

A14
**Cambridge to Huntingdon
improvement scheme**
Development Consent Order Application

HE/A14/EX/256

TR010018

HE/A14/EX/256

Commentary on those aspects of the draft DCO (Rev 6) discussed during the Examination
(marked-up version)

November 2015

A14 CAMBRIDGE TO HUNTINGDON IMPROVEMENT SCHEME

COMMENTARY ON THOSE ASPECTS OF THE DRAFT DCO (REV 56) DISCUSSED DURING THE EXAMINATION

1. INTRODUCTION

1.1 This document provides a commentary on changes made to the draft Development Consent Order ("DCO") in the version submitted at Deadline ~~13-15~~ (~~30 October 11 November~~ 2015) (DCO Revision 56), compared with the previous version of the draft DCO submitted at Deadline 10 (28 September 2015) (DCO Revision 4). Highways England's revised draft DCO (Revision 56) is document ~~HE/A14/EX/192~~HE/A14/EX/253, and an electronic comparison between the two versions has also been submitted (document ~~HE/A14/EX/193~~HE/A14/EX/254).

1.2 [Highways England has opted to simply update the previous commentary on changes to the DCO that was submitted at Deadline 13 \(applicant reference: HE/A14/EX/194; PINS reference: REP13-016\). A comparison of this version compared to that version is submitted along side this document with reference HE/A14/EX/256.](#)

1.3 ~~4.2~~In broad terms the changes to the latest draft DCO [compared to that submitted at Deadline 10](#) have been made for the following reasons:

1.3.1 ~~4.2.1~~changes arising from continued discussions with the host and other local authorities, statutory undertakers and landowners;

1.3.2 ~~4.2.2~~changes arising from amendments proposed by the Examining Authority in their consultation draft of the DCO published on 13 October 2015 (PINS ref: PD-016);

1.3.3 ~~4.2.3~~changes arising from points raised at the third Issue Specific Hearing on the DCO on 22 October 2015, together with points raised at the Issue Specific Hearings and Compulsory Acquisition Hearings that took place on 21 October 2015; and

1.3.4 ~~4.2.4~~other points which Highways England has identified as requiring amendment since the first revision of the DCO was submitted.

1.4 ~~4.3~~This document also seeks to provide commentary on any outstanding DCO-related issues, together with any resolved issues on which Highways England nevertheless considers it worth commenting.

1.5 ~~4.4~~This document should be read in conjunction with Highways England's *Comments on the Examining Authority's draft Development Consent Order* submitted for Deadline 12 (applicant reference: HE-A14-EX-185; PINS reference: REP12-007). Highways England does not intend to repeat comments made in that document.

2. TABLE OF CHANGES TO THE DRAFT DCO

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
Overall	<p>A number of minor drafting changes have been made throughout the DCO, following an 'audit' carried out to ascertain the consistency of the drafting with legislative drafting conventions. Such amendments are purely following 'good practice' and, as such, do not affect the operation of the provisions. In light of this, Highways England has not commented on each of these amendments.</p> <p>Examples include the amendment to 'authorised vehicle' in article 12(12) and amendments made in Schedule 3 (e.g. referring to 'miles per hour' as opposed to 'mph').</p>	No
Article 1	Amendments have been made so that the 'engineering section drawings' have been accurately referred to within the DCO. Consequential amendments have been made throughout the DCO as a result.	No
Article 2	<p>Amendments have been made to various definitions of the documents to be certified to reflect these now being listed in Schedule 10.</p> <p>Highways England is currently considering <u>has now concluded its thinking on</u> the documents that would comprise <u>should fall under</u> the definition of 'environmental statement' and will submit its proposed wording at Deadline 14. <u>These are set out in Schedule 10 – an explanation as to this is included in the commentary on Schedule 10 below.</u></p> <p><u>Whilst the definition of 'commence' has not been raised by the Examining Authority in its draft DCO or at the Issue Specific Hearing on 22 October 2015, Highways England considers that it is worth commenting on at this stage of the examination, bearing in mind its importance to the delivery of the scheme.</u></p> <p><u>The effect of the definition is that certain 'carved out' works (including archaeological investigations and non-intrusive investigations for the purpose of assessing ground conditions) can be carried out prior to the requirements contained in Schedule 2 to the DCO being discharged. The ability to do this is of critical importance to Highways England in the context of the challenging programme and thus a need to have an element of flexibility in respect of the implementation of the scheme. Following Question 1.6.1 of the Examining Authority's First Written Questions that dealt with the original definition of 'commence', Highways England gave further</u></p>	No

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p><u>consideration to this and limited the 'carved out' works, as it was considered these were drafted too widely in the application version of the DCO. This consideration was carried out by reference to the assessments undertaken for the environmental statement. As such, it is considered that the works that are 'carved out' would not have any impact on the effectiveness of the requirements from an environmental protection perspective.</u></p> <p><u>Highways England is particularly keen to draw the Examining Authority's attention to the importance of retaining this definition in the context of the definition of 'commence' being deleted by the Secretary of State when the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 was made. Highways England drew the Secretary of State's attention to the consequences of this and a Correction Order was made, amending some of the requirements, and it was recognised by the Secretary of State in the Correction Notice that the deletion of the definition of 'commence' had 'the unintended consequence of removing an acceptable degree of flexibility in the implementation of the project and that this is a correctable error for the purposes of Schedule 4 to the Planning Act 2008'.</u></p> <p><u>In light of this, Highways England considers that it has provided a robust justification for including the definition of 'commence' in the made DCO (if the application is granted), particularly by reference to limiting the number of 'carved out' works.</u></p>	
Article 7	<p>Whilst the last part of article 7(b) has not been raised by the Examining Authority in its draft DCO or at the Issue Specific Hearing on 22 October 2015, Highways England considers that it is worth commenting on at this stage of the examination, bearing in mind that it is not a standard provision.</p> <p>This provision was discussed in detail at the first Issue Specific Hearing on the draft DCO on 15 July 2015. As Highways England reiterated in its post-hearing submissions (application reference: HE-A14-EX-66; PINS reference: REP5-028), as there is no detailed scheme design at this point a proportionate degree of flexibility is essential, until further survey data is obtained amongst other things. Drainage outfalls are particularly where this flexibility is required.</p> <p>This flexibility is tempered by the protective provisions contained in Schedule 8 to the DCO, where affected parties would have a plan approval role, prior to any works taking place, including those beyond the vertical</p>	No

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p>limits of deviation.</p> <p>As a result of further submissions, Highways England clarified that a 'certification' process would be employed to show how the Secretary of State would be satisfied that any deviation beyond the vertical limits of deviation would not give rise to any materially new or materially worse environmental effects. The Secretary of State would need to consult with the relevant planning authority before giving such certification. This process was explained in further detail at Deadline 9 (PINS reference: REP9-015).</p> <p>Highways England considers that it has set out robustly during the examination as to why the wording in article 7(b) is appropriate for this scheme, with the relevant safeguards, and should be included in the made DCO (if the application is granted).</p>	
Article 11	<p>In its written representations, Cambridgeshire County Council sought amendments to article 11 of the DCO to clarify maintenance liability in circumstances where a footpath, cycle track or bridleway co-exists with a private means of access.</p> <p>Having considered these amendments, and discussed them with Cambridgeshire County Council, Highways England has agreed with Cambridgeshire County Council the amended wording in the latest iteration of article 11. Whilst not the same as Cambridgeshire County Council's proposals, both parties are content that article 11 as amended provides the comfort required.</p> <p>It should also be noted that Highways England has deleted what was article 11(5) of previous versions of the DCO. It is considered that this was superfluous in light of the new drafting in articles 11(1)-(3) which makes clear that references to highways includes culverts or other structures laid under them.</p>	Yes
Article 12	<p>Cambridgeshire County Council and Highways England have been discussing for some time the precise mechanics of de-trunking and how article 12(4) as originally drafted would operate (which provided for Highways England to unilaterally determine the de-trunking date) in the context of the intention of there being a legal agreement in place between the parties that would also regulate de-trunking.</p> <p>In light of these discussions, Highways England has amended article 12(4) and added a new article 12(5) to make clear that de-trunking cannot occur unless the</p>	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p>Secretary of State has consented, following consultation with Cambridgeshire County Council. Highways England understands Cambridgeshire County Council to be content with this amendment.</p> <p>Please also see Highways England's separate submission on de-trunking with reference number: HE/A14/EX/213.</p>	
Article 23	<p>Whilst the general power in article 23(2) to impose restrictive covenants has not been raised by the Examining Authority in its draft DCO or at the Issue Specific Hearing on 22 October 2015, Highways England considers that it is worth commenting on at this stage of the examination, bearing in mind it is not a standard provision.</p> <p>Highways England considers that a general power to impose restrictive covenants is a key term of the DCO. This is for two primary reasons. First, as has been stated throughout the examination, the scheme has not yet been through the detailed design process. As such, rationalisation of land requirements may take place, whereby lesser rights are needed and where restrictive covenants could be imposed rather than land being acquired permanently. Secondly, and related to this, discussions with landowners are on-going and it is not yet clear as to the arrangements that will be put in place for the benefit of those landowners. Some will prefer for restrictive covenants to be imposed, rather than land being taken permanently. Due to this uncertainty, a wide power to impose restrictive covenants is required.</p> <p>Highways England considers that it has set out robustly during the examination as to why this general power is appropriate, and should be included in the made DCO (if the application is granted).</p>	No
Article 41	<p>Article 41 has been amended to make clear that the documents to be certified are now listed in Schedule 10. That Schedule includes a list of document reference numbers to ensure there is clarity as to which documents are to be certified.</p> <p>A note on how the certification process will operate in practice is attached to this note at Appendix 1. In respect of new sub-paragraph (2), please see the commentary on 'Schedule 1, General' below.</p>	Yes
Schedule 1, General	A number of amendments to this Schedule have been made as a result of the revision of floodplain compensation areas. These changes are explained in the Compulsory Acquisition Submission submitted at	No

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p>Deadline 14 (applicant ref: HE/A14/EX/247; PINS ref: REP14-024).</p> <p>It should be noted that there was an error in that document, however. On page 53 of that submission it was stated that the DCO needed to be amended such that Work No. 26(gg) needed to be removed. However, this should have referred to Work No. 5(ggg) needing to be removed. This amendment has been made accordingly in the latest draft of the DCO.</p> <p>It should be noted that at the request of the Examining Authority Highways England has not submitted into the examination revised plans that reflect these changes. It is suggested that the Secretary of State can make his decision based on the information in respect of the excluded or changed floodplain compensation areas that will be provided by the Examining Authority in its recommendation report and the changes made to the revised DCO. Following the decision of the Secretary of State, should the application be granted, Highways England proposes to make the necessary revisions to the plans to accord with that decision and then submit them for certification under article 41 of the DCO. At that stage, the works plans would be checked by the Department for Transport to ensure that they reflect the changes to the floodplain compensation areas endorsed in the Secretary of State's decision. In this context, Highways England has made an addition to article 41 (new sub-paragraph (2)) to make clear that the Department for Transport can require changes to any document (including the plans) listed in Schedule 10.</p>	
Schedule 1, Work No. 6	The distances in the preamble have been extended as a result of accepted design changes (DR1.23).	No
Schedule 1, Work No. 64	The cross-reference to the Work No. concerning the new Conington Road has been amended.	No
Schedule 1, Work No. 74	An amendment has been made for clarification.	No
Schedule 1, 'catch-all'	The final sentence in the 'catch-all' has been deleted, as on a review this was deemed to be superfluous in light of the remainder of Schedule 1.	No
Paragraph 1 of Part 1 of Schedule 2	Two definitions have One definition has been added to reflect amendments to the requirements, namely the 'flood risk assessment' and 'outline WSI', both of which will be documents a document certified under article 41.	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	Amendments have also been made to the definitions to reflect the fact that certified documents are now listed in Schedule 10.	
Paragraph 3 of Part 1 of Schedule 2	<p>Sub-paragraph (1) has been amended to to provide clarity that the detailed design of the scheme must be compatible with the preliminary scheme design shown on the works plans and the engineering section drawings. Further amendments have been made to make clear that any amendments to the works plans or engineering section drawings must not give rise to any materially new or materially worse adverse environmental effects from those assessed in the environmental statement. This wording stems from amendments made in the ExA's draft of the DCO, but Highways England has amended the wording to make it consistent with article 7 of the DCO.</p> <p>The addition of sub-paragraph (2) also has its origins in the ExA's draft of the DCO, but Highways England has added in some wording to make clear that any amended documents will be made available in electronic form for inspection by members of the public. This is in response to concerns raised at the Issue Specific Hearing on the DCO on 22 October 2015 as to how the public would be able to access any amended certified plans or documents.</p> <p>Sub-paragraphs (3) and (4) have been moved from an existing requirement to ensure all requirements relating to detailed design are contained on paragraph.</p> <p>A new sub-paragraph (5) has been added as a result of submissions made throughout the examination, and discussions at the Issue Specific Hearing on the DCO on 22 October 2015 in respect of the Great Ouse viaduct.</p> <p>Highways England has been considering how best it can give parties comfort that the Great Ouse viaduct, which is a significant structure in the context of the scheme in a sensitive location, will be subject to scrutiny during the detailed design stage.</p> <p>Whilst Highways England maintains that an overall detailed design 'approval' requirement would be onerous and inappropriate, thus failing the various tests in the National Networks National Policy Statement, it does recognise that the Great Ouse viaduct is a unique feature of the scheme. In this context, Highways England has therefore concluded that the Secretary of State should have an approval role in respect of the 'external appearance' of the viaduct, such approval to be subject to consultation</p>	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p><u>with the relevant planning authority.</u></p> <p><u>It is hoped that this approval process, in conjunction with the other commitments contained in paragraph 3 of Part 1 of Schedule 2, gives comfort as to the rigorous, collaborative process Highways England will go through prior to finalising detailed design and constructing the scheme.</u></p>	
Paragraph 4 of Part 1 of Schedule 2	Sub-paragraph (2) has been added to make clear that any local environmental management plans produced under the code of construction practice would be made available for inspection by the public. This is in response to concerns raised at the Issue Specific Hearing on the DCO on 22 October 2015 as to the 'transparency' of the processes under the code of construction practice.	Yes
Paragraph 6 of Part 1 of Schedule 2	Sub-paragraph (1) has been amended to make clear that any risk assessment in respect of found contaminated land is carried out in consultation with the relevant planning authority or the Environment Agency as appropriate. This is in response to South Cambridgeshire District Council's submissions on this point at Deadline 10.	No
Paragraph 7 of Part 1 of Schedule 2	<p>A new sub-paragraph (1) has been added to require Highways England, following consultation with the relevant planning authority, to issue a planting strategy to include the landscape elements and objectives of the scheme. The landscaping schemes to be produced in accordance with sub-paragraph (2) would need to be in accordance with this planting strategy.</p> <p>Highways England has made this change in response to submissions made by South Cambridgeshire District Council (both orally and in writing) and provisions in the ExA's draft DCO. These proposed an overarching landscaping strategy to be approved by the Secretary of State, under which more detailed strategies would be produced and would also need approval.</p> <p>Highways England considers that it is not appropriate for the Secretary of State to have an approval role for both 'tiers' (and, indeed, considers the Secretary of State would not welcome this) so considers its proposed solution provides a robust and sufficient framework within which the landscaping for the scheme can be developed, approved and implemented. South Cambridgeshire District Council has confirmed that it is content with this proposed wording and this is documented in the relevant</p>	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	Statement of Common Ground submitted at Deadline 13.	
Paragraph 8 of Part 1 of Schedule 2	<p>Sub-paragraph (1) has been amended to include reference to the 'outline WSI' which has been agreed with Cambridgeshire County Council and will be a certified document. The detailed written schemes for the investigation of areas of archaeological interest must be in accordance with the outline WSI.</p> <p>This amendment was included <u>In its Deadline 13 version of the DCO, Highways England amended this requirement to refer to an 'outline WSI', a certified document with which the WSI to be produced under this requirement must be in compliance with.</u></p> <p><u>However, having given this further consideration, Highways England has come to the conclusion that this does not work practically and has the potential to cause confusion. As such, Highways England considers it most appropriate to revert back to the previous wording, whereby the WSI needs to be approved by the Secretary of State and then implemented. Detailed WSIs are then produced in accordance with the Code of Construction Practice, which is secured by a separate requirement.</u></p> <p><u>The inclusion of the outline WSI was found in the ExA's draft DCO, but is not considered necessary for the reasons given above.</u></p>	Yes
Paragraph 11 of Part 1 of Schedule 2	<p>The wording '(including longer-term maintenance and management)' has been added to sub-paragraph (1) in response to a written submission from South Cambridgeshire District Council at Deadline 10.</p> <p>Sub-paragraph (2) has been added to make clear that the site-specific restoration and aftercare plans produced under the borrow pits aftercare and restoration strategy would be made available for inspection by the public. This is in response to concerns raised at the Issue Specific Hearing on the DCO on 22 October 2015 as to the 'transparency' of the processes under the borrow pits aftercare and restoration strategy.</p>	Yes
Paragraph 12 of Part 1 of Schedule 2	<p>Minor amendments have been made to sub-paragraphs (1) and (3) in response to a written submission from South Cambridgeshire District Council at Deadline 10. These simply make clear that (a) the written details of noise mitigation must include any very low noise surfacing; and (b) the noise mitigation approved must be retained.</p>	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
Paragraph 14 of Part 1 of Schedule 2	<p>Wording has been added at the end of sub-paragraph (2) as a result of a suggestion made in the Examining Authority's draft DCO. Highways England considers this addition to be appropriate on the basis that it provides further clarity on what the scheme for the standard of highway lighting will encompass.</p> <p>On a separate but related point, in its draft DCO, the Examining Authority queried whether Natural England were content with the wording of this requirement. Highways England has attached an email at Appendix 2 to this document confirming its agreement to the requirement.</p>	Yes
Paragraph 15 of Part 1 of Schedule 2	<p><u>Previous paragraph 15 (Development of detailed design) has been deleted, as it has been amalgamated into paragraph 3.</u></p> <p>A new requirement has been added following discussions at the Issue Specific Hearing on the DCO on 22 October 2015. Due to the finalised updated flood risk assessment being submitted into the examination at Deadline 13, it is considered appropriate for there to be a requirement securing compliance with it. The flood risk assessment will be a certified document under article 41, and Highways England must ensure that no part of the authorised development is predicted to result in any exceedance of the flood risk levels shown in the flood risk assessment. <u>Following further discussions with the Environment Agency, a further limb and minor tweaks have been added to this requirement to make clear that Highways England can carry out the development otherwise than in accordance with the flood risk assessment, but only if it is demonstrated to the Environment Agency's satisfaction that either no material exceedances of the flood levels would be experienced or that affected landowners accept any predicted exceedances of the flood levels as reported in the flood risk assessment. This has been agreed with the Environment Agency, and it has been confirmed this provides the Environment Agency with the required comfort.</u></p> <p><u>However, there is a minor disagreement between the parties in respect of the use of the word 'material' in the requirement (although this does not impact on the effect of the requirement in respect of satisfying the Environment Agency's outstanding minor concerns).</u></p> <p><u>Highways England understands that the Environment Agency is not comfortable with the inclusion of 'material'. However, Highways England is of the opinion that the use of the word 'material' has</u></p>	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p><u>precedent in made DCOs and is widely used and understood. This would give Highways England suitable flexibility. Without the inclusion of the term 'material', Highways England considers that the requirement is circular, as it would still be bound by the precise flood levels in the flood risk assessment. It considers a certain amount of flexibility is entirely appropriate.</u></p> <p><u>In its Rule 17 letter dated 3 November 2015, the Examining Authority suggested a new requirement in order to deal with continuing uncertainties as to the flood model for Oakington Brook. Both the Environment Agency and Highways England do not consider this to be necessary in light of the revised flood model and the effect of the new proposed requirement set out above (notwithstanding the disagreement in respect of the word 'material', which the Environment Agency has confirmed does not affect the comfort it derives from the requirement).</u></p>	
Paragraph 16 of Part 1 of Schedule 2	<p>A new requirement has been added in respect of air quality monitoring.</p> <p>There have been numerous representations made on the need for air quality monitoring by the local authorities during the examination. Highways England maintains that no such air quality monitoring is required. However, in the interests of goodwill, and to ensure effective collaboration between Highways England and the local authorities, air quality monitoring at specific sites has been agreed to be provided and will be secured by this requirement. For further detail on the arrangements and background, please see Highways England's separate position statement on air quality monitoring submitted alongside this note at Deadline 13 with reference number HE/A14/EX/212.</p> <p>The requirement obliges Highways England to provide air quality monitoring as specified, share data with the local authorities (with an equivalent obligation on the local authorities to share their own air quality monitoring data with Highways England) and if, following analysis, it is considered that the A14 is directly responsible for any worsening in air quality at the monitoring sites, a scheme of mitigation must be discussed and, if concluded necessary, submitted to and approved by the Secretary of State. It is considered that this proposal should be acceptable to the local authorities.</p> <p><u>Following further discussions with the local authorities, Highways England has amended the requirement</u></p>	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p>proposed at Deadline 13 and this is reflected in the revised draft of the DCO submitted at Deadline 15.</p> <p>For clarity, Highways England still maintains that no post-opening noise monitoring is required, pursuant to its various submissions on the subject. As such, no noise monitoring is proposed.</p>	
<p>Paragraph 17 of Part 1 of Schedule 2</p>	<p>A new sub-paragraph (3) has been added as a result of submissions made throughout the examination, and discussions at the Issue Specific Hearing on the DCO on 22 October 2015 in respect of the Great Ouse viaduct.</p> <p>Highways England has been considering how best it can give parties comfort that the Great Ouse viaduct, which is a significant structure in the context of the scheme in a sensitive location, will be subject to scrutiny during the detailed design stage.</p> <p>Whilst Highways England maintains that an overall detailed design 'approval' requirement would be onerous and inappropriate, thus failing the various tests in the National Networks National Policy Statement, it does recognise that the Great Ouse viaduct is a unique feature of the scheme. In this context, Highways England has therefore concluded that the Secretary of State should have an approval role in respect of the 'external appearance' of the viaduct, such approval to be subject to consultation with the relevant planning authority.</p> <p>It is hoped that this approval process, in conjunction with the other commitments contained in paragraph 17 of Part 1 of Schedule 2, gives comfort as to the rigorous, collaborative process Highways England will go through prior to finalising detailed design and constructing the scheme.</p>	<p>Yes</p>
<p>Paragraph 19<u>18</u> of Part 1 of Schedule 2</p>	<p>Highways England has added a new sub-paragraph (2) in direct response to suggested wording from the Examining Authority in its draft DCO.</p> <p>This provides that Highways England must reflect in any details submitted for approval under the requirements, any consultation responses received in the development of those details, where it is appropriate, reasonable and feasible to do so.</p>	<p>Yes</p>
<p>Paragraph 23<u>22</u> of Part 2 of Schedule 2</p>	<p>A new paragraph has been added to make clear that any steps taken prior to the DCO coming into force, if such steps were intended to demonstrate compliance with the requirements, are treated as being valid for such compliance as if they had been carried out</p>	<p>Yes</p>

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p>following the making of the DCO.</p> <p>This is simply to allow Highways England to, for example, submit plans for approval prior to the making of the DCO, in order to help meet a challenging construction timetable.</p>	
Part 3 of Schedule 4, Sheets 9 and 10	These amendments have been made as they are necessary in connection with design change DR1.25.	No
Part 6 of Schedule 3	<p>The numbering in this part of the schedule has been amended to bring it further into line with established statutory instrument drafting conventions.</p> <p>Consequential amendments to the cross referencing in article 12 have been made accordingly.</p>	No
Schedule 7, General	<p>A number of amendments to this Schedule have been made as a result of the revision of floodplain compensation areas. These changes are explained in the Compulsory Acquisition Submission submitted at Deadline 14 (applicant ref: HE/A14/EX/247; PINS ref: REP14-024).</p>	No
Schedule 8 9	<p>Schedules 8 and 9 have been swapped around to ensure consistency with the order in which each Schedule is referred to in the DCO.</p> <p>The title to Part 1 of Schedule 8-9 has been amended to make clear that it does not apply to oil apparatus, as separate protective provisions are being discussed in respect of the CLH Pipeline System. It is anticipated hoped that a-an agreed set of protective provisions can be agreed by Deadline 14 submitted before the end of the examination, although Highways England accepts it may have to continue to negotiate with CLH and provide an update to the Secretary of State following the conclusion of the examination.</p> <p>The protective provisions in Part 3 of Schedule 8-9 are now substantially agreed with the Environment Agency. Minor cross-referencing amendments have been made which were brought to Highways England's attention by the Environment Agency. New wording has also been added to address a concern the Environment Agency had in respect of maintenance of access. This has been agreed between the parties.</p> <p>Part 4 of Schedule 8-9 has been agreed with Cambridgeshire County Council, although including the coordinates included are in draft. The parties will continue to discuss these in paragraph 32. Highways England continues to attempt has attempted to engage with Alconbury and Ellington Internal Drainage</p>	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p>Board on the protective provisions, as detailed in the relevant Statement of Common Ground submitted at Deadline 13. Highways England is grateful to the Board for having reverted on the protective provisions on 10 November. However, the comments raised make it clear that further substantive discussions will need to take place following the conclusion of the examination. As such, the parties will endeavour to agree the protective provisions, and provide an update to the Secretary of State. The consent of Alconbury and Ellington Internal Drainage Board to the disapplication of their consenting powers in article 3 of the DCO is dependent on agreement in respect of the protective provisions. If agreement is not able to be reached, Alconbury and Ellington Internal Drainage Board's usual consenting powers will apply to the scheme.</p> <p>Part 5 of Schedule 8-9 has been agreed with National Grid.</p> <p>Part 6 of Schedule 8-9 is, in the main, agreed with Network Rail, with a couple of minor outstanding points. Engagement between the parties is ongoing, with the aim of submitting an agreed position at Deadline 14. It is hoped that an agreed set of protective provisions can be submitted before the end of the examination, although Highways England accepts it may have to continue to negotiate with Network Rail and provide an update to the Secretary of State following the conclusion of the examination.</p> <p>Part 7 of Schedule 8 is under discussion-9 is now agreed with Anglian Water, although the terms are broadly agreed. The parties continue to engage, with the aim of submitting an agreed position at Deadline 14.</p>	
Schedule 10	<p>Please see the commentary on article 41 above, for an a general explanation as to this new schedule.</p> <p>As stated in the commentary on article 2 above, Highways England has now concluded its considerations as to which documents should form the 'environmental statement' for the purpose of the relevant definition in the DCO. Highways England has also given consideration as to the documents that are 'environmental information' and thus should be taken into account by the Examining Authority and the Secretary of State. Explanations on both these points are set out below.</p> <p>The definition of "Environmental Statement" For the purposes of the development consent order (if made), "the environmental statement" will comprise</p>	Yes

Provision in revised draft DCO and/or issue	Brief description and explanation	Did the issue arise in the ExA's draft DCO and/or the DCO ISH on 22 October?
	<p><u>the documents set out in Schedule 10 to the DCO, certified by the Secretary of State as the environmental statement.</u></p> <p><u>The documents included in Schedule 10 are the application version of the environmental statement submitted with the application, plus documents submitted subsequently that supersede or are supplemental to the environmental statement (or parts thereof) and which report likely significant effects or mitigation measures where such effects or mitigation are secured by the DCO.</u></p> <p><u>Documents produced during the examination that are supplemental to the environmental statement but do not operate to update the environmental statement, provide an appraisal of significant effects or introduce additional mitigation, are not included in the definition of "environmental statement" for the purpose of the DCO. Those documents are, however, included as "environmental information" to be taken into account by the Examining Authority and the Secretary of State in their consideration of the application (see below for further details). The distinction is because, whilst such documents provide information about the scheme and its environmental effects, they do not identify environmental effects that are utilised by the DCO as a means to limit the scheme's environmental effects, nor do they include mitigation measures that are required to be delivered as part of the scheme and so secured by the DCO.</u></p>	

APPENDIX 4

NOTE ON CERTIFICATION PROCESS

1. INTRODUCTION

- 1.1 At the Issue Specific Hearing on the Development Consent Order (“DCO”) that took place on 22 October, the Examining Authority requested a note on (i) how it is proposed the certification process under the draft DCO would work generally, and how the public can establish whether any certified documents have been amended.
- 1.2 Highways England has produced this note to cover both aspects in order to assist the Examining Authority.

2. GENERAL CERTIFICATION PROCEDURE

- 2.1 Under article 41(1) of the draft DCO, as soon as practicable after the Order is made (if the application is granted), copies of specified documents must be ‘certified’ by the Secretary of State as true copies. The specified documents have been listed out in a separate schedule to include document reference numbers for identification purposes. It is considered that this provides certainty as to what needs to be certified under the DCO.
- 2.2 In practice, Highways England would deliver a copy of all of the relevant documents to the Department for Transport. Officials would then check these against the documents cited by the Examining Authority in their report to the Secretary of State.
- 2.3 If the officials are satisfied, each page of the ‘certified’ document would be stamped and signed by a duly authorised representative of the Department for Transport. As article 41(2) of the draft DCO states:

“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.”

- 2.4 Following certification of the documents, under article 41(3) Highways England is under an obligation to make the documents available in electronic form for inspection by members of the public. It is anticipated that this will be via an easily accessible website. Following comments at the Issue Specific Hearing on 22 October, Highways England will seek to discuss with relevant local authorities as to how best their websites could easily link into the website containing the certified documents.

It is hoped that making the documents available in this way will enable people affected by the scheme easily to access the various documents and to check compliance.

3. AMENDMENT OF CERTIFIED DOCUMENTS

- 3.1 Paragraph 3(1) of Part 1 of Schedule 2 to the draft DCO provides that the authorised development must be constructed in accordance with the ‘works plans’ and ‘engineering section drawings’ (as defined in article 2 and included in article 41 as documents to be certified). However, this paragraph also states that this is:

“...unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority...”

- 3.2 This, in effect, means that the works plans and engineering section drawings as certified can be amended, if agreed by the Secretary of State.

~~3.3 The question therefore arises as to how members of the public (and, indeed, Highways England and its contractors) can be clear as to which version of these plans and drawings are secured by the DCO.~~

~~3.4 Highways England has included some wording at paragraph 3(2) of Part 1 of Schedule 2 to the draft DCO to address this issue:~~

~~*“Where amended details are approved by the Secretary of State pursuant to sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering section drawings **and the undertaker must make those amended details available in electronic form for inspection by members of the public.**”*~~ (emphasis added)

~~3.5 Highways England has added this wording in order to make clear that the amended details must be made available for public inspection. Highways England will ensure that its website containing the certified documents will make clear where any documents have been superseded and provide a signpost to the replacement document.~~

~~3.6 Highways England is confident that this provides members of the public with sufficient clarity as to which documents are at any time authorised by the DCO.~~

APPENDIX 2

EMAIL FROM NATURAL ENGLAND IN RESPECT OF THE LIGHTING REQUIREMENT