figure 7.14 of Chapter 7 (Landscape and Visual – Figures) (Part 3 of 3) [[REP3-015](#)]. The Applicant has also provided further information in relation to the potential impact of the proposed lighting in response to ExQ1 12.1.9, 12.1.10 and 12.1.13 [[REP2-051](#)]. The Applicant points out that LV24 in Table 3.2 of the fiEMP [[REP8-023](#)] requires that the gantry mounted signage lighting should be designed within the parameters of the Environmental Light Zones in which they are located and in accordance with the SDNP (TLL-10), Technical Advice Note.
- 3.10.164. In addition, the reference designs for signage lighting Figure 7.7.2 and Annex 1 (Proposed-Design Values) for GADS003, and Annex 2 (Proposed-Design Values) for GADS004 of Appendix 7.7 (Technical Note Lighting Assessment of Gantry Signage) of the ES [[APP-103](#)] show the avoidance of excess direct upward light which, based on the proximity of Winchester as an existing source of upward light, influences skyglow and causes a reduction in night sky visibility. This results in the Applicant's conclusion that the Proposed Development would not noticeably or attributably change the dark sky conditions within the SDNP Dark Sky Reserve.
- 3.10.165. The Applicant's response to ExQ1 12.1.13 provides further justification and explanation to support the view that the effects would be very small-scale. The Applicant acknowledges that in relation to the SDNP designation there would be a discernible change to lighting conditions. However, the size and scale of the change is considered very small for the following reasons:
- the proximity of Winchester as an expansive lit area and with a high proportion of upward light, both direct and indirect;
 - the existing M3 corridor includes light sources through vehicle tail and head lights;
 - the gantry-lit signage has been designed to minimise upward light, and to be consistent with obtrusive lighting criteria established

within Institution of Lighting Professionals Guidance Note 1 for the reduction of obtrusive light (2021);

- lighting in the underpasses would be limited to the underpass itself, which in any event are situated at a relatively low elevation in the landscape and typically below the existing carriageway levels in these areas which vary between 45 and 63m;
- the effects on perceptual qualities of proposed lit elements are limited in respect of the SDNP given the position and orientation of the lighting and the perception of these from the SDNP; and
- in addition, the underpasses would be located in very close proximity to the existing M3 and A34 corridors, in an area already influenced by light sources from vehicles.

The ExA's consideration of the South Downs National Park International Dark Sky Reserve

- 3.10.166. Given the information on this topic provided both with the application and during the Examination, the ExA is satisfied that there would be no discernible change to the Environmental Light Zones or the dark skies of the SDNP within the application boundary and its environs. The Proposed Development would be consistent with the aims of SDLP Policy SD8 in that respect.

The overall effects on the SDNP in the long-term

- 3.10.167. The ES Chapter 7 (Landscape and Visual) presents the findings of the assessment of the construction and operation (including maintenance where relevant) of the Proposed Development on LVIA [[REP1-003](#)]. The summary findings set out in paragraph 7.11.15 are that the overall moderate adverse and significant effect predicted in the short to medium-term reduces to a slight adverse and not significant effect in the long-term as landscape mitigation planting successfully establishes to aid landscape integration and provide visual screening.
- 3.10.168. The SoCG between the SDNPA and the Applicant [[REP8-040](#)] records this as a matter that is not agreed. The SDNPA question the reliability of the judgements within the LVIA including the finding that landscape effects on the SDNP would no longer be significant at Year 15 of operation having regard to its intrinsic characteristics including its topography. They are also critical of the failure to assess landscape and visual effects for winter at Year 15.
- 3.10.169. The SDNPA's response to ExQ2 12.2.2 confirms that their position in relation to the significance of effects on the SDNP at Year 15 has not changed in the light of any additional information provided by the Applicant at DL4 including the winter Year 15 visualisations in Appendix B of Applicant written summaries of oral case at ISH1 [[REP4-034](#)].
- 3.10.170. The SDNPA submit that the residual effects include: loss of open downland landscape to the highway; loss of the natural flowing topography due to the deposition of fill; total loss of landscape character for the area between White Hill Cottage, the M3 and Easton Lane due to loss of land to new slip roads, attenuation basin 5, and changes to

topography and woodland planting required to screen those aspects from the SDNP; loss of continuity of landscape character either side of the area between White Hill Cottage, the M3 and Easton Lane; permanent harm to views from the west, in particular from St Swithun's Way from where there would be increased views of traffic and noticeable changes to the landform which would not appear natural, and reduction in tranquillity.

- 3.10.171. In relation to the combined effect on the SDNP, the SDNPA disagree with the conclusion set out in ES Chapter 15: Cumulative Effects [[APP-056](#)], paragraph 15.5.43 (ExQ2 8.2.1) [[REP5-035](#)]. They do not consider that the loss of land within the SDNP to the Proposed Development, the permanent changes to topography, the introduction of uncharacteristic features such as the attenuation basins and visibility of a number of these changes from St Swithun's Way can be properly described as 'very minor loss or detrimental alteration to one or more characteristics, features or elements'.
- 3.10.172. The SDNPA at DL5 submitted as Appendix C an additional response from Michelle Bolger Expert Landscape Consultancy [[REP5-035](#)]. They welcomed the provision of the Applicant's revised visualisations with the loss of existing trees shown accurately and the preparation of winter Year 15 images. However, there remained two viewpoints that they considered did not fully represent how the change in the landscape would be viewed on the ground, namely, VP 3 and 7 both of which look towards the Proposed Development from the west.
- 3.10.173. To assist the ExA, the SDNPA have provided additional visualisations which they submit makes it possible to see how the side of the hill slope would be reprofiled with a new planted edge appearing which marks the eastern edge of the Proposed Development. They contend that the slope that would be created to the west of this newly created horizon/ edge would not have the appearance of a natural hillside as shown in the visualisation, as it would represent new slopes created by the highway works.
- 3.10.174. They submit that there would be a clear loss of the natural hillside when viewed from VP 3. They also consider that visible moving traffic on this hillside would have a significantly greater impact than it does at present and that the reprofiled horizon with its fringe of planting would not restore the current natural horizon. They emphasise that this is not a single view but a series of views along this promoted route which were identified as iconic in the SDNP View Characterisation and Analysis (2015).
- 3.10.175. The SDNPA's position, as recorded in the SoCG, is that there is no explanation as to how the incursion and expansion of the motorway landscape into the SDNP, which would result in the erosion of intrinsic characteristics such as the downland topography and the loss of trees that cannot be replaced, could be reduced to negligible. They consider there would be a significant residual and permanent adverse effect on the SDNP.

- 3.10.176. The Applicant maintains the view that reported effects on the SDNP would be non-significant in the long-term once the mitigation measures have successfully established. This judgement is given on the basis that the mitigation measures would re-provide vegetation features lost during the construction period, and that the Proposed Development would be no more perceptible in the landscape than the baseline condition which includes the existing highway network.
- 3.10.177. At ISH1 [REP4-034], the Applicant confirmed that it had reviewed the assessment of Year 15 effects in both winter and summer. As a result of the mitigation already proposed which would provide multiple layers of vegetation, it was considered that the belt of vegetation would continue to provide necessary screening effects and therefore there would be no change to the assessment conclusions.
- 3.10.178. In response to ExQ2 12.2.2 [REP5-035], the Applicant has fully considered comments from the SDNPA in respect of the LVIA and has made amendments to the application to secure additional mitigation as requested including the Design Principles Report, an update to the fiEMP to include two additional commitments (LV25 and LV26) within the REAC Table 3.2 and has committed to the establishment phase for chalk grassland being included within Requirement 6 of the dDCO as set out above.
- 3.10.179. At ISH2, SDNPA sought an amendment in relation to Requirement 6 (3), namely, that it should include reference to 'other elements planted as part of the landscaping scheme' and provide for replacement within a 10 year period after planting rather than 5 years [REP4-047].
- 3.10.180. The Applicant in response to ExQ2 1.2.1, rejected the proposal that a longer post-construction management plan would be more appropriate than the 5 years currently included in the dDCO. As stated in Appendix 7.6 (OLEMP) of the ES [APP-102], 'the duration of management and monitoring for each landscape / ecology element created or enhanced is 25 years from completion of the authorised development'. A response to the provision of a longer establishment period and how landscape and planting 'failures' are to be resolved is also covered in response to ExQ2 9.2.16.

The ExA's consideration of the overall effects on the SDNP in the long-term

- 3.10.181. The ExA has carefully considered the points raised by the SDNPA on this matter in the light of the additional visualisations provided by both the Applicant and the SDNPA during the Examination. We nevertheless concur with the Applicant that the LVIA correctly assesses that the reported effects on the SDNP would not be significant in the long-term when considering impacts on the special qualities of the designation.
- 3.10.182. Our conclusions in relation to the long-term effects on matters such as topography, loss of trees and tranquillity and the like are set out above. In reaching our overall judgement on this matter we have had regard to the mitigation measures that would be provided including the proposed

new planting in the light of the vegetation features that would be lost during the construction period. In that respect, we welcome the amendments made to the application to secure certain additional mitigation measures requested by SDNP during the Examination which are set out in the Applicant's response to ExQ2 12.2.2.

- 3.10.183. However, we believe that it is essential that the proposed mitigation becomes successfully established. The Applicant considers that the extension of the time beyond the 5 year establishment period would create onerous conditions which would be difficult to monitor, and that sufficient provision has already been made. The ExA disagrees and considers that a period of 10 years is required in this instance given the sensitivity of the SDNP and the importance of establishing the anticipated mitigation including the proposed new planting and chalk grassland. This change to Requirement 6 (3) is reflected in the rDCO.
- 3.10.184. We have also taken into account the existing baseline where the M3 corridor is a visible and audible feature on the existing western edge of the SDNP. We are satisfied that following implementation and establishment of mitigation the Proposed Development would be no more perceptible in the landscape than the existing highway network.
- 3.10.185. For the avoidance of doubt, we also agree with the LVIA assessment of the effects of the Proposed Development on visual receptors during the construction and operational phases including the views from St Swithun's Way. Overall, there would be significant construction phase effects on visual amenity which would predominantly be limited to receptors within about 1km of the application boundary, with many of the affected receptors being much closer than this. Only VL17 (Winchester Cathedral Tower) beyond 1km would experience significant effects. There would also be significant Year 1 operational phase effects on visual amenity. However, by Year 15, only receptors at VL1 (Easton Lane/ NCN Route 23) would continue to experience significant effects.
- 3.10.186. In conclusion, we agree with the LVIA overall outcome combined to a single conclusion of the likely significance of effect on LVIA that effects on the SDNP and its special qualities including tranquillity would result in significant adverse effects in the short to medium-term. This is during construction and immediately following construction whilst the proposed mitigation is establishing. However, during the operational phase those effects would reduce to a slight adverse and not significant effect by Year 15 summer once the landscape mitigation has established to aid landscape integration and provide visual screening.
- 3.10.187. In the light of the Applicant's review of the assessment of Year 15 effects, we agree that that would also be the position in winter. In addition, we find that there would be no discernible change to the Environmental Light Zones or the dark skies of the SDNP within the application boundary and its environs. The proposed mitigation would be satisfactory and appropriate and no further mitigation measures are necessary.

3.10.188. The ExA concludes that the reported effects on the SDNP would not be significant in the long-term once the mitigation measures have successfully established. In reaching this conclusion, we have taken into account the combined effects on the SDNP including the loss of land within the SDNP to the Proposed Development, the permanent changes to topography, the introduction of features such as the attenuation basins and the visibility of a number of these changes from St Swithun's Way.

Whether the Proposed Development represents "good design" and the overall approach to design reflected by the submitted scheme including the design principles document

3.10.189. The SDNPA highlight that good contextual design goes to the heart of the 'landscape-led approach' to design within the Local Plan, and specifically Policies SD4: Landscape Character and SD5: Design.

3.10.190. At DL5, the Applicant submitted a draft Design Principles Report [[REP5-028](#)] for the application and ongoing detailed design. The development of the detailed design of the Proposed Development in accordance with the Design Principles Report would be secured by Requirement 12 of the dDCO and, if development consent is granted by the SoS, it would be one of the documents to be certified pursuant to Article 47 and Schedule 11 of the dDCO.

3.10.191. The SDNPA has responded to the submitted Design Principles Report [[REP6-034](#)]. In summary, the SDNPA do not support the current Design Principles Document. They seek more detailed specifications and guidance that would be used to inform and guide the next design stage and how the different elements of the Proposed Development would address the special qualities and seek to conserve and enhance the SDNP.

3.10.192. The SDNPA [[REP6-034](#)] support the WCC comments [[REP6-036](#)] that further iterations of the Design Principles Report should be made a specific requirement of the dDCO and that a final version should be agreed with WCC, HCC and the SDNPA prior to the detailed design stage and any development commencing on site [[REP7-006](#)].

3.10.193. The Design Principles Report was updated at DL8 [[REP8-025](#)] to include a further principle (EU.07 – Walking Cycling and Horse Riding) which sets out surface treatments and minimum widths for all routes. The Applicant's position is that the purpose of the Design Principles Report is to set out the principles that are to be incorporated into the detailed design of the Proposed Development, that will be considered under Requirement 12 of the dDCO. The Applicant does not consider it necessary to include an additional requirement as sought by WCC and SDNPA because the preliminary design has been developed in accordance with the DAS [[APP-162](#)] which sets out design principles. This preliminary design then informs the detailed design.

The ExA's consideration of whether the Proposed Development represents "good design" and the overall approach to design reflected by the submitted scheme including the design principles document

- 3.10.194. The Design Principles Report explains that the Design Principles are written to capture the key principles that have shaped the preliminary design submitted, and to make a commitment that these would be maintained and developed in the future detailed design and delivery phases of the Proposed Development in accordance with NPSNN requirements for 'good design'.
- 3.10.195. Section 3.3 explains that the Design Principles incorporate a landscape-led strategy to ensure that consideration is given to the integration of the Proposed Development with the environmental and landscape context in which it is located, including the SDNP, and specifically the identified LCAs. Table 3.2 sets out the Landscape-led Design Principles which include LL.01 'Respecting the South Downs National Park' and other principles relate to existing vegetation, planting including advance planting, lighting, and landscape reinstatement.
- 3.10.196. The ExA has considered the SDNPA and WCC criticisms of the Design Principles Report. We nevertheless believe that the document, as drafted, would satisfactorily serve the desired purposes of first, defining the Design Principles that are to be incorporated into the detailed design of the Proposed Development and, secondly, to ensure that these detailed design elements have a clear design language, taking into consideration the local context and characteristics of each area within the application boundary. Whilst there is a duplication of generic principles from other documents, the Design Principles Report provides a readily accessible summary record of those principles in a specific document without the need to trawl through other sources.
- 3.10.197. Given the purpose and scope of this document to inform the future detailed design and delivery phases of the Proposed Development, we consider the level of detail provided to be entirely reasonable. The latest version submitted at DL8 includes specific details for the width and surfacing of the non-motorised routes.
- 3.10.198. The ExA agrees with SDNPA and WCC that acceptable design principles are vital given the location of the site within the SDNP. However, we consider that both the key principles and the landscape-led Design Principles set out in the document provide sufficient recognition and safeguards for the SDNP and its setting. We do not therefore believe that it is necessary to include provision for further iterations of the Design Principles Report in consultation with the local authorities as a DCO Requirement.
- 3.10.199. As regards the Applicant's design approach generally, the ES Non-Technical Summary [[APP-153](#)] paragraph 2.4.1, explains the design features that have been developed and incorporated into the scheme. The NSPNN Accordance Table [[REP5-017](#)] sets out the Applicant's

position in relation to the relevant paragraphs of the NPSNN. The DAS [APP-162] provides a series of high-level design principles which form the design strategy for the Proposed Development. In response to principles of Climate, Places, People and Value contained within the 'Design Principles for National Infrastructure', published by the National Infrastructure Commission (February 2020) the DAS [APP-162] includes principles which align with these.

- 3.10.200. The Applicant has provided further explanation in relation to various aspects of design in response to ExQ1 12.1.2 to 12.1.4 [REP2-051]. The key principles include a landscape-led strategy and placemaking which recognise the challenge and opportunities of the surrounding environment including the SDNP and other environmental designations. A Highways England Design Review Panel was completed on 30 March 2021. The response to ExQ1 12.1.4 sets out the measures that have been adopted in response to comments of the Design Review Panel to ensure good design principles are embedded into the proposal.
- 3.10.201. The ExA is content that the Applicant's design approach for the Proposed Development reflects the NPSNN guidance and design has been included as an integral consideration from the outset of a proposal. In accordance with NPSNN paragraph 4.35, the Applicant has demonstrated how the design process was conducted and how the proposed design evolved. The Applicant has also set out the reasons why the favoured choice has been selected.

Whether the Proposed Development would constitute significant road widening or the building of new roads in a National Park

- 3.10.202. As regards NPSNN paragraph 5.152, the SDNPA [REP4-047] submit that an existing road(s) within the SDNP is getting significantly wider and new roads are being proposed to be built in parts of the SDNP where currently there are none. Therefore, the test set out in NPSNN paragraph 5.152 is applicable. In addition, the SDNPA believe the current application falls short in terms of policy compliance, and more specifically the 'exceptional circumstances' test set out in paragraph 5.151 has not been met. This is set out in the SDNPA LIR and WR [REP2-071 and REP2-075]. In response to ExQ2 14.2.11 [REP5-035] the SDNPA accept that ultimately it is a matter of judgement as to whether the Proposed Development is a 'significant road widening scheme' and whether it meets the tests required.
- 3.10.203. The Applicant's position is that the Proposed Development is not a significant road widening scheme within the scope of paragraph 5.152. In response to ExQ2 14.2.11 [REP5-026], the Applicant explains that the road elements of the Proposed Development within the SDNP include the new southbound links between the A34, the M3 and the M3 J9 gyratory, the A33 roundabout, and the M3 northbound on-slip and southbound off-slip. The widening of the M3 carriageway to four lanes at the junction is local to the junction and is required to facilitate the free flow links to and

from the A34 / M3. This localised widening would occur outside the SDNP.

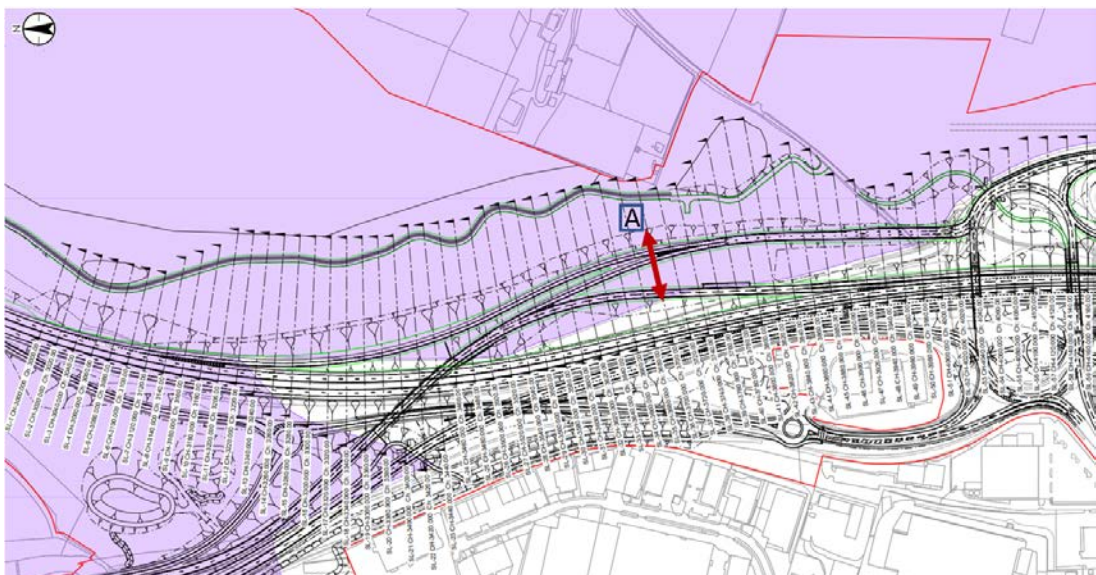
- 3.10.204. The Applicant also submits that the A34 links (Work No. 3 and 39) are captured within paragraph 2.27 of the NPSNN as corresponding links. The M3 northbound on-slip (Work No. 8) and southbound off-slip (Work No. 11) are captured within paragraph 2.23 of the NPSNN as new slip roads. The A33 junction and the realignment of the southbound carriageway (Work No. 1 & 7) are captured in paragraph 2.27 of the NPSNN as including new alignments which cross a river, in this case the River Itchen where the alignment is modified, and new carriageway is proposed to the A33 roundabout as the road alignment changes.
- 3.10.205. It is the Applicant's position that 'significant road widening' refers to the consistent widening of roads or the 'dualling' of an existing road for a considerably longer distance than the works proposed as part of the Proposed Development. The Applicant defines the works within the SDNP as new links, new alignments, new slip roads, and a new roundabout. For these reasons, the Applicant submits that they do not constitute 'significant road widening'.
- 3.10.206. In response to ExQ2 14.2.12 the Applicant refers to paragraph 2.23 of the NPSNN which states that the Government's wider policy is to bring forward improvements and enhancements to the existing SRN to address the needs set out earlier in the NPSNN. It indicates that enhancements to the existing national road network will include: "*junction improvements, new slip roads and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion;*".
- 3.10.207. The NPSNN paragraph 2.23 therefore refers specifically to new slip roads within the context of junction improvements. Paragraph 2.27 refers to new road alignments and corresponding links. The Applicant submits that the Proposed Development would reflect the infrastructure referred to in paragraphs 2.27 and 2.23.
- 3.10.208. The Applicant contends that NPSNN paragraph 5.148 refers to the "*building of new roads*", with the implication of meaning to be entirely new roads that create a new route from one place to another, falling under s22(1)(a) PA2008 for the 'construction' of a highway rather than an 'alteration' or 'improvement' falling under s22(1)(b) and (c) respectively. In this case, the A33, A34, and M3 are all existing roads, and whilst there would be new alignments and new carriageways in the form of new links, new alignments, new slip roads, and a new roundabout, these would not constitute the 'building of new roads' where there was not previously a route.
- 3.10.209. The NPSNN Accordance Table [[REP5-017](#)] sets out the Applicant's position with respect to paragraph 5.148 and the reference to 'significant road widening'. Whilst the gyratory would change shape, the diameter of the new gyratory as measured on the axis north-south would be smaller than the existing by circa 55m. At present the distance between the

gyratory bridges measured north-south is circa 150m, and as proposed it would be circa 95m. On the axis east-west the gyratory would be unchanged in width although its geometry would change with the angle of the curve altered. There would be some local widening of circa 1m to the A272 spitfire link, but this would be within the existing extent of the highway. The Applicant submits that the combined changes to the gyratory and A272 spitfire link would not constitute 'significant road widening'. The limited widening of the M3 carriageway is within the highway extents and the A33 roundabout and new slip roads would not meet the definition of 'new roads' or 'significant road widening'.

3.10.210. In ExQ2 1.2.3 [[PD-011](#)], the ExA requested detailed information and data to clarify the amount of new carriageway proposed to be constructed within the SDNP. The Applicant provided comprehensive detail in their reply which is shown in the appendices to the Applicant's Response to ExQ2 [[REP5-027](#)]. Figure 3B details that there is 2.23km of new carriageway proposed.

3.10.211. The ExA also sought to understand the extent of additional highway land required within the SDNP to facilitate the Proposed Development which we consider is more representative of 'widening' than the detail of additional width of the M3 carriageway and gyratory previously provided by the Applicant. The engineering cross-sections provided following ExQ2 [[REP6-005](#)] show that, over a length of approximately 1km of the north-eastern side of the M3 Gyratory, the Proposed Development extends up to 80m further into the National Park than the existing highway boundary (as shown at point A in Figure 11).

Figure 11 : Extent of main road widening into South Downs National Park



3.10.212. As set out in the Applicant's Closing Statement [[REP8-028](#)], its position remains that the Proposed Development does not constitute the building of 'new roads' or 'significant road widening' as referred to in paragraphs 5.148 and 5.152 of the NPSNN for the reasons outlined in response to ExQ2 14.2.11(I) and ExQ2 14.2.12 [[REP5-026](#)].

- 3.10.213. The Applicant's submits that paragraph 5.152 of the NPSNN does not apply and there are exceptional circumstances for the grant of consent for the Proposed Development within the SDNP. Should the SoST consider the Proposed Development to constitute 'significant road widening' or the 'building of new roads' the Applicant maintains that there are compelling reasons for the enhanced capacity and the benefits would outweigh the disbenefits (or costs) very significantly.

The ExA's consideration of whether the Proposed Development would constitute significant road widening or the building of new roads in a National Park

- 3.10.214. The ExA notes that NPSNN paragraph 2.23 regards enhancements to the existing road network as including junction improvements, and new slip roads to address congestion and improve performance and resilience at junctions. In addition, paragraph 2.27 recognises that in some cases new road alignments and corresponding links, including alignments which cross a river or estuary, may be needed to support increased capacity and connectivity. A similar reference to such enhancements of the SRN is also included at paragraph 3.46 of the Consultation Draft of the NPSNN.
- 3.10.215. The Applicant has provided details of the extent and location of any road widening that would be incorporated in the Proposed Development including whether it would fall within the SDNP. We are content that any such widening, although in parts extensive, can nevertheless be regarded as localised. We concur that the A34 links (Work No. 3 & 39) would fall within paragraph 2.27 of the NPSNN as corresponding links.
- 3.10.216. We regard the fundamental nature of the Proposed Development as being distinct from 'significant road widening' and prefer the Applicant's approach that this refers to the consistent widening of roads or the 'dualling' of an existing road for a considerably longer distance than the works proposed as part of the Proposed Development. In contrast, we consider that the works within the SDNP are appropriately defined as new links, new alignments, new slip roads, and a new roundabout.
- 3.10.217. Furthermore, having regard to the dimensions of the proposed works we find as a matter of fact and degree that, although the Proposed Development includes new carriageway and localised widening of the existing highway, the combined changes to the gyratory and A272 spitfire link would not constitute 'significant road widening' nor would the limited widening of the M3 carriageway, the A33 roundabout and new slip roads fall within the definition of 'new roads' or 'significant road widening' as anticipated by the NPSNN.
- 3.10.218. We also agree that, when considering the document as a whole, the most reasonable interpretation of NPSNN paragraph 5.148, is that it refers to the 'building of new roads', with the implication of the meaning to be entirely new roads that create a new route from one place to another. In this situation, the A33, A34, and M3 are all existing roads, and we do not consider that the proposed new alignments and new carriageways would constitute the 'building of new roads' where there was previously a route.

- 3.10.219. We conclude that the Proposed Development should not be categorised as 'significant road widening' and the test set out in NPSNN paragraph 5.152 is not applicable nor does it fall within the scope of paragraph 5.148.

The ExA's Conclusions on Landscape and Visual Effects and Design

Design

- 3.10.220. The ExA is content that the Applicant's design approach for the application reflects the NPSNN guidance and design has been included as an integral consideration from the outset. In accordance with NPSNN paragraph 4.35, the Applicant has demonstrated how the design process was conducted and how the proposed design evolved and has also set out the reasons why the favoured choice has been selected. In relation to NPSNN paragraph 4.32, we are satisfied that the Proposed Development would be sustainable and as aesthetically sensitive, durable, adaptable, and resilient as it could reasonably be.
- 3.10.221. In the long-term, the design approach for the Proposed Development is such that it would minimise the impact on the natural beauty, wildlife and cultural heritage of the SDNP consistent with the aims of SDLP Policy SD42. The Proposed Development meets the NPSNN requirements relating to 'good design'. However, we consider that this is a factor which weighs neither for nor against the Proposed Development and we attribute neutral weight to it in the planning balance.

Landscape and Visual Effects

- 3.10.222. The ExA agrees with the SDNPA that the NPSNN paragraph 5.150 policy requirement is for great weight to be attached to conserving landscape and scenic beauty in the SDNP nationally designated area and that this highest status of protection is afforded to all parts of the SDNP. We shall consider whether the NPSNN paragraph 5.151 test of 'exceptional circumstances' to justify development within such locations is met in Chapter 5 of this Report where we shall also consider compliance with SDLP Policy SD3.
- 3.10.223. We conclude that the Proposed Development should not be categorised as 'significant road widening' and the test set out in NPSNN paragraph 5.152 is not applicable nor does it fall within the scope of paragraph 5.148. The strong presumption against any significant road widening or the building of new roads does not therefore apply to the Proposed Development.
- 3.10.224. In relation to the effects on landscape character during construction and operation, on the question of the proposed earthworks and changes to topography, we conclude that during construction and immediately following construction whilst the proposed mitigation is establishing, there would be a significant adverse effect on the designated landscape. However, having regard to the Applicant's visibility analysis and the visualisations provided by both the Applicant and the SDNPA, we

consider that once landscape mitigation on these slopes has become established that the earthworks and associated topographical changes, would not have any significant adverse effects on the surrounding landscape.

- 3.10.225. As regards the loss of existing vegetation and proposed planting, we conclude that the effect of loss of vegetation would initially be to open-up views of the motorway corridor and the new infrastructure. As set out above, this would result in a series of residual significant effects in the medium-term. However, given the proposed landscape mitigation planting, including advance planting, we are satisfied that the effect in the long-term on the SDNP and the Winnall Moors Nature Reserve would not be significant. We are content that the approach to trees, woodland and hedgerows would be in accordance with SDLP Policy SD11.
- 3.10.226. Turning now to the proposed swales and attenuation ponds, for Basin 5 we consider that the proposed woodland planting could be successfully integrated as a visually appropriate element in the landscape at this location and the woodland proposals would provide satisfactory mitigation in the context of the existing character of the local area. We find that the introduction of planting at this location as landscape mitigation would respect the existing character and would serve to support the integration of the Proposed Development into its immediate surroundings, and the conservation of the wider SDNP.
- 3.10.227. For Basin 6, we are content that it would not appear as an incongruous feature but would blend well with the surrounding chalk grassland landscape which would be created at this location. As regards the swales, once vegetation has been established, we anticipate that they would be imperceptible within the landscape including to users of the bridleway.
- 3.10.228. In relation to the proposed siting of the main construction compound within the SDNP, we believe that the Applicant has taken proportionate and reasonable steps to minimise the landscape impact and visual effects on the SDNP, whilst balancing the requirement to maintain a construction compound including essential welfare facilities in the immediate vicinity of its works.
- 3.10.229. We find that there would be a degree of additional harm associated with the temporary use of land within the SDNP as a construction compound. However, we concur with the Applicant that given the context of the existing junction at the boundary of the SDNP, the other construction works of the Proposed Development, and the resulting effects anticipated on this designated landscape during this phase, that the adverse effects associated with the construction compound would not materially increase the overall effects on the SDNP arising from the wider construction activity. Nonetheless, those overall adverse effects during construction would be significant even after mitigation and compliance with the dDCO Requirements.
- 3.10.230. We conclude that the proposed chalk grassland would provide ecological mitigation that would contribute to an overall BNG for the Proposed

Development which would represent a positive benefit in ecological terms as set out in Section 3.6 of this Report. In addition, we consider that it would provide landscape mitigation and an element of landscape enhancement in this location. In the light of the proposed management, maintenance and monitoring that would be secured by the rDCO, we are content that satisfactory measures have been secured and would be put in place with a view to achieving the viability and success of the new chalk grassland area.

- 3.10.231. We have also considered whether the proposed chalk grassland should be extended to cover the fields to the east. However, we find the proposed provision of chalk grassland as mitigation to be entirely satisfactory and proportionate. We believe that to extend the chalk grassland beyond the current area identified would represent an unreasonable requirement that would go beyond the mitigation or enhancement measures necessary for the Proposed Development.
- 3.10.232. We are satisfied that although an adverse effect on tranquillity would be experienced during construction and at Year 1, there would only be negligible change for the SDNP by Year 1 and by Year 15 no material adverse effects on tranquillity would remain and the eastern part of the SDNP would experience some beneficial effects. We conclude that there would be material harm to the special quality of tranquillity during the short to medium-term, but by Year 15 the Proposed Development would conserve and enhance relative tranquillity. That would be consistent with the purpose of Policy SD7 to ensure that development would not harm the relative tranquillity of the National Park.
- 3.10.233. We are also content that there would be no discernible change to the Environmental Light Zones or the dark skies of the SDNP within the application boundary and its environs. The Proposed Development would be consistent with the aims of SDLP Policy SD8 in that respect.
- 3.10.234. We conclude in Section 3.13 of this Report, that the ProW and non-motorised user (NMU) proposals resulting from the Proposed Development would be positive and provide an enhancement to the existing provision. We find the detailed criticisms of the SDNPA in relation to the alignment of the proposed bridleway between Easton Lane and Long Walk to be overstated. We consider that the provision of improved WCH links to the SDNP including the new bridleway would contribute to the SDNPA's second purpose and policy priority of improving accessibility within and around the National Park.
- 3.10.235. As regards visual amenity, we agree with the LVIA assessment of the effects of the Proposed Development on visual receptors during construction and operation including in relation to the views from St Swithun's Way. Whilst there would be significant construction phase adverse effects on visual amenity by Year 15, only receptors at VL1 (Easton Lane/ NCN Route 23) would continue to experience significant effects.

- 3.10.236. Taking all those landscape and visual effects considerations together, the ExA agrees with the LVIA overall outcome combined to a single conclusion of the likely significance of effect on LVIA that effects on the SDNP and its special qualities during the operational phase would reduce to slight adverse and would not be significant by Year 15 once the landscape mitigation has established to aid landscape integration and provide visual screening.
- 3.10.237. We therefore consider that overall and in the long-term the Proposed Development would conserve the landscape and scenic beauty of the nationally designated area and would not adversely affect its specific statutory purposes which the SoS has a statutory duty to have regard to, as highlighted by NPSNN paragraph 5.150. However, since s245 LURA 2023 came into effect after the close of the Examination, that duty is now for the relevant authority to seek to further those statutory purposes. We have therefore included this in our recommendation as a matter on which the SoST may wish to satisfy themselves.
- 3.10.238. In conclusion, we recognise that the Applicant's landscape strategy aims to reinforce and, in some respects, enhance defined key characteristics of the SDNP landscape and its setting including through the provision of the chalk grassland. We find that the proposed mitigation would be satisfactory and appropriate and no further mitigation measures would be necessary. However, there would be a moderate adverse and significant effect on the landscape character and visual amenity of the SDNP during construction and until the proposed mitigation is established and a slight adverse and non-significant effect would remain thereafter.
- 3.10.239. This is a factor to which we attach moderate weight against the making of the Order. This weighting takes into account the anticipated duration and extent of the harm to the SDNP and its setting during construction, including that which would result from the main construction compound, and the residual non-significant adverse effect that would remain in the long-term. This harm will be weighed in the overall planning balance in Chapter 5 of this Report together with any identified benefits.

3.11. NOISE AND VIBRATION

Introduction

- 3.11.1. This Section sets out the effects of the Proposed Development as they relate to noise and vibration during the construction and operational phases.

The Relevant Policy Tests

- 3.11.2. The NPSNN addresses noise and vibration considerations at paragraphs 5.186 to 5.200. Paragraph 5.186 makes clear that in addition to meeting the statutory requirements for noise, regard must be paid to the Government's Noise Policy Statement for England (DEFRA, 2010) (NPSE), which promotes "... *good health and good quality of life through effective noise management*", with similar considerations applying to vibration.

Applicants are advised to use best available techniques to reduce noise impacts (paragraph 5.189 of the NPSNN).

- 3.11.3. For the purposes of decision-making, schemes "... *should demonstrate good design through optimisation of scheme layout to minimise noise emissions, and where possible, the use of landscaping, bunds or noise barriers to reduce noise transmission*" (paragraph 5.194 of the NPSNN). As set out in paragraph 5.195 of the NPSNN, the SoS "... *should not grant development consent unless satisfied that the proposals will meet the following aims, within the context of Government policy on sustainable development:*
- *avoid significant adverse impacts on health and quality of life from noise as a result of the new development;*
 - *mitigate and minimise other adverse impacts on health and quality of life from noise from new development; and*
 - *contribute to improvements to health and quality of life through the effective management and control of noise, where possible."*
- 3.11.4. To mitigate the effects of noise from the construction and operational phases of NSIPs the SoS "... *may wish to impose requirements to ensure delivery of all mitigation measures*" (paragraph 5.197 of the NPSNN). Mitigation measures should be proportionate and may include containment, the use of noise reducing materials, layout changes and administrative measures such as the setting of noise levels and the setting of working hours.
- 3.11.5. The NPSE refers to the concept for establishing noise effects – the No Observed Effect Level (NOEL) and the Lowest Observable Adverse Effect Level (LOAEL). The former is the level below which there is no detectable effect on health and quality of life due to the noise, with the LOAEL being the level above which adverse effects on health and quality of life can be detected. The NPSE adds the concept of SOAEL (Significant Observed Adverse Effect Level), which is the level above which significant adverse effects on health and quality of life occur. The NPSE requires that all reasonable steps are taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development (paragraph 1.8).
- 3.11.6. The Winchester Local Plan Policies DM17 and DM19 state that only development which does not cause unacceptable levels of pollution will be allowed and any development that is allowed and which generates pollution will be required to meet acceptable environmental standards during operation and construction. Policy DM20 further states that a development which generates noise pollution will only be permitted where it does not have an unacceptable impact on human health or quality of life.

The Application

- 3.11.7. Noise and vibration effects of the Proposed Development have been assessed in Chapter 11 of the ES [[APP-052](#)], The Noise and Vibration Figures [[APP-073](#)] show in a mapped form where the study areas are for

construction and operational assessment and also show the predicted areas of impact.

- 3.11.8. The assessment has been undertaken in accordance with DMRB LA 111 Noise and Vibration (Highways England, 2020).
- 3.11.9. The effects of noise associated with the Proposed Development have been assessed in the ES having regard to the effect levels outlined in the NPSE, namely:
- No Observed Effect Level, the level below which no effect can be detected with there being no effect on health and quality of life due to noise.
 - LOAEL, the level above which adverse effects on health and quality of life can be detected.
 - SOAEL, the level above which significant adverse effects on health and quality of life occur.
- 3.11.10. The potential noise and vibration effects for the construction and operational phases for the Proposed Development have been assessed by reference to sensitive receptors within a defined study (assessment) area that the Applicant has identified. The study area for the effects of noise and vibration during the construction phase has been defined by the Applicant as being an area of 300 metres beyond the construction footprint for the Proposed Development, in line with the guidance contained within BS5228:200931. The study area for construction traffic also relates to a 300 metres area extending outwards from all of the roads that are expected to be used by vehicles travelling to or from construction works sites and for the delivery of materials.
- 3.11.11. In line with the provisions of the DMRB, the ES chapter 11 reports on effects in four study areas, these are detailed in paragraph 11.5 of the ES and shown in Figure 11.1:
- Construction noise.
 - Construction vibration.
 - Construction traffic noise.
 - Operational traffic effects.
- 3.11.12. The ES details the baseline conditions which have been assessed through a measured and modelled approach. The model has been validated through observed and measured noise levels which were also assessed against the potential impact of measurements being taken during the Covid-19 pandemic.
- 3.11.13. The ES has stated the consideration of other committed developments on the baseline conditions relating to noise. Paragraph 11.6 shows that the assessment predicts a number of receptors will experience a potential negligible increase in noise (0.1 to 0.9 decibels (dB)) between the DM 2027 scenario and the DM 2042 scenario.
- 3.11.14. The ES has assessed the Noise Important Areas (NIA) and sensitive receptors in the study area and these are shown in Fig 11.1 [[APP-073](#)].

This shows that there are three NIAs within the study area. The existing NIAs are located in the vicinity of the existing highway network and consist primarily of residential properties along with some commercial properties.

- 3.11.15. Within Chapter 11 of the ES [[APP-052](#)] the Applicant has indicated that during the construction phase without mitigation there would be potential for a SOAEL to be experienced during the different construction phases over the duration of the proposed three year construction period. Paragraphs 11.9.2 to 11.9.17 detail the number of receptors anticipated to experience impacts for each phase of the work. Phase 2 shows the largest number of properties impacted with 162 (of which 87 are residential) anticipated to experience a moderate impact and 78 (of which 11 are residential) anticipated to experience a major impact. This is related to the demolition of the existing M3 J9 gyratory along with sheet piling and surfacing works.
- 3.11.16. The Applicant considered a noise receptor outside of the study areas at the request of Kings Worthy and Abbots Worthy Parish Councils to consider the anticipated noise impact at Kings Worthy Primary School and Princes Meads School. Based on the results of the noise modelling, the noise impact during construction at both schools is predicted to be Minor or Negligible, and no significant effect is anticipated.
- 3.11.17. Construction vibration generation is anticipated to be primarily related to piling operations and vibratory compaction during road surfacing. Table 11.22 of ES Chapter 11 [[APP-052](#)] details the properties within 100m of proposed piling operations and 30m of surfacing works, and predicts the impact of vibrations on those properties. Paragraph 11.9.22 states that it is not considered that vibration levels would reach 10mm/s peak particle velocity (PPV) at any commercial property and therefore the risk of building damage due to vibration is very low (based on Table 11.5). Furthermore, only commercial properties have been identified to be within 100m of piling works and 30m of road surfacing works, which have a medium receptor sensitivity. Overall, the ES states that it is considered unlikely that there would be any significant effects from construction vibration.
- 3.11.18. The ES Chapter 11, paragraph 11.9.27 to 11.9.35, details the potential impact of construction traffic on noise and vibration. It is stated that the amount of construction traffic will peak in phase 1 at 140 two-way vehicle movements per day, and overall, the assessment of the impact of noise levels from the increase in construction traffic is anticipated to be less than a 1dB increase.
- 3.11.19. With regard to the impact of noise and vibration on properties situated on the routes of temporary traffic diversions, the ES details the number of properties with 25m of night-time diversion routes. The ES summary states that in total 1,318 residential dwellings are anticipated to experience noise impacts during traffic diversions at night. Based on the anticipated timings of the road closures as stated in DMRB LA 111 Noise and Vibration (Highways England,2020) (ie not being over 15 days/

nights in any 40 days/ nights or 40 days/ nights in six consecutive months), these impacts are not anticipated to be significant.

- 3.11.20. In relation to the operational phase of the Proposed Development, the ES states that there is a predicted change in noise levels for various receptors in the study area with some experiencing a predicted increase in noise level between negligible and moderate and some a decrease in noise level between negligible and major. In summary, the ES states that there will be a negligible to minor adverse noise effects at 1,040 dwellings in daytime (1,471 night-time) and negligible to moderate adverse noise effects at 323 other receptors in daytime (375 night-time).
- 3.11.21. The ES states that no residential properties are anticipated to experience an increase of more than 1dBA above the specified level of 68dB La10,18hr and therefore no residential properties are anticipated to be eligible for additional noise insulation under the Noise Insulation Regulations. The highest modelled noise increase in relation to residential properties is seen in Easton Lane/ Wales Street which would experience an increase of 1.8 dB La10,18hr which results in a minor adverse impact. Similarly, this location has the highest predicted increase in noise levels for commercial receptors, with one (being a car dealership) experiencing a moderate adverse increase of between 3.0 and 4.9 dB.
- 3.11.22. The modelled decreases in noise, in relation to dwellings, during operation are mostly seen on the B3047 due to reduced traffic flow and changes in road geometry and user type. The greatest modelled noise decrease is 3.1dB which results in a moderate beneficial impact. In addition to dwellings, commercial receptors along Moorside Road are predicted to show a decrease in noise between 3.0 and 4.9dB.
- 3.11.23. The NIAs have been assessed and the outcomes are shown in paragraph 11.9.44 to 11.9.48 of Chapter 11 of the ES [[APP-052](#)]. The predicted changes result in effects from slight adverse to slight beneficial, which is not significant.
- 3.11.24. The ES states that based on these results the magnitude of noise impact therefore ranges between minor adverse and negligible beneficial. For residential dwellings with a high sensitivity, this equates to a slight beneficial and slight adverse effect which is not significant.
- 3.11.25. The ES has considered the potential noise impacts on other receptors, including PRoW, heritage assets and ecological sites. In all cases the ES states that at these receptors any increase will be negligible or slight and the adverse effects would not be significant.
- 3.11.26. The ES Chapter 11 [[APP-052](#)] references mitigation which is embedded in relation to the operational phase with the use of low noise surfacing as the only embedded mitigation, paragraph 11.8.7 states that there is no further mitigation proposed or required. In relation to the construction phase mitigation, commitments are detailed within the fiEMP and include industry standard measures such as enclosing certain operation, using water suppression and implementing road sweeping and wheel washing.

Issues Considered in the Examination

- 3.11.27. The key issues considered during the Examination were:
- Noise as a factor of tranquillity of the SDNP.
 - Construction noise and vibration.
 - Operational noise and vibration.

Noise as a factor of tranquillity of the SDNP

- 3.11.28. The SDNPA LIR [[REP2-071](#)] explains that the seven special qualities of the SDNP include tranquil and unspoilt places. In their LIR, the matter of noise is mentioned specifically in relation to tranquillity.
- 3.11.29. The ExA sought to understand the particular issue of noise as a factor of tranquillity in relation to the SDNP and at ISH2 we asked the SDNPA how they would describe tranquillity in relation to National Parks. The SDNPA explained that tranquillity was more than simply the noise we hear and encompasses many other aspects and feelings. The SDLP paragraph 5.43 states that tranquillity is considered to be a state of calm, quietude and is associated with a feeling of peace.
- 3.11.30. We note that one of the special qualities of the SDNP is 'tranquil and unspoilt places' and the SDLP paragraph 1.10 states that landscape is key to all of the special qualities. We therefore consider that, although noise may be a factor of tranquillity, it is more appropriately considered together with other landscape matters. Therefore, the examination of tranquillity is detailed in Chapter 3.11 of this Report.

Construction noise and vibration

- 3.11.31. The ExA examined the issue of construction noise and vibration broadly in the same regard as presented in ES Chapter 11 [[APP-052](#)], namely noise and vibration impact from construction activities and noise from temporary traffic diversions.
- 3.11.32. A number of RRs made a general comment about potential noise impacts, and a concern was raised by Mrs Rosewell in her written summary of oral submissions of the Open Floor Hearing (OFH) [[REP1-035](#)]. In response to this concern from Mrs Rosewell [[REP3-020](#)], the Applicant stated that the ES details that no significant impacts relating to construction noise and construction traffic have been identified at this receptor.
- 3.11.33. with the exception of Local Authorities, no other WRs were made detailing specific issues relating to construction noise, although a passing reference was made in the WR from 20s Plenty for Hampshire [[REP1-033](#)].
- 3.11.34. In their LIR, WCC [[REP2-083](#)] and SDNPA [[REP2-071](#)] had no high-level objection to the principle of the assessment methodology. This was explored further by the ExA in ISH2 where WCC, who have responsibility for Environmental Health, confirmed that this remained their position.

3.11.35. Noise and vibration mitigation during construction has been presented in the fiEMP. The initial versions of the fiEMP did not contain a draft noise and vibration management plan which led to WCC not being willing to confirm their acceptance of the proposed mitigation. This draft plan was subsequently included in revisions of the fiEMP and at the close of the Examination, the SoCG with WCC stated that there was agreement that the fiEMP contained sufficient mitigation measures and commitments to ensure that noise issues could be managed subject to further consultation and detail in the siEMP.

Construction noise

3.11.36. The ExA explored the assumptions which have been made regarding noise generating plant and activities during construction. It is accepted that a full understanding of the type and number of noise generating activities and plant/ machinery is not known at this stage of the design development however, it is considered that most variables have been considered and are in line with BS 5228 – 1:2009 (Code of practice for noise and vibration control on construction and open sites).

3.11.37. The ExA questioned the Applicant in ExQ1 Q13.1.1 if alternative plant and equipment had been considered to be used in lieu of the standard equipment detailed in the assessment. The Applicant stated in their reply that the assessment was the likely worst-case scenario and further details would be presented in the construction noise and vibration management plan as part of the consultation for the siEMP. We also asked at Q13.1.7 how the number of items of plant in the assessment was derived, the Applicant stated that this was based on advice from the Principal Contractor.

3.11.38. The ExA has reviewed the proposed phasing of the construction works and the anticipated noise and vibration levels associated with these. The figures in ES Chapter 11 [[REP2-033](#)] map the anticipated areas of adverse impact from each major stage of construction. The major adverse impacts are seen in the vicinity of the M3 which is predominantly farmland to the east and commercial land to the west.

3.11.39. ES Chapter 11 [[APP-052](#)], table 11.20 summarises the receptors anticipated to experience temporary moderate and major noise impact during the phases of the construction without mitigation measures implemented. Paragraph 11.9.15 states that with no noise mitigation, there is likely to be temporary moderate to major adverse noise impacts. Paragraph 11.9.16 goes on to summarise the potential exceedances of the SOAEL temporal thresholds for each phase without mitigation as, the phase with the most significant number of properties effected is seen at phase 2 and summarised as:

- 162 properties (87 residential, 73 commercial, two community use) with a moderate adverse impact which is significant; and
- 77 properties (11 residential, 65 commercial, one community use) with a major adverse impact which is significant.

- 3.11.40. The ES goes on to state that when mitigation, as detailed in the fiEMP is provided, the resultant significance is anticipated to be reduced such that moderate impacts will become minor and major impacts will become moderate. The ES states that minor impacts are considered to be not significant, and the properties anticipated to experience moderate impacts will be subject to further mitigation.
- 3.11.41. This further mitigation is seen in Appendix L of the fiEMP which shows the outline noise and vibration management plan and in table L.1 the Applicant lists 15 residential properties which could potentially experience moderate noise impacts during construction. The table details the anticipated mitigation for these properties, primarily this is shown as being localised screening and noise monitoring. During the Examination, no IPs raised issues regarding this aspect of the construction mitigation process.
- 3.11.42. In ExQ1 8.1.1 [[PD-008](#)] the ExA sought further understanding of the impact of the Proposed Development on White Hill Cottage, which is included in the outline noise and vibration management plan list of properties to receive mitigation. The Applicant stated that there was a potential for temporary significant adverse effects from noise during construction and the mitigation for such is outlined in the fiEMP and will be further detailed in the siEMP, which will also detail a noise and vibration management plan. Mitigation will include screening and monitoring with a communication plan to be prepared for White Hill Cottage.
- 3.11.43. The ES details the predicted noise generated from construction traffic which would mainly be in the supply of material to the site using the primary road network. The average two-way movements are estimated to be up to 140 per day which is not anticipated to increase noise levels by 1dBA or more and therefore significant effects as a result of construction traffic noise are not anticipated.

Temporary traffic diversions

- 3.11.44. The potential impact of temporary traffic diversions in relation to noise was considered during the Examination. Overall, no specific objection or direct concern was raised regarding potential noise from either daytime or night-time traffic diversions either from RRs or LIRs.
- 3.11.45. The ES states that DMRB LA 111 Noise and Vibration (Highways England, 2020), requires dwellings within 25m of the kerbs of night-time diversion routes to be identified and these are detailed in table 11.23 of the ES. The ES states that 1,318 residential dwellings are anticipated to experience noise impacts during traffic diversions at night.
- 3.11.46. The ES goes on to conclude that, based on the anticipated timings of the road closures, (ie not being over 15 days/nights in any 40 days/nights or 40 days/nights in six consecutive months) these impacts are not anticipated to be significant.

3.11.47. At ISH2, we asked WCC about their concern regarding the potential for drivers using unofficial diversion routes due to following satellite navigation directions rather than the official temporary diversion routes which will be agreed and monitored. It was accepted that it is not possible to make direct commitments to how this issue may be managed by the Applicant. However, WCC confirmed that they would be expecting to see monitoring of the traffic during diversions and would work with the Applicant to minimise impacts that may arise.

Construction vibration

3.11.48. The ES states that vibration during the construction phase is primarily associated with piling activity and vibratory compaction during road surfacing and there is potential for a significant effect to occur in locations where construction vibration levels are likely to exceed the SOAEL.

3.11.49. The ES details 20 commercial properties that are located within 100m of the likely piling operations (no residential properties are within this zone), from this assessment, the ES states that it is not considered that vibration levels would reach 10mm/s PPV at any commercial property and therefore the risk of building damage due to vibration is very low, and:

- The probability of moderate impact at one commercial property is less than 50%.
- The probability of moderate impact at 12 commercial properties is less than 33%.
- The probability of moderate impact at seven commercial properties is less than 5%.

In all instances, the commercial properties have a medium sensitivity, which would result in a moderate effect and therefore a significant effect is considered unlikely.

3.11.50. The ES and fiEMP detail the mitigation measures that are proposed in relation to vibration, which include trial vibration monitoring and limiting the number of days where vibration generating works occur.

The ExA Considerations relating to Construction noise and vibration

3.11.51. The ExA considers that the Applicant has taken account of the requirements of the DMRB and British Standard in the assessment and prediction of noise and vibration impacts of the Proposed Development. The Applicant has shown that there is predicted to be temporary impacts on a number of properties, including residential, commercial, educational and community.

3.11.52. We agree that there is predicted to be major impacts at some residential properties, which when mitigated would be reduced to moderate. We are content that these properties are listed in the fiEMP as requiring

additional mitigation which will be subject to further consultation during the development of the siEMP. In addition, we also agree that those properties predicted to experience moderate temporary adverse effects, will be reduced to minor adverse with the implementation of mitigation, which includes the receptor of concern in Mrs Rosewell's WR.

- 3.11.53. We also consider that the noise impacts of construction traffic and temporary traffic diversions have been assessed and mitigation is adequately shown in the fiEMP.
- 3.11.54. We accept that a standard, worst-case, assessment has been undertaken to assess construction noise however, we consider that some of the quantities of noise generating items could be deemed to be less in number than may ultimately be used during construction. We accept that full construction practice is not known at this stage of the design development and that mitigation is nevertheless secured in the fiEMP.
- 3.11.55. The ExA also considers that the Applicant has considered the worst-case potential impacts of vibration during construction and has proposed mitigation measures which would allow these impacts to be managed appropriately.

Operational noise and vibration

- 3.11.56. As detailed earlier in this Section, a number of RRs made a general comment about potential noise impacts, and a concern was raised by Mrs Rosewell in her written summary of oral submissions at the Open Floor Hearing (OFH) [[REP1-035](#)]. The Applicant in response stated that there is not predicted to be a significant effect due to noise during operation at this receptor.
- 3.11.57. The ES Chapter 11 [[APP-073](#)] considers the potential impact and mitigation of noise and vibration in the operational phase of the Proposed Development. As with the construction phase, the assessment methodology for this phase was not questioned by IPs and gained overall acceptance by WCC as the local environmental control authority.
- 3.11.58. Table 11.24 of the ES details the modelled short-term changes in noise between the DM and DS scenarios on the opening year of 2027. The ES states that the majority of dwellings anticipated to experience a noise increase would be as an indirect impact of increase in traffic along Easton Lane/ Wales Street. The highest modelled noise increase at these receptors is 1.8dB LA10,18h which would be a minor adverse impact. One commercial receptor in Easton Lane is expected to experience a noise increase of between 3.0 and 4.9 dB which would be a moderate adverse effect.
- 3.11.59. The ES also states that there would be dwellings which would experience a noise decrease. Indirect effects would result from reduced traffic flows along the B3047 with direct effects due to the conversion of the slip road from the A34 to the A33 into a public footpath. The greatest modelled noise decrease at these receptors is 3.1dB. In addition, 32 commercial receptors along Moorside Road are anticipated to experience a noise

decrease of between 3.0 and 4.9dB (moderate beneficial) and 12 are anticipated to experience a noise decrease of more than 5dB, being major beneficial.

- 3.11.60. The ES goes on to assess the long-term increase between the DM at opening year (2027) and the DS future year of 2042. This states that one commercial receptor would experience and increase in noise greater than negligible and 27 commercial receptors would experience a noise decrease greater than negligible.
- 3.11.61. In summary of the impacts, the ES states that there are short-term significant adverse effects anticipated at 20 dwelling which would experience exposure to levels above the SOAEL. None of these are directly affected by the Proposed Development but would be as a result of increased traffic on the surrounding road network. In the long-term the impact is anticipated to be negligible and below the SOAEL. There are no predicted long-term significant effects at dwellings.
- 3.11.62. For commercial properties there will be a short-term adverse effect at one receptor due to changes in traffic and in the long-term this would be minor. There would be short-term moderate to major benefits to 44 commercial receptors and in the long-term 8 of these would be a significant benefit.
- 3.11.63. In our ExQ1, we sought to understand the impact of noise at White Hill Cottage due to its proximity to the Proposed Development and the potential cumulative effects which include noise. The Applicant stated [[REP2-051](#)] that in the operational phase, there would be a minor adverse short-term impact during phase relating to noise however, this would reduce over time with the maturing of the landscape planting which would act as screening. If further noise screening is required, this will be detailed during design development and will be included in the siEMP.
- 3.11.64. The main matter examined during operation was that of low noise road surfacing. The ES states that this is the sole mitigation measure to reduce the impact of noise during operation however, there was no clear understanding of the potential impact this would have as some of the existing carriageway is already subject to low noise surfacing. Notwithstanding this, the inclusion of low noise surfacing was considered beneficial by all LAs and was highlighted as required in LIRs from WCC and SDNPA.
- 3.11.65. At DL5, in response to the ExAs second ExQs [[PD-011](#)], the Applicant detailed the locations of the current low noise surfacing within the application boundary, which is seen in Appendix D of the Applicant Response ExQ2 [[REP5-027](#)]. This shows that most of the existing highway network is already surfaced with a low noise surface.
- 3.11.66. Furthermore, some of the carriageways within the Order Limits that would be part of the Proposed Development would be maintained by the local highway authority at completion, giving rise to questions about

ongoing assurances that regular maintenance would include the commitment for use of low noise surfacing, which could have a cost differential for the maintaining authority.

- 3.11.67. At the close of the Examination, the SoCG between the Applicant and HCC, reference 11.2 [[REP8-019](#)] stated that it is agreed that there would be a commuted sum to HCC relating to future maintenance costs of the low noise surfacing to ensure continuation of the embedded mitigation. It should be noted that this commitment is anticipated to be part of a side agreement between these two parties which was not concluded at the close of the Examination.
- 3.11.68. Chapter 11 of the ES [[APP-073](#)] states that no thresholds have been met that would require additional noise reduction measures nor ongoing monitoring. This is accepted by the ExA but will be subject to ongoing review and consultation with WCC as the detailed design progresses and the siEMP is developed and presented for approval.

The ExA Considerations relating to operational noise and vibration

- 3.11.69. The ExA considers that the Applicant has appropriately assessed the potential effects of noise and vibration in the operation phase of the Proposed Development which is broadly supported by WCC. We also consider that the conclusions are appropriate at this stage of the design development, include that relating to the receptor raised as a concern by Mrs Rosewell.
- 3.11.70. We agree that there is predicted to be significant adverse effects at 20 residential dwellings with noise levels above the SOAEL however, in the long-term the impact is anticipated to be negligible and below the SOAEL, with over time, no predicted long-term significant effects at dwellings. We also agree that there will be a short-term adverse effect at one receptor and in the long-term this would be minor, and that there are short-term moderate to major benefits to 44 commercial receptors and in the long-term 8 of these would be a significant benefit.
- 3.11.71. The ExA acknowledges that the use of low noise surfacing is a positive and important part of the Proposed Development. However, we consider that due to the large percentage of the highway within the application boundary, which is already subject to low noise surfacing, the benefit in addition to the existing may be limited.
- 3.11.72. Notwithstanding this, the ExA finds that the primary mitigation measure of low noise surfacing is appropriate but will only remain effective in the long-term if both HCC and the Applicant, as highway authorities, continue to use this type of surface as part of their maintenance programme. The issue of noise mitigation and use of low noise surfacing will form part of the approval by the SoST for noise mitigation secured in Requirement 14 of the dDCO, which we anticipate will also include details of low noise surfacing on local roads within the Order limits.

ExA Conclusions on Noise and Vibration

- 3.11.73. The ExA is satisfied that the Applicant has fully addressed the possible effects from noise and vibration for the construction and operation of the Proposed Development and has demonstrated that these can be satisfactorily mitigated and managed.
- 3.11.74. We agree that during construction there is predicted to be an increase in noise levels at receptors with major impacts anticipated at some residential properties, which when mitigated would be reduced to moderate. We are content that these properties are listed in the fiEMP as requiring additional mitigation which will be subject to further consultation during the development of the siEMP.
- 3.11.75. We accept that a standard, worst-case, assessment has been undertaken to assess construction noise. However, we consider that some of the quantities of noise generating items could be deemed to be less in number than may ultimately be used during construction. We accept that full construction practice is not known at this stage of the design development and that mitigation is nevertheless secured in the fiEMP.
- 3.11.76. We also consider that the noise impacts of construction traffic and temporary traffic diversions have been assessed in accordance with the DMRB and due to the timing of construction activities impacts are not anticipated to be significant.
- 3.11.77. The ExA also considers that the Applicant has considered the worst-case potential impacts of vibration during construction and has proposed mitigation which would allow these impacts to be managed appropriately.
- 3.11.78. The ExA acknowledges that the use of low noise surfacing is a positive and important part of the mitigation for noise in the operational phase of the Proposed Development. However, we consider that with a large percentage of the highway within the application boundary already subject to low noise surfacing, the additional benefit as proposed might be limited.
- 3.11.79. The ExA accepts that National Highways have a commitment to use low noise surfacing on its maintainable network. However, this is not the case for the local highway network, and we suggest that the SoST reviews the matter of low noise surfacing on both the strategic and local highway networks at such stage as noise mitigation measures, including low noise surfacing, are submitted for approval by the SoST pursuant to Requirement 14 of the dDCO.
- 3.11.80. The ExA agrees with the assessment that the impact of the Proposed Development in the NIAs will be between slight beneficial and slight adverse, which is not significant.
- 3.11.81. Considering the above, the ExA considers that the Applicant's assessment of noise and vibration complies with the policy aims of the NPSNN and the NPSE requirement that all reasonable steps are taken to

avoid and mitigate significant adverse effects on health and quality of life.

- 3.11.82. Overall, we conclude that although there are some beneficial effects seen from the Proposed Development, there are also a number of adverse effects both during construction and operation including residential dwellings with anticipated exposure above the SOAEL. Therefore, we find that overall, the issue of noise and vibration has a little weight against the making of the DCO.
- 3.11.83. The findings in respect of noise and vibration will be taken into account in the overall planning balance in Chapter 5 of this Report.

3.12. POPULATION AND HUMAN HEALTH

Introduction

- 3.12.1. This Chapter sets out the effects of the Proposed Development as they relate to population and human health.
- 3.12.2. For clarity, the submitted ES Chapter 12 : Population and Human Health [[APP-053](#)] includes assessment of the impacts on agricultural land holdings and WCH. The direct impact on agriculture has been examined by the ExA in Section 3.4 of this Report and the direct impact on the public rights of way (PRoW) network has been examined in Section 3.13 of this Report.

The Relevant Policy Tests

- 3.12.3. Paragraph 2.23 of NPSNN states that the Government's vision and strategic objectives for the national networks include improving overall quality of life, journey quality, reliability and safety and linking up communities. Junction improvement is cited as a measure which will be used to enhance the existing national road network towards this vision.
- 3.12.4. Paragraph 3.3 of the NPSNN establishes the expectation that delivery of new schemes will improve quality of life and avoid and mitigate environmental and social impacts in line with the principles set out in the NPPF and the Government's planning guidance.
- 3.12.5. Paragraphs 4.79 to 4.81 of the NPSNN states that road networks have the potential to affect the health, well-being and quality of life of the population and that new and enhanced infrastructure may have indirect health impacts. It further states that where a proposed project has likely significant environmental impacts that would have an effect on humans, the ES should assess these.
- 3.12.6. Paragraphs 4.82 of the NPSNN states that the Applicant should identify measures to avoid, reduce or compensate for adverse health impacts as appropriate and the SoS should consider the cumulative impact on health.

- 3.12.7. Paragraphs 5.165 and 5.168 of NPSNN state that Applicants should identify existing and proposed land uses near the Proposed Development and the likely effects on it. Applicants should also identify any effects, and seek to minimise impacts, on soil quality, taking into account any mitigation measures proposed.
- 3.12.8. Paragraphs 5.174 of the NPSNN states that the SoS should not grant consent for development on existing open space, sports and recreational buildings and land, unless an assessment has been undertaken which shows the facility to be surplus to requirements, or the SoS determines that the benefits of the project outweigh the potential loss of such facilities.
- 3.12.9. Chapter 8 of the NPPF states that planning policies and 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.
 - Are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.
 - Enable and support healthy lifestyles, especially where this would address identified local health and well-being needs

The Application

- 3.12.10. Chapter 12 of the ES [[APP-053](#)] presents an assessment of the impacts of the application on land use and accessibility taking account of the effects on private property and housing; community land and assets, business and development land; agricultural holdings and WCH (also referred to in this Report as non-motorised users (NMUs)). The direct effects of these are assessed within the application boundary with indirect effects assessed up to 500m from the boundary, with the exception of NMUs where the indirect effects are assessed up to 5km from the application boundary. The assessment for human health impacts is focused at a 'population level' within the application boundary with consideration to the LA Wards directly and indirectly affected by the Proposed Development.
- 3.12.11. The ES assesses the impact of the Proposed Development on land use in both construction and operation. During construction the potential adverse effects are greater, with moderate adverse to very large adverse effect being shown, this being most evident for NMUs, agricultural land and businesses. During operation businesses are predicted to have a moderate beneficial effect with NMUs having moderate to large beneficial effect.
- 3.12.12. The ES assesses the impact of the Proposed Development on human health in both construction and operation. It summarises the baseline studies as showing that the populations within the study area perform better than the national average in terms of life expectancy, living with a long-term illness or disability, childhood obesity, emergency hospital admissions for heart disease, heart attack, stroke, Chronic Obstructive

Pulmonary Disease, incidence of all cancers and deaths from respiratory diseases. The area performs overall significantly better than the national average with regards to income deprivation, child poverty and older people in deprivation.

3.12.13. The ES details that during construction and operation the main potential impacts from the Proposed Development would include: air quality, noise and vibration, visual amenity, disturbance and stress caused by construction activity, changes to accessibility to open space or facilities and services, and changes in physical activity levels. After mitigation, it has been assessed that the impact during construction would be neutral, with the exception of temporary negative outcomes anticipated for ambient noise environment within St. Bartholomew and St. Michaels wards. During operation all effects were predicted to be neutral or positive.

Issues Considered in the Examination

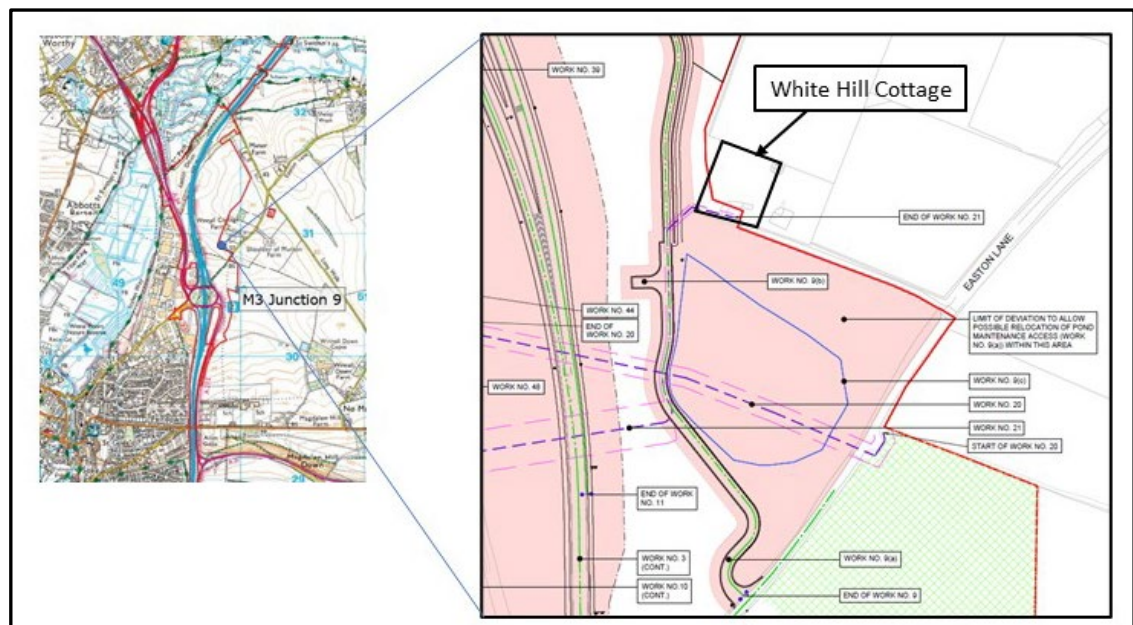
3.12.14. The key issues considered during the Examination were:

- Land use effects on private property, development land and businesses.
- Community Assets.
- Human Health.

Land use effects on private property and businesses

3.12.15. Chapter 12 of the ES [[APP-053](#)] details that one private property would experience a direct impact from land use in relation to the Proposed Development, being White Hill Cottage. The location of this property is shown in Figure 12. During the Examination, the ExA sought to understand if the impact of land use on this property could be mitigated further.

Figure 12 : Location plan showing White Hill Cottage



- 3.12.16. The Applicant has stated in the ES that following an assessment of the property in accordance with DMRB LA 112, this receptor has a medium sensitivity which is determined as a function of the area of land affected by the Proposed Development and the number of properties affected. ES Chapter 12 goes on to state that there would be a temporary moderate impact on land use at White Hill Cottage which would result in a significant adverse effect.
- 3.12.17. During the operational phase, the land use need at White Hill cottage will be required for the purposes of maintaining an electricity cable, and it is anticipated that this will be an irregular and temporary impact. The ES states that this would result in a slight adverse effect.
- 3.12.18. In ExQ1 15.1.1 [[PD-008](#)] we questioned if the Applicant had sought to reduce the impact of land use requirements at White Hill Cottage. It was explained that the land requirement from this private property relates to the re-routing of overhead electricity cables and will not require intrusive work on the property.
- 3.12.19. There are further private properties within 500m of the application boundary which may be affected by indirect effects from the construction and operation of the Proposed Development however, the ExA accepts the ES findings that these will not be significant and in the case of the construction phase impacts, they will be temporary.
- 3.12.20. During the construction phase of the Proposed Development, it is predicted that there will be significant adverse effects to businesses in the Winnall area, primarily due to temporary changes in access arrangements. The Applicant has sought to mitigate this within the fiEMP and with their approach to temporary diversions and advance notification of work activity and changes in access arrangements. The local Highway Authority has sought to ensure temporary management of traffic and access arrangements is undertaken in consultation with them, which the ExA considers is proportionate and appropriate to help mitigate the impacts of this.
- 3.12.21. The ES details that there is a significant business community in the study area, primarily in Winnall Industrial Estate and in the environs of Easton Lane. There is predicted to be a moderate positive impact on these businesses during the operation phase of the Proposed Development due to improvements in journey time reliability directly related to the junction improvements.
- 3.12.22. There is no allocated development land within the study area and therefore the Proposed Development is not anticipated to lead to any significant effects in this regard.

ExA's consideration regarding land use effects on private property, development land and businesses

- 3.12.23. The Proposed Development has been designed to minimise impact on private properties and businesses and the ExA considers that the

mitigation detailed in the fiEMP and secured in the rDCO at Requirement 3 proposed is acceptable.

- 3.12.24. The land use impact on private properties is seen only at White Hill Cottage and the ExA agrees that this receptor will see a temporary moderate adverse effect during construction and slight adverse impact during operation. The ES does not predict any cumulative effects from land use however, the cumulative effects of the Proposed Development on White Hill Cottage are detailed in Section 3.15 of this Report.
- 3.12.25. We also consider that as there is no development land within the study area, there will be no impact seen in this regard. We consider that during construction there will be a likely temporary significant adverse effect on businesses in the Winnall area, primarily due to temporary traffic flow changes and diversions. However, in the operational phase these same businesses are likely to see a moderate positive effect from reduced traffic delay and improvements to journey time reliability.

Community Assets

- 3.12.26. Chapter 12 of the ES [[APP-053](#)] details a number of community assets and Open Access Land within the study area, which is 500m from the application boundary. Although there are no community assets shown within the application boundary, there are a number of high usage, sensitive sites within the study area. Access to these community assets and Open Access Land will not be affected in the operation phase of the Proposed Development and any temporary impact during construction would be mitigated to ensure access remains and direct construction impacts would be managed.
- 3.12.27. The ES details the potential impact on the SDNP in respect of its role as a recreational asset for the community and visitors. It concludes that the area of the National Park affected by the Proposed Development is agricultural land and not part of the public open space area seen in other parts of the National Park.
- 3.12.28. There are obvious recreational access opportunities afforded with the network of PRow and NMU routes which allow access to the National Park and other locations surrounding the Proposed Development. It is accepted that access to these will be impacted upon temporarily during construction. Consultation between various parties has been ongoing regarding temporary diversions and the need for effective communication of changes to access during construction.
- 3.12.29. At the end of the Examination the SDNPA retained concerns about the consultation process relating to the temporary diversion of PRow and NMUs during construction. In the SoCG between the SDNP and the Applicant [[REP8-040](#)] references 14.3 and 14.4 show that concerns relating to consultation and clarification of diversion routes are not agreed. It is noted that this issue is also covered in the SoCG with HCC [[REP8-019](#)] as PRow authority and all matters in this regard were agreed between the Applicant and HCC.

ExA's consideration regarding community assets

- 3.12.30. The Proposed Development does not impact directly on community assets within the Order limits however, there are a number of sensitive sites within the 500m study area. The ExA considers that the Applicant has proposed mitigation which will minimise the impact on these sites such that there is predicted to be no long-term impact.
- 3.12.31. The ExA accepts that there will be a temporary negative impact during construction, particularly related to PRow and NMU routes. We find that the Applicant has sought to provide suitable alternative routes and has continued to seek to mitigate and consult during the Examination which will continue through detailed design. Notwithstanding this, the ExA finds that the impact has been mitigated and HCC as PRow authority has not raised any outstanding concerns at the end of the Examination.

Human Health

- 3.12.32. The ES Chapter 12 [[APP-053](#)] has assessed the various factors that contribute to an overall assessment of the potential impact on human health, both during construction and operational phases. These are detailed as:
- community, recreational and education facilities.
 - green/open space.
 - healthcare facilities.
 - transport and connectivity.
 - safety of the existing affected road network.
 - ambient air quality.
 - ambient noise environment.
 - sources and pathways of potential pollution.
 - landscape amenity.
- 3.12.33. Most of these individual topics are assessed separately and in detail in other parts of the ES and this Report however, the Applicant has sought to assess the impact of these matters directly on health determinants for humans.
- 3.12.34. In their LIR [[REP2-066](#)], HCC provided commentary on human health impacts and broadly accepted that the Proposed Development would provide positive outcomes relating to reduced stress from less traffic congestion and reduced exposure to air and noise pollution. They also highlight potential improvements regarding access to recreational opportunities, including improvements for walking, cycling and active travel.
- 3.12.35. Further to HCCs comments, there was limited commentary from IPs regarding direct human health impacts of the Proposed Development, those that were raised were generalised comments.
- 3.12.36. The ES details, by ward, the sensitivity and predicted health outcome for each for the health determinates during construction and operation. These are shown in tables 5 and 6.

Table 5: Summary of Assessment of Construction Phase Human Health Outcomes (Extract of ES Chapter 12 Table 12.26)

Health Determinant	Alresford and Itchen Valley		St Bartholomew		St Michaels		The Worthys		Upper Meon Valley	
	Sensitivity	Health Outcome	Sensitivity	Health Outcome	Sensitivity	Health Outcome	Sensitivity	Health Outcome	Sensitivity	Health Outcome
Community, recreational and education facilities	Medium	Neutral	Medium	Neutral	Medium	Neutral	Medium	Neutral	Medium	Neutral
Green/open space	Medium	Neutral	Low	Neutral	Low	Neutral	Medium	Neutral	High	Neutral
Healthcare facilities	Low	Neutral	Low	Neutral	Low	Neutral	Low	Neutral	Low	Neutral
Transport and connectivity	Medium	Neutral	Medium	Neutral	Medium	Neutral	Medium	Neutral	Medium	Neutral
Safety of the existing affected road network	Medium	Neutral	Medium	Neutral	Medium	Neutral	Medium	Neutral	Medium	Neutral
ambient air quality	Low	Neutral	High	Neutral	High	Neutral	Low	Neutral	Low	Neutral
Ambient noise environment	Low	Neutral	High	Negative	High	Negative	Low	Neutral	Low	Neutral
Sources and pathways of potential pollution	Low	Neutral	Medium	Neutral	Medium	Neutral	Low	Neutral	Low	Neutral
Landscape amenity	High	Neutral	Medium	Neutral	Medium	Neutral	High	Neutral	High	Neutral

Table 6 : Summary of Assessment of Operational Phase Human Health Outcomes (Extract of ES Chapter 12 Table 12.31)

Health Determinant	Alresford and Itchen Valley		St Bartholomew		St Michaels		The Worthys		Upper Meon Valley	
	Sensitivity	Health Outcome	Sensitivity	Health Outcome	Sensitivity	Health Outcome	Sensitivity	Health Outcome	Sensitivity	Health Outcome
Community, recreational and education facilities	Medium	Positive	Medium	Positive	Medium	Positive	Medium	Positive	Medium	Positive
Green/open space	Medium	Positive	Low	Positive	Low	Positive	Medium	Positive	High	Positive
Healthcare facilities	Low	Positive	Low	Positive	Low	Positive	Low	Positive	Low	Positive
Transport and connectivity	Medium	Positive	Medium	Positive	Medium	Positive	Medium	Positive	Medium	Positive
Safety of the existing affected road network	Medium	Positive	Medium	Positive	Medium	Positive	Medium	Positive	Medium	Positive
Ambient air quality	Low	Neutral	High	Neutral	High	Neutral	Low	Neutral	Low	Neutral
Ambient noise environment	Low	Neutral	High	Neutral	High	Neutral	Low	Neutral	Low	Neutral
Sources and pathways of potential pollution	Low	Neutral	Medium	Neutral	Medium	Neutral	Low	Neutral	Low	Neutral
Landscape amenity	High	Neutral	Medium	Neutral	Medium	Neutral	High	Neutral	High	Neutral

3.12.37. The summary of the assessment in the ES for human health outcomes shows that during construction, only the ambient noise environment would be negative in two wards, with all other outcomes being neutral. During operation the health outcomes are predicted to be neutral or positive.

3.12.38. HCC stated in their LIR that they would have welcomed a full Health Impact Assessment in the ES. The applicant in their response to the LIR [REP3-023] stated that it is best practice to consolidate all health considerations and therefore all matters have been assessed. In ExQ2 15.2.1 we sought to ensure that HCC accepted this. They confirmed in their response to ExQ2 [REP5-032] that clarification had been given that the consolidated approach meets the same assessment criteria as for a full Health Impact Assessment and therefore they were reassured that

the Applicant has assessed all matters and is satisfied that the assessment is acceptable.

ExA's consideration regarding human health

- 3.12.39. The ExA considers that the ES satisfactorily addresses the required health determinants to assess the overall impact of the Proposed Development on human health.
- 3.12.40. We find that the assessment of impact during construction is mostly neutral with temporary negative outcomes in two circumstances. Regarding the operational phase, we find that the outcomes for human health are either neutral or positive.

ExA Conclusion on Population and Human Health

- 3.12.41. The ExA is satisfied that the Applicant has fully addressed the possible effects on population and human health for the construction and operation of the Proposed Development and has demonstrated that such effects associated with the Proposed Development can be satisfactorily mitigated and managed.
- 3.12.42. We find that the following effects weigh positively in favour of the DCO being made:
- A moderate beneficial effect on businesses from improved journey times, particularly seen at Winnall Industrial Estate and nearby businesses.
 - Increase in health determinants from improved access to recreational use of community assets and access to the SDNP from improvements in NMU facilities.
- 3.12.43. We find that the following effects weigh negatively against the DCO being made:
- A moderate temporary effect on a private dwelling, White Hill Cottage, in relation to land use and accessibility, which is significant.
 - Minor adverse temporary impacts during construction of private properties within 500m of the application boundary in relation to indirect effects of environmental factors, which is not significant.
 - Slight negative temporary effect on businesses during construction which is not significant.
- 3.12.44. We conclude that the Proposed Development would not impact on community assets during construction or operation. However, there is a predicted impact on routes for WCH during construction which would be mitigated in consultation with the appropriate authorities. We also conclude that there would be a positive impact on health determinants for walkers, cyclists and equestrians in the operational phase with improved access to recreational opportunities and access to the SDNP.

- 3.12.45. We conclude that the overall assessment of human health impact during construction is mostly neutral with temporary negative outcomes in two circumstances. Regarding the operational phase, we find that the outcomes for human health are either neutral or positive.
- 3.12.46. Consequently, the ExA considers that the Applicant's assessment of population and human health complies with the policy aims of the NPSNN.
- 3.12.47. Overall, in consideration of the long-term benefits to health from improvements in facilities for WCH, and the beneficial impact to businesses in and around the Winnal Industrial Estate, we find that the effects of the Proposed Development on the issue of population and human health has a moderate weighting in favour of the Order being made.
- 3.12.48. The findings in respect of population and human health will be taken into account in the overall planning balance in Chapter 5 of this Report.

3.13. TRAFFIC, TRANSPORT AND NON-MOTORISED USER ROUTES

Introduction

- 3.13.1. This Chapter sets out the effects of the Proposed Development as they relate to traffic, transport and NMU routes. This Chapter also sets out the effects of the economic appraisal of the transport case.

The Relevant Policy Tests

- 3.13.2. The NPSNN sets out the Government's vision 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. The four strategic objectives which flow from the vision, and are detailed on page 9 of the NPSNN, aim to deliver:
- networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs;
 - networks which support and improve journey quality, reliability and safety;
 - networks which support the delivery of environmental goals and the move to a low carbon economy; and
 - networks which join up communities and link effectively to each other.
- 3.13.3. Paragraph 2.2 of the NPSNN states that there is a "*critical need to improve national networks to address road congestion ... to provide safe, expeditious and resilient networks that better support social and economic activity and to provide a transport network that is capable of stimulating and supporting economic growth*".

- 3.13.4. At paragraph 2.10 of the NPSNN it is stated that *"The Government has concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The Examining Authority and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this NPS on that basis"*.
- 3.13.5. At paragraph 2.13 of the NPSNN it is stated that the SRN *"... provides a vital role in people's journeys, and drives prosperity by supporting new and existing development ... A well-functioning Strategic Road Network is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies"*. It is further stated that *"Increased traffic without sufficient capacity will result in more congestion, greater delays and more unpredictable journeys"* (paragraph 2.20 of the NPSNN).
- 3.13.6. In paragraph 2.22 it is stated 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"*.
- 3.13.7. The NPSNN explains in paragraph 2.23 that enhancements to the existing national road network will include junction improvements, new slip roads, and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion. To that end the Government's policy is for individual schemes to be brought forward *"... to tackle specific issues, including those of safety, rather than to meet unconstrained traffic growth"*.
- 3.13.8. With respect to sustainable transport the Government expects Applicants to *"use reasonable endeavours to address the needs of cyclists and pedestrians in the design of new schemes"* (paragraph 3.17 of the NPSNN).
- 3.13.9. Paragraph 5.211 of the NPSNN requires Examining Authorities and the SoST to *"... give due consideration on impacts on local transport networks ..."*, while schemes should be developed, and options considered in the light of relevant local policies and local plans (paragraph 5.212 of the NPSNN).
- 3.13.10. With respect to mitigating the effects of schemes on transport networks, the mitigation to be provided should be proportionate and reasonable and *"... Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated"* (paragraphs 5.215 and 5.216 of the NPSNN).
- 3.13.11. The HCC LTP3 states collectively in policies B, C, E and H that it will work with the Highway England (now National Highways), Network Rail, ports and airports to ensure reliable access to and from South Hampshire's

three international gateways for people and freight and optimise the capacity of the highway network and improve journey time reliability for all modes. Furthermore, it will deliver improvements in air quality and promote and develop active travel modes.

- 3.13.12. The HCC emerging draft LTP4 policies C5 and C8 state that development should support local living and reduce demands on transport with an emphasis on supporting investment in walking, cycling along with managing the harmful health effects of poor air quality and noise disturbance due to transport.

The Application

- 3.13.13. The Applicant's consideration of traffic and transport matters is set out in the TA [[APP-166](#)]. The TA has been produced to assess the impact of the Proposed Development on the strategic and local highway network, road safety and local sustainable modes of transport. Supporting information and details of cost and benefit is provided in the Combined Modelling and Assessment Report (CoMRA) [[APP-163](#)] and a number of related appendices and figures.
- 3.13.14. The TA repeats the need for the Proposed Development, the policy background and details the existing issues and background to the alternatives developed. These matters have been detailed in other parts of this Report and are not repeated here.

Traffic Model

- 3.13.15. The TA details the establishment, creation and use of a traffic model which has been developed specifically for modelling and forecasting traffic changes relating to the implementation of the Proposed Development.
- 3.13.16. Traffic modelling has been undertaken using the Applicant's South-East Regional Transport Model (SERTM) which has been refined, calibrated and updated to produce the M3 J9 Model in accordance with Transport Analysis Guidance (TAG) and other relevant guidance. This is a strategic model which has been used to assess the effects of the Proposed Development in terms of traffic flows, including diversions as a result of the Proposed Development, and vehicle journey times.
- 3.13.17. Additionally, the TA states that the traffic model has taken account of traffic changes predicted from future developments and local planning assumptions within the study area along with assessments of traffic, rail and light goods vehicle (LGV)/ HGV growth; the details of growth rates are shown in Table 7.

Table 7 : Traffic Assessment Report showing Growth Rates (extract of TA [REP1-028] table 5-5)

Period / Year	Matrix Totals (PCUs/Hr)					
	Car Business	Car Commuting	Car Other	LGV	HGV	Total
AM						
2027	11%	8%	13%	19%	4%	11%
2042	20%	17%	27%	43%	15%	24%
2047	24%	21%	32%	49%	18%	28%
IP						
2027	10%	7%	13%	19%	4%	12%
2042	19%	15%	28%	43%	15%	26%
2047	23%	18%	32%	49%	18%	30%
PM						
2027	10%	7%	12%	19%	5%	10%
2042	19%	16%	25%	43%	15%	22%
2047	23%	19%	29%	49%	18%	26%

3.13.18. The TA states that the model has been fully calibrated in accordance with TAG and has been reviewed by HCC as the local highway authority.

Operational impacts

3.13.19. The TA shows a number of forecast scenarios for traffic modelling, with four years being relevant:

- 2017 – base year detailing current traffic.
- 2027 – assumed to be the opening year of the Proposed Development.
- 2042 - the design year 15 years after the assumed opening year.
- 2047 - a horizon year for modelling that is three years on from that in the Stage 3a (preliminary design) assessment.

3.13.20. The TA, paragraph 5.7, details the operational forecasts without the Proposed Development. It states that in 2047 there would be predicted delays above free-flow journey time at M3 J9:

- On the Easton Lane approach (from Winchester city centre) of almost 3 minutes in the AM peak and 1.5 minutes in the PM peak.
- On the A34 approach to M3 J9 there is a predicted delay of around 0.5 minutes in the AM and PM peaks with a predicted average queue length of 870m (maximum queue length of 2,000m) in the PM peak
- North-bound M3 off-slip shows delays of 54 seconds with an average queue length of 695m in the PM peak.

3.13.21. The modelling shows that in 2027, the introduction of the Proposed Development is forecast to result in a limited increase in traffic volumes using the A34 and M3 and surrounding roads. There is evidence of some changes in travel patterns likely due to the realignment of roads and junctions, but again these are mostly modest changes. There are certain

locations which see a larger percentage increase in traffic, this is generally on Easton Lane, the A33 and A31.

3.13.22. The modelling of traffic in 2042 and 2047 broadly aligns with the 2027 forecasts with additional traffic growth seen.

3.13.23. The TA summarises the changes in paragraphs 7.3.3 to 7.3.5 as:

- increases in flow in all time periods (up to 870 vehicles in the PM period in 2047) due to the provision of direct slip roads between the M3 and A34.
- increase of traffic flow on Easton Lane in all periods in all years. The diversion of A34 traffic from M3 J9 increases the attractiveness of the A272 Spitfire Link as an access route to the M3 and Winchester City.
- flows on several local roads within Winchester City are predicted to decrease, partly as less traffic is anticipated to divert through Winchester to avoid the delays at M3 J9.

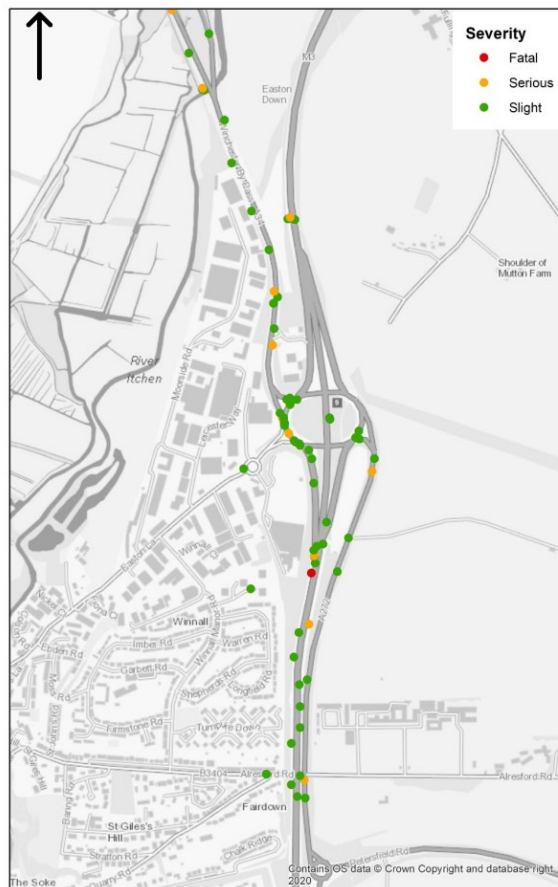
3.13.24. The TA details journey times and modelling journey time savings on a number of selected routes on the highway network. The TA predicts that there would be journey time savings on all routes in all forecast years as a result of the Proposed Development. There is a range of journey time savings detailed in the TA to support the understanding of the impact of the Proposed Development however, the route between M3 and A34 is worthy of mention due to its significance in the case for the scheme. In this regard paragraph 7.3.8 states *"The A34 route northbound between M3 Junction 10 and A34/A272 junction is predicted to have journey time savings in excess of two minutes in 2027, in excess of three minutes in 2042, and in excess of four minutes in 2047 in the PM peak period and around one minute for the AM Peak. The equivalent southbound journey time savings are approximately one minute in 2027, 2042 and 2047. The Scheme provides a direct connection between the M3 and A34, hence the journey time improvements."*

3.13.25. The TA details other operational predictions, including delay forecasts on links and at junctions along with forecasts of volume/ capacity ratios on links. These assessments show a broad improvement in both delays on the network over all forecast years and both improvements and slight negative impacts on the capacity of links.

Safety

3.13.26. The TA considers collision data from 2015 to 2019 in an area around the M3 J9 as shown in Figure 13.

Figure 13 : Location of observed Collisions 2015-2019



3.13.27. The TA states that there were 80 collisions in this assessment of which 67 were slight, 12 were serious and 1 was fatal. The recorded factors involved with these collisions include shunt collisions where drivers have not anticipated slowing traffic, loss of control, poor driving conditions leading to aquaplaning and lane change manoeuvres. The TA further states that the majority of collisions within the study area occurred on the M3 J9 roundabout. These have been mainly on the circulatory area involving rear end shunts where drivers have failed to anticipate slowing traffic.

3.13.28. The TA assessed the impact of the Proposed Development on safety over a wide area where changes in traffic flows would be seen. The assessment of safety impacts indicates an overall reduction in predicted accidents and casualties. This shows a reduction of 537 accidents over the 60 year appraisal period, including a predicted reduction in 696 slight casualties, 59 serious, and 9 fatal casualties.

Sustainable Transport

3.13.29. An assessment of the impact of the Proposed Development on buses, rail, walking, cycling and horse-riding was undertaken. Regarding buses and rail, the TA states the existing services would not be affected by the Proposed Development.

- 3.13.30. Regarding WCH, the TA states that user surveys, in the form of 'counts' were undertaken over a 24 hours assessment period in September 2016 for each user type. The survey recorded 256 movements across all sites, 67% were cyclists and 33% were pedestrians, with no horse-riders recorded.
- 3.13.31. The impact of the PRow network and proposals for NMU routes are detailed in ES Chapter 12, Population and Human Health [[APP-053](#)]. The ES details 22 PRow that interact with or are in close proximity to the Proposed Development. These include national trails and a National Cycle Route. The ES details the proposed diversion routes during the construction phase for existing PRow and also details the changes and additional facilities for NMUs.
- 3.13.32. The new permanent NMU facilities include a proposed cycling and walking route from Kings Worthy to M3 J9 and also a new bridleway within the SDNP connecting Easton Lane to Long Walk, along with changes to existing NMU facilities within the Order limits.

Construction

- 3.13.33. The TA states that for the purposes of the traffic assessment, the construction phase of the Scheme is estimated to commence in late 2024, with operation anticipated to commence in winter 2027. The construction is predicted to be in three phases, with phases 1 and 3 both also having sub-phases which are shown in detail in Table 10-1 of the TA.
- 3.13.34. The construction plan will be refined through detailed design of the Proposed Development with appropriate regard to reducing the overall impacts during construction.
- 3.13.35. The traffic modelling shows that during construction, there is predicted to be an overall increase in journey times and network congestion due to the reduction in capacity, particularly on the M3 J9 gyratory approaches however, there will be less impact on the M3 mainline performance. This is detailed in appendix E of the CoMAR [[REP1-025](#)] where table B2 details a maximum delay in the AM peak during phase 3 of four minutes.
- 3.13.36. During certain phases of construction there is the possibility of re-routing impacts across a wider area, in particular during the closure of the M3 J9 northbound on-slip, the TA states that an assessment of this impact was undertaken and the impact is expected to be slight given the temporary nature of the works, details of this assessment are shown in appendix E of the CoMAR.

Assessment of economic benefits

- 3.13.37. The assessment of economic benefits and a benefit/ cost analysis is detailed in the CoMAR [[APP-163](#)].
- 3.13.38. The savings made to journey times are the major contributor to the economic benefits of the Proposed Development. The CoMAR states that over the 60 year appraisal period, with values discounted to 2010, the

total value of journey time savings would be £155.48 million which are predominantly due to the provision of the free-flow movement between the A34 and the M3.

3.13.39. There would be a predicted disbenefit of vehicle operating costs due to a slightly longer road network, and therefore additional travel distance being proposed, which equates to a £8.34 million. There would also be a benefit of increase of £5.66 million relating to a predicted increase in fuel tax due to this additional travel distance.

3.13.40. Overall, the Proposed Development would provide approximately £152 million of user benefits, taking into account impacts on travel times and operating costs, and delays experienced during construction.

3.13.41. Further costs and benefits, both financial and non-financial, are detailed in the CoMAR, these are all discounted to 2010 values and include:

- £2.69 million disbenefit from additional journey time during construction traffic diversions.
- £22.9 million benefit from casualty reduction.
- £1.34 million disbenefit from noise.
- £4.74 million benefit from air quality improvements.
- £24.11 million disbenefit from GHG emissions.
- £41.8 million benefit from wider economic impact

(The TA explains that "wider economic impacts refer to economic impacts which are additional to transport user benefits. They arise because market failures in secondary markets (non-transport markets), such as the product, labour, and land markets, mean that the full welfare impact of a transport investment may not be reflected in the transport market".)

3.13.42. The overall monetised benefit for the Proposed Develop is detailed as:

- £152.3 million, excluding the wider economic impacts; and
- £194.1 million, including the wider economic impacts.

3.13.43. The reported cost of the Proposed Development, which includes costs for all known risks and therefore no optimism bias was considered to be required, is detailed as £112.71 million, again discounted to 2010 rates.

3.13.44. A summary of Cost and Benefits is set out in Table 5-23 of the CoMAR [[APP-163](#)] with a further assessment of the variation seen from high and low traffic growth forecast detailed in table 5-24.

3.13.45. In summary of the CoMAR, the benefit to cost ratios (BCR) are shown in Table 8:

Table 8 : Summary of BCR Ratios

Initial BCR	Initial BCR adjusted for wider economic impact	Low Growth (not including wider economic impact)	High Growth (not including wider economic impact)
1.35	1.72	0.98	1.77

Issues Considered in the Examination

3.13.46. The key issues considered during the Examination were:

- The Traffic Model.
- Journey Times.
- Delays and road volume capacity.
- Road Safety.
- Economic Benefits.
- Construction phase, including traffic management.
- The Local Highway network.
- A33/ B3047 (Cart and Horses) Junction.
- PRow and NMU routes – Operational Phase.
- PRow and NMU routes – Construction Phase.

The Traffic Model

3.13.47. The ExA has reviewed the model information as presented and found that the approach accorded with the TAG requirements. The use of regional Saturn models which are calibrated is standard practice and the calibration tests detailed in the TA [[REP1-028](#)] are shown to be in acceptable limits.

3.13.48. The TA details the use of TAG Unit M-4 for the production of an uncertainty log in relation to local planning assumptions. In their LIR [[REP2-083](#)], WCC questioned the use of pre-pandemic traffic models from 2018 and requested that traffic models were recalculated using the 2022 NTEM (National Trip End Models). In their comments on LIRs [[REP3-023](#)], the Applicant states that the 2022 NTEM data was released for use after the application was submitted and therefore the correct data was used at the time of Application being submitted, which the ExA accepts.

3.13.49. Both Winchester Friends of the Earth and Winchester Action on the Climate Crisis questioned aspects of the traffic model, in particular how the Variable Demand Model (VDM) traffic model assesses modal shift and how there was limited visibility of the traffic data calculations; which at ISH2 the process was likened to deploying "*black box methodology*". Questions were also raised with regard to existing traffic flow data used to inform the model and the perceived lack of data on existing traffic flow shown in the application.

3.13.50. The focus of questions from Winchester Friends of the Earth regarding the VDM traffic model was summarised in their post ISH2 hearing submission [[REP4-052](#)] at DL4; they stated that these questions were not resolved during the hearing. The questions included:

- What are the differences between the Fixed Trip matrix and the VDEM matrix?
- What does the VDEM model say about the level of induced traffic (e.g. south of the junction)?

- What part of the user benefits is attributable to the induced traffic?
- Does the VDEM modelling include modal choice?
- Does the VDEM modelling use the elasticities in M2.1 Table A.1 pertaining to high modal competition?

3.13.51. In their reply to these DL4 comments [[REP5-030](#)] the Applicant stated that the VDM has been used in accordance with the correct TAG units and within this there is an assessment of the modal shift between private cars and public transport. It is also stated that there is a predicted limited impact from induced demand.

3.13.52. It is standard practice for the local highway authority to review the traffic model and ensure that it accords with and takes account of local factors and local traffic models. HCC confirmed that they had reviewed the traffic model for the Proposed Development and were satisfied that it was acceptable. They made an observation that as the model was based on regional and strategic flows and there could be less certainty about the forecasts on the local road network. When questioned during ISH2 about this and the overall modelling work, HCC confirmed that they had no residual concerns and considered that the model was suitable for its intended use.

ExA's consideration regarding the traffic model

3.13.53. The ExA finds that the Applicant's approach to modelling is acceptable and has followed the relevant guidance and TAG Units. Evolution of the model has taken into account consultations with relevant bodies, in particular HCC as local highway authority, who accept that it is fit for purpose. We note the advice from HCC regarding the strategic model being used for local forecasting however, we accept that this would result at worst in minor localised impacts.

3.13.54. The question regarding available data to show the existing traffic is one that the ExA considered in the early stages of the Examination. We consider that the application documents adequately detail the traffic flows and growth forecasts required to assess the relative impacts of Proposed Development and along with the early indication of the model being acceptable to HCC, the ExA are satisfied that the base data was gathered and assessed correctly.

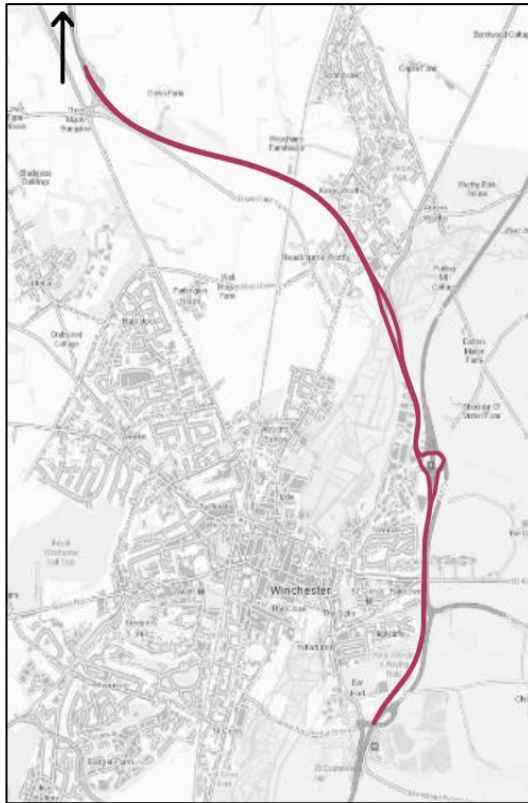
3.13.55. We find that the questions raised by IPs have been satisfactorily answered by the Applicant and there have been no further comments or concerns from the local highway authority emanating from these questions. Therefore, we find that no substantive evidence of significant forecasting inadequacies or errors have been presented to the Examination.

3.13.56. Overall, we find that the traffic model has been developed to allow relevant forecasting of potential impacts of the Proposed Development to be acceptable and reliable.

Journey Times

- 3.13.57. The Case for the Scheme [[REP1-019](#)] states that one of the five primary objectives of the Proposed Development is to:
- *"Smooth the flow of traffic by improving journey time reliability and reducing delays (time lost per vehicle per mile) at M3 Junction 9 and the exit and entry roads for the A33 and A34"*
- 3.13.58. A number of IPs have stated that they consider the journey time savings are not significant and as a primary objective for the scheme, believe they do not show a significant benefit.
- 3.13.59. In their LIR [[REP2-071](#)], paragraph 6.31, the SDNPA question if "...the benefits significantly outweighs the costs... when in particular journey times seem to have a marginal improvement". This is echoed in the WR from Winchester Action on the Climate Crisis [[REP1-038](#)] where they state that most journey time savings in the opening year will be less than one minute and they calculate the average time saving to be 56 seconds.
- 3.13.60. It should be noted that WCC and HCC have not specifically commented on journey time savings. Notwithstanding this, at ISH2 HCC confirmed that they considered the traffic model was sufficiently acceptable to assess the predicted journey time savings and they had no strategic concern about the forecasts.
- 3.13.61. The TA [[REP1-028](#)] details the predicted journey time savings through the junction for a number of routes and The Case for the Scheme [[REP1-019](#)], Table 3.1, sets out how the proposals comply with objectives for the Proposed Development. This summarises the journey time savings specifically on the A34 route between the M3 Junction 10 and the A34/A272 junction (as shown in Figure 14); the savings are summarised thus:
- Savings in excess of 2 minutes in 2027 northbound.
 - Savings in excess of 3 minutes in 2042 northbound.
 - Savings in excess of 4 minutes in 2047 in the PM peak northbound.
 - Savings in excess of 1 minute in 2047 in the AM peak northbound.
 - Savings of approximately 1 minute in 2027, 2042 and 2047 southbound.
- 3.13.62. Journey time savings have been considered for other routes which are impacted by M3 J9 and these are shown in the TA [[REP1-028](#)] however, as the primary objective for the Proposed Development is the M3/ A34 route, the Applicant has focused on this route.

Figure 14 : A34 Journey time assessment route



- 3.13.63. The predicted time savings in the three forecast years (2027, 2042 and 2047) on the A34 route show:
- In the AM peak, the time saving is between 1 minute and 1 minute 24 seconds, between 12% and 16% saving on the DM forecast for each of forecast year;
 - In the inter-peak period savings are forecast to be between 1 minute 16 seconds and 3 minutes 19 seconds, between 17% and 30% saving on the DM forecast for each of forecast year; and
 - In the PM peak, the time saving is between 1 minute 23 seconds and 4 minutes 20 seconds, between 14% and 35% saving on the DM forecast for each of forecast year.
 - As is noted in this Section, the southbound time savings are less than the northbound savings.
- 3.13.64. Journey time savings on other routes which have been assessed show that there are predicted to be savings in most circumstances, in particular on Easton Lane. This is considered an important entry to Winchester and the industrial area at Winnal.
- 3.13.65. The ExA sought to understand the predicted journey time impact over a wider area than that initially detailed in the TA to understand how the Proposed Development would benefit the strategic network, in particular the Solent to Midlands route. In ExQ2 16.2.1 [[PD-011](#)] the Applicant was asked to provide predicted journey time savings from the Solent to the Midlands taking account of the current route strategy commitments and

the emerging RIS3 programme aims. In their reply [[REP5-027](#)] the Applicant detailed that for the forecast years of 2027, 2042 and 2047, the savings were between 29 seconds and 1 minute 54 seconds. The greatest predicted journey time savings for any of the forecast years in each direction (northbound and southbound) are summarised in Table 9.

Table 9 : Summary of maximum predicted journey time savings (northbound and southbound) between The Solent and The Midlands

Year	Direction	Period	Journey Time (DM)	Journey Time (DS)	Saving
2047	Northbound	PM	03:00:37	02:59:14	01:23
2027	Southbound	Interpeak	02:44:05	02:42:11	01:54

ExA’s consideration regarding journey times

- 3.13.66. The ExA has carefully considered the impact of the Proposed Development on journey times, which is one of the five strategic objectives of the scheme as detailed in the Case for the Scheme [[REP1-019](#)].
- 3.13.67. The forecasts for journey times have relied upon the traffic model, which as detailed in this Section, is found to be reliable for forecasting purposes. The ExA further finds that the forecasting of journey times is acceptable and has followed the relevant guidance. No substantive evidence of significant forecasting inadequacies or errors has been presented to the Examination.
- 3.13.68. We consider it is shown from the evidence within the application, that the strategy aim to reduce journey time is met, as factually there is a predicted journey time saving on all assessed routes for each of the forecast years and time periods.
- 3.13.69. However, in many instances these savings may not be considered substantial, with the southbound time savings not exceeding one and a half minutes in any of the forecast conditions for the primary route of the M3/A34. Northbound savings on the A34 route are greater with a 35% saving in the PM peak by 2047.

Delays and road volume capacity

- 3.13.70. The Case for the Scheme [[REP1-019](#)] states that one of the five primary objectives of the Proposed Development is:
 - *“To reduce delays at the M3 Junction 9 on all links to the M3, the A33 and the A3”*
- 3.13.71. The TA [[REP1-028](#)] details the predicted impact on delays.
- 3.13.72. It is recognised that reducing delays and providing journey time reliability are linked and therefore the examination of this issue is broadly

related to how the proposed road network impacts on delays at junctions and in terms of the impact on road volume capacity.

3.13.73. In the TA, the Applicant has detailed the forecast delays only at the proposed M3 J9 gyratory. The ExA accepts that this is the primary location for delays and therefore a focus on this is proportionate. Tables 7-7 and 7-8 of the TA show the modelled changes in queue length and delay in 2047 for the AM peak and PM peak respectively; these are reproduced in tables 10 and 11.

Table 10 : Do minimum and do something junction result AM Peak 2047 (extract from TA [REP1-028] Table 7-7)

Junction	Approach	Do-Minimum - AM				Do-Something - AM			
		Flow	Delay (s)	Avg queue (m)	Max Q (m)	Flow	Delay (s)	Avg queue (m)	Max Q (m)
M3 Junction 9	A272	391	100	30	177	690	27	13	145
	M3 southbound off-slip / A34	263	88	21	81	1,368	11	7	77
	A33 (old A34)	2,699	28	75	593	399	29	9	91
	Easton Lane	603	165	150	184	1,057	11	15	146
	M3 northbound off-slip	2,320	19	30	196	703	21	14	89

Table 11 : Do minimum and do something junction result PM Peak 2047 (extract from [REP1-028] Table 7-8)

Junction	Approach	Do-Minimum - PM				Do-Something - PM			
		Flow	Delay (s)	Avg queue (m)	Max Q (m)	Flow	Delay (s)	Avg queue (m)	Max Q (m)
M3 Junction 9	A272	405	138	76	402	611	24	8	87
	M3 southbound off-slip / A34	356	170	87	192	1,097	16	10	76
	A33 (old A34)	2,697	37	870	2,099	358	27	7	75
	Easton Lane	1,230	91	107	181	1,471	17	25	126
	M3 northbound off-slip	1,972	54	695	2,594	451	7	3	32

- 3.13.74. In their LIR [[REP2-066](#)], HCC state that they note the predicted reduction in queue lengths in the PM peak on the A34 and M3 Northbound off slip, and also note the additional queuing on Easton Lane in the AM peak. HCC concluded that overall, there is a resultant reduction in traffic flows and they consider the impact on the local highway network is mainly positive or neutral.
- 3.13.75. Notwithstanding the general comments about the traffic model sufficiency which has been previously discussed, there were no specific challenges from IPs relating to the data presented regarding the delay forecasts at the M3 J9 gyratory.
- 3.13.76. We asked a number of questions in both ExQ1 [[PD-008](#)] and ExQ2 [[PD-011](#)] to ensure we had clarity about the delay impacts in the operational phase at the gyratory but also at other specific points where we questioned the reason for the changes in delay, in particular where there is a predicted increase in delay. Without detailing specific locations in this Report, the general reply to these questions stated that changes in traffic routes and volumes would be seen due to the introduction of the free-flow slip roads and some limited locations would see an increase in delay however, overall the impact to the network was positive.
- 3.13.77. In ExQ2 we requested delay data for the A31/A272 junction as the data presented in the TA suggested an increase in usage. The Applicant's response is provided in the Appendices to the Applicant's Response to ExQ2 [[REP5-027](#)] and shows that there is predicted to be mostly small changes (+/- four seconds) in delay in the 2047 AM peak and slightly larger savings of up to 41 seconds in the 2047 PM peak.
- 3.13.78. In addition to the delay data presented at these junctions, the TA [[REP1-028](#)] detailed the predicted changes in the delay on the assessed road network, presenting data in the form of 'heatmaps'. These maps show the relative delay as a percentage of the total travel time and are reproduced in figures 15 and 16.

Figure 15 : Delay 'heatmaps' forecast AM peak 2047

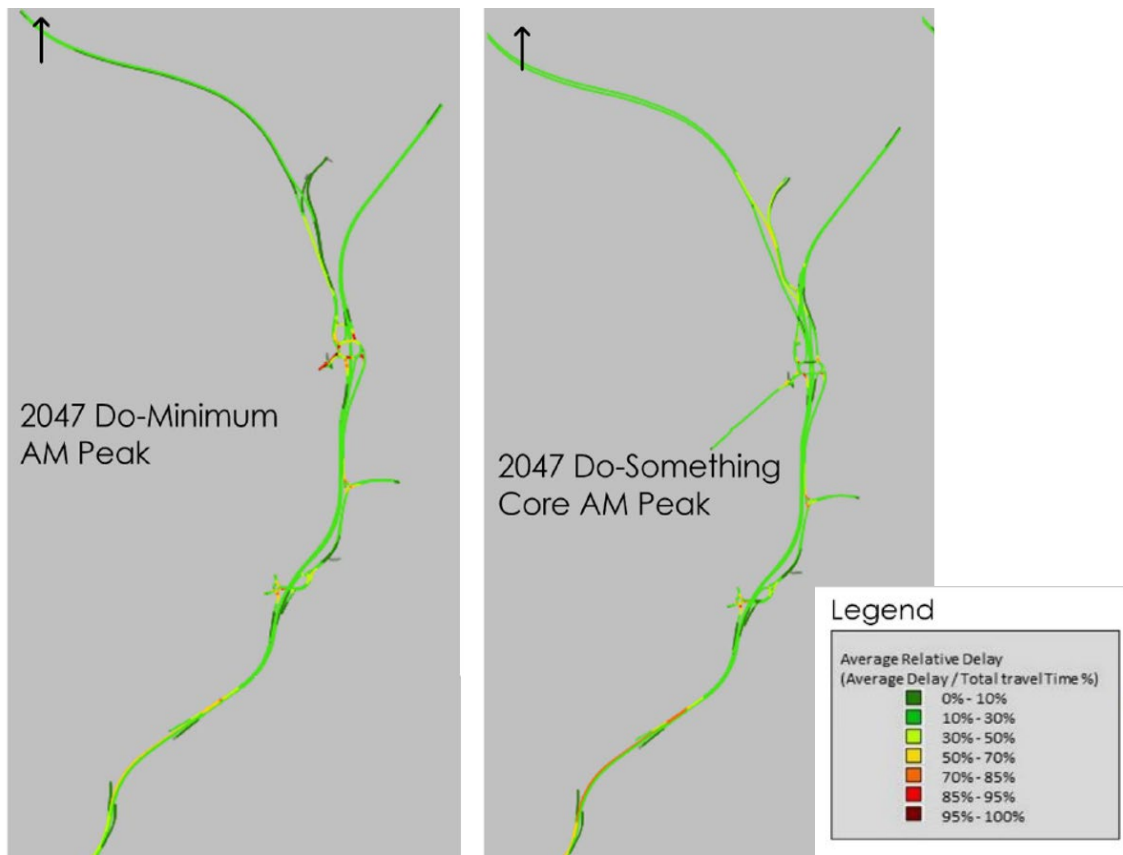
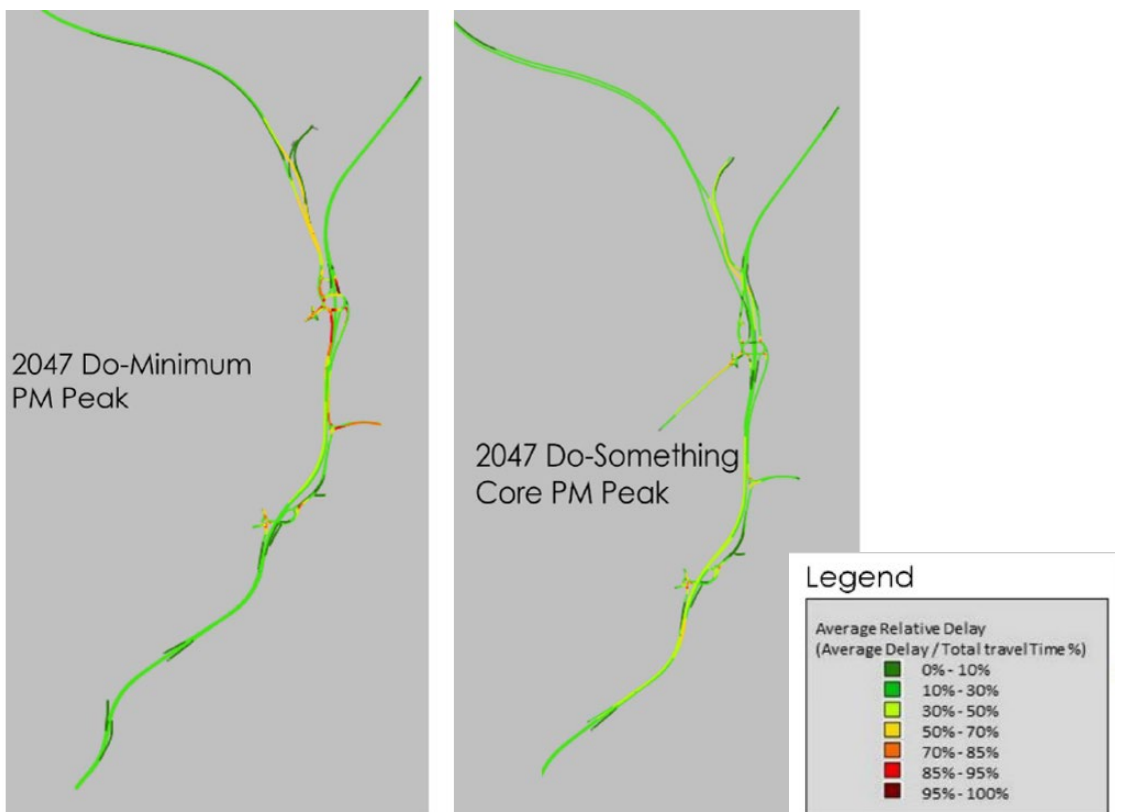


Figure 16 : Delay 'heatmaps' forecast PM peak 2047



3.13.79. The ExA considered these maps gave a clarity of presentation which supported the Applicant’s analysis and allowed an accurate and helpful visualisation of the predicted delays.

3.13.80. As a further assessment of the delay predictions of the Proposed Development, the TA [REP1-028] has detailed the network volume to Capacity Ratio across the network. This information shows how the percentage of available capacity on each section of road will be taken up. These visualisations are reproduced in Figure 17.

Figure 17 : Network Volume to Capacity Ratios (2042 AM and PM Peak)



3.13.81. The ExA considers these maps, again, gave a clarity of presentation which supported the Applicant’s analysis and allowed an accurate and helpful visualisation of the predicted capacity limits on the network.

3.13.82. Winchester Friends of the Earth raised a concern about the increased volume of traffic on the M3 south of M3 J9 where in the PM peak the plans are showing that the used capacity will increase from the 75%-85% range to the over 85% range. This observation was subject to a question in ExQ1 [PD-008], Q16.1.8, which asked why this deterioration in capacity was being forecast and how it will be monitored. In their reply [REP2-051] the Applicant explained that the increase is caused by the predicted increase in traffic that is associated with increased capacity and reduction of delay on the M3 J9 resulting in rerouting of strategic traffic to the M3. They also stated that a post opening project evaluation will be undertaken three years after the Scheme opens.

ExA's consideration regarding delays and road volume capacity

- 3.13.83. The ExA has carefully considered the impact of the Proposed Development on delays on the road network, which one of the five strategic objectives of the scheme as detailed in the Case for the Scheme [[REP1-019](#)].
- 3.13.84. The forecasts for predicted delays have relied upon the traffic model which is found to be reliable for forecasting purposes. The ExA further finds that the forecasting of delays is acceptable and has followed the relevant guidance. Although HCC have highlighted that a strategic traffic model may be less accurate for the detail required for forecasting impacts on individual junctions, there is no suggestion or evidence that shows this would lead to significant forecasting inadequacies or errors relating to delays, and indeed none have been presented to the Examination.
- 3.13.85. Similarly to journey time savings, it is shown from the evidence within the application that the strategy aim to reduce delays is substantially met, as factually there is a predicted reduction in delays on most of the assessed routes for each of the forecast years and time periods.
- 3.13.86. The ExA does note that the predicted delay savings are generally between one and two and a half minutes, which in themselves may not be considered substantial. It is however, accepted that many of the locations where delay is forecast, will be reduced, which along with a clear improvement in network volume capacity in most locations, will see an anticipated improvement in delays experienced.
- 3.13.87. The ExA also notes that the reduction in delay experienced at M3 J9 will have a direct beneficial impact on the access to the Winnal industrial and employment area which will be beneficial.
- 3.13.88. In summary, the ExA consider that the Applicant has shown that delays will be reduced and in most cases road capacity will be improved.

Road Safety

- 3.13.89. The Case for the Scheme [[REP1-019](#)] states that one of the five primary objectives of the Proposed Development is to:
- *"Improve the safety for all road users and reduce the annual collision frequency and severity ratio on the M3 Junction 9."*
- 3.13.90. The TA [[REP1-028](#)] details the predicted impact on road safety.
- 3.13.91. With the exception of road safety issues highlighted at the A33/ B3047 (Cart and Horses) Junction, which is discussed in detail separately in this Section of this Report, there were no concerns raised by IPs regarding the assessment and presentation of road safety data. In their LIR [[REP2-066](#)], HCC suggested that updating the collision data beyond the 5 year period 2015 to 2019 would be beneficial. This was requested in ExQ2

16.2.11 [PD-011] and details were provided by the Applicant for available years between 2012 and 2021. It is noted that there were less collisions during 2020 and 2021, and as anticipated by the Applicant, this is likely to be consistent with the changes of traffic patterns seen during the Covid-19 pandemic.

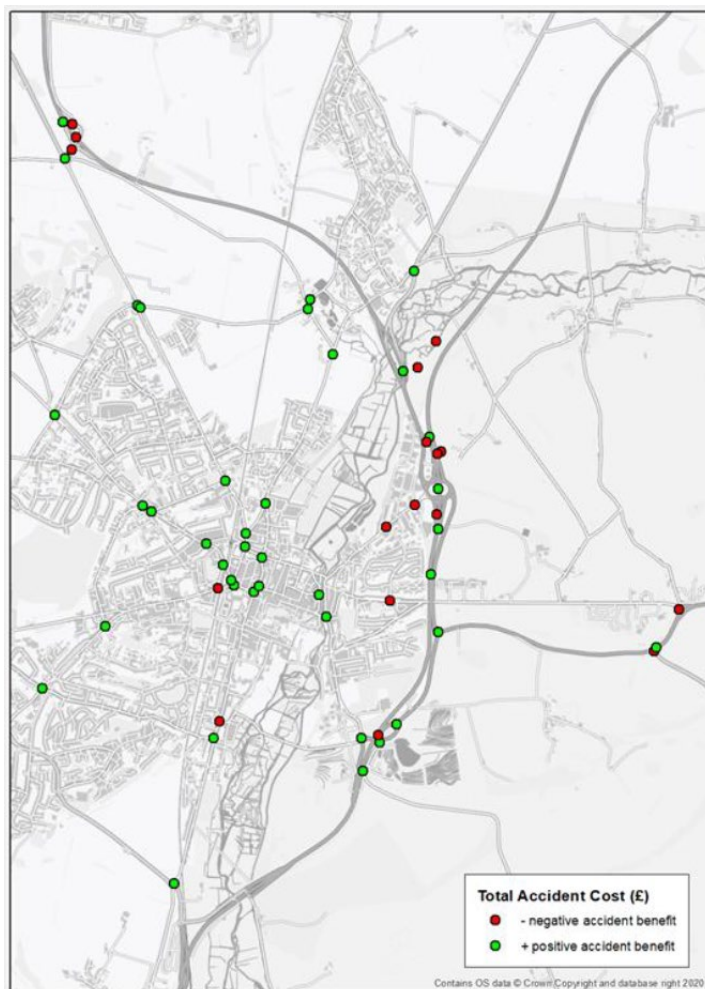
- 3.13.92. The ExA found that the collision data as presented led to a certain amount of confusion and ambiguity, resulting in several questions being raised over the three rounds of ExQs. The data presented in Table 8-1 of the TA [REP1-028] detailed observed collision data between 2015 and 2019 for an undefined and seemingly arbitrary area in *'the vicinity of the A34, A33 and the M3 Junction 9'*. The TA then continues to detail collision savings for the 60 year appraisal period for an assessment area significantly different and wider to the observed data. The TA also used *'collisions rates'* and *'casualty numbers'* in a way to further create potential ambiguity.
- 3.13.93. The ExA does not, in principle, consider there are errors in how this data was used however, the presentation may well lead the reader to conclude the predicted collision savings and related cost savings are in direct relation to the observed data.
- 3.13.94. With this in mind, the ExA sought to understand the forecast collision savings solely within the application boundary to allow a direct comparison with observed data and forecast data. We accept that changes in traffic flows may result in collision savings on the wider network, as presented in the TA however, the stated objective of the Proposed Development is to *'Improve the safety for all road users and reduce the annual collision frequency and severity ratio on the M3 Junction 9'*, therefore we considered this was an appropriate approach.
- 3.13.95. In the response to ExQ2 16.2.10 [REP5-027], the Applicant provided a table showing collision forecasts within the application boundary showing links and junctions separately. This table was a direct comparison of the forecast collision savings shown in the TA *'wider area'*. The extract in Table 12 shows the anticipated savings within the application boundary.

Table 12 : 60 year forecast of collision savings within the application boundary (extract from [REP5-027] Table 1.3)

Area of Influence	Accidents reduction	Casualties reduction - fatal	Casualties Reduction - serious	Casualties Reduction - slight
Application Boundary - links only	311	6	30	469
Application Boundary - junctions only	-165	-4	-38	-254
Total	146	2	-8	215

- 3.13.96. The data presented for within the application boundary shows a predicted collision reduction significantly less than that predicted for the 'wider area'.
- 3.13.97. The data presented also indicates that there is a prediction of increased collisions of all severities at junctions within the application boundary as a direct result of the Proposed Development; this was questioned further in ExQ2 16.2.9 [PD-011]. The Applicant's response explained that adding new junction 'nodes' into the assessment will provide a disbenefit while removing junction 'nodes' would provide a benefit. The ExA understands from this explanation that the Proposed Development therefore adds a number of new nodes, or junctions, which increase the potential for collisions.
- 3.13.98. Due to the data showing an increase in collisions forecast at junctions, the ExA asked for a plan showing which junctions were forecast to have positive or negative impacts from the Proposed Development. This was provided and is shown in Figure 18. Although on balance there are more 'positive accident benefits' locations shown, these are mainly seen further away from the application boundary, with more negative impacts seen closer to M3 J9.

Figure 18 : Location of positive and negative benefit to collisions at junctions



3.13.99. The ExA questioned the Applicant about the use of a wide area of assessment for collisions as this contributes significantly to the predicted savings where there is limited or no change in geometry. Table 5-16 of the CoMAR [REP1-025] details that the wider area of influence contributes £8.745 million of the £22.918 million net of savings, this is reproduced in Table 13. The Applicant details in their reply that this is a result of the standard assessment approach and is a function of traffic flow changes.

**Table 13 : Accident Impacts over 60 year appraisal period
(extract from [REP1-025] Table 5-16)**

Area of Influence	Reduction in number of Accidents	Casualties Reduction - Fatal	Casualties Reduction - Serious	Casualties Reduction -Slight	Present Value of Benefits*
Immediate area of influence - links only	417	10	54	600	20,905
Immediate area of influence - junctions only	-75	-3	-27	-122	-6,732
Wider area of influence	195	2	32	218	8,745
Total	537	9	59	696	22,918

* present value in £M, discounted to 2010, in 2010 prices

ExA's consideration regarding safety

- 3.13.100. The ExA considers that, although the collision data and predictions have been undertaken in accordance with the relevant TAG units, the presentation of safety related savings has been inconsistent when assessing the extent of observed data in relation to the Order limits and the stated wider area.
- 3.13.101. The ExA has concerns relating to the increase in predicted collisions at junctions within the Order limits. We accept this is a function of new junction 'nodes' being introduced to the road network however, the predicted increase in collisions is the resultant effect. It is expected that close attention will be paid to the safe design and comprehensive safety audit during detailed design.
- 3.13.102. It is accepted that the proposed change to the highway network within the Order limits will have traffic flow impacts on the wider road network and this is likely to lead to changes in safety across this wider network. The ExA considers there is an apparent disproportionate magnitude of saving over the wider area seen within the overall stated saving however, we accept that safety savings will nevertheless be seen.
- 3.13.103. In summary and notwithstanding the issues we have raised during the Examination with regard to safety analysis, the ExA accepts that there is a predicted improvement in road safety and a forecast reduction in collisions.

Economic Benefits

- 3.13.104. The Case for the Scheme [REP1-019] states that one of the five primary objectives of the Proposed Development is to:
- *"Support economic growth and ensure the junction can accommodate additional traffic"*
- 3.13.105. The CoMAR [REP1-025] and TA [REP1-028] detail the predicted economic benefits and BCR of the Proposed Development. The assessment of value

and benefits has been undertaken in accordance with the relevant TAG units and there is acceptance that these have been interpreted appropriately by the Applicant.

3.13.106. The CoMAR in its assessment of the BCR has not referred to the categorisation of values as detailed in the government’s Value for Money (VfM) Framework document. Reference to this publication was brought into the Examination by Winchester Action on the Climate Crisis in their WR at DL1 [[REP1-038](#)] where they reference Box 5.1 which provides a categorisation for ranges of BCR values. The ExA finds this reference and categorisation useful and appropriate to use within this Report for ease of reference and consistency with national standardisation. For ease of reference the extract of the VfM Framework document Box 5.1 is shown in Table 14.

Table 14 : Extract of Value for Money Framework Document Box 5.1

VfM Category	Implied by...*
Very High	BCR greater than or equal to 4
High	BCR between 2 and 4
Medium	BCR between 1.5 and 2
Low	BCR between 1 and 1.5
Poor	BCR between 0 and 1
Very Poor	BCR less than or equal to 0

3.13.107. The ExA acknowledges that VfM considerations are primarily a matter for the Government in its assessment of its RIS programme however, the ExA has examined this in the context of the Application and further to issues raised by various IPs.

3.13.108. In their LIR [[REP2-066](#)] HCC state that they broadly support the Proposed Development and the benefits it will bring to the wider economy. Neither WCC nor SDNPA specifically reference the benefit to economy in their LIR however, the SDNPA do question if the benefits outweigh the costs.

3.13.109. In addition to the commentary in LIRs, other IPs raised the issue of VfM. Winchester Action on the Climate Crisis stated in their WR [[REP1-038](#)] that “*The scheme struggles to achieve better than a poor value for money rating*” and that “*Without the wider economic impacts the scheme would have been in the ‘poor’ category in the government’s Value for Money Framework*”.

3.13.110. Further to this, in their WR [[REP1-039](#)] Winchester Friends of the Earth argue that the overall economic and value assessment for road projects has been questioned at Transport Select Committees and questions remain unanswered. They further state that it has not been proven that road schemes deliver growth.

- 3.13.111. The Applicant's Summary of Cost Benefit Analysis is set out the CoMAR [[REP1-025](#)]. Taking into account, monetised benefits the adjusted Net Present Value (NPV) (discounted to 2010) is calculated at £152.2M with a cost (discounted to 2010) of 112.7M, resulting in a BCR of 1.35 if publicly financed.
- 3.13.112. When the benefits of the wider economic impact is considered, the adjusted BCR is 1.72.
- 3.13.113. The CoMAR states that the primary benefit of the Proposed Development is from the journey time savings. Journey time savings are detailed earlier in this Section and for the examination of benefits here, it is accepted that these savings are in accordance with the relevant TAG units.
- 3.13.114. Of the total stated user benefits of £152.73M, journey time savings account for £155.48M. The monetised costs included in the VfM assessment are detailed in the CoMAR tables 5-23 and we have summarised this in Table 15.

Table 15 : Summary of monetised benefits and costs with resultant BCR

	Benefit (£)	Cost (£)
Noise	-1,343,544	
Air Quality	4,745,333	
Greenhouse Gases	-24,110,508	
Accidents	22,918,178	
Economic Efficiency (including net benefit of journey time, VOC, user charges and during construction users cost)	144,355,540	
Wider Public Finances (Indirect Taxation Revenues)	5,691,758	
NPV (to 2010) of monetised benefits	152,253,757	
NPV (to 2010) of Scheme Costs		112,710,685
Initial BCR	1.35	
Adjusted BCR (including Wider economic benefit of £41.8M)	1.72	

- 3.13.115. In addition to the monetised assessment of benefits, the CoMAR details in Table 5-1 where non-monetised benefits have been considered which include journey time reliability, wider structural and context specific impacts and social impacts.
- 3.13.116. As previously stated, the overall assessment of VfM in relation to the calculation of the BCR is accepted to be in accordance with the relevant TAG units. However, the ExA sought to further understand particular elements:

- Assessment of the wider economic benefit.
- Magnitude of saving relating to safety.
- Use of costed risk assessment in lieu of optimism bias.

Assessment of the wider economic benefit

3.13.117. In their WR [[REP1-038](#)], Winchester Action on the Climate Crisis state that without the addition of wider economic benefits the BCR for the Proposed Development would be 'poor'. The ExA sought further information in this regard and in ExQ1 14.1.12 [[PD-008](#)] we asked how these benefits are expected to stimulate local development sites and economic activity, to which the Applicant's reply [[REP2-051](#)] was that:

"The Level 2 wider economic impacts were quantified based on the relevant Department for Transport, TAG methods and application of the Department for Transport Wider Impacts in Transport Appraisal (WITA) software (version 2.2) released by of the Department for Transport. An estimate of the impact of increased output in imperfectly competitive markets has been derived directly from the estimated business user benefits (as per TAG Unit A2.2) and is estimated to be £7.1 million (Net Present Value (NPV), 2010 prices and values). Agglomeration benefits were quantified following the approach set out in TAG Unit 2-4 where the Scheme is expected to increase business productivity by reducing travel costs and improving accessibility, and is estimated to be £34.7 million (NPV, 2010 prices and values). The Scheme has the potential to help unlock development by mitigating capacity constraints on the strategic road network. This includes the potential stimulus of local development sites and improved land values at the Winnall Industrial Estate with consequential densification of development and economic activity. These developments, however, are not directly dependent on the Scheme. Therefore, no direct dependent development benefits have been quantified at this stage, as it was not considered proportionate to carry out a detailed assessment and related land-use and economic modelling".

3.13.118. Following further comments from IPs at ISH3, we asked a further clarification question at ExQ2 14.2.5 [[PD-011](#)] relating to the reliability of the TAG unit and assessment of land values and development sites at the Winnall Industrial Estate. The Applicant confirmed that the application of TAG is in accordance with NPSNN requirements and that land values at the Winnall Industrial Estate had not been quantified in the economic appraisal.

Magnitude of saving relating to safety

3.13.119. Earlier in this Section we discussed the issue we examined relating to the extent of predicted safety related savings. The extent of collisions savings has a direct influence on the magnitude of monetised savings seen in the BCR calculation.

3.13.120. The ExA has sought to understand the wider safety savings in the assessment of BCR, and how that differs from the savings associated directly with the physical infrastructure changes within the Order limits.

- 3.13.121. As such, we asked the Applicant via ExQ3 16.3.2 [[PD-012](#)] to provide a revised BCR calculation for the Proposed Development which only took account of collision savings within the Order limits.
- 3.13.122. The Applicant's response [[REP6-023](#)] showed that the monetised collision savings if taken within the Order limits only, reduces to £3.63M from £22.198M and the BCR would be 1.18, compared to 1.32 with the inclusion of the wider safety savings. The adjusted BCR when taking account of wider economic effects would change from 1.72 to 1.55.
- 3.13.123. The Applicant's response states that this sensitivity test of the wider safety saving impact would not change the assessed VfM of the scheme. The initial BCR would remain in the 'low' VfM category (1.0 – 1.5) and the adjusted BCR would remain in the 'medium VfM category (1.5 – 2.0).

Use of costed risk assessment in lieu of optimism bias

- 3.13.124. The CoMAR [[REP1-025](#)] states in paragraph 5.4.1 that in the estimating process of the Proposed Development, the Applicant has included costed risks in the estimate rather than optimism bias as required by the Treasury's Green Book. In the opinion of the ExA, this has reduced the visibility of the cost estimating exercise as the amount of costed risk is not disclosed.
- 3.13.125. We asked the Applicant in ExQ1 16.1.14 [[PD-008](#)] for details of the risks included in the cost estimate to which the Applicant's reply [[REP2-051](#)] was to state that risk is managed in line with National Highways' risk process. Therefore we asked a further question in ExQ2 16.2.5 [[PD-011](#)] seeking an explanation of the use of risk in lieu of optimism bias. The Applicant reiterated that their approach is in line with TAG requirements.
- 3.13.126. In seeking to examine the robustness of the cost estimate, the ExA has only been assured that a quantity of risk cost has been included in the estimate. It has not been possible to assess the relevant percentage of risk within the scheme cost in relation to that anticipated by the Treasury Green Book.

ExA's consideration regarding Economic Benefit

- 3.13.127. The ExA acknowledges that VfM considerations are primarily a matter for the Government in relation to its RIS. Nevertheless, the economic and VfM assessment forms part of the evidence and justification for the Proposed Development and, as the Applicant states, is a primary objective in the case for the scheme-
- 3.13.128. The ExA considers that the Applicant has undertaken the economic and VfM appraisal in accordance with the relevant TAG units and it appears that the Applicant has included all relevant considerations of both monetised and non-monetised benefits and costs, including a fair assessment of the potential wider economic impacts.

- 3.13.129. Notwithstanding this, we highlight that no reasoned explanation was provided to the ExA as to the magnitude of risk allowance within the of the 'cost' element of the BCR of the Proposed Development.
- 3.13.130. On balance, we consider that the projected safety savings included within the wider area of assessment could be seen to provide a heightened benefit valuation of savings, with savings outside of the Order limits being five times greater than those within it. However, we also conclude that if the value of wider safety savings were reduced this would not change the category of VfM, ie the initial BCR would remain low and adjusted BCR would remain medium.
- 3.13.131. Overall, the CoMAR states, and we agree, that the Proposed Development provides a medium VfM in the primary scenario which includes for wider economic impacts. The various scenario testing shows that VfM ranges from low to medium VfM assessment in all cases with the exception of a poor rating when a low traffic growth scenario was tested (as detailed in table 5-24 of the CoMAR).

Construction phase traffic, including traffic management

- 3.13.132. The Applicant has produced an Outline Traffic Management Plan (OTMP) [[REP5-023](#)] which details the anticipated method of managing traffic during the construction phase.
- 3.13.133. At the beginning of the Examination, the ExA sought to understand how the Applicant had consulted with HCC as the local highway authority regarding construction phase traffic management. It was important to assess if agreement had been reached as the major impact of work on the trunk road network would be seen on the local highway network.
- 3.13.134. The ExA asked a number of questions in ExQ1 [[PD-008](#)] and ISH2 and following further discussions between the Applicant and HCC an updated OTMP was submitted at DL5 which showed progress with arrangements that reflected progressive dialogue between the two parties. At the end of the Examination, the SoCG between the Applicant and HCC [[REP8-019](#)] details a number of issues relating to this subject, all of which have been addressed by the Applicant and are shown as agreed by HCC.
- 3.13.135. In addition to the issues raised and clarification given to HCC as the local highway authority, WCC raised a concern about the potential of 'unofficial' diversion routes being taken by traffic during times of congestion. It is generally accepted that the Applicant has a limited ability to manage all journeys and has worked with HCC to mitigate the impact during construction.
- 3.13.136. At the close of the Examination WCC in their SoCG with the Applicant agreed that they will continue to liaise with the local highway authority and that there is further opportunity to consult with the Applicant regarding the OTMP. It was also agreed in the SoCG that the Applicant will continue liaison and dialogue during the construction phase of the Proposed Development to manage emerging issues.

- 3.13.137. The Applicant states that there will not be a significant impact on the local highway network from construction vehicles. In addition to this, there was an issue raised by SDNPA relating to the opportunity to reduce traffic generation from the construction workforce through the development of a site travel plan. At the close of the Examination this matter was included in the fiEMP as a commitment which will be included in detail in the siEMP. At the close of the Examination, this item was shown in the SoCG as “*not agreed*” however, the inclusion of the commitment to include a travel plan is secured through the fiEMP.

ExA’s consideration regarding construction phase, including traffic management.

- 3.13.138. The ExA considers that the Applicant has given significant consideration to the impact of construction traffic and temporary road/ lane closures on the highway network. The Applicant is the maintaining authority for the strategic road network and therefore will need to comply with the requirements as set out for that part of the affected road network. The ExA finds that the impact on the local highway network, maintained and managed by HCC, has been considered in detail and ongoing consultation and liaison has been undertaken and will be ongoing.
- 3.13.139. The ExA considers that HCC acceptance of the OTMP and agreement to details with the SoCG show that there is a general consensus on the proposals and means of managing diversions and associated works both pre-construction and during the construction phase.
- 3.13.140. There is a need to continue to consult with other local authorities, in addition to the local highway authority, and this has been acknowledged by the Applicant and is stated as commitment G8 in the fiEMP [[REP8-023](#)] which is secured by Requirement 3 of the dDCO.

The Local Highway network

Local Highway Authority interface

- 3.13.141. The Applicant and HCC, as local highway authority, have liaised during the development of the Proposed Development and this has continued during the application. A number of technical and engineering issues were raised by HCC in their LIR [[REP2-066](#)] regarding the impact and legal status of changes that would be required to the local highway network that HCC are responsible for.
- 3.13.142. A number of these issues, for example de-trunking, stopping up of highways, future ownership and future maintenance responsibility, were subject to ExQs and questioning in ISH2. HCC also requested a number of changes to the dDCO to reflect issues they considered were not addressed, these are detailed in Chapter 7 of this Report.
- 3.13.143. Towards the close of the Examination, HCC and the Applicant advised the ExA that they were preparing a side agreement which would allow these issues to be addressed largely out with the need for the ExA to make findings on individual issues.

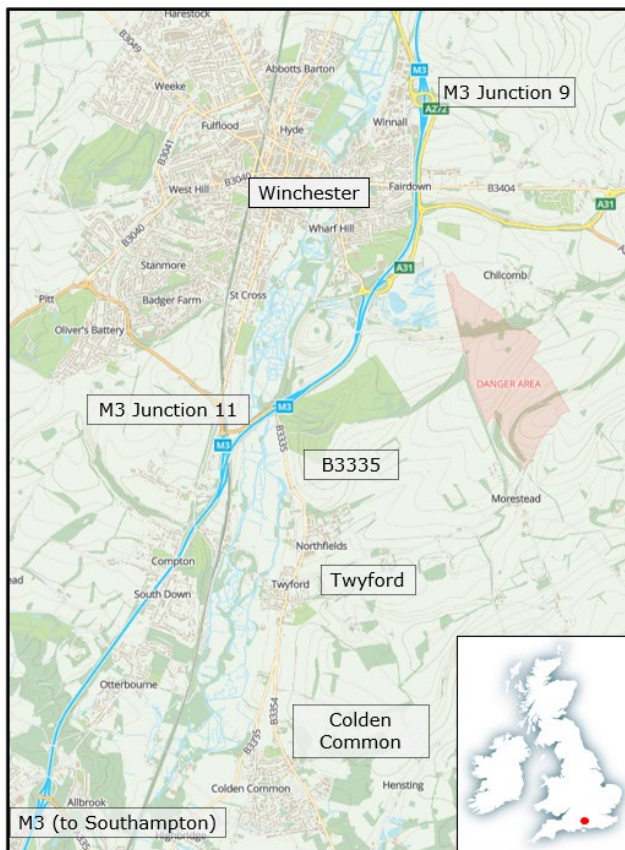
3.13.144. At the close of the Examination the ExA were advised by HCC’s solicitor [REP8-044] that the side agreement is substantially agreed, however we give no weight to this Report which has not been submitted to the Examination. In addition, the SoCG between the parties shows “agreed” or “provisionally agreed” (where both parties expect the issues to be agreed shortly after the close of the Examination) to all issues, with the exception of the A33/ B3047 (Cart and Horses) Junction which is discussed separately in this Section of this Report.

Impact on the B3335 and the villages of Twyford and Colden Common

3.13.145. The potential impact of the Proposed Development on the villages of Twyford and Colden Common, in particular the impact on the B3335 was raised by a number of IPs.

3.13.146. Twyford is located some 4km (2.5 miles) from the southern end of application boundary and 6.5km (4 miles) from M3 J9. Assessment of the impact of the Proposed Development on this area was not included in the application documents. The location of Twyford and Colden Common is shown in Figure 19.

Figure 19 : Location Plan – Twyford and Colden Common



3.13.147. Due to the absence of traffic assessment in the Application, in ExQ1 16.1.17 [PD-008], the Applicant was asked to provide details of changes in traffic flows that may be seen along the B3335 in the operational phase. The Applicant stated that the strategic model predicted a very

small increase in the average daily traffic flows of less than 200 passenger car units 2-way per day in 2027.

- 3.13.148. The representations from IPs stated several current issues along the B3335 and through Twyford and Colden Common villages which they believe would be made worse by the implementation of the Proposed Development. These are summarised in WR from Colden Common and Twyford Cycle Bus [REP2-062] and 20's Plenty for Hampshire [REP1-033]. The matters referenced in these representations were highlighted to the ExA partly during ASI1 [EV2-002] and in greater detail during ASI2 [EV2-004].
- 3.13.149. It is apparent that the issues highlighted to the ExA are predominantly existing issues which are known to the local highway authority. HCC were asked in ISH2 if they had any comments regarding the requests for improvements in this area which they confirmed they did not. It is also noted that neither HCC nor WCC have raised issues relating to the B3335 or these villages.
- 3.13.150. Notwithstanding this, of the issues raised in regard to the B3335, the ExA particularly reviewed the uncontrolled crossing of the B3335 in the vicinity of the M3 junction 11 and the Hockley Golf Course. The location and image of the crossing is shown in Figure 20.

Figure 20 : B3335 Uncontrolled Crossing at the M3 Junction 11 near Hockley Golf Course



- 3.13.151. There is a footway on the eastern side of the B3335 from Twyford and this crossing is used as the primary crossing point of the B3335 to access Winchester and the recreational routes in the Itchen Valley. Although M3 junction 11 will be primarily impacted during construction works, the IPs consider that this crossing at present does not present a safe crossing and therefore any additional traffic as a consequence of the Proposed Development would result in further deterioration in safety. They further argue that the Applicant should upgrade this currently uncontrolled crossing to a controlled crossing to improve safety.
- 3.13.152. In their response to WRs [[REP3-020](#)] the Applicant stated that *“There is not considered to be a risk of changes in traffic flow which would exceed the LA 105 or LA 111 screening criteria, and therefore there are considered to be no significant effects on air quality or noise and vibration. It is for this reason, that no improvements are proposed to these roads outside the application boundary. Suggested improvements including; reductions in speed limits, provision of light-controlled pedestrian crossings and weight limits on the local road network in and around Twyford and Colden Common are not included within the scope of the Scheme and concerns should be raised with Hampshire County Council as the local highway authority responsible.”*
- 3.13.153. At ExQ2 16.2.20 [[PD-011](#)], we asked HCC and WCC to comment on the impact on pedestrian crossings at this location. In their reply [[REP5-032](#)], HCC stated that through the process of agreeing the construction management plan (the ExA considers this is meant to reference the TMP), should it be considered necessary to provide additional, temporary crossing points as a result of the diversion route this will be agreed prior to commencement. WCC [[REP5-037](#)] stated that, if the operation of the traffic signal junction is reviewed at a future point consideration should be given to providing safe pedestrian crossing points at junction 11.

ExA’s consideration regarding the local highway network

- 3.13.154. The ExA considers that the many matters pertaining to the local highway network that have been discussed and considered between the Applicant and HCC as local highway authority are either agreed or provisionally agreed.
- 3.13.155. The Applicant and HCC have indicated that they expect a side agreement to be in place shortly after the close of the Examination, as set out in a letter by HCC’s legal team [[REP8-044](#)] and HCC confirm in their response to ExQ3 9.3.1 [[REP6-031](#)] that they anticipate all outstanding matters relating to their dDCO comments will be resolved. As we detail in Chapter 7 of this Report, the rDCO is drafted on the basis that this side agreement is not in place.
- 3.13.156. Notwithstanding the separate consideration of the A33/ B3047 (Cart and Horses) junction, the ExA finds that the only significant issue raised by IPs relating to the local highway network is in regard to the crossing of the B3335 near Hockley Golf Course.

- 3.13.157. The ExA considers that the uncontrolled crossing on the B3335 at the M3 Junction 11 near Hockley Golf Course does not present a demonstrably safe crossing point and additional traffic as a consequence of the Proposed Development could affect this crossing. However, we accept that changes to this are not within the scope of the Proposed Development and furthermore, interventions are not being sought by the local highway authority. We consider that HCC's comment to review this during approval of the TMP is acceptable and this is covered by commitment G8 in the fiEMP [[REP8-023](#)] which is secured by Requirement 3 of the dDCO.
- 3.13.158. Regarding all other aspects, the ExA considers that the impact of the Proposed Development in the operational phase will be neutral or very slight and as such the ExA considers that there is no requirement or expectation on the Applicant to include any permanent measures in their proposal.

The A33/ B3047 (Cart and Horses) Junction

- 3.13.159. The A33/ B3047 (Cart and Horses) Junction, hereafter referred to as 'The Cart and Horses Junction', has been raised as a significant concern by a number of IPs, including the three local authorities. HCC, WCC and SDNPA all strongly consider that an improvement to this junction should be included as part of the Application as they say that the Proposed Development will adversely affect its operation and safety, principally as additional traffic is predicted to use the A33. An extract from The General Arrangement [[APP-061](#)] is shown in Figure 21 with a location plan in Figure 22.

Figure 21 : Extract from General Arrangement Plan Sheet 3 of 10 [[APP-061](#)]

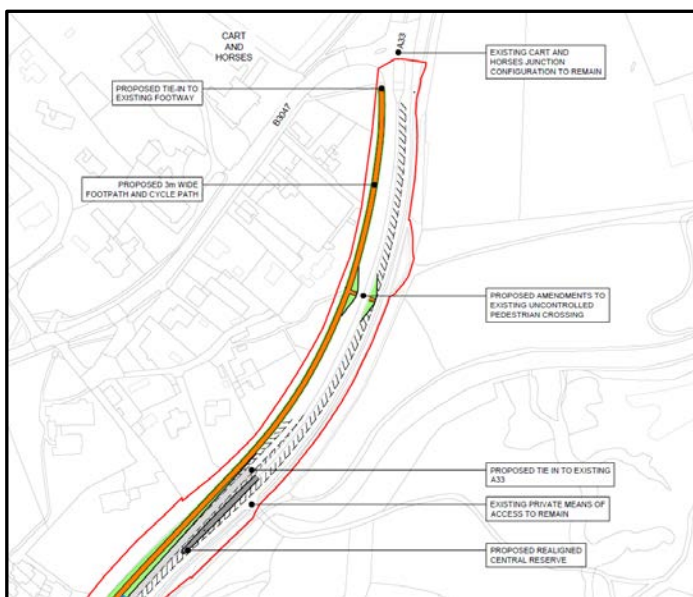


Figure 22 : Cart and Horses Junction Location Plan - Extract from HCC Cart & Horses Junction Proposals document [[AS-008](#)]



- 3.13.160. The ExA asked the Applicant in ExQ1 4.1.8 [[PD-008](#)] their position regarding the exclusion of improvements at the junction as part of the Proposed Development. The Applicant gave a substantive reply in appendix A of their response to ExQ1 [[REP2-051](#)] where they state that this junction has been the subject of discussion during the scheme development and it is acknowledged that there is a predicted increase in traffic on the A33. However, they also state that the traffic model forecast shows a decrease in the average delay in the AM and PM peaks, a decrease in traffic flows on the B3047 and a decrease in a number of turning movements which may lead to a reduction in potential collisions.
- 3.13.161. The Applicant goes on to state that if they were to incorporate this junction into the Application, significant further design, assessment and consultation work would need to be undertaken with a revised DCO application being required.
- 3.13.162. HCC were also asked to state their current position regarding the junction improvements in ExQ1 4.1.8. In their reply, HCC stated they did not wish to see the Application delayed but wish to see an alternative method agreed for delivering mitigation at the junction and were wishing to continue to develop options and opportunities with the Applicant. HCC were questioned at ISH2 to give any further information on the mitigation they were seeking. At the hearing and in their post hearing summary [[REP4-044](#)] HCC reiterated the need for further mitigation and stated that they consider the improvement of the junction should be a requirement of the scheme.
- 3.13.163. Around the time of ISH2, HCC presented to the Examination a public consultation document [[AS-008](#)] regarding potential junction improvements, which HCC published during the summer of 2023. The consultation document provides an existing collision record including fatalities and continued to detail two proposed improvement schemes.

The consultation document states that *"The County Council is continuing to press National Highways to incorporate Cart and Horses Junction improvements into their scheme..."* and conclude by stating that *".... It is expected these improvements would be funded by National Highways...there may be scope for other funding sources..."* which in some respects contradicts the position detailed in HCCs response to ExQ1.

- 3.13.164. At the close of the Examination the Applicant's position regarding this junction had not changed and this is reflected in the SoCGs with HCC, WCC and SDNPA which shows that the Applicant's final position to exclude the Cart and Horses Junction, which is not agreed by all three of the local authorities.
- 3.13.165. Furthermore, HCC's closing comments on the Examination solely referenced the Cart and Horses Junction. They reiterate the need for mitigation and the assertion that the Proposed Development will be detrimental to safety at the junction due to the increase in northbound traffic flows, which they state are the leading cause of collision.

ExA's consideration regarding the A33/ B3047 (Cart and Horses) Junction

- 3.13.166. There is clear concern about the historic, current and future safety record of the Cart and Horses Junction which has been acknowledged by the Applicant.
- 3.13.167. The ExA considers that although the Proposed Development would see additional traffic volumes on the A33, when considering the decrease in side-road traffic volumes and the predicted decrease in some turning movements we agree that there would be a slightly negative or neutral overall impact on the junction as a consequence of Proposed Development.
- 3.13.168. The ExA considers that the scale of impact anticipated due to the Proposed Development would not be significant enough to set a requirement or expectation on the Applicant amend or add to the Application.

PRoW and NMU routes – Operational Phase

- 3.13.169. The Case for the Scheme [[REP1-019](#)] states that one of the five primary objectives of the Proposed Development is to provide:
- *"Improvements for walkers and cyclists including connecting the National Cycle Network Route 23 which is severed by the current junction layout."*
- 3.13.170. It is noted that in respect of both the proposed PRoWs and NMU routes which are not PRoWs, the responsible LA is HCC. The ExA has added significance to this when examining the issues raised by IPs.

- 3.13.171. In addition to HCC, the IPs primarily commenting on the NMU provision were SDNPA and Cycle Winchester. Although SDNPA acknowledge they are not the PRoW authority, they have a specific duty to improve access to the SDNP. Cycle Winchester is a local action group which aims to encourage cycling and campaigns on issues relevant to cycling and cyclists in the Winchester area.
- 3.13.172. During the OFH the Applicant and Cycle Winchester agreed to develop a SoCG and the ExA considers this approach to be helpful. At the close of the Examination, in the SoCG [[REP8-022](#)] the Applicant states that *"consultation with Cycle Winchester began in January 2018 as part of a non-statutory consultation. Representatives from Cycle Winchester have since then attended meetings as part of a group of representatives from other local walking, cycling and horse-riding community groups. Cycle Winchester continued to be consulted as a member of this group."*
- 3.13.173. At the OFH, the ExA sought to ensure that Cycle Winchester made representation on behalf of walkers and horse-riders in addition to cyclists. Cycle Winchester explained that they were part of the consultative group which included representatives from The Ramblers, The British Horse Society and SDNPA and they were of *"one mind"* regarding NMU matters.
- 3.13.174. It is stated in the LIRs from HCC [[REP2-066](#)] and SDNPA [[REP2-071](#)] that they consider the proposed improvements to the existing NMU and PRoW network would be positive. In their SoCG, *"Cycle Winchester agree that the proposed plans are an improvement and a good objective of the scheme"* [[REP8-022](#)].
- 3.13.175. During the Examination there were some areas of specific concern regarding the proposed NMU provision raised by some IPs and three primary issues were considered:
- Routes.
 - Design standards.
 - Legal status.
- 3.13.176. With regards to the NMU routes proposed, there is general agreement that the Proposed Development would provide a positive benefit and is generally supported. Both HCC and SDNPA will continue to be included in consultation during the detailed design development to ensure that all positive opportunities are considered.
- 3.13.177. The design standards for the proposed NMU routes have been subject to debate between various parties during the Examination. Cycle Winchester have proposed design standards which it feels provide the optimum facility for all users and are considered to be of a higher standard than those used by the Applicant. The Applicant has consistently stated that the proposed NMU routes have been designed in accordance with the current and appropriate design guides from DMRB which take into consideration the existing and proposed usage.

- 3.13.178. As the PRow and Highway Authority, HCC were asked to comment on the design standards of the proposed NMU routes in written questions and at ISH2. They confirmed that they were in agreement with the proposals in the Application and were continuing to liaise with the Applicant. This is reflected in the SoCG which, at the close of the Examination detailed agreement on all issues raised regarding NMU routes and PRowS.
- 3.13.179. The legal status of some of the proposed and amended NMU routes has been contested by Cycle Winchester, primarily with regard to the status of users who would legally be able to use the proposed routes. Cycle Winchester state that as part of the initial consultation with NMU groups, there was a commitment to not-preclude the use by horse-riders of the proposed Kings Worthy route and also to allow horse-riders to use the part of NCN Route 23 through the gyratory to meet the bridleway at Easton Lane; in both cases these have not been provided for in the Proposed Development. At the close of the Examination these points were not agreed in the SoCG between Cycle Winchester and the Applicant.
- 3.13.180. Again, as the PRow and highway authority, HCC were asked to comment on the legal status of the proposed NMU routes in written questions and at ISH2. They confirmed that the legal status of the NMU routes for the Proposed Development were agreed with them and this is reflected in SoCG with HCC and the Applicant as detailed at the close of the Examination.

ExA's consideration regarding PRow and NMU routes – Operational Phase

- 3.13.181. The ExA considers that there is a generally accepted view that there would be an overall benefit and improvement for WCH with the Proposed Development and the ExA also considers this to be the case.
- 3.13.182. It is accepted that there has been a difference of view as to the design standards and legal status of the proposed NMU routes and that in their SoCG, Cycle Winchester did not agree with the Applicant on a number of aspects in this regard. However, the ExA considers that the application of both design standards and legal status of routes in the application is acceptable and this is supported by HCC as the local maintaining authority for PRowS and highways.

PRow and NMU routes – Construction Phase

- 3.13.183. A number of IPs have detailed concerns regarding the temporary re-routing of existing PRowS and other provisions for recreational WCH. Much of the concerns centred on the length, practical issues and safety of the proposed diversions.
- 3.13.184. Cycle Winchester raised a number of practical issues regarding diversion of cycle routes, in particular NCN Route 23, such as the presence of styles and the requirement to pass under a bridge with limited headroom. The Applicant has referenced the diversion plan shown in The Scheme and its Surrounding, Figure 2.6 [[APP-063](#)] in their response to

these concerns. However, it was considered that this did not give a clear indication of what diversion routes would be used at what stage in the construction stage. In addition, at ISH2, the Applicant acknowledged that there was also some potential ambiguity between Chapter 2 and Chapter 12 of the ES regarding NMU diversions.

- 3.13.185. In their LIR [[REP8-040](#)] SDNPA also raise general concerns about the diversion routes for NMUs during the construction phase. Although these concerns are not fully detailed, they make reference to NCN Route 23 and suggest that the DCO Requirements are amended to ensure that before a temporary route is brought into use, the Local Planning Authorities and local highway authority are consulted, along with local access groups.
- 3.13.186. These ambiguities were clarified during the Examination and ES Chapter 12 [[REP4-013](#)] has been updated so that Table 12.25, Summary of significant construction effects on WCH, now clarifies the proposed diversion route for NCN Route 23.
- 3.13.187. At the end of the Examination, Cycle Winchester were not in agreement with the Applicant regarding proposed diversion routes for cyclist during the construction phase. However, in their SoCG, HCC acknowledge that further discussions will be held and a PRow management plan will be developed during the detailed design stage. This mitigation requirement is secured as commitment PH5 in the fiEMP.

ExA's consideration regarding PRow and NMU routes – Construction Phase

- 3.13.188. The ExA considers that the Applicant has taken account of the requirements to provide suitable alternatives for NMUs during the construction phase. We consider that, although at the end of the Examination Cycle Winchester and SDNPA do not agree with the proposed mitigation, we find the proposed management of NMUs during construction is acceptable and this is supported by HCC as the local maintaining authority for PRow and highways.

ExA Conclusions on traffic, transport and non-motorised user routes

- 3.13.189. In principle, the Proposed Development would be in accordance with the Government's vision and strategic objectives set out in the NPSNN: "*...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 the wider transport system*".
- 3.13.190. The traffic modelling undertaken by the Applicant is acceptable and has been carried out in accordance with relevant guidance. The application is supported by a local transport model which provides sufficiently accurate detail to allow modelling of the impacts of the project. It includes appropriate sensitivity analysis to consider the impact of uncertainty on project impacts. Furthermore, the model has been reviewed and

approved by HCC as local highway authority. The ExA found no substantive reason to question the suitability and accuracy of the model or assessments made by it.

- 3.13.191. It is clear from the evidence within the application that the strategy aim to reduce journey times would be met. On balance however, the ExA considers that the anticipated journey time savings in themselves would be moderate, rather than significant, as presented by the Applicant.
- 3.13.192. It is also clear from the evidence within the application that the strategy aim to reduce delays would be met. On balance, the ExA considers that there would be a clear benefit to the local network in terms of forecast delays, even with a predicted increase in traffic demand.
- 3.13.193. The presentation of safety savings has been inconsistent particularly with regard to savings over the wider area. The ExA also has concerns about the increase in predicted collisions at junctions within the application boundary. Notwithstanding these observations, the ExA accepts that there is a predicted improvement in road safety and a forecast reduction in collisions. It is expected that close attention would be paid to the safe design and comprehensive safety audit during detailed design, which is secured by Requirement 3 that requires the EMP to be produced in accordance with the DMRB.
- 3.13.194. The assessment of costs and benefits has been carried out in accordance with relevant guidance. The ExA finds that the initial BCR is considered to be a low VfM. However, the adjusted BCR value, which includes wider economic factors, is considered to represent medium VfM.
- 3.13.195. The ExA considers that the uncontrolled crossing on the B3335 at the M3 Junction 11 near Hockley Golf Course does not present a demonstrably safe crossing point and additional traffic as a consequence of the Proposed Development could affect this crossing. However we accept that changes to this are not within the scope of the Proposed Development. We accept that this will be subject to further consultation through the proposed TMP.
- 3.13.196. The ExA considers that there is no requirement for the Applicant to include improvement to the Cart and Horses Junction as part of the Application.
- 3.13.197. At the end of the Examination, a side agreement between the Applicant and HCC was nearing completion. If this is agreed, the objections raised by HCC will be withdrawn however, if this is not agreed, the ExA have concluded the rDCO for this eventuality.
- 3.13.198. The ExA considers that although there will be temporary negative impacts from construction phase diversions and traffic management, these are subject to clear mitigation which is accepted by the local highway authority.
- 3.13.199. The ExA considers that the Proposed Development would deliver a number of benefits relating to transport matters which correspond with

its key objectives including reduced journey time, reduced delays, improvements to NMU facilities and improvements in safety. We have carefully examined the extent of these benefits which are integral to ensuring that the identified localised and strategic need would be met. Taken together, we attribute great weight to these traffic and transport benefits and the associated meeting of that need in favour of the Order being made.

- 3.13.200. The findings in respect of traffic, transport and NMU routes will be taken into account in the overall planning balance in Chapter 5 of this Report.

3.14. WASTE AND MATERIAL RESOURCES

Introduction

- 3.14.1. This Section sets out the effects of the Proposed Development as they relate to waste and material resources.

The Relevant Policy Tests

- 3.14.2. Paragraph 5.169 of NPSNN requires Applicants to safeguard any mineral resources on the proposed site as far as possible.
- 3.14.3. Paragraphs 5.39 to 5.41 of the NPSNN details the Government's objectives to protect human health and the environment by producing less waste and disposing in a way that is least damaging to the environment and human health.
- 3.14.4. Paragraph 5.42 of NPSNN addresses management of waste and waste reduction and states that the Applicant should set out the arrangements that are proposed for managing any waste produced.
- 3.14.5. Paragraphs 5.43 to 5.45 of the NPSNN outline that the SoS should consider the extent and effectiveness of the proposed management of waste and where necessary should use requirements or planning obligations to ensure the measures are applied and relevant permits are obtained.
- 3.14.6. Paragraph 210 of the NPPF states that planning policies should, so far as is practicable, take account of the secondary and recycled materials and minerals waste supply before considering the extraction and use of primary materials.
- 3.14.7. The Hampshire Minerals and Waste Plan 2013 Policy 15 states that sand and gravel and brick-making clay resources are safeguarded against needless sterilisation by development, unless 'prior extraction' takes place. Policy 25 states that all waste should be managed to the 'waste hierarchy' to reduce waste sent to landfill and maximise recycling.

The Application

- 3.14.8. Chapter 10 of the ES [[APP-051](#)] assesses the impacts of materials and waste associated with the Proposed Development during its construction,

demolition and operation phases. This Chapter has been written in accordance with established principles which set out the requirements for assessing and reporting the effects on material assets and waste from the delivery of major highway construction projects.

- 3.14.9. The ES states that the operational phase of the Proposed Development was 'scoped out' of the assessment at the scoping stage, because it is unlikely that the operational phase will result in significant effects with respect to material assets and waste.
- 3.14.10. The estimated quantities of materials consumed during the construction phase have been assessed against a regional or national material sales baseline. The estimated quantities of waste generated during the construction phase have been assessed against a local waste infrastructure capacity baseline. The assessment identifies the quantum of material which will be removed and re-used during the construction of the Proposed Development.
- 3.14.11. The ES states that after design mitigation to develop a balance between excavated soil and that required for deposition, a worst-case scenario would require 65,000m³ of excavated material to be removed from site. The ES states that this is 65% of the construction material requirement for the Proposed Development and exceeds the regional target of 26% (Recycled aggregate targets for England 2005-2020 : National and regional guidelines for aggregate provision published 2009). A more detailed breakdown of the figures is provided within Chapter 10 of the ES [[APP-051](#)].
- 3.14.12. The ES states that the construction waste generated by the Proposed Development would be primarily non-hazardous and inert. However, should hazardous waste be encountered during construction, this would be handled at the established construction site compounds prior to transfer to external approved waste management sites.
- 3.14.13. The ES states the estimated main types and quantities of materials to be used during construction. The ES also details the measures to be taken to reduce the impact and amount of imported material.
- 3.14.14. Cumulative impacts are detailed in Section 3.15 of this Report, which states that material assets and waste have been 'scoped out' of the cumulative assessment.
- 3.14.15. The ES states that mitigation and enhancement measures associated with the materials and waste have been provided in line with Waste Framework Directive (2008/98/EC) waste hierarchy: prevention; reuse; recycle; recover; and dispose. These have been provided for the design phase, as well as the construction phase of the Proposed Development. The assessment is based on the findings of the preliminary ground investigation that was undertaken for the Proposed Development.
- 3.14.16. In summary, Chapter 10 of the ES [[APP-051](#)] confirms no likely significant adverse effects during construction and operation of the Proposed Development on material assets and waste

Issues Considered in the Examination

- 3.14.17. The key issues considered during the Examination were:
- Waste management and recycling.
 - Construction materials and mineral safeguarding.

Waste Management

- 3.14.18. Chapter 10 of the ES [[APP-051](#)] considers waste management and recycling and how this may impact locally and regionally. Reference is also made to the draft site waste management plan (SWMP) which is appended to the fiEMP [[REP8-023](#)]. The draft SWMP contains little detail regarding types and volumes of waste, but it does set the expectations for further iterations of the Environmental Management Plan (EMP) and in that respect is a useful inclusion.
- 3.14.19. No specific issues were raised by IPs in LIR or RR, including by the Local Waste Authority, HCC.
- 3.14.20. The ES considers the issue of waste and recycling in two ways, through the design process and by setting targets for residual waste recycling during the construction phase. The level of detail provided at this stage is in line with the level of design detail, the primary materials would arise from earthworks, general inert materials and the removal of existing concrete structures.
- 3.14.21. The Applicant has stated that they have endeavoured to achieve an 'earthworks balance' in the design of the Proposed Development and at the close of the Examination this balance was calculated to show a reuse rate of 83%, resulting in 65,000m³ (135,300t) of excavated material to be disposed of. The ES states that in a regional context, removing this material to registered waste sites would reduce the regional landfill void capacity by 0.2%. The local waste authority, HCC have not raised concerns about local void capacity and this is confirmed in their SoCG [[REP8-019](#)].
- 3.14.22. The ExA explored through questions if the Applicant considered that this quantity of waste could be minimised further however, by the close of the Examination there had been no further reduction in the excess of the 'earthworks balance'.
- 3.14.23. The ExA also explored the relevance of ascribing a generic rate of inert waste recovery by the Main Contractor of 95%. In the first ExQs [[PD-008](#)], the Applicant confirmed that the 95% figure is considered realistic and achievable and is secured through the fiEMP and will be updated through detailed design and into the siEMP. The commitment is secured through the Requirement 3 of the rDCO.
- 3.14.24. The relevant environmental action/ commitment in the fiEMP is reference MA5 and states "*The Principal Contractor is committed to achieving 95% of non-hazardous waste (by weight) diverted from landfill. The Principal*

Contractor will have overall responsibility for the management of all waste streams generated within the site."

- 3.14.25. The ES states that the concrete removed from existing structures to be removed will see a 95% recovery rate with the remainder, stated as 125m³, being disposed to landfill.

ExA's consideration regarding waste management

- 3.14.26. The ExA accepts the conclusion of Chapter 10 of the ES [[APP-051](#)] that the Proposed Development will see a slight adverse effect on the regional landfill void capacity and is therefore not significant. However, the ExA also considers that the Applicant has set out the minimum acceptable commitments to reduction of waste and recycling of materials from construction activities.
- 3.14.27. The ExA would expect to see significant clarification of commitments within further iterations of the EMP following detailed design and would expect the Applicant to review design and construction approaches to maximise the elimination of waste and maximise the reuse of materials.
- 3.14.28. Although the ExA finds that proposals to divert waste from landfill are generally acceptable, we also consider that the statement "*The Principal Contractor is committed to achieving 95% of non-hazardous waste (by weight) diverted from landfill...*" is intended to promote good practice but is non-binding and we suggest this is reviewed in the siEMP to ensure the intended outcome is deliverable.

Materials to be used in construction and mineral safeguarding

- 3.14.29. Chapter 10 of the ES [[APP-051](#)] details the types of materials anticipated to be used in the construction of the Proposed Development, being largely generic highway construction materials. The ES and fiEMP [[REP8-023](#)] commit the Applicant to the application of the Waste Hierarchy, as mandated in the Waste (England and Wales) Regulations 2011.
- 3.14.30. Notwithstanding this, the ES states that materials will be imported and the fiEMP includes (at Appendix F) a draft Material Management Plan (MMP) which although containing little detail regarding types and volumes of material required at this stage of design development, it does set the expectations for further iterations of the EMP and in that respect is a useful inclusion.
- 3.14.31. During the Examination, Winchester Action on the Climate Crisis questioned the need for extensive demolition of existing concrete structures, in particular the gyratory bridges over the M3, and suggested there could be more reuse of existing infrastructure. The Applicant clarified that design requirements and the existing structures in the context of the Proposed Development meant that existing structures could not be retained. Whilst the ExA acknowledges the concerns of Winchester Action on the Climate Crisis on this matter we find the Applicant's approach to be acceptable.

3.14.32. The fiEMP details a number of commitments relating to the use of materials, recycling and use of imported recycled materials. At this stage of the design development, the ExA accepts that details relating to availability of materials at the time of construction will not be known however, many of the commitments are not specific, for example Environmental Action/ Commitment reference MA8 states "*Maximising the use of renewable materials and materials with recycled or secondary content and setting material balance as a goal*". The ExA would, again, recommend that these non-measurable targets are solidified in the siEMP.

3.14.33. The ES details how some parts of the Proposed Development lie within a Mineral Safeguarding Area (MSA) however, this is predominantly on existing highway land. The ES states that the MSA is considered to have a negligible impact on the sterilisation of mineral resources which is not contested by the LA.

ExA's consideration regarding materials to be used in construction and mineral safeguarding

3.14.34. The ExA accepts that at the current stage of design development, some detail will not be known to the Applicant. The ExA anticipates that during design refinement and development, emphasis will be placed on the sourcing of materials and recycling to enable the Proposed Development to meet and exceed the current commitments in the ES and fiEMP.

3.14.35. We also find that the use of generic statements of aims in the fiEMP are suitable for the stage of design development however, during the review for the siEMP specific, measurable targets and recording and reporting criteria should be adopted.

ExA Conclusion on Waste and Material Resources

3.14.36. The ExA is satisfied that the Applicant has assessed the possible impacts of waste and material resources for the Proposed Development. The ExA accepts that the Applicant has proposed commitments within the fiEMP which are appropriate to the current design development.

3.14.37. The ExA further concludes that in the detailed formulation of the siEMP, that is to be based on the fiEMP, all commitments, should be reviewed to be specific, targetted and measurable.

3.14.38. The ExA concludes that the effects of the Proposed Development on:

- material assets and use would lead to a slight adverse effect which is not significant;
- mineral safeguarding would be negligible which is also not significant; and
- waste generation and its impact on void capacity would be a slight adverse effect which is not significant.

- 3.14.39. Consequently, the ExA considers that the Applicant's assessment of waste and material resources complies with the policy aims of the NPSNN.
- 3.14.40. In addition, we agree with the Applicant's assessment of the effect on mineral safeguarding policy, in that the merits of which significantly outweigh the very limited effect on the relevant MSA.
- 3.14.41. The ExA therefore finds that the issue of waste and material resources does not weigh for or against the Order being made.
- 3.14.42. The findings in respect of waste and material resources will be taken into account in the overall planning balance in Chapter 5 of this Report

3.15. CUMULATIVE EFFECTS

Introduction

- 3.15.1. This Section sets out the effects of the Proposed Development as they relate to cumulative effects.

The Relevant Legislative and Policy Tests

- 3.15.2. The Environmental Impact Assessment (EIA) Directive and the Infrastructure Planning (EIA) Regulations 2017 ('EIA Regulations') require an ES to include the assessment of the interrelationship between environmental topics and an assessment of cumulative effects with other developments.
- 3.15.3. Schedule 4 paragraph 5 of the EIA Regs requires: "*A description of the likely significant effects of the development on the environment resulting from, inter alia: (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources*". In addition, the description of the likely significant effects on the factors specified in regulation 5(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term, and long-term, permanent and temporary, positive and negative effects of the development.
- 3.15.4. NPSNN paragraph 4.16 states that: "*When considering significant cumulative effects, any environmental statement should provide information on how the effects of the applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been granted, as well as those already in existence)*".
- 3.15.5. As required by NPSNN paragraph 4.17, 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.

The Applicant's approach

- 3.15.6. The ES Chapter 15 Cumulative Effects [[APP-056](#)] considers the cumulative effects of the Proposed Development. It assesses both the effects that would occur due to changes caused by other developments acting cumulatively with the effects of the Proposed Development and effects from the combined effects of several different impacts acting together on a single receptor, such that the combined effects would be more significant than the individual effects.
- 3.15.7. It was prepared with reference to the Planning Inspectorate's Advice Note 17: Cumulative Effects Assessment (Planning Inspectorate, 2019), guidance on cumulative effects contained in DMRB LA104 (Highways England, 2019), the NPSNN and the 2020 Scoping Opinion (Planning Inspectorate (2020)).
- 3.15.8. In accordance with the 2020 Scoping Opinion, air quality, noise and vibration and material assets and waste were scoped out of the cumulative assessment and have not therefore been considered further in the ES. In addition, cumulative effects in relation to vulnerability to climate change alongside different local developments were scoped out. However, the Applicant points out that the assessment in ES Chapter 14 Climate [[REP2-027](#)] considers the wider strategic transport routes in the local area and submits that it is therefore inherently cumulative.
- 3.15.9. The ES Chapter 15 section 15.3 explains the assessment methodology. Within the GHG assessment (impact of the project on climate change), all global cumulative GHG sources are relevant to the effect on climate change, and this was taken into account by defining the global climate as a single receptor. The GHG assessment considers the combined impact of the different sources of GHGs resulting from the Proposed Development on the global climate and inherently addresses single project cumulative effects.
- 3.15.10. The Applicant's position is that the cumulative assessment of different developments together with the Proposed Development is inherent within the GHG methodology through the inclusion of the Proposed Development and other locally committed development within the traffic model, as well as contextualising the Proposed Development's GHG emissions against the UK carbon budgets.
- 3.15.11. Guidance on the identification of 'other development' to be taken into account in the consideration of cumulative effects, including the certainty to be attributed to each 'other development' is available in Planning Inspectorate Advice Note 17 (Planning Inspectorate, 2019) (Table 2).
- 3.15.12. In accordance with that advice, the Applicant undertook a search for 'other developments' using information gathered from the Planning Inspectorate National Infrastructure website, Local Authority Planning websites and other relevant sources. The 'long list' took account of requests identified through the previously adopted (and now superseded) 2019 Scoping Opinion and the 2020 Scoping Opinion. It includes the

strategic growth site in the Eastleigh Local Plan - the new link road to junction 10 of the M3 and the M3 J9 to 14 Safety Barrier Improvement Scheme.

- 3.15.13. The initial long list of potentially relevant 'other developments' was prepared in accordance with Planning Inspectorate Advice Note 17, using the Zones of influence (ZoIs) identified in Table 15.1 and the tier structure outlined in the ES. This process identified 80 other developments. The long list is presented in Appendix 15.1 (Long List of Cumulative Developments) [[APP-150](#)]. A short list of 'other development' was prepared through a review of the long list to identify those to be taken forward into the cumulative assessment, primarily by applying threshold (inclusion/exclusion) criteria to the identified long list, as shown in Table 15.3 of ES Chapter 15.
- 3.15.14. The Planning Inspectorate's Advice Note 17, acknowledges that applicants are required to stop assessment work at a particular point in time in order to be able to finalise and submit an application. To allow the assessment work to progress, the Applicant set a 'cut-off date' for the consideration of any new 'other development' at 30 June 2022.
- 3.15.15. The significance of cumulative effects was determined using the criteria in ES Chapter 15 Table 15.2, taken from the DMRB (LA 104 section 3 Part 3.4). Where significant cumulative effects were identified additional mitigation measures have been recommended.
- 3.15.16. Table 15.4 and Table 15.5 provide a summary of effects which may arise cumulatively with the Proposed Development and 'other developments' identified in ES Appendix 15.2 (Short List of Cumulative Development) of the ES [[APP-151](#)] relevant to each environmental topic. The assessment of cumulative effects with other developments identified that both developments ID 72 and ID 79 are anticipated to increase traffic on the local network during construction, and therefore have minor impacts on journey time reliability. During operation the minor impact on journey time would still be experienced.
- 3.15.17. Where combined effects of the Proposed Development have been identified in the ES but do not result in a greater significance of effect than the individual topic assessment, and where cumulative effects are identified but are minor or below, they are not deemed to be significant and therefore no mitigation or monitoring is proposed.
- 3.15.18. Although the assessment for combined effects on residential dwellings/ residents is acknowledged by the ES to be significant, it is not anticipated to result in a greater significance of effect than individual topic assessments. Therefore, the mitigation and monitoring identified in the individual topic assessments and set out within the fiEMP [[REP8-023](#)] is considered by the Applicant to be appropriate.
- 3.15.19. In summary, a temporary significant combined effect is identified by the ES at White Hill Cottage on Easton Lane, due to the combination of visual, noise and land-take effects, at that location. The combined effect

would be temporary in nature, being experienced during the construction period, and the Applicant does not anticipate that it would result in a greater significance of effect than for the individual topic assessments.

- 3.15.20. The proposed mitigation set out within the fiEMP [[REP8-023](#)] includes a range of measures in addition to the implementation of a stakeholder communications plan that would require community engagement prior to works commencing on site. As a result of the assessment for combined effects, further mitigation specifies that engagement must be undertaken with the occupant/ owner of White Hill Cottage to ensure they would be provided with contact details for a site representative and would be kept up to date on the construction works programme and the implementation of the relevant mitigation.

Issues arising in the Examination

- 3.15.21. The following issues were considered by the ExA as part of the Examination:
- The combined environmental effects of the Proposed Development during construction and operation with particular regard to the effects on White Hill Cottage, Easton Lane.
 - The cumulative effects of the Proposed Development together with other developments including the cumulative effects on journey time reliability during construction associated with the developments permitted pursuant to planning application numbers 22/00230/FUL (ID 72) and 21/03239/OUT (ID 79).
 - Whether any additional mitigation measures are required to avoid, reduce, or compensate for any cumulative adverse impacts identified.

The combined effects of the Proposed Development during construction and operation

White Hill Cottage

- 3.15.22. The ES Chapter 15: Cumulative Effects [[APP-056](#)], paragraph 15.7.1, states that the assessment of combined effects on residential dwellings/ residents identified a temporary significant effect at White Hill Cottage on Easton Lane. The proposed mitigation set out within the fiEMP [[REP8-023](#)] includes the early planting of new woodland to the south of White Hill Cottage to help screen the works and the further mitigation set out in paragraph 15.7.6 for engagement to be undertaken with the occupant/ owner of that property.
- 3.15.23. The SDNPA LIR [[REP2-071](#)] paragraph 6.38, acknowledges that the measures within the fiEMP and the dDCO Requirements seek to mitigate the harm to residential amenity during the construction phase. However, they submit that this would be insufficient to address the negative impacts to the occupiers of White Hill Cottage. Their position, as set out in the SoCG [[REP8-040](#)], is that the Proposed Development would be

contrary to SDLP Policies SD2: Ecosystem Services, SD5: Design and SD54: Pollution and Air Quality.

- 3.15.24. The Applicant's response to ExQ1 8.1.1 [[REP2-051](#)] explains further the in-combination effects on White Hill Cottage which relate to noise and vibration, landscape and visual, and land-take, and the mitigation proposed.
- 3.15.25. The ES Chapter 11: Noise [[APP-052](#)] identifies that there is potential for temporary significant adverse noise effects at White Hill Cottage on Easton Lane during the construction phase only. In accordance with Commitment NV1 in Table 3.2 of the fiEMP, a Noise and Vibration Management Plan would be prepared during detailed design. This would outline how construction noise and vibration would be managed, monitored, and mitigated throughout the construction of the Proposed Development both generally and specifically at this property. Any specific mitigation measures required would be identified at that stage. These measures might include localised acoustic barriers. No part of the Proposed Development would start until this has been subject to stakeholder engagement and approved by WCC.
- 3.15.26. For landscape and visual effects on White Hill Cottage, a commitment to the provision of advanced planting is set out in Table 3.2 of the fiEMP. At this location it would include areas of Woodland (Broadleaf) (LE2.1) and Native Scrub Planting (LE2.8), for the plots as indicated on Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures (Part 2 of 4)) of the ES [[APP-062](#)]. The intention is that Plots 008-27 and 008-28 would provide a visual screening function for White Hill Cottage. The preparation of the landscape design would be secured by Requirement 5 of the dDCO.
- 3.15.27. The ES Chapter 12: Population and Human Health [[APP-053](#)] identifies that White Hill Cottage would experience a temporary loss of 0.0213ha with rights over the land required permanently. Land-take at White Hill Cottage is required during construction as Scottish Southern Electricity Networks (SSEN) would install a new termination pole and extending one span of overhead line. Acquisition of permanent rights in this area would be required for ongoing maintenance of the termination pole and overheads.
- 3.15.28. The Applicant's response to ExQ1 8.1.6 provides information in relation to the temporary significant combined effect at White Hill Cottage, and the mitigation proposed. The combined effect is not expected to be greater than the individual topic assessments, as the property is already experiencing a very large adverse effect. The Applicant submits that potential additional mitigation, such as erection of temporary screen fencing, would add to the very large adverse visual effect by completely limiting views from the property. Otherwise, measures identified to mitigate noise effects include implementation of the Noise and Vibration Management Plan referred to above.

- 3.15.29. The Applicant's response to ExQ1 8.1.6 also confirms that it would comply with the commitment set out in ES Chapter 15 (Cumulative Effects) [[APP-056](#)] paragraph 15.7.6, that engagement must be undertaken with the occupant/ owner of White Hill Cottage to ensure they would be provided with contact details for a site representative, and would be kept up to date on the construction works programme and the relevant mitigation being implemented.

Worthy Park Historic Park and Garden (HPG)

- 3.15.30. The ES Chapter 15: Cumulative Effects [[APP-056](#)], paragraph 15.6.29, concludes that the combined effect experienced by Worthy Park HPG during construction of the Proposed Development is considered to be slight adverse and not significant.
- 3.15.31. The ES Chapter 6: Cultural Heritage [[APP-047](#)] identified a temporary slight adverse effect on Worthy Park HPG due to the long-distance views of a small part of the main works between the A34 and M3. It was also considered in ES Chapter 7: Landscape and Visual [[REP1-003](#)] that the Proposed Development would not materially alter the quality of the views or the Park's characteristics. A negligible magnitude of change was assigned, which when combined with a receptor of medium sensitivity, concludes that a slight adverse (not significant) effect is anticipated.
- 3.15.32. In response to ExQ1 8.1.3, the Applicant confirms that the combined effect on the Worthy Park HPG during construction is not anticipated to result in greater significance of effect than the individual ES topic assessments which both conclude the same level of effect. Since construction activities would be unlikely to be visually or audibly noticeable at Worthy Park, the Applicant has used professional judgement to determine that this would not lead to a greater level of significance when considered cumulatively than that reported in ES Chapters 6 and 7.

South Downs National Park

- 3.15.33. The ES Chapter 15: Cumulative Effects [[APP-056](#)], paragraph 15.5.43, concludes that the combined effects on the SDNP is not anticipated to be significant. The Table 15.2 criteria have been used to determine the significance of cumulative effects.
- 3.15.34. In relation to the combined effects on the SDNP, the SDNPA disagrees with the conclusion set out in ES Chapter 15: Cumulative Effects [[APP-056](#)], paragraph 15.5.43. In response to ExQ2 8.2.1 [[REP5-035](#)], the SDNPA states that this is because the assessment is based on the Applicant's conclusion that there would be no long-term significant landscape effects.
- 3.15.35. In response to ExQ1 8.1.4 the Applicant provides further justification to support the view that the combined effects on the SDNP would not be significant. At fifteen years after opening, Table 1.2 of Appendix 7.3 (Schedule of Landscape Effects) of the ES [[REP1-013](#)] identifies that the overall effect on the SDNP would be slight adverse (not significant).

- 3.15.36. The ES Chapter 15, paragraph 15.5.33, indicates that the assessment on the SDNP within Chapter 7: Landscape and Visual Effects of the ES [REP1-003] considers impacts upon the SDNP both during construction (Table 7.20) and operation (Table 7.24), from a number of other environmental topics. This includes land-take, changes in lighting, noise and other impacts that may have direct physical effects or affect the tranquillity, setting and amenity of the area. The Applicant therefore contends that the assessment set out within ES Chapter 7: Landscape and Visual Effects considers the combined environmental effects on the SDNP.
- 3.15.37. The ES Chapter 15: Cumulative Effects [APP-056] paragraph 15.5.36 concludes that the combined effect during construction would be moderate adverse. However, paragraph 15.5.42 states that at 15 years after opening, these effects would be localised and would therefore only result in a very small change on the SDNP as a whole. The resulting effect would be slight adverse and not significant. Overall, the combined effect on the SDNP is not anticipated by the ES to be significant.

The cumulative effects of the Proposed Development together with other developments

- 3.15.38. The ExQ1 8.1.8, asked the Applicant whether the other developments identified for inclusion in the cumulative assessment were agreed with the relevant local planning authorities. In WCC's s42 PA2008 consultation response, they noted that the list of 'other developments' submitted by the Applicant appeared to cover the key developments within WCC's area. However, it was pointed out that a number of site allocations and planning consents were missed from the search area for cumulative effects. WCC subsequently listed those that they considered had been missed in Appendix I of their s42 response. These were later included within the list of developments identified for the ES cumulative assessment.
- 3.15.39. HCC did not comment on the 'other developments' identified for inclusion in the cumulative assessment during statutory consultation. Whilst SDNPA mentioned cumulative effects within their s42 response, this was not in the context of which developments should be assessed, but rather in relation to emphasising the need to consider cumulative impacts on habitats rather than individual habitat impacts.
- 3.15.40. The ES Chapter 15: Cumulative Effects [APP-056], paragraph 15.7.2, as regards the assessment of cumulative effects with other developments identifies that both developments ID 72 and ID 79 are anticipated to increase traffic on the local network during construction, and therefore have minor impacts on journey time reliability.
- 3.15.41. The Applicant's response to ExQ1 8.1.7 explains that development ID 79 (21/03239/OUT) involves the erection of up to 2100sqm of office floorspace and up to 158 bed purpose-built student accommodation. Given the anticipated temporal overlap of construction periods and Development ID 79 being located 600m from the application boundary of

the Proposed Development, it was assumed that cumulatively, there could be an increase of traffic on the local road network during part of the construction phase and therefore, journey time may be impacted. However, the TA submitted with the application for development ID 79 suggests that given that the two-way traffic flow is comparatively low on the Winnall Manor Road the increase in traffic would not have any severe impact on the local network.

- 3.15.42. Additionally, a Travel Plan was submitted with the application for development ID 79. The key aim of a Travel Plan is to inform residents, staff (and visitors where possible) of the alternatives to driving their cars to the site, to increase awareness of and promote greener, cleaner modes of travel, and to reduce the overall number of single-occupancy car trips to and from the proposed development. As a result, professional judgement was used to conclude that should there be any cumulative impact upon journey time due to the overlap of construction period for the Proposed Development and development ID 79, this would be minor adverse.
- 3.15.43. Development ID 72 (22/00230/FUL) involves the construction and operation of a new McDonalds restaurant with a drive-thru. Chapter 8 of the TA that was submitted with the planning application for development ID 72 assesses anticipated changes in traffic flows on the local road network, including M3 J9 and Easton Lane, during Friday and Saturday 'peak' times. There are also traffic flow diagrams demonstrated these anticipated changes within the Appendices submitted with the planning application for development ID 72. The assessment concludes a predicted increase on the local network of around 100 vehicles (2-way). The proposed year of opening for development ID 72 was 2022, but the development was only permitted in May 2023. As a result, construction of the development has the potential to overlap with the construction of the Proposed Development, resulting in increased journey times. However, due to the scale of the estimated increases in traffic flows due to development ID 72 (100 vehicles – 2-way), professional judgement was used to conclude that any cumulative effects impacting journey time would be minor.

Whether any additional mitigation measures are required

- 3.15.44. The ES Chapter 15: Cumulative Effects [[APP-056](#)], section 15.7, gives consideration to monitoring and mitigation. Paragraph 15.7.4 of Chapter 15 (Cumulative Effects) of the ES [[APP-056](#)], states: *"Although the assessment for combined effects on residential dwellings / residents is considered to be significant, it is not anticipated to result in a greater significance of effect than individual topic assessments and therefore, the mitigation and monitoring identified in the individual topic assessments and set out within the first iteration Environmental Management Plan (fiEMP) (Document Reference 7.3) is considered appropriate"*.
- 3.15.45. The ES Chapter 15: Cumulative Effects [[APP-056](#)], paragraph 5.7.5 lists relevant mitigation measures that are included within the fiEMP. These measures include:

- Appoint an Environmental Manager to manage environmental issues during construction.
- Implement an environmental management system to ensure appropriate control measures and monitoring systems are employed during the planning and construction of the works.
- Implement best practice techniques to reduce dust and noise on site.
- Implement a noise and vibration management plan that will detail how local residents that may be affected by construction noise and vibration will be notified of activities that have the potential to cause a nuisance.
- Early planting of new woodland to the south of White Hill Cottage to help screen the works.
- Implement a stakeholder communications plan that requires community engagement prior to works commencing on site.

3.15.46. The Applicant's response to ExQ1 8.1.6 provides further justification for its stance that there is no need for additional mitigation and monitoring for relevant properties over and above that identified in the individual topic assessments and set out within the fiEMP [[REP8-023](#)].

The ExA's consideration of cumulative effects

3.15.47. The ES Chapter 15: Cumulative Effects [[APP-056](#)], refers to the 2020 Scoping Opinion (Planning Inspectorate (2020)) which is included within the Consultation Report Appendix E [[APP-031](#)]. It states that air quality, noise and vibration and material assets and waste have been scoped out of the cumulative assessment and are not considered further in the ES. This is because traffic related air quality and noise impacts are already the subject of the air quality and noise assessments. On the basis that traffic modelling accounts for future growth, the air quality and noise assessments were considered to be inherently cumulative. We find no reason to disagree with that view and the consequent scope of the ES assessment in that respect.

3.15.48. For minerals and waste, the Applicant explains that waste capacity and materials availability are based on future regional demand projections including landfill void capacity and are inherently cumulative. Therefore, cumulative effects from materials and waste are assessed in the individual chapters. In addition, the cumulative effects in relation to vulnerability to climate change alongside different local developments have been scoped out, as vulnerability to climate change is specific to the Proposed Development. We are therefore content that these matters have also been scoped out.

3.15.49. We note that within the GHG assessment, all global cumulative GHG sources are relevant to the effect on climate change, and this has been taken into account by defining the global climate as a single receptor.

The assessment in ES Chapter 14 Climate [[REP2-027](#)] also has regard to the wider strategic transport routes in the local area and is therefore inherently cumulative. We consider that the cumulative assessment of different developments together with the Proposed Development is inherent within the GHG methodology through the inclusion of the Proposed Development and other locally committed development within the traffic model, as well as contextualising the Proposed Development's GHG emissions against the UK carbon budgets.

- 3.15.50. We have considered the cumulative effects in relation to Climate Change and the criticism made by IPs as regards the cumulative aspect of the assessment in Section 3.7 of this Report. We conclude that the ES cumulative assessment in respect of that topic has been appropriately undertaken and can safely be relied upon and that the Applicant has met the legal tests required of it in that respect.
- 3.15.51. The ES Chapter 15: Cumulative Effects [[APP-056](#)], paragraph 15.7.2, in relation to the assessment of cumulative effects with other developments, identifies that both developments ID 72 and ID 79 are anticipated to increase traffic on the local network during construction, and therefore have minor impacts on journey time reliability. We concur with that assessment and are satisfied that any cumulative effects of the Proposed Development together with other developments would be minor.
- 3.15.52. The Applicant's response to ExQ1 8.1.8 confirms that additional 'other developments' were included in the list as sought by WCC and that no other such development were requested for consideration by HCC or SDNPA. We are content as to the scope of the ES assessment and that the list of 'other developments' considered was complete and appropriate.
- 3.15.53. Turning to the consideration of the combined effects of the Proposed Development, as regards those topics that have not been scoped out, the ES Chapter 15, section 15.5, identifies the receptors that would experience multiple effects from different environmental topics and therefore potentially bring about combined effects. For those identified receptors the combined effects assessment is then set out. The identified receptors include residential dwellings/ residents, the SDNP and Worthy Park HPG.
- 3.15.54. A temporary significant combined effect is identified at White Hill Cottage on Easton Lane due to the combination of visual, noise and land-take effects at that location predominantly during construction of the Proposed Development. However, the Applicant has proposed mitigation including the early planting of new woodland to the south of White Hill Cottage to help screen the works and the further mitigation set out in ES Chapter 15 paragraph 15.7.6. for engagement to be undertaken with the occupant /owner of that property. This would be secured through item G14 of the Register of Environmental Actions and Commitments (REAC) Table in the fiEMP [[REP8-023](#)] which sets out a requirement to: "*Develop and implement a stakeholder communications plan that includes community*

engagement (in particular, at White Hill Cottage, Easton Lane) before work commences on site".

- 3.15.55. In relation to Worthy Park HPG, the ES concludes that a slight adverse (not significant) effect is anticipated. We concur with that assessment and are content that the combined effect on the HPG during construction would not result in greater significance of effect than the individual topic assessments.
- 3.15.56. As regards the SDNP, the Applicant in response to EXQ1 8.1.4 has provided further justification to support the view that the combined effect would not be significant. We have considered the landscape and visual effects on the SDNP in Section 3.10 of this Report. We agree that the effects on the SDNP and its special qualities during the operational phase would not be significant by Year 15. Likewise, we concur with the ES Chapter 15 conclusion that overall, the combined effects on the SDNP are not anticipated to be significant.
- 3.15.57. In the light of the Applicant's responses to our questions on this topic referred to above, we do not consider that additional mitigation, over and above that for which provision has been made through the fiEMP and Requirements 3, 5 and 6 and 14 of the dDCO, would be appropriate or necessary either in respect of White Hill Cottage, the SDNP or other locations to avoid, reduce, or compensate for any cumulative adverse impacts identified.

The ExA's Conclusions on Cumulative Impact

- 3.15.58. We consider that the ES, and the Applicant's responses to our questions on this topic during the Examination, provide the necessary information on how the effects of the Proposed Development would combine and interact with the effects of other development, as required by NPSNN paragraph 4.16. We are satisfied that the negative effects that have been identified for the Proposed Development in combination with other existing and/ or approved projects would be minor and not significant.
- 3.15.59. In accordance with NPSNN paragraph 4.17, we have considered how any 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. We do not consider that additional mitigation, over and above that for which provision has been made through the fiEMP and the requirements of the dDCO, would be appropriate or necessary.
- 3.15.60. The identified significant combined effect on White Hill Cottage would be temporary and would occur during the construction period. Whilst this is a factor that weighs against the Order being made, given those circumstances we have attributed a little weight to it in the planning balance.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

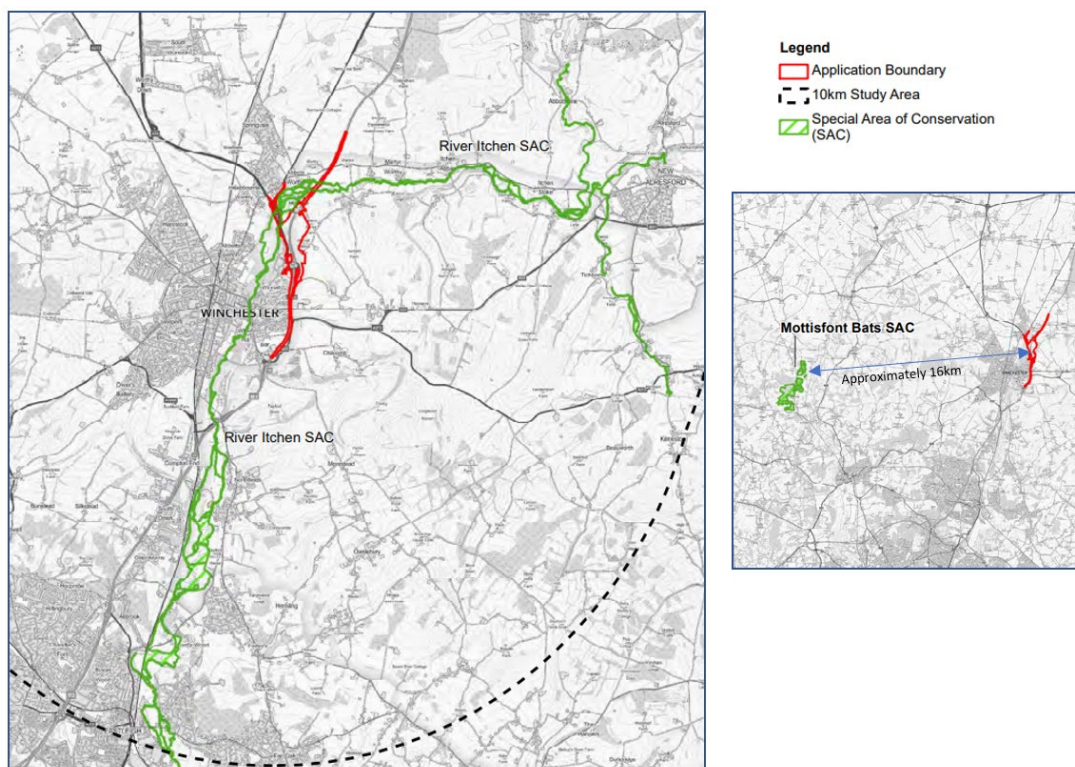
- 4.1.1. This Chapter summarises the analysis and conclusions reached relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Transport (SoST) as the competent authority, in performing their duties under the Habitats Regulations.
- 4.1.2. The Examining Authority's (ExA's) full HRA Recommendation Report is provided in Annex C of this Report.
- 4.1.3. Consent for the Proposed Development may only be granted if, after having assessed the potential adverse effects the Proposed Development could have on European Sites, the competent authority considers it acceptable in light of the requirements stipulated in the Habitats Regulations.
- 4.1.4. The ExA has been mindful throughout the Examination of the need to ensure that the SoST has sufficient information required to carry out their duties as the competent authority. Evidence was sought from the Applicant and the relevant Interested Parties (IPs), including Natural England (NE).
- 4.1.5. Regulation 63 of the Habitats Regulations states that if an application proposal is likely to have a significant effect (either alone or in-combination with other plans or projects), then the competent authority must undertake an Appropriate Assessment (AA) of the implications for that site in view of its conservation objectives.
- 4.1.6. The Applicant's HRA Report [[REP8-041](#)] includes evidence that NE and the Environment Agency (EA) have been involved in the development of the HRA and were consulted on a draft HRA Report in November 2021. Responses from both parties to the draft HRA Report are provided in Appendix J of the HRA Report.

4.2. HRA IMPLICATIONS OF THE PROJECT

- 4.2.1. The Applicant's HRA report has detailed two designated sites that are relevant to the HRA:
- River Itchen Special Area of Conservation (SAC)
 - Mottisfont Bats SAC
- The location of these is shown in Figure 23, being an extract of the Applicant's HRA report figures 8.2 and 8.3.
- 4.2.2. During the construction phase, the primary impact would be in the River Itchen SAC. Construction would be adjacent to the SAC with the exception of two new drainage outfalls and one altered drainage outfall.

There would also be remedial works to a bridge spanning the River Itchen.

Figure 23 : HRA European sites location plan



4.3. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

- 4.3.1. The European sites and qualifying features considered in the Applicant’s assessment of Likely Significant Effects (LSE) are detailed in full in Annex C. No IPs raised concerns about the scope of the European sites considered or their qualifying features.
- 4.3.2. The ExA has considered the sites alone and our findings are summarised in Table 16.

Table 16 : Summary of Applicants Assessment of LSE for The Mottisfont SAC and River Itchen SAC

European Site	LSE considerations (as detailed in the Applicant’s HRA report)	ExA consideration
Mottisfont Bat SAC	No LSE	Agreed
River Itchen SAC	LSE could not be excluded for the following impact pathways: <ul style="list-style-type: none"> ▪ changes in water quality; ▪ changes to hydraulic / hydrological conditions; 	ExA agrees with the Applicant’s conclusions with respect to LSE on the River Itchen SAC and has

	<ul style="list-style-type: none"> ▪ other habitat degradation (including physical modification of habitat, spreading invasive species, increase in air-borne pollutants, increased shading of the River Itchen, and inappropriate habitat management); ▪ species disturbance; ▪ mortality of white-clawed crayfish; and ▪ impacts to air quality. 	<p>carried these pathways forward to the consideration of Adverse Effects on Integrity (AEoI).</p>
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4.3.3. Regarding in-combination effects, no further LSE have been identified for the sites and qualifying features where LSE were excluded from the Proposed Development alone.

4.3.4. The ExA is satisfied 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.

4.3.5. Therefore, the ExA considers that the Proposed Development is likely to have a significant effect on the qualifying features of the River Itchen SAC, when considered alone, or in-combination with other plans or projects.

4.4. ADVERSE EFFECTS ON INTEGRITY

4.4.1. The Applicant’s HRA Report concluded that the Proposed Development would not result in AEoI on the River Itchen SAC, either alone or in-combination with other plans or projects.

4.4.2. At the close of the Examination, the Applicant’s conclusions had not been disputed by any IP with the exception of the LSE relating to air quality impacts. NE requested that further work be undertaken on the operational air quality modelling to ensure that all relevant types of airborne pollutants be considered, including acid deposition. At the close of the Examination, NE “provisionally agreed” in the Statement of Common Ground (SoCG) with the Applicant [[REP8-021](#)] that sufficient information had been provided by the Applicant to conclude no AEoI.

4.4.3. The ExA is satisfied on the basis of the information above, that AEoI from the impact pathways on the River Itchen SAC and its qualifying features can be excluded subject to the delivery of the relevant mitigation.

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 Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoST.

- 4.5.2. 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.
- 4.5.3. The ExA's findings are that, subject to the mitigation measures secured in the dDCO, AEOI of the River Itchen SAC from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded.
- 4.5.4. The ExA considers that there is sufficient information before the SoST to enable them to undertake an AA in order to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This Section sets out our reasoning and conclusions on whether there is a case for the making of a Development Consent Order (DCO) for the Proposed Development.
- 5.1.2. This is based on the provisions of the recommended Development Consent Order (rDCO) (Appendix D), the details of which are discussed in Chapter 7.
- 5.1.3. As set out in Section 2.2 of Chapter 2 of this Report the application falls to be considered under s104 PA2008. The Secretary of State (SoS) must therefore have regard to:
- any national policy statement (NPS) which has effect in relation to development of the description to which the application relates;
 - any Local Impact Report (LIR) (within the meaning given by the PA2008 s60(3)) submitted to the SoS before the deadline for submission;
 - any matters prescribed in relation to development of which the application relates;
 - and other matters that the SoS thinks are both important and relevant to their decision.
- 5.1.4. 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.
- 5.1.5. In this case, the relevant NPS is the NPSNN which was published in 2014 and designated in 2015. Whilst it is currently subject to review, as set out in Section 3.2 of Chapter 3 of this Report, it is the designated NPSNN which continues to provide a basis on which we can examine and the SoS can make a decision on the application.
- 5.1.6. The Examining Authority's (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) with the HRA at Appendix C. In this Chapter of the Report we shall summarise the conclusions reached 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 relevant and important 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.

- 5.1.7. In reaching our conclusions, we have considered all evidence presented to the Examination, including the application documents; the Environmental Statement (ES); the HRA Report; the LIRs; Statements of Common Ground (SoCGs); Relevant Representations (RR); Written Representations (WR); oral submissions at Hearings; answers to our written questions; responses to requests for information; information gathered from our site inspections, and all matters which we consider to be both important and relevant to the Secretary of State for Transport's (SoST's) decision.

5.2. THE PRINCIPLE OF AND NEED FOR THE PROPOSED DEVELOPMENT

- 5.2.1. It is Government policy, as outlined in section 2 of NPSNN, that at a strategic level there is a compelling need for the development of the national networks to address road congestion and facilitate national and local economic growth. NPSNN paragraph 2.10 states that the Government has concluded that at a strategic level, there is a compelling need for development of the national networks – both as individual networks and as an integrated system and that the ExA and the SoS should therefore start their assessment of applications for infrastructure covered by the NPSNN on that basis.
- 5.2.2. The ExA has considered the need for the development in the light of the policy background in Section 3.2 of Chapter 3 of this Report. Hampshire County Council (HCC), South Downs National Park Authority (SDNPA) and Winchester City Council (WCC) acknowledge that there is a need to improve junction 9 of the M3 (M3 J9) and all three Local Authorities (LAs) support the principle of the need for an improvement. Given the strategic need recognised in the NPSNN, the inclusion of the project within the Road Improvement Strategy (RIS) as a committed scheme and the existing and acknowledged problems identified with the operation of M3 J9, we find that there is a clear need for an improvement scheme in this location.
- 5.2.3. Following our consideration of specific design options in Section 3.2 of Chapter 3, we are satisfied that the fundamental and the identified need for the Proposed Development could not be met in some other way.
- 5.2.4. In order to achieve the necessary improvements to the junction, the Applicant has identified five key objectives for the Proposed Development. We can see no reason to disagree with the scope of these objectives for identifying a solution to the existing highlighted problems. Furthermore, we are satisfied, as set out in Section 3.13 of Chapter 3, of this Report that the Proposed Development would indeed meet its key objectives. It would consequently meet the specific need for an improved motorway junction in this location.
- 5.2.5. The Proposed Development would conform with the Government's vision and strategic objective set out in the NPSNN 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.

- 5.2.6. In conclusion, the Proposed Development would meet the specific need for improvement in this location and contribute towards the strategic need set out in the NPSNN to deliver national networks that meet the country's long-term needs as part of a wider transport system.

5.3. THE APPLICANT'S APPROACH TO THE POTENTIAL BENEFITS

- 5.3.1. The Applicant summarises the benefits of the Proposed Development in section 2.3 of its Closing Statement [[REP8-028](#)]. These benefits are outlined in the Case for the Scheme [[REP1-019](#)] paragraph 9.8.1. The Combined Modelling and Appraisal Report (CoMAR) [[REP1-025](#)] summarises the economic appraisal and notes that the results of the transport economic analysis indicate that the Proposed Development is predicted to generate user benefits in the order of £152.7M. The greatest benefit relates to travel time savings which are predominantly due to the provision of the free-flow movement between the A34 and the M3. Table 5-23: (AMCB Table) in the CoMAR provides a full breakdown of the monetised costs and benefits in line with the Transport Appraisal Guidance Unit A1.
- 5.3.2. The ES - Non-Technical Summary [[REP2-038](#)] provides an overview of the environmental effects arising from the Proposed Development including those that are beneficial.
- 5.3.3. Section 2.3 of the Statement of Reasons (SoR) summarises the benefits outlined across the Case for the Scheme, the ES [[APP-042](#) to [APP-152](#)] and the CoMAR.
- 5.3.4. The Applicant's position is that the Proposed Development will deliver the following extensive benefits:
- A reduction in congestion and delays through improved journey times, and improved journey time reliability as it provides more capacity, which in turn reduces congestion and journey time delay.
 - Economic benefits including local air quality (£4.74M), accident reductions (£22.92M), travel time savings including commuting, businesses, and other (£155.48M), Indirect Tax Revenues (£5.66M), wider economic impacts (£41.8M) and employment opportunities during construction.
 - Safety improvements as a result of a decrease in the total number of collisions and casualties with the Proposed Development, safer travel and reduced fear of accidents for pedestrians and cyclists.
 - Environmental benefits including improvements to visual amenity and landscape character over the long-term, wildlife and green infrastructure enhancements including Biodiversity Net Gain (BNG) and chalk grassland restoration, enhanced pollution and run-off control, enhanced provision for pedestrians, walking, cycling and horse-riding (WCH). This includes a new footbridge over the River

Itchen and new subways under M3 J9), improving cycle connectivity, especially for the National Cycle Network (NCN) Route 23 and improvements to the horse-riding provision on the eastern side of the Proposed Development.

- Improvements to the air quality and noise environment within Winchester city centre.
- Design of the Proposed Development using PAS 2080 (British Standards Institute (BSI), 2016) to manage and reduce embodied carbon.

5.4. FINDINGS

Introduction

- 5.4.1. The ExA has considered the materiality of the various benefits put forward by the Applicant in support of its case and whether those benefits have been substantiated. This is set out in the relevant generic topic Sections of Chapter 3 of this Report. The ExA has also made findings in relation to the various potential adverse effects that would occur during the construction, and operation of the Proposed Development. We shall now summarise our Chapter 3 findings in relation to the benefits and adverse impacts of the Proposed Development to be weighed in the overall planning balance.

Alternatives

- 5.4.2. The ExA considers that the Applicant has correctly identified all legal and policy requirements relating to the assessment of alternatives applicable to this project. We find the ES assessment of alternatives to be reasonable, and proportionate and in compliance with Regulation 14 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs).
- 5.4.3. The M3 and M3 J9 are either within the South Downs National Park (SDNP) itself or within its setting. The issue the Proposed Development is aimed at is to alleviate the congestion at M3 J9 itself. Given that these significant pieces of existing infrastructure are already located in the National Park, we accept that there is no realistic alternative location in which to carry out the proposed improvement works. Having regard to NPSNN paragraph 5.151, we do not believe there to be scope for developing elsewhere outside the SDNP or meeting the need for the Proposed Development in some other way.
- 5.4.4. In relation to the specific issue of the location of the proposed construction compound, ES Chapter 3 has thoroughly assessed the alternative sites during the selection process. The May 2023 review considered not only the Badger Farm site but also looked again at whether there were any other suitable options with the lesser site area of 3ha. We are satisfied that none of the suggested alternatives would provide a suitable and realistic alternative option.
- 5.4.5. The ExA has also considered alternatives in the context of the Habitats Regulations in Chapter 4 and the Water Framework Directive (WFD) in

Section 3.8 of Chapter 3 of this Report. We are content that the Proposed Development would comply with all specific legal requirements in relation to the consideration of alternatives including the EIA Regs, the Habitats Regulations and the WFD.

- 5.4.6. As regards compliance with policy requirements in any relevant NPS in relation to alternatives, the application of the Sequential and Exception Tests is considered in the Flood Risk Section 3.8 of Chapter 3. We consider that the Applicant's assessment of flood risk complies with the relevant policy requirements for alternatives.
- 5.4.7. We conclude that there are no other common law, policy or legal requirements which demand further consideration of alternatives to the Proposed Development. Consequently, there are no matters relating to alternatives that would weigh for or against the making of the Order and it is a factor to which we ascribe neutral weight.

Agriculture, Geology and Soils

- 5.4.8. The ExA is satisfied that the Applicant has fully addressed the possible effects on agriculture, geology and soils associated with the construction and operation of the Proposed Development and has demonstrated that such risks can be satisfactorily mitigated and managed.
- 5.4.9. We are content that the ground investigation and land stability assessments have been undertaken in accordance with standard practice and risk management and mitigation proposals are in place.
- 5.4.10. Furthermore, we consider that the contaminated ground investigations and an assessment of the potential for new contamination pathways has been undertaken in accordance with standard practice and mitigation proposals are acceptable.
- 5.4.11. We conclude that there is no requirement for a deemed hazardous substance consent pursuant of section 6 of The Infrastructure Planning (Decisions) Regulations 2010.
- 5.4.12. We agree that there are no issues relating to land severance and no land parcels would remain without access or be economically unviable.
- 5.4.13. We also recognise that there would be a temporary loss of agricultural land required during the construction phase, including 12.1 hectares (ha) of best and most valuable (BMV) land. The reinstatement of temporary agricultural land following construction is detailed in the Soil Management Plan which is an appendix to the first iteration of the Environmental Plan (fiEMP) which in turn is secured by Requirement 3 of the dDCO.
- 5.4.14. The ExA concludes that there would be a permanent loss of agricultural land including 18.7ha of BMV agricultural land. Whilst this is a relatively small percentage of loss in the context of the BMV agricultural land within the Winchester City area, the permanent loss of BMV land has a large to very large adverse effect which weighs negatively against making the Order.

- 5.4.15. Overall, we conclude having regard to the significance of the permanent impact on BMV land, that agriculture, geology and soils issues have a moderate weight against the making of the DCO.

Air Quality

- 5.4.16. The ExA is satisfied that the fiEMP adequately deals with mitigation and dust matters during construction which would be subject to further development and detail during detailed design. We are equally satisfied with the scope and assessment work undertaken to assess the effects of the Proposed Development on air quality matters in the operational phase.
- 5.4.17. The ExA concludes that, as stated in the ES, changes in annual mean concentrations of PM₁₀ would be imperceptible at all receptors with the exception of an increase of greater than 1% at four receptors and decrease of greater than 1% at two receptors; in all cases, concentrations are below the annual and daily mean Air Quality Standard (AQS) objectives and are not considered significant. Regarding predicted PM_{2.5} changes, we also find that there are no predicted exceedances of the PM_{2.5} annual mean AQS objectives.
- 5.4.18. In relation to the assessment of PM_{2.5}, the ExA is satisfied that the Applicant has undertaken an assessment which forecasts PM_{2.5} levels in 2027 as the worst-case year. It is accepted that the 2040 requirements under the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 are not defined by specific location or development and therefore the Applicant cannot have a significant impact on managing this target. We also accept that the ES shows predicted levels of PM_{2.5} in 2027 are broadly compliant with the required interim target of 12 µg/m³ by January 2028 and exceed the 2040 target of 10 µg/m³ at the majority of modelled receptor points.
- 5.4.19. The ExA concludes that the impact of air quality on habitats and designated sites has been assessed appropriately and increases will be below the 1% threshold, or where they are above the 1% threshold this will be over a small area. We conclude that, although final confirmation of agreement to all issues relating to nitrogen deposition from NE was not presented by the close of the Examination, all indications are that this will be forthcoming shortly after the close of the Examination, and we have assumed this within our conclusions.
- 5.4.20. We conclude that the air quality effects of the Proposed Development during the construction phase would result in localised, limited negative air quality effects, including temporary effect from dust on approximately 580 properties located within 200m of construction activities.
- 5.4.21. We also conclude that during the operational phase, there would be some improvement in air quality seen, with a perceptible improvement (greater than 1% of the relevant air quality threshold) at 13 of the 55 modelled receptors which are primarily in Winchester city centre. There would also be localised net worsening in local air quality (greater than 1% of the

relevant air quality threshold) seen at 9 of the 55 modelled receptors, primarily in Easton Lane / Wales Street.

- 5.4.22. In overall summary, the ExA therefore finds that there would be limited and temporary negative effects from the Proposed Development during construction along with both positive and negative effects during operation for both NO₂ and fine particulate matter. We also find that the AQMAs would not be adversely affected. We consider that the Applicant's assessment of air quality complies with the policy aims of the NPSNN.
- 5.4.23. The ExA therefore finds that the issue of air quality does not weigh for or against the Order being made.

Biodiversity and ecology

- 5.4.24. The ExA is satisfied that the Applicant has fully addressed the biodiversity and ecology risk and possible effects for the construction and operation of the Proposed Development and has demonstrated that such risks associated with the Proposed Development can be satisfactorily mitigated and managed.
- 5.4.25. The ExA finds that the Applicant has detailed appropriate mitigation, which has been agreed by the relevant statutory bodies, to conclude that the effects on the internationally important River Itchen Special Area of Conservation (SAC) and nationally important River Itchen Site of Special Scientific Interest (SSSI) are likely to be not significant. We also find that the combined effect on the River Itchen SAC and SSSI during the construction and operation phases would not be more significant than for the individual topic areas.
- 5.4.26. The ExA finds that there are no anticipated effects on the internationally important Mottisfont Bats SAC and nationally important site of the St Catherine's Hill SSSI. Further SSSIs within 2km of the affected road network (ARN) are also anticipated to have no effects.
- 5.4.27. The ExA also finds that the effects on Habitats of Principal Importance (HPI) and locally important sites would be subject to appropriate mitigation which is agreed by the relevant statutory bodies.
- 5.4.28. The ExA concludes that the Applicant has sought to implement enhancements to habitat and biodiversity both within the application boundary and in the surrounding area and further measures may be proposed during the design phase which would provide further enhancements.
- 5.4.29. The impact on specific species has been assessed and mitigated where required in consultation with the appropriate statutory bodies. The ExA finds that the Applicant has taken measures to ensure these species and habitats are protected from the adverse effects of the Proposed Development. We are satisfied that conditions for licenses to manage badger and dormouse impacts are in place and agreed by NE as the licencing body.

- 5.4.30. The ExA accepts that the Applicant is not legally required to comply with the BNG requirements of the Environment Act 2021 at present. We also recognise that delivering a BNG of 4.14%, is a positive benefit.
- 5.4.31. The ExA considers that the requirement to replace failed planting of newly established habitats in Requirement 6 of the dDCO should be amended from a 5 year period to a 10 year period. This is reflected in the rDCO.
- 5.4.32. Taking these conclusions into consideration, the ExA is satisfied that the Proposed Development would comply with paragraphs 5.23, 5.26, 5.29, 5.31, 5.32, 5.33 and 5.35 of the NPSNN on conserving and enhancing biodiversity and ecology conservation interests, and paragraphs 5.36 and 5.38 regarding the mitigation measures.
- 5.4.33. Overall, we are satisfied that opportunities for promoting biodiversity have been identified through the Proposed Development. Whilst there would be slight beneficial effects on certain habitats and species in the medium-term, the ExA notes that there would be slight adverse effects on other types of habitat in the short-term. However, in most cases the effects are between slight adverse and slight beneficial and in all instances, impacts are seen as not significant.
- 5.4.34. When considering the positive effects of BNG and taking all other matters relating to biodiversity and ecology into account, we attribute a little weight in favour of the Order being made.

Climate Change and Resilience

- 5.4.35. In relation to the ES assessment and the Institute of Environmental Management and Assessment (IEMA) guidance, we conclude that the Design Manual for Roads and Bridges (DMRB) LA 114 Climate (Highways England, 2021) represents the appropriate standard for motorway and trunk road schemes in the United Kingdom (UK) and is the appropriate methodology to be used in this case. The Applicant is not under a duty to comply with the IEMA guidance, nor do we consider that failure to do so on the part of the SoST would create an interaction with s104(5) PA2008. Furthermore, we do not consider that additional contextualisation over and above that provided by the Applicant is required or necessary.
- 5.4.36. The EIA Regs do not specify a methodology for assessment of cumulative effects, just that an ES must report on the 'likely significant effects' of a development on the environment, including cumulative effects arising from other 'existing or approved' development. We are content that the ES assessment has done just that in a satisfactory manner. We agree with the Applicant that the transport model study area is entirely reasonable and corresponds to accepted practice in EIA assessments for such development.
- 5.4.37. We disagree with the stance of Climate Emergency Policy and Planning (CEPP) on the question of whether the "*latest evidence and risk analysis of the Carbon Budget Delivery Plan (CBDP)*" is required to make a reasoned conclusion on whether approving the Proposed Development

would lead to a breach of international obligations, statutory duty or be unlawful and thus engage s104(4), (5) or (6) PA2008. For the reasons provided by the Applicant in response to Examining Authority Questions (ExQ) 3 6.3.18, we are satisfied that there has been compliance with Regulation 21 of the EIA Regs and the Applicant has provided a "*reasoned conclusion*" on the significant effects of the Proposed Development on the environment.

- 5.4.38. In summary, we conclude that a robust and comprehensive ES assessment has been carried out of the impact of the Proposed Development on climate in accordance with the DMRB LA 114 Climate (Highways England, 2021) and the NPSNN. We are satisfied that the ES cumulative assessment has been appropriately undertaken and can safely be relied upon and that the Applicant has met the legal tests required of it in that respect.
- 5.4.39. We also agree that the ES assessment is based on a worst-case scenario and is not affected by the 2023 Government announcement to delay the sale restrictions on new petrol and diesel vehicles to 2035.
- 5.4.40. We have considered the Climate Change Committee (CCC) report to Parliament (June 2023), and the criticisms made of the NPSNN by Interested Parties (IPs). However, we believe that the application should continue to be considered and determined in accordance with the NPSNN as existing Government policy in the form of a designated NPS under s104 PA2008.
- 5.4.41. In our view, the Applicant is entitled to proceed on the basis that the Government will respond to the CCC Report and will continue to meet the legal obligations that it has set and will continue to set itself. We concur with the Applicant that the Proposed Development, as a single project for works to the strategic highway, would be highly unlikely to undermine securing the CBDP. The question of what reliance can be made by the SoST on the deliverability of national net zero targets which the Government has a legal duty to deliver is a matter primarily for the SoST in their decision-making process.
- 5.4.42. The Proposed Development would result in an increase in carbon emissions. It is anticipated that an estimated 37,070 tonnes of carbon dioxide emissions (tCO_{2e}) would be emitted during construction and during operation net emissions from traffic and operational energy use are anticipated to result in 3,319 tCO_{2e} annually and by 2042, 4,691 tCO_{2e} annually. The ES consequently finds that the Proposed Development is expected to contribute approximately 0.002% of the UK's 4th carbon budget and 0.001% of the 5th carbon budget and 0.002% of the 6th carbon budget. We consider that this represents a small increase in the overall magnitude of emissions.
- 5.4.43. In accordance with NPSNN paragraph 5.17, the Applicant has provided evidence of the carbon impact of the project and an assessment against the Government's carbon budgets. In carrying out its assessment, the Applicant has had regard to the applicable law and policy tests, including

under the Climate Change Act 2008, the PA2008 and the NPSNN, as well as DMRB LA 114 (Highways England, 2021).

- 5.4.44. In relation to the NPSNN paragraph 5.18 test, we conclude that the increase in carbon emissions resulting from the Proposed Development would not be so significant that, in isolation, it would have a material impact on the ability of Government to meet its carbon reduction targets. Therefore, the increase in carbon emissions is not a reason to refuse development consent.
- 5.4.45. As regards the first part of NPSNN paragraph 5.19, the ExA is satisfied that the Applicant has presented evidence of appropriate mitigation in both design and construction and how it would be secured within the DCO. We do not consider that the WCC's Carbon Neutrality Action Plan (CNAP) represents an appropriate policy document for assessing or managing carbon emissions of the motorway or that it provides justification for the offsetting and additional mitigation measures sought by WCC. Given our conclusion that the increase in emissions that would result from the Proposed Development would not have a material impact on the ability of UK Government to meet its carbon budgets, we do not consider that any additional mitigation is required.
- 5.4.46. In accordance with the NPSNN paragraph 5.19, we find the mitigation measures relating to design and construction to be adequate and we are satisfied that they would be effective in ensuring that the carbon footprint of the Proposed Development would not be unnecessarily high.
- 5.4.47. We conclude that there are no critical features of the design which might be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections as required by NPSNN paragraph 4.43. The proposed mitigation and adaptation measures would ensure that the Proposed Development would be sufficiently resilient against the possible future impacts of Climate Change.
- 5.4.48. There are no outstanding issues relating to Climate Change that weigh for or against the making of the Order and it is a matter to which we ascribe neutral weight.

Flood Risk, Groundwater and Surface Water

- 5.4.49. The ExA is satisfied that the Applicant has fully addressed the risk and possible effects from flooding, groundwater and surface water for the construction and operation of the Proposed Development and has demonstrated that such risks associated with the Proposed Development can be satisfactorily mitigated and managed.
- 5.4.50. The ExA agrees that the Proposed Development would result in improved pollution control and water quality at the outfalls into the River Itchen and at drainage infiltration points in the operational phase, although the increase in length of carriageway would increase the risk profile of pollutants. In addition, there are potential short-term impacts on water

quality during construction, although mitigation measures are detailed in agreement with relevant agencies.

- 5.4.51. The ExA finds that that the combined effect on the River Itchen water quality during construction would be localised, small scale and temporary and also that there would be no combined effects on water quality or flood risk in the operation phase.
- 5.4.52. The ExA concludes that a WFD Compliance assessment has been undertaken and has shown that the Proposed Development would not result in a deterioration of the WFD status or prevent achieving Good status by 2027.
- 5.4.53. The ExA agrees that the Proposed Development accords with the Sequential Test and Exception Test and considers they are passed. Furthermore, we conclude that the Proposed Development would not give rise to unacceptable risks in terms of flooding.
- 5.4.54. Accordingly, the ExA concludes that the requirements in respect of flood risk, groundwater and surface water as set out in NPSNN are met. Although there is the potential for negative effects on water quality during construction there would be an improvement in pollution control in the operational phase due to improved drainage design. Therefore, taking all other matters relating to flood risk, groundwater and surface into account, we attribute a little weight in favour of the Order being made.

Historic Environment

- 5.4.55. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has given specific consideration to the desirability of preserving listed buildings, conservation areas and scheduled monuments or their settings or any features of special architectural or historic interest which they possess, and the desirability of preserving or enhancing the character or appearance of conservation areas.
- 5.4.56. The ExA is satisfied that the Applicant has fully addressed the possible effects on the historic environment and assets for the construction and operation of the Proposed Development and has demonstrated that such effects associated with the Proposed Development can be satisfactorily mitigated and managed.
- 5.4.57. The ExA considers that the necessary monitoring, mitigation, and controls are incorporated within the latest revisions of the dDCO requirements and fiEMP. We are satisfied that they would be satisfactorily secured via Requirement 9 of the dDCO. The ExA agrees with the findings of the Applicant's ES, that following mitigation any residual adverse effects upon the historic environment (archaeology, built heritage or historic landscape) from the construction or operation of the Proposed Development would be reduced or offset to levels considered not significant.

- 5.4.58. The ExA has reviewed the impact of the Proposed Development on the historic environment and historic assets, undertaking site inspections to view all important assets that are potentially impacted. The ExA has also noted that Historic England had no issues with the Applicant's assessment of the historic environment and concluded a Statement of Common Ground (SoCG) at the beginning of the Examination.
- 5.4.59. The ExA agrees with the ES assessment of the Kings Worthy and Abbots Worthy Conservation Areas having likely temporary and permanent slight impacts which are not significant. Furthermore, we agree with the assessment of 'negligible impact' which is not significant relating to Worthy Park House. We also agree with the ES assessment of the non-designated historic landscapes as having temporary and permanent neutral to moderate impacts which are not significant.
- 5.4.60. Paragraph 5.131 of the NPSNN states that the more important a designated heritage asset is, the more weight should be given to its conservation. Paragraphs 5.132, requires 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. Paragraph 5.134 of the NPSNN requires that less than substantial harm to designated heritage assets should be weighed against the public benefits of the Proposed Development.
- 5.4.61. The ExA's conclusions on the effects of the Proposed Development on designated heritage assets are as follows:
- Less than substantial harm should be ascribed to matters relating to effects on archaeological significance in respect of the Scheduled Ancient Monument (SAM) of The Site of St Gertrude's Chapel;
 - Less than substantial harm should be ascribed to matters relating to effects on archaeological significance in respect of the SAM of St Catherine's Hill;
 - Less than substantial harm should be ascribed to matters relating to effects on archaeological significance in respect of the SAM of the Roman Trackway; and
 - Less than substantial harm should be ascribed to matters relating to effects on built heritage in respect of the Kings Worthy and Abbots Worthy Conservation Areas.
- 5.4.62. For each of the individual identified designated heritage assets, the ExA is satisfied that the Proposed Development would result in less than substantial harm to the historic significance of those. The harm identified falls to be weighed against the public benefits of the Proposed Development, as required by paragraph 5.134 of the NPSNN.
- 5.4.63. In Section 5.5 of this Report, we weigh the less than substantial harm to designated heritage assets against the public benefits of the Proposed Development and conclude on the weight to be attributed to this factor together with the adverse effect on the undesignated historic landscapes in the overall planning balance.

- 5.4.64. The ExA is also satisfied that no oversight or omission has occurred in respect of the assessment undertaken which may prejudice the SoST duty to consider the desirability of preserving listed buildings and their settings. We consider that the Applicant's assessment complies with the policy aims of the NPSNN in those respects.

Landscape and Visual Effects and Design

Design

- 5.4.65. The ExA is content that the Applicant's design approach for the application reflects the NPSNN guidance and design has been included as an integral consideration from the outset of a proposal. In accordance with NPSNN paragraph 4.35, the Applicant has demonstrated how the design process was conducted and how the proposed design evolved. The Applicant has also set out the reasons why the favoured choice has been selected. The SoS can be satisfied that the Proposed Development would be sustainable and as aesthetically sensitive, durable, adaptable, and resilient as it could reasonably be.
- 5.4.66. In the long-term the design approach for the Proposed Development is such that it would minimise the impact on the natural beauty, wildlife and cultural heritage of the SDNP consistent with the aims of South Downs Local Plan (SDLP) Policy SD42. The Proposed Development meets the NPSNN requirements relating to 'good design'. This is a factor which weighs neither for nor against the making of the Order.

Landscape and Visual Effects

- 5.4.67. Turning now to the landscape and visual implications, the ExA agrees with the SDNPA that the NPSNN paragraph 5.150 policy requirement is for great weight to be attached to conserving landscape and scenic beauty in the SDNP nationally designated area and that this highest status of protection is afforded to all parts of the SDNP.
- 5.4.68. We conclude that the Proposed Development should not be categorised as 'significant road widening' and the test set out in NPSNN paragraph 5.152 is not applicable nor does it fall within the scope of paragraph 5.148. The strong presumption against any significant road widening or the building of new roads does not therefore apply to the Proposed Development.
- 5.4.69. In relation to the effects on landscape character during construction and operation, on the question of the proposed earthworks and changes to topography, we conclude that during construction and immediately following construction whilst the proposed mitigation is establishing, there would be a significant adverse effect on the designated landscape. However, we consider that once landscape mitigation on these slopes has become established that the earthworks and associated topographical changes, would not have any significant adverse effects on the surrounding landscape.

- 5.4.70. As regards the loss of existing vegetation and proposed planting, we consider that overall, the proposed planting responds positively to the recommendations set out in the SDNPA Landscape Character Area (LCA). We also find that the Applicant's visibility analysis demonstrates that the effectiveness of the planting and landform proposals would not materially improve if the width of this planting were to be increased. We conclude that the effect of loss of vegetation would initially be to open-up views of the motorway corridor and the new infrastructure. However, given the proposed landscape mitigation planting, including advance planting, we are satisfied that the effect in the long-term on the SDNP and the Winnall Moors Nature Reserve would not be significant. We are also content that the approach to trees, woodland and hedgerows would be in accordance with SDLP Policy SD11.
- 5.4.71. In relation to the proposed swales and attenuation ponds, for Basin 5 we consider that the proposed woodland planting could be successfully integrated as a visually appropriate element in the landscape at this location and the woodland proposals would provide appropriate mitigation in the context of the existing character of the local area. We find that the introduction of planting at this location as landscape mitigation would respect the existing character and would serve to support the integration of the Proposed Development into its immediate surroundings, and the conservation of the wider SDNP.
- 5.4.72. Given the specific design features, we are content that Basin 6 would not appear as an incongruous feature but would blend well with the surrounding chalk grassland landscape which would be created at this location. As regards the swales, once vegetation has been established, we anticipate that they would be imperceptible within the landscape including by users of the bridleway.
- 5.4.73. We have also considered the effects on the LVIA that would result from the proposed siting of the main construction compound within the SDNP. As indicated above in relation to 'Alternatives', we are content that the proposed site represents the most satisfactory option for the temporary construction compound site. We believe that the Applicant has taken proportionate and reasonable steps to minimise the landscape impact and visual effects on the SDNP, whilst balancing the requirement to maintain a construction compound including essential welfare facilities in the immediate vicinity of its works.
- 5.4.74. We find that there would be a degree of additional harm associated with the temporary use of land within the SDNP as a construction compound. However, we concur with the Applicant that given the context of the existing junction at the boundary of the SDNP, the other construction works of the Proposed Development, and the resulting effects anticipated on this designated landscape during this phase, that the impact of the construction compound at the proposed location would not materially increase the overall effects on the SDNP arising from the wider construction activity. Nevertheless, those overall effects during construction would be significant even after mitigation and compliance with dDCO Requirements.

- 5.4.75. We conclude that the proposed chalk grassland would provide ecological mitigation that would contribute to an overall BNG for the Proposed Development which would represent a significant benefit which has also been considered in Section 3.6 of this Report. In addition, we consider that it would provide landscape mitigation and a degree of landscape enhancement in this location. In the light of the proposed management, maintenance and monitoring that would be secured by the rDCO, we are content that satisfactory measures have been secured and would be put in place with a view to achieving the viability and success of the new chalk grassland area.
- 5.4.76. We have considered whether the proposed chalk grassland should be extended to cover the fields to the east. However, we find the proposed provision of chalk grassland as mitigation to be entirely satisfactory and proportionate. We believe that to extend the chalk grassland beyond the current area identified would represent an unreasonable requirement that would go beyond the mitigation necessary for the Proposed Development.
- 5.4.77. We are satisfied that although an adverse effect on tranquillity would be experienced during construction and at Year 1, there would only be negligible change for the SDNP by Year 1 and by Year 15 no material adverse effects on tranquillity would remain. Indeed, we agree with the Applicant that by that stage the eastern part of the SDNP would experience beneficial effects. We conclude that there would be material harm to the special quality of tranquillity during construction and the early stages of operation, but by Year 15 the Proposed Development would conserve and enhance relative tranquillity in accordance with SDNP Policy SD7.
- 5.4.78. We are also content that there would be no discernible change to the Environmental Light Zones or the dark skies of the SDNP within the application boundary and its environs. The Proposed Development would be consistent with the aims of SDLP Policy SD8 in that respect.
- 5.4.79. As regards visual amenity during construction and operation, we agree with the Landscape and Visual Amenity (LVIA) assessment of the effects of the Proposed Development on visual receptors during the construction and operational phases including the views from St Swithun's Way. Overall, there would be significant construction phase adverse effects on visual amenity. However, by Year 15, only receptors at VL1 (Easton Lane/ NCN Route 23) would continue to undergo significant effects.
- 5.4.80. Taking those various landscape and visual effects considerations together, the ExA agrees with the LVIA overall outcome combined to a single conclusion of the likely significance of effect on LVIA that effects on the SDNP and its special qualities, including tranquillity, would result in a moderate adverse and significant effect during construction and immediately following construction whilst the proposed mitigation is establishing. However, during the operational phase those effects would reduce to slight adverse and would not be significant by Year 15 once the

landscape mitigation has established to aid landscape integration and provide visual screening.

- 5.4.81. We conclude in Section 3.13 of this Report, that the public rights of way (PRoW) and non-motorised user (NMU) proposals resulting from the Proposed Development would be positive and provide an enhancement to the existing provision. We consider that the provision of improved WCH links to the SDNP including the new bridleway would contribute to the SDNPA's second purpose and policy priority of improving accessibility within and around the National Park.
- 5.4.82. We recognise that the Applicant's landscape strategy aims to reinforce and, in some respects, enhance defined key characteristics of the SDNP landscape and its setting. The proposed mitigation would be satisfactory and appropriate and no further mitigation measures would be necessary. However, there would be a moderate adverse and significant effect on the landscape character and visual amenity of the SDNP during construction and until the proposed mitigation is established and a slight adverse and non-significant effect would remain thereafter.
- 5.4.83. The identified harm to the SDNP is a factor to which we attribute moderate weight against the making of the Order. This weighting takes into account the anticipated duration and extent of the significant adverse effect on the SDNP and its setting, including that which would result from the main construction compound and the residual non-significant adverse effect that would remain in the long-term.
- 5.4.84. In relation to NPSNN paragraph 5.150, we find that in the long-term taking the benefits and non-significant residual adverse effects together, the Proposed Development would conserve the landscape and scenic beauty of the nationally designated area and would not adversely affect its specific statutory purposes which the SoS has a statutory duty to have regard to. However, as mentioned in Section 3.10 of Chapter 3 and as set out in our final recommendation, since s245 of the Levelling-up and Regeneration Act 2023 (LURA 2023) came into effect that duty is now for the relevant authority to seek to further those purposes. This is a matter on which the SoS may wish to satisfy themselves.
- 5.4.85. We shall consider the application of NPSNN paragraph 5.151, namely, whether there are exceptional circumstances to justify the grant of development consent in the SDNP and it can be demonstrated that it is in the public interest to do so, in our overall conclusions later on in this Chapter.

Noise and Vibration

- 5.4.86. We agree that during construction there is predicted to be an increase in noise levels at receptors with major impacts anticipated at some residential properties, which when mitigated would be reduced to moderate. We are content that these properties are listed in the fiEMP as requiring additional mitigation which would be subject to further consultation during the development of the Second Iteration of the Environmental Management Plan (siEMP).

- 5.4.87. We consider that a standard, worst-case, assessment has been undertaken to assess construction noise. However, we believe that some of the quantities of noise generating items could be deemed to be less in number than might ultimately be used during construction. We accept that full construction practice is not known at this stage of the design development and that mitigation is nevertheless secured in the fiEMP.
- 5.4.88. We also recognise that the noise impacts of construction traffic and temporary traffic diversions have been assessed in accordance with the DMRB and due to the timing of construction activities impacts are not anticipated to be significant.
- 5.4.89. The ExA accepts that the Applicant has considered the worst-case potential impacts of vibration during construction and has proposed mitigation which would allow these impacts to be managed appropriately.
- 5.4.90. The ExA acknowledges that the use of low noise surfacing is a positive and important part of the mitigation for noise in the operational phase of the Proposed Development. However, we consider that with a large percentage of the highway within the application boundary already subject to low noise surfacing, the additional benefit as proposed might be limited.
- 5.4.91. The ExA notes that National Highways have a commitment to use low noise surfacing on its maintainable network. However, this is not the case for the local highway network, and we suggest that the SoST reviews the matter of low noise surfacing on both the strategic and local highway networks at such stage as noise mitigation measures, including low noise surfacing, are submitted for approval by the SoST pursuant to Requirement 14 of the dDCO.
- 5.4.92. The ExA agrees with the assessment that the impact of the Proposed Development in the NIAs would be between slight beneficial and slight adverse, which is not significant.
- 5.4.93. Considering the above, the ExA considers that the Applicant's assessment of noise and vibration complies with the policy aims of the NPSNN and the Noise Policy Statement for England (NPSE) requirement that all reasonable steps are taken to avoid and mitigate significant adverse effects on health and quality of life.
- 5.4.94. Overall, we conclude that although there would be some beneficial effects seen from the Proposed Development, there would also be a number of adverse effects both during construction and operation including residential dwellings with anticipated exposure above the Significant Observed Adverse Effect Level (SOAEL). Therefore, we find that taken as a whole the issue of noise and vibration should be afforded a little weighting against the making of the DCO.

Population and Human Health

- 5.4.95. The ExA is satisfied that the Applicant has fully addressed the possible effects on population and human health for the construction and

operation of the Proposed Development and has demonstrated that such effects associated with the Proposed Development can be satisfactorily mitigated and managed.

- 5.4.96. We find that the following effects weigh positively in favour of the DCO being made:
- A moderate beneficial effect on businesses from improved journey times, particularly seen at Winnall Industrial Estate and nearby businesses.
 - Increase in health determinants from improved access to recreational use of community assets and access to the SDNP from improvements in NMU facilities.
- 5.4.97. We find that the following effects weigh negatively against the DCO being made:
- A moderate temporary effect on a private dwelling, White Hill Cottage, in relation to land use and accessibility, which is significant.
 - Minor adverse temporary impacts during construction of private properties within 500m of the application boundary in relation to indirect effects of environmental factors, which is not significant.
 - Slight negative temporary effect on businesses during construction which are not significant.
- 5.4.98. We conclude that the Proposed Development would not impact on community assets during construction or operation. However, there is a predicted impact on routes for WCH during construction which will be mitigated in consultation with the appropriate authorities. We also conclude that there would be a positive impact on health determinants for WCH in the operational phase with improved access to recreational opportunities and access to the SDNP.
- 5.4.99. We conclude that the overall assessment of human health impact during construction is mostly neutral with temporary negative outcomes in two circumstances. Regarding the operational phase, we find that the outcomes for human health are either neutral or positive.
- 5.4.100. Consequently, the ExA considers that the Applicant's assessment of population and human health complies with the policy aims of the NPSNN.
- 5.4.101. Overall, in consideration of the long-term benefits to health from improvements in facilities for WCH, and the beneficial impact to businesses in and around the Winnall Industrial Estate, we find that the effects of the Proposed Development on the issue of population and human health has a moderate weighting in favour of the Order being made.

Traffic, Transport and Non-Motorised User Routes

- 5.4.102. In principle, the Proposed Development would be in accordance with the Government's vision and strategic objectives set out in the NPSNN: *"...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 the wider transport system"*.
- 5.4.103. The traffic modelling undertaken by the Applicant is acceptable and has been carried out in accordance with relevant guidance. The application is supported by a local transport model which provides sufficiently accurate detail to allow modelling of the impacts of the project. It includes appropriate sensitivity analysis to consider the impact of uncertainty on project impacts. Furthermore, the model has been reviewed and approved by HCC as local highway authority. The ExA found no substantive reason to question the suitability and accuracy of the model or assessments made by it.
- 5.4.104. It is clear from the evidence within the application that the strategy aim to reduce journey times would be met. On balance however, the ExA considers that the anticipated journey time savings in themselves would be moderate, rather than significant, as presented by the Applicant.
- 5.4.105. It is also clear from the evidence within the application that the strategy aim to reduce delays would be met. On balance, the ExA considers that there would be a clear benefit to the local network in terms of forecast delays, even with a predicted increase in traffic demand.
- 5.4.106. The presentation of safety savings has been inconsistent particularly with regard to savings over the wider area. The ExA also has concerns about the increase in predicted collisions at junctions within the application boundary. Notwithstanding these observations, the ExA accepts that there is a predicted improvement in road safety and a forecast reduction in collisions. It is expected that close attention will be paid to the safe design and comprehensive safety audit during detailed design, which has been secured by Requirement 3 which requires the EMP to be produced in accordance with the DMRB.
- 5.4.107. The assessment of costs and benefits has been carried out in accordance with relevant guidance. The ExA finds that the initial benefit to cost ratio (BCR) is considered to be a low value for money (VfM). However, the adjusted BCR value, which includes wider economic factors, is considered to represent medium VfM.
- 5.4.108. The ExA considers that the uncontrolled crossing on the B3335 at the M3 Junction 11 near Hockley Golf Course does not present a demonstrably safe crossing point and additional traffic as a consequence of the Proposed Development could affect this crossing. However, we accept that changes to this are not within the scope of the Proposed Development. We accept that this will be subject to further consultation through the proposed Traffic Management Plan (TMP).

- 5.4.109. The ExA considers that there is no requirement for the Applicant to include improvement to the Cart and Horses Junction as part of the application.
- 5.4.110. At the end of the Examination, a side agreement between the Applicant and HCC was nearing completion. If this is agreed, the objections raised by HCC will be withdrawn however, if this is not agreed, the ExA have concluded the rDCO for this eventuality.
- 5.4.111. The ExA considers that although there would be temporary negative impacts from construction phase diversions and traffic management, these would be subject to clear mitigation which is accepted by the local highway authority.
- 5.4.112. Overall, we consider that the Proposed Development would deliver a number of benefits relating to transport matters which correspond with its key objectives including reduced journey time, reduced delays, improvements to NMU facilities and improvements in safety. We have carefully examined the extent of these benefits which are integral to ensuring that the identified localised and strategic need would be met. Taken together, we attribute great weight to these traffic and transport benefits and the associated meeting of that need in favour of the Order being made.

Waste and Material Resources

- 5.4.113. The ExA is satisfied that the Applicant has assessed the possible effects of waste and material resources for the Proposed Development. The ExA accepts that the Applicant has proposed commitments within the fiEMP which are appropriate to the current design development.
- 5.4.114. The ExA further concludes that in the detailed formulation of the siEMP, that is to be based on the fiEMP, all commitments, should be reviewed to be specific, targeted and measurable.
- 5.4.115. The ExA concludes that the effects of the Proposed Development on:
- material assets and use would lead to a slight adverse effect which is not significant;
 - mineral safeguarding would be negligible which is also not significant; and
 - waste generation and its impact on void capacity would be a slight adverse effect which is not significant.
- 5.4.116. Consequently, the ExA considers that the Applicant's assessment of waste and material resources complies with the policy aims of the NPSNN. In addition, we agree with the Applicant's assessment of the effect on mineral safeguarding policy, in that the merits of which significantly outweigh the very limited effect on the relevant Mineral Safeguarding Area (MSA).
- 5.4.117. The ExA therefore finds that the issue of waste and material resources does not weigh for or against the Order being made.

Cumulative Impact

- 5.4.118. The ExA considers that the ES, and the Applicant's responses to our questions on this topic during the Examination, provide the necessary information on how the effects of the Proposed Development would combine and interact with the effects of other development, as required by NPSNN paragraph 4.16. We are satisfied that any cumulative effects of the Proposed Development together with other developments would be minor and not significant. We are also content as to the scope of the ES assessment and that the list of 'other developments' considered was complete.
- 5.4.119. In accordance with NPSNN paragraph 4.17, we have considered how any 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. A temporary significant combined effect is identified at White Hill Cottage on Easton Lane, due to the combination of visual, noise and land take effects, predominantly during construction of the Proposed Development. However, the Applicant has proposed mitigation including a commitment for engagement to be undertaken with the occupant/owner of that property.
- 5.4.120. We do not consider that additional mitigation, over and above that for which provision has been made through the fiEMP and the requirements of the rDCO would be appropriate or necessary either in respect of White Hill Cottage or other receptors to avoid, reduce, or compensate for any cumulative adverse impacts identified.
- 5.4.121. We conclude that the negative effects that have been identified for the Proposed Development in combination with other existing and/or approved projects would be minor and not significant. The identified significant combined effect on White Hill Cottage would be temporary and would occur during the construction period. We have attributed a little weight to this factor against the Order being made in the overall planning balance.

5.5. THE OVERALL PLANNING BALANCE AND CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

- 5.5.1. In the light of paragraph 4.2 of the NPSNN there is a presumption in favour of granting development consent for the Proposed Development subject to the detailed policies and protections in the NPSNN, and the legal constraints set out in the PA2008. We have considered those detailed policies and protections and relevant legal constraints in Chapters 3 and 4 of this Report and our findings and conclusions are set out above. We find that there are no other NPS policies that clearly indicate that consent should be refused.

5.5.2. NPSNN paragraph 4.3 requires the ExA and the SoS when weighing the adverse impacts against the benefits of the Proposed Development to take into account:

- its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;
- its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.

The principle of and need for the Proposed Development

5.5.3. The ExA finds in Section 3.2 of Chapter 3 that there is a need for an improved M3 J9. We are content that the Proposed Development would meet its key objectives which we set out in Chapter 1 of this Report. We conclude that the Proposed Development would both meet the specific need for improvement in this location and contribute towards meeting the strategic Government policy objectives set out in the NPSNN for the development of the national road network.

5.5.4. There have been general concerns expressed by a number of IPs as regards the principle of proceeding with new road building or improvements to ease issues such as congestion against the backdrop of climate change. In that respect, we note that paragraph 4.6 of the NPSNN, states that the ExA and the SoS do not need to be concerned with the national methodology and national assumptions around the key drivers of transport demand. We have considered specific matters relating to carbon emissions and climate change in Section 3.7 of Chapter 3 of this Report and our summary conclusions on that topic are set out above.

The business case for the Proposed Development

5.5.5. The application has been supported by a business case prepared in accordance with the Treasury Green Book principles. We are satisfied that the approach taken to the economic assessment prepared for the transport business case is consistent with paragraph 4.5 of the NPSNN and that the Applicant has followed national adopted guidance in the modelling of the forecast BCR for the Proposed Development. This indicates and we accept that whilst the initial BCR would fall within the 'low' VfM category (1.0 – 1.5), the adjusted BCR, when taking account of wider economic impacts, would fall within the 'medium VfM category (1.5 – 2.0). This would remain the case if the value of wider safety savings were reduced. Whilst the question of VfM is a matter for the SoS to consider, this nevertheless provides an indication that the Proposed Development would indeed deliver an economic benefit.

The benefits and adverse impacts of the Proposed Development

- 5.5.6. On the planning balance, the ExA has assessed the potential adverse impacts, including any long-term and cumulative adverse impacts. In so doing, we have taken into account the mitigation proposed to avoid, reduce, or compensate for any such impacts which would be secured by the rDCO. We have considered all the matters raised by the LIRs. Likewise, the benefits of the Proposed Development have been assessed including any long-term or wider benefits.
- 5.5.7. The potential benefits claimed by the Applicant include a reduction in congestion and delays; improving journey times; economic benefits; safety improvements; improvements to visual amenity and landscape character over the long-term; wildlife and green infrastructure enhancements; enhanced pollution and run-off control; and enhanced provision for WCH.
- 5.5.8. Turning to our specific considerations of these potential benefits, we have given detailed consideration to traffic and transport matters in Section 3.13 of Chapter 3 of this Report. We are content that the Proposed Development would result in a reduction in congestion and delays, safety improvements, and economic growth would be supported. There would also be enhanced provision for WCH including the associated improvement of accessibility within and around the SDNP. We have expressed some reservations in relation to the extent of journey time savings and the value of the safety cost benefits over the wider area. However, we have no doubt that benefits would be realised in respect of these matters. These benefits reflect key objectives of the Proposed Development and are integral to ensuring that the identified localised and strategic need referred to above would be met. Given those circumstances and taken together, we attribute great weight to these benefits and the meeting of that need in favour of the Order being made.
- 5.5.9. We also consider that the proposed chalk grassland would provide ecological mitigation which would contribute to an overall BNG for the Proposed Development and an element of long-term landscape improvement. In the context of our overall considerations on those topics, we attach a little weight to those positive contributions resulting from the provision of chalk grassland in favour of the Order being made. For the reasons set out in the relevant Sections of Chapter 3, we attribute a little positive weight to the topic of flood risk, groundwater and surface water taking into account the improvement in pollution control in the operational phase due to improved drainage design. We give a moderate positive weighting in relation to population and human health in favour of the Order being made having regard to the long-term benefits to health from improvements in facilities for WCH, and the beneficial impact to businesses in and around the Winnal Industrial Estate.
- 5.5.10. Turning now to the potential adverse impacts, we attribute moderate negative weight to the significant harm to the landscape character and visual amenity of the SDNP during construction and until the proposed mitigation is established and the non-significant adverse effect that would remain in the long-term. We also give moderate negative weight

to the permanent loss of BMV land in this instance taking into account the extent and nature of the loss. We attach a little weight to the identified significant combined effect on White Hill Cottage which would be temporary and would occur during the construction period. Furthermore, we attribute a little weight to the adverse effects associated with noise and vibration.

- 5.5.11. For each of the individual identified designated historic assets, the ExA is satisfied that the Proposed Development would result in less than substantial harm to the historic significance of those assets. In weighing the harmful impact on the significance of each of the historic assets against the public benefits, the ExA concludes that in all instances the substantial public benefits of the Proposed Development would strongly outweigh the less than substantial harm to the significance of the historic asset concerned. The loss of significance to those assets would therefore be justified in this case. The identified harm to those designated assets and to the non-designated assets including the historic landscapes is a factor to which we attach a little negative weight in the overall planning balance.
- 5.5.12. There are also a number of issues to which we attribute neutral weight in that they do not weigh for or against the making of the Order, namely, those arising under the topics of air quality, alternatives, climate change, design, waste and material resources.

Whether the NPSNN paragraph 5.151 test of 'exceptional circumstances' to justify development within the SDNP is met

- 5.5.13. The relevant policies in the NPSNN in this case include those relating to development within nationally designated areas. In reaching our conclusions on the landscape and visual effects in Section 3.10 of Chapter 3 we have attached great weight to conserving the landscape and scenic beauty of the SDNP. As indicated in that section of the Report, we shall now consider whether the NPSNN paragraph 5.151 test of 'exceptional circumstances' to justify development within such locations is met together with compliance with SDLP Policy SD3.
- 5.5.14. Paragraph 5.151 of the NPSNN sets out three aspects of the Proposed Development that the SoS should consider for applications in nationally designated areas. These are the need for the development; the cost and scope of developing outside the National Park or meeting the need in some other way; and any detrimental effect on the environment, the landscape and recreational opportunities and the extent to which that could be moderated.
- 5.5.15. Taking these in turn, we agree with the Applicant that there is a strong need case for an intervention to address the significant existing congestion and road safety issues on the M3. Both addressing the existing road safety issues and removing an impediment to strategic economic growth is in the public interest. We recognise that delivery of the Proposed Development would meet an identified need that has been

committed to within the Road Investment Strategy 2020 - 2025 (RIS2) and would contribute to the Government's wider policy to improve and enhance the existing Strategic Road Network (SRN) to assist in addressing the compelling need for development of the national networks.

- 5.5.16. On the second aspect of paragraph 5.151, we consider in Sections 3.2 and 3.3 of Chapter 3 of this Report, the scope for meeting the need in some other way including modal alternatives. Given the Proposed Development's status as a national road project included within the Road Investment Strategy 2015 - 2020 (RIS1) and RIS2, we are satisfied that, as required by NPSNN paragraph 4.27, the assumption can safely be made that a proportionate option consideration of alternatives has been undertaken as part of the investment decision making process and that appropriate consideration was given to viable modal alternatives.
- 5.5.17. The SDNPA confirms that it accepts that there is a need for the Proposed Development and for it to be developed in the SDNP by virtue of the junction already existing in the SDNP but submits that there remained additional alternatives that would have reduced the impact on the SDNP. We have considered the proposed alternative locations for the main construction compound in Section 3.3 of this Report. We conclude that none of the suggested alternatives would provide a suitable and realistic alternative option.
- 5.5.18. The relevant parts of the M3, and M3 J9 are either within the SDNP itself or within its setting. The aim of the Proposed Development is to alleviate the congestion at M3 J9 itself. Given that these significant pieces of existing infrastructure are already located in the National Park, there is no realistic alternative location outside the designated area in which to carry out the proposed improvement works. There is a need to carry out the Proposed Development in this specific location.
- 5.5.19. The ExA has considered the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way. We find that there are no viable modal alternatives that would meet the identified need or realistic alternative options to developing within the designated areas. We conclude that there is no scope for developing elsewhere, outside the designated area, or meeting the fundamental and the identified need for the Proposed Development in some other way.
- 5.5.20. On the third aspect of paragraph 5.151, the Applicant acknowledges in relation to the detrimental effect on the environment, the landscape, and recreational opportunities, that there would be some residual significant adverse effects including in relation to the landscape. However, we agree with the Applicant that the operational landscape and visual effects would not be significant in the long-term. We consider that in the long-term the Proposed Development taken as a whole would at least conserve the landscape and scenic beauty of the nationally designated area. We are satisfied that the Applicant has actively sought to avoid or moderate any detrimental effects through the incorporation of appropriate mitigation

and through making substantial changes to the scheme design where reductions in adverse effects could be achieved.

- 5.5.21. Taking all those factors into account, we conclude that there is a clear need for the Proposed Development that would also assist in addressing the compelling need for the development of the national road network in the public interest. There is no scope for developing outside the designated area, or meeting that need in some other way. The effects of the Proposed Development on the environment, landscape and recreational opportunities have been considered appropriately. We consider that when balancing the benefits of the Proposed Development against the disbenefits the benefits strongly outweigh the disbenefits. We find that there are exceptional circumstances in this case that justify the grant of development consent within the designated area and the test set out in the NPSNN paragraph 5.151 is met.
- 5.5.22. SDNP Policy SD3 'Major Development' of the SDLP is the primary policy relating to the principle of large developments within the National Park. Given our finding in relation to NPSNN paragraph 5.151 of the NPSNN, we also consider that Part 2 of Policy SD3 would be met. With respect to Part 3 we are content that the Proposed Development has incorporated opportunities to conserve and, in some respects, enhance the special qualities of the SDNP in the long-term. We also consider that the Applicant's approach to matters including carbon footprint, waste, materials, water and biodiversity would reflect the principles of sustainability set out in Policy SD3. We believe that the Proposed Development, when considered as a whole, would be consistent with the aims of Policy SD3.

The test set out in NPSNN paragraph 5.152 in relation to significant road widening or the building of new roads in the National Park

- 5.5.23. We conclude in Section 3.10 of this Report that the Proposed Development should not be categorised as 'significant road widening' or the 'building of new roads', and the test set out in NPSNN paragraph 5.152 is not applicable nor does it fall within the scope of paragraph 5.148 to fulfil the requirements set out in Defra's *English national parks and the broads: UK government vision and circular 2010* or successor documents. The strong presumption against any significant road widening or the building of new roads does not therefore apply to the Proposed Development.
- 5.5.24. Nevertheless, should the SoST disagree and consider the Proposed Development to constitute 'significant road widening' or the 'building of new roads', we would highlight that the Applicant's position as summarised in its Closing Statement [[REP8-028](#)] is that there would be compliance with the test set out in NPSNN paragraph 5.152. The SDNPA disagree and, as set out in their LIR [[REP2-071](#)] and WR [[REP2-075](#)], they question whether the benefits of the Proposed Development would outweigh the costs very significantly.

Whether the project would be carried out to high environmental standards

- 5.5.25. Paragraph 5.153 of the NPSNN states that where consent is given the SoS should be satisfied an applicant has ensured that the project will be carried out to high environmental standards and where possible includes measures to enhance other aspects of the environment.
- 5.5.26. In addition to the measures secured within the Register of Environmental Actions and Commitments (REAC) of the fiEMP [[REP8-023](#)] a Design Principles Report [[REP8-025](#)] is to be secured as part of the rDCO which includes measures to ensure high quality design and an appropriate response to the local context outlined from paragraphs 7.5.11 onwards of the Case for the Scheme [[REP1-019](#)]. There are also a number of measures included within the Proposed Development to enhance other aspects of the environment.
- 5.5.27. The SDNPA's position on compliance with paragraph 5.153 as recorded in the SoCG with the Applicant [[REP8-040](#)] is that there is currently insufficient mitigation and failure to achieve significant landscape enhancements. The SDNPA also refer to the Proposed Development as missing an opportunity to help contribute to the Government's commitment to nature recovery (as set out in the 25-year Environment Plan). This is expanded upon in Appendix C of the SDNPA LIR [[REP2-071](#)]. The Applicant's response is provided in section REP02-075e in its Comments on WRs [[REP3-022](#)].
- 5.5.28. Whilst we have given careful consideration to the points made by the SDNPA on this matter, we are nevertheless content that the Proposed Development would be carried out to high environmental standards and where possible includes measures to enhance other aspects of the environment in compliance with NPSNN paragraph 5.153. We also consider that the Proposed Development has responded to the special qualities of the SDNP in its design, as outlined in Table 5.1 of the Design and Access Statement (DAS) [[APP-162](#)].
- 5.5.29. We are satisfied that the Proposed Development as a whole, has had regard to the purpose in s5(1) of the National Parks and Access to Countryside Act 1949 to conserve and enhance the natural beauty, wildlife, and cultural heritage in compliance with paragraph 5.147 of the NPSNN.
- 5.5.30. We note that s245 LURA 2023 amended the National Parks and Access to Countryside Act 1949 duty to have regard to purposes of National Parks so that a relevant authority must now seek to further the purposes specified in section 5(1). Since this amendment came into force after the close of the Examination, the ExA did not have an opportunity to examine this change in drafting nor have IPs had an opportunity to comment upon it.
- 5.5.31. In reaching our conclusions on the evidence before us, in addition to the significant adverse effects identified in the short to medium-term, we find that there would potentially be enhancements in the long-term to certain

SDNP special qualities, namely, tranquillity, landscape and public access provision. This may have a bearing on the consideration of the revised duty. However, the recent amendment to existing legislation on this topic is a matter that the SoST may wish to consider further.

National Planning Policy Framework September 2023 (NPPF)

- 5.5.32. Paragraph 5 of the NPPF makes clear that it does not contain specific policies for Nationally Significant Infrastructure Projects (NSIPs). At Issue Specific Hearing 3 (ISH3), no issues were raised by IPs in relation to any potential inconsistency between the overall strategic aims of the NPPF and the NPSNN. As required by paragraph 202 of the NPPF, we have weighed the less than substantial harm to designated heritage assets against the public benefits of the Proposed Development and concluded as set out above.
- 5.5.33. As noted in Section 3.2 of Chapter 3 of this Report, the NPPF was revised on 19 December 2023 following the close of the Examination. Since it was the September 2023 update that was considered during the Examination, this means that IPs have not had an opportunity to comment on this latest NPPF revision. Whilst this is drawn to the attention of the SoST, we note that paragraph 5 of the revised document remains as before in relation to the NPPF not containing specific policies for NSIPS. In addition, the paragraph 202 NPPF test mentioned above in relation to designated heritage assets is reiterated in paragraph 208 of the revised document.

Local Plan policies

- 5.5.34. In relation to other Local Plan policies, HCC confirmed that the Proposed Development is consistent with the Local Transport Plan adopted in 2011, and the emerging Draft Local Transport Plan published in 2022. Both WCC and HCC consider the Proposed Development to be in accordance with the jointly prepared Winchester Movement Strategy. We find no reason to disagree with those positions.
- 5.5.35. We have considered the issues raised by WCC in relation to Climate matters and the Climate Neutrality Action Plan (2019). However, we concur with the Applicant that this document should be attributed little weight in the assessment of the Proposed Development with respect to climate matters as it specifically omits motorway emissions that require a national response and focuses on local measures for reducing emissions.
- 5.5.36. The Winchester District Local Plan Part 1 Policy DS1 indicates that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. Given our conclusions in relation to matters such as climate change, air quality, waste, flood risk and the water environment, we do not consider that there would be any material conflict with relevant aspects of that policy.
- 5.5.37. As indicated above, we consider that the Proposed Development, when considered as a whole, would be in accordance with the aims of the key

SDLP Policy SD3 'Major Development'. Furthermore, in the long-term the design approach for the Proposed Development is such that it would minimise the impact on the natural beauty, wildlife and cultural heritage of the SDNP consistent with the aims of SDLP Policy SD42.

HRA

- 5.5.38. Chapter 4 of this Report summarises the analysis and conclusions reached relevant to the HRA. The ExA's full HRA Recommendation Report is shown in Annex C of this Report. The ExA has had regard to the findings of the HRA Report that, subject to the mitigation measures secured in the dDCO, Adverse Effects on Integrity (AEoI) on the River Itchen SAC from the Proposed Development when considered alone or in combination with other plans or projects can be excluded from the impact-effect pathways assessed. There are no HRA matters that we consider would prevent the making of the DCO. However, in Section 3.5 of Chapter 3 we have highlighted in relation to the impact of air quality on habitats and designated sites that final confirmation of agreement to all issues relating to nitrogen deposition was not available from NE at the close of the Examination. The ExA identifies this as a matter that the SoST may wish to review, and it is included within Chapter 7 of this Report for that purpose.

The ExA's Conclusion

- 5.5.39. In conclusion, there is a well-established need for the Proposed Development and there is no scope for developing elsewhere or meeting the need in some other way. Taking all the above into account, we find that the matters in favour of the DCO being made, including the specific need to improve M3 J9 with the resulting traffic and transport benefits and the contribution that would make to the strategic Government policy objectives for the SRN, clearly outweigh those against. The overall balance of benefits and adverse impacts falls very strongly in favour of the grant of development consent.
- 5.5.40. In relation to the NPSNN paragraph 5.151, there are exceptional circumstances that justify the grant of consent for the Proposed Development within the SDNP. Since we do not consider that the Proposed Development should be categorised as 'significant road widening' or the 'building of new roads', the test set out in NPSNN paragraph 5.152 is not applicable and the strong presumption against such development does not apply in this case. There would also be compliance with NPSNN paragraph 5.153, in that we are satisfied that the Proposed Development would be carried out to high environmental standards and where possible include measures to enhance other aspects of the environment.
- 5.5.41. The ExA therefore concludes that for the reasons set out and incorporating the provisions of the rDCO (Appendix D), that the case for the making of the DCO for the Proposed Development has been made. Since we find that the Proposed Development would be acceptable in planning terms, we do not regard the question of alternatives as a matter that demands further consideration.

5.5.42. The ExA has outlined, in Chapter 7, matters which were dealt with on the basis of evidence available at the close of the Examination which the SoST may wish to consider further for the purpose of assisting the SoST to reach a final decision on the application for development consent.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

- 6.1.1. The full extent of the land which would be subject to powers of Compulsory Acquisition (CA) and required to enable the Applicant to construct the Proposed Development, as described in the Statement of Reasons (SoR) [[REP6-013](#)] is shown on the Land Plans [[REP8-003](#)], and the Works Plans [[REP3-003](#)]. It is further described in the Book of Reference (BoR) [[REP8-013](#)], the Explanatory Memorandum (EM) [[REP8-006](#)] and in the documents comprising the Environmental Statement (ES).
- 6.1.2. The final version of the Introduction to the Application Appendix A (Navigation Document) [[REP8-001](#)] charts the submission of these documents and provides a guide to the structure of the application and its principal contents.
- 6.1.3. There is no open space, common land or fuel or field garden allotments included in or affected by the Order land and therefore there is no requirement for Special Category Land Plans. Likewise, there is no Crown Land included in or affected by the Order land and hence there is no requirement for Crown Land Plans. In addition, there is no National Trust inalienable land which is affected by the CA powers.
- 6.1.4. The area of land within the application boundary is about 109 hectares (ha). The total area of land within the Order Limits over which CA powers are sought is about 76 ha. The total area of land within the Order Limits over which Temporary Possession (TP) powers are sought is some 18 ha. The total area of land within the Order Limits over which CA of rights only powers are sought is about 1 ha.

6.2. THE REQUEST FOR CA AND TP POWERS

- 6.2.1. The application for development consent seeks powers for the CA of land and rights over land and for the TP of land for construction, and operation (including maintenance) purposes.
- 6.2.2. The application was accompanied by an SoR [[APP-022](#)], Funding Statement [[APP-023](#)], BoR in five parts [[APP-024](#)], EM [[APP-020](#)], Land Plans and Works Plans [[APP-006](#) and [APP-007](#)], and Rights of Way and Access Plans [[APP-008](#)]. These accompanying documents and plans have been revised and updated, as necessary, during the Examination.
- 6.2.3. The SoR Annex A sets out details of the purpose for which CA and TP powers are sought and Annex B comprises a schedule of all objections made by representation to the granting of CA powers and the progress of negotiations with those Affected Persons (AP). Annex C of the SoR provides a schedule of engagement with Statutory Undertakers (SU) [[APP-022](#)].

- 6.2.4. The Examining Authority's (ExA) requested [[PD-007](#)] the Applicant to provide as standalone documents an updated Annex B and Annex C. The request was for the standalone Annex B to include additional columns for the relevant Work No(s) and the relevant Development Consent Order (DCO) articles that would authorise the acquisition of the rights and/or powers sought over the plot and for Annex C to give an indication as to whether Protective Provisions (PPs) had been agreed and included within the latest version of the Draft Development Consent Order (dDCO). These Annexes were updated at various times during the Examination with final versions provided at Deadline (DL) 8 and DL6 respectively [[REP8-011](#), and [REP6-011](#)].
- 6.2.5. The final BoR, Part 1, contains the names and addresses of each person within Categories 1 and 2, as set out in s57 Planning Act 2008 (PA2008), along with the area of each plot of land in which the development would be carried out [[REP8-013](#)]. The description of each plot also includes the reference to the extent of the acquisition or use sought in the dDCO in respect of that particular plot.
- 6.2.6. The BoR, Part 2, contains the names and addresses of each person within Category 3, as defined by s57 PA2008. A person is within Category 3 if the Applicant believes that, if the DCO were to be made and fully implemented, they would or might be entitled to make a relevant claim as defined in s57(6) of the PA2008.
- 6.2.7. The BoR, Part 3, contains the names of all those entitled to enjoy easements or other private rights over land which it is proposed shall be extinguished, suspended, or interfered with pursuant to the exercise of powers in the dDCO.
- 6.2.8. The BoR, Part 4, and Part 5 are blank as no plots have been identified as relating to Crown Land or interests or which may be subject to special parliamentary procedure, special category land or replacement land.
- 6.2.9. The final BoR [[REP8-013](#)] identifies the relevant plots of land and these are shown on the Land Plans.
- 6.2.10. The details of the powers sought in order to implement the required CA of land and the other powers sought are set out in the final dDCO [[REP8-004](#)]. The main powers authorising the CA of land, or interests in, or rights over land, are contained in Article 24 (CA of land) and Article 27 (CA of rights and the compulsory imposition of restrictive covenants) of the dDCO. The powers sought in relation to the TP of land do not constitute CA and are provided for in separate articles in the dDCO, albeit within the Powers of Acquisition section.
- 6.2.11. The final SoR section 3 [[REP6-013](#)], sets out the dDCO articles which relate to CA, or the interference with third party rights and additional powers. The additional CA powers are set out in Article 28 (extinguishment of public rights of way (PRoW)), Article 29 (extinguishment of private rights over land), Article 32 (acquisition of subsoil or airspace only) and Article 33 (rights under or over streets).

- 6.2.12. The main powers authorising the TP of land are contained in Article 34 (temporary use of land for carrying out authorised development) and Article 35 (temporary use of land for maintaining the authorised development).
- 6.2.13. The other rights and powers that the dDCO would confer on the Applicant that may interfere with property rights and private interests are set out in Article 11 (Street works), Article 16 (Temporary stopping up and restriction of use of streets), Article 17 (permanent stopping up and restriction of use of streets, and private means of access), Article 21 (Discharge of water), Article 22 (Protective works to buildings), Article 23 (Authority to survey and investigate the land), Article 25 (CA of land – incorporation of mineral code), Article 36 (Statutory Undertakers), Article 37 (Apparatus and rights of Statutory Undertakers in stopped up streets), Article 39 (Felling or lopping of trees and removal of hedgerows), and Article 40 (Trees subject to Tree Preservation Orders (TPOs)).
- 6.2.14. The final EM explains the purpose and effect of the dDCO, Part 5 powers of acquisition and possession of land [[REP8-006](#)].

6.3. STATUTORY UNDERTAKERS' LAND

- 6.3.1. If a SU makes a representation about the CA of land or a right over land which has been acquired for the purpose of its undertaking, and this is not withdrawn, s127 PA2008 applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the Secretary of State (SoS) is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land.
- 6.3.2. S138 PA2008 applies where a SU has a relevant right or relevant apparatus in the CA land. In those circumstances, the DCO can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.
- 6.3.3. The SoR section 7.4 [[REP6-013](#)] explains that the land affected by the Proposed Development includes the CA of SUs' rights on land comprising of plots as described in the BoR [[REP8-013](#)], and the DCO application provides for the diversion of existing utilities along the scheme length. The SoR final Appendix C reports on the Applicant's negotiations with each of these SUs [[REP6-011](#)]. The final dDCO includes PPs for SUs in Schedule 10 [[REP8-004](#)].

6.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

- 6.4.1. CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met.
- 6.4.2. The Appendix A of the SoR [[REP3-009](#)], sets out the purposes for which CA and TP powers are necessary and the interest to be acquired in

relation to each individual plot of the land. The final Annex B of the SoR [[REP8-011](#)] includes the relevant Work No(s) and the relevant DCO articles that would authorise the acquisition of the rights and/or powers sought over the plot.

- 6.4.3. The interest to be acquired, with the final dDCO numbering, is categorised as follows:
- 6.4.4. Class 1 - All freehold and leasehold interests to be compulsorily acquired under Article 24 and shaded pink on the Land Plans.
- 6.4.5. Class 2 – Acquisition of rights by the creation of new rights or the imposition of restrictive covenants under Article 27 and shaded blue on the Land Plans.
- 6.4.6. Class 3 – Land proposed to be temporarily possessed under Article 34 and Article 35 and shaded green on the Land Plans.
- 6.4.7. The Applicant's response to the ExA's first questions (ExQ1) [[REP2-051](#)] confirms that the BoR has a total of 117 plots in Part 1 (Category 1 and 2 persons) and 48 plots in Part 3. All 117 plots in Part 1 of the BoR [[REP8-013](#)] are accounted for in the SoR Annex A Parts 1-3 [[REP3-009](#)].

6.5. LEGISLATIVE REQUIREMENTS

- 6.5.1. CA powers can only be granted if the conditions set out in s122 and s123 PA2008 are met.
- 6.5.2. S122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate, as set out in the PA2008: Guidance related to procedures for the CA of land, former Department for Communities and Local Government, September 2014 (CA Guidance).
- 6.5.3. S122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. That does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.
- 6.5.4. S123 requires that one of three conditions is met by the proposal. The ExA is satisfied that the condition in s123(2) is met because the application for the DCO includes a request for CA of the land to be authorised.
- 6.5.5. A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:

- All reasonable alternatives to CA must be explored;
- the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.5.6. The Applicant considers the statutory conditions for the exercise of CA powers and the CA guidance in the SoR [[REP6-013](#)]. There is also general guidance in relation to CA in the Department for Levelling Up, Housing and Communities Guidance on compulsory purchase process and the Crichel Down Rules 2019.

6.6. OTHER MATTERS

6.6.1. Article 30 of the dDCO amends the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms and timeframes under the dDCO and PA2008.

6.6.2. Article 31 provides for the application of the Compulsory Purchase (Vesting Declarations) Act 1981 ("the 1981 Act"), containing the vesting procedures for land subject to compulsory purchase. It allows the undertaker to choose between the notice to treat procedure or the general vesting declaration procedure set out in the 1981 Act.

6.6.3. S120(5)(a) PA2008 provides that a DCO may apply, modify, or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) PA2008 provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. Since in certain instances the dDCO seeks to apply s120(5)(a), it is in the form of a statutory instrument.

6.7. EXAMINATION OF THE CA AND TP CASE

6.7.1. The ExA asked 43 first questions (ExQ1) [[PD-008](#)], 21 second questions (ExQ2) [[PD-011](#)] and 6 third written questions (ExQ3) [[PD-012](#)] in relation to the request for CA and TP powers which reflected the requirements of PA2008, and matters raised by parties in their representations. The questions cover a range of issues including:

- The scope and purpose of the CA powers sought.
- Whether there is a compelling case in the public interest for the CA of the land, rights and powers sought.
- Whether all reasonable alternatives to CA have been explored.
- Whether adequate funding is likely to be available.
- Whether the purposes of the proposed CA justify interfering with the human rights of those with an interest in the land affected.
- The accuracy of the BoR, Land Plans and points of clarification.
- The acquisition of Statutory Undertakers' land – s127 PA2008.
- Objections to the grant of powers of CA and TP.

- 6.7.2. At Deadlines (DL) 2, 5 and 6, CA and TP related submissions and responses to ExQ1, ExQ2 and ExQ3 respectively were provided by the Applicant and SUs.
- 6.7.3. An Accompanied Site Inspection (ASI) (ASI 1) was held on 10 July 2023 and a second ASI on 10 October 2023 (ASI 2). USIs were also undertaken on 9 March 2023, 28 April 2023, and 23 August 2023.
- 6.7.4. There was no request to be heard at a Compulsory Acquisition Hearing (CAH) made by any AP. The ExA was content that any outstanding queries on this topic could be satisfactorily responded to and dealt with in writing through further written questions and submissions. A CAH was not therefore held.

6.8. THE APPLICANT'S GENERAL CASE FOR THE GRANT OF CA AND TP POWERS

- 6.8.1. The Applicant's case for the grant of CA and TP powers is set out in the: SoR [[REP6-013](#)]; Funding Statement, [[APP-023](#)], and final BoR [[REP8-013](#)].
- 6.8.2. The SoR paragraph 1.8.3 [[REP6-013](#)] explains that it should be read alongside the other application documents that relate to the CA and TP powers sought by the Applicant and the need for the Proposed Development. Final versions of these documents include the:
- Land Plans [[REP8-003](#)].
 - Works Plans [[REP3-003](#)].
 - Draft DCO [[REP8-004](#)].
 - EM [[REP8-006](#)].
 - BoR [[REP8-013](#)].
 - Funding Statement [[APP-023](#)].
 - Case for the Scheme [[REP1-019](#)].
 - NPSNN Accordance Table [[REP5-017](#)].
 - Introduction to the Application (Rev 9) [[REP8-036](#)].
 - Consents and Agreements Position Statement [[REP5-006](#)].
- 6.8.3. The Applicant's final version of the Introduction to the Application Appendix A (Navigation Document) [[REP8-036](#)] sets out the updates to documents made during the Examination which led to the final versions identified above.

Section 122(2) PA2008 – The Scope and Purpose of the CA Powers Sought

- 6.8.4. The SoR refers to the CA Guidance, paragraph 11, which sets out the considerations that the SoS will take into account in deciding whether the condition in s122(2) has been met [[REP6-013](#)]. For s122(2)(a) to be met, the Applicant should be able to demonstrate that the land in question is needed for the development for which consent is sought. The SoS will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development. Further guidance is also provided in relation to compliance with s122(2)(b).

- 6.8.5. The SoR, section 5.3, explains the need for the land and the purposes for which CA powers are sought. Paragraph 2.2 of the NPSNN states 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. It goes on to state that improvements may also be required to address the impact of the national networks on quality of life and environmental factor. The way in which the strategic objectives of the Proposed Development are aligned with the NPSNN is set out in detail in the Case for the Scheme [[REP1-019](#)]. The Applicant's position is that this demonstrates that there would be substantial public benefits arising from the implementation of the Proposed Development.
- 6.8.6. The Applicant considers that the land included in the dDCO is the minimum land-take required to construct, operate, maintain, and mitigate the Proposed Development and is necessary to achieve the scheme objectives. The Applicant has sought to achieve a balance between minimising land-take and securing sufficient land to deliver the Proposed Development, noting that the detailed design of the scheme has yet to be developed. In that context, the limits of deviation (LoD) have been drawn as tightly as possible so as to avoid unnecessary land-take. In the event that less land proves to be required in a particular area following the detailed design stage, the Applicant would only seek to acquire that part of the land that is required and, in all events, will seek to minimise effects on land interests.
- 6.8.7. The CA powers are also required to override any existing rights and interests in the land as well as to grant the right to take TP of land for construction and maintenance purposes; without these rights over the land, the Proposed Development could not be delivered.
- 6.8.8. The SoR Annex A [[REP6-023](#)] sets out why compulsory powers are necessary in relation to each individual parcel of the Land, with reference to the relevant DCO works numbers and the nature of the works as set out in Schedule 1 of the dDCO. Annex A sets out in detail the purpose of acquisition and use of each plot.
- 6.8.9. The Applicant has provided further information as regards the scope and purpose of the CA powers sought in responses to ExQ1 [[REP2-051](#)]. The Applicant submits that the extent of the land which is proposed to be acquired is reasonable and proportionate.
- 6.8.10. The Applicant is therefore satisfied that the condition in s122(2) PA2008 is met. It considers that the Order land which is proposed to be subject to CA powers is either needed for the development, or is needed to facilitate the development, or is incidental to the development.

Section 122(3) PA2008

- 6.8.11. Turning to the condition in s122(3), the CA Guidance states at paragraphs 12 and 13 that the SoS will need to be persuaded that there

is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

Public benefit

- 6.8.12. S122(3) PA2008 provides that there must be a compelling case in the public interest for the land to be compulsorily acquired. The CA Guidance, paragraph 14, states that, in determining where the balance of the public interest lies, the SoS will weigh up the public benefits that a scheme will bring against any private loss to those affected by CA.
- 6.8.13. The Applicant's position is explained in the SoR [[REP6-013](#)] and other application documents including the Case for the Scheme [[REP1-019](#)]. The SoR section 2.3 sets out the benefits of the Proposed Development and further details are provided in the Case for the Scheme, the ES, and the Combined Modelling and Appraisal Report (CoMAR) (Rev 1) [[REP1-025](#)]. The Applicant has also responded to ExQ [[PD-008](#), [PD-011](#)] on this topic, namely, ExQ1 7.1.13, and ExQ2 7.2.2 [[REP2-051](#), [REP5-026](#)]. The Applicant's Closing Statement [[REP8-028](#)] section 2.3 summarises the benefits of the Proposed Development.
- 6.8.14. The Applicant asserts that the Proposed Development will deliver extensive benefits as follows:
- A reduction in congestion and delays though improved journey times and improved journey time reliability as it provides more capacity, which in turn reduces congestion and journey time delay.
 - Economic benefits including local air quality (£4.74M); accident reductions (£22.92M); travel time savings including commuting, business and other (£155.48M) which are predominantly due to the provision of the free-flow movement between the A34 and the M3; indirect tax revenues (£5.66M); wider economic impacts (£41.8M); and employment opportunities during construction.
 - Safety Improvements due to a decrease in the total number of collisions and casualties; and safer travel and reduced fear of accidents for pedestrians and cyclists. The greatest benefits are experienced because of the reduced traffic demand through the proposed junction gyratory.
 - Environmental benefits including improvements to visual amenity and landscape character over the long-term; wildlife and green infrastructure enhancements including Biodiversity Net Gain (BNG) and chalk grassland restoration; enhanced pollution and run-off control; enhanced provision for pedestrians, cyclists, and horse-riders. This includes a new footbridge over the River Itchen and new subways under junction 9 of the M3 (M3 J9), improving cycle connectivity, especially for the National Cycle Network (NCN) Route 23 and improvements to the horse-riding provision on the eastern side of the Proposed Development; improvements to the air quality and noise environment within Winchester City centre.
 - Once restoration measures and ground remodelling have been implemented and mitigation and enhancement measures, such as planting, have started to mature, the Proposed Development will

improve visual amenity and the landscape particularly to the east within the South Downs National Park (SDNP) where new earthworks and planting will screen the existing road and provide additional chalk grassland which will be integrated into the existing landscape.

- Wildlife fencing will ensure species are protected from road traffic which will be an improvement over the existing situation and green infrastructure links will be enhanced.
- The Proposed Development will provide enhanced pollution and run off control compared with the existing situation; and the scheme design using PAS 2080 (British Standards Institute (BSI), 2016) to manage and reduce embodied carbon.

6.8.15. The Applicant's position is that substantial benefits can only be realised if the land required for the Proposed Development can be guaranteed in a timely manner through the use of CA powers.

Private loss

6.8.16. The Applicant has sought to acquire the required land privately where reasonably possible, and negotiations are ongoing as is evidenced by the SoR Annex B [[REP8-011](#)]. However, to deliver the benefits of the Proposed Development requires the use of CA powers. This would result in private loss for those persons whose land or interests in land is compulsorily acquired. Appropriate compensation would however be available under the national compensation code.

Compelling case in the public interest

6.8.17. The SoR [[REP6-013](#)], section 5.4 indicates that the Applicant is satisfied that the condition set out in s122(3) PA2008 is met. The SoR Table 5.1 outlines the benefits delivered by the Proposed Development and its objectives.

6.8.18. The case for the Proposed Development is set out in Chapter 2 of the SoR and in other application documents, including the Case for the Scheme (Rev 1) [[REP1-019](#)]. The way in which the Proposed Development conforms with the NPSNN is set out in detail in Chapter 6 of the Case for the Scheme. General compliance with the NPSNN is set out in the NPSNN Accordance Table [[REP5-017](#)].

6.8.19. The Applicant recognises that the location of the Proposed Development partially within the SDNP is considered a particularly important factor in terms of the case in the public interest for CA of the land. The Case for the Scheme Chapter 7 [[REP1-019](#)] considers this issue and compliance with the NPSNN in relation to the development proposed within the SDNP. The Applicant submits that together they demonstrate that there is a compelling case in the public interest for the Proposed Development to be delivered.

Alternatives to CA

6.8.20. The SoR (Rev 5) [[REP6-013](#)], section 2.5 explains that at this stage, all the land sought to be acquired is considered to be necessary to deliver

the Proposed Development. However, should it transpire that any part of the land is not required, the Applicant would only seek to acquire that part of the land required, and in all events, will seek to minimise the effects on land interests.

- 6.8.21. The SoR (Rev 5) section 5.5, indicates that the Applicant has explored alternative options for the Proposed Development, and this is set out in Chapter 3 (Assessment of Alternatives) (Rev 1) of the ES [[REP4-007](#)] and Case for the Scheme (Rev 1) [[REP1-019](#)].
- 6.8.22. Between January and February 2018, non-statutory consultation was undertaken which presented the details of the proposed preferred option. The rejected options and the environmental design considerations were also presented as part of the consultation. This non-statutory consultation helped to develop the Preferred Route Announcement (PRA) made in July 2018.
- 6.8.23. Since the PRA, design development and the consideration of alternatives has continued with many of the design developments seeking to limit the effect on land. Following the statutory consultation in summer 2021 several alterations were made that further reduced the land-take.
- 6.8.24. Following feedback from South Downs National Park Authority (SDNPA) on the proposed landscape measures further material was incorporated into the design to screen the motorway from the SDNP and better integrate the landscape into the surrounding topography. This alternative landscape scheme obviated the need for the material deposition areas that had been presented at statutory consultation. As a result, all three deposition areas were removed with land take reduced accordingly.
- 6.8.25. In addition, continued refinement of the main construction compound layout meant that the footprint of this compound was reduced. Further consideration of the construction working space location and requirements also enabled the northern (satellite) construction compound to be entirely removed from the Proposed Development. Design refinements also reduced the land take associated with the River Itchen Site of Special Scientific Interest (SSSI).
- 6.8.26. The Applicant also responded to ExQ1, and ExQ2 and ExQ3 [[PD-008](#), [PD-011](#) and [PD-012](#)] in relation to alternatives in the context of CA [[REP2-051](#), [REP5-026](#)].
- 6.8.27. The Applicant's Closing Statement, section 3.1 [[REP8-028](#)] summarises its position in relation to the assessment of alternatives including modal alternatives with particular regard to the consideration of a rail-based solution. The Applicant refers to section 1.3.4 of Appendix A (Further information regarding alternatives) in its written summaries of oral case for Issue Specific Hearing (ISH) 3 [[REP4-036](#)] and the response to question ExQ3 4.3.2 [[REP6-023](#)].
- 6.8.28. The Applicant's position on this matter remains that the appraisal process informing the Department for Transport's (DfT) decision reflects the wording contained within paragraph 4.27 (line 8 and 9) of the NPSNN

which states that: “For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process”. Given the project’s status as a national road project included within an investment strategy, the Applicant submits that the ExA can reasonably rely on the assumption that a suitable and proportionate assessment of alternative modes has taken place.

- 6.8.29. The Applicant’s Closing Statement, section 3.2 [REP8-028] summarises its position in relation to the proposed location of the Construction Compound. This refers to the Applicant’s response to ExQ3 4.3.5(I) [REP6-023] and ExQ2 4.2.2(ii) [REP5-026], where the Applicant has further expanded upon how the sensitivity of the SDNP has been determined.
- 6.8.30. In summary, the Applicant’s response to ExQ3 14.3.2 [REP6-023], sets out why the approach taken to determining the appropriate siting of the construction compound was proportionate and reasonable. Given the high level of protection afforded to the SDNP by policy and the duty have regard to the statutory purposes of the SDNP, the Applicant contends that appropriate weight was given to balancing the temporary impacts arising from construction against the permanent impacts of the Proposed Development.

Availability of Funds for Compensation

- 6.8.31. The CA Guidance, paragraph 9, states that there must be a reasonable prospect of the requisite funds for the scheme being available. The Applicant indicates that certainty of funding for the Proposed Development, including a guarantee that all compensation claims will be funded is detailed in the Funding Statement [APP-023].
- 6.8.32. The SoR, section 5.6, [REP6-013] also states that the Applicant is content that there is reasonable prospect of the necessary funds for acquisition being available for the reasons set out in the Funding Statement [APP-023]. This explains that the Proposed Development would be adequately funded through the Road Investment Strategy (RIS), using the change control processes set out in Part 6 of the Highways England (now National Highways) Licence (see Appendix A of the Funding Statement), if required. Therefore, funding is no impediment to the delivery of the Proposed Development or the payment of compensation to persons affected by CA, TP, or a blight claim.
- 6.8.33. The Proposed Development has a most likely estimate of £215 million, including allowances for risk and inflation at the date of application. This estimate includes all costs to deliver the scheme from Options stages through to the opening for traffic. It includes an allowance for compensation payments relating to the CA of land interests in, and rights over, land and the TP and use of land. It also takes into account potential claims under Part 1 of the Land Compensation Act 1973, s10 of the Compulsory Purchase Act 1965 and s152(3) PA2008.

- 6.8.34. The Applicant is a government owned company and is responsible for operating, maintaining, and improving the strategic road network in England. The Proposed Development was first announced in the Road Investment Strategy 2015 - 2020 (RIS1) (see Appendix B of the Funding Statement) as a committed and therefore funded proposal. The funding commitment was reiterated in the National Highways five-year Delivery Plan 2015-2020, which was published in March 2015, and in subsequent annual delivery plans (see Appendix C of the Funding Statement).
- 6.8.35. RIS2 Part 3: The Investment Plan sets out the Government's expenditure priorities which confirms the ongoing commitment to the Proposed Development (see Appendix D of the Funding Statement). The funding commitment was also reiterated in the National Highways five-year Delivery Plan 2020-2025. The Proposed Development is detailed as one of the key investments on the Strategic Road Network (SRN) in the South-East of England with a start of works to occur in Road Period (RP) 2 (2023/24) and notes that the open to traffic date will occur during RP3 (See Appendix E of the Funding Statement).
- 6.8.36. The Funding Statement concludes that the Proposed Development would be fully funded by the DfT and consequently the Proposed Development would not be dependent on funding contributions from other parties.
- 6.8.37. The Applicant also responded to ExQ1 7.1.19 to 7.1.21 [[REP2-051](#)], and ExQ2 7.2.10 [[REP5-026](#)] in relation to funding.

Statutory Undertakers' Land

- 6.8.38. The Applicant explains that the SoR section 4.10 [[REP6-013](#)] indicates that a number of existing utility services are located in the surrounding area that would be affected by the Proposed Development. The relevant major utility diversions are set out in summary and have been defined as specific works within the development, listed in Schedule 1 of the dDCO [[REP8-004](#)]. These works are also shown on the Works Plans [[REP2-003](#)].
- 6.8.39. The SoR section 7.4 states that protection for SUs' assets will be included within the PPs in Schedule 9 to the dDCO and/or in asset protection agreements between the Applicant and the undertaker. Accordingly, the Applicant considers that the SUs would not suffer serious detriment to the carrying out of their undertaking because of the CA of the land or as a result of the acquisition of rights over land. The Applicant submits that the tests set out in s127(3) and s127(6) of the PA2008 are therefore satisfied. In addition, proposals for the removal of apparatus are wholly necessary for the carrying out of the Proposed Development therefore the requirements of s138 of the PA2008 are also met.
- 6.8.40. The updated information about the status of engagement with SUs is presented in Annex C of the SoR [[REP6-011](#)].

Other Consents and Agreements

- 6.8.41. The Consents and Agreements Position Statement (Rev 3) [[REP5-006](#)] sets out the additional consents outside of the DCO and the current position as to the status of securing those consent.
- 6.8.42. The Applicant is not aware of any impediments to the delivery of the Proposed Development. Whilst there are a number of other consents being sought, there are no obvious impediments to securing those consents. The Applicant is satisfied that all necessary consents to enable the Proposed Development to proceed have been identified and that there is no reason why such consents should not be secured or granted. This is confirmed by the Applicant at DL8 [[REP8-029](#)].

Acquisition by Negotiation

- 6.8.43. The SoR (Rev 5) section 4.9 [[REP6-013](#)] sets out the Applicant's position on this topic. The Applicant is aware of the requirement of paragraph 25 of the CA Guidance to seek to acquire land by negotiation wherever practicable. The power to acquire land compulsorily should only be sought if attempts to acquire by agreement fail.
- 6.8.44. However, the Applicant notes that the CA Guidance also recognises that where proposals would entail the CA of many separate plots of land, it may not always be practicable to acquire each plot of land by negotiation. The CA Guidance states: "*Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset*".
- 6.8.45. The Applicant has engaged with all affected landowners, leaseholders, and occupiers with a view to acquiring their land interest by agreement by writing to them to inform them of the Applicant's willingness to negotiate to acquire the Land by agreement, and to invite dialogue at that point. The Applicant has been in the process of engaging with various land interests as regards the acquisition of land and interests by agreement, and negotiations have been ongoing throughout the DCO process. The status of such negotiations at the close of the Examination is set out in Annex B of the SoR [[REP8-011](#)].
- 6.8.46. Whilst negotiations are ongoing, the Applicant is mindful that it is under a duty to acquire land at best value and that it is required to deliver the Proposed Development within a specified timescale. It has concluded that it may not be possible to acquire by agreement all land interests necessary to deliver the Proposed Development within this timescale.
- 6.8.47. The SoR (Rev 5) [[REP6-013](#)] Table 4.1, also sets out further parcels of land in unknown ownership which cannot be acquired by agreement. The Applicant submits that it is unlikely that the Proposed Development would be capable of being delivered without the CA powers being sought in the dDCO.

Human Rights

- 6.8.48. The SoR (Rev 5) [[REP6-013](#)] sections 6.1, 6.2 and 6.3 give consideration to the Human Rights Act 1998 which incorporated into domestic law the

provision of the European Convention on Human Rights (ECHR). The relevant articles are Article 1 of the First Protocol, Article 6, and Article 8. The Applicant has also provided responses to ExQ1 and ExQ2 [[REP2-051](#), [REP5-026](#)] on this topic.

- 6.8.49. The dDCO, if made, may infringe the human rights of persons with an interest in land. This infringement is authorised by law provided that:
- There is a compelling case in the public interest for the CA powers included within the DCO, and that proper procedures are followed; and
 - Any interference with a human right is proportionate and otherwise justified.
- 6.8.50. The Applicant recognises that the Proposed Development may have an impact on individuals but considers that the significant public benefits that would arise from it, outweigh any harm to those individuals. The Applicant submits that the dDCO strikes a fair balance between the public interest in seeing the Proposed Development proceed and the private rights which will be affected by the CA.
- 6.8.51. In relation to both Article 1 and 8, the land over which CA powers are sought as set out in the dDCO is the minimum necessary to ensure the delivery of the Proposed Development and has been reduced as the scheme design has been developed. The Proposed Development has been designed to minimise harm whilst achieving its publicly stated objectives. The Applicant submits that the interference with human rights is both proportionate and justified.
- 6.8.52. In relation to Article 6, the Applicant is content that proper procedures have been followed for both the consultation on the Proposed Development and for the determination of the CA powers included in the dDCO. The Applicant contends that throughout the development of the scheme, it has given persons with an interest in the land a full opportunity to comment on the proposals, both in a statutory and non-statutory capacity, and has endeavoured to engage with land interests. The Applicant has had regard to land interest feedback in both the initial design of the Proposed Development and in iterative design changes throughout the life of the scheme. Examples of design changes are provided within the Consultation Report [[APP-025](#)].
- 6.8.53. The Applicant also points to the ability of any individuals affected by the application to submit representations by way of an objection in response to any notice given under s56 PA2008, the examination of the application by the ExA, any Written Representation (WR) procedures which the ExA decides to hold, and any CAH held under s92 of the PA2008. 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 s118 of the PA2008.
- 6.8.54. Any person affected by the exercise of CA powers or by the exercise of TP, may be entitled to compensation. This entitlement to compensation is

provided for by the existing compensation code and Article 26 and Schedule 6 to the dDCO.

The Equality Act

- 6.8.55. The SoR (Rev5) [[REP6-013](#)] section 6.4 asserts that the Applicant has complied with its duties under s149 of the Equality Act 2010 and has had due regard to the need to: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by or under the Equality Act 2010; (ii) advance equality of opportunity between persons who share a protected characteristic and persons who do not share it; and (iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.8.56. The Applicant has conducted an Equality Impact Assessment (EqIA) [[APP-167](#)] which explains how it has had regard to its Public Sector Equality Duty (PSED) in the context of the application for development consent for the Proposed Development.
- 6.8.57. In response to ExQ1 7.1.26 [[REP2-051](#)] the Applicant indicates at paragraph 7.1.23, that the scheme has the potential to disproportionately affect the age, disability and pregnancy and maternity equality groups due to the potential temporary diversion or closure of routes during construction.
- 6.8.58. In response to ExQ2 7.2.11 [[PD-011](#)] which sought further details of any ongoing engagement with APs with protected characteristics in relation to those matters identified as having the potential to disproportionately affect them, the Applicant explains that since submission of the application, there have been no design changes that would require further consultation of this nature [[REP5-026](#)]. The potential impacts would be due to temporary diversions or closure which would occur only during construction. Consideration to minimising these potential impacts would be taken into consideration when confirmation diversion routes with Hampshire County Council (HCC). An updated EqIA would be provided as part of all future Project Control Framework (PCF) Stages (4-7).

The Applicant's Conclusions

- 6.8.59. The SoR (Rev5) section 8 [[REP6-013](#)] states that in determining the extent of CA and TP powers proposed in the dDCO [[REP8-004](#)] the Applicant has had regard to the legislative tests set out in the PA2008 and to the advice in the CA Guidance. The Applicant is content that the scope of powers sought and the extent of the interests in the land to be acquired by CA are required for the Proposed Development and are the minimum necessary that would allow it to construct, operate and maintain the scheme.
- 6.8.60. The Applicant has consulted all persons affected by the CA and TP powers and persons who might have a claim for compensation arising from the Proposed Development. The Applicant has consulted such persons during preparation of the DCO application and in the design of the Proposed Development to address their concerns and to ensure that any impacts

are reduced or removed. The Applicant has further sought to acquire any interests in the land by agreement wherever practicable.

- 6.8.61. The Applicant has considered the human rights of the individuals affected by the CA and TP powers. The Applicant is satisfied that there is a compelling public interest case for CA and that the significant public benefits arising from the Proposed Development would outweigh the harm to those individuals. Without the grant of CA and TP powers the Applicant considers that it would not be possible to construct the scheme or realise the public benefits that would arise from it.

6.9. THE OBJECTIONS RECEIVED TO THE CA PROPOSALS

- 6.9.1. The ExA's Procedural Decision dated 25 May 2023 [[PD-007](#)], requested the Applicant to provide the 'Statement of Reasons, Annex B – Schedule of all objections made by representation to the granting of CA powers and progress of negotiations with those APs as a standalone Examination document in order to facilitate regular updates during the Examination. The ExA also requested the provision of a separate Annex C – Schedule of Engagement with SUs identifying all relevant SUs and the position as regards the agreement of PPs for each one.
- 6.9.2. The latest version of Annex B [[REP8-011](#)] identifies the APs, the category and type of land interest held, the relevant plot number and associated work number, the nature of the rights and/ or powers sought by reference to the associated dDCO Article and relevant plot numbers. There is a degree of overlap with some APs falling within one or more parts of the BoR. Annex B also provides a summary update of the status of the objection and/ or negotiations. This sets out the current position on negotiations, and identifies those objections which remain outstanding, and those where agreement has been reached or is expected to be reached.
- 6.9.3. The SoR section 4 [[REP6-013](#)], outlines the process by which the Applicant identified those persons falling within Categories 1, 2 and 3. This explains that landowners and other Interested Parties (IP) were initially identified through title searches with HM Land Registry. The parties identified through the Land Registry searches were contacted by the land referencing supplier through the land referencing process. This included issuing a Request for Information (RFI) to all parties. Where RFIs were not returned to the Applicant, further follow up letters were issued, and site visits were conducted to visit properties to verify information. The forms were supported by emails, telephone calls and landowner engagement meetings to verify and confirm information.
- 6.9.4. On completion of the initial desk-based exercise described above, the extent of unregistered land interests became known. In order to establish interests in relevant areas of unregistered land that falls within the proposed order limits, public sources of information were used including site visits, posting of sites notices, contacting the relevant Highway Authority, and querying records held by SUs and other online resources.

Discussions were also held as part of the ongoing engagement and consultation with affected landowners.

- 6.9.5. The Applicant has relied on the presumption in law that where the subsoil of a highway is unregistered, and no other owner has been identified following diligent enquiry, the frontagers to that highway own the subsoil to the half width of the highway unless it is known that it is in some other ownership. In all cases reasonable diligent enquiries have been made to establish ownership.
- 6.9.6. In response to ExQ1 7.1.27 to 7.1.29 [[REP2-051](#)], the Applicant provided further information and explanation in relation to the accuracy of the BoR including in respect of the land referencing process and the steps taken to ensure that all APs were identified, consulted, and listed where necessary in the BoR.
- 6.9.7. The BoR [[REP8-013](#)] notes that for some plots the name of the owner is still recorded as being unregistered/unknown. In response to ExQ1 7.1.31 [[REP2-051](#)], the Applicant explained further the steps that were followed to investigate ownership of unregistered land. This included visiting and inspecting land where accessible to ascertain the presence of an interest and the erection of site notices on, and in the vicinity of, unregistered land, inviting persons to contact the Applicant and its land agents. The Applicant understands that the majority of the unregistered land in the project is public highway and as such, the likelihood is that the 'owner' will be the Applicant or the local authority. The ExA is content that diligent inquiry to identify all relevant persons with an interest in land has been undertaken including for those plots which remain categorised as unknown.
- 6.9.8. The details of the initial objections raised are set out in the Relevant Representations (RR), and WR for those persons listed in Annex B and in their further oral and written responses made during the Examination. For full details of those objections reference should be made to the submissions of the relevant parties set out in the Examination Library. The objections are considered here in the context of the application for the grant of CA powers.
- 6.9.9. The APs listed within Annex B include those where no substantive objection has been made. We shall now summarise the cases for those APs who have raised substantive objections to the grant of CA powers that have not yet been formally withdrawn, followed by the Applicant's response, before setting out our considerations for each outstanding objection.
- 6.9.10. This will include the consideration of objections made by persons within Categories 1 and 2 and those who also fall within Category 3. The ExA then considers the position in relation to SUs and whether any outstanding objections remain.
- 6.9.11. We set out later in this Chapter our approach to the consideration of CA issues which also forms the basis of our considerations and conclusions

drawn in relation to all the objections made and related matters which now follow. These objections have therefore all been considered against the tests set out in the PA2008, in the light of the CA Guidance and the provisions of the Human Rights Act 1998 and the Equality Act 2010. The ExA has also considered those issues which raise important and relevant matters relating to the merits of the application under the various topic headings under Chapter 3 of this Report.

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

- 6.9.12. As indicated above, these are listed together with other APs who have not raised objection, in the SoR Annex B [[REP8-011](#)] which also identifies the type of interest held by them, the relevant plots which are being sought, and the rights and/or powers to which they would be subject. The individual site-specific issues raised during the course of the Examination by those APs with CA objections that have not been formally withdrawn are as follows:

Mr Geoffrey Michael Fairris

- 6.9.13. The RR of Geoffrey Michael Fairris [[RR-030](#)] raises the issue of his access rights along Long Walk / Fulling Mill Lane. He is included in the BoR [[APP-024](#)] Part 1 as a Category 1 owner in respect of Plots 4/1c and 5/2d and in Part 2 as a Category 3 person.

The Applicant's response

- 6.9.14. In response to ExQ1 7.1.37 [[REP2-051](#)], the Applicant clarifies that Plot 4/1c is to be used temporarily as indicated in the BoR [[REP8-013](#)]. The SoR [[REP6-013](#)] clarifies that this is in relation to Work No.9 being the construction of a new footway / cycleway and horse-riding route (approximately 1390 metres in length) and associated drainage and landscaping features to connect Long Walk and Easton Lane. The dDCO Schedule 7 [[REP8-004](#)] secures this possession and purpose.
- 6.9.15. Plot 5/2d is to be used temporarily as set out in the BoR. The SoR clarifies that the works associated with this plot are those associated with or ancillary to the construction, operation, or maintenance of the Authorised Development. The dDCO Schedule 7 [[REP8-004](#)] secures this possession and purpose.
- 6.9.16. The possession of these plots temporarily is the lowest interest which the Applicant can acquire. Mr Fairris' interest in this land is as presumed landowner of the subsoil of the unregistered highway and of access. The Applicant in its response to [RR-030](#) and [[REP1-031](#)] has confirmed that they would ensure that a safe means of access would be maintained throughout and indicated that if further discussions were required for Mr Fairris to contact the Applicant's land agent.
- 6.9.17. The Applicant submits that its case as set out in the Case for the Scheme [[REP1-019](#)], SoR [[REP6-013](#)], and Funding Statement [[APP-023](#)] demonstrates that the interference with human rights would be proportionate and justified.

6.9.18. The Applicant's response to ExQ2 7.2.16 confirms that the individual rights referred to by Mr Fairris in his RR [[RR-030](#)] are known to it. A safe means of access would be maintained through the detail included in the detailed Traffic Management Plan (TMP) which is required pursuant to Requirement 11 of the dDCO. The Applicant's position is that this means that there would be no interference with the rights held by Mr Fairris.

The ExA's considerations

6.9.19. The submission of this AP raises the issue of his access rights along Long Walk / Fulling Mill Lane.

6.9.20. We note that only TP is sought for the relevant plots. In the light of the Applicant's response to our first and second questions on this matter, we are satisfied that a safe means of access would be maintained in this location throughout that temporary period. This would be secured through the detailed TMP and a requirement of the DCO.

6.9.21. The ExA considers that the Applicant has provided a reasonable explanation of the need for and the extent of the land within the scope of the TP powers sought. The proposed TP powers in relation to this land are necessary for the achievement of the Applicant's reasonable objectives and this represents a reasonable and proportionate approach. The ExA concludes that the matters raised do not preclude the exercise of the relevant TP powers should the Secretary of State for Transport (SoST) decide to grant development consent for the Proposed Development.

Mr Jonathan William Muir

6.9.22. The RR of Jonathan William Muir [[RR-053](#)] refers to his need to access his land at Abbots Worthy at all times via the gate adjoining the A33 while the works are being undertaken and when they are complete. Critical maintenance and management of the site needs to occur, and access would be required through the only access point on the A33. He also refers to the SSSI status of the land and that the construction of the project should include sufficient infrastructure and drainage provision.

6.9.23. He is listed in the BoR [[APP-024](#)] Part 1 as a Category 2 person in respect of rights of access in respect of Plot 3/2b and in Part 2 as a Category 3 person, and also in Part 3 in respect of the same plot.

The Applicant's response

6.9.24. In response to ExQ1 7.1.39 [[REP2-051](#)], the Applicant clarifies that Plot 3/2b is to be acquired permanently as per the BoR. The SoR indicates that this is in relation to Work No's 1, 1b, 1c, 1d, and 2 which are set out below:

- Work No 1. As shown on sheet nos. 3, 5 and 6 of the Works Plans and being the improvement and construction of the realignment of the northbound and southbound carriageways of the A33 between B3047 (London Road) / A33 junction and proposed A33 / M3

northbound on slip roundabout (approximately 1371 metres in length).

- Work No 1b. The construction of a realigned central reserve on the A33, approximately 60m in length at the location shown on sheet 3 of the Works Plans.
- Work No 1c. The construction of a widened section of the A33 and reconfiguration to a two-way layout, approximately 190m in length at the location shown on sheet 3 of the Works Plans.
- Work No 1d. The construction of a realigned Taylor Maxwell Business Park egress to the A33 at the location shown on sheet 3 of the Works Plans.
- Work No 2. As shown on sheet nos. 3, 5, 6 and 7 of the Works Plans and being the construction of a footpath/cycle path route between B3047 (London Road/ A33 junction and M3 J9 gyratory (approximately 2000m in length) including the construction of a footpath/ cycle path underpass (approximately 24 metres in length).

6.9.25. The Applicant has responded to [RR-053](#) in Response to the RRs [[REP1-031](#)] to confirm that a safe means of access would be maintained. The Applicant has also responded to the consideration that has been given to impact on the SSSI in its response to [RR-053](#).

6.9.26. The Applicant considers that interference with Article 1 of the First Protocol and Article 8 of the ECHR will be a relevant consideration to all the land identified in Annex A of the SoR [[REP2-019](#)]. The Applicant submits that its case, as set out in the Case for the Scheme [[REP1-019](#)], SoR and Funding Statement [[APP-023](#)], demonstrates that the interference with human rights would be proportionate and justified.

The ExA's considerations

6.9.27. As indicated above, the ExA has considered those issues which raise important and relevant considerations such as the effect on the SSSI under the relevant generic Section of Chapter 3 of this Report.

6.9.28. In the light of the Applicant's submissions, the ExA is satisfied that the reasonable access arrangements to the relevant land holding would be maintained. The proposed CA powers sought by the Applicant in respect of this plot would be necessary in order to implement the Proposed Development and it would be reasonable and proportionate for those powers to be exercised. We do not find that the matters raised by this objector preclude the exercise of those CA powers should the SoST decide to grant development consent for the Proposed Development.

Denise Rosewell

6.9.29. The written summary of Denise Rosewell's oral submissions at the Open Floor Hearing (OFH) [[REP1-035](#)] explains that her property would be adjacent to and would overlook the construction compound. She has concerns regarding air quality, noise, and light pollution both during works and on completion. She also has concerns about possible restricted access to her property during works, particularly the gateway to her

paddock. Furthermore, there is a borehole sited approximately 50-100m from the proposed attenuation and infiltration basin (EDB5). This borehole provides drinking water to her home and adjacent farmland totalling approximately 25 ha. She is concerned that her drinking water supply would become contaminated.

The Applicant's response

- 6.9.30. The Applicant's response to written summaries of oral submissions made at OFH1 [REP3-020] indicates that the borehole detailed as Mansard House is the location referred to by Denise Rosewell. This borehole for private groundwater abstraction is shown on Figure 3.14 'Licenced and private abstractions and SPZs' of Appendix 13.2: Hydrogeological Risk Assessment [APP-144] and is 90m east of the application boundary. The borehole is up the hydraulic gradient of the proposed works which means that groundwater flowing past Drainage Basin 5 would be flowing away from the borehole. It is therefore considered to have a negligible risk of impacting it.
- 6.9.31. Walking, cycling and horse-riding (WCH) route closures and associated diversions would be avoided unless absolutely necessary. However, due to the nature of the work required on the M3 J9 gyratory, there would be a diversion required to the NCN Route 23 as the new gyratory abutments are constructed. Figure 2.6 (Temporary diversion of walking, cycling and horse-riding routes) of Chapter 2 (The Scheme and its Surroundings – Figures (Part 3 of 4)) of the ES [APP-063] shows two temporary diversion routes for NCN Route 23. The Applicant has also provided information in relation to the air quality, noise and vibration, landscape impact and light pollution.
- 6.9.32. In its cover letter at DL4 [REP4-033], the Applicant gave an update of further investigations and assessment of the groundwater borehole in this location and indicated that it has corresponded with the owners in this regard. The Applicant's response to ExQ2 10.2.3 [REP5-026] states that the Applicant provided a copy of the covering letter at Appendix A (Cover Note regarding Hydrogeological Risk Assessment Basin 5) in the Cover Letter DL4 [REP4-033] to the IP on the 14 August 2023 ahead of DL4. The IP confirmed via email on the 4 September 2023 that they had reviewed the covering letter and that they had no further comments.

The ExA's considerations

- 6.9.33. The ExA notes that Denise Rosewell is listed in the BoR Part 2 (Land outside the Development Consent Order Boundary) as a person within Category 3 that would or might make a relevant claim as defined by s57 of the PA2008.
- 6.9.34. The ExA has considered those issues which raise important and relevant considerations such as the diversion of rights of way including NCN Route 23, air quality, noise and vibration, visual effects and light pollution under the relevant generic Sections of Chapter 3 of this Report and our conclusions on those matters are set out therein.

6.9.35. In the light of the Applicant's submissions, the ExA is content that the relevant groundwater borehole would not be materially affected by the proposed CA powers sought by the Applicant in this location. Those powers would be necessary in order to implement the Proposed Development and it would be reasonable and proportionate for those powers to be exercised. We do not find the matters raised by this AP preclude the exercise of those CA powers should the SoST decide to grant development consent for the Proposed Development.

STATUTORY UNDERTAKERS' LAND

Sections 127 and 138 PA2008

6.9.36. S127(2) provides that a DCO may include provisions authorising the CA of SUs' land only to the extent that the SoS is satisfied of the matters set out in subsection (3). The matters set out in subsection (3) are that the nature and situation of the land are such that:

- It can be purchased and not replaced without serious detriment to the carrying on of the undertaking;
- or, if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

6.9.37. S127(5) provides that a DCO may include provisions authorising the CA of a right over SUs' land by the creation of a new right over land only to the extent that the SoS is satisfied of the matters set out in subsection (6). The matters set out in subsection (6) are that the nature and situation of the land are such that:

- The right can be purchased without serious detriment to the carrying on of the undertaking;
- or any detriment to the carrying on of the undertaking, in consequence of the acquisition of the rights, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

6.9.38. S138(4) provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if the SoS is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the order relates.

The Applicant's general case in relation to SUs' land

6.9.39. The full extent of SUs' land and interests affected by the Proposed Development is set out in section 7.4 of the SoR [\[REP6-013\]](#). The SoR [\[REP6-013\]](#) confirms that the DCO, if made, will authorise the CA of SUs' rights on land comprising of plots as described in the BoR [\[REP8-013\]](#) and shown on the Land Plans [\[REP8-003\]](#). The land rights are held by SUs for the purposes of carrying out their statutory undertaking.

6.9.40. The Applicant indicates that adequate protection for SUs' assets will be included within the PPs in Schedule 10 to the dDCO and/or in asset

protection agreements between the Applicant and the undertaker. Accordingly, 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 of the CA of rights over land. The Applicant submits that the tests set out in s127(3) and s127(6) PA2008 would therefore be satisfied. In addition, proposals for the removal of apparatus are wholly necessary for the carrying out of the Proposed Development and therefore the requirements of s138 PA2008 would also be met.

- 6.9.41. In response to ExQ1 7.1.34 [[REP2-051](#)], the Applicant explains that the PPs for electricity, gas, water, and sewerage undertakers in Part 1 and for operators of the electronic communications code networks in Part 2 are on standard terms for National Highway's DCOs. The Applicant is not aware that any concerns about the provisions in Part 1 or Part 2 have been raised by affected SUs other than those with whom it is already engaging to negotiate bespoke PPs.
- 6.9.42. Article 36 of the dDCO [[REP8-004](#)] provides that the Applicant may acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belong to SUs; and extinguish the rights of, or remove or reposition the apparatus belonging to SUs over or within the Order land. Therefore, s127 and s138 PA2008 apply in equal measure to all the interests listed in Annex C of the SoR [[REP2-018](#)], and Column 5 of Annex C sets out the relevant plots where there is apparatus held by SUs. Annex A of the SoR sets out the extent of works in each plot.
- 6.9.43. The Applicant's SoR Appendix C - Status of Negotiations with Statutory Undertakers [[REP6-011](#)] identifies the relevant plots and their location. It includes the position on negotiations with SUs as at DL6. The Applicant's DL8 Cover Letter [[REP8-029](#)] provides the latest position on negotiations with SUs. The Applicant confirms that it has agreed bespoke PPs with Southern Gas Networks plc (SGN) as set out in Part 3 of Schedule 10 of the dDCO [[REP8-004](#)], and the Environment Agency (EA) as set out in Part 4 of Schedule 10 of the dDCO. The Applicant has agreed terms with SGN for a confidential side agreement.
- 6.9.44. The Applicant has also engaged with Southern Water Services Ltd (SWS) who have confirmed that Part 1 of Schedule 10 of the dDCO [[REP8-004](#)] provides sufficient protection for their apparatus and undertaking. The Applicant continues to engage with SWS Limited on the negotiation of a confidential side agreement.
- 6.9.45. Finally, the Applicant confirms that it has not been contacted by other SUs requesting bespoke PPs outside the standard provisions in Parts 1 and 2 of Schedule 10 of the dDCO.

Southern Gas Networks (SGN) objection

- 6.9.46. The RR of SGN [[RR-090](#)] objects to the proposed Order to ensure the protection of its interests in land and apparatus and the safe and effective operation of its gas transportation network. SGN's primary concern is to meet its statutory obligations and ensure that any

development does not impact in any adverse way upon those statutory obligations. The Applicant seeks powers within the dDCO for the CA of land and rights in which SGN is interested. SGN therefore wishes to protect its position in the light of existing apparatus that is both within, and in the vicinity of, the proposed application boundaries through suitable PPs being secured in the dDCO.

- 6.9.47. The Closing submission of SGN [[REP8-032](#)] confirms that the parties have reached an agreed position regarding the provision of SGN's preferred PPs in the dDCO and are entering into a confidential side agreement.

The Applicant's response

- 6.9.48. In response to ExQ3 7.3.6 [[REP6-023](#)], the Applicant indicates that it has agreed with SGN to include bespoke provisions at Schedule 10, Part 3 of the dDCO [[REP8-004](#)]. These provisions would be subject to a side agreement that is not yet complete but, in any case, would not be disclosed as part of the Examination. The Applicant's Cover Letter DL8 [[REP8-029](#)] provides a final update on progress made in its discussions with SGN.

The ExA's Conclusions on the SGN objection

- 6.9.49. The Closing Submission of SGN [[REP8-032](#)] confirms that engrossments of the side agreement between the parties were being circulated for execution with completion anticipated the following week, with withdrawal of SGN's objection anticipated shortly thereafter.
- 6.9.50. However, no withdrawal of SGN's objection was submitted prior to the close of the Examination. Nevertheless, the ExA considers that adequate protection for this SUs' assets is included in the PPs in Schedule 10 Part 3 to the dDCO. We conclude that the proposed PPs are appropriate, and the SoST can be satisfied that the prescribed tests set out in s127 would be met.
- 6.9.51. In relation to s138, the ExA considers that the extinguishment of rights and removal of apparatus sought by the Applicant in relation to the SGN land is necessary for the purpose of carrying out of the Proposed Development. In the event that development consent is granted, the DCO should include provision authorising the CA powers sought over this SU's land.

Southern Water Services Ltd objection

- 6.9.52. The RR of SWS [[RR-091](#)] states that the dDCO, if made, would authorise the exercise of powers over or near land in which SWS maintains assets and/or has other rights for the purposes of discharging its statutory duties. Unchecked, the exercise of such powers in respect of SWS's interests would cause severe detriment to it. Furthermore, should the DCO be made, it would authorise works within certain of SWS's groundwater abstraction capture zones. SWS seeks further information from the Applicant to confirm that the construction and operation of the Proposed Development would not give rise to any adverse effects on

these zones, and that sufficient mitigation measures would be put in place.

- 6.9.53. Nonetheless, SWS and the Applicant have been positively engaging on some of these matters for some time and SWS saw no impediment at that stage to the parties being able to reach a satisfactory arrangement during the course of the Examination. However, in the absence of such an arrangement having been formalised, SWS was obliged at the outset to formally object to the DCO application on the basis that it would cause severe detriment to SWS's apparatus and operations.

The Applicant's response

- 6.9.54. In response to ExQ3 7.3.6, the Applicant indicated that it had agreed with SWS that SWS is content to rely on the standard set of provisions contained at Schedule 10, Part 1 of the dDCO [[REP8-004](#)]. These provisions will be subject to a side agreement that is not yet complete but is not proposed to be disclosed as part of the Examination.
- 6.9.55. The Applicant's Cover Letter DL8 [[REP8-029](#)] provides a final update on progress made in its discussions with SWS. As indicated above, this states that SWS has confirmed that Part 1 of Schedule 10 of the dDCO [[REP8-004](#)] provides sufficient protection for their apparatus and undertaking. The Applicant continues to engage with SWS on the negotiation of a confidential side agreement.

The ExA's conclusions on the SWS objection

- 6.9.56. No withdrawal of SWS's objection was submitted prior to the close of the Examination. Nevertheless, the ExA considers that adequate protection for this SUs' assets is included in the PPs in Schedule 10 Part 1 to the dDCO [[REP8-004](#)]. We conclude that the proposed PPs are appropriate to protect the relevant interests of SWS and that the SoST can be satisfied that the prescribed tests set out in s127 PA2008 would be met.
- 6.9.57. In relation to s138 of the PA2008, the ExA is satisfied that the extinguishment of rights and the removal or relocation of apparatus sought by the Applicant under the dDCO would be necessary for the purpose of carrying out the Proposed Development. In the context of s127 and s138 PA2008, and in the event that development consent is granted, the DCO should include provision authorising the CA powers sought over this SUs' land.

PROTECTIVE PROVISIONS

- 6.9.58. The Annex C Schedule of Engagement with Statutory Undertakers (Rev 2) [[REP6-011](#)] sets out the position in relation to the negotiation with SUs at that stage. The Applicant's Cover Letter DL8 [[REP8-029](#)] provides a final update on progress made in its discussions with parties in relation to PPs.
- 6.9.59. This confirms that bespoke PPs have been agreed with SGN as set out in Part 3 of Schedule 10 of the dDCO [[REP8-004](#)], and the EA as set out in

Part 4 of Schedule 10 of the dDCO. Furthermore, SWS is content to rely on the standard set of provisions contained at Schedule 10, Part 1 of the dDCO [REP8-004]. No other SU has contacted the Applicant to request bespoke PPs outside standard provisions in Parts 1 and 2 of Schedule 10 of the dDCO, nor have they made any submissions to that effect to the Examination.

- 6.9.60. At the end of the Examination, there were no identified outstanding concerns relating to PPs. Having regard to the extent and nature of the PPs within the dDCO [REP8-004] and the relevant statutory tests, the ExA is content that there is nothing in relation to PPs that would prevent the grant of the CA powers sought.

OTHER CONSENTS AND AGREEMENTS

- 6.9.61. The Consents and Positions Statement submitted with the application documentation identifies the consents, licences and agreements that have been, or must be, obtained for the Proposed Development, in addition to development consent under PA2008 [APP-021]. It sets out the intended strategy for obtaining the relevant consents and associated agreements needed to implement to the Proposed Development. The Applicant provided an updated Consents and Agreements Position Statement (Rev 3) at DL5 [REP5-006] and the required consents are set out at Appendix A to that document.
- 6.9.62. The ExQ3 7.3.5 sought an update on the progress of discussions with Natural England (NE) including in relation to shadow licence applications. In response, the Applicant [REP6-023] referred to the submission of the draft dormouse licence application to NE in December 2022.
- 6.9.63. At DL8, the Applicant confirmed that on 10 November 2023 NE provided a Letter of No Impediment (LoNI) in respect of the dormouse licence [REP8-029] and this is attached as Appendix A to the Statement of Common Ground (SoCG) between the Applicant and NE. This sets out NE's requirements for a final dormouse licence application to be submitted in due course, together with conditions relating to the content of the licence application [REP8-021].
- 6.9.64. In relation to badgers, works which might affect any existing setts will be undertaken using a class licence held by a badger specialist. The use of a class licence means that there will be no application for a badger licence from NE. The use of a badger class licence is agreed within the SoCG with NE [REP8-021].
- 6.9.65. The SoCG with the EA [REP8-020] confirms that the Applicant has amended the dDCO [REP8-004] to only seek disapplication for Flood Risk Activity Permits. This aligns with the EA's position. This means that all the other consents and licences for which the EA is listed as consenting authority in the Consents and Agreements Position Statement [REP5-006] will need to be obtained including for water discharge activities, flood defence byelaws and water abstraction licence.

- 6.9.66. 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.
- 6.9.67. 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.

6.10. THE ExA'S CONSIDERATION OF THE APPLICANT'S GENERAL CASE FOR THE GRANT OF CA AND TP POWERS

- 6.10.1. The ExA's approach to the question whether and what CA powers it should recommend to the SoS to grant has been to seek to apply the relevant sections of the PA2008, notably s122 and s123, the Human Rights Act 1998 and the Equality Act 2010; 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.
- 6.10.2. A number of general considerations also have to be addressed in the light of the CA Guidance, namely, whether all reasonable alternatives to CA have been explored; the Applicant must have a clear idea how it intends to use the land and to demonstrate funds are available and the Applicant must demonstrate that the proposed interference with the rights of those with an interest in land is for a legitimate purpose and that it is necessary and proportionate.
- 6.10.3. The dDCO [[REP8-004](#)] deals with both the development, itself, and CA powers. The case for CA powers cannot properly be considered unless and until the ExA has formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.
- 6.10.4. The ExA has shown in Chapter 5 that it has reached the view that development consent should be granted. The question therefore that is addressed here is the extent to which, in the light of the factors set out above, the case is made for CA powers necessary to enable the development to proceed.

The purpose for which the CA powers are sought

- 6.10.5. The CA Guidance, paragraph 11, considers the purpose for which CA is sought, in the light of s122 PA2008. The effect of subsections 122(1) and 122(2) PA2008 is to provide that the land to be subject to CA must be required for the development to which the development consent relates; effectively that the land needs to be acquired, or rights over, or under it

acquired or impediments upon it removed, in order that the development can be carried out.

- 6.10.6. The SoR sections 3, 4 and 5, explain the Applicant's need for the land, the location and proposed use of the Order Land and the purposes for which the powers of CA are sought. The SoR [[REP6-013](#)] section 3.1 sets out that the purpose of the CA powers in the dDCO is to enable the Applicant to construct, operate and maintain the Proposed Development and section 5.3 explains the need for the land and the purposes for which CA powers are sought. The way in which the strategic objectives of the Proposed Development are aligned with the NPSNN is set out in detail in the Case for the Scheme [[REP1-019](#)].
- 6.10.7. The SoR Annex A explains why CA powers are necessary in relation to each individual parcel of the Land, with reference to the relevant DCO works numbers and the nature of the works as set out in Schedule 1 of the dDCO [[REP8-004](#)]. The proposed use of this land and the benefits this would bring to the Proposed Development are set out in general summary in Chapter 2 of the SoR.
- 6.10.8. The SoR section 2.5 explains the need for a degree of flexibility as to where certain elements of the Proposed Development can be constructed. The Applicant has sought to achieve a balance between minimising land-take and securing sufficient land to deliver the Proposed Development, given that the detailed design has yet to be developed. The LoD have been drawn as tightly as possible to avoid unnecessary land-take. At this stage, the Applicant considers that all the land sought would be necessary to deliver the Proposed Development. However, should it transpire that any part of the land is not required, for instance, as a result of the detailed design process, the Applicant would only seek to acquire that part of the land required, and in all events, would seek to minimise the effects on land interests.
- 6.10.9. 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 and without these rights over the land, the scheme could not be delivered.
- 6.10.10. The Applicant has also provided further information in relation to the scope and purpose of the CA powers sought in response to ExQ1 7.1.1 to 7.1.9 [[REP2-051](#)]. In response to ExQ1 7.1.2, the Applicant explains that in setting out the LoD in Article 8 of the dDCO, it has carefully considered the degree of flexibility that it requires to undertake the Proposed Development. The LoD reflect the current level of design and the complexity of the scheme. The site is heavily constrained in engineering terms, in particular by existing infrastructure, water features and geometric standards.
- 6.10.11. As regards how it would be ensured that CA powers would not be exercised in respect of land not ultimately required following the detailed design process, the Applicant points out that Article 24 of the dDCO only grants the undertaker power to acquire compulsorily so much of the

Order Land as is required to carry out or to facilitate, or is incidental to, the authorised development. Where detailed design has provided that less land take may be required, then that land would not be acquired unless it remains necessary to facilitate or is incidental to the authorised development. In addition, the Applicant would not want to incur the compensation liabilities involved in acquiring land it does not need. Furthermore, any land acquired by CA is subject to the Crichel Down Rules and so in the unlikely event it has been acquired but it is not required for the Proposed Development, the land would have to be dealt with in accordance with these rules.

- 6.10.12. The ExA considers that the extent of flexibility sought is entirely appropriate and proportionate for a project of this type. We believe that the combination of the drafting of Article 24, the absence of any practical or other incentive to take more land than is ultimately required on a permanent basis, and the existence of a clear financial disincentive to doing so, is sufficient to ensure that the powers sought would be exercised in a proportionate manner and that ultimately no more land is acquired than is needed as a result.
- 6.10.13. The operation of Article 27 of the dDCO [[REP8-004](#)], allows for rights over land to be acquired as well as the land itself, and also for new rights to be created over land. This includes the power to impose restrictive covenants. It provides for such rights as may be required to be acquired by the undertaker over land which it is authorised to acquire under Article 24.
- 6.10.14. The Applicant explains in response to ExQ1 7.1.3 [[REP2-051](#)] that it is not the intention for Article 27 to be utilised in a way that rights might be acquired in the alternative to outright acquisition. In response to ExQ1 7.1.5, the Applicant states that the power to impose restrictive covenants is provided principally to protect the plant and equipment of SUs. The power to impose restrictive covenants as granted by Article 27(1) is limited by Article 27(3) and the power is exercisable only in respect of the plots specified in column (1) of Schedule 5 of the dDCO [[REP8-004](#)], being only plot number 6/5. The imposition of any restrictive covenant would be limited under (2) to be only that required for the purpose set in column (2) of Schedule 5 of the dDCO. The purpose for which rights may be acquired over plot 6/5 is to permit the Applicant to permanently access, construct, maintain and repair overhead electricity cables and associated apparatus associated with work number 21.
- 6.10.15. In response to ExQ1 7.1.6, the Applicant indicates that Article 32 (Acquisition of subsoil or airspace only) of the dDCO, facilitates the ability to be flexible in order to minimise, so far as is possible, the extent of interests to be acquired, with less impact upon landowners. The EM [[REP8-006](#)], paragraph 4.129 explains that it is considered to be in the public interest to provide this flexibility. The right enables accommodation works to be installed underground and structures to oversale third party land without needing to acquire the surface.

6.10.16. The ExA has examined the case which has been made for the grant of CA powers in respect of all plots included in the BoR; the justification for the inclusion of the plots in the SoR; the type and extent of the interests sought; the stated use of the land and whether there are clear and necessary proposals in relation to each plot sought; and the potential effects and consequences of taking the land proposed. The ExA is also content that all associated development comprised in the authorised works set out in Schedule 1 of the dDCO is appropriately included and reflects the AD Guidance. The ExA concludes that the extent of the land over which powers are sought in the dDCO is no more than is reasonably required, and it is proportionate to the needs of the Proposed Development.

6.10.17. The ExA is satisfied that in the event of the grant of development consent for the Proposed Development, there would be a need to acquire the rights and interests in the CA land and the CA powers sought in the dDCO would be required to implement the development.

Whether all reasonable alternatives to CA have been explored

6.10.18. The CA Guidance, paragraph 8, requires the Applicant to be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the scheme) have been explored. The Applicant's position is that there is no alternative but to seek powers of CA in the dDCO.

6.10.19. The SoR (Rev5) [[REP6-013](#)] section 2.5 sets out the need for the Applicant to retain a degree of flexibility in the scheme and the use of LoD in the dDCO to achieve that. Section 5.5 explains how the Applicant has considered alternatives and modifications to the Proposed Development to minimise the potential land-take and the associated consultation process.

6.10.20. The Applicant has also provided a full description of the considered alternatives to the Proposed Development in the ES Chapter 3 [[REP4-007](#)] and Case for the Scheme (Rev 1) [[REP1-019](#)]. Together the application documents and updates thereto describe the Applicant's approach to site selection and consideration of alternatives for the Proposed Development including design changes made in response to both statutory and non-statutory consultation feedback.

6.10.21. The Applicant's Closing Statement, section 3.1 [[REP8-028](#)] summarises its position in relation to the assessment of alternatives, including modal alternatives, with particular regard to the consideration of a rail-based solution.

6.10.22. The ExA has given consideration to strategic alternatives together with alternatives to the location or design of the Proposed Development including the main Construction Compound in Section 3.3 of Chapter 3 of this Report. The ExA concludes that there are no policy or legal requirements that would lead it to recommend that development consent be refused for the Proposed Development in favour of another alternative.

- 6.10.23. In relation to acquisition by alternative means to CA, the Applicant has entered into negotiations with APs to seek to avoid the need to CA the relevant interests. The SoR (Rev 5) Chapter 4 [[REP6-013](#)] and Annex B [[REP8-011](#)] set out the discussions the Applicant has had with holders of land interests to acquire the Order Land by agreement.
- 6.10.24. The Applicant has provided further information in response to ExQ1 7.1.16 to 7.1.18, and ExQ2 7.2.6 to 7.2.9 [[REP2-051](#), [REP5-026](#)] in relation to alternatives to CA.
- 6.10.25. In response to ExQ1 7.1.16 [[REP2-051](#)], the Applicant confirms that it has engaged with all affected landowners, leaseholders, and occupiers with a view to acquiring their land interest by agreement by writing to them to inform them of its willingness to negotiate to acquire the land by agreement, and to invite dialogue at that point. The status of such negotiations at the close of the Examination is set out in Annex B of the SoR [[REP8-011](#)].
- 6.10.26. Whilst negotiations are ongoing, the Applicant is mindful that it is under a duty to acquire land at best value and that it is required to deliver the Proposed Development within a specified timescale. It has concluded that it may not be possible to acquire by agreement all land interests necessary to deliver the Proposed Development within this timescale. There are also further parcels of land in unknown ownership which cannot be acquired by agreement, and these are set out in the SoR Table 4.1 [[REP6-013](#)].
- 6.10.27. The Applicant makes similar points in relation to the need for CA in response to ExQ1 7.1.17. The ExA accepts that it is very unlikely that all of the required interests in land will become available to the Applicant through negotiation for the stated purposes in a reasonable time scale. We also note that some holders of required interests in land could not be identified and are satisfied that diligent inquiry has been made in that respect. We are content that, as a general proposition, reasonable alternatives to CA would be unlikely to lead to comprehensive land assembly of the scale required, within a reasonably certain timescale.
- 6.10.28. This is supported by the Applicant's response to ExQ2 7.2.7 which indicates, as recorded in Annex B of the SoR that, in relation to the progress of negotiations, the Applicant has secured verbal agreement from one party and has verbally agreed heads of terms for agreements from two other parties. However, until these have been documented the Applicant is unable to confirm that powers of CA are no longer required in respect of the interests held by these parties. The Applicant is also aware of the personal circumstances of some landowners which means that they will be unlikely to be able to conclude a written agreement during the time available. The Applicant has also been informed by some parties that they are not willing to enter into a voluntary agreement for the necessary rights prior to consent being granted for the Proposed Development. The Applicant is not certain that this agreement would be forthcoming should the application be granted and therefore requires CA powers to be certain that it could deliver the consented application.

- 6.10.29. As regards other alternative solutions and routes, in response to ExQ1 7.1.17 [[REP2-051](#)], the Applicant confirms that before a decision was made to proceed with the Proposed Development, it explored and assessed many such alternatives. The ExA notes that the Proposed Development has evolved through consultations, negotiation, and discussion with a range of IPs and APs. The selection of the most appropriate route took into account various factors. This included the views of consultees and persons with an interest in land. We accept that none of the alternatives or modifications considered would obviate the need for the CA and TP of land.
- 6.10.30. The CA Guidance recognises that, in some cases, it may not always be practicable to acquire each plot of land by agreement. Where this is the case the CA Guidance confirms that it is reasonable to include provision authorising CA covering all the land required at the outset. It also recognises that in some cases it may be preferable, or necessary, to acquire land compulsorily rather than by agreement.
- 6.10.31. In the light of the Applicant's response to oral and written questions on this topic, the ExA is satisfied that there is no alternative but to acquire third party land for the construction and operation including maintenance of the Proposed Development. We have examined the extent of the land for which CA powers are sought and have considered the arguments made by AP's who have raised objections. We are content that the land that would be subject to the powers of CA sought is required in order to construct, operate, and maintain the Proposed Development or to facilitate its construction or operation, or to help mitigate its impact and there is no alternative to the use of CA powers. The ExA concludes that the Applicant has explored all reasonable alternatives to CA, including modifications to the scheme.

Availability and adequacy of funding

- 6.10.32. The CA Guidance, paragraph 9, requires the Applicant to be able to demonstrate that there is a reasonable prospect of the requisite funds for CA becoming available. Paragraph 18 requires the Applicant to be able to demonstrate that adequate funding is likely to be available to enable the CA within the statutory period following the DCO being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken into account. Paragraph 17 also indicates that the funding statement should provide as much information as possible about the resource implications of implementing the project for which the land is required as well as acquiring that land.
- 6.10.33. The Funding Statement submitted with the application [[APP-023](#)], sets out the Applicant's position on funding which is that the Proposed Development would be adequately funded through the RIS, using the change control processes set out in Part 6 of the Highways England (now National Highways) Licence (Appendix A of the Funding Statement) if required, and therefore that funding is no impediment to the delivery of the Proposed Development or the payment of compensation to persons affected by CA, TP, or a blight claim.

- 6.10.34. In response to ExQ1 7.1.19 and 7.1.20 [[REP2-051](#)], the Applicant confirmed that the Proposed Development has a most likely estimate of £215m to cover all costs to deliver the scheme from Options stages through to the opening for traffic and which includes the Valuation Office Agency (VOA) estimate of CA costs. The £215m estimate forms part of the Government's RIS2 which commits £27.4 billion to improving the SRN. The Funding Statement [[APP-023](#)] explains the Government support for the Proposed Development which is included in the Government's RIS2 report as well as the National Highways Delivery Plan. The Delivery Plan commits the Applicant to open the Proposed Development for traffic during Roads Period 3 (2025-2030).
- 6.10.35. The Funding Statement also explains that the £215m 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) PA2008.
- 6.10.36. As regards the reliability and degree of accuracy of the estimated figure, the Applicant's response to ExQ1 7.1.21 [[REP2-051](#)] indicates that the £215m cost estimate for the Proposed Development was produced by its Commercial Services Division using industry standard methods and techniques drawing on the principles of the HM Treasury Green Book. A three-point range estimate was calculated providing the plausible minimum, plausible maximum and most likely cost estimate for the scheme. In accordance with the Applicant's cost-estimating process, lands costs are calculated for it by the VOA which provides an external Royal Institution of Chartered Surveyors (RICS) registered valuer to undertake robust land valuations, used by the Applicant for including within scheme cost estimates. The estimate is reviewed on a six-monthly basis and reviews the best, worst and most likely position to ensure that the anticipated costs remain within budget.
- 6.10.37. As regards the prospect of a blight claim, the ExQ2 7.2.21 sought confirmation that the resource implications of a possible acquisition resulting from a blight notice had been taken account of in the overall cost estimate. In response, the Applicant explained that part of the cost estimate process involves identifying property that would be on the line of the proposed route and where the owner might be expected to submit a blight notice [[REP5-026](#)]. The value of that property would be assessed and included in the land cost estimate. In the case of the Proposed Development, it has been assumed that no blight notices would be received, and there is therefore no allocation for blight in the land cost estimate. However, the Applicant recognises that there is a potential for blight notices to be issued and confirms that this has been included within the risk element of the project and incorporated within the £215m.
- 6.10.38. In response to ExQ2 7.2.10 [[REP5-026](#)], the Applicant provided further information on the topic of blight notices. The VOA have confirmed that they do not expect any blight notices to be received. This is because no buildings are being acquired and because agricultural land will still be

farmable as viable agricultural units post scheme. The VOA have also met with each affected landowner and blight was not raised during compensation discussions. The £215m cost estimate includes an allowance for risks associated with land cost uncertainty including blight. In the event of a successful blight claim being submitted cost will be drawn from the risk allowance which is sufficient to process payment.

- 6.10.39. The ExA is content that the Government and National Highways' commitments set out in RIS1, RIS2, and the National Highways Delivery Plan 2020-2025 demonstrate that the Proposed Development would be fully funded by the DfT, and consequently the project is not dependant on funding contributions from other parties. The ExA agrees that this should provide sufficient security for the investment in the Proposed Development, including costs associated with CA, which could be drawn on at the appropriate time.
- 6.10.40. The ExA concludes that should development consent be granted, there is a reasonable prospect of the requisite funds for CA becoming available within the statutory period following the DCO being made. We are also content that the availability of funding of the Proposed Development more widely would not be a potential impediment to implementation. Finally, the financial resource necessary to accommodate possible acquisition resulting from a blight notice has been satisfactorily secured.

The assessment of private loss and public benefit

- 6.10.41. The Applicant's assessment of private loss is explained in its responses to ExQ1, ExQ2 and ExQ3 [[REP2-051](#), [REP5-026](#)], [[REP6-023](#)] (in particular 7.1.12, 7.2.1, 7.2.3, and 7.3.3). The SoR and Annex A [[REP6-013](#)], Case for the Scheme [[REP1-019](#)], and the BoR [[REP8-013](#)] are also of relevance.
- 6.10.42. In the light of the CA Guidance, paragraphs 12, 13, and 14 the ExA further questioned the assessment that had been made by the Applicant of the effect upon APs and their private loss that would result from the exercise of compulsory powers. In response to ExQ1 7.1.2, the Applicant explained that during the scheme's development, each plot has been reviewed individually in order to challenge the proposed land take and allow refinement where possible to reduce land required. The Applicant's response to EXQ1 7.1.2 sets out the factors that were included in that plot-by-plot review.
- 6.10.43. In response to ExQ2 7.2.1, the Applicant confirms that there are no commercial buildings or residential properties being acquired as part of the Proposed Development. The land being acquired is in the majority, rural agricultural land, or existing highway land. Although there has not been an individual assessment made of the effect on individual APs to assess their private loss, this is not considered necessary due to the overwhelming make-up of the rights to be acquired.
- 6.10.44. Annex A of the SoR sets out the purpose for which land is required on a plot-by-plot basis. As set out in paragraph 5.3.5 of the SoR [[REP6-013](#)], the Applicant has sought to achieve a balance between minimising land-

take and securing sufficient land to deliver the Proposed Development, noting that the detailed design has yet to be developed. The LoD have also been drawn as tightly as possible. In the event that less land proves to be required in a particular area following the detailed design stage, the Applicant would only seek to acquire that part of the land that is required and, in all events, would seek to minimise effects on land interests.

- 6.10.45. As indicated above, the ExA is content that all of the land subject to CA and TP would be necessary to construct, operate, and maintain the Proposed Development. Furthermore, the Applicant has taken a number of steps to ensure its approach to land acquisition and the exercise of CA powers in respect of each plot and each individual AP would not give rise to interference with private rights beyond what is absolutely necessary to deliver the Proposed Development.
- 6.10.46. The ExA considers that this represents a proportionate approach, and that the Applicant has made an adequate assessment of private loss that would be experienced by APs to weigh in the balance between public benefits and private losses.
- 6.10.47. The public benefits of the Proposed Development are set out in the SoR section 2.3 [[REP6-013](#)] and further details are provided in the Case for the Scheme [[REP1-019](#)], the ES, and the CoMAR (Rev 1) [[REP1-025](#)]. The Applicant has also responded to ExQ1 7.1.13, and ExQ2 7.2.2 [[REP2-051](#), [REP5-026](#)] on this topic. The Applicant's Closing Statement [[REP8-028](#)] section 2.3 provides an updated summary of the benefits of the Proposed Development.
- 6.10.48. The ExA is satisfied that the public benefits of the Proposed Development could only be realised if the CA of the land required for it could be guaranteed in a timely manner through the use of CA powers. We have also considered identified benefits and the need for the development in various Sections of Chapter 3 and in Chapter 5 of this Report. For the reasons set out in Chapter 5, we conclude that taking into account the public benefits identified, the case for the grant of development consent is made.
- 6.10.49. In terms of determining where the balance of public interest lies, the SoS will need to weigh up the public benefits that the Proposed Development would bring against any private loss to those affected by CA. The ExA concludes that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation, and maintenance of Proposed Development to proceed.

Human Rights considerations

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

- 6.10.51. The ECHR was incorporated into domestic law by the Human Rights Act 1998. The relevant articles for the CA powers sought are:
- Article 1 of the First Protocol (the peaceful enjoyment of possessions and not to be deprived of possessions except in the public interest and subject to the conditions provided for by law and by the principles of international law);
 - Article 6 (fair and public hearing within a reasonable time by an independent and impartial tribunal); and
 - Article 8 (right to respect for private and family life, home and correspondence).
- 6.10.52. No public authority can interfere with these rights, except if it is in accordance with the law and is necessary in the interests of national security, public safety, or the economic well-being of the country. In assessing whether the interference with the rights of individuals would be for a legitimate purpose, such a finding is predicated on the SoS reaching the conclusion that development consent should be granted.
- 6.10.53. The SoR [[REP6-013](#)] section 6 sets out the Applicant's position on this topic. To the extent that the Proposed Development would affect individuals' rights, the Applicant submits that for the reasons summarised in that section, any infringement of the rights of those whose interests in the land might be affected by the exercise of powers of CA would be proportionate and legitimate. It would also be in the public interest and in accordance with national law.
- 6.10.54. In response to ExQ1 7.1.23 [[REP2-051](#)], the Applicant acknowledges that interference with Article 1 of the First Protocol and Article 8 of the Human Rights Act 1998 might be a relevant consideration to all of the land identified in Annex A of the SoR [[REP6-013](#)]. The Applicant points to the need for and benefits of the Proposed Development as demonstrating that there is a strong and compelling case in the public interest for it to be delivered and submits that any interference with human rights would be proportionate and justified. In support, the Applicant explains that during the scheme's development, each plot was reviewed individually in order to challenge the proposed land take and allow refinement where possible to reduce land required. The Applicant is satisfied that, as a result of the proportionality tests and the review and challenge process which balanced the requirement for individual plots against the anticipated impacts, that the powers of CA and TP sought through the dDCO [[REP8-004](#)] are necessary, proportionate, and justified.
- 6.10.55. From the Applicant's response to ExQ1 and ExQ2 on this topic, the ExA is content that the Applicant has taken steps to ensure that its approach to CA is proportionate and would not give rise to interference with private rights beyond that which would be absolutely necessary. The Applicant has sought to ensure that the land affected has been kept to the minimum necessary to ensure the delivery of the Proposed Development and has been reduced as the design has been developed. The Applicant

has also sought to reach voluntary agreements with all persons with an interest in the land affected. In this respect the interference with human rights is both proportionate and justified.

- 6.10.56. The ExA is satisfied that the Applicant has endeavoured to minimise the impact that CA would have on those individuals who would be affected by the Proposed Development. The SoR paragraph 6.2.1 indicates that there are no commercial buildings or residential properties being acquired as part of the Proposed Development. In addition, compensation would be payable, to be assessed on an individual basis.
- 6.10.57. As regards the TP powers sought, the Applicant's responses to ExQ1 7.1.8 and 7.1.9 explain further the scope and purpose of the powers that would be authorised by Articles 34 and 35 of the rDCO and the need for the 5-year maintenance period specified in Article 35. We are content that the interference with rights subject to TP would be less than would be the case for CA and that the use of this power would serve to minimise the extent of CA that would otherwise be required. Compensation would also be payable for temporary use to construct or maintain the Proposed Development.
- 6.10.58. The ExA has considered the individual rights interfered with and is satisfied that should the SoST be minded to grant development consent, then for Article 1 of the First Protocol and Article 8, the proposed interference with those rights would be for legitimate purposes that would justify such interference in the public interest. The extent of that interference would be proportionate. In reaching this conclusion, the ExA has had regard to the compensation to which those individuals would be entitled.
- 6.10.59. In relation to Article 6, the Applicant has consulted the persons set out in the categories contained in s44 PA2008 which include owners of the land subject to CA. All APs had the opportunity to participate in the Examination process and to make WRs. There were no requests from APs to attend a CAH. In the event that development consent is granted, persons aggrieved may also challenge the DCO in the High Court, if they consider that the grounds for doing so are made out pursuant to s118 PA2008. The ExA is therefore satisfied that the requirements of Article 6 have been met.
- 6.10.60. The ExA concludes that the inclusion of CA and TP powers in the Order would not constitute any unlawful interference with rights under the Human Rights Act 1998 and that should the SoST be minded to grant consent it would be appropriate and proportionate for the rDCO to include the grant of powers of CA and TP.

Public Sector Equality Duty

- 6.10.61. The Applicant submitted an EqIA with the application [[APP-167](#)] which explains how it has had regard to its PSED in the context of the application for development consent for the Proposed Development. The EqIA considers the potential effects of the Proposed Development on protected characteristic groups and seeks to identify any likely

differential impacts on such persons. It also identifies opportunities to improve equality of opportunity and eliminate discrimination.

- 6.10.62. The EqIA section 5 sets out the potential impacts of the Proposed Development on protected characteristic groups during construction and operation. The findings from the Consultation Report [[APP-025](#)] have also been reviewed to identify further impacts on protected characteristic groups. Table 8 details the potential impacts on different groups with protected characteristics as well as the evidence basis for these conclusions.
- 6.10.63. Section 7 sets out the finding that the Proposed Development has the potential to disproportionately affect age, disability and pregnancy and maternity characteristics due to the potential temporary diversion or closure of routes during its construction. However, the WCH facilities would be upgraded as part of the Proposed Development which would be likely to benefit persons with protected characteristics including the elderly, disabled, children and during pregnancy and maternity by providing safer and more accessible WCH facilities and PRow during operation. Operational air and noise impacts are not forecast to be significant and no adverse impacts on groups with protected characteristics are therefore predicted.
- 6.10.64. The Applicant has provided a response to ExQ2 7.2.11 [[REP5-026](#)] which sought further details of any ongoing engagement with APs with protected characteristics in relation to those matters identified as having the potential to disproportionately affect them. The Applicant's position is that following the submission of the application, there have been no design changes that would require further consultation of this nature. The potential impacts would be due to temporary diversions or closure which would occur only during construction. The Applicant confirms that it would take into consideration minimising these potential impacts when confirming diversion routes with HCC. An updated EqIA would be provided as part of all future PCF Stages (4-7), as referred to response to ExAQ1 7.1.26 [[REP2-051](#)].
- 6.10.65. The ExA is satisfied that the Applicant has complied with its duties under s149 Equality Act 2010. In exercising our functions as an ExA, we have had due regard to the PSED contained in s149 Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. We conclude that the implementation of the Proposed Development would not disproportionately affect persons who enjoy a protected characteristic, nor would there be any adverse effect on the relationship between such persons and persons who do not share a protected characteristic.

Temporary possession

- 6.10.66. As indicated above, for some land plots TP has been sought as an alternative to CA. The dDCO contains powers for TP which the ExA considers are appropriate for inclusion to support the delivery of the

Proposed Development in respect of all plots noted for TP in the revised BoR.

- 6.10.67. 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. The inevitable interference with human rights must also be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 6.10.68. The ExA is 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.
- 6.10.69. 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.

The ExA's OVERALL CONCLUSIONS ON THE GRANT OF COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS

Section 122(2) – The purpose for which CA is sought

- 6.10.70. This section of the Act sets out the purposes for which CA may be authorised. In the light of the CA Guidance, it is necessary to consider whether the Applicant has justified its proposals for the CA of the land.
- 6.10.71. 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 and shown on the Land Plans (as amended) 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. The requirements of s122(2)(a) and (b) PA2008 would, therefore, be met.

Section 122(3) – Whether there is a compelling case in the public interest

- 6.10.72. In relation to s122(3), in considering whether there is a compelling case in the public interest there are a number of issues to be considered in balancing the public interest against the private loss which would occur.
- 6.10.73. The ExA recognises 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 scheme design.

- 6.10.74. The ExA considers 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.
- 6.10.75. 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.
- 6.10.76. The ExA is satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development and acquisition by negotiation and agreement. The ExA concludes that there are no alternatives to the CA powers sought which ought to be preferred.
- 6.10.77. The ExA concludes 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.
- 6.10.78. 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. The resource implications of a blight notice have been taken into account.
- 6.10.79. If the SoST decides that the case for the Proposed Development is made out the ExA concludes 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;

- adequate and secure funding would be available to enable the CA within the statutory period following the Order being made;
- the resource implications of a possible acquisition resulting from a blight notice have been taken into account;
- the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent; and
- the relevant duties under the Equality Act 2010 have been complied with.

6.10.80. 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.

Section 120(5)(a) PA 2008 – the incorporation of other statutory powers

6.10.81. The dDCO seeks, in a number of instances, to apply s120(5)(a) and apply, modify or exclude a statutory provision. For example, Article 30, 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.

Section 127 and 138 PA2008

6.10.82. In the case of each s127 representation, adequate protection for the relevant SUs’ assets is included in the PPs in the dDCO, Schedule 10 Parts 1 to 4 [[REP8-004](#)]. The ExA concludes 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 (6). In the case of each s138 representation, the ExA is 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 dDCO 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.

Temporary possession

6.10.83. The TP powers sought would be necessary both to facilitate implementation of the Proposed Development and to maintain it and adequate compensation provisions are in place in the dDCO.

Other consents and agreements

6.10.84. The updated Consents and Agreements Position Statement [[REP5-006](#)] sets out the other required consents and the position as to the status of securing those consents. The outstanding matter in relation to required

consents was the issuing of a LoNI in anticipation of submission of a final dormouse licence application to NE.

6.10.85. The Applicant's Cover Letter DL8 [[REP8-029](#)] confirms that NE provided a LoNI in relation to the dormouse licence on 10 November 2023 and it is attached as Appendix A to the SoCG [[REP8-021](#)]. This sets out NE's requirements for a final dormouse licence application to be submitted in due course, together with conditions relating to the content of the licence application.

6.10.86. The ExA 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 should development consent be granted for the Proposed Development.

6.11. THE ExA's RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS

6.11.1. In the event that the SoST is minded to grant development consent for the Proposed Development, the ExA recommends that:

- The CA powers included in the rDCO be granted.
- The TP powers included in the rDCO be granted.
- The powers authorising the CA of SUs' land and rights over land included in the rDCO be granted.
- The powers authorising the extinguishment of rights, and removal of apparatus, of SUs included in the rDCO be granted; and
- The powers included in the rDCO to apply, modify or exclude a statutory provision be granted.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. This Chapter provides an overview of the examination of the Applicant's draft Development Consent Order (dDCO). We set out the Examining Authority's (ExA's) proposed changes to the Applicant's final version of the dDCO [[REP8-004](#)] which the ExA would recommend should the Secretary of State for Transport (SoST) decide to grant development consent for the application.
- 7.1.2. This Chapter provides a summary of the main changes made to the dDCO during the Examination. We do not report on every change made in the updated versions if they relate to slight revisions of typographical or referencing errors or other minor revisions of the wording following discussion between the Applicant and relevant Interested Parties (IPs).
- 7.1.3. This Chapter will not make recommendations in relation to the outcome of the Examination in any other respect.
- 7.1.4. The final version of the draft DCO as recommended by the ExA, referred to as the Recommended Draft Development Consent Order (rDCO), is at Appendix D to this Report.

7.2. THE DEVELOPMENT CONSENT ORDER AS APPLIED FOR AND EXAMINATION MATTERS

Draft DCO

- 7.2.1. The dDCO [[APP-019](#)] and Explanatory Memorandum (EM) [[APP-020](#)] were submitted as part of the application for development consent by the Applicant. The EM describes the purpose and effect of the provisions in the application dDCO.
- 7.2.2. During the Examination, the ExA has looked at the detail of the structure and effectiveness of the dDCO through written questions and at Issue Specific Hearing (ISH) 2 on the dDCO and related matters. In response to this and further consultation with IPs, the Applicant has submitted a further six versions of the dDCO.
- 7.2.3. The Applicant provided a cumulative table of amendments to the dDCO at each revision, the final version of this was submitted at Deadline (DL) 8 [[REP8-010](#)], the amendments are summarised in Table 17.

Table 17 : Iterations of the draft DCO

Deadline Number	dDCO Revision Number	Exam Library Reference	Notable Changes Made
Application	0	APP-019	
Additional Submission	1	AS-004	Changes plan identification numbers
2	2	REP2-012	Changes plan identification numbers. Amendments to clarify landscaping to be based on Outline Landscape and Ecological Management Plan (OLEMP) and environmental masterplan. Add Winchester City Council (WCC) to consultees for noise. Changes to Article 3 requested by Environment Agency (EA).
3	3	REP3-004	Add South Downs National Park Authority (SDNPA) as consultees in response to dual responsibilities to ensure both WCC and SDNPA are consulted. Amendments to work numbers and related plans.
5	4	REP5-004	Article 3 updated to take account of comments from Lead Local Flood Authority (LLFA). Article 13 updated to ensure Hampshire County Council (HCC) permit scheme applies. Schedule 2 Part 1 amends matters relating to landscaping and planting. Further clarification to ensure both WCC and SDNPA are consulted. New requirement to Schedule 2 Part 1, Para 15 to state max height of static construction facilities. Inclusion of 'Design Principles Report'.
6	5	REP6-006	Various footnote additions and changes including relating to comments from EA. Schedule 10 Part 3, addition of provisions for Southern Gas Networks and EA
8	6	REP8-004	Final dDCO. Alterations, changes and corrections following further discussion with stakeholders.

7.2.4. The ExA issued a schedule of recommended changes to the Applicant's dDCO [[PD-014](#)] between DL5 and DL6 and following the ISH. The Applicant provided their comments on this at DL6 [[REP6-026](#)].

7.2.5. At the close of the Examination the Applicant submitted their final version of the dDCO [[REP8-004](#)] together with a document detailing the amendments to the originally submitted dDCO [[REP8-010](#)]. The Applicant also provided a revised EM [[REP8-006](#)].

Examination Matters

- 7.2.6. The ExA and some IPs raised issues relating to the dDCO. These were mainly raised by either Local Authorities within their Local Impact Report (LIR), statutory bodies or statutory undertakers (SU). We shall now set out the major differences between parties on the dDCO that were considered during the Examination. This is supplemented by Table 19 where we set out in tabular form our examination of and conclusion on those outstanding matters not agreed at the close of the Examination.

General matters

- 7.2.7. A number of IPs raised issues relating to the approval and consultation of processes which are seen as the responsibility of a local authority (LA) or agency, but which are proposed to be changed through the dDCO. Most of these have been subject to ExA questions both written and at ISH2 and relate to matters such as the HCC Permit scheme; time periods for responses to consultation or approvals; felling and lopping of trees and changes to public rights of way (PRoW). The ExA is pleased to note that in most instances the Applicant has reached agreement on these matters. However, where this has not been the case, we have shown our recommendation for the rDCO in Table 19.
- 7.2.8. The dDCO in many places uses the terminology of 'relevant local planning authority' (LPA) to reference where consultation with, or approval is required from such. The SDNPA raised concerns that where their jurisdiction overlays that of WCC and HCC, they may not be classified as the planning authority, but they have requirements that should be considered when undertaking consultation. During the Examination, the Applicant was accepting of this position and the dDCO generally takes account of the need to change that standard wording where necessary.

Articles

Article 3

- 7.2.9. Both HCC as Lead Local Flood Authority (LLFA) and the Environment Agency (EA) detailed concerns about the disapplication of various water and flood related matters shown in Article 3. These were subject to further questions from the ExA in written questions and to HCC at ISH2. The Applicant was receptive to amendments following discussions with both HCC and the EA. At the close of the Examination, Article 3 was amended to reduce the number of disappplied legislative provisions. These are shown as agreed in the Statement of Common Ground (SoCG) with both HCC as LLFA [[REP8-019](#)] and the EA [[REP8-020](#)], the relevant IPs.

Article 8

- 7.2.10. In relation to Article 8, a number of IPs including HCC, SDNPA and WCC raised matters relating to the defined Limits of Deviation (LoD). The SDNPA in response to Examining Authority Questions (ExQ) 1 9.1.4 expressed significant concerns about the proposed LoD allowing for up to a 5m deviation in relation to the drainage works and attenuation ponds [[REP2-073](#)]. The concerns of HCC related to the extent of the LoD in the

location of the A33/B3047 (Cart and Horses) junction. HCC requested that this was kept under review pending agreement on the improvement of that junction which could potentially tie into this section of the works. The matter of the Cart and Horses junction is discussed in Section 3.13 of this Report and the ExA concludes that changes to the LoD in that location are not appropriate.

- 7.2.11. At ISH2, the Applicant provided further explanation of and justification for the LoD for the attenuation ponds which relate to work nos 1j and 1m. The relevant topographical and design issues that led to the LoD are set out in the Applicant's summary of oral submissions at ISH2 [[REP4-035](#)]. The SDNPA response to EXQ2 9.2.4 [[REP5-035](#)] expresses the view that the proposed attenuation ponds would be incongruous features and any harm caused should be mitigated (if it cannot be avoided) and therefore the LoD should be limited as much as possible. However, the SDNPA accept that ultimately the extent of the LoD is for the ExA and SoST to consider and weigh in the planning balance. We concur with the Applicant that the LoD are tight for the type of works proposed for the attenuation ponds and would allow little scope for adjustment at detailed design stage. We find the flexibility sought for this aspect of the Proposed Development to be entirely reasonable and we do not consider that the LoD require amendment in this respect.
- 7.2.12. As regards the inclusion of LoD generally, we reviewed the Rochdale Envelope approach employed by the Applicant as set out ES Chapter 4 Environmental Impact Assessment (EIA) Methodology [[APP-045](#)], paragraph 4.4.1, in our initial review of issues. In ExQ1 9.1.12 [[PD-008](#)] the ExA sought confirmation that the Applicant had assessed the application boundary in accordance with the Planning Inspectorate Advice Note Nine: Rochdale Envelope (Planning Inspectorate, 2018) and asked the Applicant to explain and justify the extent of the vertical and lateral deviations set out in Article 8.
- 7.2.13. In response [[REP2-051](#)], the Applicant confirmed that the LoD that have been incorporated within the application boundary are required to allow modifications to be made to alter working procedures or make adjustments to the position of certain infrastructure during the detailed design and construction stages. Such flexibility is required, for example, to enable the Principal Contractor to alter their working procedures or make adjustments to the position of certain infrastructure in response, for example, to unforeseen ground conditions. The extent of vertical and lateral deviations has been determined based on the design, known constraints, construction and buildability factors associated with the Proposed Development. The ExA finds the proposed LoD as a whole to be reasonable and appropriate and we do not consider that any changes are required to be made to them.

Article 28

- 7.2.14. The ExA's schedule of proposed changes to the dDCO included a proposed amendment of Article 28 (2). This article grants the power to extinguish identified PRow on the date of the expiry of the notice period given under sub-paragraph (2). The period specified in the dDCO is not

less than 28 days. The HCC LIR [[REP2-066](#)] initially proposed a new Article 28 (4) to require the undertaker to provide notice of any extinguishment of relevant public rights of way. The HCC post hearing submissions for ISH2 confirm that HCC still request 42 days (6 weeks) notice rather than the 28 days' notice proposed by the Applicant's amendment.

- 7.2.15. The Applicant's response to the ExA's schedule of proposed changes [[REP6-026](#)] points out that the notice that would be provided to HCC (as a result of previous amendments to the dDCO) would not be provided with the view that HCC would go on to prepare the statutory public notices which would be required in cases where applications are being made pursuant to the Highways Act 1980. Under the PA2008, and the dDCO, the consideration of the appropriateness of the stopping-up occurs during the examination process. Therefore, there would be no administrative steps for the HCC to take other than to update the definitive map. The ExA agrees that the notice period of 28 days provided for in the dDCO would give a reasonable period of time for HCC to undertake any associated administrative tasks. We do not consider that any change to the notice period set out in Article 28 is necessary.

Requirements

Requirement 5

- 7.2.16. During the Examination, the SDNPA sought a number of changes to Requirement 5 which relates to landscaping including the addition of references in Requirement 5 (3) (a) to the timing of any proposed planting and advance planting. The SDNPA also requested that the submitted landscaping scheme should include reference to the provision of any fences and walls. These changes were largely agreed by the Applicant and are reflected in the final dDCO. However, at the close of the Examination there remained a point at issue in that the new Requirement 5 (3) (g) refers to "*...any fences and walls which do not serve a structural or safety purpose.*"
- 7.2.17. The SoCG between the SDNPA and the Applicant [[REP8-040](#)] records this as a matter of disagreement at the close of the Examination. The SDNPA position is that whilst they appreciate and fully understand the structural and safety concerns raised, they do not consider this to be a valid reason to include this specific exemption. They submit that fencing and walls can provide a 'dual' purpose and the Applicant could use some of these features to improve the overall design of the Proposed Development and provide opportunities for landscape and biodiversity enhancements. The ExA concurs with the position of the SDNPA on this matter and this is reflected in the rDCO.
- 7.2.18. The ExA's proposed changes to the dDCO [[PD-014](#)] included a suggested change to Requirement 7 in respect of fencing to include specific reference to the new 5 (3) (g). The Applicant disagrees with this proposed amendment for the reasons set out in its response [[REP6-026](#)]. In the light of those submissions, we agree that it is not necessary to make that change and that there is already sufficient flexibility in the

provisions to enable the SoST to grant deviance from the Manual of Contract Documents for Highway Works where it is considered appropriate to do so.

Requirement 6

- 7.2.19. As regards Requirement 6 which relates to the implementation and maintenance of landscaping, the SDNPA sought changes to the scope of this provision and to the duration of the maintenance period. At DL5, the Applicant submitted an amended dDCO [REP5-004] which included reference to 'chalk grassland' within Requirement 6 (3). The SoCG between the SDNPA and the Applicant [REP8-040] records this as a matter of disagreement. The SDNPA seek to broaden the scope by referring to any "*other element*" planted as part of the landscaping scheme and for the maintenance period to be changed from 5 to 10 years.
- 7.2.20. The ExA has given consideration to the changes sought by the SDNPA in Section 3.6 of this Report. We proposed this change in our schedule of proposed changes to the dDCO. In response, the Applicant [REP6-026] states that it intentionally did not use the suggested wording from SDNPA of "*other element*" as it does not recognise this as having a commonly understood meaning and submits that this could cause issues for interpretation. We disagree and do not believe that these words would cause any difficulties in their interpretation. In our view, the scope of Requirement 6 should be broadened in this way as set out in Table 19 below.
- 7.2.21. As regards the extension of the 5 years replacement period to 10 years, the Applicant has set out its position in response to ExQ2 9.2.16 [REP5-026] and in reply to LIRs [REP3-023]. This is that routine maintenance beyond a 5 year period would include thinning and coppicing to ensure the continued successful establishment of the planting. This means that the maintenance routine would result in the removal of trees and shrubs. The extension from a 5 year to a 10 year replacement period would then be contrary to the maintenance schedule of the landscaping works. As such, the Applicant does not consider this amendment to be appropriate.
- 7.2.22. In Section 3.6 of this Report, we conclude that the proposed landscape mitigation should be given additional protection due to the potential impact on a National Park and the importance of its setting and biodiversity. As set out in Table 19 below, we consider that amending the dDCO to ensure there is a requirement on the Applicant to replace failed planting for 10 years is both necessary and reasonable. However, we would highlight to the SoST that our proposed additional sub-paragraph 6 (4) designed to overcome the Applicant's concerns in relation to potential conflict with routine maintenance was not consulted upon with IPs before the close of the Examination. We have therefore included it in the matters which the SoST may wish to consider further in the list at the end of this Chapter.

Requirement 9

7.2.23. Both WCC and SDNPA at the outset raised an issue relating to the need to protect archaeological finds and provide sufficient space and funding for remains, reports and other material that may need to be stored in archives. During the Examination, this matter was discussed further between the parties. This resulted in a mutually agreeable redrafting of Requirement 9 (6) of the dDCO to ensure that suitable resources and provisions for long-term storage of the archaeological archive will be agreed with the WCC City Archaeologist rather than discussed with them. This is reflected in the final dDCO which also provides at Requirement 9 (7) that reference to consultation, reporting, and discussion with the City Archaeologist shall include the nominated archaeologist for SDNPA to the extent that it relates to matters relevant to their function.

Requirement 11

7.2.24. The SDNPA's DL4 submission at Appendix B [[REP4-047](#)] sets out suggested amendments to the dDCO including Requirement 11. The SDNPA submits that it should be consulted on the Traffic Management Plan (TMP) (especially if the document is going to include the PRoW diversions and management plan and the Construction Workers Travel Plan, as suggested by the Applicant during ISH2). Therefore, they sought amendment of Requirement 11 (1) to include consultation with both WCC and the SDNPA as well as the local highway authority.

7.2.25. The ExA's proposed changes to the dDCO included an amendment of Requirement 11 (1) to provide for consultation with the SDNPA, the WCC, and the local highway authority. In response, the Applicant referred to ExQ2 9.2.18 [[REP5-026](#)] which set out that it would separate the Construction Workers Travel Plan, called a Green Travel Plan, out of the TMP and insert that into the first iteration Environmental Management Plan (fiEMP) and require this to be developed in consultation with the relevant planning authorities. This was added to entry C15 of the Register of Environmental Actions and Commitments (REAC) table at DL5. The Applicant therefore considers that the elements of the TMP which would be appropriate to comment on for a planning authority on matters related to its functions has been moved out of the TMP.

7.2.26. On that basis, the ExA agrees that there is not now a need for relevant planning authorities to be consulted on the TMP and it is not necessary to amend Requirement 11 (1) in that respect.

Requirement 12

7.2.27. At ISH1, the ExA raised the question as to whether any specific design principles/ objectives and/ or design code that reflects the location of the Proposed Development within the protected landscape should be secured by the dDCO. The Applicant subsequently submitted to the Examination a Design Principles Report [[REP5-028](#)] with the purpose of firstly, defining the Design Principles that are to be incorporated into the detailed design of the Proposed Development. Secondly, to ensure that these detailed design elements have a clear design language, taking into consideration

the local context and characteristics of each area within the application boundary. The latest version was submitted at DL8 [[REP8-025](#)].

- 7.2.28. This matter is considered in the Landscape and Visual Section 3.10 of Chapter 3 of this Report where we deal with the SDNPA and WCC criticisms of the detail of the Design Principles Report. Given the purpose and scope of this document, we consider the level of detail provided to be entirely reasonable. In our view, both the key principles and the landscape-led Design Principles set out in the document provide sufficient recognition and safeguards for the SDNP and its setting. We do not therefore consider that it is necessary to include provision for further iterations of the Design Principles Report in consultation with the local authorities as a DCO Requirement. We find the Design Principles Report to be a valuable document that would be secured in Requirement 12 and is included in the list of documents to be certified by the SoST in Schedule 11.

Requirement 13

- 7.2.29. The ExA's schedule of proposed changes to the dDCO [[PD-014](#)] included the proposed amendment of Requirement 13 to include reference to the flood risk assessment (FRA) and drainage strategy. In response [[REP6-026](#)], the Applicant agreed that reference to the FRA [[APP-157](#)] and ES Appendix 13.1 (Drainage Strategy Report) [[APP-142](#) and [APP-143](#)] should be included within Requirement 13. The final dDCO [[REP8-004](#)] reflects this and no further amendment of this requirement is necessary.

Requirement 14

- 7.2.30. The ExA's schedule of proposed changes to the dDCO included the proposed amendment of Requirement 14 to specifically provide for approval of the written details of proposed noise mitigation including low noise surfacing by the SoST to follow consultation with WCC and SDNPA on matters relating to their function and HCC as the local highway authority. In response [[REP6-026](#)], the Applicant submits that this requirement is specifically to manage the environmental health impacts of noise including low noise surfacing for sign off by an environmental health officer of a relevant planning authority and since the location and design of low noise road surfacing would be a matter of consultation as part of detailed design through which the local highway authority would be consulted on, the inclusion therefore of the local highway authority is not necessary.

- 7.2.31. However, the Applicant indicates that if the ExA does not agree with the Applicant then the following amendment is proposed to ensure alignment in the drafting of other requirements. This is to remove specific reference to WCC and SDNPA and refer to 'relevant planning authority' to ensure both are treated equally and only consulted to the extent relevant to their functions, and to reference HCC only by reference to a relevant highway authority in accordance with other requirements. The Applicant proposed an amendment in those circumstances that includes reference to the local highway authority and relevant planning authority on matters related to their functions.

7.2.32. That suggested re-drafting of Requirement 14 (1) is not entirely reflected in the final dDCO [[REP8-004](#)] which states: "14 (1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to their functions if required any additional relevant planning authority."

7.2.33. We conclude in Section 3.11 of this Report that it is reasonable in this location to specifically provide for consultation on the noise mitigation measures, including low noise road surfacing, with both the SDNPA and the WCC on matters relating to their function and with HCC as the local highway authority. We disagree with the Applicant that it is not necessary for the local highway authority to be consulted upon the low road noise aspect of the noise mitigation as low noise road surfacing is a clearly a matter which falls within the ambit of HCC's functions. We also consider the "if required" caveat in the revised drafting of Requirement 14 to be unnecessary and for the avoidance of doubt we consider that specific reference should be made to the SDNPA in a new sub-paragraph in a similar way as Requirement 9 (7) does in relation to that aspect of the SDNPA functions. The rDCO includes an amendment to Requirement 14 to this effect.

Additional requirements

Phasing plan

7.2.34. The SDNPA's DL4 submission at Appendix B [[REP4-047](#)] explains why it sought in the LIR [[REP2-071](#)] and at the ISH2, an additional requirement for the submission of a phasing plan / schedule of works. They acknowledge the intention to deliver the Proposed Development as a continuous build-out but submit that the actual works would not proceed in that way, for example, in relation to the provision of the construction compound and advanced planting. They contend that this would also help with the timing and understanding of when information would be provided for approval. In that respect, Requirement 5 Landscaping refers to 'written landscaping scheme for that part'.

7.2.35. The Applicant rejects the inclusion of such a requirement as set out in its response to ExQ2 9.2.24 [[REP5-026](#)] and submits that the phasing plan requirement that has been suggested is not appropriate for the Proposed Development. The Applicant submits that this requirement is normally appropriate to circumstances where the authorised development is being built-out in defined phases and stages, or where requirements may be discharged against a defined stage rather than against the authorised development as a whole.

7.2.36. There is no intention to discharge requirements against defined stages as the Proposed Development is being built-out in a single continuous phase of development. The approach is required by the Applicant to ensure that discharge of requirements, and therefore commencement of the Proposed Development, is not unnecessarily and unreasonably delayed

should there be only a small part of the Proposed Development preventing the discharge of requirements.

- 7.2.37. The SoCG [[REP8-040](#)] between the SDNPA and the Applicant is noted as not being agreed at the close of the Examination. The ES Chapter 2: The Scheme and its Surroundings [[APP-043](#)] Section 2.8 provides some information in relation to construction phasing. The ExA consider that it is reasonable for the dDCO to allow the Applicant the flexibility to continue to commence those parts of the authorised development which do not have any latent issues without unnecessary delay. We agree with the Applicant that the absence of a phasing plan would not be detrimental to the provision of landscaping as secured by the rDCO. Whilst we have carefully considered the concerns of the SDNPA on this matter, we do not believe that the inclusion of the additional requirement sought can be justified.

Walking, cycling and horse-riding

- 7.2.38. The SDNPA LIR [[REP2-071](#)] raises concerns that the DCO Requirements should set out the minimum widths of all the proposed footpaths / cycleways / bridleways including the subways and details of their status. This matter is recorded as an area of disagreement in the SoCG between the SDNPA and the Applicant [[REP8-040](#)]. The Applicant has responded to this point in its comments on LIRs [[REP3-023](#)] and state that the legal status of the PRoW are set out in Article 15(8) and Schedule 3, Part 8 of the dDCO.
- 7.2.39. The ExA also notes that the Design Principles Report which is secured by Requirement 12 was updated at DL8 [[REP8-025](#)] to include a further principle (EU.07 – Walking Cycling and Horse Riding) which sets out surface treatments and minimum widths for all routes. We do not consider that it is necessary for an additional requirement to be included in the rDCO in relation to this topic.

Schedule 11 Documents to be certified

- 7.2.40. The Applicant's cover letter at the close of the Examination [[REP8-043](#)] requests the ExA note that the revision number of Appendix 8.3 (Assessment of Operational Air Quality Impacts on Biodiversity) in Schedule 11 of the dDCO may need to be updated following agreement of the issues with Natural England after the close of the Examination. At present, the document in Schedule 11 is Revision number 2. We bring this to the attention of the SOST, as we are not able to finalise this matter within our rDCO.

7.3. THE EXA'S DCO INCLUDING PROVISIONS RECOMMENDED TO BE CHANGED

- 7.3.1. The final version dDCO as recommended by the ExA (the Recommended DCO) is set out in Appendix D. This is the DCO the ExA would recommend, should the SoST decide to grant development consent for the application.

7.3.2. The rDCO is structured as detailed in Table 18:

Table 18 : Structure of the Recommended DCO

Articles	
Part 1	<p>Preliminary</p> <ul style="list-style-type: none"> Articles 1 and 2 contain the preliminary provisions providing for citation, commencement, and interpretation Articles 3 details disapplication of legislative powers Article 4 relates to maintenance of drainage
Part 2	<p>Principal Powers</p> <ul style="list-style-type: none"> Article 5 provides the principal powers granting development consent for the Proposed Development. Article 6 relates to maintenance of the authorised development. Article 7 relates to planning permissions granted under the TCPA 1990. Article 8 sets out the Limits of Deviation. Article 9 and 10 set out who has the benefit of the powers of the Order and how those powers can be transferred.
Part 3	<p>Streets</p> <ul style="list-style-type: none"> Articles 11 to 20 provide for the Undertaker to be able to carry out works to and within streets, alter layouts, to create or improve accesses, to permanently close streets, to establish classifications and traffic regulations and to undertake agreements with street authorities.
Part 4	<p>Supplemental Powers</p> <ul style="list-style-type: none"> Articles 21 to 23 concern supplemental powers relating to discharge of water, protective works to buildings and authority to survey land.
Part 5	<p>Powers of Acquisition</p> <ul style="list-style-type: none"> Articles 24 to 38 provide for the Undertaker to be able to compulsorily acquire the Order land and rights over/ within it, and to be able to temporarily use parts of the Order land for the construction or maintenance of the Proposed Development. The provisions provide for compensation to be payable to Affected Persons in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to land and equipment of Statutory Undertakers.
Part 6	<p>Operations</p> <ul style="list-style-type: none"> Article 39 provides for the Undertaker to be able to complete felling or lopping of trees and removal of hedgerows. Article 40 regards trees subject to tree preservation orders.
Part 7	<p>Miscellaneous and General</p> <ul style="list-style-type: none"> Articles 41 to 49 are concerned with miscellaneous and other general matters including the removal of human remains; application of landlords and tenant law; operational land in respect of the TCPA1990; defence to proceeding in relation to statutory nuisance and Control of Pollution Act 1974; certification of plans; service of notices; and arbitration.
Schedules	
Schedule 1	The description of the Authorised Development.
Schedule 2	Sets out the deemed approval of requirements and is in two parts:
Part 1	Lists the Requirements.
Part 2	Details the procedure for discharge of the Requirements.

Schedule 3	Lists the classification and other traffic regulations to be made and is in eight parts:
Part 1	Lists the special roads to be created.
Part 2	Lists the trunk roads to be created.
Part 3	Lists the roads to be de-trunked.
Part 4	Lists the classified roads to be created.
Part 5	Lists the speed limits to be made.
Part 6	Lists the traffic regulation measures (clearways and prohibitions) to be made.
Part 7	Lists the revocations & variations of existing traffic regulation orders.
Part 8	Lists the public rights of way to be created
Schedule 4	Lists the permanent stopping up of highways and private means of access & provision of new highways and private means of access and is in two parts:
Part 1	Lists the highways to be stopped up for which a substitute is to be provided and new highways which are otherwise to be provided.
Part 2	Lists the private means of access to be stopped up for which a substitute is to be provided and new private means of access which are otherwise to be provided.
Schedule 5	Lists land in which only new rights etc. may be acquired.
Schedule 6	Sets out the modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants.
Schedule 7	Lists the land of which temporary possession may be taken.
Schedule 8	Lists removal of hedgerows.
Schedule 9	Lists the trees subject to tree preservation orders.
Schedule 10	Sets out the Protective Provisions and is in four parts:
Part 1	Sets out the protective provisions for electricity, gas, water and sewerage undertakers
Part 2	Sets out the protective provisions for operators of electronic communications code networks.
Part 3	Sets out the protective provisions for Southern Gas Networks Plc as gas undertaker.
Part 4	Sets out the protective provisions for The Environment Agency.
Schedule 11	Lists the documents to be certified.

- 7.3.3. The rDCO is based on the Applicant's final submitted dDCO (Revision 6) [REP8-004]. It also contains drafting changes which the ExA considers to be necessary to accommodate matters explored during the Examination. These are set out in Table 19.
- 7.3.4. Table 19 addresses outstanding matters and instances where drafting objections have been raised but not resolved by the close of the Examination. This includes those matters which were discussed at ISH2 and where written submissions were made seeking potential changes to the dDCO.
- 7.3.5. Matters which have been raised and subsequently agreed during the course of the Examination are not listed in Table 19 but have been incorporated within the dDCO and form part of the ExAs rDCO.
- 7.3.6. Table 19 sets out the provisions in which the ExA either:

- recommend changes to the final dDCO [[REP8-004](#)] and which are included in the rDCO (Appendix 4); or
- has considered the detailed submissions of the parties and has concluded that no changes are required.

7.3.7. It is brought to the attention of the SoST that all matters relating to HCC that are shown in Table 19 were unresolved at the close of the Examination. These matters are however, shown in the SoCG as “*provisionally agreed*” which indicates that the issues are agreed in principle and both parties expect the issues to be “*agreed*” shortly after the close of the Examination.

7.3.8. The Applicant and HCC have indicated that they expect a side agreement to be in place shortly after the close of the Examination, as set out in a letter by HCC legal team [[REP8-044](#)]. If this side agreement is completed, HCC confirm in their response to ExQ3 9.3.1 [[REP6-031](#)] that all outstanding matters relating to the dDCO will be resolved and it is implied by HCC that they would withdraw their objection to the matters they have raised. However, our rDCO has been drafted without reliance upon the side agreement being in place, and we consider below matters raised by HCC prior to the conclusion of any agreement with the Applicant.

Table 19 : DCO Provisions Examined and the Recommended Changes where required

Provisions	Examination Issue	ExA Reasoning	Recommended change
Article 6 Maintenance of authorised development	HCC in their LIR [REP2-066] sought assurance that where the future maintenance of the authorised development concerns maintenance of the County Council’s highway network, the Applicant will first obtain the consent of the County Council for any such relevant works.	The ExA anticipates that this matter will be covered within the side agreement. However, this was not available to the ExA at the close of the Examination. We note that the wording of the article is seen in comparator DCOs (as made) and we consider that the rDCO gives sufficient safeguards to the local highway authority. The ExA also notes that Article 6 directly allows for an agreement between the Applicant and a maintaining authority.	none
Article 11 Street works	HCC in their LIR [REP2-066] HCC sought to ensure that all street works undertaken by the Applicant on the County Council’s	In their comments to the LIR [REP3-023] the Applicant stated that a permit scheme cannot apply to works executed pursuant to a section 50 licence (Reg 6 Traffic	none

Provisions	Examination Issue	ExA Reasoning	Recommended change
	<p>network pursuant to the DCO are undertaken in accordance with and pursuant to the terms of the County Council's Permit Scheme</p> <p>HCC raised concerns that the effect of Article 11 the application and disapplication of parts of the New Roads and Street Works Act 1991) would run contrary to the operation of the Permit Scheme.</p>	<p>Management Permit Scheme (England) Regulations 2007 ("the Permit Regulations"). The Development Consent Order ensures that the works are not pursuant to a section 50 licence as the Development Consent Order is deemed to grant statutory right to street works making the Applicant an undertaker for the purposes of the street works regime (Article 11(2) Development Consent Order, section 48 New Roads and Street Works Act 1991).</p> <p>Notwithstanding this, the Applicant proposed an addition to Article 13 to state that nothing in the Article would affect the operation of the permit scheme. The ExA accepts this approach, and this addition is seen in the rDCO at Article 13 (8).</p>	
<p>Article 12 (2)</p> <p>Power to alter layout etc. of streets</p>	<p>Paragraph (2) of the Article places a need for temporary alteration of a street to be the reasonable satisfaction of the street authority. HCC consider this should include any alteration, not solely temporary alterations.</p>	<p>The Applicant considers that Article 12(2) relates to temporarily altered streets and in addition Article 12 also permits the permanent alteration of a street with the consent of the street authority.</p> <p>The ExA anticipates that this matter will be covered within the side agreement. However, this was not available to the ExA at the close of the Examination.</p> <p>We agree that consent is secured adequately in Article 12 (3)(b) which states that alterations detailed in Article 12 (1) are subject to consent of the street authority.</p>	<p>none</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
<p>Article 12 (3)(b)</p> <p>Power to alter layout etc. of streets</p>	<p>HCC requests in considering requests and inspecting and approving works and would request an amendment to Article 12(3)(b) should include the requirement for cost recovery for such.</p>	<p>The Applicant states that the dDCO does not envisage that the street authority will be inspecting the works undertaken by the Applicant. Consequently, there will be no costs to be recovered.</p> <p>The ExA anticipates that this matter will be covered within the side agreement. However, this was not available to the ExA at the close of the Examination.</p> <p>We conclude that the Applicant's position, that recovery of costs is not deemed as required for inspections, is accepted.</p>	<p>none</p>
<p>Article 12 (4)</p> <p>Power to alter layout etc. of streets</p>	<p>The County Council is concerned that the period of 6 weeks (42 days) for a notification by the street authority on the decision as to whether to consent to proposed street works under Article 12(4) is not likely to be sufficient and requests a minimum of three months.</p>	<p>The Applicant considers that HCC's request of three months is unreasonable and that 42 days is sufficient.</p> <p>The ExA anticipates that this matter will be covered within the side agreement. However, this was not available to the ExA at the close of the Examination.</p> <p>We consider that 42 days' notice would be sufficient and would expect that in practice this would be a minimum notice period; the need to apply the Permit Scheme as detailed in Article 13 (8) would further secure HCCs position in this regard.</p>	<p>none</p>
<p>Article 14</p> <p>Construction and maintenance of new, altered or diverted streets and other structures</p>	<p>In their LIR, HCC stated that, in order to protect its requirement for various agreements to be made with the Applicant, HCC would expect a s106 agreement or</p>	<p>In their response to the LIR, the Applicant stated that they considered there were sufficient requirements to protect HCC within additional legal agreements. The Applicant indicated that it was committed to concluding a</p>	<p>none</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
	additional requirement to secure these agreements.	<p>side agreement which at the end of the Examination, both parties suggested was almost complete.</p> <p>The ExA considers that there are sufficient Requirements to protect HCC without the provision of a s106 agreement or additional requirements.</p>	
<p>Article 14 (1-3)</p> <p>Construction and maintenance of new, altered or diverted streets and other structures</p>	<p>In their LIR, HCC raised concerns that under Article 14(1) – (3) highway structures within the local highway network would be transferred to the HCC unless otherwise agreed. HCC state that the County Council would only expect highway structures to be transferred to the County Council’s maintenance responsibility by agreement.</p>	<p>In their response to the LIR, the Applicant stated that the transfer of authorised development is contingent on the works meeting the necessary design and safety standards, and that in the case of Article 14(1-3) the works must be done to the reasonable satisfaction of the local highway authority. The ExA finds that this is acceptable protection and is seen in similar made DCOs.</p>	<p>none</p>
<p>Article 14 (5)(b)</p> <p>Construction and maintenance of new, altered or diverted streets and other structures</p>	<p>HCC state in their LIR that Article 14(5)(b) requires clarification so that any alterations to the network to be de-trunked should be to the County Council’s reasonable satisfaction.</p>	<p>In their response to the LIR, the Applicant contests that any highway being de-trunked should not subject to ‘the reasonable satisfaction of the local highway authority’ as those highways would already be built to the standard required of the Applicant as a strategic highways authority.</p> <p>The ExA anticipates that this matter will be covered within the side agreement.</p> <p>However, as this was not available to the ExA at the close of the Examination we consider that the Applicant has not considered the matter</p>	<p><i>After the words “any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must”</i></p> <p><i>insert</i></p> <p><i>“be completed to the reasonable satisfaction of the local highway authority and”</i></p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
		<p>fully. In our view, HCC are attempting to safeguard against issues that may arise if any alterations happen subsequent to the 'building to standards'. In this respect the ExA considers HCC are not adequately protected with the current form of words in Article 14 (5)(b).</p>	
<p>Article 14 (6) Construction and maintenance of new, altered or diverted streets and other structures</p>	<p>HCC state in their LIR that they seek an amendment to Article 14(6) to clarify that in the construction of highway surfacing to be maintained by the County Council over a bridge structure to be maintained by National Highways must be completed to the reasonable satisfaction of the County Council.</p>	<p>The Applicant contests that Article 14(6), operates to confirm the degree of adoption, with the matter of the quality of the construction is secured by Article 14(1).</p> <p>The ExA anticipates that this matter will be covered within the side agreement.</p> <p>However, as this was not available to the ExA at the close of the Examination we accept the Applicant's position that the quality of construction will be subject to Article 14 (1) and, as stated, will <i>'...be completed to the reasonable satisfaction of the local highway authority...'</i>.</p>	<p>none</p>
<p>Article 14 (7) Construction and maintenance of new, altered or diverted streets and other structures</p>	<p>HCC state in their LIR that they seek an amendment to Article 14(7) to clarify that in the construction of a bridge structure to be maintained by the County Council the bridge must be completed to the reasonable satisfaction of the County Council.</p>	<p>The Applicant contests that Article 14(7), operates to confirm that where a bridge carried a highway over another highway and neither of those highways are trunk road or special roads that the local highway authority will maintain the entire structure of the bridge.</p> <p>The matter of the quality of the construction is secured by Article 14(1).</p> <p>The ExA anticipates that this matter will be covered within the side agreement.</p>	<p>none</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
		<p>However, as this was not available to the ExA at the close of the Examination we accept the Applicant's position that the quality of construction will be subject to Article 14 (1) and, as stated, will <i>'....be completed to the reasonable satisfaction of the local highway authority...'</i>.</p>	
<p>Articles 15 (4) Classification of roads, etc.</p>	<p>HCC state in their LIR they have concerns about the impact of Article 15(4) and the transfer of de-trunked highway to the County Council. The state that they would not be able to agree an article for transfer of liability of de-trunked roads on a date to be notified. HCC continue to state that they except to rely on the terms of a relevant legal agreement, in which the ExA anticipate this to mean the side agreement previously referenced.</p> <p>Notwithstanding the request of an agreement with the Applicant, HCC recommended an amendment to Article 15(4).</p>	<p>Through the course of the Examination, the ExA have sought updates on the progress on matters including agreement relating to de-trunking matters. Both HCC and the Applicant have stated that the were discussing matters and expected them to be finalised within an agreement.</p> <p>Although there is an absence of further commentary on this matter from either the Applicant or HCC, the ExA anticipates that this matter will be covered within the side agreement.</p> <p>However, as this was not available to the ExA at the close of the Examination we find that it is not reasonable for the local highway authority to have a de-trunked highway transferred to them unilaterally on a date determined by the Applicant. Therefore, we accept HCCs proposed amendments to the dDCO which we have incorporated into the rDCO.</p>	<p>At the beginning of the paragraph. delete the words <i>"On such day as the undertaker may determine"</i></p> <p>and insert the words</p> <p><i>"On written confirmation from the local highway authority that the roads described in Part 3 (roads to be de-trunked) of Schedule 3 are in a state of repair and condition as is reasonably satisfactory to the local highway authority"</i></p>
<p>Article 16 (6) Temporary stopping up and</p>	<p>HCC state in their LIR they consider that a period for a decision as stated in Article</p>	<p>In their response to LIP, the Applicant references a made DCO, being the Southampton to London</p>	<p>After the words <i>"If a street authority which receives an application for</i></p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
restriction of use of streets	16(6) of 28 days from the date of the application is too short and they require a minimum period of three months.	<p>Pipeline, and note that in that DCO HCC will have been subject a requirement for a decision within 42 days. They go on to suggest that this application is over a limited extent of highway and therefore 28 days is sufficient.</p> <p>The ExA anticipates that this matter will be covered within the side agreement.</p> <p>However, as this was not available to the ExA at the close of the Examination we consider that 28 days is not sufficient time to consider the full implication of temporarily stopping up or restricting streets. We also consider the suggested period of three months to be excessive.</p> <p>In referencing a period of 42 days, the Applicant has sought to dismiss this based on quantity of road affected, whereas the ExA consider it a matter of process time, not road length. The ExA, consider 42 days to be a reasonable compromise in the absence of the side agreement.</p>	<p><i>consent under paragraph (4) fails to notify the undertaker of its decision before the end of “</i></p> <p>Delete the words “<i>the period of 28 days</i>” and replace with “<i>the period of 42 days</i>”</p>
<p>Article 17</p> <p>Permanent stopping up and restriction of use of streets and private means of access</p>	<p>In their LIR, HCC stated that they have raised questions with the Applicant with regard to the areas of highway to be stopped up to better understand the approach proposed. In particular, the stated they were unsure why it is sought to de-trunk carriageway that will</p>	<p>In their comments on LIR, the Applicant has stated that the areas for de-trunking are clear on the de-trunking plans and some revisions were made to the classification of roads plans at DL2 [REP2-006].</p> <p>The Applicant sought to explain the process of de-trunking followed by stopping up in their reply to LIR and concluded that</p>	none

Provisions	Examination Issue	ExA Reasoning	Recommended change
	<p>subsequently be stopped up.</p>	<p>they the intention would be to de-trunk and stop up highway simultaneously, which would eliminate risk to HCC.</p> <p>The ExA anticipates that this matter will be covered within the side agreement.</p> <p>However, as this was not available to the ExA at the close of the Examination we consider that the Applicant has sufficiently detailed the process and there is adequate protection for HCC.</p>	
<p>Article 19 Clearways</p>	<p>In their LIR, HCC states that the Proposed Development provides for a clearway order for the length of carriageway from the A33/ B3047 junction to the new onslip roundabout (between point 1 and 2 on sheets 3 and 5 of the traffic regulation measures plans [REP2-009])</p> <p>HCC goes on to states that they do not want this section to have a clearway order as they have taken the approach of removing clearways from its highway network.</p>	<p>In their comments on LIR, the Applicant asked the County Council to explain the method of control it wishes to place on the road to ensure restrictions.</p> <p>Through the course of the Examination, the ExA have sought updates on the progress on matters between these parties. Both HCC and the Applicant have stated that they were discussing matters and expected them to be finalised within an agreement.</p> <p>Although there is an absence of further commentary on this matter from either the Applicant or HCC, the ExA anticipates that this matter will be covered within the side agreement.</p> <p>However, as this was not available to the ExA at the close of the Examination we find that in the absence of a clear alternative, the requirement for a clearway over this length of highway should remain.</p>	<p>none</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
<p>Article 28</p> <p>Public rights of way</p>	<p>The HCC LIR initially proposed a new Article 28(4) to require the undertaker to provide notice of any extinguishment of relevant public rights of way.</p> <p>The HCC post hearing submissions for ISH2 confirm that it requests 42 days (6 weeks) notice rather than the 28 days' notice proposed by the Applicant's amendment.</p> <p>The Applicant's response to the ExA's proposed changes points out that there are no administrative steps for the HCC to take other than to update the definitive map. The Applicant considers that 28 days is ample time for this to be undertaken.</p>	<p>In the light of the Applicant's response to our schedule of proposed changes the ExA does not consider that it is necessary to provide for a longer notice period than 28 days. We are now satisfied that 28 days would provide sufficient time for HCC to take any associated administrative steps.</p>	<p>none</p>
<p>Article 34</p> <p>(Temporary use of land for carrying out the authorised development)</p>	<p>In their LIR, SDNPA state that they consider Article 34 (1)(b) to give arbitrary powers which conflict with assurances and commitments given elsewhere in the development proposal (for example around the retention of vegetation).</p>	<p>The Applicant's position was stated in their response to ExQ2 9.2.9 [REP5-026]. They state that the removal of buildings and vegetation will be limited to the requirements in Schedule 2 and that stated in the fiEMP and practically, there will be a need to clear vegetation before work commences and there may be structures which are not apparent at this stage.</p>	<p>none</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
	<p>They suggest that additional wording in Article 34 (1) should be added to ensure that this action would only be taken “where necessary for” the carrying out of the authorised development, and “subject to article 26(2)” (time limit for exercise of authority to acquire land compulsorily) and “the Requirements of Schedule 2”</p>	<p>They further state that on review of previous (made) DCOs in sensitive landscapes, the model provisions have been used which state “in connection with” and not the suggested “where necessary for”.</p> <p>They finally state that adding “the Requirements of Schedule 2” is unnecessary confirmatory language.</p> <p>The ExA considers the Applicant’s position to be acceptable on all aspects of this matter.</p>	
<p>Article 44 (Defence to proceedings in respect of statutory nuisance)</p>	<p>In their LIR, SDNPA state that they consider that a statutory nuisance by its very definition is harmful and consider that a defence against this should not be written into the DCO.</p>	<p>The Applicant’s position was stated in their response to LIR [REP3-023]. They state that a broad defence against civil or criminal proceedings is contained in S158 of PA2008 and Article 44 seeks to fill a legislative gap and is contained in the model provisions and has been included in similar (made) DCOs.</p> <p>The ExA considers the Applicant’s position to be acceptable on this matter.</p>	<p>none</p>
<p>Schedule 2, Requirements 1 (Interpretation)</p>	<p>Error in referencing changed by ExA after close of Examination.</p>	<p>To ensure the correct reference is made</p>	<p>Schedule 2 Part 1 1. Definition of “EMP (first iteration)”</p> <p>After the words “EMP (First Iteration)” means the first iteration of the environmental management plan produced in accordance with the DMRB during</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
			<p>the preliminary design stage and as certified under article”</p> <p>Delete the words “48 (<i>certification of documents, etc.</i>)</p> <p>And replace with the words “47 (<i>certification of plans, etc.</i>)</p>
<p>Schedule 2, Requirement 4</p> <p>(Details of construction)</p>	<p>In their LIR, SDNPA state that they propose a change to the DCO at requirement 4(3) to delete <i>‘taking into account considerations including, but not limited to, cost and engineering practicality’</i> as they consider the requirement provides the Applicant with sufficient flexibility without this additional wording.</p>	<p>The Applicant’s position is detailed in their response to ExQ2 9.2.14 where they state that the proposed amendment does not change the interpretation of Requirement 4(3).</p> <p>They submit that the wording adds clarification that where there are cost and engineering constraints make a consultation response inappropriate, unreasonable or unfeasible the undertaker can decide whether to reflect those responses in the details submitted to the SoS. However, if the Applicant did not reflect those representations in the details submitted to the SoS they remain obligated by Requirement 4(4) to explain why they are not reflected in the details to be approved.</p> <p>In their schedule of Proposed Changes to the dDCO, the ExA proposed that this wording was removed as we do not consider that it is necessary to include the words suggested to be deleted or to place any emphasis on those factors</p>	<p>Schedule 2 Part 1, 4(3) after the words “<i>The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so</i>”.</p> <p>delete the words and comma “, <i>taking into account consideration including, but not limited to, cost and engineering practicality</i>”.</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
		and not others. That remains our position notwithstanding the rejection of this change by the Applicant.	
<p>Schedule 2, Requirement 5</p> <p>(Landscape)</p>	<p>In their LIR, SDNPA state that they propose a number of changes to the DCO at requirement 5. Most of these issues have been resolved.</p> <p>One issue that remained at the close of the Examination was that the Applicant's revision of this requirement states that the provision applies to <i>"...any fences and walls which do not serve a structural or safety purpose for a highway"</i>. The SDNPA considered that this should apply to <i>"and fences and walls"</i> without the caveat in relation to structural and safety purposes.</p>	<p>The ExA in our schedule of proposed changes to the dDCO [PD-014] we proposed a new provision at 5 (3) (g) to read <i>"landscaping works associated with the provision of any fences and walls"</i> as we considered that the inclusion of this provision to be necessary given the location of part of the site within the SDNPA.</p> <p>The Applicant's response was to accept an additional requirement but worded it to restrict the requirement to <i>"...any fences and walls which do not serve a structural or safety purpose for a highway"</i>.</p> <p>We conclude that SDNPAs position at the close of the Examination aligns with our consideration that given the location of the site with the South Downs National Park (SDNP) that the provision of all fences and walls should be included in the landscaping scheme.</p>	<p>In Schedule 2, Part 1 5(3)(g) after the words <i>"landscaping works associated with the provision of any fences and walls"</i></p> <p>delete the words</p> <p><i>"which do not serve a structural or safety purpose for a highway"</i></p>
<p>Schedule 2, Requirement 6</p> <p>(Implementation and maintenance of landscaping)</p>	<p>At DL4 [REP4-047], SDNPA suggest that Requirement 6 (3) for replacement of failed planting should not be restricted to "any tree or shrub" as proposed in the dDCO. At DL5 (dDCO revision 4) the Applicant included</p>	<p>The ExA consider that the requirement to include all elements of landscape planting is proportionate and to this end in our schedule of proposed changes to the dDCO [PD-014] we included reference to <i>"other elements"</i> of landscape planting.</p>	<p>In Schedule 2, 6(3) amend to read <i>"Any tree, shrub, chalk grassland or other element..."</i>.</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
	<p>additional wording to extend this to “any tree, shrub or chalk grassland”. The SDNPA considered that this is still restrictive for development within a national park, and should state: “Any tree or shrub, or other element”</p>	<p>We have noted the Applicant’s response to our proposed amendment [REP6-026]. In the light of that we believe that the specific reference to “chalk grassland” should be retained but that the inclusion of this additional wording sought by the SDNPA is required given the location of part of the site within the SDNP.</p>	
	<p>At DL4 [REP4-047], SDNPA suggest that Requirement 6 (3) for replacement of failing planting of 5 is insufficient in the context of the National Park and 10 years would be a more suitable period.</p>	<p>The ExA has considered this in Section 3.6 of this Report. We believe that there is a need to provide a greater degree of certainty to replacement of failed planting over a longer period having regard to the implication that the failure of planting would have for the SDNP and its setting. This change was included in our schedule of proposed changes to the dCO [PD-014].</p> <p>Notwithstanding the responses from the Applicant, we conclude that a 10 year replacement period is proportionate and necessary in the circumstances of the Proposed Development. However, to circumvent the potential difficulty identified by the Applicant we propose that an additional sub-paragraph be included to avoid conflict with the approved maintenance schedule.</p>	<p>In Schedule 2, 6(3) after the words “within a period of” delete the number “5” and insert the number “10”.</p> <p>Insert a new sub-paragraph 6(4) as follows:</p> <p><i>“(4) The reference to any tree or shrub being “removed” in sub-paragraph (3) above shall not apply to those trees or shrubs removed in accordance with the approved landscape maintenance works and timetable.”</i></p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
<p>Schedule 2, Requirement 7 (Fencing)</p>	<p>The ExA's proposed changes to the dDCO [PD-014] included a suggested change to Requirement 7 to ensure compatibility with the suggested change to Requirement 5 (3) (g) mentioned above.</p> <p>In response, the Applicant did not agree to the proposed amendment and gave reasons as to why there was already sufficient flexibility in the dDCO provisions for the SoS to take an appropriate view on the facts.</p>	<p>The ExA has considered the Applicant's response to our suggested change [REP6-026] and the explanation as to the differences between Requirements 6 and 7 in its response to ExQ2 9.2.15(ii) [REP5-026].</p> <p>On reflection, we agree that the current drafting of Requirement 7 would allow the SoS flexibility to grant deviance from the Manual of Contract Documents for Highway Works should that be considered necessary.</p>	<p>none</p>
<p>Schedule 2, Requirement 12 (Requirements - Detailed design)</p>	<p>In their LIR, HCC state that future maintenance responsibility for those parts of the authorised development that are on highway (other than trunk road or special road) will be transferred to them, they request that the dDCO is changed to give them a right to approve the detailed design in respect of such highway.</p>	<p>The Applicant's comments on the LIR indicate that they do not consider that it is necessary or appropriate that the local highway authority approve detailed design of the local highway elements of the Proposed Development and that it is well established that the SoST is the most appropriate person for approval of detailed design for National Highways Schemes, with the design based on the preliminary design, Design Manual for Roads and Bridges (DMRB) regulations, and the principles in the Design and Access Statement.</p> <p>They further state that HCC will have the opportunity to comment on the detailed design as they are required to be consulted and that the local highway authority</p>	<p>none</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
		<p>has a mechanism for control of those elements being dedicated in article 14(1)-(3) which ensures works are done to the reasonable satisfaction of the local highway authority.</p> <p>The ExA anticipates that this matter will be covered within the side agreement.</p> <p>However, as this was not available to the ExA at the close of the Examination we find the Applicant's approach to be acceptable and we consider there is adequate protection within the rDCO for HCC.</p>	
<p>Schedule 2, Requirement 12 (1)(b) (Requirements - Detailed design)</p>	<p>During the Examination, the Applicant provided a Design Principles Report [REP8-025] following requests from a number of IPs; this is now detailed in Schedule 2 Requirement 12 to be part of the basis for the detailed design.</p> <p>Further to this, WCC have requested that the DCO should state the subsequent revisions of this Report should be included within this requirement for the Applicant to allow consultation with the Authorities being prior to development.</p>	<p>The Applicant indicates that the purpose of the Design Principles Report (Rev 1) is to set out the principles that are to be incorporated into the detailed design of the Proposed Development, that will be considered under Requirement 12 dDCO, and they do not consider it necessary to include an additional requirement for further iterations to be detailed.</p> <p>The ExA has considered in Section 3.10 of this Report the request for further iterations of this Design Principles Report and provisions for consultation to be specifically secured in the rDCO. We conclude that it is not necessary to make such provision given the purpose and scope of this document.</p>	<p>none</p>
	<p>During the Examination, the</p>	<p>The Applicant's response to the ExA's schedule of</p>	<p>In Schedule 2, Requirement 14</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
<p>Schedule 2, Requirement 14</p> <p>(Noise mitigation)</p>	<p>SDNPA raised the matter of consultation in relation to low road noise surfacing. The SDNPA DL5 submission [REP5-035] and SoCG item 1.8 [REP8-040] note the SDNPA position as being that they need to be consulted as the noise mitigation measures are part of the mitigation measures required due to the impacts to the National Park. If the Applicant is not going to change the overall reference to 'relevant planning authority' then they submit that Requirement 14(1) needs to be amended to explicitly refer to the SDNPA as well as WCC.</p>	<p>proposed changes to the dDCO in relation to Requirement 14 contested the need to include provision for consultation with HCC as local highway authority.</p> <p>In the event that the ExA disagreed, then the Applicant proposed an alternative amendment to ensure alignment in the drafting of other requirements. This is to remove specific reference to WCC and SDNPA and refer to 'relevant planning authority' and to reference HCC only by reference to a relevant highway authority in accordance with other requirements.</p> <p>We consider that a further amendment of this requirement is necessary to include provision for consultation with the local highway authority and for the avoidance of doubt to make specific reference to consultation with the SDNPA.</p>	<p>(1) after the words "<i>following consultation with the relevant planning</i>" delete the words: "<i>authority</i>" and "<i>if required any additional relevant planning authority</i>" and substitute therefor the words: "<i>authorities</i>". In addition to include a new Requirement 14 (4) as follows: "<i>(4) References in sub-paragraph (1) above to consultation with the relevant planning authorities shall include the South Downs National Park Authority to the extent that it relates to matters relevant to their functions.</i>"</p>
<p>Additional Requirement</p> <p>Stages of Authorised Development</p>	<p>In their LIR, SDNPA propose an additional requirement to dDCO to require the authorised development to commence subject to a written scheme setting out all stages of the authorised development including a phasing plan indicating when each stage would be constructed.</p>	<p>In their response to ExQ2 9.2.24, the Applicant gives reasons why it does not consider it appropriate to include such a provision given that the intention is for the Proposed Development to be built out in a single continuous phase of development.</p> <p>The ExA agrees with the Applicant that it is not necessary for a phasing requirement to be included in the rDCO requirements.</p>	<p>none</p>

Provisions	Examination Issue	ExA Reasoning	Recommended change
<p>Additional Requirement</p> <p>Walking, cycling and horse-riding</p>	<p>In their LIR, SDNPA state that the DCO requirements should set out the minimum widths of all the proposed footpaths/ cycleways/ bridleways and should clearly state the legal status of such.</p>	<p>The Applicant's comments on LIRs states that they do not consider that it is necessary or appropriate to include an additional provision and that design standards and widths are included in the relevant plans within the Application and secured as such within the dDCO. Furthermore, they state that the legal status of the PRow are set in Article 15(8) and Schedule 3, Part 8.</p> <p>The ExA accepts this explanation from the Applicant and finds that the legal status and design standards of PRow are adequately included within the rDCO.</p>	<p>none</p>
<p>Schedule 3, Part 8</p> <p>Public Rights of Way to be Created</p>	<p>Cycle Winchester state in their SoCG that they continue to disagree with the legal status and design standards for some of the NUM routes in the Proposed Development and therefore the details within Schedule 3 Part require amendment.</p>	<p>The ExAs examination of this matter is detailed in Section 3.13 of this Report.</p> <p>We conclude that the Applicant has provided sufficient details in relation to these matters and this has found acceptance with the PRow and local highway authority. We conclude that the dDCO is satisfactory in this respect.</p>	<p>none</p>

7.4. OTHER CONSENTS AND AGREEMENTS

- 7.4.1. The rDCO, if made, would require a number of other consents and licences to be granted. The position at the close of the Examination on other consents is set out in Chapter 6. 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.

7.5. CONCLUSIONS

- 7.5.1. The ExA has considered all iterations of the dDCO as set out in Table 17 above and the degree to which the Applicant's final version has addressed matters arising during the Examination. No substantive amendments to the Applicant's final dDCO [REP8-004] are recommended and only a small number of changes as shown in Table 19 above are included in the rDCO in Appendix D of this Report.
- 7.5.2. However, we highlight that the following updates are expected to be submitted following the close of the Examination:
- an update to the DCO Schedule 11 is required should a revised Environmental Statement - Appendix 8.3 Assessment of Operational Air Quality Impacts on Biodiversity; and
 - final confirmation of agreement to all issues relating to nitrogen deposition from NE.
- 7.5.3. The ExA is satisfied that the rDCO (Appendix D) satisfactorily defines the scope of the consent that would be granted. It would secure the necessary controls and mitigation for potential adverse effects identified in the Environmental Statement (ES) and sufficiently address the issues raised during the course of the Examination. In compliance with the NPSNN paragraph 4.9, we are content 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.
- 7.5.4. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoST is minded to make the DCO, it is recommended that the DCO should be made in the form set out in the rDCO, which can be located at Appendix D of this Report, subject to the SoST being satisfied on the following matters:
- may wish to satisfy themselves in relation to the revised wording of Requirement 6 (4) of the rDCO; and
 - may wish to satisfy themselves in relation to the s245 of the Levelling-up and Regeneration Act 2023 (LURA 2023) amendment of s11A of the National Parks and Access to the Countryside Act 1949.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. This Chapter of the Report provides a summary of the findings and conclusions that the Examining Authority (ExA) has made that have led to our overall conclusion and recommendation for this application for development consent.
- 8.1.2. As set out in Chapter 1 of this Report, the application is for a Development Consent Order (DCO) to grant development consent for changes to Junction 9 of the M3 (M3 J9). The Proposed Development includes new connector roads between the M3 and the A34 with localised widening of the M3 from a two-lane motorway to a four-lane motorway (with hard shoulders) and a remodelled gyratory. Improvements to walking, cycling and horse-riding (WCH) routes are also proposed.
- 8.1.3. The Proposed Development meets the definition of a Nationally Significant Infrastructure Project (NSIP) set out in s14(1)(h) of PA2008.

8.2. SUMMARY OF FINDINGS AND CONCLUSIONS

- 8.2.1. The legal and policy context that the ExA considers applies to this application is set out in Chapter 2 and Appendix B of this Report. This includes the Planning Act 2008 (PA2008), the National Policy Statement for National Networks (NPSNN), those aspects of EU law which have been converted into United Kingdom (UK) law and which remain in force such as the Water Framework Directive (WFD), the Air Quality Directive, the Habitats Regulations, the Ramsar Convention, and the Environmental Impact Assessment (EIA) Directive. We have also had regard to the Paris Agreement, and the Aarhus Convention.
- 8.2.2. Other relevant legal provisions and policy statements include the Equality Act 2010, the Climate Change Act 2008, the Development Plan, and the National Planning Policy Framework September 2023 (NPPF). In relation to the NPPF, we have noted in Section 3.2 of Chapter 3 and Chapter 5 that this was revised in December 2023. Since this was after the close of the Examination, it was the September 2023 revision that was considered during the Examination.
- 8.2.3. The main issues have been identified in the various sections of Chapter 3 of this Report. The ExA's findings and conclusions in relation to policy and need are set out in Section 3.2 of Chapter 3, and topic-based planning issues are considered in the remaining Sections of Chapter 3. Those conclusions and findings are summarised in Chapter 5. In Section 3.2, we conclude that the need for the Proposed Development has been established. In Section 3.3, we conclude that there are no policy, or legal requirements that would lead us to recommend that consent be refused for the Proposed Development in favour of another alternative.

- 8.2.4. Chapter 2, Section 2.2 sets out the position in relation to the National Policy Statement (NPS) and the appraisal of the application under the PA2008. Since there is a designated NPS for this type of application s104 PA2008 applies. Under s104 the Secretary of State (SoS) in deciding the application must have regard to those matters set out in s104(2)(a) to (d).
- 8.2.5. Section 2.3 of Chapter 2 sets out the Local Impact Reports (LIRs) which were submitted by Eastleigh Borough Council, Hampshire County Council, Winchester City Council and the South Downs National Park Authority. The ExA has taken account of the various LIRs that have been submitted in its examination of the application and in different sections of Chapter 3 of the Report we have addressed relevant comments made in the LIRs.
- 8.2.6. The relevant prescribed matters as set out in the Infrastructure Planning (Decisions) Regulations 2010 are those relating to listed buildings, conservation areas and scheduled monuments, and biological diversity. The ExA has had regard to all these prescribed matters where relevant in its consideration of the application, as set out in the appropriate sections of Chapter 3.
- 8.2.7. In Section 3.9 of Chapter 3, we find that there would be harm to the significance of designated heritage assets. We consider that the harm would be less than substantial in each case. In Chapter 5, we conclude that in weighing the harmful impact on the significance of each of the identified designated historic assets against the public benefits, in all instances the substantial public benefits of the Proposed Development would strongly outweigh the less than substantial harm to the significance of the historic asset concerned. We are satisfied that paragraphs 5.132, 5.134 and 5.135 of the NPSNN and paragraph 202 of the NPPF have been complied with.
- 8.2.8. The ExA has also had regard to human rights under the Human Rights Act 1998. We have considered the individual rights interfered with and are satisfied that should the Secretary of State for Transport (SoST) be minded to grant development consent, then for Article 1 of the First Protocol and Article 8, the proposed interference with those rights would be for legitimate purposes that would justify such interference in the public interest. The extent of that interference would be proportionate and strike a fair balance between the rights of the individual and the public interest. In relation to Article 6 (entitlement to a fair and public hearing), the Examination has been conducted so as to ensure a fair and public hearing.
- 8.2.9. We have had regard to the Public Sector Equality Duty (PSED), and we conclude that the implementation of the Proposed Development would not disproportionately affect persons who enjoy a protected characteristic, nor would there be any adverse effect on the relationship between such persons and persons who do not share a protected characteristic. We therefore find no breach of the PSED and equality considerations under the Equality Act 2010.

- 8.2.10. Chapter 4 and Appendix C of this Report set out the ExA's analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). The ExA has had regard to the findings of the HRA Report that, subject to the mitigation measures secured in the dDCO, Adverse Effects on Integrity (AEoI) on the River Itchen Special Area of Conservation (SAC) from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed. In our view, there are no HRA matters that we consider would prevent the making of the DCO. However, we recognise that the SoST is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and will make the definitive assessment.
- 8.2.11. In that regard, we have highlighted, in Section 3.5 of Chapter 3, in relation to the impact of air quality on habitats and designated sites, that final confirmation of agreement to all issues relating to nitrogen deposition was not available from Natural England (NE) at the close of the Examination. However, we were provided assurances that this would be forthcoming. We would therefore highlight to the SoST that in reaching our conclusions on this matter we have proceeded on the assumption that NE was in agreement with the Applicant on those nitrogen deposition issues.
- 8.2.12. Our overall conclusion on the case for development consent is stated in Chapter 5 and we find that the Proposed Development would be acceptable in planning terms. The conclusion that we reach is subject to the outstanding matters identified and provided the changes we propose are made as set out in the recommended Order (rDCO), that development consent should be granted.
- 8.2.13. In coming to our view that development consent should be granted in the form proposed in the rDCO attached at Appendix D, we have taken into account all matters raised in the representations. Whilst we have regard to all matters which we consider to be both important and relevant to the SoST's decision, including the draft NPSNN, we do not find there to be any other important and relevant matters that would individually or collectively lead to a different recommendation to that set out below.
- 8.2.14. In relation to s245 of the Levelling-up and Regeneration Act 2023 (LURA 2023) amendment of the National Parks and Access to Countryside Act 1949 s11A (duty to have regard to purposes of National Parks), this came into effect on 26 December 2023 after the close of the Examination. This means we have not had an opportunity to examine nor have IPs had an opportunity to comment upon this change to the statutory duty of a relevant authority in exercising or performing any functions in relation to, or so as to affect, land in any National Park in England. As a result of this amendment, a relevant authority must now seek to further the purposes of that National Park, as opposed to have regard to those purposes.
- 8.2.15. However, we would point out that in reaching our conclusions in relation to the SDNP purposes we have identified potential long-term enhancements to the SDNP special qualities, namely, tranquillity,

landscape and public access provision that may have a bearing upon the SoST's consideration of this change. We nevertheless highlight that the recent amendment to existing legislation on this topic is a matter that the SoST may wish to consider further.

- 8.2.16. We have considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights sought by the Applicant to implement the Proposed Development. For the reasons set out in Chapter 6, we find that the CA and TP powers sought by the Applicant are justified in order to implement the development and comply with the PA2008. They should therefore be granted in the event that the development consent order is made. Our recommendations in respect of the grant of CA powers, and the s127 and s138 representations are set out in Chapter 6.
- 8.2.17. We have considered all these various factors together, in the light of the tests set out in s104 of the PA2008. We are content that none of the sub-sections (4) to (8) apply, and the relevant NPS supports the grant of development consent.
- 8.2.18. In applying the balance required by s104(7) of the PA2008, and with the mitigation proposed through the rDCO in Appendix D to this Report, we are satisfied that the identified adverse impacts arising from the Proposed Development would not outweigh its benefits.
- 8.2.19. The other consents that are required to construct, operate and maintain the Proposed Development are referred to in Chapter 1 of this Report and are set out in the updated Consents and Agreements Position Statement [[REP5-006](#)]. We comment on them in Chapter 6. From the representations made by the relevant parties, there is no reason to suppose that the necessary approvals, licences, consents, and permits would not be granted, if required. None of the other consents referred to in Chapter 1, would be a prerequisite of making the DCO.

8.3. RECOMMENDATION

- 8.3.1. For all the above reasons and in the light of the ExA's findings and conclusions on important and relevant matters set out in this Report, and based on the evidence and information before us at the close of the Examination, the ExA under the Planning Act 2008 (as amended), recommends that the Secretary of State for Transport grants the application for development consent and makes the M3 Junction 9 Improvement Order as set out in Appendix D.
- 8.3.2. The ExA's recommendation is subject to the following points on which the SoST may wish to satisfy themselves:
- may wish to satisfy themselves in relation to the revised wording of Requirement 6 (4) of the rDCO; and
 - may wish to satisfy themselves in relation to the s245 LURA 2023 amendment of s11A of the National Parks and Access to the Countryside Act 1949.

APPENDICES

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APPENDIX A: ABBREVIATIONS

Abbreviation	Meaning
AA	Appropriate Assessment
AEoI	Adverse Effects on Integrity
ALC	Agricultural Land Classification
ALR	All Lane Running
ANCB	Appropriate Nature Conservation Body
AOD	Above Ordnance Datum
AP	Affected Person
AQEG	Air Quality Expert Group (UK Government)
AQMA	Air Quality Management Areas
AQS	Air Quality Standard
ARN	Affected Road Network
ASI	Accompanied Site Inspection
BCR	Benefit to Cost Ratio
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BoR	Book of Reference
BSI	British Standards Institute
CA	Compulsory Acquisition
CA Guidance	Guidance related to Procedures for the Compulsory Acquisition of Land, DCLG September 2013 (the former Department of Communities and Local Government (DCLG) (CA Guidance)
CA Regs	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CAH	Compulsory Acquisition Hearing
CBDP	Carbon Budget Delivery Plan
CCC	Climate Change Committee
CEPP	Climate Emergency Policy and Planning
CoMAR	Combined Modelling and Appraisal Report
CNAP	Carbon Neutrality Action Plan
dB	Decibel
DAS	Design and Access Statement
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DfT	Department for Transport
DL (x)	Deadline (if followed by a number, this denotes the relevant deadline number of the Examination)
DM	Do Minimum
DMRB	Design Manual for Roads and Bridges
DS	Do Something
EA	Environment Agency
ECHR	European Convention on Human Rights

EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regs	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EL	Examination Library
EM	Explanatory Memorandum
EMP	Environmental Management Plan
EPR	EPR Infrastructure Planning (Examination Procedure) Rules 2010
EqIA	Equality Impact Assessment
ES	Environmental Statement
ExA	Examining Authority
ExQ(x)(x)	Examining Authority Questions (if followed by a number, this denotes the 'round' of questions)
FRA	Flood Risk Assessment
fiEMP	first iteration of the Environmental Management Plan
GHG	Greenhouse Gas(es)
GLVIA3	Guidelines for Landscape and Visual Impact Assessment Revision 3
ha	hectares
HCC	Hampshire County Council
HGV	heavy goods vehicle
HEWRAT	Highways England Water Risk Assessment Tool
HILCA	Hampshire Integrated Landscape Character Assessment
HPI	Habitat of Principal Importance
HPG	Historic Parks and Gardens
HRA	Habitats Regulations Assessment
IAPI	Initial Assessment of Principal Issues
IEMA	Institute of Environmental Management and Assessment
IP	Interested Party
ISH	Issue Specific Hearing
km	Kilometre
l/s/ha	Litres/ second/ hectare
LA	Local Authority
LED	Light Emitting Diode
LEMP	Landscape Ecological Management Plan
LGV	Light Goods Vehicle
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LOAEL	Lowest Observable Adverse Effect Level
LoNI	Letter of No Impediment
LPA	Local Planning Authority
LSE	Likely Significant Effects
LTP	Local Transport Plan
LTP3	Hampshire Local Transport Plan 3 : 2011-2031

APPENDIX A: ABBREVIATIONS

M3 Junction 9 Improvements - TR010055

REPORT TO THE SECRETARY OF STATE FOR TRANSPORT: 16 February 2024

A:2

LTP4	Hampshire Local Transport Plan (emerging)
LURA 2023	Levelling-up and Regeneration Act 2023
LVIA	Landscape and Visual Amenity
m	Metre(s)
m ²	Square metres
m ³	Cubic Meters
M3 J9	Junction 9 of the M3
MMP	Material Management Plan
MSA	Mineral Safeguarding Area
NCN	National Cycle Network
NDC	Nationally Determined Contribution
NE	Natural England
NH ₃	Ammonia
NIA	Noise Important Area
NMU	Non-motorised User
NO ₂	Nitrogen dioxide
NOx	Oxides of Nitrogen
NOEL	No Observed Effect Level
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NPSNN	National Policy Statement for National Networks
NPV	Net Present Value
NSIP	Nationally Significant Infrastructure Project
NZS	Net Zero Strategy
OFH	Open Floor Hearing
OLEMP	Outline Landscape and Ecological Management Plan
OTMP	Outline Traffic Management Plan
PA2008	Planning Act 2008
PCF	Project Control Framework
PM	Preliminary Meeting
PM ₁₀ and PM _{2.5}	Particulate Matter
PPs	Protective Provisions
PPV	Peak Particle Velocity
PRA	Preferred Route Announcement
PRoW	Public Rights of Way
PSED	Public Sector Equality Duty
PUB	Powering Up Britain
rDCO	Recommended Draft Development Consent Order
REAC	Register of Environmental Actions and Commitments
RFI	Request for Information
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy
RIS1	Road Investment Strategy 2015 - 2020

APPENDIX A: ABBREVIATIONS

M3 Junction 9 Improvements - TR010055

REPORT TO THE SECRETARY OF STATE FOR TRANSPORT: 16 February 2024

RIS2	Road Investment Strategy 2020 - 2025
RR	Relevant Representation
Rule 6	Rule 6 letter of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
RVEI	Road Verge of Ecological Importance
S(*)	Section of an Act
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SDILCA	South Downs Integrated Landscape Character Assessment
SDLP	South Downs Local Plan
SDNP	South Downs National Park
SDNPA	South Downs National Park Authority
SERTM	South-East Regional Transport Model
SFRA	Strategic Flood Risk Assessment
SGN	Southern Gas Networks Plc
siEMP	Second Iteration of the Environmental Management Plan
SINC	Site of Important Nature Conservation
SRN	Strategic Road Network
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoST	Secretary of State for Transport
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SU	Statutory Undertakers
SuDS	Sustainable Drainage Solutions
SWMP	Site Waste Management Plan
SWS	Southern Water Services Ltd
TA	Transport Assessment
TAG	Transport Analysis Guidance
tCO _{2e}	Tonnes of Carbon Dioxide Emissions
TCPA1990	Town and Country Planning Act 1990
TMP	Traffic Management Plan
TP	Temporary Possession
TPO	Tree Preservation Order
UK	United Kingdom
USI	Unaccompanied Site Inspection
VDM	Variable Demand Model
VfM	Value for Money
VL	View Location
VMS	Variable Message Sign
VOA	Valuation Office Agency

APPENDIX A: ABBREVIATIONS

M3 Junction 9 Improvements - TR010055

REPORT TO THE SECRETARY OF STATE FOR TRANSPORT: 16 February 2024

A:4

WCC	Winchester City Council
WCH	Walking, Cycling and Horse-riding
WFD	Water Framework Directive
WMS	Written Ministerial Statement
WR	Written Representation
ZEV	Zero-Emission Vehicle
ZTV	Zone of Theoretical Visibility

APPENDIX B: LEGISLATION AND POLICY

Table B1 – Key Legislation and policies considered by the ExA

The key legislation
<ul style="list-style-type: none">• The Planning Act 2008 (as amended).• The South Downs National Park Authority (Establishment) Order 2010.• European Law and Related UK Regulations.
The key national policy documents
<ul style="list-style-type: none">• The National Planning Policy Framework (NPPF)• National Policy Statement for National Networks (NPSNN)• The National Infrastructure Strategy• Road Investment Strategy 1 (2015-2020)• Road Investment Strategy 2 (2020-2025)• English National Parks and the Broads - UK Government Vision and Circular 2010
The key local policy documents
<ul style="list-style-type: none">• Winchester Local Plan 1 – Joint Core Strategy (March 2013).• Winchester Local Plan Part 2 – Development Management and Site Allocations (April 2017).• Winchester District Local Plan 2018 – 2039 (Emerging).• Hampshire Minerals and Waste Plan (adopted October 2013).• The Hampshire Local Transport Plan 3 (adopted 2011).• The Hampshire Local Transport Plan 4 (draft)• The South Downs Local Plan.• The City of Winchester Movement Strategy

Table B2 - Other relevant legislation, conventions and policies considered by the ExA

Relevant legislation and conventions
<ul style="list-style-type: none">• Climate Change Act 2008• Equality Act 2010• Highways Act 1980• Human Rights Act 1998• Natural Environment and Rural Communities Act 2006• New Roads and Street Works Act 1991• Planning (Listed Buildings and Conservation Areas) Act 1990• The Aarhus Convention 1998• The Climate Change Act 2008• The Climate Change Act 92050 Target Amendment) Order 2019• The Environment Act 2021• The Environmental Protection Act 1990 (as amended)• The Hedgerow Regulations 1997• The Human Rights Act 1998• The Infrastructure Planning (Decisions) Regulations 2010• The Paris Agreement 2015

- The Protection of Badgers Act 1992
- The Traffic Management Act 2004
- The Water Environment (Water Framework Directive)(England and Wales)Regulations 2017
- The Wildlife and Countryside Act 1981
- United Nations Environmental Programme Convention on Biological Diversity 1992

Relevant policies

- The South Downs National Park Partnership Management Plan 2020-2025
- The South Downs Integrated Landscape Character Assessment (updated 2020)
- Winchester Air Quality Emerging Supplementary Planning Document (draft 2021)
- The Carbon Neutrality Action Plan 2020 - 2030

APPENDIX C: HABITATS REGULATIONS ASSESSMENT

FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

C.1 INTRODUCTION

C.1.1 This Appendix reports 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').

C.1.2 This Appendix is structured as follows:

- Section C.2: Findings in relation to Likely Significant Effects on the United Kingdom (UK) National Site Network and other European sites;
- Section C.3: Conservation Objectives for sites and features;
- Section C.4: Findings in relation to Adverse Effects on Integrity; and
- Section C.5: HRA conclusions.

C.1.3 In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European sites and no reasonable scientific doubt remains.

C.1.4 Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 3 of this Report.

C.1.5 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 ISHs.

RIES and Consultation

C.1.6 The ExA produced a Report on the Implications for European Sites (RIES) [[PD-013](#)] which compiled, documented, and signposted HRA-relevant information provided in the DCO application and Examination representations up to DL5 (22 September 2023). The RIES was issued to set out the ExA's understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. Consultation on the RIES took place between 6 October 2023 and 3 November 2023. Comments were received from the Applicant [[REP6-027](#)] and NE [[REP6-033](#)] at DL6 (27 October 2023). These comments have been taken into account in the drafting of this Appendix.

C.1.7 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 they wish to do so.

Proposed Development Description and HRA Implications

- C.1.8 The Proposed Development is described in Chapter 1 of this Report and in the Case for the Scheme [[REP1-019](#)].
- C.1.9 The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figures 8.1, 8.2 and 8.3 of the Applicant's HRA Report [[REP8-041](#)]. Copies of these figures from the Applicant's application documents are reproduced in Figure C1 in this Report for ease of reference.

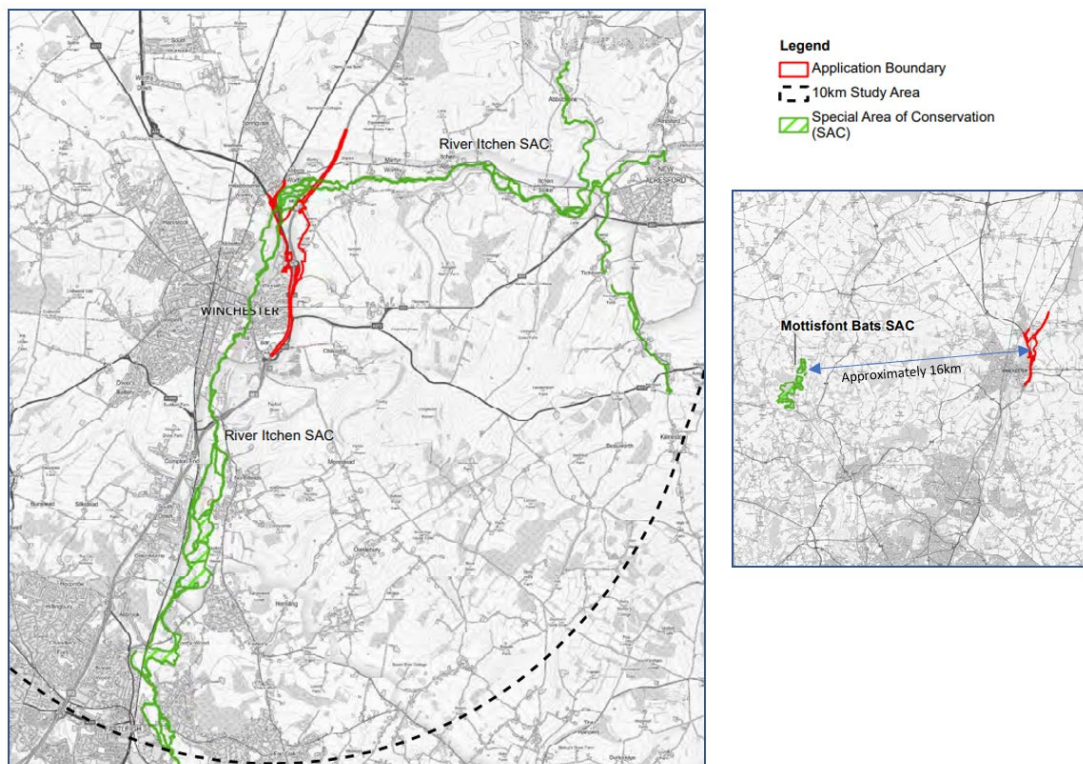


Figure C1 : Location of European Sites

- C.1.10 The majority of construction associated with the Proposed Development would take place in the vicinity of the River Itchen Special Areas of Conservation (SAC), except for the installation of two new drainage outfall structures and the refurbishment of a third which would take place within the SAC itself, along with strengthening works to the existing bridge over the River Itchen.
- C.1.11 The Proposed Development is not directly connected with, or necessary to, the management of a European site. The SoST must therefore consider the implications of the Proposed Development for European sites.
- C.1.12 The Applicant's assessment of effects is presented in the following application document:

- Habitats Regulations Assessment [[APP-158](#)], hereafter referred to as 'the Applicant's HRA Report'.

C.1.13 The Applicant's HRA Report was updated at DL4 [[REP4-028](#)], DL5 [[REP5-021](#)], and DL8 [[REP8-041](#)], in order to address concerns raised by NE relating to impacts to air quality. This Appendix refers to the DL8 version [[REP8-041](#)] unless otherwise specified.

C1.14 The Applicant's HRA Report includes evidence that NE and EA have been involved in the development of the HRA and were consulted on a draft HRA Report in November 2021. Responses from both parties to the draft HRA Report are provided in Appendix J of the HRA Report.

Transboundary effects

C.1.15 The Applicant did not identify any likely significant effects (LSE) on non-UK European sites in European Economic Area (EEA) States in its HRA Report [[REP8-041](#)] or within its ES [[APP-045](#)]. Only UK European sites are addressed in this Report. No such impacts were raised for discussion by any IPs during the Examination.

C.2 FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE)

C.2.1 Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

C.2.2 The Applicant scoped sites for consideration by applying the criteria set out in the Design Manual for Roads and Bridges (DMRB) LA 115 (reproduced in Plate 2.2 of the HRA Report [[REP8-041](#)]).

C.2.3 The European sites and qualifying features that were considered in the Applicant's assessment of LSE are as follows:

- River Itchen SAC
 - water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho Batrachion* vegetation;
 - southern damselfly (*Coenagrion mercurial*);
 - bullhead (*Cottus gobio*);
 - white-clawed (or Atlantic stream) crayfish (*Austropotamobius pallipes*);
 - brook lamprey (*Lampetra planeri*);
 - Atlantic salmon (*Salmo salar*); and
 - otter (*Lutra lutra*).
- Mottisfont Bats SAC
 - Annex II Species that are a primary reason for selection of this Site: Barbastelle bat (*Barbastella barbastellus*).

C.2.4 No IPs raised concerns about the scope of the European sites considered or their qualifying features.

C.2.5 The Applicant's HRA Report sets out the methodology applied to determining what would constitute a 'significant effect' within section 2.3 of its HRA Report [[REP8-041](#)].

LSE from the Proposed Development Alone

C.2.6 The Applicant's conclusions in respect of screening are presented in Section 3.3 (Tables 3.1 and 3.2) of the HRA Report [[REP8-041](#)].

Mottisfont Bats SAC

C.2.7 The Applicant's HRA Report concluded no LSE from the Proposed Development alone on any of the qualifying features of the Mottisfont Bats SAC, owing to the intervening distance (16km) and limited foraging range of the SAC bat population. The evidence regarding the foraging range of the SAC bat population is derived from Jonathon Cox Associates (2010) Mottisfont Bats Special Area of Conservation Protocol for Planning Officers Report to NE, provided at Appendix K of the HRA Report [[REP8-041](#)]. This protocol sets out that radiotracking studies undertaken between 2002 and 2005 have shown that 80% of foraging bats travel less than 7.28km from their roost site. The protocol proposes that a distance of 7.5km from the SAC should be used as a core foraging zone to identify plans and projects likely to have an impact upon habitats used by barbastelle bats from the Mottisfont Bats SAC. The use of this 7.5km zone is incorporated within the Bat SAC Planning Guidance for Wiltshire (Natural England and Wiltshire Council (2015)) (provided at Appendix L of the HRA report).

C.2.8 NE provided their agreement with the conclusion to screen out the site, when they reviewed the draft HRA (evidenced in Appendix J of the HRA Report), and in the SoCG [[REP8-021](#)].

C.2.9 On this basis, the ExA is satisfied that there would be no LSE on the Barbastelle bat feature of the Mottisfont Bat SAC.

River Itchen SAC

C.2.10 The impact pathway categories screened by the Applicant for LSEs were:

- changes in water quality;
- changes to hydraulic / hydrological conditions;
- other habitat degradation (including physical modification of habitat, spreading invasive species, increase in air-borne pollutants, increased shading of the River Itchen, and inappropriate habitat management);
- species disturbance; and
- mortality of white-clawed crayfish.

C.2.11 Of these, the Applicant's application HRA Report [[APP-158](#)] screened out the following impact pathways to the River Itchen SAC:

- habitat loss/ fragmentation;
- operational disturbance to qualifying habitat and species (other than otter); and
- impacts to air quality (construction and operation) on qualifying habitat (water courses of plain to montane levels with the
- *Ranunculion fluitantis* and *Callitricho Batrachion* vegetation).

C.2.12 No IPs disputed the decision to screen out habitat loss/ fragmentation or operational disturbance impacts to qualifying habitats and species other than otter.

C.2.13 However, in response to ExQ1 5.1.22 [[PD-008](#)], in which we requested NE to confirm whether it was satisfied with the conclusions of the HRA report, NE highlighted that it had outstanding concerns regarding the assessment of air quality impacts (ES Appendix 8.3 [[APP-132](#)]). The Applicant submitted revisions to ES Chapter 5: Air Quality [[REP4-009](#)], ES Appendix 5.3 [[REP4-018](#)] and ES Appendix 8.3 [[REP8-038](#)]. The HRA Report was also revised at D4 [[REP4-028](#)] and D5 [[REP5-021](#)] to conclude that there is the potential for LSE to occur due to deposition of pollutants on the qualifying habitat features of the SAC.

C.2.14 For the other impact pathways considered, the Applicant concluded that LSE could not be excluded; these pathways and relevant features are set out in Table C1.

C.2.15 Following the revisions to the Applicant's HRA Report, the ExA agrees with the Applicant's conclusions with respect to LSE on the River Itchen SAC and has carried these pathways forward to the consideration of adverse effects on integrity (AEoI) (see Section C.4 of this Report).

LSE from the Proposed Development In Combination

C.2.16 Section 2.5 of the Applicant's HRA Report details its approach to assessing in-combination effects, with the projects included in the in-combination assessment detailed in Appendix I.

C.2.17 Where the Applicant's screening exercise established the potential for LSE to arise from the Proposed Development alone, the potential for in-combination effects was also referred to in the Applicant's HRA Report (Table 3.1, 3.2 and Section 3.3).

C.2.18 No in-combination LSE have been identified for the sites and qualifying features where LSE were excluded from the Proposed Development alone, ie:

- impacts to foraging Barbastelle bats (Mottisfont Bat SAC); and
- habitat loss/ fragmentation and operational disturbance to qualifying habitat and species (other than otter) (River Itchen SAC).

C.2.19 In-combination effects have been excluded by the Applicant because of distance to the site (Mottisfont Bat SAC - see Table 3.1 of the HRA

Report), or because there is no appreciable effect on the qualifying features (River Itchen SAC – see Table 3.2 of the HRA Report).

- C.2.20 In their responses to questions at ExQ1 [[REP2-069](#)] and ExQ2 [[REP5-034](#)], NE raised concerns with the in-combination assessment of air quality, requesting additional assessment of air quality impacts in combination with other projects, particularly beyond the scheme's opening year, and in-combination impacts with other non-road projects. This is discussed further below, with respect to adverse effects on AEoI, as explained above this pathway is taken forward to Stage 2.
- C.2.21 No other concerns were raised by IPs with respect to the in-combination assessment of LSE.

LSE Assessment - Outcomes

- C.2.22 The Applicant concluded no LSE would occur from either the Proposed Development alone or in-combination with other projects and plans on the Mottisfont Bat SAC [[REP8-041](#)]. This conclusion was not disputed by any IPs during the Examination.
- C.2.23 The Applicant concluded that LSE on the River Itchen SAC and its qualifying features could not be excluded (see Table C1 for relevant impact pathways). As noted above, while NE raised concerns about the initial conclusion of no LSE for impacts from air quality, it was agreed during the Examination that the pathway should be taken forward to Stage 2 [[REP4-028](#)].
- C.2.24 The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination LSE.
- C.2.25 Taking into account the reasoning set out above, the ExA considers that the Proposed Development is likely to have a significant effect on the qualifying features of the River Itchen SAC, from the impacts identified in Table 1.1, when considered alone, or in-combination with other plans or projects.

Table C1 : European sites and features for which LSE were identified by the Applicant

European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
River Itchen SAC	Water courses of plain to montane levels with the <i>Ranuncilion fluuitantis</i> and <i>Callitricho Batrachion</i> vegetation	Changes in water quality (construction and operation) Changes to hydraulic conditions (construction and operation) Other habitat degradation (construction and operation) Impacts from air quality (construction and operation)	Changes in water quality (construction and operation) Changes to hydraulic conditions (construction and operation) Impacts from air quality (construction and operation)
	Southern damselfly (<i>Coenagrion mercurial</i>) Bullhead (<i>Cottus gobio</i>) Brook lamprey (<i>Lampetra planeri</i>) Atlantic salmon (<i>Salmo salar</i>)	Changes in water quality (construction and operation) Changes to hydraulic conditions (construction and operation) Other habitat degradation (construction and operation) Impacts from air quality (construction and operation) Species disturbance (construction)	Changes in water quality (construction and operation) Changes to hydraulic conditions (construction and operation) Impacts from air quality (construction and operation) Species disturbance (construction)
	White-clawed (or Atlantic stream) crayfish (<i>Austropotamobius pallipes</i>)	Changes in water quality (construction and operation) Changes to hydraulic conditions (construction and operation)	Changes in water quality (construction and operation) Changes to hydraulic conditions (construction and operation)

European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
		<p>Other habitat degradation (construction and operation)</p> <p>Impacts from air quality (construction and operation)</p> <p>Species disturbance (construction)</p> <p>Mortality (construction)</p>	<p>Impacts from air quality (construction and operation)</p> <p>Species disturbance (construction)</p>
	<p>Otter (<i>Lutra lutra</i>)</p>	<p>Changes in water quality (construction and operation)</p> <p>Changes to hydraulic conditions (construction and operation)</p> <p>Other habitat degradation (construction and operation)</p> <p>Impacts from air quality (construction and operation)</p> <p>Species disturbance (construction and operation)</p>	<p>Changes in water quality (construction and operation)</p> <p>Changes to hydraulic conditions (construction and operation)</p> <p>Impacts from air quality (construction and operation)</p>

C.3 CONSERVATION OBJECTIVES

C.3.1 The conservation objectives for the River Itchen SAC are provided in Table 3.1 and Appendix C of the HRA Report [[REP4-028](#)]. Table C.1 does not state whether the European site features are in unfavourable condition, or provide the conservation status of the SAC however, it does provide the condition of the River Itchen SSSI:

- River Itchen SSSI has 141 units, of which 10.37% are in favourable condition, 55.74% are in unfavourable condition, but recovering, 27.99% in unfavourable condition, with no change and 5.51% in unfavourable condition, and declining.

C.3.2 The ExA requested in the RIES (paragraph 3.1.1 [[PD-013](#)]) that NE confirm the condition of the River Itchen SAC. NE [[REP6-033](#)] advised that the condition of the SAC can be interpreted to be in an unfavourable condition because the condition of the underpinning SSSI is known to be in unfavourable condition.

C.3.3 In light of this, the ExA recommends that the SAC be considered to be in an unfavourable condition.

C.4 FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY

C.4.1 The River Itchen SAC and qualifying features identified in Table C1 were further assessed by the Applicant to determine if they could be subject to AEOI from the Proposed Development, either alone or in-combination. The assessment of AEOI was made in light of the conservation objectives for the European site [[REP8-041](#)].

C.4.2 The Applicant's information to inform the Appropriate Assessment is provided in section 4 of the Applicant's HRA Report.

Sites for which AEOI can be excluded

C.4.3 The Applicant's HRA Report concluded that the Proposed Development would not result in AEOI on the River Itchen SAC, either alone or in-combination with other plans or projects. At the close of the Examination, the Applicant's conclusions had not been disputed by any IP, as listed in Table C2.

C.4.4 NE confirmed it was satisfied with these elements of the Applicant's assessment, including the mitigation measures proposed for both the construction and operational phases of the development (see [[REP2-069](#)] and Annex 2 of [[REP6-033](#)] regarding impacts to air quality during construction).

C.4.5 The ExA is satisfied on the basis of the information above, that AEOI from the impact pathways listed in Table C2 on the River Itchen SAC and its qualifying features can be excluded, subject to the delivery of the relevant mitigation.

Table C2 : Applicant’s conclusions on AEOI which were not disputed during the Examination

Impact pathway	Qualifying feature	AEOI alone or in-combination	Mitigation required to avoid AEOI
Changes in water quality (construction and operation)	Habitat feature (water courses of plain to montane levels) Species features (southern damselfly, bullhead, brook lamprey, Atlantic salmon, white-clawed crayfish and other)	No – see section 4.2 (construction) and 4.3 (operation) [REP8-041]	<p>Construction:</p> <p>Measures to control and mitigate silt transport, measures in relation to working near watercourses, construction phase drainage strategy (including package of pollution prevention measures) outlined in the first iteration Environmental Management Plan (fEMP) [REP8-0231] (references B10, B15, B28, WE2-3, WE5-13, WE17, WE19, WE22, WE24-26).</p> <p>Operation:</p> <p>Operational phase drainage system outlined in ES Appendix 13.1 (Drainage Strategy Report) secured in the fEMP (reference WE14)</p>
Changes to hydraulic conditions (construction and operation)	Habitat feature (water courses of plain to montane levels) Species features (southern damselfly, bullhead, brook lamprey, Atlantic salmon, white-clawed crayfish and other)	No – see section [REP8-041]	<p>Construction:</p> <p>Damming and dewatering method statement and measures to manage changes in surface water flow volumes outlined in the fEMP B10, B15 WE3, WE5-6, WE15-16, WE21.</p> <p>Operation:</p> <p>Operational phase drainage system outlined in ES Appendix 13.1 (Drainage Strategy Report) secured in the fEMP (reference WE14)</p>
Other habitat degradation (construction and operation)	Habitat feature (water courses of plain to montane levels) Species features (southern damselfly, bullhead, brook lamprey, Atlantic	No – see section [REP8-041]	<p>Construction:</p> <p>Measures in relation to working near watercourses, biosecurity measures, construction phase fencing to avoid accidental damage to ecologically sensitive areas, outlined in the fEMP (reference B10-11, B15, B29 WE15, WE21)</p> <p>Operation:</p>

	salmon, white-clawed crayfish and otter)		Habitat management measures provided within ES Appendix 7.6 (Outline Landscape and Ecological Management Plan) (reference B1, B23, B29)
Species disturbance (construction)	Species features (southern damselfly, bullhead, brook lamprey, Atlantic salmon, white-clawed crayfish and otter)	No – see section [REP8-041]	Construction: Pre-construction otter survey, working methods and timing restrictions in relation to avoiding impacts to fish, low spill lighting, measures to avoid entrapment of animals, avoidance of night-time working, an Ecological Clerk of Works, outlined in the fEMP (reference B2-3, B12, B15-18)
Species disturbance (operation)	Otter	No – see section [REP8-041]	Operation: Pedestrian fencing (reference B1)
Mortality (construction)	White-clawed crayfish	No – see section 4.10 [REP8-041]	Construction: Biosecurity measures, checks before in-river working, outlined in the fEMP (B3, B29)
Impacts from air quality (construction)	Habitat feature (water courses of plain to montane levels) Species features (southern damselfly, bullhead, brook lamprey, Atlantic salmon, white-clawed crayfish and otter)	No - see section 4.11 [REP8-041]	Construction: Environmental management measures (such as dust control) as set out in the fEMP

AEoI for which concerns were raised – operational changes to air quality

- C.4.6 The Applicant's assessment of AEoI to the River Itchen SAC considered impacts from changes in air quality (during operation) on the habitat (water courses of plain to montane levels) and species features (southern damselfly, bullhead, brook lamprey, Atlantic salmon, white-clawed crayfish and otter). The Applicant's assessment is presented in section 4.11 of the HRA Report [[REP8-041](#)].
- C.4.7 The Applicant concludes that from the Proposed Development alone:
- Habitats within this stretch of the River Itchen are considered unsuitable for southern damselfly and therefore this species is not considered further (paragraph 4.11.5).
 - Some areas of habitat within the SAC would see increases in the levels of nitrogen deposition and oxides of nitrogen (NO_x), with some increases above the 1% screening threshold (Table 4.1 of the HRA Report). However, given the low levels of increase in NO_x and total nitrogen over a small geographical area, the qualifying habitat not being sensitive to NO_x or nitrogen (it is phosphorus limited), along with the diluting effect of the water and constant flushing, the increases in the pollutants would not adversely affect the integrity of the SAC with respect to the river habitat and fully aquatic qualifying species (paragraphs 4.11.9 to 4.11.11).
 - Increases in levels of ammonia (NH₃) at the point where the air quality modelling transects intersect the SAC are below 1% of the critical level or will see reductions below the critical level (applying the upper critical level of 3 µg/m³ given that lichens and bryophytes are not integral to the qualifying habitat of the SAC) (paragraph 4.11.12).
 - There is potential for changes in pollutants to affect terrestrial habitats outside the SAC which may be used by otter however, these would be negligible in the context of the overall habitat within an otter's home range (4.11.4).
- C.4.8 During the Examination, NE requested that further work be undertaken on the operational air quality modelling to ensure that all relevant types of airborne pollutants be considered, including acid deposition [[REP2-069](#)] and that further evidence be provided to consider the ecological impact of the pollutants on the qualifying features of the sites, and whether they would undermine any conservation objectives [[REP5-034](#)].
- C.4.9 The Applicant revised Appendix 8.3 Assessment of Operational Air Quality Impacts on Biodiversity of the ES [[REP4-020](#), [REP8-038](#)] and the HRA Report [[REP8-041](#)]:
- at DL4 to consider the operational air quality pathway for AEoI;
 - at DL5 to take account of absolute increases in NO_x and nitrogen deposition (Table 4.1); and
 - at DL8 to include justification for the use of the upper critical level of 3 µg/m³ for ammonia (paragraph 4.11.12), and to clarify that the

recently updated (2022) nitrogen deposition critical loads had been applied (Appendix M, section 2).

C.4.10 A response from NE to the latest amendments to the HRA Report was not provided before the close of the Examination. At DL8, NE 'provisionally agreed' in the SoCG (defined as an agreement in principle which both parties expect to be fully agreed shortly after the close of the Examination) that sufficient information had been provided by the Applicant to conclude no AEoI, "*despite of the changes needed to the HRA to reflect discussions around the methodology for assessment and presentation of results*" [[REP8-021](#)].

C.4.11 On the basis of the additional information provided by the close of the Examination, the ExA is satisfied that this pathway would not result in AEoI to the River Itchen SAC from the Proposed Development alone.

Impacts from changes to air quality – in combination

C.4.12 The Applicant's application HRA Report [[APP-158](#)] did not include a separate in-combination assessment of impacts from changes in road traffic emissions, on the grounds that the air quality modelling used to inform the assessment includes other schemes with the potential to act cumulatively with the Proposed Development, and as such it was intrinsically accounted for.

C.4.13 NE requested that further assessment be undertaken of air quality impacts in-combination with other projects (see [[REP2-069](#)] and Annexes 2 and 3 of [[REP6-033](#)]), comprising:

- assessment beyond the scheme's opening year, or evidence that the opening year constitutes the 'worst-case' traffic emissions; and
- consideration of in-combination impacts arising from other non-road projects.

C.4.14 With respect to the assessment of road traffic emissions, the Applicant revised the HRA Report at DL5 [[REP5-021](#)] and DL8 [[REP8-041](#)] to provide additional information on the traffic model and the developments it considers, including information on predicted traffic growth and changes in emissions over time (beyond 2027).

C.4.15 In relation to non-road projects, the Applicant identified an Anaerobic Digestion facility approximately 3.6km from the SAC. The HRA Report concludes that the scale of the predicted contributions from the Anaerobic Digestion plant (equivalent to 0.4% of the critical level for NOx, 0.4% of the critical level for ammonia, and 0.7% of the critical level for nitrogen deposition), in addition to the fact that the river is likely to be phosphorus-limited rather than nitrogen-limited and subject to constant flushing, means that the contributions are unlikely to alter the conclusions of the assessment (paragraph 4.11.22)

C.4.16 A response from NE to the latest amendments to the HRA Report was not provided before the close of the Examination.

- C.4.17 Based on the findings of the Examination, the ExA is satisfied that an assessment of AEOI from the Proposed Development in-combination with other plans and projects can be based on this information and that no other plans or projects are required to be taken into account. In light of the additional information provided by the close of the Examination, the ExA is satisfied that this pathway would not result in AEOI to the River Itchen SAC from the Proposed Development in-combination with other plans or projects.

C.5 HRA CONCLUSIONS

- C.5.1 The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoST.
- C.5.2 Two European Sites and their qualifying features were considered in the Applicant's assessment of LSE: the Mottisfont Bats SAC and the River Itchen SAC. LSE were identified for the River Itchen SAC, listed in Table 1.1 both from the Proposed Development alone and in-combination with other plans or projects.
- C.5.3 The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- C.5.4 The ExA's findings are that, subject to the mitigation measures secured in the rDCO, AEOI on the River Itchen SAC from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.
- C.5.5 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.

APPENDIX D: THE RECOMMENDED DEVELOPMENT CONSENT ORDER

202[] No.

INFRASTRUCTURE PLANNING

M3 Junction 9 Development Consent Order

Made - - - - - ***

Coming into force ***

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PRELIMINARY

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2. Interpretation
3. Disapplication of legislative provisions
4. Maintenance of drainage works

PART 2

PRINCIPAL POWERS

5. Development consent etc. granted by the Order
6. Maintenance of authorised development
7. Planning permission
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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a panel of two members (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(d), 115(e), 117(f), 120(g), and 122(h) of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5(i) to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the M3 Junction 9 Development Consent Order 202[•] and comes into force on [•].

Interpretation

2.—(1) In this Order except where provided otherwise—

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

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

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

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

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

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- (a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).
- (b) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act.
- (e) Section 115 was amended by paragraph 56 of Part 2 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011 and section 160 of the Housing and Planning Act 2016 (c.22) and section 43 of the Wales Act 2017 (c.4).
- (f) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
- (g) Section 120 was amended by paragraph 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
- (h) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (i) 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, paragraph 71 of Part 1 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Part 3 of Schedule 6 to the Wales Act 2017.
- (j) 1961 c.33.
- (k) 1965 c.56.
- (l) 1980 c.66.
- (m) 1981 c.66.

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

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

“the 2008 Act” means the Planning Act 2008**(d)**;

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

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development);

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

“the classification of road plans” means the plans 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) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, ecological surveys and pre-construction ecological mitigation, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements, 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**(e)**, and for the purposes of this Order includes parts of a cycle track and a right of way on foot;

“de-trunking plans” means the plans certified by the Secretary of State as the de-trunking 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)**(f)** of the Communications Act 2003;

“the engineering and structural drawings and sections” means the documents certified by the Secretary of State as the engineering plans and sections, and the structural plans and sections for the purposes of this Order;

“the environmental management plan” means the plan certified by the Secretary of State as the first iteration environmental management plan (fiEMP) for the purposes of this Order;

“the environmental statement” means the documents certified by the Secretary of State as the environmental statement for the purposes of this Order;

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

(a) 1984 c.27.

(b) 1990 c.8.

(c) 1991 c.22.

(d) 2008 c.29.

(e) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c.38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54).

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

“the general arrangement plans” means the plans certified by the Secretary of State as the general arrangement plans for the purposes of this Order;

“highway” has the same meaning as in section 328 (meaning of “highway”) of the 1980 Act;

“the land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;

“the limits of deviation” means the limits of deviation referred to in article 8 (limits of deviation);

“the local highway authority” means Hampshire County Council;

“maintain” includes inspect, repair, adjust, alter, remove, replace or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“the Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

“the Order limits” means the limits of the land to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

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

“the protected trees and hedgerows to be removed plans” means that plans certified by the Secretary of State as the protected trees and hedgerows to be removed plans for the purposes of this Order;

“the relevant planning authority” means the local planning authority for the land in question;

“the rights of way and access plans” means the plans certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

“the revoking existing clearway orders plans” means the plans certified by the Secretary of State as the revoking existing clearway orders plans for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 (general provision as to special roads) of the 1980 Act or by virtue of an order granting development consent;

“speed limit plans” means the plans certified by the Secretary of State as the speed limit 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(b)(streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” has the same meaning as in section 49 (the street authority and other relevant authorities) of the 1991 Act;

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

“the traffic regulation measures plans” means the plans certified by the Secretary of State as the traffic regulation measures plans for the purposes of 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) 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.

(b) Section 48 was amended by section 124 of the Local Transport Act 2008 (c.26)

(c) This section was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act; and brought into force by S.I. 1991/2288.

- (c) 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;
- (d) an order made or direction given under section 10 of that Act;
- (e) an order granting development consent; or
- (f) any other enactment;

“the undertaker” means National Highways Limited, company number 09346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans 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 and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

(7) The expression “includes” may be construed without limitation.

Disapplication of legislative provisions

3.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article 35(11), any maintenance of any part of the authorised development—

- (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(c) in relation to the carrying on of a flood risk activity;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991(d);
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(e) including, but not limited to, Southern Water Authority Land Drainage and Sea Defence Byelaws 1981;
- (d) section 28E (duties in relation to sites of special scientific interest) and 28H (Statutory undertakers, etc.: duty in relation to carrying out operations) of the Wildlife and Countryside Act 1981(f); and

(a) As amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c.7).

(b) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c.7).

(c) S.I. 2016/1154

(d) 1991 c.57.

(e) 1991 c.59

(f) 1981 c.69.

(e) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017^(a).

(2) In paragraph 3(1)(a) “flood risk activity”^(b) has the meaning given in the Environmental Permitting (England and Wales) Regulations 2016.

Maintenance of drainage works

4.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991^(c).

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

6. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Planning permission

7. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Limits of deviation

8. In carrying out the authorised development the undertaker may—

(a) 2017 c.20.

(b) This term is defined in paragraph 3 of Part 1 of Schedule 25 to the Regulations.

(c) As amended by section 100(2) of the Environment Act 1995 c.25 and S.I. 1996/186.

- (a) Subject to paragraphs (b), (c) and (d) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of work numbers 1i, 1l, 1k, 3b, 8, 9c, 9d, 11, 30, 33, 42, between points A to B, C to D, G to H and I to L only as shown on the works plans, deviate laterally from lines or situations of the authorised development shown on the work plans to a maximum of 2.0 metres;
- (c) in respect of work number 1j and 1m as shown on the works plans, deviate laterally from lines or situations of the authorised development shown on the works plans to a maximum of 5.0 metres;
- (d) deviate vertically from the levels of the authorised development shown on the engineering and structural drawings and sections—
 - (i) to a maximum of 1 metre upwards or downwards in respect of the construction of the gyratory northern overbridge (work number 27), gyratory southern overbridge (work number 28), A34 southbound underpass (work number 13), A33 underpass (work number 14), attenuation basin (work numbers 1j and 1m), M3 southern bridge portal gantry (work number 36) and bridleway (work number 9)
 - (ii) to a maximum of 0.75m upwards or downwards in respect of the construction of the retaining walls (work numbers 2d, 12a, 12c, 31a, 32c, 32d), subways (work numbers 2e, 24a, 24d, 33a), A34 footway/cycleway overbridge (work number 4) and gyratory (work number 29)
 - (iii) In respect of any other work comprised in the authorised development, to a maximum of 0.5 metres upwards or downwards

except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority and the local highway authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or worse adverse environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) If the benefit of the provisions of this Order relating to compulsory acquisition is transferred or granted to a transferee or lessee pursuant to this article and the transferee or lessee exercises those powers then the undertaker alone is liable for any compensation that is payable to another party as a consequence of the exercise of those powers by the transferee or lessee.

(5) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) Scottish and Southern Energy Power Distribution Limited (company number SC213459, whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ) for the purposes of undertaking Work No. 21, 35;
- (b) Southern Gas Networks plc (company number 05167021, whose registered office is at St Lawrence House, Station Approach, Horley, Surrey, RH6 9HJ) for the purposes of undertaking Work No. 20;
- (c) Southern Water Limited (company number 02366620, whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX) for the purposes of undertaking Work No. 5; or
- (d) Openreach Limited (company number 10690039, whose registered office is at Kelvin House, 123 Judd Street, London, WC1H 9NP) for the purposes of undertaking Work No. 26.

PART 3 STREETS

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Subject to article 13 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout etc. of streets

12.—(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, footway, cycle track or verge;
- (c) reduce the width of the carriageway; 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 6 weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(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.

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)(a) of that Act; 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 conferred by 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) (restriction 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(a) (restriction on works following substantial street works).

(a) Section 86(3) defines what highway works are major highway works.

(b) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c.51) and section 168(2) of, and Schedule 9 to, the 1991 Act.

(c) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11); and Schedule 8 to the 1991 Act.

(d) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c.18).

(e) Inserted by section 44 of the Traffic Management Act 2004 (c.18).

(f) As amended by section 51 of the Traffic Management Act 2004.

(g) Inserted by section 52 of the Traffic Management Act 2004.

(h) Inserted by section 52 of the Traffic Management Act 2004.

(i) Inserted by section 55 of the Traffic Management Act 2004.

(j) Inserted by section 55 of the Traffic Management Act 2004.

(k) Inserted by section 55 of the Traffic Management Act 2004.

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 16 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act^(b) referred to in paragraph (4) are—

- (a) section 54 (advance notice of certain works), subject to paragraph (6);
- (b) section 55 (notice of starting date of works), subject to paragraph (6);
- (c) section 57 (notice of emergency works);
- (d) section 59 (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 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 that the undertaker is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

(8) Nothing in this article affects the operation of the Traffic Management (Hampshire County Council) Permit Scheme Order 2019 as varied by the Traffic Management (Hampshire County Council) Permit Scheme Variation Order 2022 operated by the local highways authority pursuant to the Traffic Management Permit Scheme (England) Regulations 2007^(c).

Construction and maintenance of new, altered or diverted streets and other structures

14.—(1) Any highway (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing with the local highway authority, the highway including any culverts, bunding or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway

(a) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.

(b) Sub-paragraphs (a) to (h) as amended by the Traffic Management Act 2004.

(c) SI 2007/3372 _

authority, that part of the highway including any culverts, bunding, or other structures laid or supporting it under it must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is constructed, altered or diverted under this Order, the constructed, 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 part of the footpath, cycle track or bridleway including any culverts, bunding, or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion

(4) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(5) Where a highway is de-trunked under this Order—

- (a) section 265(a) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(6) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or trunk road, the highway surface (being those elements over the waterproofing membrane) must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker unless otherwise agreed in writing with the local highway authority.

(7) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over another highway which is not a special road or trunk road, both the highway surface and the structure of the bridge must be maintained by and at the expense of the local highway authority from their completion.

(8) 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.

(9) For the purposes of a defence under paragraph (8), 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,

(a) As amended by section 57 of the Infrastructure Act 2015 (c.7)

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 that the competent person had carried out those instructions.

Classification of roads, etc.

15.—(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act.

(2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 have been completed and are open for traffic—

- (a) the undertaker is the highway authority for those roads; and
- (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads but does not make provision for highways classified as special roads.

(3) From the date on which the roads described in Part 2 (trunk roads) of Schedule 3 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.

(4) On written confirmation from the local highway authority that the roads described in Part 3 (roads to be de-trunked) of Schedule 3 are in a state of repair and condition as is reasonably satisfactory to the local highway authority, the roads described in Part 3 (roads to be de-trunked) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(5) From the date on which the roads described in Part 4 (classified roads) of Schedule 3 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(6) From the date on which the roads described in Part 5 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(7) On such day as the undertaker may determine, the restrictions specified in column (3) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 are to apply to the lengths of road identified in the corresponding row of column (2) of that Part.

(8) Unless otherwise agreed with the local highway authority, the public rights of way set out in Part 8 (public rights of way to be created) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic and are to have the status described in column (2) of that Part.

(9) On such day as the undertaker may determine, the orders specified in column (3) of Part 7 (revocations & variations of existing traffic regulation orders) of Schedule 3 are to be varied or

(a) As amended by section 22 of the 1991 Act, and by section 57 of, and Schedule 1 to, the Infrastructure Act 2015.

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.

(10) The application of paragraphs (1) to (8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

Temporary stopping up and restriction of use of streets

16.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined as if it were a dispute under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

Permanent stopping up and restriction of use of streets and private means of access

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Parts 1, and 2 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 1 and 2 of Schedule 4 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) 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.

(4) 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 as if it were a dispute under Part 1 of the 1961 Act.

(5) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

18. 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

19.—(1) From such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) where it is identified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to 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—
 - (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(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person's control.

(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(b) 1991 c. 56.

(c) 2000 c. 26.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) 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.

(4) Paragraphs (1), (2) and (3) 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.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(a).

Traffic regulation

20.—(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 vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

- (a) given not less than—
 - (i) 12 weeks’ notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks’ notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker’s intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker’s intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

- (a) has effect as if duly made by, as the case may be—

(a) 2004 c. 18.

- (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, 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 Traffic Management Act 2004.

(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 it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(a) have the same meaning as in that Act.

(7) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

Protective works to buildings

22.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter and survey any building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and any land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 49 (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

(a) 1991 c.57.

- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a)(compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

23.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water samples onto the land;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes or boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or boreholes.

(4) No trial holes or boreholes are to be made under this article—

- (a) in land located within the highway boundary for which the local highway authority is the highway authority, without the consent of the local highway authority; 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

(a) As amended by S.I. 2009/1307.

compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either the local highway authority or a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application for consent, that authority is deemed to have granted consent.

(7) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development.

(2) This article is subject to paragraph (2) of article 27 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (8) of article 34 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

25. 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

26.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 30 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 34 (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

27.—(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(a) 1981 c.67.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 75(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Public rights of way

28.—(1) The public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and shown on the rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way and must ensure a copy of this site notice is provided to the local highway authority for their information at the same time.

(3) The notice to be erected under paragraph (2) must include—

- (a) details of the public rights of way to be extinguished;
- (b) the date on which the extinguishment will take effect;
- (c) details of any public rights of way being provided in substitution; and
- (d) details of the places where a copy of this Order and the documents listed in Schedule 11 (documents to be certified) may be inspected.

Private rights over land

29.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined as if it were a dispute under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 36 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(8) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(a) If any such agreement as is referred to in paragraph (8)—

(i) is made with a person in or to whom the right is vested or belongs; and

(ii) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modification of Part 1 of the 1965 Act

30.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the [•] Development Consent Order 20[•]”.

(a) As inserted by section 202(1) of the Housing and Planning Act 2016 (c.22).

- (3) In section 11A(a) (powers of entry: further notice of entry)—
- (a) in subsection (1)(a), after “land” insert “under that provision”;
 - (b) in subsection (2), after “land” insert “under that provision”.
- (4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 26 of the [•] Development Consent Order 20[•]”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
 - “(2) But see article 29(3) (acquisition of subsoil or airspace only) of the [•] Development Consent Order 20[•], 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 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of the M3 Junction 9 Development Consent Order 20[•].”

Application of the 1981 Act

- 31.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act), for subsection 2 substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(b) (time limit for general vesting declaration).
- (6) In section 5B(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(d) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the [•] Development Consent Order 20[•]”.
- (7) In section 6(e) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(f) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In Schedule A1(g) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

-
- (a) As inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
 - (b) Inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).
 - (c) As inserted by sections 202(2) and 216(3) of the Housing and Planning Act 2016 (c.22).
 - (d) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c.20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c.2).
 - (e) 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).
 - (f) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c.20) and S.I. 2017/16.
 - (g) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c.22).

“(2) But see article 32(3) (acquisition of subsoil or airspace only) of the [•] Development Consent Order 20[•], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

32.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 24 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(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

33.—(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 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

34.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26(2) (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than in connection with the acquisition of rights only);
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (2) of Schedule 7 (land of which temporary possession may be taken), or any other mitigation works in connection with the authorised development.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) 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 (including ground strengthening works) have been constructed under paragraph (1)(d); or
- (c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(a) Section 11 was amended by sections 186, 187, 188, and 216 of the Housing and Planning Act 2016 (c.22), Schedule 4 to the Acquisition of Land Act 1981 (c.67), section 3 of schedule 1 to the Housing (Consequential Provision) Act 1985 (c.71), section 16 of, paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.

(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 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

- (a) Acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights and imposition of restrictive covenants) relating to the purposes for which temporary possession of that land may be taken as specified in column (2) of Schedule 7 (land of which temporary possession may be taken); or
- (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 32 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 24 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and imposition of restrictive covenants).

Temporary use of land for maintaining the authorised development

35.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land explaining the purpose for which entry is to be taken.

(4) 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.

(5) 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.

(a) Section 13 was amended by sections 139 and 148 of, and paragraphs 27 and 28 of Schedule 13, and part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) 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

36.—(1) Subject to the provisions of article 27(3) (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 10 (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 37 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

37.—(1) Where a street is stopped up under article 17 (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 17 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (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.

(a) 2003 c.21.

(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 36, 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 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

39.—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub and 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) remove any hedgerow provided that hedgerow is described in Schedule 8 (removal of hedgerows).

(5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997^(a) and includes important hedgerows.

Trees subject to tree preservation orders

40.—(1) The undertaker may fell or lop any tree described in Schedule 9 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) S.I.1997/1160.

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
 - (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1)—
- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;
 - (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and
 - (c) the undertaker must consult the relevant planning authority prior to that activity taking place.
- (3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.
- (4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Removal of human remains

- 41.—**(1) In this article “the specified land” means the 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) 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 must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).
- (7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary

manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

then subject to paragraph (10) the undertaker must remove the remains and cause them to be 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) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857^(a) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

Application of landlord and tenant law

42.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(a) 1857 c.81.

(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

43. 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 for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

44.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d), (fb), (g), (ga) or (h) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
 - (iii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Appeals relating to the Control of Pollution Act 1974

45.—(1) 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 of the decision, or the date by which a decision was due to be made, as the case may be;

(a) 1990 c.43.

(b) 1974 c.40.

- (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 sub-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. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. 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).

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) Except where a direction is given under sub-paragraph (11) 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.

(11) 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. 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 Department for Communities and Local Government or such guidance as may from time to time replace it.

Protective provisions

46. Schedule 10 (protective provisions) has effect.

Certification of plans etc.

47.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 11 (documents to be certified) for certification that they are true copies of the plans and documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

48.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1978 c.30.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

49. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Date

[Name]
[Title]
[Department]

SCHEDULES

SCHEDULE 1

Articles 2, 5 and 6

AUTHORISED DEVELOPMENT

In the administrative areas of Hampshire County Council and Winchester City Council and South Downs National Park Authority.

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act (a) and associated development within the meaning of section 115(2) of the 2008 Act, comprising—

Work No. 1 – as shown on sheet nos. 3, 5 and 6 of the works plans and being the improvement and construction of the realignment of the northbound and southbound carriageways of the A33 between B3047 (London Road) / A33 junction and proposed A33/M3 northbound onslip roundabout, being 1371 metres in length, such works including—

- (a) The construction of 2 no. uncontrolled pedestrians crossing at the location shown on sheet 3 of the works plans;
- (b) The construction of a realigned central reserve on the A33, being 60m in length at the location shown on sheet 3 of the works plans;
- (c) The construction of a widened section of the A33 and reconfiguration to a two-way layout, being 190m in length at the location shown on sheet 3 of the works plans;
- (d) The construction of a realigned business park access to the A33 at the location shown on sheet 3 of the works plans;
- (e) The construction of a realignment of the business park access at the location shown on sheet 3 of the works plans;
- (f) The construction of a 1 no. splitter island at the location shown on sheet 3 of the works plans;
- (g) The construction of the extension of the existing central reserve with associated vehicle restraint system, being 275m in length at the location shown on sheet 5 of the works plans;
- (h) The construction of carriageway realignment on the existing river Itchen bridge (including possible remediation works), being 47m in length at the location shown on sheet 5 of the works plans;
- (i) The construction of a new vehicular maintenance access from the attenuation basin maintenance track at the location shown on sheet 5 of the works plans;
- (j) The construction of a drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans;
- (k) The construction of an attenuation basin maintenance track, being 130m in length at the location shown on sheet 5 of the works plans;
- (l) The construction of an open drainage channel at the location shown on sheet 5 of the works plans;
- (m) The construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans;

(a) Section 22 was substituted by article 3 of S.I. 2013/1883.

- (n) The construction of a 1 no. roundabout splitter island at the location shown on sheet 5 of the works plans;
- (o) The construction of an open drainage channel at the location shown on sheet 5 of the works plans.

Work No. 2 – as shown on sheet nos. 3, 5, 6 and 7 of the works plans and being the construction of a cycle track between B3047 London Road/ A33 junction and M3 Junction 9 gyratory, being 2000m in length of footway, cycle way, edgings, verges, wayfinding signage, bollards, fencing, tactile paving, chalk bunds, embankments, retaining walls, steps., including the construction of a cycle track underpass (24 metres in length), such works including—

- (a) The construction of a realignment of the existing public right of way (Ref. 111/6/1) to connect to the proposed Kings Worthy cycle track at the location shown on sheet 3 of the works;
- (b) The construction of a retaining wall, being 80 metres in length at the toe of the embankment of the proposed Kings Worthy cycle track at the location shown on sheet 5 of the works plans;
- (c) The construction of a new pedestrian link, being 41m in length, from the proposed cycle track to the existing public right of way (Ref. 111/749/1) at the location shown on sheet 5 of the works plans;
- (d) The construction of a retaining wall, being 37 metres in length, in the embankment of the A34 southbound at the location shown on sheet 5 of the works plans;
- (e) The construction of a cycle track subway with associated lighting, being 24 metres in length to the north west of the A34 northbound underpass to maintain connectivity on the cycle track route between Kings Worthy and Winchester at the location as shown on sheet 6 of the works plans.

Work No.3 – As shown on sheet nos. 3, 5, 6 and 7 of the works plans and being the construction improvements and realignment of the southbound carriageway of the A34, being 1660 metres in length, such works including—

- (a) The construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet nos. 3 and 5 of the works plans;
- (b) The construction of a variable message sign maintenance layby including layby foundations, earthworks and vehicle restraint system at the location shown on sheet 3 of the works plans;
- (c) The construction of carriageway widening on the existing river Itchen bridge (including possible remediation works), being 46 metres in length at the location shown on sheet 5 of the works plans;
- (d) The construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet nos. 5 and 6 of the works plans;
- (e) The construction of a variable message sign maintenance layby including layby foundations, earthworks and vehicle restraint system at the location shown on sheet nos. 5 and 6 of the works plans.

Work No. 4 – as shown on sheet 5 of the works plans and being the construction of a cycle track overbridge across the river Itchen, being 38 metres in length.

Work No. 5 – as shown on sheet nos. 5 and 6 and being the diversion of 1095 metres of water pipeline.

Work No. 6 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of drainage attenuation basins and associated maintenance and landscaping between A34 northbound

95m south of river Itchen Bridge to M3 diverge offslip, being 781 metres in length, and the construction improvement and realignment of the northbound carriageway of the A34 (1194 metres in length), such works including—

- (a) The construction of an attenuation basin maintenance track, being 565 metres in length at the location shown on sheet nos. 5 and 6 of the works plans;
- (b) The construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet nos. 5 and 6 of the works plans;
- (c) The construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (d) The construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (e) The construction of a maintenance footway and associated earthworks, being 321 metres in length at the location shown on sheet 6 of the works plans.

Work No.7 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of a new roundabout on embankment positioned to the north of M3 Junction 9, providing connections to the realigned A33 (Work No. 1) and realigned M3 northbound onslip (Work No. 8).

Work No. 8 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of a new 1 lane merge onslip onto the M3 Northbound, being 600 metres in length, from the A33 roundabout (Work No. 7) on embankment to connect to the M3 Junction 9.

Work No. 9 – as shown on sheet nos. 4, 5, 6 and 7 of the works plans and being the construction of a new bridleway, being 1390 metres in length including edgings, verges, wayfinding signage, bollards, tactile paving, and horse mounting blocks, and associated drainage and landscaping features to connect Long Walk and Easton Lane, such works including—

- (a) The construction of an attenuation basin maintenance track, being 191 metres at the location shown on sheet 6 of the works plans;
- (b) The construction of a new vehicular access turning head to the infiltration and attenuation basin maintenance track at the location shown on sheet 6 of the works plans;
- (c) The construction of drainage infiltration and attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (d) The construction of drainage infiltration and attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans.
- (e) The construction of an open drainage channel at the location shown on sheet nos. 4, 5, 6 and 7 of the works plans.

Work No. 10 – as shown on sheet nos. 5, 6, 7 and 8 of the works plans and being the construction improvements of the southbound carriageways of the M3, being 1983 metres in length, such works including—

- (a) The construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet 6 of the works plans;
- (b) The alteration of the existing M3 southbound carriageway from two lanes and hard shoulder to four lanes southbound, being 320 metres in length, from A34 southbound on merge to M3 southbound tie-in in cutting including tie in from the M3 Junction 9 southbound merge slip at the location shown on sheet 7 of the works plans
- (c) The construction of a new retaining wall, being 100 metres in length, and associated landscaping tie-ins as shown on sheet 7 of the works plans

Work No. 11 – as shown on sheet nos. 5, 6 and 7 of the works plans and being the construction of a new one lane off slip carriageway and associated hard shoulder, being 881 metres in length, on both embankment and in cutting to connect the M3 southbound to the M3 Junction 9 gyratory including alterations to the tie ins at both ends of the proposed off slip.

Work No. 12 – as shown on sheet nos. 4, 5, 6, 7 and 8 of the works plans and being the construction improvements of the northbound carriageways of the M3, being 2067 metres in length, such works including—

- (a) The construction of a new retaining wall, being 186 metres in length and associated landscaping tie-ins as shown on sheet nos. 6 and 7 of the works plans;
- (b) The alteration of the existing M3 northbound carriageway from two lanes and hard shoulder to four lanes northbound, being 656 metres in length, from M3 Junction 9 northbound offslip to A34 northbound offslip in cutting including tie in from the M3 Junction 9 northbound diverge slip;
- (c) The construction of a new retaining wall, being 167 metres in length, and associated landscaping tie-ins as shown on sheet nos. 6 and 7 of the works plans;
- (d) The construction of 1 no. variable messaging sign including installation of new sign, sign illumination, sign structures, gantry foundations, embankment, earthworks, control cabinets, power and communication cable connections at the location shown on sheet 7 of the works plans.

Work No. 13 – as shown on sheet 6 of the works plans and being the construction of a vehicular underpass, being 119 metres in length, and associated drainage and structural elements (wing walls, etc) underneath the M3 to connect the A34 southbound to the M3 Junction 9 gyratory.

Work No. 14 – as shown on sheet 6 of the works plans and being the construction of a vehicular underpass, being 100 metres in length, and associated drainage and structural elements underneath the A34 northbound to connect the A33 to the M3 Junction 9 gyratory.

Work No. 15 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a toucan crossing including associated traffic signals and ducting.

Work No. 16 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a new roundabout (National Highways depot roundabout) at the junction of the National Highways depot access and the A33 northbound / southbound road.

Work No. 17 – as shown on sheet nos. 5, 6 and 7 of the works plans and being the construction of a new 2 lane carriageway between the A33 roundabout (Work No. 7) and National Highways depot roundabout (Works No. 16), such works including—

- (a) The construction of a 1 no. splitter island at the location shown on sheet 6 of the works plans;
- (b) The construction of a new vehicular access to the infiltration and attenuation basin maintenance track at the location shown on sheet 6 of the works plans;
- (c) The construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans.

Work No. 18 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a new works access to the National Highways depot and associated drainage features within the depot area, such works including—

- (a) The construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans;
- (b) The construction of attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheets 6 of the works plans;
- (c) The extinguishment of the existing National Highways depot exit at the location shown on sheet nos. 6 and 7 of the works plans.

Work No. 19 – as shown on sheet nos. 4, 5, 6, and 7 of the works plans and being the construction of the realignment of the M3 central reserve, being 1741 metres in length, and replacement of the existing central reserve steel vehicle restraint system.

Work No. 20 – as shown on sheet 6 and being the diversion of 216 metres in length of low-pressure gas main pipeline.

Work No. 21 – as shown on sheet nos. 6 and 7 and being the diversion of 269 metres in length of power cables.

Work No. 22 – as shown on sheet nos. 6 and 7 and being the construction of 2 lane carriageway (261 metres in length) between National Highways depot roundabout (Works No. 16) and the M3 Junction 9 gyratory, such works including—

- (a) The construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans;
- (b) The realignment of the existing M3 Junction 9 / A33 splitter island at the location shown on sheet 7 of the works plans;
- (c) The realignment of the A34 southbound approach to the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans.

Work No. 23 – as shown on sheet nos. 6 and 7 of the works plans and being the construction realignment of the A34 northbound merge from M3 Junction 9 gyratory to the A34 northbound merge termination, being 372 metres in length, on embankment.

Work No. 24 – as shown on sheet 7 of the works plans and being the construction of a cycle track, being 490 metres in length including edgings, verges, wayfinding signage, bollards, tactile paving, horse mounting blocks, in cutting and associated structural elements, such works including—

- (a) The construction of a cycle track subway with associated lighting, being 22 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans;
- (b) The construction of an island in cutting at the location shown on sheet 7 of the works plans;
- (c) The construction of pedestrian steps, being 17 metres in length, at the location shown on sheet 7 of the works plans;
- (d) The construction of a cycle track subway, being 28 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans.

Work No. 25 – as shown on sheet 7 of the works plans and being the realignment of the Easton lane entry / exit from the M3 Junction 9 gyratory, such works including—

- (a) The realignment of the existing splitter island at the location shown on sheet 7 of the works plans.

Work No. 26 – as shown on sheet 7 of the works plans and being the diversion of 499 metres of telecommunication equipment.

Work No. 27 – as shown on sheet 7 of the works plans and being the construction of a new M3 Junction 9 gyratory northern overbridge.

Work No. 28 – as shown on sheet 7 of the works plans and being the construction of a new M3 Junction 9 gyratory southern overbridge.

Work No. 29 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment construction of the existing M3 Junction 9 gyratory to tie into the new northern (Works No. 27) and southern (Works No. 28) overbridges and new tie ins to the existing M3 offslips and onslips.

Work No. 30 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment of the M3 offslip from the M3 to the M3 Junction 9 gyratory, being 370 metres in length, on embankment,

Work No. 31 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment and construction of the M3 southbound onslip from the M3 Junction 9 gyratory to the M3 merge, being 711 metres in length, such works including—

- (a) The construction of a retaining wall, being 147 metres in length, and associated earthworks and landscaping at the location shown on sheet 7 of the works plans;

- (b) The realignment lane reduction of the M3 southbound onslip and associated earthworks at the location shown on sheet 7 of the works plans.

Work No. 32 – as shown on sheet 7 of the works plans and being the realignment of the A272 approach to the M3 Junction 9 gyratory, being 417 metres in length, and associated earthworks, such works including—

- (a) The realignment of the existing splitter island at the location shown on sheet 7 of the works plans;
- (b) The widening of the existing A272 exit from the M3 Junction 9 gyratory, being 241 metres in length, and associated earthworks at the location shown on sheet 7 of the works plans;
- (c) The construction of a retaining wall, being 184 metres in length, and associated earthworks and landscaping at the location shown on sheet 7 of the works plans;
- (d) The construction of a retaining wall, being 92 metres in length, and associated earthworks and landscaping at the location shown on sheet 7 of the works plans.

Work No. 33 – as shown on sheet nos. 6 and 7 of the works plans and being the realignment of a bridleway featuring the national cycle route 23, being 277 metres in length, and associated earthworks and landscaping, such works including—

- (a) The construction of a bridleway (NCN23) subway with associated lighting, being 23 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans.

Work No. 34 – as shown on sheet nos. 5 and 6 of the works plans and being the realignment of the A34 northbound carriageway, being 1024 metres in length.

Work No. 35 – as shown on sheet 4 of the works plans and being the diversion of 50 metres of power cables.

Work No. 36 – as shown on sheet 7 of the works plans and being the construction of a gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, associated maintenance provision, signs sign illuminations, control cabinets and power.

Work No. 37 – as shown on sheet 8 of the works plans and being the construction of a gantry including the installation of new gantry foundations, gantry structures, associated maintenance provision, earthwork retaining structures, signs, sign illuminations, control cabinets, and power.

Work No. 38 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a temporary construction site compound situated on land to the east of the M3 Junction 9 gyratory.

Work No. 39 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of the A34 southbound link to the M3 southbound, being 430 metres in length.

Work No. 40 – as shown on sheet 6 of the works plans, the construction of a new vehicular access and maintenance track to the infiltration and attenuation basin.

Work No. 41 – as shown on sheet 5 of the works plans and being the construction of a drainage outfall into the river Itchen.

Work No. 42 – as shown on sheet 5 of the works plans and being the construction of a drainage outfall into the river Itchen.

Work No. 43 – as shown on sheet 5 of the works plans and being the construction of a drainage outfall into the river Itchen.

Work No. 44 – as shown on sheet 6 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 45 – as shown on sheet 6 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 46 – as shown on sheet nos. 2 and 4 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 47 – as shown on sheet 4 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 48 – as shown on sheet no. 6 of the works plans and being the construction of a variable message sign layby including foundations, earthworks and vehicle restraint system.

Work No. 49 – as shown on sheet 7 of the works plans and being the construction of a temporary access from existing A272 to provide connectivity to the proposed temporary construction site compound (Work No. 38).

Work No. 50 – as shown on sheet 8 of the works plans and being the construction of a variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, sign illuminations, control cabinets and power.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (b) the strengthening, alteration or demolition of any structure;
- (c) ramps, steps, means of access including private manes of access, non-motorised user routes or links, footpaths, footways, bridleways, cycle tracks, laybys and crossing facilities;
- (d) embankments, cuttings, bridges, abutments, foundations, retaining walls, barriers, parapets, drainage works, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (e) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables and ducts;
- (f) works to alter the course of, or otherwise interfere with a watercourse, including private water supplies;
- (g) landscaping, re-grading, re-profiling, contouring, works associated with the provision of ecological, landscape and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (h) works for the benefit or protection of land affected by the authorised development;
- (i) works to place, alter, remove or maintain road furniture;
- (j) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling), remediation of contamination;
- (k) the felling of trees and hedgerows;
- (l) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;

- (m) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, street lighting, road restraints, road markings works, emergency roadside telephones, traffic management measure including temporary roads and such other works as are associated with the construction of the authorised development; and
- (n) such other works, working sites, storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of or for purposes associated with or ancillary to the construction, operation or maintenance of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 5

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“contaminated land” has the same meaning as that given in section 78A(a) of the Environmental Protection Act 1990;

“commence” means beginning to carry out any material operation (as defined in section 56(4)(b) of the 1990 Act) forming part of the authorised development other than environmental surveys and monitoring, archaeological mitigation works, pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of services and site clearance, construction of welfare facilities and temporary buildings, temporary display of site notices, information and advertisements, and establishment of construction compounds, and ‘commencement’ is to be construed accordingly;

“City Archaeologist” means the individual nominated or appointed as such by the relevant planning authority;

“design principles report” means that document certified by the Secretary of State as the design principles for the purposes of this Order;

“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;

“drainage strategy” means the document certified by the Secretary of State as the drainage strategy report being appendix 13.1 of the environmental statement for the purposes of this Order;

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

“environmental masterplan” means that plan certified by the Secretary of State as figure 2.3 in the document certified as “the environmental statement - chapter 2 - the scheme and its surroundings - figures (Part 2 of 4) for the purposes of this Order;

(a) Substituted by sections 86 and 105 of the Water Act 2003 (c.37), S.I. 2012/264 and S.I. 2012/284

(b) As amended by section 32 of and paragraph 10 of Schedule 12 to, the Planning and Compensation Act 1991 (c.34)

“EMP (First Iteration)” means the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage and as certified under article 47 (certification of plans, etc.);

“EMP (Second Iteration)” means the second iteration of the environmental management plan produced in accordance with the DMRB, which is to be a refined version of the EMP (First Iteration) including more detailed versions of the outline plans contained or listed within the EMP (First Iteration) or any other plans as required;

“EMP (Third Iteration)” means the third iteration of the environmental management plan produced in accordance with the DMRB, which is a refined version of the EMP (Second Iteration) and which relates to the operational and maintenance phase of the authorised development;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(a);

“flood risk assessment” means the document certified by the Secretary of State as the flood risk assessment for the purposes of the Order;

“lead local flood authority” means Hampshire County Council;

“outline Landscape and Ecological Management plan” means that plan certified by the Secretary of State as appendix 7.6 of the environmental statement for the purposes of this Order;

“outline traffic management plan” means the document certified by the Secretary of State as the outline traffic management plan for the purposes of the Order.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Environmental Management Plan

3.—(1) No part of the authorised development is to commence until an EMP (Second Iteration) for that part, substantially in accordance with the EMP (First Iteration) has been submitted to and approved in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and local highway authority to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions.

(2) The EMP (Second Iteration) must—

- (a) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the authorised development;
- (b) incorporate the measures referred to in the environmental statement as being incorporated in the EMP (First Iteration);

require adherence to working hours of 07:00 to 19:00 on Mondays to Friday and 07:00 to 13:00 on Saturdays with no working hours on Sundays and public holidays, except for—

- (i) works requiring the full or partial closure of, or otherwise adversely affecting the operation of, the M3, A33, and A34 carriageway;
- (ii) works associated with the diversion or removal of existing utilities;
- (iii) works associated with traffic management and signal changes;
- (iv) works associated with tie-ins to existing carriageways;
- (v) any emergency works, or works required for engineering, safety, or efficiency purposes;

(a) S.I. 2017/1012

(vi) any works for which different working hours have been agreed with parties who will or may be affected by those works and recorded in the approved EMP (Second Iteration), in which case the EMP (Second Iteration) must require adherence to those working hours; and

(vii) as otherwise agreed by the relevant planning authority in advance.

(3) The authorised development must be constructed in accordance with the approved EMP (Second Iteration).

(4) Upon completion of construction of the authorised development the EMP (Second Iteration) must be converted into the EMP (Third Iteration). The EMP (Third Iteration) must be submitted to the Secretary of State for approval within 28 days of the opening of the authorised development for public use.

(5) The authorised development must be operated and maintained in accordance with the EMP (Third Iteration) approved under paragraph (4).

Details of consultation

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

Landscaping

5.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions; and the local highway authority.

(2) The landscaping scheme prepared under sub-paragraph (1) must be based on the outline Landscape and Ecological Management Plan, environmental masterplan, and EMP (First Iteration)

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size, timing and planting density of any proposed planting, including advanced planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period outlined within a Tree Protection Plan and Arboricultural Method Statement;
- (f) implementation and maintenance timetables for all landscaping works; and
- (g) landscaping works associated with the provision of any fences and walls.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 54.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree, shrub, chalk grassland or other element planted as part of the landscaping scheme that, within a period of 10 years after planting, is removed, dies or becomes, 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.

(4) The reference to any tree or shrub being “removed” in sub-paragraph (3) above shall not apply to those trees or shrubs removed in accordance with the approved landscape maintenance works and timetable.

Fencing

7. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Land and groundwater contamination

8.—(1) In the event that contaminated material, including impacted groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and the relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (2) and (3) will apply.

(2) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

(3) Remedial measures must be carried out in accordance with the approved scheme.

Archaeology

9.—(1) No part of the authorised development is to commence until for that part a written scheme of investigation, reflecting the mitigation measures included in the Archaeology and Heritage Mitigation Strategy prepared substantially in accordance with the Archaeology and Heritage Outline Mitigation Strategy appended to chapter 6 of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (strip, map and sample, geoarchaeological investigation, watching brief) as required, has been prepared in consultation with the City Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the Archaeology and Heritage Mitigation Strategy and written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation, archiving and publication undertaken in accordance with written schemes of investigation referred to in sub-paragraph (1) must be consulted upon with the City Archaeologist and implemented within a timescale discussed with the City Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within an agreed time period.

(4) Any nationally significant archaeological remains not previously identified which are revealed when carrying out the authorised development must be—

- (a) retained in situ temporarily and reported to the City Archaeologist and Historic England as soon as reasonably practicable; and
- (b) subject to appropriate mitigation, including post-excavation process, as set out in the Archaeology and Heritage Mitigation Strategy and consulted upon with the City Archaeologist and Historic England.

(5) No construction operations are to take place within 20 metres from the identifiable extent of the nationally significant remains referred to in sub-paragraph (4) until an appropriate mitigation strategy has been discussed and consulted upon with the City Archaeologist and Historic England, unless otherwise agreed in writing by the Secretary of State.

(6) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the City Archaeologist.

(7) References in this paragraph to consultation, reporting, and discussion with the City Archaeologist shall include the nominated archaeologist for South Downs National Park Authority to the extent that it relates to matters relevant to their functions.

Protected species

10.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development. Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

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, document reference 7.8, 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 authorised development must be designed in detail and carried out so that it is in accordance with—

- (a) the preliminary scheme design shown on the works plans and the engineering and structural drawings and sections;
- (b) the design principles set out in the design principles report

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering drawings and sections showing departures from the preliminary design would not give rise to any

materially worse adverse environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface water drainage

13.—(1) No part of the authorised development is to commence until written details of the surface water drainage system for that part, in accordance with the flood risk assessment and drainage strategy, reflecting the mitigation measures in chapter 13 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 related to their functions, the lead local flood authority, the Environment Agency, and the local highway authority where that the surface water drainage system interacts with a highway maintainable at the expense of that local highway authority.

(2) The drainage system must be constructed and maintained in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, the lead local flood authority and the Environment Agency.

Noise Mitigation

14.—(1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authorities on matters related to their functions.

(2) The written details referred to in sub-paragraph (1) must either reflect the mitigation measures included in the environmental statement or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new adverse or materially worse adverse environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it.

(3) The noise mitigation must be constructed in accordance with the approved details referred to in sub-paragraph (1) and must be retained thereafter.

(4) References in sub-paragraph (1) above to consultation with the relevant planning authorities shall include the South Downs National Park Authority to the extent that it relates to matters relevant to their functions.

Height Restrictions

15. Any static unit providing welfare or other facilities within the temporary construction site compound as part of Work No. 38 shall be a single storey unit and shall not exceed a height of 4 metres, the measurement of which being from the external base to the external roof of the static unit but shall not include the depth of any foundation reasonably required to secure the structure or height of any aerial, mast, satellite dish, chimney stack, flue, pipe, solar panel or other equipment reasonably required to be affixed to the static unit.

Approvals and amendments to approved details

16. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

17.—(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 19; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report referred to in paragraph 4 stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement,

then the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

18.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within this 21 day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 18 and in this sub-paragraph.

(5) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

Register of requirements

19.—(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

20. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Details of consultation

21. With respect to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days for any response to the consultation and the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker’s response to that consultation.

SCHEDULE 3

Article 15 and 19

CLASSIFICATION OF ROADS, ETC.

PART 1

SPECIAL ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Hampshire County Council (Winchester)	M3 northbound carriageway from a point 540 metres from the proposed M3 Junction 9 gyratory southern bridge to the proposed A34 northbound diverge between point 30 and 23 of sheets 6, 7 and 8 of the classification of road plans, comprising 878 metres.
Hampshire County Council (Winchester)	M3 northbound carriageway from the proposed A34 northbound diverge to a point 221 metres from the proposed M3 Junction 9 gyratory northern bridge between points 23 and 31 on sheets 4, 5, and 6 of the classification of road plans, comprising 1186 metres
Hampshire County	M3 northbound offslip to the proposed M3 Junction 9 gyratory

(a) 1971 c.80.

Council (Winchester)	between point 32 and 27 on sheets 8 and 7 of the classification of road plans, comprising 468 metres.
Hampshire County Council (Winchester)	M3 northbound onslip from the proposed A33 / M3 onslip roundabout to the M3 northbound carriageway to a point 790 metres from the proposed M3 Junction 9 gyratory northern bridge between points 14 and 33 on sheets 5 and 4 of the classification of road plans, comprising 468 metres.
Hampshire County Council (Winchester)	M3 southbound carriageway from a point 1066 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 790 metres from the proposed M3 Junction 9 gyratory southern bridge between point 34 and 35 on sheets 5 6, 7 and 8 of the classification of road plans, comprising 1984 metres.
Hampshire County Council (Winchester)	M3 southbound merge from a point 182 metres from the proposed M3 underpass southern portal to a point 782 metres from the proposed M3 Junction 9 gyratory southern bridge between point 18 and 36 on sheet 6, 7 and 8 of the classification of road plans, comprising 1311 metres.
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory to a point 48 metres from the proposed M3 Junction 9 gyratory southern bridge between point 37 and 38 on sheet 7 and 8 of the classification of road plans, comprising 797 metres.
Hampshire County Council (Winchester)	M3 southbound offslip from a point 1059 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 394 metres from the proposed M3 Junction 9 gyratory northern bridge between point 39 and 21 on sheets 5 and 6 of the classification of road plans, comprising 694 metres.

PART 2

TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Hampshire County Council (Winchester)	A33 southbound from the proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between point 5 and 6 on sheets 5 and 6 of the classification of road plans, comprising 520 metres.
Hampshire County Council (Winchester)	A33 southbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 7 and 8 on sheets 6 and 7 of the classification of road plans, comprising 227 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 9 and 10 on sheets 7 and 6 of the classification of road plans, comprising 246 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed A33 / M3 northbound onslip roundabout between point 11 and 12 on sheets 6 and 5 of the classification of road plans, comprising 524 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the commencement of the proposed M3 northbound onslip motorway between point 13 and 14 on sheet 5 and 6 of the classification of road plans, comprising 8 metres.
Hampshire County Council (Winchester)	Proposed A33 / M3 northbound onslip roundabout extents as shown at point 15 on sheet 5 of the classification of road plans, comprising 87 metres.

Hampshire County Council (Winchester)	Proposed National Highways depot roundabout extents as shown at point 16 on sheet 6 of the classification of road plans, comprising 87 metres.
Hampshire County Council (Winchester)	A34 southbound from a point 659 metres from the proposed M3 underpass northern portal to a point 178 metres from the proposed M3 underpass southern portal between point 17 and 18 on sheets 5 and 6 of the classification of road plans, comprising 890 metres.
Hampshire County Council (Winchester)	A34 southbound diverge from commencement of diverge to the proposed M3 Junction 9 gyratory between point 19 and 20 on sheets 6 and 7 of the classification of road plans, comprising 588 metres.
Hampshire County Council (Winchester)	A34 southbound from a point 394 metres from the proposed M3 Junction 9 gyratory to a point 347 metres from the proposed M3 Junction 9 gyratory between point 21 and 22 on sheet 6 of the classification of road plans, comprising 49 metres.
Hampshire County Council (Winchester)	A34 northbound from the proposed M3 / A34 northbound diverge to a point 223 metres from the proposed M3 Junction 9 gyratory northern bridge between point 23 and 24 on sheets 6 and 5 of the classification of road plans, comprising 1171 metres.
Hampshire County Council (Winchester)	A34 northbound onslip from the proposed M3 Junction 9 gyratory to a point 68 metres from the proposed M3 Junction 9 gyratory between point 25 and 26 on sheet 7 and 6 of the classification of road plans, comprising 613 metres.
Hampshire County Council (Winchester)	M3 northbound offslip from a point 60 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 63 metres from the proposed M3 Junction 9 gyratory southern bridge between point 27 and 28 on sheet 7 of the classification of road plans, comprising 39 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 29 on sheet 7 of the classification of road plans, comprising 583 metres.

PART 3

ROADS TO BE DE-TRUNKED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Road</i>
Hampshire County Council (Winchester)	A33 northbound carriageway between point 1 and 2 on sheets 3 and 5 of the de-trunking plans, comprising 1182 metres.
Hampshire County Council (Winchester)	A33 southbound carriageway between point 3 and 4 on sheets 3 and 5 of the de-trunking plans, comprising 1261 metres.
Hampshire County Council (Winchester)	A34 northbound carriageway between point 5 and 6 on sheets 5, 6 and 7 of the de-trunking plans, comprising 935 metres.
Hampshire County Council (Winchester)	A34 southbound carriageway between point 7, 8, 9 and 10 on sheets 5, 6 and 7 of the de-trunking plans, comprising 902 metres.
Hampshire County Council (Winchester)	M3 northbound onslip to M3 northbound carriageway from M3 Junction 9 gyratory between point 11, 12 and 13 on sheets 6 and 7 of the de-trunking plans, comprising 259 metres.
Hampshire County Council (Winchester)	M3 southbound offslip from M3 southbound carriageway to M3 Junction 9 gyratory between

Hampshire County Council (Winchester)	point 14 and 15 on sheets 6 and 7 of the de-trunking plans, comprising 418 metres. M3 southbound onslip to M3 southbound carriageway from M3 Junction 9 gyratory between point 16 and 17 on sheet 7 of the de-trunking plans, comprising 245 metres.
Hampshire County Council (Winchester)	M3 northbound offslip from M3 northbound carriageway to M3 Junction 9 gyratory between point 18 and 19 on sheet 7 of the de-trunking plans, comprising 315 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory as shown by point 20 on sheet 7 of the de-trunking plans, comprising 645 metres.

PART 4

CLASSIFIED ROADS

<i>(1)</i> Area	<i>(2)</i> Length of road
Hampshire County Council (Winchester)	A33 southbound from a point 17 metres from the existing Cart and Horses Junction (Kings Worthy) to the proposed A33 / M3 northbound onslip roundabout between points 1 and 2 on sheets 3 and 5 of the classification of road plans, comprising 1367 metres
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the existing Cart and Horses Junction (Kings Worthy) between point 3 and 4 on sheets 3 and 5 of the classification of road plans, comprising 1367 metres.
Hampshire County Council (Winchester)	Easton Lane southbound from a point 104 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 196 metres from the proposed M3 Junction 9 gyratory southern bridge between point 44 and 45 on sheet 7 of the classification of road plans, comprising 100 metres.
Hampshire County Council (Winchester)	Easton Lane northbound from a point 126 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 145 metres from the proposed M3 Junction 9 gyratory southern bridge between point 46 and 47 on sheet 7 of the classification of road plans, comprising 38 metres.
Hampshire County Council (Winchester)	A272 southbound from the proposed M3 Junction 9 gyratory to a point 132 metres from the proposed M3 Junction 9 gyratory southern bridge between point 40 and 41 on sheet 7 of the classification of road plans, comprising 204 metres.
Hampshire County Council (Winchester)	A272 northbound from a point 103 metres from the proposed M3 Junction 9 gyratory to the proposed M3 Junction 9 gyratory between point 42 and 43 on sheet 7 of the classification of road plans, comprising 171 metres.

PART 5

SPEED LIMITS

<i>(1)</i> Area	<i>(2)</i> Road name, number and length	<i>(3)</i> Speed limit
Hampshire County Council (Winchester)	Easton Lane northbound between point 31 and 32 on sheet 7 of the	30mph

	speed limit plans, comprising 15 metres.	
Hampshire County Council (Winchester)	Easton Lane southbound between point 33 and 34 on sheet 7 of the speed limit plans, comprising 80 metres.	30mph
Hampshire County Council (Winchester)	A33 northbound and southbound between point 1 and 2 on sheet 3 of the speed limit plans, comprising 327 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound between point 3 and 4 on sheet 5 of the speed limit plans, comprising 163 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound from proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between Point 5 and 6 on sheets 5 and 6 of the speed limit plans, comprising 527 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound from proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 7 and 8 on sheets 6 and 7 of the speed limit plans, comprising 222 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed M3 Junction 9 gyratory to the proposed National Highways depot roundabout between point 9 and 10 on sheets 7 and 6 of the speed limit plans, comprising 244 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed A33 / M3 northbound onslip roundabout between point 11 and 12 on sheets 6 and 5 of the speed limit plans, comprising 527 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 onslip roundabout to the A33 northbound between point 13 and 3 on sheet 5 of the speed limit plans, comprising 163 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the M3 northbound onslip between point 14 and 15 on sheet 5 of the speed limit plans, comprising 46 metres.	40mph
Hampshire County Council (Winchester)	A33 / M3 northbound onslip roundabout extents as shown at point 16 on sheet 5 of the speed limit plans, comprising 83 metres.	40mph
Hampshire County Council (Winchester)	National Highways depot roundabout extents as shown at point 17 on sheet 6 of the speed	40mph

	limit plans, comprising 83 metres.	
Hampshire County Council (Winchester)	A34 southbound diverge to the - proposed M3 Junction 9 gyratory between point 21 and 22 on sheets 6 and 7 of the speed limit plans, comprising 393 metres.	40mph
Hampshire County Council (Winchester)	A34 / M3 southbound offslip merge between point 23 and 24 on sheet 6 of the speed limit plans, comprising 50 metres.	40mph
Hampshire County Council (Winchester)	A34 northbound onslip between point 29 and 27 on sheet 7 of the speed limit plans, comprising 39 metres.	40mph
Hampshire County Council (Winchester)	Easton Lane northbound between point 30 and 31 on sheet 7 of the speed limit plans, comprising 23 metres.	40mph
Hampshire County Council (Winchester)	Easton Lane southbound between point 34 and 35 on sheet 7 of the speed limit plans, comprising 36 metres.	40mph
Hampshire County Council (Winchester)	A272 southbound between point 40 and 41 on sheet 7 of the speed limit plans, comprising 204 metres.	40mph
Hampshire County Council (Winchester)	A272 northbound between point 41 and 42 on sheet 7 of the speed limit plans, comprising 180 metres.	40mph
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 43 on sheet 7 of the speed limit plans, comprising 583 metres.	40mph
Hampshire County Council (Winchester)	M3 northbound offslip to the proposed M3 Junction 9 gyratory between point 36 and 37 on sheet 7 of the speed limit plans, comprising 40 metres.	40mph
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory between point 38 and 39 on sheet 7 of the speed limit plans, comprising 36 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound and southbound between point 2 and 3 on sheets 3 and 5 of the speed limit plans, comprising 871 metres.	50mph
Hampshire County Council (Winchester)	A34 southbound to M3 southbound onslip merge between point 18 and 19 on sheets 5 and 6 of the speed limit plans, comprising 905 metres.	50mph
Hampshire County Council (Winchester)	A34 southbound diverge to proposed M3 Junction 9 gyratory between point 20 and 21 on sheet 6 of the speed limit plans, comprising 200 metres.	50mph

Hampshire County Council (Winchester)	A34 northbound between point 26 and 28 on sheets 6 and 5 of the speed limit plans, comprising 802 metres.	50mph
Hampshire County Council (Winchester)	A34 northbound from M3 northbound diverge to A34 northbound between point 25 and 26 on sheet 6 of the speed limit plans, comprising 390 metres.	70mph
Hampshire County Council (Winchester)	A34 onslip from proposed M3 Junction 9 gyratory between point 27 and 26 on sheets 7 and 6 of the speed limit plans, comprising 578 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound offslip between point 44 and 36 on sheets 8 and 7 of the speed limit plans, comprising 486 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound onslip between point 39 and 53 on sheets 7 and 8 of the speed limit plans, comprising 763 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound between point 45 and 25 on sheets 8, 7 and 6 of the speed limit plans, comprising 876 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound between point 46 and 47 on sheets 6, 5 and 4 of the speed limit plans, comprising 1186 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound onslip between point 15 and 48 on sheets 5 and 4 of the speed limit plans, comprising 605 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound between point 49 and 50 on sheets 5, 6, 7 and 8 of the speed limit plans, comprising 1980 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound offslip between point 51 and 23 on sheets 5 and 6 of the speed limit plans, comprising 695 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound onslip merge between point 19 and 52 on sheets 6, 7 and 8 of the speed limit plans, comprising 1305 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory between point 39 and 53 on sheets 7 and 8 of the speed limit plans, comprising 763 metres.	70mph

PART 6

TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
Hampshire County Council (Winchester)	A33 southbound from the Cart and Horses Junction (Kings Worthy) to the proposed A33 / M3 northbound onslip roundabout between point 1 and 2 on sheets 3 and 5 of the traffic regulation measures plans, comprising 1366 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 southbound from the proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between point 3 and 4 on sheets 5 and 6 of the traffic regulation measures plans, comprising 526 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 southbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 5 and 6 on sheet 6 and 7 of the traffic regulation measures plans, comprising 224 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 northbound from the proposed M3 Junction 9 gyratory to the proposed National Highways depot roundabout between Point 7 and 8 on sheets 6 and 7 of the traffic regulation measures plans, comprising 242 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed A33 / M3 northbound onslip roundabout between Point 9 and 10 on sheets 6 and 5 of the traffic regulation measures plans, comprising 527 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to a point 20 metres from the existing Cart and Horses Junction (Kings Worthy) between point 11 and 12 on sheets 5 and 3 of the traffic regulation measures plans, comprising 1365 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to a point 24 metres from the proposed A33 / M3 northbound onslip roundabout between point 13 and 14 on sheet 5	Clearway extents

	of the traffic regulation measures plans, comprising 10 metres.	
Hampshire County Council (Winchester)	A33 / M3 northbound onslip roundabout the proposed roundabout extents as shown as point 15 on sheet 5 of the traffic regulation measures plans, comprising 84 metres.	Clearway extents
Hampshire County Council (Winchester)	National Highways depot roundabout the proposed roundabout extents as shown as point 16 on sheet 6 of the traffic regulation measures plans, comprising 84 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 southbound from a point 662 metres from the proposed M3 underpass northern portal to a point 204 metres from the proposed M3 underpass southern portal between point 17 and 18 on sheets 6 and 5 of the traffic regulation measures plans, comprising 891 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 southbound from diverge to the proposed M3 Junction 9 gyratory between point 19 and 20 on sheets 6 and 7 of the traffic regulation measures plans, comprising 589 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 southbound from a point 393 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 346 metres from the proposed M3 Junction 9 gyratory northern bridge between point 21 and 22 on sheet 6 of the traffic regulation measures plans, comprising 50 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 northbound from M3 / A34 northbound diverge to a point 1172 metres from the M3 / A34 northbound diverge between point 23 and 24 on sheet 6 and 5 of the traffic regulation measures plans, comprising 1172 metres.	Clearway extents
Hampshire County Council (Winchester)	A34 northbound onslip from a point 32 metres from the proposed M3 Junction 9 gyratory northern bridge between Point 25 and 26 on sheet 7 and 6 of the traffic regulation measures plans, comprising 612 metres.	Clearway extents
Hampshire County Council (Winchester)	Easton Lane northbound between point 27 and 28 on sheet 7 of the traffic regulation measures plans, comprising 23 metres.	Clearway extents
Hampshire County	Easton Lane southbound between	Clearway extents

Council (Winchester)	point 29 and 30 on sheet 7 of the traffic regulation measures plans, comprising 25 metres.	
Hampshire County Council (Winchester)	M3 northbound offslip between point 31 and 32 on sheet 7 of the traffic regulation measures plans, comprising 40 metres.	Clearway extents
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 33 (including points 34, 35, 36) on sheet 7 of the restrictions to traffic movement plans, comprising 635 metres.	Clearway extents
Hampshire County Council (Winchester)	A33 overtaking between point 37 and 38 on sheets 6 and 5 of the traffic regulation measures plans, comprising 487 metres.	No overtaking
Hampshire County Council (Winchester)	A33 overtaking between point 39 and 40 on sheets 5 and 3 of the traffic regulation measures plans, comprising 731 metres.	No overtaking

PART 7

REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> Area	<i>(2)</i> Road name, number and length	<i>(3)</i> Title of Order	<i>(4)</i> Revocations or variations
Hampshire County Council (Winchester)	A34 northbound carriageway between point 1 and 2 on sheets 5 and 7 of the revoking existing clearway orders plans, comprising 926 metres.	The Winchester-Preston Trunk Road (A34) (24 Hours Clearway) (No.2) Order 1987	Existing section of highway (in part) to be stopped up. Traffic regulation order to be revised to suit proposed highway arrangement.
Hampshire County Council (Winchester)	A34 southbound carriageway between point 3 and 4 on sheets 5 and 7 of the revoking existing clearway orders plans, comprising 899 metres.	The Winchester-Preston Trunk Road (A34) (24 Hours Clearway) (No.2) Order 1987	Existing section of highway (in part) to be stopped up. Traffic regulation order to be revised to suit proposed highway arrangement.
Hampshire County Council (Winchester)	A33 between point 5 and 6 on sheets 3 and 5 of the revoking existing clearway orders plans, comprising 929 metres.	The South West of Basingstoke – Southampton Trunk Road (Prohibition of Waiting) (Clearways) Order 1968	Existing section of highway (in part) to be stopped up. Traffic regulation order to be revised to suit proposed highway arrangement.

PART 8

PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Status and length of public right of way / footpath / cycle track / bridleway / footway and associated structures</i>
Hampshire County Council (Winchester)	Cycle track between the Cart and Horses Junction (Kings Worthy) to the existing NCN Route 23 adjacent to Tesco and the proposed gyratory between points 16, 4 and 15 as shown on sheets 3, 5, 6 and 7 of the rights of way and access plans, comprising 2606 metres.
Hampshire County Council (Winchester)	Bridleway between the proposed gyratory and Easton Lane between point 3 and 4 as shown on sheets 6 and 7 of the rights of way and access plans, comprising 277 metres.
Hampshire County Council (Winchester)	Bridleway between Easton Lane and Long Walk between point 1 and 2 on sheet 4, 5, 6 and 7 of the rights of way and access plans, comprising 1197 metres.

SCHEDULE 4

Articles 17 and 28

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

1. In relating this Schedule to the rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) Existing highways to be stopped up, as described in column (2) of Part 1 and Part 2 of this Schedule, are shown by red boxed hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column (3) of Part 1 and Part 2 of this Schedule.
- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by green shading (for motorways), pink shading (for trunk roads), yellow shading (for other classified roads and highways) and blue, yellow or purple shading (for public rights of way) (as shown in the key on the rights of way and access plans and are given a reference label (a capital letter in a circle) and will be a road unless otherwise stated beneath its reference letter in column (4) of Part 2 of this Schedule.
- (c) Private means of access to be stopped up, as described in column (2) of Part 2 of this Schedule, are shown by blue shading (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column (3) of Part 2 of this Schedule, and are given a reference label (a lower case letter in a circle).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by blue shading (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Highway to be</i>
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	<i>stopped up</i>		<i>substituted/provided</i>
Hampshire County Council (Winchester)	A33 northbound carriageway	936 metres between points 22 and 21 as shown on sheets 3 and 5 of the rights of way and access plans.	A new cycle track between the Cart and Horses Junction (Kings Worthy) to the existing NCN Route 23 adjacent to Tesco and the proposed gyratory between points 16, 4, and 15 as shown on sheets 3, 5, 6, and 7 of the rights of way and access plans, comprising 2606 metres.
Hampshire County Council (Winchester)	A34 northbound carriageway	935 metres between points 17 and 18 as shown on sheets 5 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 northbound carriageway) for a length of 691 metres.
Hampshire County Council (Winchester)	A34 southbound carriageway	920 metres between points 19 and 20 as shown on sheets 5 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 southbound carriageway) for a length of 549 metres.
Hampshire County Council (Winchester)	M3 northbound onslip carriageway	258 metres between points 23 and 24 as shown on sheets 6 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 northbound merge) for a length of 617 metres.
Hampshire County Council (Winchester)	M3 northbound offslip carriageway	316 metres between points 29 and 30 as shown on sheets 7 and 8 of the rights of way and access plans.	A new length of special road (realigned M3 northbound offslip carriageway) for a length of 440 metres.
Hampshire County Council (Winchester)	M3 southbound onslip carriageway	246 metres between points 27 and 28 as shown on sheet 7 of the rights of way and access Plans.	A new length of special road (realigned M3 southbound onslip carriageway) for a length of 687 metres.
Hampshire County Council (Winchester)	M3 southbound offslip carriageway	418 metres between the M3 southbound offslip to point 26 as shown on sheets 6 and 7 of the rights of way and access plans.	A new length of special road (realigned M3 southbound offslip carriageway) for a length of 634 metres.
Hampshire County Council (Winchester)	A272 northbound carriageway	101 metres between points 33 and 34 as shown on sheet 7 of the rights of way and access plans.	A new length of classified road (realigned A272 northbound carriageway) for a length of 116 metres.
Hampshire County Council (Winchester)	Easton Lane southbound carriageway	106 metres between points 31 and 32 as shown on sheet 7 of the rights of way and	A new length of classified road (realigned Easton Lane southbound

		access plans.	carriageway) for a length of 106 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory (with demolition of existing structures over M3 northbound and southbound carriageways)	640 metres as identified by all points referenced 35 on sheet 7 of the rights of way and access plans.	A new length of trunk road (realigned M3 Junction 9 gyratory) for a length of 583 metres.
Hampshire County Council (Winchester)	National Highways rear entrance / exit	As noted on the rights of way and access plans	A realigned entrance / exit via a proposed roundabout (National Highways depot roundabout) for a length of 93 metres.
Hampshire County Council (Winchester)	Existing public right of way to be stopped up	441 metres of existing public right of way between points 6 and 7 as shown on sheets 6 and 7 of the rights of way and access plans.	New public right of way as per reference F/C 1 between points 4, 15 and 16, for a length of 2693 metres, as shown on sheets 3, 5, 6 and 7.
Hampshire County Council (Winchester)	Existing public right of way to be stopped up	290 metres of existing public right of way between points 5 and 6 as shown on sheets 6 and 7 of the rights of way and access plans.	New public right of way as identified between points 1 and 2, 3 and 4, for a length of 1679 metres as shown on sheets 4, 6 and 7 of the rights of way and access plans.
Hampshire County Council (Winchester)	Existing footway / footpath between to be stopped up	1719 metres of existing footway / footpath between points 7 and 8, 9 and 10, 11 and 12, 13 and 14 as shown on sheets 3, 5, 6 and 7 of the rights of way and access plans.	New public right of way as per reference F/C 1 between points 4, 15 and 16, for a length of 2693 metres as shown on sheets 3, 5, 6 and 7 of the rights of way and access plans.

PART 2

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1) Area</i>	<i>(2) Private means of access to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New private means of access to be substituted/provided</i>
Hampshire County Council (Winchester)	A33 business park access	Shown as point A on sheet 3 of the rights and access plans.	Between point 49 and 48 on sheet 3 of the classification of road plans, comprising 18 metres.
Hampshire County	A33 business park	Shown as point B on	Between point 50 and

Council (Winchester)	access	sheet 3 of the rights of way and access plans	51 on sheet 3 of the classification of road plans, comprising 33 metres.
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SCHEDULE 5

Article 27

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(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
Land Plans – Sheet 6		
Plot 6/5	Rights to be acquired permanently to access, construct, maintain and repair overhead electricity cables and associated apparatus	Work No. 21

SCHEDULE 6

Article 27

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5) (a) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph [5(5)] of Schedule [6] to the [•] Development Consent Order 20[•] (the “[•] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph [5(8)] of Schedule [6] to the [•] Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

(3) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (4).

(4) 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

3. Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(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.

4.—(1) The modifications referred to in paragraph 74(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 24), 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;

(a) 1973 c.26.

and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 30 (application of the 1981 Act) of the M3 Junction 9 Development Consent Order 202[•] in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil or airspace only) of the M3 Junction 9 Development Consent Order 202[•] which excludes the acquisition of subsoil or airspace only from this Schedule.

(3) In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

(b) Section 11B was inserted by sections 187(3) and 216(3) of the above Act and S.I. 2017/75

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right of the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 7

Article 34

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot Reference Number shown</i>	<i>(2)</i> <i>Purpose for which temporary</i>	<i>(3)</i> <i>Relevant part of the authorised</i>
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<i>on land plans</i>	<i>possession may be taken</i>	<i>development</i>
Land Plans – Sheet 4		
4/1a	Land required temporarily for temporary traffic management purposes.	Ancillary works
4/1b	Required to facilitate and provide a working space and temporary access for works associated with the diversion of power cables	Work No. 35
4/1c	Required to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk and Easton Lane	Work No. 9
4/1d	Land required temporarily for temporary traffic management purposes.	Ancillary works
4/2a	Required to facilitate and provide a working space and temporary access for works associated with the diversion of 50 metres in length of power cables	Work No. 35
4/2b	Required to facilitate and provide a working space and temporary access for works associated with the diversion of power cables	Work No. 35
4/2c	Land required temporarily for temporary traffic management purposes.	Ancillary works
Land Plans – Sheet 5		
5/5a	Requirement to facilitate and provide a working space and temporary access for works associated with the construction of a drainage outfall into the river Itchen	Work No. 43
5/2d	Land required temporarily for temporary traffic management purposes.	Ancillary Works
5/2e	Required to facilitate and provide a working space and temporary access for works associated with: 1. the improvement and construction of the realignment of the northbound and southbound carriageways of the A33 between B3047 (London Road) / A33 junction	Work No. 1, 1g, 1h, 3, 42

	<p>and proposed A33 / M3 northbound onslip roundabout;</p> <p>1g. the construction of the extension of the existing central reserve with associated vehicle restraint system;</p> <p>1h. the construction of carriageway realignment on the existing river Itchen bridge (including possible remediation works), approximately;</p> <p>3. the construction improvements and realignment of the southbound carriageway of the A34;</p> <p>42. the construction of a drainage outfall into the river Itchen.</p>	
5/3c	<p>Required temporarily to facilitate construction generally and to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk to Easton Lane.</p>	Work No. 9
5/4	<p>Required temporarily to facilitate construction of surface water drainage outfall</p>	Work No. 42
Land Plans – Sheet 6		
6/1f	<p>Required to facilitate and provide a working space and temporary access for works associated with:</p> <p>9. the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk and Easton Lane;</p> <p>9a. the construction of an attenuation basin maintenance track;</p> <p>20. the diversion low-pressure gas main pipeline;</p> <p>26. the diversion of telecommunication equipment;</p> <p>33. the realignment of the National Cycle Route 23 and associated earthworks and landscaping.</p>	Work No. 9, 9a, 20, 26, 33
6/1g	<p>Required to construct a temporary construction site</p>	Work No. 38

	compound	
6/4d	Required to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk to Easton Lane.	Work No. 9
6/6a	Required to facilitate and provide a working space and temporary access for works associated with the diversion of a low-pressure gas main pipeline.	Work No. 20
6/6b	Required to facilitate and provide a working space and temporary access for works associated with: 20. the diversion of a low-pressure gas main pipeline; 38: the construction of a temporary construction site compound situated on land to the east of the M3 Junction 9 gyratory.	Work No. 20, 38
Land Plans – Sheet 7		
7/1a	Required to facilitate and provide a working space and temporary access for works associated with the construction of a temporary construction site compound situated on land to the east of the M3 Junction 9 gyratory	Work No. 38
7/2c	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/4g	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/5	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/6	Land required temporarily for temporary traffic management purposes.	Ancillary works

SCHEDULE 8

Article 39

REMOVAL OF HEDGEROWS

<i>(1) Hedgerow No. as referred to in the</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of authorised</i>	<i>(3) hedgerow</i>	<i>Important</i>
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<i>protected trees and hedgerows to be removed plans</i>		<i>development</i>	
H1	Partial Removal	Work No. 35	Yes
H2	Partial Removal	Work No. 9	Yes
H3	Partial Removal	Work No. 9	Yes
H4	Removal	Work No. 3, 10(a), 11, 19, 20, 21, 39	No
H5	Partial Removal	Work No. 3, 32, 33	No
H6	Partial Removal	Work No. 3, 9, 33	Yes
H7	Partial Removal	Work No. 3, 33	Yes
H9	Partial Removal	Work No. 49	No
H10	Partial Removal	Work No. 49	No

SCHEDULE 9

Article 40

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1) Name of Order/Type of tree</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of the authorised development</i>
Tree preservation order (00039-2003-TPO) partially covered by tree group G43(B) which identified ash, sycamore, yew, hawthorn, field maple, english oak, elder, blackthorn	Partial Removal	Work No. 24, 29

SCHEDULE 10

Articles 36 and 46

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;

(a) 1989 c.29.

(b) 1986 c.44.

- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(a); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(b) (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(c),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 16 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up

(a) 1991 c.56.

(b) Inserted by section 94(3) of and paragraph 90 of Schedule 7 to the Water Act 2014 (c.21), sections 96(1)(c)(3) and 105(3) of the Water Act 2003 (c.37), S.I. 2017/462 and S.I. 2004/641.

(c) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c.29), section 11 of the Water Act 2003, sections 96, 105(3) of and part 3 of Schedule 9 to the Water Act 2014, S.I. 2004/641, S.I. 2017/462 and S.I. 2017/1288

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 22 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (1) 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 (1) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (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 49 (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 (5) 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 49 (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, 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 (6), 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 49 (arbitration) to be necessary then, if such placing involves cost exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (6) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (6), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any

requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106(b) (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

(a) 2003 c.21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017.

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (8) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 49 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (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.
- (c) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

Application

18. For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

Interpretation

19. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991(a); “alternative apparatus” means appropriate alternative apparatus to the satisfaction of SGN to enable SGN 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 SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include the works described in that definition that would otherwise have been excluded from its scope other than ecological surveys, preconstruction ecological mitigation, erection of any temporary means of enclosure and the temporary display of site notices or advertisements

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SGN’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(b).

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

(a) 1991 c.22.
(b) 1986 c.44.

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 of this Order.

On Street Apparatus

20.—(1) Except for paragraphs 4 (*apparatus in stopped up streets*), 7 (*removal of apparatus*) in so far as sub-paragraph 3(2) applies, 8 (*facilities and rights for alternative apparatus*) in so far as sub-paragraph 3(2) below applies, 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 7 and 8 of this Part shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding articles 11, 12, 30 and 35 or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of SGN under the 1991 Act.

Apparatus of SGN in stopped up streets

21.—(1) Without prejudice to the generality of any other protection afforded to SGN elsewhere in the Order, where any street is stopped up under article 17 (*permanent stopping up of streets*) if SGN has any apparatus in the street or accessed via that street SGN will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to SGN, or will procure the granting to SGN of, legal easements reasonably satisfactory to SGN 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 SGN to require the removal of that apparatus under paragraph 7 of this Part.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16 (*temporary stopping up and restriction of use of streets*), SGN will be 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 it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

22. The undertaker, in the case of the powers conferred by article 22 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN.

Acquisition of land

23.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire from SGN any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of SGN otherwise than by agreement.

(2) The undertaker and SGN agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus/including but not limited to the payment of costs and expenses relating to such

relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SGN or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(3) Any agreement or consent granted by SGN under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

(4) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ SGN must use reasonable endeavours to surrender its easement or other interest in land in respect of such decommissioned apparatus to the reversionary landowner and transfer title to such de-commissioned apparatus to the reversionary landowner. If SGN is not released by the reversionary landowner from all liabilities (including title) in respect of such de-commissioned apparatus the undertaker shall take on such liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(5) Where the undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must, unless SGN agrees otherwise:

- (a) retain any notice of SGN'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 SGN'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 SGN's easement, right or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

Removal of apparatus

24.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SGN and in accordance with sub-paragraph (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 SGN 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 SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its satisfaction (taking into account sub-paragraph 8(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the 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, SGN 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 shall not extend to the requirement for SGN 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 SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

25.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance 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 SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SGN's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 15 (*arbitration*) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of SGN

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SGN a plan and, if reasonably required by SGN, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SGN 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 SGN has given written approval of the plan so submitted.

(4) Any approval of SGN required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

(b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) and (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing 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 to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a), and SGN will be entitled to watch and inspect the execution of those works.

(7) Where SGN 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 SGN's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If SGN, 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 sub-paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that SGN 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 10.

Expenses

27.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN on demand all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 58 (*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 SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) 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 SGN 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 SGN any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably

necessary in view of its intended removal for the purposes of the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and
- (b) indemnify SGN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from SGN, by reason or in consequence of any such damage or interruption or SGN becoming liable to any third party as aforesaid other than arising from any default of SGN.

(2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN 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 SGN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SGN, its officers, servants, contractors or agents; and
- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 9 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) SGN must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

Enactments and agreements

29. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

30.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 7(2) or SGN 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 SGN’s undertaking and SGN must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of the agreement reached in accordance with sub-paragraph 6(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus)

is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Save for differences or disputes arising under sub-paragraphs 7(2), 7(4), 8(1), 11(5) and paragraph 9 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 49 (arbitration.).

Notices

33. The plans submitted to SGN by the undertaker pursuant to sub-paragraph 9(1) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify in writing to the undertaker.

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Application

34. The following provisions will apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

Interpretation

35.—(1) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, or flood defence;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113(1) of the Water Resources Act 1991(a);

“plans” includes sections, drawings, specifications, calculations and method statements;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within —

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or

(ii) interfere with the Agency’s access to or along that remote defence.

(a) 1991 c. 57. The definition of “main river” was amended by section 59(3) of the Water Act 2014 (c. 21).

- (b) 8 metres of a drainage work or is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) affect the flow, purity or quality of water in any watercourse or other surface waters;
 - (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or
 - (v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

- (c) an activity that includes dredging, raising or taking of any sand, silt ballast, clay gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
- (d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work.

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

Submission and approval of plans

36.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

37. Without limiting paragraph 2, the requirements which the Agency may have under that paragraph may include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

38.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

39.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) and paragraph 10, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 11.

Maintenance of works

40.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), and paragraph 10, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance

and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with the provisions of this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and on receipt of such notice the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 11.

(6) This paragraph does not apply to:

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prevented by the exercise by the undertaker of the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

41. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

42. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours or as soon as reasonably practicable of the undertaker becoming aware of such obstruction.

Free passage of fish

43.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 10, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 10, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

44.—(1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) The undertaker is responsible for and indemnifies the Agency against all costs and losses not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance or failure during construction of any specified works comprised within the authorised development
- (b) the operation or maintenance of any specified works comprised within the authorised development or the failure of any such works; or
- (c) any act or omission of the undertaker, its employees, contractors or agents or other persons acting under the direction of the undertaker whilst engaged upon—
 - (i) the construction, operation or maintenance of the specified works; or
 - (ii) in the case of those specified works that the undertaker is liable to maintain, dealing with any failure of those specified works.

(3) For the avoidance of doubt in sub-paragraph (1)—

“costs” includes—

- (i) expenses and charges;
- (ii) staff costs and overheads;
- (iii) legal costs;

“losses” includes physical damage.

(4) The undertaker indemnifies the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraph (1).

(5) In sub-paragraph (3)—

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
- (b) any interest element of sums claimed or demanded;

“liabilities” includes—

- (c) contractual liabilities;
- (d) tortious liabilities (including liabilities for negligence or nuisance);
- (e) liabilities to pay statutory compensation or for breach of statutory duty;
- (f) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(6) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(7) The Agency must, at all times, take reasonable steps to prevent and mitigate any such claims,

(8) demands, proceedings, costs, damages, expenses or loss.

(9) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(10) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, liabilities, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

45. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must if the parties agree, be determined by arbitration under article 49 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

SCHEDULE 11

Articles 28 and 47

DOCUMENTS TO BE CERTIFIED

<i>(1) Document</i>	<i>(2) Application Document Reference</i>	<i>(3) Revision</i>
Book of reference	Volume 4, document 4.3	5
Classification of roads plans	Volume 2, document 2.8	1
Design principles report	Volume 8, document 8.18	1
De-trunking plans	Volume 2, document 2.10	1
Engineering plans and sections	Volume 2, document 2.6	1
Environmental management plan	Volume 7, document 7.3	7
Flood risk assessment	Volume 7, document 7.4	0
General arrangement plans	Volume 2, document 2.5	0
Land plans	Volume 2, document 2.2	1
Outline traffic management plan	Volume 7, document 7.8	2
Protected trees and hedgerows to be removed plans	Volume 2, document 2.13	0
Revoking existing clearway orders plans	Volume 2, document 2.14	1
Rights of way and access plans	Volume 2, document 2.4	1
Speed limit plans	Volume 2, document 2.9	1
Structural plans and sections	Volume 2, document 2.7	0
Traffic regulation measures plans	Volume 2, document 2.11	1
Works plans	Volume 2, document 2.3	2
Environmental Statement – Chapter 1 – Introduction	Volume 6, document 6.1	0
Environmental Statement –	Volume 6, document 6.1	0

Chapter 2 – The Scheme and its Surroundings		
Environmental Statement – Chapter 3 – Assessment of Alternatives	Volume 6, document 6.1	1
Environmental Statement – Chapter 4 – Environmental Impact Assessment Methodology	Volume 6, document 6.1	0
Environmental Statement – Chapter 5 – Air Quality	Volume 6, document 6.1	2
Environmental Statement - Chapter 6 - Cultural Heritage	Volume 6, document 6.1	0
Environmental Statement - Chapter 7 - Landscape and Visual	Volume 6, document 6.1	1
Environmental Statement - Chapter 8 - Biodiversity	Volume 6, document 6.1	0
Environmental Statement - Chapter 9 - Geology and Soils	Volume 6, document 6.1	1
Environmental Statement - Chapter 10 - Material Assets and Waste	Volume 6, document 6.1	1
Environmental Statement - Chapter 11 - Noise and Vibration	Volume 6, document 6.1	0
Environmental Statement - Chapter 12 - Population and Human Health	Volume 6, document 6.1	1
Environmental Statement - Chapter 13 - Road Drainage and the Water Environment	Volume 6, document 6.1	1
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Environmental Statement - Chapter 15 - Cumulative Effects	Volume 6, document 6.1	0
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Environmental Statement - Chapter 17 - Abbreviations and Glossary	Volume 6, document 6.1	0
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Environmental Statement - Chapter 2 - The Scheme and its Surroundings - Figures (Part 3 of 4)	Volume 6, document 6.2	0
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Environmental Statement - Chapter 5 - Air Quality - Figures	Volume 6, document 6.2	1
Environmental Statement - Chapter 6 - Cultural Heritage - Figures	Volume 6, document 6.2	0
Environmental Statement - Chapter 7 - Landscape and Visual - Figures (Part 1 of 3)	Volume 6, document 6.2	1
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Environmental Statement - Chapter 7 - Landscape and Visual - Figures (Part 3 of 3)	Volume 6, document 6.2	1
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Environmental Statement - Chapter 8 - Biodiversity - Figures	Volume 6, document 6.2	1
Environmental Statement - Chapter 9 - Geology and Soils - Figures	Volume 6, document 6.2	1
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Environmental Statement - Chapter 12 - Population and Human Health - Figures	Volume 6, document 6.2	2
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Environmental Statement - Chapter 14 - Climate - Figures	Volume 6, document 6.2	0
Environmental Statement - Chapter 15 - Cumulative Effects - Figures	Volume 6, document 6.2	0
Environmental Statement - Appendix 1.1 - Competent Expert Evidence	Volume 6, document 6.3	0
Environmental Statement - Appendix 2.1 - Drainage	Volume 6, document 6.3	0

Outfall Methodology Optioneering Report		
Environmental Statement - Appendix 3.1 - Stage 1 Technical Appraisal Report	Volume 6, document 6.3	0
Environmental Statement - Appendix 3.2 - Scheme Assessment Report	Volume 6, document 6.3	0
Environmental Statement - Appendix 3.3 - Non-motorised User Route Options	Volume 6, document 6.3	0
Environmental Statement - Appendix 4.1 - Major Events Screening Assessment	Volume 6, document 6.3	0
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Environmental Statement - Appendix 5.1 - Air Quality Modelling Methodology and Verification	Volume 6, document 6.3	0
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Environmental Statement - Appendix 6.6 - Archaeological Trial Trench Evaluation Report	Volume 6, document 6.3	0
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Environmental Statement - Appendix 6.8 - Archaeology and Heritage Outline Mitigation Strategy	Volume 6, document 6.3	2
Environmental Statement - Appendix 7.1 - Landscape and Visual Methodology	Volume 6, document 6.3	0
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Environmental Statement - Appendix 7.4 - Schedule of Visual Effects	Volume 6, document 6.3	0
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Environmental Statement - Appendix 7.7 - Technical Note Lighting Assessment of Gantry Signage	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1a - Badger Survey Report 2017 - Confidential	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1b - Bat Activity Survey Report 2017	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1c - Botanical Survey Report 2017	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1d - Breeding Bird Community Walkover Survey Report 2017	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1e - Great Crested Newt Survey Report 2017	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1f - Hazel Dormouse Survey Report 2018	Volume 6, document 6.3	0
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Environmental Statement - Appendix 8.1i - Preliminary Bat Roost Assessment Report 2018	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1j - Reptile Survey Report 2017	Volume 6, document 6.3	0
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Environmental Statement - Appendix 8.1m - Habitat Verification and Orchid Survey 2020	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1n - Aquatic Ecology Survey Report 2020 - Confidential	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1o - Terrestrial Invertebrate Survey and Southern Damselfly Habitat Assessment 2020	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1p - Preliminary Ecological Appraisal: Proposed Deposition Areas and Compound 2020 - Confidential	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1q - Bat Trapping Survey Report 2021	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1r - Bat Survey Report 2020	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1s - Bat Roost Survey Report 2021	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1t - Water Vole Survey Report 2020	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1u - Badger Survey Report 2021 - Confidential	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1v - Great Crested Newt HSI and eDNA Survey 2021	Volume 6, document 6.3	0
Environmental Statement - Appendix 8.1w - White	Volume 6, document 6.3	0

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Environmental Statement - Appendix 8.1y - Biodiversity Desk Study Report 2021	Volume 6, document 6.3	0
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Environmental Statement - Appendix 9.1 - Phase 1 Ground Conditions Assessment (Part 2 of 2)	Volume 6, document 6.3	0
Environmental Statement - Appendix 9.2 - Agricultural Land Classification and Soil Resources	Volume 6, document 6.3	0
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Environmental Statement - Appendix 11.4 - Operational Noise Receptor Results	Volume 6, document 6.3	0
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Environmental Statement - Appendix 13.2 - Hydrogeological Risk Assessment	Volume 6, document 6.3	1
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Environmental Statement - Appendix 6.4 - Geophysical Survey Report (2019)	Volume 6, document 6.3	0
Environmental Statement - Non-Technical Summary	Volume 6, document 6.4	2

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises National Highways to construct, operate and maintain the M3 Junction 9 and carry out all associated works.

This Order permits National Highways 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, general arrangement plans, book of reference and environmental statement mentioned in this Order and certified in accordance with article 47 (certification of plans etc). may be inspected free of charge during working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ.

2024 No.

INFRASTRUCTURE PLANNING

M3 Junction 9 Development Consent Order

Made - - - -

16 May 2024

Coming into force

6 June 2024

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

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

The application was examined by a panel of two members (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010**(b)**.

The panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 74(2) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114**(c)**, 115**(d)**, 117**(e)**, 120**(f)**, and 122**(g)** of, and paragraphs 1 to 3, 10 to 17, 19 to 23, 26, 33, 36 and 37 of Schedule 5**(h)** to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the M3 Junction 9 Development Consent Order 2024 and comes into force on [•].

Interpretation

2.—(1) In this Order except where provided otherwise—

“the 1961 Act” means the Land Compensation Act 1961**(i)**;

“the 1965 Act” means the Compulsory Purchase Act 1965**(j)**;

“the 1980 Act” means the Highways Act 1980**(k)**;

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

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

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

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

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 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, S.I. 2021/978, S.I. 2022/634 and S.I. 2023/1071; modified by S.I. 2012/147 and S.I. 2012/1659.

(b) S.I. 2010/103, amended by S.I. 2012/635.

(c) Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011.

(d) Section 115 was amended by paragraph 56 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).

(e) Section 117 was amended by paragraph 58 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.

(f) Section 120 was amended by section 140 of and paragraph 60 of Schedule 13 to the Localism Act 2011.

(g) Section 122 was amended by paragraph 62 of Schedule 13 to the Localism Act 2011.

(h) Part 1 of Schedule 5 was amended by paragraph 4 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23), paragraph 71 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Schedule 6 to the Wales Act 2017.

(i) 1961 c. 33.

(j) 1965 c. 56.

(k) 1980 c. 66.

(l) 1981 c. 66.

(m) 1984 c. 27.

(n) 1990 c. 8.

“the 2008 Act” means the Planning Act 2008**(b)**;

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

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development);

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

“the classification of road plans” means the plans 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) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, ecological surveys and pre-construction ecological mitigation, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in section 329(1)**(c)** (further provision as to interpretation) of the 1980 Act and for the purposes of this Order includes parts of a cycle track and a right of way on foot;

“de-trunking plans” means the plans certified by the Secretary of State as the de-trunking 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)**(d)** of the Communications Act 2003;

“the engineering and structural drawings and sections” means the documents certified by the Secretary of State as the engineering plans and sections, and the structural plans and sections for the purposes of this Order;

“the environmental statement” means the documents certified by the Secretary of State as the environmental statement for the purposes of this Order;

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

“highway” has the same meaning as in section 328 (meaning of “highway”) of the 1980 Act;

“the land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;

“the limits of deviation” means the limits of deviation referred to in article 8 (limits of deviation);

(a) 1991 c. 22.

(b) 2008 c. 29.

(c) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

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

“the local highway authority” means Hampshire County Council;

“maintain” includes inspect, repair, adjust, alter, remove, replace or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“the Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

“the Order limits” means the limits of the land to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

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

“the protected trees and hedgerows to be removed plans” means that plans certified by the Secretary of State as the protected trees and hedgerows to be removed plans for the purposes of this Order;

“the relevant planning authority” means the local planning authority for the land in question;

“the revoking existing clearway orders plans” means the plans certified by the Secretary of State as the revoking existing clearway orders plans for the purposes of this Order;

“the rights of way and access plans” means the plans certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

“special road” means a highway which is a special road in accordance with section 16 (general provision as to special roads) of the 1980 Act or by virtue of an order granting development consent;

“the speed limits plans” means the plans certified by the Secretary of State as the speed limits 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(b)(streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” has the same meaning as in section 49 (the street authority and other relevant authorities) of the 1991 Act;

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

“the traffic regulation measures plans” means the plans certified by the Secretary of State as the traffic regulation measures plans for the purposes of this Order;

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

- (a) section 10(d) (general provision as to trunk roads) or section 19(1)(e) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (b) an order made or direction given under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 7 which are not relevant to this Order.

(b) Section 48 was amended by section 124 of the Local Transport Act 2008 (c. 26)

(c) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act; and amended by section 1(6) of, and paragraph 95(2) and (3) of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and S.I. 2001/1400.

(d) Section 10 was amended by section 22(2) of the 1991 Act, by section 36 of, and paragraph 22 of Schedule 2 to, the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(e) Section 19 was amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015. There are other amendments to section 19 that are not relevant to this Order.

“the undertaker” means National Highways Limited, company number 09346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans 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 and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

(7) The expression “includes” may be construed without limitation, unless so construing would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Disapplication of legislative provisions

3.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article 35(11), any maintenance of any part of the authorised development—

- (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(a) in relation to the carrying on of a flood risk activity;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991(b);
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(c) including, but not limited to, the Southern Water Authority Land Drainage and Sea Defence Byelaws 1981;
- (d) sections 28E (duties in relation to sites of special scientific interest) and 28H (Statutory undertakers, etc.: duty in relation to carrying out operations) of the Wildlife and Countryside Act 1981(d); and

(a) S.I. 2016/1154.

(b) 1991 c. 57. Paragraph 5 was amended by section 100(2) of the Natural Environment and Rural Communities Act 2006 (c. 16), paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraph 32(2) and (3) of Schedule 10 to the Fisheries Act 2020 (c. 22) and by S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224(2), (4), (5), (6) and (9) of, and paragraph 24(2) and (3) of Schedule 16 and Part 5(B) of Schedule 22 to, the Marine and Coastal Access Act 2009 and by S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(c) 1991 c. 59.

(d) 1981 c. 69.

(e) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(a).

(2) In paragraph 3(1)(a) “flood risk activity”(b) has the meaning given in the Environmental Permitting (England and Wales) Regulations 2016.

Maintenance of drainage works

4.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(c).

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

6. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Planning permission

7. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Limits of deviation

8. In carrying out the authorised development the undertaker may—

(a) 2017 c. 20.

(b) This term is defined in paragraph 3 of Part 1 of Schedule 25 to the Regulations.

(c) 1991 c. 59. The definition of “drainage” was substituted by section 100(2) of the Environment Act 1995 (c. 25).

- (a) Subject to paragraphs (b), (c) and (d), deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of Work Nos. 1(i), 1(l), 1(k), 3(b), 8, 9(c), 9(d), 11, 30, 33, 42, between points A and B, C and D, G and H and I and L only, as shown on the works plans, deviate laterally from the lines or situations of the authorised development shown on the works plans to a maximum of 2.0 metres;
- (c) in respect of Work Nos. 1(j) and 1(m) as shown on the works plans, deviate laterally from the lines or situations of the authorised development shown on the works plans to a maximum of 5.0 metres;
- (d) deviate vertically from the levels of the authorised development shown on the engineering and structural drawings and sections—
 - (i) to a maximum of 1 metre upwards or downwards in respect of the construction of the gyratory northern overbridge (work number 27), gyratory southern overbridge (work number 28), A34 southbound underpass (work number 13), A33 underpass (work number 14), attenuation basin (work numbers 1(j) and 1(m)), M3 southern bridge portal gantry (work number 36) and bridleway (work number 9);
 - (ii) to a maximum of 0.75 metres upwards or downwards in respect of the construction of the retaining walls (work numbers 2(d), 12(a), 12(c), 31(a), 32(c), 32(d)), subways (work numbers 2(e), 24(a), 24(d), 33(a)), A34 footway/cycleway overbridge (work number 4) and gyratory (work number 29);
 - (iii) in respect of any other work comprised in the authorised development, to a maximum of 0.5 metres upwards or downwards,

except that those maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority and the local highway authority, certifies accordingly, that a deviation in excess of those limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

10.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) If the benefit of the provisions of this Order relating to compulsory acquisition is transferred or granted to a transferee or lessee pursuant to this article and the transferee or lessee exercises those powers then the undertaker alone is liable for any compensation that is payable to another party as a consequence of the exercise of those powers by the transferee or lessee.

(5) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) Scottish and Southern Energy Power Distribution Limited (company number SC213459, whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ) for the purposes of undertaking Work Nos. 21 and 35;
- (b) Southern Gas Networks plc (company number 05167021, whose registered office is at St Lawrence House, Station Approach, Horley, Surrey, RH6 9HJ) for the purposes of undertaking Work No. 20;
- (c) Southern Water Limited (company number 02366620, whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX) for the purposes of undertaking Work No. 5; or
- (d) Openreach Limited (company number 10690039, whose registered office is at Kelvin House, 123 Judd Street, London, WC1H 9NP) for the purposes of undertaking Work No. 26.

PART 3 STREETS

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Subject to article 13 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout etc. of streets

12.—(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, footway, cycle track or verge;
- (c) reduce the width of the carriageway; 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 6 weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(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.

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)(a) of that Act; 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 conferred by 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) (restriction 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(a) (restriction on works following substantial street works).

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- (a) Section 86(3) defines what highway works are major highway works.
 - (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, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and Schedule 8 to the 1991 Act.
 - (d) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (e) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
 - (f) Section 58 was amended by section 51 of the Traffic Management Act 2004.
 - (g) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (h) Section 73A is inserted by section 55 of the Traffic Management Act 2004 from a date to be appointed.
 - (i) Section 73B is inserted by section 55 of the Traffic Management Act 2004 from a date to be appointed.
 - (j) Section 73C is inserted by section 55 of the Traffic Management Act 2004 from a date to be appointed.
 - (k) Section 78A is inserted by section 57 of the Traffic Management Act 2004 from a date to be appointed.

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 16 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

- (a) section 54(b) (advance notice of certain works), subject to paragraph (6);
- (b) section 55(c) (notice of starting date of works), subject to paragraph (6);
- (c) section 57(d) (notice of emergency works);
- (d) section 59(e) (general duty of street authority to co-ordinate works);
- (e) section 60(f) (general duty of undertakers to co-operate);
- (f) section 68(g) (facilities to be afforded to street authority);
- (g) section 69(h) (works likely to affect other apparatus in the street);
- (h) section 75(i) (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 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 that the undertaker is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to street works to which the provisions of Part 3 of the 1991 Act apply.

(8) Nothing in this article affects the operation of the Traffic Management (Hampshire County Council) Permit Scheme Order 2019 as varied by the Traffic Management (Hampshire County Council) Permit Scheme Variation Order 2022 operated by the local highway authority pursuant to the Traffic Management Permit Scheme (England) Regulations 2007(j).

Construction and maintenance of new, altered or diverted streets and other structures

14.—(1) Any highway (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, (subject to paragraph (6)) unless otherwise agreed in writing with the

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- (a) Schedule 3A is inserted by section 52(2) of the Traffic Management Act 2004 from a date to be appointed.
 - (b) Section 54 was amended by sections 40(1) and (2) and 49(1) of, and Schedule 1 to, the Traffic Management Act 2004.
 - (c) Section 55 was amended by sections 40(1) and (2), 49(2) and 51(9) of, and Schedule 1 to, the Traffic Management Act 2004.
 - (d) Section 57 was amended by sections 40(1) and (2) and 52(3) of, and Schedule 1 to, the Traffic Management Act 2004.
 - (e) Section 59 was amended by sections 42(2) and (3) of the Traffic Management Act 2004.
 - (f) Section 60 was amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.
 - (g) Section 68 was amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (h) Section 69 was amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (i) Section 75 was substituted by section 58(2) of the Traffic Management Act 2004.
 - (j) S.I. 2007/3372.

local highway authority, the highway including any culverts, bunding or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts, bunding, or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is constructed, altered or diverted under this Order, the constructed, 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 part of the footpath, cycle track or bridleway including any culverts, bunding, or other structures laid under it or supporting it must be maintained by and at the expense of the local highway authority from its completion

(4) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority and unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(5) Where a highway is de-trunked under this Order—

- (a) section 265(a) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(6) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or a trunk road, the highway surface (being those elements over the waterproofing membrane) must from its completion be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker unless otherwise agreed in writing with the local highway authority.

(7) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over another highway which is not a special road or trunk road, both the highway surface and the structure of the bridge must be maintained by and at the expense of the local highway authority from their completion.

(8) 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.

(9) For the purposes of a defence under paragraph (8), 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;

(a) Section 265 was amended by section 146 of, and paragraph 45 of Schedule 13 to, the Road Traffic Regulation Act 1984 (c. 27) and section 57 of, and paragraph 52 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

- (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 that the competent person had carried out those instructions.

Classification of roads, etc.

15.—(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
- (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4(a) (classes of traffic for purposes of special roads) to the 1980 Act.

(2) On and after the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 have been completed and are open for traffic—

- (a) the undertaker is the highway authority for those roads; and
- (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads but does not make provision for highways classified as special roads.

(3) On the date on which the roads described in Part 2 (trunk roads) of Schedule 3 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)(b) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(4) On the date on which written confirmation is given by the local highway authority to the undertaker (such confirmation not to be unreasonably withheld or delayed) that the roads described in Part 3 (roads to be de-trunked) of Schedule 3 are in a state of repair and condition as is reasonably satisfactory to the local highway authority, the roads described in Part 3 of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(5) On the date on which the roads described in Part 4 (classified roads) of Schedule 3 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(6) On and after the date on which the roads described in Part 5 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(a) Schedule 4 was amended by section 4 of, and paragraph 21(3) of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) Section 10(2) was amended by section 22(2)(a) of the New Roads and Street Works Act 1991 (c. 22), and by section 57(1) of, and paragraph 10(2) of Schedule 1 to, the Infrastructure Act 2015.

(7) On such day as the undertaker may determine, the restrictions specified in column (3) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 are to apply to the lengths of road identified in the corresponding row of column (2) of that Part.

(8) Unless otherwise agreed with the local highway authority, the public rights of way set out in Part 8 (public rights of way to be created) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic and are to have the status described in column (2) of that Part.

(9) On such day as the undertaker may determine, the orders specified in column (3) of Part 7 (revocations and 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.

(10) The application of paragraphs (1) to (8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

Temporary stopping up and restriction of use of streets

16.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined as if it were a dispute under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

(7) An application for consent under paragraph (4) must be accompanied by a letter informing the street authority—

- (a) of the period mentioned in paragraph (6); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have granted.

Permanent stopping up and restriction of use of streets and private means of access

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in column (2) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access and 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 column (2) of Parts 1 or 2 of Schedule 4 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) 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.

(4) 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 as if it were a dispute under Part 1 of the 1961 Act.

(5) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

18. 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

19.—(1) On and after such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) where it is identified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to 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 Act 2000(b); or
- (c) in relation to a vehicle waiting when the person in control of it is—
- (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person’s control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) 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.

(4) Paragraphs (1), (2) and (3) 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.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(c).

Traffic regulation

20.—(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 vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

- (a) given not less than—

(a) 1991 c. 56.
 (b) 2000 c. 26.
 (c) 2004 c. 18.

- (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
- to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—
- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32(a) (power of local authorities to provide parking places) of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.
- (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 it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.
- (12) An application for consent under paragraph (2) must be accompanied by a letter informing the traffic authority—
- (a) of the period mentioned in paragraph (11); and
 - (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

(a) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106(a) (right to communicate with public sewers) of the Water Industry Act 1991.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

(7) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

(8) An application for consent under paragraph (3) or for approval under paragraph (4)(a) must be accompanied by a letter informing the person who receives the application—

(a) of the period mentioned in paragraph (7); and

(b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Protective works to buildings

22.—(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) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) 1991 c. 57.

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter and survey any building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and any land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 48 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

(a) Section 152 was amended by S.I. 2009/1307.

- (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

23.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and water samples and discharge water samples onto the land;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes or boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or boreholes.

(4) No trial holes or boreholes are to be made under this article—

- (a) in land located within the highway boundary for which the local highway authority is the highway authority, without the consent of the local highway authority; 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) If either the local highway authority or a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application for consent, that authority is deemed to have granted consent.

(7) An application for consent under paragraph (4) must be accompanied by a letter informing the local highway authority or street authority—

- (a) of the period mentioned in paragraph (6); and
- (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

(8) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development.

(2) This article is subject to article 27(2) (compulsory acquisition of rights and imposition of restrictive covenants) and article 34(8) (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

25. 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

26.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 30 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 34 (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

27.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive

(a) 1981 c. 67.

covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Public rights of way

28.—(1) The public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) and shown on the rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the rights of way and access plans, the undertaker must erect a site notice at each end of the right of way to be extinguished no less than 28 days prior to the extinguishment of that right of way and must ensure a copy of the site notice is provided to the local highway authority no less than 28 days prior to the extinguishment.

(3) The notice to be erected under paragraph (2) must include—

- (a) details of the public rights of way to be extinguished;
- (b) the date on which the extinguishment will take effect;
- (c) details of any public rights of way being provided in substitution; and
- (d) details of the places where a copy of this Order and the documents listed in Schedule 11 (documents to be certified) may be inspected.

Private rights over land

29.—(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) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant on—

- (a) the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order limits which are required to be interfered with or breached for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined as if it were a dispute under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 36 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modification of Part 1 of the 1965 Act

30.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the M3 Junction 9 Development Consent Order 2024”.

(3) In section 11A(d) (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”; and

(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 26 (time limit for exercise of authority to acquire land compulsorily) of the M3 Junction 9 Development Consent Order 2024”.

(5) In Schedule 2A(e) (counter-notice requiring purchase of land not in notice to treat)—

(a) Section 152 was amended by S.I. 2009/1307.

(b) Section 138 was amended by section 23 of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

(c) Section 4A was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(d) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(e) Schedule 2A was inserted by section 199 of, and paragraph 3 of Schedule 17 to, the Housing and Planning Act 2016.

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 32(3) (acquisition of subsoil or airspace only) of the M3 Junction 9 Development Consent Order 2024, which excludes the acquisition of subsoil or airspace only from this Schedule”; and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development) of the M3 Junction 9 Development Consent Order 2024.”.

Application of the 1981 Act

31.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(a) (time limit for general vesting declaration).

(6) In section 5B(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the 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 26 (time limit for exercise of authority to acquire land compulsorily) of the M3 Junction 9 Development Consent Order 2024”.

(7) In section 6(c) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In Schedule A1(d) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 32(3) (acquisition of subsoil or airspace only) of the M3 Junction 9 Development Consent Order 2024, which excludes the acquisition of subsoil or airspace only from this Schedule.”.

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

(a) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(b) Section 5B was inserted by sections 202(2) of the Housing and Planning Act 2016.

(c) 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.

(d) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

Acquisition of subsoil or airspace only

32.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 24 (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 30 (modification of Part 1 of the 1965 Act);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A)(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

33.—(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 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

34.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26(2) (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that

(a) Section 153(4A) was inserted by section 200(2) of the Housing and Planning Act 2016.

Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act and no declaration has been made under section 4(b) (execution of declaration) of the 1981 Act (other than in connection with the acquisition of rights only);

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any permanent works specified in relation to that land in column (2) of Schedule 7, or any other mitigation works in connection with the authorised development.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7; or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1)(d); or

(c) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152(c) (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the

(a) Section 11 was amended by section 34 of, and paragraph 14(3) of Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Schedule 1 to, the Housing (Consequential Provision) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(b) Section 4 was amended by section 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016.

(c) Section 152 was amended by S.I. 2009/1307.

subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 32 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 24 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and imposition of restrictive covenants).

Temporary use of land for maintaining the authorised development

35.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land explaining the purpose for which entry is to be taken.

(4) 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.

(5) 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.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) 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

36.—(1) Subject to the provisions of article 27(3) (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 10 (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 37 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

37.—(1) Where a street is stopped up under article 17 (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 17 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case

may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a).

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (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 36, 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 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

(a) 2003 c. 21.

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

39.—(1) The undertaker may fell or lop any tree (other than a tree subject to a tree preservation order, as to which see article 40 (trees subject to tree preservation orders)) or shrub, or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must—

(a) do no unnecessary damage to any tree or shrub; 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) remove any hedgerow provided that the hedgerow is described in Schedule 8 (removal of hedgerows).

(5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(a) and includes important hedgerows.

Trees subject to tree preservation orders

40.—(1) The undertaker may fell or lop any tree described in Schedule 9 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and

(c) the undertaker must consult the relevant planning authority prior to that activity taking place.

(a) S.I.1997/1160.

(3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Removal of human remains

41.—(1) In this article “the specified land” means the 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) 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 must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

then subject to paragraph (10), the undertaker must remove the remains and cause them to be 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) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857^(a) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

Application of landlord and tenant law

42.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1).

Operational land for purposes of the 1990 Act

43. 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 for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

44.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d), (fb), (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
 - (iii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protective provisions

45. Schedule 10 (protective provisions) has effect.

Certification of plans etc.

46.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 11 (documents to be certified) for certification that they are true copies of the plans and documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

47.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(a) 1990 c. 43.

(b) 1974 c. 40. Section 61 was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and section 162 of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43).

(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.

(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.

(a) 1978 c. 30.

Arbitration

48. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the Lands Chamber of the Upper Tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Gareth Leigh
Head of the Transport and Works Act Orders Unit
Department for Transport

16 May 2024

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administrative areas of Hampshire County Council and Winchester City Council and South Downs National Park Authority

The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act(a) and associated development within the meaning of section 115(2)(b) of the 2008 Act, comprising—

Work No. 1 – as shown on sheet nos. 3, 5 and 6 of the works plans and being the improvement and construction of the realignment of the northbound and southbound carriageways of the A33 between B3047 (London Road)/A33 junction and proposed A33/M3 northbound onslip roundabout, being 1371 metres in length, such works including—

- (a) the construction of 2 no. uncontrolled pedestrians crossing at the location shown on sheet 3 of the works plans;
- (b) the construction of a realigned central reserve on the A33, being 60m in length at the location shown on sheet 3 of the works plans;
- (c) the construction of a widened section of the A33 and reconfiguration to a two-way layout, being 190m in length at the location shown on sheet 3 of the works plans;
- (d) the construction of a realigned business park access to the A33 at the location shown on sheet 3 of the works plans;
- (e) the construction of a realignment of the business park access at the location shown on sheet 3 of the works plans;
- (f) the construction of a 1 no. splitter island at the location shown on sheet 3 of the works plans;
- (g) the construction of the extension of the existing central reserve with associated vehicle restraint system, being 275m in length at the location shown on sheet 5 of the works plans;
- (h) the construction of carriageway realignment on the existing River Itchen bridge (including possible remediation works), being 47m in length at the location shown on sheet 5 of the works plans;
- (i) the construction of a new vehicular maintenance access from the attenuation basin maintenance track at the location shown on sheet 5 of the works plans;
- (j) the construction of a drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans;
- (k) the construction of an attenuation basin maintenance track, being 130m in length at the location shown on sheet 5 of the works plans;
- (l) the construction of an open drainage channel at the location shown on sheet 5 of the works plans;

(a) There are amendments to section 14 but none is relevant to this Order. Section 22 was substituted by S.I. 2013/1883 and amended by section 1(6) of, and paragraph 153 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(b) Section 115(2) was amended by section 160(3) of the Housing and Planning Act 2016 (c. 22) and by section 43(2) of the Wales Act 2017 (c. 4).

- (m) the construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans;
- (n) the construction of a 1 no. roundabout splitter island at the location shown on sheet 5 of the works plans;
- (o) the construction of an open drainage channel at the location shown on sheet 5 of the works plans.

Work No. 2 – as shown on sheet nos. 3, 5, 6 and 7 of the works plans and being the construction of a cycle track between B3047 London Road/A33 junction and M3 Junction 9 gyratory, being 2000m in length of footway, cycle way, edgings, verges, wayfinding signage, bollards, fencing, tactile paving, chalk bunds, embankments, retaining walls, steps, including the construction of a cycle track underpass (24 metres in length), such works including—

- (a) the construction of a realignment of the existing public right of way (Ref. 111/6/1) to connect to the proposed Kings Worthy cycle track at the location shown on sheet 3 of the works;
- (b) the construction of a retaining wall, being 80 metres in length at the toe of the embankment of the proposed Kings Worthy cycle track at the location shown on sheet 5 of the works plans;
- (c) the construction of a new pedestrian link, being 41m in length, from the proposed cycle track to the existing public right of way (Ref. 111/749/1) at the location shown on sheet 5 of the works plans;
- (d) the construction of a retaining wall, being 37 metres in length, in the embankment of the A34 southbound at the location shown on sheet 5 of the works plans;
- (e) the construction of a cycle track subway with associated lighting, being 24 metres in length to the north west of the A34 northbound underpass to maintain connectivity on the cycle track route between Kings Worthy and Winchester at the location as shown on sheet 6 of the works plans.

Work No. 3 – As shown on sheet nos. 3, 5, 6 and 7 of the works plans and being the construction improvements and realignment of the southbound carriageway of the A34, being 1660 metres in length, such works including—

- (a) the construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet nos. 3 and 5 of the works plans;
- (b) the construction of a variable message sign maintenance layby including layby foundations, earthworks and vehicle restraint system at the location shown on sheet 3 of the works plans;
- (c) the construction of carriageway widening on the existing River Itchen bridge (including possible remediation works), being 46 metres in length at the location shown on sheet 5 of the works plans;
- (d) the construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet nos. 5 and 6 of the works plans;
- (e) the construction of a variable message sign maintenance layby including layby foundations, earthworks and vehicle restraint system at the location shown on sheet nos. 5 and 6 of the works plans.

Work No. 4 – as shown on sheet 5 of the works plans and being the construction of a cycle track overbridge across the River Itchen, being 38 metres in length.

Work No. 5 – as shown on sheet nos. 5 and 6 and being the diversion of 1095 metres of water pipeline.

Work No. 6 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of drainage attenuation basins and associated maintenance and landscaping between A34 northbound 95m south of River Itchen Bridge to M3 diverge offslip, being 781 metres in length, and the construction improvement and realignment of the northbound carriageway of the A34 (1194 metres in length), such works including—

- (a) the construction of an attenuation basin maintenance track, being 565 metres in length at the location shown on sheet nos. 5 and 6 of the works plans;
- (b) the construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet nos. 5 and 6 of the works plans;
- (c) the construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (d) the construction of drainage attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (e) the construction of a maintenance footway and associated earthworks, being 321 metres in length at the location shown on sheet 6 of the works plans.

Work No. 7 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of a new roundabout on embankment positioned to the north of M3 Junction 9, providing connections to the realigned A33 (Work No. 1) and realigned M3 northbound onslip (Work No. 8).

Work No. 8 – as shown on sheet nos. 5 and 6 of the works plans and being the construction of a new 1 lane merge onslip onto the M3 Northbound, being 600 metres in length, from the A33 roundabout (Work No. 7) on embankment to connect to the M3 Junction 9.

Work No. 9 – as shown on sheet nos. 4, 5, 6 and 7 of the works plans and being the construction of a new bridleway, being 1390 metres in length including edgings, verges, wayfinding signage, bollards, tactile paving, and horse mounting blocks, and associated drainage and landscaping features to connect Long Walk and Easton Lane, such works including—

- (a) the construction of an attenuation basin maintenance track, being 191 metres at the location shown on sheet 6 of the works plans;
- (b) the construction of a new vehicular access turning head to the infiltration and attenuation basin maintenance track at the location shown on sheet 6 of the works plans;
- (c) the construction of drainage infiltration and attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 6 of the works plans;
- (d) the construction of drainage infiltration and attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet 5 of the works plans;
- (e) the construction of an open drainage channel at the location shown on sheet nos. 4, 5, 6 and 7 of the works plans.

Work No. 10 – as shown on sheet nos. 5, 6, 7 and 8 of the works plans and being the construction improvements of the southbound carriageways of the M3, being 1983 metres in length, such works including—

- (a) the construction of 1 no. variable message sign including installation of new sign, sign illumination, sign structures, gantry foundations, control cabinets, power and communication cable connections at the location shown on sheet 6 of the works plans;
- (b) the alteration of the existing M3 southbound carriageway from two lanes and hard shoulder to four lanes southbound, being 320 metres in length, from A34 southbound on merge to M3 southbound tie-in in cutting including tie in from the M3 Junction 9 southbound merge slip at the location shown on sheet 7 of the works plans;
- (c) the construction of a new retaining wall, being 100 metres in length, and associated landscaping tie-ins as shown on sheet 7 of the works plans.

Work No. 11 – as shown on sheet nos. 5, 6 and 7 of the works plans and being the construction of a new one lane offslip carriageway and associated hard shoulder, being 881 metres in length, on

both embankment and in cutting to connect the M3 southbound to the M3 Junction 9 gyratory including alterations to the tie ins at both ends of the proposed offslip.

Work No. 12 – as shown on sheet nos. 4, 5, 6, 7 and 8 of the works plans and being the construction improvements of the northbound carriageways of the M3, being 2067 metres in length, such works including—

- (a) the construction of a new retaining wall, being 186 metres in length and associated landscaping tie-ins as shown on sheet nos. 6 and 7 of the works plans;
- (b) the alteration of the existing M3 northbound carriageway from two lanes and hard shoulder to four lanes northbound, being 656 metres in length, from M3 Junction 9 northbound offslip to A34 northbound offslip in cutting including tie in from the M3 Junction 9 northbound diverge slip;
- (c) the construction of a new retaining wall, being 167 metres in length, and associated landscaping tie-ins as shown on sheet nos. 6 and 7 of the works plans;
- (d) the construction of 1 no. variable messaging sign including installation of new sign, sign illumination, sign structures, gantry foundations, embankment, earthworks, control cabinets, power and communication cable connections at the location shown on sheet 7 of the works plans.

Work No. 13 – as shown on sheet no. 6 of the works plans and being the construction of a vehicular underpass, being 119 metres in length, and associated drainage and structural elements (wing walls, etc) underneath the M3 to connect the A34 southbound to the M3 Junction 9 gyratory.

Work No. 14 – as shown on sheet no. 6 of the works plans and being the construction of a vehicular underpass, being 100 metres in length, and associated drainage and structural elements underneath the A34 northbound to connect the A33 to the M3 Junction 9 gyratory.

Work No. 15 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a toucan crossing including associated traffic signals and ducting.

Work No. 16 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a new roundabout (National Highways depot roundabout) at the junction of the National Highways depot access and the A33 northbound/southbound road.

Work No. 17 – as shown on sheet nos. 5, 6 and 7 of the works plans and being the construction of a new 2 lane carriageway between the A33 roundabout (Work No. 7) and National Highways depot roundabout (Work No. 16), such works including—

- (a) the construction of a 1 no. splitter island at the location shown on sheet no. 6 of the works plans;
- (b) the construction of a new vehicular access to the infiltration and attenuation basin maintenance track at the location shown on sheet no. 6 of the works plans;
- (c) the construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans.

Work No. 18 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a new works access to the National Highways depot and associated drainage features within the depot area, such works including—

- (a) the construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans;
- (b) the construction of attenuation basin with associated drainage facilities, access and landscaping at the location shown on sheet no. 6 of the works plans;
- (c) the extinguishment of the existing National Highways depot exit at the location shown on sheet nos. 6 and 7 of the works plans.

Work No. 19 – as shown on sheet nos. 4, 5, 6, and 7 of the works plans and being the construction of the realignment of the M3 central reserve, being 1741 metres in length, and replacement of the existing central reserve steel vehicle restraint system.

Work No. 20 – as shown on sheet no. 6 and being the diversion of 216 metres in length of low-pressure gas main pipeline.

Work No. 21 – as shown on sheet nos. 6 and 7 and being the diversion of 269 metres in length of power cables.

Work No. 22 – as shown on sheet nos. 6 and 7 and being the construction of 2 lane carriageway (261 metres in length) between National Highways depot roundabout (Work No. 16) and the M3 Junction 9 gyratory, such works including—

- (a) the construction of a 1 no. splitter island at the location shown on sheet nos. 6 and 7 of the works plans;
- (b) the realignment of the existing M3 Junction 9 / A33 splitter island at the location shown on sheet no. 7 of the works plans;
- (c) the realignment of the A34 southbound approach to the M3 Junction 9 gyratory at the location shown on sheet no. 7 of the works plans.

Work No. 23 – as shown on sheet nos. 6 and 7 of the works plans and being the construction realignment of the A34 northbound merge from M3 Junction 9 gyratory to the A34 northbound merge termination, being 372 metres in length, on embankment.

Work No. 24 – as shown on sheet no. 7 of the works plans and being the construction of a cycle track, being 490 metres in length including edgings, verges, wayfinding signage, bollards, tactile paving, horse mounting blocks, in cutting and associated structural elements, such works including—

- (a) the construction of a cycle track subway with associated lighting, being 22 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet no. 7 of the works plans;
- (b) the construction of an island in cutting at the location shown on sheet no. 7 of the works plans;
- (c) the construction of pedestrian steps, being 17 metres in length, at the location shown on sheet no. 7 of the works plans;
- (d) the construction of a cycle track subway, being 28 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet no. 7 of the works plans.

Work No. 25 – as shown on sheet no. 7 of the works plans and being the realignment of the Easton lane entry / exit from the M3 Junction 9 gyratory, such works including the realignment of the existing splitter island at the location shown on sheet no. 7 of the works plans.

Work No. 26 – as shown on sheet no. 7 of the works plans and being the diversion of 499 metres of telecommunication equipment.

Work No. 27 – as shown on sheet no. 7 of the works plans and being the construction of a new M3 Junction 9 gyratory northern overbridge.

Work No. 28 – as shown on sheet no. 7 of the works plans and being the construction of a new M3 Junction 9 gyratory southern overbridge.

Work No. 29 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment construction of the existing M3 Junction 9 gyratory to tie into the new northern (Work No. 27) and southern (Work No. 28) overbridges and new tie ins to the existing M3 offslips and onslips.

Work No. 30 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment of the M3 offslip from the M3 to the M3 Junction 9 gyratory, being 370 metres in length, on embankment.

Work No. 31 – as shown on sheet nos. 7 and 8 of the works plans and being the realignment and construction of the M3 southbound onslip from the M3 Junction 9 gyratory to the M3 merge, being 711 metres in length, such works including—

- (a) the construction of a retaining wall, being 147 metres in length, and associated earthworks and landscaping at the location shown on sheet no. 7 of the works plans;
- (b) the realignment lane reduction of the M3 southbound onslip and associated earthworks at the location shown on sheet no. 7 of the works plans.

Work No. 32 – as shown on sheet no. 7 of the works plans and being the realignment of the A272 approach to the M3 Junction 9 gyratory, being 417 metres in length, and associated earthworks, such works including—

- (a) the realignment of the existing splitter island at the location shown on sheet no. 7 of the works plans;
- (b) the widening of the existing A272 exit from the M3 Junction 9 gyratory, being 241 metres in length, and associated earthworks at the location shown on sheet no. 7 of the works plans;
- (c) the construction of a retaining wall, being 184 metres in length, and associated earthworks and landscaping at the location shown on sheet no. 7 of the works plans;
- (d) the construction of a retaining wall, being 92 metres in length, and associated earthworks and landscaping at the location shown on sheet no. 7 of the works plans.

Work No. 33 – as shown on sheet nos. 6 and 7 of the works plans and being the realignment of a bridleway featuring the national cycle route 23, being 277 metres in length, and associated earthworks and landscaping, such works including the construction of a bridleway (NCN23) subway with associated lighting, being 23 metres in length, underneath the M3 Junction 9 gyratory at the location shown on sheet 7 of the works plans.

Work No. 34 – as shown on sheet nos. 5 and 6 of the works plans and being the realignment of the A34 northbound carriageway, being 1024 metres in length.

Work No. 35 – as shown on sheet no. 4 of the works plans and being the diversion of 50 metres of power cables.

Work No. 36 – as shown on sheet no. 7 of the works plans and being the construction of a gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, associated maintenance provision, signs sign illuminations, control cabinets and power.

Work No. 37 – as shown on sheet no. 8 of the works plans and being the construction of a gantry including the installation of new gantry foundations, gantry structures, associated maintenance provision, earthwork retaining structures, signs, sign illuminations, control cabinets, and power.

Work No. 38 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of a temporary construction site compound situated on land to the east of the M3 Junction 9 gyratory.

Work No. 39 – as shown on sheet nos. 6 and 7 of the works plans and being the construction of the A34 southbound link to the M3 southbound, being 430 metres in length.

Work No. 40 – as shown on sheet no. 6 of the works plans, the construction of a new vehicular access and maintenance track to the infiltration and attenuation basin.

Work No. 41 – as shown on sheet no. 5 of the works plans and being the construction of a drainage outfall into the River Itchen.

Work No. 42 – as shown on sheet no. 5 of the works plans and being the construction of a drainage outfall into the River Itchen.

Work No. 43 – as shown on sheet no. 5 of the works plans and being the construction of a drainage outfall into the River Itchen.

Work No. 44 – as shown on sheet no. 6 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 45 – as shown on sheet no. 6 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 46 – as shown on sheet nos. 2 and 4 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 47 – as shown on sheet no. 4 of the works plans and being the construction of variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs sign illuminations, control cabinets and power.

Work No. 48 – as shown on sheet no. 6 of the works plans and being the construction of a variable message sign layby including foundations, earthworks and vehicle restraint system.

Work No. 49 – as shown on sheet no. 7 of the works plans and being the construction of a temporary access from existing A272 to provide connectivity to the proposed temporary construction site compound (Work No. 38).

Work No. 50 – as shown on sheet no. 8 of the works plans and being the construction of a variable message sign gantry including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, sign illuminations, control cabinets and power.

In connection with the construction of any of those works, further development within the Order limits which does not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement consisting of—

- (a) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (b) the strengthening, alteration or demolition of any structure;
- (c) ramps, steps, means of access including private means of access, non-motorised user routes or links, footpaths, footways, bridleways, cycle tracks, laybys and crossing facilities;
- (d) embankments, cuttings, bridges, abutments, foundations, retaining walls, barriers, parapets, drainage works, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (e) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, pipes, cables and ducts;
- (f) works to alter the course of, or otherwise interfere with a watercourse, including private water supplies;
- (g) landscaping, re-grading, re-profiling, contouring, works associated with the provision of ecological, landscape and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (h) works for the benefit or protection of land affected by the authorised development;
- (i) works to place, alter, remove or maintain road furniture;
- (j) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling), remediation of contamination;
- (k) the felling of trees and hedgerows;
- (l) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary

vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;

- (m) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, street lighting, road restraints, road markings works, emergency roadside telephones, traffic management measure including temporary roads and such other works as are associated with the construction of the authorised development; and
- (n) such other works, working sites, storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of or for purposes associated with or ancillary to the construction, operation or maintenance of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 5

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“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 environmental surveys and monitoring, archaeological mitigation works, pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of services and site clearance, construction of welfare facilities and temporary buildings, temporary display of site notices, information and advertisements, and establishment of construction compounds, and “commencement” is to be construed accordingly;

“City Archaeologist” means the individual nominated or appointed as such by the relevant planning authority;

“design principles report” means the document certified by the Secretary of State as the design principles report for the purposes of this Order;

“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;

“drainage strategy” means the document certified by the Secretary of State as the Environmental Statement – Appendix 13.1 – Drainage Strategy Report (Parts 1 and 2 of 2) for the purposes of this Order;

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

“environmental masterplan” means figure 2.3 in the document certified by the Secretary of State as “the Environmental Statement - Chapter 2 - The Scheme and its Surroundings - Figures (Part 2 of 4) for the purposes of this Order;

(a) Section 56(4) was amended by paragraph 14 of Schedule 13 to the Localism Act 2011 (c. 20) and section 32 of and paragraph 10 of Schedule 12 to, the Planning and Compensation Act 1991 (c. 34).

“EMP (First Iteration)” means the plan certified by the Secretary of State as the First Iteration Environmental Management Plan for the purposes of this Order;

“EMP (Second Iteration)” means the second iteration of the environmental management plan produced in accordance with the DMRB, which is to be a refined version of the EMP (First Iteration) including more detailed versions of the outline plans contained or listed within the EMP (First Iteration) or any other plans as required;

“EMP (Third Iteration)” means the third iteration of the environmental management plan produced in accordance with the DMRB, which is a refined version of the EMP (Second Iteration) and which relates to the operational and maintenance phase of the authorised development;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(a);

“flood risk assessment” means the document certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“lead local flood authority” means Hampshire County Council;

“Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England, or any equivalent replacement published for that document;

“Outline Landscape and Ecological Management Plan” means that plan certified by the Secretary of State as the Environmental Statement – Appendix 7.6 - Outline Landscape and Ecological Management Plan for the purposes of this Order;

“outline traffic management plan” means the document certified by the Secretary of State as the outline traffic management 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”.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Environmental Management Plan

3.—(1) No part of the authorised development is to commence until an EMP (Second Iteration) for that part, substantially in accordance with the EMP (First Iteration) has been submitted to and approved in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and local highway authority to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions.

(2) The EMP (Second Iteration) must—

- (a) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the authorised development;
- (b) incorporate the measures referred to in the environmental statement as being incorporated in the EMP (First Iteration);
- (c) require adherence to working hours of 07:00 to 19:00 on Mondays to Friday and 07:00 to 13:00 on Saturdays with no working hours on Sundays and public holidays, except for—
 - (i) works requiring the full or partial closure of, or otherwise adversely affecting the operation of, the M3, A33, and A34 carriageway;
 - (ii) works associated with the diversion or removal of existing utilities;

(a) S.I. 2017/1012.

- (iii) works associated with traffic management and signal changes;
- (iv) works associated with tie-ins to existing carriageways;
- (v) any emergency works, or works required for engineering, safety, or efficiency purposes;
- (vi) any works for which different working hours have been agreed with parties who will or may be affected by those works and recorded in the approved EMP (Second Iteration), in which case the EMP (Second Iteration) must require adherence to those working hours; and
- (vii) as otherwise agreed by the relevant planning authority in advance.

(3) The authorised development must be constructed in accordance with the approved EMP (Second Iteration).

(4) Upon completion of construction of the authorised development the EMP (Second Iteration) must be converted into the EMP (Third Iteration). The EMP (Third Iteration) must be submitted to the Secretary of State for approval within 28 days of the opening of the authorised development for public use.

(5) The authorised development must be operated and maintained in accordance with the EMP (Third Iteration) approved under paragraph (4).

Details of consultation

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

Landscaping

5.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, and the local highway authority.

(2) The landscaping scheme prepared under sub-paragraph (1) must be based on the Outline Landscape and Ecological Management Plan, environmental masterplan, and EMP (First Iteration).

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size, timing and planting density of any proposed planting, including advanced planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;

- (e) details of existing trees to be retained, with measures for their protection during the construction period outlined within a Tree Protection Plan and Arboricultural Method Statement;
- (f) implementation and maintenance timetables for all landscaping works; and
- (g) landscaping works associated with the provision of any fences and walls.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under paragraph 5(1).

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree, shrub or chalk grassland planted as part of the landscaping scheme that, within a period of 10 years after planting, is removed, dies or becomes, 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.

(4) The reference to any tree or shrub being “removed” in sub-paragraph (3) above does not apply to those trees or shrubs removed in accordance with any approved landscape maintenance works and timetable forming part of the landscaping scheme.

Fencing

7. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Land and groundwater contamination

8.—(1) In the event that contaminated material, including impacted groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and the relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (2) and (3) will apply.

(2) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared and submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

(3) Remedial measures must be carried out in accordance with the approved scheme.

Archaeology

9.—(1) No part of the authorised development is to commence until for that part a written scheme of investigation, reflecting the mitigation measures included in the Archaeology and Heritage Mitigation Strategy prepared substantially in accordance with the Archaeology and Heritage Outline Mitigation Strategy appended to Chapter 6 of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (strip, map and sample, geoarchaeological investigation, watching brief) as required, has been prepared in consultation with the City Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the Archaeology and Heritage Mitigation Strategy and written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation, archiving and publication undertaken in accordance with written schemes of investigation referred to in sub-paragraph (1) must be consulted upon with the City Archaeologist and implemented within a timescale discussed with the City Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within an agreed time period.

(4) Any nationally significant archaeological remains not previously identified which are revealed when carrying out the authorised development must be—

- (a) retained in situ temporarily and reported to the City Archaeologist and Historic England as soon as reasonably practicable; and
- (b) subject to appropriate mitigation, including post-excavation process, as set out in the Archaeology and Heritage Mitigation Strategy and consulted upon with the City Archaeologist and Historic England.

(5) No construction operations are to take place within 20 metres of the identifiable extent of the nationally significant remains referred to in sub-paragraph (4) until an appropriate mitigation strategy has been discussed and consulted upon with the City Archaeologist and Historic England, unless otherwise agreed in writing by the Secretary of State.

(6) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the City Archaeologist.

(7) References in this paragraph to consultation, reporting, and discussion with the City Archaeologist shall include consultation, reporting, and discussion with the nominated archaeologist for South Downs National Park Authority to the extent that it relates to matters relevant to their functions.

Protected species

10.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development. Where nesting birds are identified, works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

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 authorised development must be designed in detail and carried out so that it is in accordance with—

- (a) the preliminary scheme design shown on the works plans and the engineering and structural drawings and sections;
- (b) the design principles set out in the design principles report,

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions and the local highway authority on matters related to its functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering drawings and sections showing departures from the preliminary design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The undertaker in relation to the detailed design of the authorised development must have regard to the amended duty to seek to further the purposes specified in section 5(1) of the National Parks and Access to Countryside Act 1949 as set out in section 11A of that Act.

(3) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface water drainage

13.—(1) No part of the authorised development is to commence until written details of the surface water drainage system for that part, in accordance with the flood risk assessment and drainage strategy, reflecting the mitigation measures in chapter 13 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 related to their functions, the lead local flood authority, the Environment Agency, and the local highway authority where that the surface water drainage system interacts with a highway maintainable at the expense of that local highway authority.

(2) The drainage system must be constructed and maintained in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, the lead local flood authority and the Environment Agency.

Noise Mitigation

14.—(1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authorities, the South Downs National Park Authority and the local highway authority on matters related to their functions.

(2) The written details referred to in sub-paragraph (1) must either reflect the mitigation measures included in the environmental statement or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it.

(3) The noise mitigation must be constructed in accordance with the approved details referred to in sub-paragraph (1) and must be retained thereafter.

Height Restrictions

15. Any static unit providing welfare or other facilities within the temporary construction site compound as part of Work No. 38 shall be a single storey unit and shall not exceed a height of 4 metres, the measurement of which being from the external base to the external roof of the static unit but shall not include the depth of any foundation reasonably required to secure the structure or

height of any aerial, mast, satellite dish, chimney stack, flue, pipe, solar panel or other equipment reasonably required to be affixed to the static unit.

Approvals and amendments to approved details

16. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

17.—(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 18 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report referred to in paragraph 4 (details of consultation) stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

then the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

18.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within this 21 day period the Secretary of State is deemed to have sufficient information to consider the application

and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 17 (applications made under requirements) and in this paragraph.

(5) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

Register of requirements

19.—(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

20. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Details of consultation

21. With respect to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days for any response to the consultation and the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker’s response to that consultation.

SCHEDULE 3

Articles 15 and 19

CLASSIFICATION OF ROADS, ETC.

PART 1

SPECIAL ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Hampshire County Council (Winchester)	M3 northbound carriageway from a point 540 metres from the proposed M3 Junction 9 gyratory southern bridge to the proposed A34

(a) 1971 c. 80.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
	northbound diverge between point 30 and 23 of sheets 6, 7 and 8 of the classification of road plans, comprising 878 metres.
Hampshire County Council (Winchester)	M3 northbound carriageway from the proposed A34 northbound diverge to a point 221 metres from the proposed M3 Junction 9 gyratory northern bridge between points 23 and 31 on sheets 4, 5, and 6 of the classification of road plans, comprising 1186 metres.
Hampshire County Council (Winchester)	M3 northbound offslip to the proposed M3 Junction 9 gyratory between point 32 and 27 on sheets 8 and 7 of the classification of road plans, comprising 468 metres.
Hampshire County Council (Winchester)	M3 northbound onslip from the proposed A33 / M3 onslip roundabout to the M3 northbound carriageway to a point 790 metres from the proposed M3 Junction 9 gyratory northern bridge between points 14 and 33 on sheets 5 and 4 of the classification of road plans, comprising 468 metres.
Hampshire County Council (Winchester)	M3 southbound carriageway from a point 1066 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 790 metres from the proposed M3 Junction 9 gyratory southern bridge between point 34 and 35 on sheets 5 6, 7 and 8 of the classification of road plans, comprising 1984 metres.
Hampshire County Council (Winchester)	M3 southbound merge from a point 182 metres from the proposed M3 underpass southern portal to a point 782 metres from the proposed M3 Junction 9 gyratory southern bridge between point 18 and 36 on sheets 6, 7 and 8 of the classification of road plans, comprising 1311 metres.
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory to a point 48 metres from the proposed M3 Junction 9 gyratory southern bridge between point 37 and 38 on sheets 7 and 8 of the classification of road plans, comprising 797 metres.
Hampshire County Council (Winchester)	M3 southbound offslip from a point 1059 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 394 metres from the proposed M3 Junction 9 gyratory northern bridge between point 39 and 21 on sheets 5 and 6 of the classification of road plans, comprising 694 metres.

PART 2

TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Hampshire County Council (Winchester)	A33 southbound from the proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between point 5 and 6 on sheets 5 and 6 of the classification of road plans, comprising 520 metres.
Hampshire County Council (Winchester)	A33 southbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 7 and 8 on sheets 6 and 7 of the classification of road plans, comprising 227 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 9 and 10 on sheets 7 and 6 of the classification of road plans, comprising 246 metres.
Hampshire County	A33 northbound from the proposed National Highways depot

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Council (Winchester)	roundabout to the proposed A33 / M3 northbound onslip roundabout between point 11 and 12 on sheets 6 and 5 of the classification of road plans, comprising 524 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the commencement of the proposed M3 northbound onslip motorway between point 13 and 14 on sheets 5 and 6 of the classification of road plans, comprising 8 metres.
Hampshire County Council (Winchester)	Proposed A33 / M3 northbound onslip roundabout extents as shown at point 15 on sheet 5 of the classification of road plans, comprising 87 metres.
Hampshire County Council (Winchester)	Proposed National Highways depot roundabout extents as shown at point 16 on sheet 6 of the classification of road plans, comprising 87 metres.
Hampshire County Council (Winchester)	A34 southbound from a point 659 metres from the proposed M3 underpass northern portal to a point 178 metres from the proposed M3 underpass southern portal between point 17 and 18 on sheets 5 and 6 of the classification of road plans, comprising 890 metres.
Hampshire County Council (Winchester)	A34 southbound diverge from commencement of diverge to the proposed M3 Junction 9 gyratory between point 19 and 20 on sheets 6 and 7 of the classification of road plans, comprising 588 metres.
Hampshire County Council (Winchester)	A34 southbound from a point 394 metres from the proposed M3 Junction 9 gyratory to a point 347 metres from the proposed M3 Junction 9 gyratory between point 21 and 22 on sheet 6 of the classification of road plans, comprising 49 metres.
Hampshire County Council (Winchester)	A34 northbound from the proposed M3 / A34 northbound diverge to a point 223 metres from the proposed M3 Junction 9 gyratory northern bridge between point 23 and 24 on sheets 6 and 5 of the classification of road plans, comprising 1171 metres.
Hampshire County Council (Winchester)	A34 northbound onslip from the proposed M3 Junction 9 gyratory to a point 68 metres from the proposed M3 Junction 9 gyratory between point 25 and 26 on sheets 7 and 6 of the classification of road plans, comprising 613 metres.
Hampshire County Council (Winchester)	M3 northbound offslip from a point 60 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 63 metres from the proposed M3 Junction 9 gyratory southern bridge between point 27 and 28 on sheet 7 of the classification of road plans, comprising 39 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 29 on sheet 7 of the classification of road plans, comprising 583 metres.

PART 3

ROADS TO BE DE-TRUNKED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Road</i>
Hampshire County Council (Winchester)	A33 northbound carriageway between point 1 and 2 on sheets 3 and 5 of the de-trunking plans, comprising 1182 metres.
Hampshire County Council (Winchester)	A33 southbound carriageway between point 3 and 4 on sheets 3 and 5 of the de-trunking plans, comprising 1261 metres.
Hampshire County Council (Winchester)	A34 northbound carriageway between point 5 and 6 on sheets 5, 6 and 7 of the de-trunking plans, comprising 935 metres.
Hampshire County Council (Winchester)	A34 southbound carriageway between point 7, 8, 9 and 10 on sheets 5,

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Road</i>
Council (Winchester)	6 and 7 of the de-trunking plans, comprising 902 metres.
Hampshire County Council (Winchester)	M3 northbound onslip to M3 northbound carriageway from M3 Junction 9 gyratory between point 11, 12 and 13 on sheets 6 and 7 of the de-trunking plans, comprising 259 metres.
Hampshire County Council (Winchester)	M3 southbound offslip from M3 southbound carriageway to M3 Junction 9 gyratory between point 14 and 15 on sheets 6 and 7 of the de-trunking plans, comprising 418 metres.
Hampshire County Council (Winchester)	M3 southbound onslip to M3 southbound carriageway from M3 Junction 9 gyratory between point 16 and 17 on sheet 7 of the de-trunking plans, comprising 245 metres.
Hampshire County Council (Winchester)	M3 northbound offslip from M3 northbound carriageway to M3 Junction 9 gyratory between point 18 and 19 on sheet 7 of the de-trunking plans, comprising 315 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory as shown by point 20 on sheet 7 of the de-trunking plans, comprising 645 metres.

PART 4

CLASSIFIED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Hampshire County Council (Winchester)	A33 southbound from a point 17 metres from the existing Cart and Horses Junction (Kings Worthy) to the proposed A33 / M3 northbound onslip roundabout between points 1 and 2 on sheets 3 and 5 of the classification of road plans, comprising 1367 metres.
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the existing Cart and Horses Junction (Kings Worthy) between point 3 and 4 on sheets 3 and 5 of the classification of road plans, comprising 1367 metres.
Hampshire County Council (Winchester)	Easton Lane southbound from a point 104 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 196 metres from the proposed M3 Junction 9 gyratory southern bridge between point 44 and 45 on sheet 7 of the classification of road plans, comprising 100 metres.
Hampshire County Council (Winchester)	Easton Lane northbound from a point 126 metres from the proposed M3 Junction 9 gyratory southern bridge to a point 145 metres from the proposed M3 Junction 9 gyratory southern bridge between point 46 and 47 on sheet 7 of the classification of road plans, comprising 38 metres.
Hampshire County Council (Winchester)	A272 southbound from the proposed M3 Junction 9 gyratory to a point 132 metres from the proposed M3 Junction 9 gyratory southern bridge between point 40 and 41 on sheet 7 of the classification of road plans, comprising 204 metres.
Hampshire County Council (Winchester)	A272 northbound from a point 103 metres from the proposed M3 Junction 9 gyratory to the proposed M3 Junction 9 gyratory between point 42 and 43 on sheet 7 of the classification of road plans, comprising 171 metres.

PART 5

SPEED LIMITS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>
Hampshire County Council (Winchester)	Easton Lane northbound between point 31 and 32 on sheet 7 of the speed limits plans, comprising 15 metres.	30mph
Hampshire County Council (Winchester)	Easton Lane southbound between point 33 and 34 on sheet 7 of the speed limits plans, comprising 80 metres.	30mph
Hampshire County Council (Winchester)	A33 northbound and southbound between point 1 and 2 on sheet 3 of the speed limits plans, comprising 327 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound between point 3 and 4 on sheet 5 of the speed limits plans, comprising 163 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound from proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between Point 5 and 6 on sheets 5 and 6 of the speed limits plans, comprising 527 metres.	40mph
Hampshire County Council (Winchester)	A33 southbound from proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 7 and 8 on sheets 6 and 7 of the speed limits plans, comprising 222 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed M3 Junction 9 gyratory to the proposed National Highways depot roundabout between point 9 and 10 on sheets 7 and 6 of the speed limits plans, comprising 244 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed A33 / M3 northbound onslip roundabout between point 11 and 12 on sheets 6 and 5 of the speed limits plans, comprising 527 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 onslip roundabout to the A33 northbound between point 13 and 3 on sheet 5 of the speed limits plans, comprising 163 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to the M3 northbound onslip between point 14 and 15 on sheet 5 of the speed limits plans, comprising 46 metres.	40mph

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>
Hampshire County Council (Winchester)	A33 / M3 northbound onslip roundabout extents as shown at point 16 on sheet 5 of the speed limits plans, comprising 83 metres.	40mph
Hampshire County Council (Winchester)	National Highways depot roundabout extents as shown at point 17 on sheet 6 of the speed limits plans, comprising 83 metres.	40mph
Hampshire County Council (Winchester)	A34 southbound diverge to the - proposed M3 Junction 9 gyratory between point 21 and 22 on sheets 6 and 7 of the speed limits plans, comprising 393 metres.	40mph
Hampshire County Council (Winchester)	A34 / M3 southbound offslip merge between point 23 and 24 on sheet 6 of the speed limits plans, comprising 50 metres.	40mph
Hampshire County Council (Winchester)	A34 northbound onslip between point 29 and 27 on sheet 7 of the speed limits plans, comprising 39 metres.	40mph
Hampshire County Council (Winchester)	Easton Lane northbound between point 30 and 31 on sheet 7 of the speed limits plans, comprising 23 metres.	40mph
Hampshire County Council (Winchester)	Easton Lane southbound between point 34 and 35 on sheet 7 of the speed limits plans, comprising 36 metres.	40mph
Hampshire County Council (Winchester)	A272 southbound between point 40 and 41 on sheet 7 of the speed limits plans, comprising 204 metres.	40mph
Hampshire County Council (Winchester)	A272 northbound between point 41 and 42 on sheet 7 of the speed limits plans, comprising 180 metres.	40mph
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 43 on sheet 7 of the speed limits plans, comprising 583 metres.	40mph
Hampshire County Council (Winchester)	M3 northbound offslip to the proposed M3 Junction 9 gyratory between point 36 and 37 on sheet 7 of the speed limits plans, comprising 40 metres.	40mph
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory between point 38 and 39 on sheet 7 of the speed limits plans, comprising 36 metres.	40mph
Hampshire County Council (Winchester)	A33 northbound and southbound between point 2 and 3 on sheets 3 and 5 of the speed limits plans, comprising 871 metres.	50mph

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>
Hampshire County Council (Winchester)	A34 southbound to M3 southbound onslip merge between point 18 and 19 on sheets 5 and 6 of the speed limits plans, comprising 905 metres.	50mph
Hampshire County Council (Winchester)	A34 southbound diverge to proposed M3 Junction 9 gyratory between point 20 and 21 on sheet 6 of the speed limits plans, comprising 200 metres.	50mph
Hampshire County Council (Winchester)	A34 northbound between point 26 and 28 on sheets 6 and 5 of the speed limits plans, comprising 802 metres.	50mph
Hampshire County Council (Winchester)	A34 northbound from M3 northbound diverge to A34 northbound between point 25 and 26 on sheet 6 of the speed limits plans, comprising 390 metres.	70mph
Hampshire County Council (Winchester)	A34 onslip from proposed M3 Junction 9 gyratory between point 27 and 26 on sheets 7 and 6 of the speed limits plans, comprising 578 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound offslip between point 44 and 36 on sheets 8 and 7 of the speed limits plans, comprising 486 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound onslip between point 39 and 53 on sheets 7 and 8 of the speed limits plans, comprising 763 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound between point 45 and 25 on sheets 8, 7 and 6 of the speed limits plans, comprising 876 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound between point 46 and 47 on sheets 6, 5 and 4 of the speed limits plans, comprising 1186 metres.	70mph
Hampshire County Council (Winchester)	M3 northbound onslip between point 15 and 48 on sheets 5 and 4 of the speed limits plans, comprising 605 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound between point 49 and 50 on sheets 5, 6, 7 and 8 of the speed limits plans, comprising 1980 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound offslip between point 51 and 23 on sheets 5 and 6 of the speed limits plans, comprising 695 metres.	70mph
Hampshire County Council (Winchester)	M3 southbound onslip merge between point 19 and 52 on sheets	70mph

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed limit</i>
	6, 7 and 8 of the speed limits plans, comprising 1305 metres.	
Hampshire County Council (Winchester)	M3 southbound onslip from the proposed M3 Junction 9 gyratory between point 39 and 53 on sheets 7 and 8 of the speed limits plans, comprising 763 metres.	70mph

PART 6

TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
Hampshire County Council (Winchester)	A33 southbound from the Cart and Horses Junction (Kings Worthy) to the proposed A33 / M3 northbound onslip roundabout between point 1 and 2 on sheets 3 and 5 of the traffic regulation measures plans, comprising 1366 metres.	Clearway
Hampshire County Council (Winchester)	A33 southbound from the proposed A33 / M3 northbound onslip roundabout to the proposed National Highways depot roundabout between point 3 and 4 on sheets 5 and 6 of the traffic regulation measures plans, comprising 526 metres.	Clearway
Hampshire County Council (Winchester)	A33 southbound from the proposed National Highways depot roundabout to the proposed M3 Junction 9 gyratory between point 5 and 6 on sheets 6 and 7 of the traffic regulation measures plans, comprising 224 metres.	Clearway
Hampshire County Council (Winchester)	A33 northbound from the proposed M3 Junction 9 gyratory to the proposed National Highways depot roundabout between Point 7 and 8 on sheets 6 and 7 of the traffic regulation measures plans, comprising 242 metres.	Clearway
Hampshire County Council (Winchester)	A33 northbound from the proposed National Highways depot roundabout to the proposed A33 / M3 northbound onslip roundabout between Point 9 and 10 on sheets 6 and 5 of the traffic regulation measures plans, comprising 527 metres.	Clearway
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to a point 20 metres	Clearway

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
	from the existing Cart and Horses Junction (Kings Worthy) between point 11 and 12 on sheets 5 and 3 of the traffic regulation measures plans, comprising 1365 metres.	
Hampshire County Council (Winchester)	A33 northbound from the proposed A33 / M3 northbound onslip roundabout to a point 24 metres from the proposed A33 / M3 northbound onslip roundabout between point 13 and 14 on sheet 5 of the traffic regulation measures plans, comprising 10 metres.	Clearway
Hampshire County Council (Winchester)	A33 / M3 northbound onslip roundabout the proposed roundabout extents as shown as point 15 on sheet 5 of the traffic regulation measures plans, comprising 84 metres.	Clearway
Hampshire County Council (Winchester)	National Highways depot roundabout the proposed roundabout extents as shown as point 16 on sheet 6 of the traffic regulation measures plans, comprising 84 metres.	Clearway
Hampshire County Council (Winchester)	A34 southbound from a point 662 metres from the proposed M3 underpass northern portal to a point 204 metres from the proposed M3 underpass southern portal between point 17 and 18 on sheets 6 and 5 of the traffic regulation measures plans, comprising 891 metres.	Clearway
Hampshire County Council (Winchester)	A34 southbound from diverge to the proposed M3 Junction 9 gyratory between point 19 and 20 on sheets 6 and 7 of the traffic regulation measures plans, comprising 589 metres.	Clearway
Hampshire County Council (Winchester)	A34 southbound from a point 393 metres from the proposed M3 Junction 9 gyratory northern bridge to a point 346 metres from the proposed M3 Junction 9 gyratory northern bridge between point 21 and 22 on sheet 6 of the traffic regulation measures plans, comprising 50 metres.	Clearway
Hampshire County Council (Winchester)	A34 northbound from M3 / A34 northbound diverge to a point 1172 metres from the M3 / A34 northbound diverge between point 23 and 24 on sheets 6 and 5 of the traffic regulation measures plans,	Clearway

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
	comprising 1172 metres.	
Hampshire County Council (Winchester)	A34 northbound onslip from a point 32 metres from the proposed M3 Junction 9 gyratory northern bridge between Point 25 and 26 on sheets 7 and 6 of the traffic regulation measures plans, comprising 612 metres.	Clearway
Hampshire County Council (Winchester)	Easton Lane northbound between point 27 and 28 on sheet 7 of the traffic regulation measures plans, comprising 23 metres.	Clearway
Hampshire County Council (Winchester)	Easton Lane southbound between point 29 and 30 on sheet 7 of the traffic regulation measures plans, comprising 25 metres.	Clearway
Hampshire County Council (Winchester)	M3 northbound offslip between point 31 and 32 on sheet 7 of the traffic regulation measures plans, comprising 40 metres.	Clearway
Hampshire County Council (Winchester)	M3 Junction 9 gyratory extents as shown at point 33 (including points 34, 35, 36) on sheet 7 of the restrictions to traffic movement plans, comprising 635 metres.	Clearway
Hampshire County Council (Winchester)	A33 overtaking between point 37 and 38 on sheets 6 and 5 of the traffic regulation measures plans, comprising 487 metres.	No overtaking
Hampshire County Council (Winchester)	A33 overtaking between point 39 and 40 on sheets 5 and 3 of the traffic regulation measures plans, comprising 731 metres.	No overtaking

PART 7

REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Revocations or variations</i>
Hampshire County Council (Winchester)	A34 northbound carriageway between point 1 and 2 on sheets 5 and 7 of the revoking existing clearway orders plans, comprising 926 metres.	The Winchester-Preston Trunk Road (A34) (24 Hours Clearway) (No.2) Order 1987	Existing section of highway (in part) to be stopped up. Traffic regulation order to be revised to suit proposed highway arrangement.
Hampshire County Council (Winchester)	A34 southbound carriageway between point 3 and 4 on	The Winchester-Preston Trunk Road (A34) (24 Hours	Existing section of highway (in part) to be stopped up. Traffic

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Revocations or variations</i>
	sheets 5 and 7 of the revoking existing clearway orders plans, comprising 899 metres.	Clearway) (No.2) Order 1987	regulation order to be revised to suit proposed highway arrangement.
Hampshire County Council (Winchester)	A33 between point 5 and 6 on sheets 3 and 5 of the revoking existing clearway orders plans, comprising 929 metres.	The South West of Basingstoke – Southampton Trunk Road (Prohibition of Waiting) (Clearways) Order 1968	Existing section of highway (in part) to be stopped up. Traffic regulation order to be revised to suit proposed highway arrangement.

PART 8

PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Status and length of public right of way / footpath / cycle track / bridleway / footway and associated structures</i>
Hampshire County Council (Winchester)	Cycle track between the Cart and Horses Junction (Kings Worthy) to the existing NCN Route 23 adjacent to Tesco and the proposed gyratory between points 16, 4 and 15 as shown on sheets 3, 5, 6 and 7 of the rights of way and access plans, comprising 2606 metres.
Hampshire County Council (Winchester)	Bridleway between the proposed gyratory and Easton Lane between point 3 and 4 as shown on sheets 6 and 7 of the rights of way and access plans, comprising 277 metres.
Hampshire County Council (Winchester)	Bridleway between Easton Lane and Long Walk between point 1 and 2 on sheets 4, 5, 6 and 7 of the rights of way and access plans, comprising 1197 metres.

SCHEDULE 4

Articles 17 and 28

PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS AND PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

1. In relating this Schedule to the rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) Existing highways to be stopped up, as described in column (2) of Part 1 of this Schedule, are shown by red boxed hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column (3) of Part 1 of this Schedule.
- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 1 of this Schedule, are shown by green shading (for motorways), pink shading (for trunk roads), yellow shading (for other classified roads and highways) and blue, yellow or purple shading (for public rights of way) (as shown in the key on the rights of way and access plans) and are given a reference label (a capital letter in a circle) and will be a road unless otherwise stated beneath its reference letter in column (4) of Part 1 of this Schedule.

- (c) Private means of access to be stopped up, as described in column (2) of Part 2 of this Schedule, are shown by blue shading (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column (3) of Part 2 of this Schedule, and are given a reference label (a lower case letter in a circle).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by blue shading (as shown in the key on the rights of way and access plans) and are given a reference label (a number in a circle).

PART 1

HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> 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
Hampshire County Council (Winchester)	A33 northbound carriageway	936 metres between points 22 and 21 as shown on sheets 3 and 5 of the rights of way and access plans.	A new cycle track between the Cart and Horses Junction (Kings Worthy) to the existing NCN Route 23 adjacent to Tesco and the proposed gyratory between points 16, 4, and 15 as shown on sheets 3, 5, 6, and 7 of the rights of way and access plans, comprising 2606 metres.
Hampshire County Council (Winchester)	A34 northbound carriageway	935 metres between points 17 and 18 as shown on sheets 5 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 northbound carriageway) for a length of 691 metres.
Hampshire County Council (Winchester)	A34 southbound carriageway	920 metres between points 19 and 20 as shown on sheets 5 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 southbound carriageway) for a length of 549 metres.
Hampshire County Council (Winchester)	M3 northbound onslip carriageway	258 metres between points 23 and 24 as shown on sheets 6 and 7 of the rights of way and access plans.	A new length of trunk road (realigned A34 northbound merge) for a length of 617 metres.
Hampshire County Council (Winchester)	M3 northbound offslip carriageway	316 metres between points 29 and 30 as shown on sheets 7 and 8 of the rights of way and access plans.	A new length of special road (realigned M3 northbound offslip carriageway) for a length of 440 metres.
Hampshire County Council (Winchester)	M3 southbound onslip carriageway	246 metres between points 27 and 28 as shown on sheet 7 of the rights of way and	A new length of special road (realigned M3 southbound onslip carriageway) for a

<i>(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
		access plans.	length of 687 metres.
Hampshire County Council (Winchester)	M3 southbound offslip carriageway	418 metres between the M3 southbound offslip to point 26 as shown on sheets 6 and 7 of the rights of way and access plans.	A new length of special road (realigned M3 southbound offslip carriageway) for a length of 634 metres.
Hampshire County Council (Winchester)	A272 northbound carriageway	101 metres between points 33 and 34 as shown on sheet 7 of the rights of way and access plans.	A new length of classified road (realigned A272 northbound carriageway) for a length of 116 metres.
Hampshire County Council (Winchester)	Easton Lane southbound carriageway	106 metres between points 31 and 32 as shown on sheet 7 of the rights of way and access plans.	A new length of classified road (realigned Easton Lane southbound carriageway) for a length of 106 metres.
Hampshire County Council (Winchester)	M3 Junction 9 gyratory (with demolition of existing structures over M3 northbound and southbound carriageways)	640 metres as identified by all points referenced 35 on sheet 7 of the rights of way and access plans.	A new length of trunk road (realigned M3 Junction 9 gyratory) for a length of 583 metres.
Hampshire County Council (Winchester)	National Highways rear entrance / exit	As noted on the rights of way and access plans.	A realigned entrance / exit via a proposed roundabout (National Highways depot roundabout) for a length of 93 metres.
Hampshire County Council (Winchester)	Existing public right of way to be stopped up	441 metres of existing public right of way between points 6 and 7 as shown on sheets 6 and 7 of the rights of way and access plans.	New public right of way as per reference F/C 1 between points 4, 15 and 16, for a length of 2693 metres, as shown on sheets 3, 5, 6 and 7.
Hampshire County Council (Winchester)	Existing public right of way to be stopped up	290 metres of existing public right of way between points 5 and 6 as shown on sheets 6 and 7 of the rights of way and access plans.	New public right of way as identified between points 1 and 2, 3 and 4, for a length of 1679 metres as shown on sheets 4, 6 and 7 of the rights of way and access plans.
Hampshire County Council (Winchester)	Existing footway / footpath between to be stopped up	1719 metres of existing footway / footpath between points 7 and 8, 9 and 10, 11 and 12, 13 and 14 as shown on sheets	New public right of way as per reference F/C 1 between points 4, 15 and 16, for a length of 2693 metres as shown on sheets 3,

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Highway to be substituted/provided</i>
		3, 5, 6 and 7 of the rights of way and access plans.	5, 6 and 7 of the rights of way and access plans.

PART 2

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private means of access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New private means of access to be substituted/provided</i>
Hampshire County Council (Winchester)	A33 business park access	Shown as point A on sheet 3 of the rights and access plans.	Between point 49 and 48 on sheet 3 of the classification of road plans, comprising 18 metres.
Hampshire County Council (Winchester)	A33 business park access	Shown as point B on sheet 3 of the rights of way and access plans.	Between point 50 and 51 on sheet 3 of the classification of road plans, comprising 33 metres.

SCHEDULE 5

Article 27

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 6		
Plot 6/5	Rights to be acquired permanently to access, construct, maintain and repair overhead electricity cables and associated apparatus	Work No. 21

SCHEDULE 6

Article 27

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a

restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(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 Compulsory Purchase Act 1965 (as modified by paragraph 5(5) of Schedule 6 to the M3 Junction 9 Development Consent Order 2024 (the “2024 Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 5(8) of Schedule 6 to the 2024 Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of Part 1 of the 1965 Act

4. Part 1 (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 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 24 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27(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 restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the

(a) 1973 c. 26.

acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 24), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12(c) (unauthorised entry) and 13(d) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(e) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of

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- (a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (b) Section 11B was inserted by sections 187(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
 - (d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

the 1981 Act as applied by article 31 (application of the 1981 Act) of the M3 Junction 9 Development Consent Order 2024 in respect of the land to which the notice to treat relates.

(2) But see article 32(3) (acquisition of subsoil or airspace only) of the M3 Junction 9 Development Consent Order 2024 which excludes the acquisition of subsoil or airspace only from this Schedule.

(3) In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the acquiring authority do not serve notice of a decision within the decision period 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 serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right of the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 7

Article 34

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot Reference Number shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
Land Plans – Sheet 4		
4/1a	Land required temporarily for temporary traffic management purposes.	Ancillary works
4/1b	Required to facilitate and provide a working space and temporary access for works associated with the diversion of power cables.	Work No. 35
4/1c	Required to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk and Easton Lane.	Work No. 9
4/1d	Land required temporarily for temporary traffic management purposes.	Ancillary works
4/2a	Required to facilitate and provide a working space and temporary access for works associated with the diversion of 50 metres in length of power cables.	Work No. 35
4/2b	Required to facilitate and provide a working space and temporary access for works	Work No. 35

<i>(1)</i> <i>Plot Reference Number shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	associated with the diversion of power cables.	
4/2c	Land required temporarily for temporary traffic management purposes.	Ancillary works
Land Plans – Sheet 5		
5/5a	Requirement to facilitate and provide a working space and temporary access for works associated with the construction of a drainage outfall into the River Itchen.	Work No. 43
5/2d	Land required temporarily for temporary traffic management purposes.	Ancillary Works
5/2e	Required to facilitate and provide a working space and temporary access for works associated with: 1. the improvement and construction of the realignment of the northbound and southbound carriageways of the A33 between B3047 (London Road) / A33 junction and proposed A33 / M3 northbound onslip roundabout; 1(g). the construction of the extension of the existing central reserve with associated vehicle restraint system; 1(h). the construction of carriageway realignment on the existing River Itchen bridge (including possible remediation works); 3. the construction improvements and realignment of the southbound carriageway of the A34; 42. the construction of a drainage outfall into the River Itchen.	Work No. 1, 1(g), 1(h), 3, 42
5/3c	Required temporarily to facilitate construction generally and to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk	Work No. 9

<i>(1)</i> <i>Plot Reference Number shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	to Easton Lane.	
5/4	Required temporarily to facilitate construction of surface water drainage outfall.	Work No. 42
Land Plans – Sheet 6		
6/1f	Required to facilitate and provide a working space and temporary access for works associated with: 9. the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk and Easton Lane; 9(a). the construction of an attenuation basin maintenance track; 20. the diversion of a low-pressure gas main pipeline; 26. the diversion of telecommunication equipment; 33. the realignment of the National Cycle Route 23 and associated earthworks and landscaping.	Work No. 9, 9(a), 20, 26, 33
6/1g	Required to construct a temporary construction site compound.	Work No. 38
6/4d	Required to facilitate and provide a working space and temporary access for works associated with the construction of a new bridleway and associated drainage and landscaping features to connect Long Walk to Easton Lane.	Work No. 9
6/6a	Required to facilitate and provide a working space and temporary access for works associated with the diversion of a low-pressure gas main pipeline.	Work No. 20
6/6b	Required to facilitate and provide a working space and temporary access for works associated with: 20. the diversion of a low-pressure gas main pipeline; 38: the construction of a temporary construction site compound situated on land to	Work Nos. 20, 38

<i>(1) Plot Reference Number shown on land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
	the east of the M3 Junction 9 gyratory.	
Land Plans – Sheet 7		
7/1a	Required to facilitate and provide a working space and temporary access for works associated with the construction of a temporary construction site compound situated on land to the east of the M3 Junction 9 gyratory.	Work No. 38
7/2c	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/4g	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/5	Land required temporarily for temporary traffic management purposes.	Ancillary works
7/6	Land required temporarily for temporary traffic management purposes	Ancillary works

SCHEDULE 8

Article 39

REMOVAL OF HEDGEROWS

<i>(1) Hedgerow No. as referred to in the protected trees and hedgerows to be removed plans</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of authorised development</i>	<i>(3) Important hedgerow</i>
H1	Partial Removal	Work No. 35	Yes
H2	Partial Removal	Work No. 9	Yes
H3	Partial Removal	Work No. 9	Yes
H4	Removal	Work Nos. 3, 10(a), 11, 19, 20, 21, 39	No
H5	Partial Removal	Work Nos. 3, 32, 33	No
H6	Partial Removal	Work Nos. 3, 9, 33	Yes
H7	Partial Removal	Work Nos. 3, 33	Yes
H9	Partial Removal	Work No. 49	No
H10	Partial Removal	Work No. 49	No

SCHEDULE 9

Article 40

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1) Name of Order/Type of tree</i>	<i>(2) Work to be carried out</i>	<i>(3) Relevant part of the</i>
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		<i>authorised development</i>
Tree preservation order (00039-2003-TPO) partially covered by tree group G43(B) which identified ash, sycamore, yew, hawthorn, field maple, english oak, elder, blackthorn	Partial Removal	Work Nos. 24, 29

SCHEDULE 10

PROTECTIVE PROVISIONS

Articles 36 and 46

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989)(a), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(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 (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.
 - (c) 1991 c. 56.
 - (d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37) and by 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 and by section 42(3) of the Flood and Water Management Act 2010 (c. 29).

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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 17 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 16 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 22 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be

extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 (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 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

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, 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 49 (arbitration) to be necessary then, if such placing involves cost exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning ascribed to it in section 106(b) (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 36 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(a) 2003 c. 21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 48 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (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.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

Application

18. For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

Interpretation

19. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of SGN to enable SGN 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 SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 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 the works described in that definition that would otherwise have been excluded from its scope other than ecological surveys, preconstruction ecological mitigation, erection of any temporary means of enclosure and the temporary display of site notices or advertisements;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SGN’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc (company number 05167021), whose registered office is at St Lawrence House, Station Approach, Horley, Surrey, RH6 9HJ, or its successors in title or successor bodies and any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(a).

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise.

On Street Apparatus

20.—(1) Except for paragraphs 21 (apparatus of SGN in stopped up streets), 24 (removal of apparatus) in so far as sub-paragraph (2) applies, 25 (facilities and rights for alternative apparatus) in so far as sub-paragraph (2) applies, 26 (retained apparatus: protection of SGN), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 24 and 25 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding articles 11 (street works), 12 (power to alter layout etc. of streets), 30 and 35 or any other powers in the Order generally, section 85 (sharing of cost of necessary measures) of the 1991 Act in relation to cost sharing and the regulations made thereunder shall not apply in relation to any diversion of apparatus of SGN under the 1991 Act.

(a) 1986 c. 44.

Apparatus of SGN in stopped up streets

21.—(1) Without prejudice to the generality of any other protection afforded to SGN elsewhere in the Order, where any street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access) if SGN has any apparatus in the street or accessed via that street SGN will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to SGN, or will procure the granting to SGN of, legal easements reasonably satisfactory to SGN 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 SGN to require the removal of that apparatus under paragraph 24 (removal of apparatus).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16 (temporary stopping up and restriction of use of streets), SGN will be 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 it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

22. The undertaker, in the case of the powers conferred by article 22 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN.

Acquisition of land

23.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire from SGN any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of SGN otherwise than by agreement.

(2) The undertaker and SGN agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SGN or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(3) Any agreement or consent granted by SGN under paragraph 26 (retained apparatus: protection of SGN) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

(4) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ SGN must use reasonable endeavours to surrender its easement or other interest in land in respect of such decommissioned apparatus to the reversionary landowner and transfer title to such de-commissioned apparatus to the reversionary landowner. If SGN is not released by the reversionary landowner from all liabilities (including title) in respect of such de-commissioned apparatus the undertaker shall take on such liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(5) Where the undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 24 (removal of apparatus) do not apply, the undertaker must, unless SGN agrees otherwise—

- (a) retain any notice of SGN'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 SGN'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 SGN's easement, right or other interest in relation to such acquired land; and

- (c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

Removal of apparatus

24.—(1) If, in the exercise of the agreement reached in accordance with paragraph 23 (acquisition of land) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SGN 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 SGN 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 SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its satisfaction (taking into account paragraph 25(1) (facilities and rights for alternative apparatus) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the 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, SGN 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 shall not extend to the requirement for SGN 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 SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

25.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance 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 SGN and must be no less favourable on the whole to SGN than the

facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SGN's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 32 (arbitration) and the arbitrator shall make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of SGN

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SGN a plan and, if reasonably required by SGN, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SGN 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 SGN has given written approval of the plan so submitted.

(4) Any approval of SGN required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) and (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing 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 to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a) and SGN will be entitled to watch and inspect the execution of those works.

(7) Where SGN 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 SGN's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If SGN, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(2) (removal of apparatus).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 27 (expenses).

Expenses

27.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN on demand all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 24(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to paragraph 26(6) (retained apparatus: protection of SGN).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (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 SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) 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 SGN 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 SGN any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and
- (b) indemnify SGN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from SGN, by reason or in consequence of any such damage or interruption or SGN becoming liable to any third party as aforesaid other than arising from any default of SGN.

(2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN 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 SGN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SGN, its officers, servants, contractors or agents; and

- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 10 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28.

(4) SGN must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

Enactments and agreements

29. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

30.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under paragraph 24(2) (removal of apparatus) or SGN makes requirements for the protection or alteration of apparatus under paragraph 26 (retained apparatus: protection of SGN), 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 SGN’s undertaking and SGN must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of the agreement reached in accordance with paragraph 23(1) (acquisition of land) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Save for differences or disputes arising under paragraphs 24(2) and(4) (removal of apparatus), 25(1) (facilities and rights for alternative apparatus)and paragraph 26 (retained apparatus: protection of SGN) any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 49 (arbitration).

Notices

33. The plans submitted to SGN by the undertaker pursuant to paragraph 26(1) (retained apparatus: protection of SGN) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify in writing to the undertaker.

PART 4
FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Application

34. The following provisions will apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

Interpretation

35.—(1) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, or flood defence;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113(1) of the Water Resources Act 1991(a);

“plans” includes sections, drawings, specifications, calculations and method statements;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within —

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or

(ii) interfere with the Agency’s access to or along that remote defence.

(b) 8 metres of a drainage work or is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any watercourse or other surface waters;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(c) an activity that includes dredging, raising or taking of any sand, silt ballast, clay gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work.

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

(a) 1991 c. 57. The definition of “main river” was amended by section 59(3) of the Water Act 2014 (c. 21).

Submission and approval of plans

36.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 45 (disputes).

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

37. Without limiting paragraph 36, the requirements which the Agency may have under that paragraph may include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

38.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 37, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

39.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the

Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) and paragraph 42 (agency access), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 45 (disputes).

Maintenance of works

40.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), and paragraph 42 (agency access), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with the provisions of this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and on receipt of such notice the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 45 (disputes).

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prevented by the exercise by the undertaker of the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

41. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

42. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours or as soon as reasonably practicable of the undertaker becoming aware of such obstruction.

Free passage of fish

43.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 42 (agency access), if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in subparagraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 42 (agency access), in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

44.—(1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) The undertaker is responsible for and indemnifies the Agency against all costs and losses not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance or failure during construction of any specified works comprised within the authorised development;
 - (b) the operation or maintenance of any specified works comprised within the authorised development or the failure of any such works; or
 - (c) any act or omission of the undertaker, its employees, contractors or agents or other persons acting under the direction of the undertaker whilst engaged upon—
 - (i) the construction, operation or maintenance of the specified works; or
 - (ii) in the case of those specified works that the undertaker is liable to maintain, dealing with any failure of those specified works.
- (3) For the avoidance of doubt in sub-paragraph (1)—
- “costs” includes—
- (i) expenses and charges;
 - (ii) staff costs and overheads;
 - (iii) legal costs;
- “losses” includes physical damage.
- (4) The undertaker indemnifies the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraph (1).
- (5) In sub-paragraph (3)—
- “claims” and “demands” include as applicable—
- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
 - (b) any interest element of sums claimed or demanded;
- “liabilities” includes—
- (c) contractual liabilities;
 - (d) tortious liabilities (including liabilities for negligence or nuisance);
 - (e) liabilities to pay statutory compensation or for breach of statutory duty;
 - (f) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).
- (6) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.
- (7) The Agency must, at all times, take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.
- (8) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.
- (9) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, liabilities, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

45. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must if the parties agree, be determined by arbitration under article 49 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

SCHEDULE 11

Articles 28 and 47

DOCUMENTS TO BE CERTIFIED

<i>(1) Document</i>	<i>(2) Application Document Reference</i>	<i>(3) Revision</i>
Book of reference	Volume 4, document 4.3	5
Classification of road plans	Volume 2, document 2.8	1
Design principles report	Volume 8, document 8.18	1
De-trunking plans	Volume 2, document 2.10	1
Engineering plans and sections	Volume 2, document 2.6	1
First Iteration Environmental Management Plan	Volume 7, document 7.3	7
Flood risk assessment	Volume 7, document 7.4	0
General arrangement plans	Volume 2, document 2.5	0
Land plans	Volume 2, document 2.2	1
Outline traffic management plan	Volume 7, document 7.8	2
Protected trees and hedgerows to be removed plans	Volume 2, document 2.13	0
Revoking existing clearway orders plans	Volume 2, document 2.14	1
Rights of way and access plans	Volume 2, document 2.4	1
Speed limits plans	Volume 2, document 2.9	1
Structures plans and sections	Volume 2, document 2.7	0
Traffic regulation measures plans	Volume 2, document 2.11	1
Works plans	Volume 2, document 2.3	2
Environmental Statement – Chapter 1 – Introduction	Volume 6, document 6.1	0
Environmental Statement – Chapter 2 – The Scheme and its Surroundings	Volume 6, document 6.1	0
Environmental Statement – Chapter 3 – Assessment of Alternatives	Volume 6, document 6.1	1
Environmental Statement – Chapter 4 – Environmental Impact Assessment Methodology	Volume 6, document 6.1	0
Environmental Statement – Chapter 5 – Air Quality	Volume 6, document 6.1	2
Environmental Statement - Chapter 6 - Cultural Heritage	Volume 6, document 6.1	0
Environmental Statement - Chapter 7 - Landscape and Visual	Volume 6, document 6.1	1
Environmental Statement - Chapter 8 - Biodiversity	Volume 6, document 6.1	0
Environmental Statement - Chapter 9 - Geology and Soils	Volume 6, document 6.1	1
Environmental Statement -	Volume 6, document 6.1	1

Chapter 10 - Material Assets and Waste		
Environmental Statement - Chapter 11 - Noise and Vibration	Volume 6, document 6.1	0
Environmental Statement - Chapter 12 - Population and Human Health	Volume 6, document 6.1	1
Environmental Statement - Chapter 13 - Road Drainage and the Water Environment	Volume 6, document 6.1	1
Environmental Statement - Chapter 14 – Climate	Volume 6, document 6.1	2
Environmental Statement - Chapter 15 - Cumulative Effects	Volume 6, document 6.1	0
Environmental Statement - Chapter 16 - Summary of Effects	Volume 6, document 6.1	1
Environmental Statement - Chapter 17 - Abbreviations and Glossary	Volume 6, document 6.1	0
Environmental Statement - Chapter 18 - References	Volume 6, document 6.1	0
Environmental Statement - Chapter 1 - Introduction - Figures	Volume 6, document 6.2	0
Environmental Statement - Chapter 2 - The Scheme and its Surroundings - Figures (Part 1 of 4)	Volume 6, document 6.2	0
Environmental Statement - Chapter 2 - The Scheme and its Surroundings - Figures (Part 2 of 4)	Volume 6, document 6.2	1
Environmental Statement - Chapter 2 - The Scheme and its Surroundings - Figures (Part 3 of 4)	Volume 6, document 6.2	0
Environmental Statement - Chapter 2 - The Scheme and its Surroundings - Figures (Part 4 of 4)	Volume 6, document 6.2	0
Environmental Statement - Chapter 5 - Air Quality - Figures	Volume 6, document 6.2	1
Environmental Statement - Chapter 6 - Cultural Heritage - Figures	Volume 6, document 6.2	0
Environmental Statement - Chapter 7 - Landscape and Visual - Figures (Part 1 of 3)	Volume 6, document 6.2	1
Environmental Statement - Chapter 7 - Landscape and Visual - Figures (Part 2 of 3)	Volume 6, document 6.2	0

Environmental Statement - Chapter 7 - Landscape and Visual - Figures (Part 3 of 3)	Volume 6, document 6.2	1
Environmental Statement - Chapter 7 - Landscape and Visual – Figure 7.3.1 – Landscape Character Areas	Volume 6, document 6.2	1
Environmental Statement - Chapter 8 - Biodiversity - Figures	Volume 6, document 6.2	1
Environmental Statement - Chapter 9 - Geology and Soils - Figures	Volume 6, document 6.2	1
Environmental Statement - Chapter 10 - Material Assets and Waste - Figures	Volume 6, document 6.2	0
Environmental Statement - Chapter 11 - Noise and Vibration - Figures	Volume 6, document 6.2	1
Environmental Statement - Chapter 12 - Population and Human Health - Figures	Volume 6, document 6.2	2
Environmental Statement - Chapter 13 - Road Drainage and the Water Environment - Figures	Volume 6, document 6.2	1
Environmental Statement - Chapter 14 - Climate - Figures	Volume 6, document 6.2	0
Environmental Statement - Chapter 15 - Cumulative Effects - Figures	Volume 6, document 6.2	0
Environmental Statement - Appendix 1.1 - Competent Expert Evidence	Volume 6, document 6.3	0
Environmental Statement - Appendix 2.1 - Drainage Outfall Methodology Optioneering Report	Volume 6, document 6.3	0
Environmental Statement - Appendix 3.1 - Stage 1 Technical Appraisal Report	Volume 6, document 6.3	0
Environmental Statement - Appendix 3.2 - Scheme Assessment Report	Volume 6, document 6.3	0
Environmental Statement - Appendix 3.3 - Non-motorised User Route Options	Volume 6, document 6.3	0
Environmental Statement - Appendix 4.1 - Major Events Screening Assessment	Volume 6, document 6.3	0
Environmental Statement - Appendix 4.2 - Scoping Comments and Responses	Volume 6, document 6.3	0
Environmental Statement - Appendix 5.1 - Air Quality	Volume 6, document 6.3	0

Modelling Methodology and Verification		
Environmental Statement - Appendix 5.2 - Human Receptors Backgrounds and Operational Phase Results	Volume 6, document 6.3	0
Environmental Statement - Appendix 5.3 - Designated Habitats Backgrounds and Operational Phase Results	Volume 6, document 6.3	1
Environmental Statement - Appendix 5.4 – Traffic Data	Volume 6, document 6.3	0
Environmental Statement - Appendix 6.1 - Detailed Cultural Heritage Baseline	Volume 6, document 6.3	0
Environmental Statement - Appendix 6.2 - Geophysical Survey Summary Report	Volume 6, document 6.3	0
Environmental Statement - Appendix 6.3 - Archaeological Evaluation Report	Volume 6, document 6.3	0
Environmental Statement - Appendix 6.4 - Geophysical Survey Report (2019)	Volume 6, document 6.3	0
Environmental Statement - Appendix 6.5 - Geophysical Survey Report (2021)	Volume 6, document 6.3	0
Environmental Statement - Appendix 6.6 - Archaeological Trial Trench Evaluation Report	Volume 6, document 6.3	0
Environmental Statement - Appendix 6.7 - Archaeological Watching Brief	Volume 6, document 6.3	0
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Appendix 8.1n - Aquatic Ecology Survey Report 2020 - Confidential		
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EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises National Highways to construct, operate and maintain works at the M3 Junction 9 and carry out all associated works.

This Order permits National Highways 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, general arrangement plans, book of reference and environmental statement mentioned in this Order and certified in accordance with article 47 (certification of plans etc). may be inspected free of charge during working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ.