

M20 Junction 10a

TR010006

Response to Examining Authority's First Written Questions

Report 4: Draft Development Consent Order



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**Response to Examining Authority's
First Written Questions
(Report 4: Draft Development Consent Order)**

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Content

Chapter	Title	Page
	Content	1
1.	Draft Development Consent Order	2
	Question 20.1	2
	Question 20.1a	3
	Question 20.2	4
	Question 20.3	6
	Question 20.4	8
	Question 20.5	10
	Question 20.6	11
	Question 20.7	12
	Question 20.8	13
	Question 20.9	13
	Question 20.10	14
	Question 20.11	14
	Question 20.12	15
	Question 20.13	15
	Question 20.14	16
	Question 20.15	16
	Question 20.16	18
	Question 20.17	18
	Question 20.18	19
	Question 20.19	20
	Question 20.20	20
	Question 20.21	22
	Question 20.23	23
	Question 20.24	23
	Question 20.25	24
	Question 20.26	26
	Question 20.27	27
	Question 20.28	27
	Question 20.29	29
	Question 20.30	30

1. Draft Development Consent Order

Question 20.1

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.1	<p>Draft Development Consent Order Revision B [OD-008]</p> <p>Each time the Applicant submits a revision of the dDCO to the Examination, both clean and track change versions should be provided.</p> <p>i. Would the Applicant provide a version of dDCO Revision B (October 2016) [OD-008] showing track changes from dDCO Revision A (July 2016) [APP-018]?</p> <p>ii. Do any of the changes made in dDCO Revision B [OD-008] have implications for the draft Explanatory Memorandum (dEM) [APP-019]? Where there are consequential changes to the dEM, would the Applicant provide an updated version?</p>	<p>i. As requested, a version of dDCO Revision B showing tracked changes from dDCO Revision A is supplied within our submissions for Deadline 3, with our document reference HA514442-MMGJV-GEN-SMW-RE-Z-3101.</p> <p>Article 43 (“Crown rights”) of dDCO Revision A has been deleted. Paragraph 4.94 of the Explanatory Memorandum is no longer applicable.</p> <p>Articles 44, 45 and 67 of dDCO Revision A have been consequentially renumbered as articles 43, 44 and 45 of dDCO Revision B. References in the Explanatory Memorandum (and particularly paragraphs 4.95 to 4.99) are amended to correspond.</p> <p>Other changes have been made in dDCO Revision B, these being;</p> <ul style="list-style-type: none"> - Consequential amendments to references in Article 19 - Amendments to references in the description of Work 3 in Schedule 1, to reflect the revised page structure of Revision B of the Works Plans - Consequential amendments to references in requirement 3 in Schedule 2 - Clarification of the purposes for which land may be acquired in column 2 of

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		<p>the table in Schedule 5</p> <ul style="list-style-type: none"> - Consequential amendments to references throughout Schedule 8 (Protective provisions); and, - Consequential amendments to references in the Explanatory Note <p>ii. These do not change the effect of the articles and provisions of the order and so do not give rise to changes to the Explanatory Memorandum.</p>

Question 20.1a

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.1a	<p>General drafting</p> <p>A number of the headings in the dDCO [OD-011], particularly in Schedule 2, contain inappropriate capitalisation.</p> <p>i. Would the Applicant please amend all relevant headings to ensure that they are consistent with the statutory drafting conventions for statutory instruments?</p>	<p>i. As requested, the capitalisation of headings has been revised in dDCO Revision C.</p>

Question 20.2

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.2	<p>Article 2(1) Interpretation</p> <p>i. Would the Applicant provide detailed justification for the breadth of the definition of “maintain” as drafted?</p> <p>ii. In the interests of precision and certainty, can the definition for each specific plan/ drawing in Article 2(1) include the reference number for that plan?</p> <p>iii. Bearing in mind section 155 of the Planning Act 2008 (PA2008) would the Applicant provide a detailed explanation as to why the definition of “commence” is required in the dDCO [OD-008]?</p>	<p>i. The definition “maintain” provided in Article 2 of the dDCO, (which explicitly includes “inspect”, “repair”, “adjust”, “alter”, “remove” or “reconstruct”) follows the same form as that in The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.</p> <p>It is less extensive that that found in The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016, which is more recent and explicitly included “clear”, “refurbish”, “decommission”, “demolish”, “replace” and “improve” in addition. It is also less extensive that that found in Schedule 2 of The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (no longer in effect) which includes “replace” in addition.</p> <p>Arguably, none of these definitions goes beyond the normal English meaning of the word “maintain.” However, it is vital for the proper operation of the proposed Scheme into the future (and the safety and convenience of users of the Scheme) that Highways England is unambiguously able to repair the highway and maintain it to the standards required by prevailing best practice, potentially many decades hence.</p> <p>Therefore, to avoid any ambiguity, a definition has been provided which clearly includes removal, alteration and reconstruction, to provide for this maintenance.</p> <p>The power to maintain is constrained by Article 6, and therefore cannot be used in such a way as to give rise to materially different environmental effects to those assessed.</p>

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		<p>ii. The applicant has no objection to the order being made in that form, but it would appear to be a duplication of the function of Article 43.</p> <p>iii. The definition of “commence” is provided to ensure that works excluded from that definition may be carried out once the Order comes into force and are not subject to prior approval under the requirements.</p> <p>This approach puts beyond doubt that certain categories of works will not trigger the DCO provisions. This clarity is useful for the undertaker and the planning authority.</p> <p>An alternative approach, modelled on The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, would be the creation of a new Article 5(4) introduced in place of the definition.</p> <p>“(4) Nothing in this Order prevents the carrying out of 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, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements immediately upon this Order coming into force.”</p>

Question 20.3

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.3	<p>Article 5 Development consent etc. granted by the Order</p> <p>Article 5(3) provides that either Work No. 2A or Work No. 2B may be constructed, but not both of them. There is no provision that Work No. 2B may only be constructed if a planning permission under the Town and Country Planning Act 1990 for the Stour Park development, which those works would serve, has first been granted.</p> <p>i. Should such a provision be inserted into the dDCO [OD-008]? If not, why not?</p> <p>ii. If so, in the interests of precision and certainty should such a provision specify the type or use class of development that such a planning permission must be for, or the existing application number referred to in Requirement 1 (Schedule 2 Part 1)? If not, why not?</p> <p>iii. Should such a provision be time limited, so that if that permission is not granted by a particular date then Work No. 2B cannot be constructed? If not, why not?</p> <p>iv. Should any such time limit expire before the 5 year limit to exercise Compulsory Acquisition (CA) powers (Article 23), so that there is</p>	<p>i. The applicant does not feel that such a provision is necessary or appropriate.</p> <p>The present Stour Park development planning application has not yet been determined by Ashford Borough Council. The site is allocated for development by the Urban Sites and Infrastructure Development Plan Document Policy U19 – Sevington. While Highways England has no reason to think that the present application cannot be permitted, any tie to this single application would prejudice any subsequent applications on the site that may otherwise be in accordance with the local plan.</p> <p>An implicit support for a single application would not be fair to developers, and would restrict the Ashford Borough Council's proper development management function.</p> <p>The option of constructing either Work No. 2A or 2B without a tie to a single planning application provides Highways England the flexibility to “support a major new development to the south east of town” more generally as required by the Road Investment Strategy. An artificial restriction could harm the ability of the Scheme to fully achieve these objectives, and constrain development of the Sevington site.</p> <p>Requirement 14 of the draft DCO ties the construction of A2070 Option 2 (which is defined as Work No. 2B) to the granting of a planning permission for the Stour Park site. This is not specific to the current Stour Park development, but to any development granted planning permission on that site, as defined by Requirement 1.</p>

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	<p>certainty over the alignment before the ability to compulsorily acquire land for Work No.2A expires? If not, why not?</p>	<p>ii. The applicant would not support any provision that could be seen to hinder or fetter the ability of the LPA to manage development of the site appropriately according to their policies. The Ashford Borough Council Urban Sites and Infrastructure Development Plan Document Policy U19 restricts development at Sevington to B1, B2 and B8 uses. It is unnecessary to replicate this, inappropriate to restrict further, and potentially prejudicial to the emerging local plan to do so.</p> <p>The Scheme supports the productive development of the Stour Park site, but is not connected to any specific application, or the precise form of that development.</p> <p>iii. Construction of the Alternative Scheme is expected to be delivered within the main construction programme, and has been assessed as such in the Environmental Statement (2.6.18).</p> <p>Requirement 2 of the dDCO (and Regulation 3 of The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010) provides that the development must be begun before the end of a period of 5 years.</p> <p>The construction of Work No. 2B is thus time limited by Requirement 2 and the Environmental Statement.</p> <p>An additional and more constrained time limit could pressure negotiations between the local planning authority, prospective developers of the Sevington site and Highways England, reducing the potential for a beneficial planning outcome. If Highways England were compelled by time constraints to construct the A2070 link without a roundabout, and then construct this later with an additional consent, this would add disruption and cost. This may harm the viability of proposed schemes for the Sevington site and constrain its development.</p>

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		<p>If such a limit were to be set, it is also unclear how the correct length of time to be allowed would be determined. It is unlikely that it would be appropriate for it to be less than 5 years.</p> <p>iv. The CA powers need to be available in both scenarios. Given the answers provided above, there is no reason to further restrict the CA powers by reference to this issue under either scenario.</p> <p>There is a compelling case in the public interest for the powers of compulsory acquisition necessary to construct the Scheme with either option, as detailed in the Statement of Reasons.</p>

Question 20.4

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.4	<p>Article 7 Planning permission</p> <p>i. Is Article 7 intended to provide a power to circumvent the provisions of the PA2008 relating to changes to a made DCO (section 153 and Schedule 6)?</p> <p>ii. If so, why may this be considered appropriate and what power exists to allow this? If not, what is the intended purpose of this provision?</p>	<p>i. No, the power in Article 7 is intended to restore Highways England's normal powers over the strategic highways network within the DCO redline boundary. It does not grant Highways England any additional powers, such as a power to circumvent the provisions of section 153 and Schedule 6 PA 2008.</p> <p>ii. Article 7 is appropriate for the reason set out above. The proposed provision is not a Model Provision, but was accepted by the Examining Authority in the M4 Junctions 3 to 12 DCO without question, as Article 5 of that DCO.</p> <p>Highways England may need to exercise, for example, Permitted Development rights within the DCO redline boundary: for example, the placement of signage. This would not be a change to the made DCO, but</p>

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	<p>iii. The dEM [APP-019] states that Article 7 “ensures that the undertaker does not breach section 161 of the 2008 Act in carrying out certain development pursuant to grant of planning permission”. What type of “development” is Article 7 referring to?</p> <p>iv. How does Article 7 “ensure” that such a breach would not occur?</p> <p>v. Under what circumstances would an authority entertain an application for planning permission for matters already covered by a made DCO?</p> <p>vi. As currently drafted clauses (a) and (b) of Article 7 are alternatives. They would not both have to be satisfied. Is the intention to provide a power in (b) which could be used to circumvent s31 of the PA2008 by allowing a planning permission under (b) to authorise development which is or is part of a Nationally Significant Infrastructure Project (NSIP)?</p> <p>vii. If so, why may this be considered appropriate and what power exists to allow this? If not, what is the intended purpose of this provision?</p> <p>viii. Would the Applicant explain in detail the intended purpose of these provisions?</p>	<p>without Article 7 would risk breaching section 161 PA 2008 and exposing Highways England to criminal liability, if works were required that are otherwise modest in nature.</p> <p>iii. "Development" in this context means "development" as defined by section 55 TCPA 1990.</p> <p>iv. Pursuant to section 161 PA 2008 a person commits an offence if, without reasonable excuse, the person carries out, or causes to be carried out, development in breach of the terms of a DCO. As Article 7 allows Highways England to carry out, use or operate such development, it puts beyond doubt that any such carrying out, use or operation will not constitute a breach of the DCO under section 161 PA 2008.</p> <p>v. An authority would be likely to entertain an application for planning permission for matters covered by the DCO that are not themselves an NSIP or part of one, but may be associated development, in a few circumstances. Such development could be, for example, the construction of air quality monitoring stations, signage or the diversion of culverts. These matters could be viewed as being covered by a made DCO, but clearly at certain times Highways England will need to exercise powers, including permitted development rights, over the land subject to that made DCO, as the policy and best practice guidelines under which Highways England operates are updated.</p> <p>vi. Article 7(b) is not intended to circumvent section 31 PA 2008, nor does it do so. It is intended to enable development to come forward within the DCO redline boundary quite properly by way of planning permission. This could be in order to allow the use of the authorised development, or simply be the exercise of Highways England's wider powers over the strategic highways network. The examples provided above could equally be cited here -</p>

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		<p>diversion of culverts or installation of traffic monitoring may fall under Article 7(b). Importantly, whilst such elements could be associated development, they are not themselves an NSIP, or part of one.</p> <p>vii. Article 7(b) is not intended to circumvent section 31 PA 2008, nor does it do so. It is intended to enable development to come forward within the DCO redline boundary quite properly by way of planning permission. This could be in order to allow the use of the authorised development, or simply be the exercise of Highways England's wider powers over the strategic highways network. The examples provided above could equally be cited here - diversion of culverts or installation of traffic monitoring may fall under Article 7(b). Importantly, whilst such elements could be associated development, they are not themselves an NSIP, or part of one.</p> <p>viii. This is explained above.</p> <p>If it is considered that this Article, made in the September 2016 M4 Smart Motorway DCO, is no longer appropriate, its removal would give rise to no consequential amendments to the Draft DCO.</p>

Question 20.5

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.5	<p>Article 8 Limits of deviation</p> <p>As currently drafted the tailpiece included in Article 8 would appear to remove an absolute limit of vertical deviation.</p>	<p>i. The Article is proportionate and necessary to avoid delaying the Scheme in the event of emerging issues during construction, and allows the Secretary of State vary the limit of deviation in the vertical plane; but only where the variation would not give rise to any materially new or materially worse</p>

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	<p>i. Would the Applicant explain how this provision provides appropriate precision and certainty in respect of limits of deviation?</p>	<p>adverse environmental effects from those reported in the environmental statement.</p> <p>This restriction provides the certainty that the built Scheme will not be materially different from that assessed</p>

Question 20.6

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.6	<p>Article 10 Consent to transfer benefit of Order</p> <p>Article 10(4) provides exceptions to the requirement for Secretary of State consent in respect of any transfer of benefit of the order.</p> <p>i. Would the Applicant explain why the exclusions at Article 10(4)(a) to 10(4)(h) are appropriate and necessary?</p>	<p>i. The undertakers listed are those that would benefit from the diverted services, and thus from the order.</p> <p>As this need and these parties are known from the outset, provision to transfer the benefit of the order can be established now rather than it being necessary to seek consent from the Secretary of State at a later date</p>

Question 20.7

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.7	<p>Article 21 and Article 24 Compulsory acquisition of land/ rights</p> <p>Articles 21(3) and 24(6) provide that before exercising CA powers, the undertaker must give the relevant local planning authority written notice of whether it intends to construct Work No.2A or Work No.2B.</p> <p>i. As drafted, would the DCO prohibit the undertaker from exercising CA powers relating to land on which Work No.2B would be constructed?</p> <p>ii. Should plot 3/16f, identified on the land plans, be expressly excluded from the definition of 'Order land' in Article 2(1) to avoid any possible confusion?</p>	<p>i. The purpose of this provision is to give the relevant local planning authority certainty as to the final form of the Scheme at the earliest possible stage and to allow them to have regard to it when carrying out their functions.</p> <p>The powers to compulsorily acquire land do not differ dependent upon whether or not Work No 2A or 2B is pursued.</p> <p>No greater or lesser powers to acquire land are need to deliver Work 2B.</p> <p>ii. The applicant has no objection to the order being made in that form. This plot is already excluded from that definition by notation on the Land Plans. It also reflects the fact that CA powers are deliberately not sought over Plot 3/16/f. It is appropriate that before the CA powers are exercised there is clarity as to which scheme is being constructed. These Articles require this.</p>

Question 20.8

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.8	<p>Article 23 Time limit for exercise of authority to acquire land compulsorily</p> <p>Article 23(2) provides the time limit for the exercise of temporary possession powers under Article 31 of the dDCO [OD-008].</p> <p>i. Would the Applicant explain why this provision does not also cover Article 30 – Rights under or over streets?</p>	<p>i. This is a wider power that relates to the continuing operation and maintenance of the highway, not just its construction.</p> <p>It is not normally time limited and Highways England does not consider it should be so limited in this case.</p>

Question 20.9

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.9	<p>Article 36 Special category land</p> <p>i. Does Article 36(1) also need to refer to “special category (rights) land”?</p>	<p>i. The applicant considers that the current drafting reflects the correct order of events.</p>

Question 20.10

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.10	<p>Work No. 1 Safety barrier</p> <p>This work is not referenced in the description of the development in the ES and therefore the detail of this work and how it has been assessed in the ES is unknown.</p> <p>i. Would the Applicant supply a detailed description of the safety barrier works, including the assumptions which have formed the basis of the assessment presented in the ES?</p>	<p>i. Existing steel vehicle restraint system (VRS) in the central reserve on M20 between point A and point B as shown on the Works Plans drawings [APP-007] will be dismantled and new vertical concrete barrier (VCB) will be installed in this location. Length of the replacement is approximately 1460 metres. The new VCB barrier must be connected to the existing barrier in point A and B using the transitions, connection will be detailed in the detailed design stage.</p>

Question 20.11

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.11	<p>Work No. 2B New A2070 dual carriageway link road with roundabout</p> <p>i. Should "Stour Park development" read "Stour Park site" to be consistent with the interpretation provided in Requirement 1 of the dDCO (also applies to Schedule 3 Part 4)?</p>	<p>i. Yes, the existing dDCO should be amended that is stating 'Stour Park site' consistent in whole document. Including Work No. 2B and Schedule 3 Part 4.</p>

Question 20.12

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.12	<p>Work No. 3 New Junction 10a gyratory and two bridges</p> <p>i. There are numerous references to Work 3d on the Works Plans [OD-011] but the other subsections of Work 3 are not labelled on the Works Plans. Would the Applicant provide Works Plans to illustrate clearly the extent of each of these works?</p> <p>ii. Consistent with other works, can any fixed dimensions which have formed the basis of the assessment in the ES be expressed in the description of this work?</p>	<p>i. The Work No.3 is the construction of a new Junction 10a gyratory and two bridges over the existing M20 main carriageway and is labelled as a Work 3. Works a,b,c,d are labelled on the Works Plans [OD-011] and referred to in dDCO [OD-008].</p> <p>ii. HighwaysEngland are not able to secure dimensions for this work in the DCO as this would unreasonably restrict the detailed design. Requirement 11 ensures that the built bridge would have no materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.</p>

Question 20.13

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.13	<p>Work No. 4 Realignment of A2070</p> <p>i. Can the precise amount of replacement open space as specified in paras 2.5.12 to 2.5.17 of the ES [APP-030] be included within this work?</p>	<p>i. Yes.</p> <p>Work No. 4 – the re-alignment of the A2070 Bad Munstereifel Road at the location of the new A2070 link road roundabout to create two new interfaces with the circulatory carriageway of the new roundabout. To include the construction of drainage attenuation pond no. 2 with associated drainage facilities, access and landscaping and the provision of 5169m² of replacement</p>

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		open space land including removal of redundant carriageway and landscaping.

Question 20.14

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20.14	<p>Work No. 6 New cycle/footbridge over the M20</p> <p>i. Consistent with other works, can any fixed dimensions which have formed the basis of the assessment in the ES be expressed in the description of this work?</p>	<p>i. Yes</p> <p>Work No. 6 – the construction of a new cycle/footbridge of approximately 55m in length over the M20 main carriageway to the east of M20 Junction 10a and connecting together Kingsford Street and Hythe Road.</p>

Question 20.15

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.15	<p>Work No. 7 Associated development</p> <p>Work No. 7 is described in the dDCO [OD-008] as “associated development comprising alteration works to the existing road markings, traffic signs and traffic signals on the M20 Junction 10 and its approaches.”</p> <p>i. Do the works described at Work No. 7 or any other numbered works consist of</p>	<p>i. No. To fall within this definition, the works would have to give rise to a likely significant effect on the environment.</p> <p>ii. The ES does not address this question as it is assessing the Scheme as a whole. The definitions under section 22 are complex and to some extent open to interpretation. The Applicant gave careful consideration to the definition and explained its approach in discussions with the Planning Inspectorate prior to submission, and in the Explanatory Memorandum.</p>

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	<p>“improvement of a highway” under s22(5) and s235(1) of the PA2008?</p> <p>ii. Would the Applicant signpost where within the ES [APP-029 to APP-208] it is evidenced that any works it considers to be “associated development” are not “likely to have a significant effect on the environment”?</p> <p>iii. If any numbered works are both “improvement” as defined by the PA2008 and “likely to have a significant effect on the environment”, why are those works not an NSIP in their own right?</p> <p>iv. The definition of “alteration” in s235(1) of the PA2008 includes “improving”. If any numbered works constitute “improvement of a highway”, but are not “likely to have a significant effect on the environment”, then rather than being “associated development” should they be part of the “alteration” NSIP identified in the dDCO [OD-008]?</p> <p>v. What is the relationship of Work 7 with item (o) under “further development within the Order” following Work No. 29?</p>	<p>iii. The Applicant does not consider that both limbs of the definition are triggered and therefore the works are not an NSIP in their own right. Furthermore, the Applicant considers that nothing of substance turns on this issue. The Work is included within the DCO, its effects have been assessed and it will be subject to all the same controls as the rest of the Scheme.</p> <p>iv. The Applicant notes and understands the point made. The difficulty with this approach, however, is that if the word “improving” is applied in this way it would call into question the whole structure of section 22, which is clearly seeking to distinguish between 3 categories of NSIP, one of which is an Improvement. The Applicant considers that the approach followed strikes the correct balance when interpreting section 22 as a whole in relation to the particular facts of this scheme.</p> <p>v. The “further development” applies to all the Works, including Work 7. There is no reason to give Work 7 special treatment. The thinking behind the need for the “further development” provisions apply to all Works.</p>

Question 20.16

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.16	<p>Work No. 8 Church Road footbridge</p> <p>The wording of this work implies that a new footbridge would be created over the A2070 to the south of the proposed roundabout, and that the Church Road Footbridge would be demolished and replaced, ie that two new bridges would be built.</p> <p>i. Would the Applicant re-word this work for clarity?</p> <p>ii. Can any fixed dimensions which have formed the basis of the assessment in the ES be expressed in the description of this work?</p>	<p>i. Yes</p> <p>Work No. 8 – the construction of a new cycle/footbridge over the A2070 main carriageway to the south of the new A2070 link road roundabout and the demolition of the existing Church Road footbridge.</p> <p>ii. HighwaysEngland are not able to secure dimensions for this work in the DCO as this would unreasonably restrict the detailed design. Requirement 11 ensures that the built bridge would have no materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.</p>

Question 20.17

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.17	<p>Work No. 17 Re-alignment of the A20 Hythe Road</p> <p>It is unclear what the private access referenced in this work would be to facilitate.</p> <p>i. Would the Applicant clarify this point?</p>	<p>i. Work No.17 is referring to the new access point to the Hinxhill Estate (Land identified as Plot 4/10/a on the 2.2. Land Plans drawings). New access is located north to the A20.</p>

Question 20.18

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.18	<p>Work No. 21 Communication cables</p> <p>This work is not described in the description of the proposed scheme in the ES [APP-030] and therefore the nature, scale and extent of the work assessed is unclear.</p> <p>i. Would the Applicant provide a detailed description of this work, including the assumptions which have formed the basis of the assessment presented in the ES?</p>	<p>i. The preliminary design for J10a has identified that an approximate length of 2km of existing National Roads Telecommunications Services (NRTS) cabling infrastructure will need to be replaced. This will need to be installed within a new ducted system.</p> <p>The existing NRTS cabling is direct buried armoured cabling and is only available for connection at conveniently placed cable jointing cabinets. These are located every 500m for copper cables and every 1000m for fibre optic cables. Therefore, the new ducted system will need to interface with existing longitudinal cables at the most convenient cable jointing cabinets at either end of the Scheme works. The extents of the new ducting system will therefore be approximately 2km in length to cater for both copper and fibre longitudinal cables. NRTS cabling requirements will be provided by NRTS within their own project design.</p> <p>The location of most of the existing technology assets within the proposed new J10a footprint will require relocation, removal or replacement, depending upon the design needs. To facilitate these moves, new local communications cables (non-NRTS) will need to be provided as well as new power cables. These are to installed within the proposed new duct system. Exact details of these cable requirements will be defined within the detailed design.</p> <p>This description formed the basis of the ES assessment.</p>

Question 20.19

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.19	<p>Works Nos. 26 and 27 Diversion of telecoms</p> <p>i. Would the Applicant state whether these two works are distinct works, and if so clarify the distinction, and if not remove one?</p>	<p>i. Works No.26 are diversion of the Vodafone cable located under A2070 Bad Munstereifel Road to the new A2070 Southern Link Road. Work No.27 are diversion of the Virgin Media cable located under A2070 Bad Munstereifel Road to the new A2070 Southern Link Road.</p>

Question 20.20

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.20	<p>Further development within the Order limits (after Work No. 29)</p> <p>Further developments (a) to (p) as stated are non-specific.</p> <p>i. In each case, where and how has it been assessed in the ES [APP-029 to APP-208], and where is it to be found on the Works Plans [OD-011]?</p> <p>ii. How will each of these further developments be unambiguously secured in the dDCO?</p> <p>iii. Would the Applicant ensure tight cross-referencing between the dDCO [OD-008], the Works Plans [OD-011] and the ES [APP-029 to APP-208]? Example: Sub-para (m), the</p>	<p>i. The approach followed in relation to “further development” is that routinely followed on DCOs, namely that there is a balance to be struck between the level of detail in the descriptions of each Work and the need to ensure that the DCO is comprehensive. As a result the list of “further development” is intended to avoid the need for the repetition of one or more of each of the different elements in the list with each Work. The same point applies to the Works plans, which are intended to show the numbered Works but are not required to show every point of detail. The underlying point is that Order which is granted has to be deliverable. The purpose of the ES is to identify the likely significant effects, meaning that it in turn is striking a balance in ensuring that the Scheme has been assessed so as to identify such effects, but not so as to go beyond than in a way which would make the exercise disproportionate and inconsistent with its purpose. Accordingly, the ES has considered the Scheme as a whole, but has not been structured or written up by reference to every Work or every element within the “further development”.</p>

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	<p>felling of trees, the ES description of the development in Chapter 2 [APP-030] does not appear to mention any requirement to fell trees, but the Arboricultural Implications Assessment [ES Appendix 7.3, APP-172] identifies a number of trees which would need to be felled as part of the development. Would the Applicant modify the dDCO to include a restriction, so it is only the tree felling assessed in the ES which can be undertaken?</p> <p>iv. Re sub-para (p), would the Applicant amend the wording of this sub-para to ensure that the associated development works would not go beyond what has been assessed in the ES (for example, wording along the lines of "...other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which do not give rise to any materially new or different significant effects from those assessed in the environmental statement.")?</p> <p>v. The following works which are described in the ES [APP-030] do not appear to feature in the dDCO works:</p> <p>a. CCTV mast, referenced in paragraph 2.3.16 of the ES;</p> <p>b. MS4 Gantries, referenced in paragraph 2.3.17 of the ES;</p> <p>c. Penstocks and bypass oil interceptors,</p>	<p>The Applicant has followed normal practice in all these respects.</p> <p>ii. The Applicant does not consider that any changes to the DCO or the Works plans are necessary to ensure that the "further development" described can be lawfully carried out pursuant to the dDCO if granted.</p> <p>iii. The Applicant does not consider that the approach indicated is appropriate. The Applicant has followed the same approach as that routinely applied on DCOs. In the specific case of tree felling, Requirement 4 requires the submission, approval and compliance with a landscaping scheme which will identify the trees to be retained and the measures for their protection. Subject to obtaining approval of that scheme, the Applicant will need to fell whatever trees are necessary to construct the development. The Applicant has followed normal practice in seeking to identify in preparing the ES the trees which are expected to be affected and has assessed the significance of that felling as part of the assessment. It is possible that the final proposals are different to this, which will be a matter for the landscaping scheme and approval at that time.</p> <p>iv. This amendment is not necessary as the point is already addressed by Requirement 11 in relation to detailed design.</p> <p>v. They would fall within "further development" under (h) and/or (p) in Schedule 1. The Applicant will consider further whether it would be prudent to have a more specific reference to the CCTV mast and the substation in particular.</p>

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	<p>referenced in paragraph 2.3.26 of the ES; and</p> <p>d. A new substation near the junction of Kingsford Street and Highfield Lane, referenced in paragraph 2.3.43 of the ES.</p> <p>Would the Applicant demonstrate how these works are secured in the dDCO [OD-008], or amend the dDCO to ensure that they would be secured?</p>	

Question 20.21

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.21	<p>Requirement 1 Interpretation</p> <p>As currently drafted the definition of “Stour Park site” includes “or other adjacent land”. This could mean that the “Stour Park site” is only “other adjacent land” and not the land subject to planning application 14/00906/AS.</p> <p>i. Would the Applicant clarify whether that is the intention of this provision?</p> <p>ii. Would the Applicant specify the precise detail of the “other adjacent land”?</p>	<p>i. The provision was not intended to tie the Order to a specific planning permission; it made reference to the location of the proposed development described in the present application for convenience.</p> <p>ii. This definition has been amended to reference the Sevington site described in the Ashford Borough Council Local Plan, thus:</p> <p>“Stour Park site” means the land to the south of the authorised development that is designated by Policy U19 – Sevington, in the Ashford Borough Council Urban Sites and Infrastructure Development Plan Document 2012</p> <p>This does not change the meaning of the definition as this is the land south of the development that is the subject of the present planning application.</p>

Question 20.23

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.23	<p>Requirement 7 Contaminated land and groundwater</p> <p>Requirement 7(2) leaves the determination of whether or not remediation is necessary solely to the undertaker.</p> <p>i. Would the Applicant explain why this is appropriate, and why the need for remediation should not be agreed by the requirement consultees?</p>	<p>i. The need for remediation will be a decision for the undertaker as it will be informed by the circumstances. The presence of contamination might, for example, lead to a change in how the works are delivered which avoids the need for remediation works.</p> <p>This wording was approved in The A14 Cambridgeshire to Huntingdon Improvement Scheme Development Consent Order 2016.</p>

Question 20.24

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.24	<p>Requirement 9 Protected species</p> <p>As currently drafted, Requirement 9 does not provide for construction to cease if a protected species that is identified in the ES [APP-029 to APP-208] is found.</p> <p>i. On the presumption that this is not the intended purpose of this provision, would the Applicant redraft this requirement to enforce</p>	<p>i. Protected species identified in the ES have been excluded from Requirement 9 as there is no need to cease works if they are found. EPS Licences will be used to allow protected species to be relocated, under these licenses. For species not covered by an EPSL, such as reptiles, mitigation strategies will be implemented to ensure there is no breach of legislation. These strategies/licences have been discussed and agreed with Natural England.</p> <p>ii. Requirement 9 expressly relates to species not previously identified in the</p>

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
	<p>cessation where a protected species identified in the ES is found?</p> <p>ii. Would the Applicant state how Requirement 9 relates to the biodiversity assessment presented in ES Chapter 8, since it does not appear to be mitigation that has been relied upon to reach the assessment conclusion?</p> <p>iii. As drafted, Requirement 9 does not require the Applicant to agree the content of the written scheme with the relevant planning authorities/ Natural England prior to implementation. Would the Applicant revise the requirement to reflect this need for agreement with these authorities?</p> <p>iv. As drafted, Requirement 9 has 3 sub-paras, but 9(3) cross references to sub para (4), which does not exist and is presumably an error. Would the Applicant re-draft accordingly?</p>	<p>ES. It is intended to provide a framework for species which are unexpectedly identified, on the basis that steps in relation to identified species have been resolved.</p> <p>iii. Consultation has been undertaken with Natural England, who are in agreement with the Scheme and The Requirements included in Schedule 2.</p> <p>iv. This point will be corrected.</p>

Question 20.25

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.25	<p>Requirement 11 Detailed design</p> <p>Requirement 11(1) states that "The authorised development must be designed in detail and carried out so that it is compatible with the</p>	<p>i. It is common for major projects not to be fully designed at the point of consent, whether DCO, Highways Act Order or planning permission. Highways England has a long established iterative design procedure. This is intended to balance the level of detail required at different stages in the</p>

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	<p>preliminary scheme design shown on the works plans and the engineering section drawings". ExA will need to be assured that the detailed design will be consistent with what has been presented in the Works Plans [OD-011] and assessed in the ES [APP-029 to APP-208].</p> <p>i. Would the Applicant explain why it will be necessary/ appropriate for the detailed design of the proposed development to be finalised after the DCO has been consented, if it is consented?</p> <p>ii. In respect of the provisions in Requirement 11(1), would the Applicant identify any precedents for them in made DCOs associated with other consented highways NSIPs?</p> <p>iii. In consideration of any such precedents, would the Applicant explain why the circumstances of the proposed development are similar?</p> <p>iv. Would the Applicant explain why in 11(1) "materially new or materially worse environmental effects" are left to the SoS's opinion, as opposed to there being an absolute restriction that they can have 'no materially different effects', which is then capable of being challenged regardless of what the SoS's opinion is?</p> <p>v. Would the Applicant consider adding in</p>	<p>project development with the increasing costs associated with each stage as it moves through the design process. To follow any different approach would give rise to potentially substantial abortive costs and would not be a prudent use of public money. A similar approach is followed on major private sector developments as well. The vast majority of DCOs which have been granted pursuant to the Planning Act 2008 have adopted this approach, which is supported by DCLG Guidance.</p> <p>ii. The Applicant's position is based on first principles. Precedent is always of interest, but is not determinative. The Applicant has not conducted a full review of all highways DCOs granted to date. The ExA has asked for specific relevant precedents.</p> <p>The Applicant would highlight the approach followed in:</p> <p>(a) The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 in Requirement 3 (page 34) which follows essentially the same approach as that in the current application, by allowing the Secretary of State to approve alterations to the design as long as they are within the limits of deviation and the envelope of the environmental statement;</p> <p>(b) The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016. The wording in Requirement 3 (page 65) of that DCO in sub paragraphs (1) and (2) is identical to that included in Requirement 11 of the dDCO and provides a direct precedent. The A14 DCO contains further generic provisions in sub paragraphs (3) and (4) in terms of consultation in relation to the detailed design which were considered to be disproportionate in the case the current project. The A14 project was significantly less developed in design terms than the current project.</p> <p>iii. The fundamental similarity relates to the points made in relation to question (i) i.e. the need which all major projects need for some flexibility to</p>

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	<p>11(1) “and any statutory bodies responsible for enforcement” after “following consultation with the relevant planning authority”, to ensure that such bodies would have a role in the agreement of the final design of the proposed development to ensure that it is compatible with the preliminary design Works Plans and accords with the requirements of the ES?</p> <p>vi. Requirement 11(2) states “Where amended details are approved by the Secretary of State under sub-para (1), those details are deemed to be substituted for the corresponding works plans or engineering section drawings”. As opposed to being “deemed to be substituted”, should any amended details require certification by the SoS?</p>	<p>remain in relation to the finalisation of the design, after consent has been granted.</p> <p>iv. The terms of the Requirement mean that a judgment has to be reached on whether the effects are materially new or materially worse. It has to be clear which party is making that judgment, otherwise the Requirement is unworkable. Whichever party makes the judgment will be a public authority (in this case the Secretary of State) which is obliged on normal administrative law principles to act reasonably. Accordingly, the Secretary of State’s judgment will be capable of being challenged on the grounds that he has not acted reasonably. It is not possible in practice to have an absolute restriction on something like this which inevitably involves some element of opinion, as opposed, for example, to a noise limit where the limit and the basis of measurement can be expressed with certainty.</p> <p>v. Highways England have no objection to the order being made in this form</p> <p>vi. It is not necessary to re-certify drawings approved by the Secretary of State under this Requirement.</p>

Question 20.26

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.26	<p>Requirement 12 Surface and foul water drainage</p> <p>Requirement 12(2) is a tailpiece provision.</p> <p>i. Would the Applicant explain why the tailpiece provision is appropriate/ necessary?</p>	<p>i. Such a provision is necessary to allow for updates to the drainage proposals to be made to incorporate emerging practice or ground situation. It is appropriate as the Secretary of State determines both the original application and the tailpiece.</p> <p>ii. The applicant has no objection to the order being made in this form.</p>

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
	ii. Would the Applicant explain why this provision does not require consultation with the relevant local planning authority?	

Question 20.27

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.27	Requirement 13 Approvals and amendments to approved details Requirement 13 is a tailpiece provision. i. Would the Applicant explain why the tailpiece provision is appropriate/ necessary in Requirement 13? ii. Would the Applicant explain why this provision does not require consultation with any relevant authority involved in the approval of, or consultation on, the originally approved details?	i. This requirement clarifies the status of amended details approved by the Secretary of State for the avoidance of doubt. It is appropriate as the Secretary of State determines both the original application and the tailpiece. ii. The requirements which this catch-all covers specify such consultation as necessary.

Question 20.28

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.28	Requirement 14 Alternative A2070 options	i. The requirement has not been drafted to limit the type of permission,

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	<p>Requirement 14(2) provides that the undertaker must not give notice under articles 21 and 24 that it intends to construct Work No.2B “unless a planning permission has first been granted for development of the Stour Park site”.</p> <p>As currently drafted, this provision does not:</p> <ul style="list-style-type: none"> • limit the type of planning permission that needs to be granted; • impose a timescale within which the planning permission must be obtained; • prevent the construction of Work No. 2A if the notice is given; or • limit the land which must benefit from the planning permission to at least include the land that is immediately adjacent to the proposed Work No.2B (see Requirement 1). <p>i. Would the Applicant explain why, in the interests of precision and certainty, Requirement 14 has not been drafted to secure the above points?</p> <p>As currently drafted Requirement 14(2) could be interpreted only to apply if the undertaker intends to give those notices under both Article 21 and Article 24, and not if the undertaker only intends to give notice under one of those articles.</p> <p>ii. Would the Applicant clarify whether this is</p>	<p>impose a timescale, prevent construction of 2A or limit the relevant area as this was not the intention of the provision. This is explored in detail in the applicant’s response to 20.3</p> <p>ii. Articles 21 and 24 independently require such notice if they are to be individually exercised. Requirement 14(2) clearly applies if either one or both Articles are exercised.</p>

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
	the intention of the provision?	

Question 20.29

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.29	<p>Paragraph 4: Anticipatory steps towards compliance with any requirement</p> <p>It is unclear what the intention of this paragraph is.</p> <p>i. Would the Applicant explain what this paragraph is intending to achieve?</p> <p>ii. Would the Applicant clarify why this provision is appropriate, since if something has already been done, to what extent should it still be a requirement at all?</p>	<p>(i) This provision is intended to facilitate the earliest commencement of works after the Order has come into force. It has been approved in the A14 Cambridgeshire to Huntingdon Development Consent Order 2016 (Schedule 2, Part 2, Paragraph 23). In practice, Highways England is likely to want to work up the details of the matters to be approved under the Requirements in advance of the grant of the DCO. Highways England is also likely to want to discuss those detailed proposals with relevant third parties in anticipation of the Order being granted in the terms applied for. For example, if Highways England were to prepare its detailed landscaping scheme in anticipation of the need to discharge Requirement 4(1), it will want to discuss that proposal with the planning authority, given that such consultation is required under the terms of the draft DCO, assuming the DCO is granted at all, and in the same terms. Paragraph 4 ensures that such steps would be retrospectively be given formal status under the DCO.</p> <p>(ii) In the absence of Paragraph 4, any consultation on such a draft landscaping scheme prior to the DCO having come into force (or a submission of the Scheme for approval, after consultation had been carried out), would have no legal status pursuant to the DCO. Such consultation would simply constitute advance discussions in anticipation of the formal submission of the Scheme for consultation (or approval) under the DCO. Whilst such advance submissions and discussions are always useful, it would be even more useful if it were possible for them to be given retrospective formal status, pursuant to Paragraph 4, assuming the DCO is in fact granted.</p>

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		<p>The net result would be the same i.e. that all the steps envisaged under the DCO would have taken place.</p> <p>These advance steps would be entirely at Highways England's risk in terms of whether the DCO was granted.</p>

Question 20.30

PINS Question Number	First Written Question	Response to First Written Question from Highways England (the Applicant)
20.30	<p>Para 2.13 of the dEM [APP-019] states that "in some cases there may be some overlap between associated development and works which form part of the NSIP". Either a particular work is part of an NSIP, or it is not.</p> <p>i. Would the Applicant clarify the intended meaning of the above statement?</p>	<p>i. DCLG Guidance on associated development applications for major infrastructure projects defines associated development as 'development which is associated with the principal development' and provides a set of principles to aid this interpretation. This is a definition by function, not by geography, and as such it is possible that functions can geographically overlap. The statement in the EM expresses this. Regardless, all of the works in the Order are capable of being consented by it and it is not necessary to go beyond the fact that they are either integral to, or development associated with, the NSIP.</p> <p>If the ExA is concerned that any element of the proposed works is neither part of an NSIP or associated with it, then the applicant will be happy to provide further clarification.</p>