



Application by Highways England for an Order Granting Development Consent for the A38 Derby Junctions Scheme The Examining Authority's issues and questions for Issue Specific Hearing 3 dealing with matters relating to the draft Development Consent Order

The issues and questions set out below will be referred to at Issue Specific Hearing 3, which will consider the draft Development Consent Order (dDCO) and will be held on Tuesday, 18 February 2020.

They are principally addressed to the Applicant and public bodies and other parties who are named in the dDCO but contributions will be welcome from other Interested Parties attending the hearing.

Abbreviations

PA2008	The Planning Act 2008 as amended	OEMP	Outline Environmental Management Plan
dDCO	draft Development Consent Order	CEMP	Construction Environmental Management Plan
DCC	Derbyshire County Council	FWQ	First Written Questions
DCiC	Derby City Council	HEMP	Handover Environmental Management Plan
EA	Environment Agency	ISH	Issue Specific Hearing
EBC	Erewash Borough Council	NPSNN	National Networks National Policy Statement
ES	Environmental Statement	SWQ	Second Written Questions
ExA	Examining Authority	TMP	Traffic Management Plan

The Examination Library is at the following link: <http://infrastructure.planninginspectorate.gov.uk/document/TR010022-000671>

No	Addressed to	Reference	Issues and questions
a) General matters and preamble			
1.	Applicant Derby City Council (DCiC) Erewash Borough Council (EBC) Environment Agency (EA)	"Guillotine" provisions Articles 15(6), 19(11), 20(7), 22(6) SWQ [PD-014] 1.1 Applicant response [REP4-024] DCiC response [REP4-029] EBC response [REP4-031] EA response [REP4-027] Applicant response [REP5-010]	a) Update on discussions between the Applicant and relevant consultees regarding the agreement of provisions that confer deemed consent if a consultee does not respond within a specified period. b) Should the "guillotine" provisions contain an express requirement that any application for consent should contain a statement drawing the consultee's attention to the guillotine, as preferred by EBC? c) Is a 28 day "guillotine" period adequate? Should 12 weeks be applied to Article 20, as suggested by DCiC? Whether DCiC's concerns would be addressed through the Environmental Permitting regime.
2.	Applicant	Tailpieces Requirements 15(2), 16(2) OEMP [REP3-003] PW-G4, MW-G12 SWQ [PD-014] 1.2 Applicant response [REP4-024]	Whether the tailpieces "... taking into account the mitigation identified in it" and "... taking into account the lighting identified in it" can be deleted.
b) Part 1 – Preliminary			
3.	Applicant	Interpretation Article 2(1) "maintain" SWQ [PD-014] 1.3 Applicant response [REP4-024]	Whether the definition of maintain should be amended to "... and excludes <u>any works that would give rise to any materially new or materially adverse environmental impacts compared to those assessed in the environmental statement.</u> "
4.	Applicant EA DCiC	Article 3 - Disapplication of legislative provisions SWQ [PD-014] 1.4	a) Update on discussions between the Applicant, Local Authorities and the EA regarding the disapplication of the Water Resources Act 1991 and of the Land Drainage Act 1991. The outstanding matters for agreement,

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	Derbyshire County Council (DCC)	Applicant response [REP4-024] DCiC response [REP4-029] DCC response [REP4-030] EA response [REP4-027] Applicant response [REP5-010]	the next steps to be taken and whether agreement is anticipated during the Examination. b) The need for protection to ensure that the LLFA can influence the detailed design of watercourse alteration to ensure flood risk is not increased. Whether consultation during detailed design would be enough.
5.	Applicant	Article 4 - Maintenance of drainage works SWQ [PD-014] 1.5 Applicant response [REP4-024]	Amended dDCO wording to clarify responsibilities for maintenance of drainage works while the Applicant has temporary possession of land, for example: <ul style="list-style-type: none"> • whether it should be secured that the Applicant would have responsibility when it has temporary possession unless otherwise agreed in writing with the landowner; or • whether it should be secured that responsibilities would need to be agreed with the landowner in writing in advance of temporary possession being taken.
c) Part 2 – Principal Powers			
6.	Applicant DCiC DCC EBC	Article 6 – Maintenance of authorised development SWQ [PD-014] 1.6 Applicant response [REP4-024] Applicant [REP4-026] DCiC response [REP4-029] DCC response [REP4-030] EBC response [REP4-031] Applicant response [REP5-010]	How the maintenance of mitigation measures on land not owned by the Applicant, or where other parties would be responsible for maintenance, should be secured, for example: <ul style="list-style-type: none"> • whether there should be an overall requirement for the Applicant to maintain all mitigation measures identified in the ES, unless the dDCO provides otherwise or unless otherwise agreed in writing; or • whether it should be secured that responsibilities should later be agreed in a separate document to be substantially in accordance with a draft version submitted to the Examination and included in Schedule 10.

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7.	Applicant	Article 8 – Limits of deviation SWQ [PD-014] 1.7 Applicant response [REP4-024]	Clarification of the lateral limits of deviation assessed in the ES.
8.	Applicant Cadent Gas Limited	Article 10 – Consent to transfer Benefit of Order Cadent Gas Limited [REP5- 012]	Amendments suggested by Cadent Gas Limited.
d) Part 3 – Streets			
9.	DCiC DCC	Streets SWQ [PD-014] 1.8 DCiC response [REP4-029] DCC response [REP4-030]	Whether DCiC have any outstanding concerns with respect to: <ul style="list-style-type: none"> • how Section 4 of the Highways Act would be affected; • provisions for construction and maintenance of new, altered or diverted streets and other structures (Article 13); • clearways (Article 18) or • traffic regulations (Article 19)?
10.	Applicant DCiC DCC	Article 11 – Street works SWQ [PD-014] 1.9 Applicant response [REP4-024] DCiC response [REP4-029] Applicant response [REP5-010]	Update on discussions regarding conflict between the ability for the undertaker to enter any streets within the Order Limits with the ability of the Local Highways Authorities to perform their duties: <ul style="list-style-type: none"> • whether a process that satisfies the statutory duties of the Local Highways Authorities should be added to the TMP; or • whether the Local Highways Authorities' permit schemes should be disapplied.

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11.	DCiC	Article 14 – Classification of roads, etc. SWQ [PD-014] 1.10 DCiC response [REP4-029] DCC response [REP4-030] Applicant response [REP5-010]	a) DCiC concerns [REP4-029] regarding how the assets to be included in the inventory of any detrunked roads should be secured. Whether enough information is provided in Parts 2 and 3 of Schedule 3. b) The need for any agreement outside the Examination and whether that is material to the Examination.
e) Part 4 – Supplemental Powers			
12.	EA DCiC DCC	Article 20 – Discharge of water SWQ [PD-014] 1.11 DCiC response [REP4-029] DCC response [REP4-030] EA response [REP4-027] Applicant response [REP5-010]	a) Whether the following provisions should be added: <ul style="list-style-type: none"> <i>The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river?</i> <i>This article does not authorise any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010 or nothing in this article overrides the requirement for an environmental permit under Regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016?</i> <i>This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (3)?</i> b) DCiC concerns regarding the need to add a provision to limit the amount of water discharged to a sewer drain or watercourse, consistent with the National Planning Policy Framework. Whether those concerns would be

No	Addressed to	Reference	Issues and questions
			<p>addressed by the Applicant's suggested addition of the following to the OEMP:</p> <ul style="list-style-type: none"> <i>"The applicable local authorities will be consulted with regard to highway runoff discharge rates, noting that Highways England will demonstrate that reasonable steps have been taken such that the total discharge rate from the Scheme surface water drainage system does not exceed the discharge rate of the existing surface water drainage system and that betterment will be provided where practical"</i> <p>c) DCC concerns for clarity regarding the discharge of water. The protection provided by the Water Industry Act and through the Environmental Permitting regime.</p>
f) Part 5 – Powers of Acquisition			
13.	Applicant Cadent Gas Limited	Article 26 – Compulsory acquisition of rights Cadent Gas Limited [REP5-012]	Matters raised by Cadent Gas Limited and the related provisions in Article 10(4).
14.	DCiC DCC	Article 27 – Public rights of way SWQ [PD-014] 1.12 DCC response [REP4-030]	Whether the Local Highways Authorities have any outstanding concerns regarding Public Rights of Way that need to be addressed in the dDCO or TMP.
15.	Applicant	Article 33 - Temporary use of land for carrying out the authorised development SWQ [PD-014] 1.13	Whether the wide-ranging phrase <i>"or any other mitigation works in connection with the authorised development"</i> can be made more precise.

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g) Part 6 – Operations			
16.	Applicant DCiC DCC EBC	Article 39 - Felling or lopping of trees and removal of hedgerows SWQ [PD-014] 1.14 Applicant response [REP4-024] DCiC response [REP4-029] DCC response [REP4-030] EBC response [REP4-031] Applicant response [REP5-010]	<p>a) Whether there should be a provision for consultation with DCiC with respect to the possible retention of felled timber within DCiC land.</p> <p>b) Whether there should be a provision for advance notice of the removal of existing trees and vegetation to be provided to the relevant Local Authority at least 14 days before any works commence. The updated OEMP provisions mentioned by the Applicant.</p> <p>c) The suitability of the hedgerow plans [REP3-021] submitted by the Applicant for the purposes of the Hedgerows Regulations 1997 and how they should be referenced by the dDCO and whether they should be included in Schedule 10. Whether the dDCO should require the production of a Schedule and a plan and consultation with the Local Authorities prior to the removal of any hedgerows subject to protection under the Hedgerow Regulations 1997.</p> <p>d) Whether it should be secured that all vegetation to be retained would need to be protected in accordance with the guidelines set out in BS5837:2012 Trees in relation to design, demolition and construction.</p> <p>e) The mitigation planting indicated in the Environmental Masterplan figures (ES Figure 2.12C and 2.12D) and the mitigation provided in the OEMP (MW-LAN2).</p>
h) Part 7 – Miscellaneous and General			
17.	DCiC	Article 50 - Appeals relating to the Control of Pollution Act 1974 SWQ [PD-014] 1.16 Applicant response [REP4-024]	Update on any discussions between the Applicant and DCiC and whether DCiC have any outstanding concerns.

No	Addressed to	Reference	Issues and questions
		DCiC response [REP4-029] EBC response [REP4-031] Applicant response [REP5-010]	
i) Schedule 1 – Authorised Development			
18.	Applicant	ISH1 [PD-003] Q50 SWQ [PD-014] 1.17 Applicant response [REP4-024]	Whether the Applicant is satisfied that separate itemisation of Ancillary Works is not needed in support of its' case for CA or TP.
j) Schedule 2 – Requirements			
19.	Applicant DCC	Requirements 1-21 Provisions for consultation and agreement SWQ [PD-014] 1.18 DCiC response [REP4-029] DCC response [REP4-030] EBC response [REP4-031] Applicant response [REP5-010]	Whether a requirement for consultation with Derwent Valley Mills World Heritage Site Partnership should be added to Requirements 9 and 12. Whether OEMP provisions PW-CH1 to PW-CH5, D-CH4 and D-CH5 are enough.
20.	DCiC DCC EBC EA	Management and mitigation plans, strategies and written schemes SWQ [PD-014] 1.19, 1.23, 1.38 Applicant response [REP4-024] DCiC response [REP4-029] DCC response [REP4-030] EBC response [REP4-031]	a) The adequacy of OEMP provisions for these documents to be kept up to date with any material changes during construction, for consultation on updates and how this should be secured. Whether the provisions cover all management and mitigation plans, strategies and written schemes b) The adequacy of OEMP provisions for a Verification Report and the addition of the text " <i>noting that the Verification Report will report on the effectiveness of the implemented remedial measures</i> ".

No	Addressed to	Reference	Issues and questions
		EA response [REP4-027] Applicant response [REP5-010]	
21.	Applicant DCiC DCC EBC EA	CEMP and Handover Environmental Management Plan (HEMP) Requirement 3 SWQ [PD-014] 1.20, 1.21 Applicant response [REP4-024] DCiC response [REP4-029] DCC response [REP4-030] EBC response [REP4-031] EA response [REP4-027] Applicant response [REP5-010]	a) Whether, to reduce doubt that the detailed design and construction proposals and mitigation would be consistent with the ES, there should be a requirement for the CEMP and HEMP to ensure no materially new or materially worse adverse environmental effects in comparison with those reported in the ES. b) Whether provisions should be added for the HEMP to: <ul style="list-style-type: none"> • be substantially in accordance with the HEMP provisions included in the OEMP and CEMP; • contain a record of all the sensitive environmental features that have the potential to be affected by the operation and maintenance of the proposed development; and • incorporate the measures referred to in the ES as being incorporated in the HEMP.
22.	Applicant DCiC DCC EBC EA	Requirement 4 OEMP [REP3-003] SWQ [PD-014] 1.22 DCiC response [REP4-029] DCC response [REP4-030] EBC response [REP4-031] EA response [REP4-027] Applicant response [REP5-010]	Whether a 28-day consultation period should be added to Requirement 4.
23.	Applicant DCiC	Preliminary works	a) Whether DCiC's and DCC's concerns regarding the need for a written landscaping scheme for any preliminary works that could include

No	Addressed to	Reference	Issues and questions
	DCC EBC EA	Requirements 5(1), 11(1), 13(1) SWQ [PD-014] 1.24 Applicant response [REP4-024] DCiC response [REP4-029] DCC response [REP4-030] EBC response [REP4-031] EA response [REP4-027] Applicant response [REP5-010]	landscaping works or new or replacement planting are addressed by OEMP PW-LAN2. b) OEMP clarification that the landscape scheme will be specific to the preliminary works, whilst vegetation retention and protection plans will also be prepared – such plans will be subject to consultation with the applicable local authorities. c) Whether the OEMP for preliminary works includes appropriate provisions for the establishment of the main construction compound at Little Eaton, including with respect any features that are expected to be retained permanently. Whether OEMP PW-WAT1 is adequate with respect to pollution risk. OEMP reference to the preliminary works CEMP including details of surface water drainage solutions at the main construction compound.
24.	Applicant	Requirement 10 – Protected species SWQ [PD-014] 1.25 Applicant response [REP4-024]	Whether Requirement 10 should be consistent with the Applicant's previous response [REP3-026] to clarify that consultation with Natural England will be required for all protected species and not just to those not previously identified in the ES.
25.	Applicant DCiC EA	Requirement 14 – Flood compensatory storage SWQ [PD-014] 1.26 Applicant response [REP4-024] DCiC response [REP4-029] EA response [REP4-027] Applicant response [REP5-010]	Whether the climate change allowances in Requirement 14 are correct and consistent with guidance and with the ES.

k) Schedule 3 – Classification of Roads, etc.

No	Addressed to	Reference	Issues and questions
26.	Applicant DCC DCiC	Local Highways Authority review and update on discussions SWQ [PD-014] 1.27 Applicant response [REP4-024] DCiC response [REP4-029] DCC response [REP4-030] Applicant response [REP5-010]	a) Whether DCC has carried out a detailed review of Parts 1-8 of Schedule 3 and provided its' comments to the Applicant. Whether the Applicant has incorporated comments from DCiC and DCC. Whether DCiC and DCC are satisfied that their comments have been incorporated in the latest version of the dDCO. b) Whether (with the exception of matters set out above in respect of Articles 11 and 14) DCiC or DCC have any outstanding concerns with respect to: <ul style="list-style-type: none"> • agreement of the dDCO provisions; • de-trunking; or • the Traffic Regulation Order making process.
l) Schedule 4 – Permanent Stopping Up of Highways, etc.			
27.	Applicant DCiC DCC	Local Highways Authority review SWQ [PD-014] 1.28 Applicant response [REP4-024] DCiC response [REP4-029] DCC response [REP4-030] Applicant response [REP5-010]	a) Whether DCiC has carried out a detailed review of Parts 1-4 of Schedule 4. Whether DCiC and DCC have provided their comments to the Applicant. Whether the Applicant has incorporated the comments from DCiC and DCC. Whether DCiC and DCC are satisfied that their comments have been incorporated in the latest version of the dDCO. b) DCiC concerns regarding the appropriate use of the stopping-up order, including whether it would be necessary to stop-up highway rights for a footway/cycle way across the new A38 alignment.
m) Schedule 5 – Land in Which New Rights, etc. May be Acquired			
28.	DCiC DCC EBC	Rolling review and updates SWQ [PD-014] 1.29 Applicant response [REP4-024]	Whether there are any comments on the Applicant's changes to the Schedules that were submitted at Deadline 4.

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	Affected Persons		
n) Schedule 6 – Modification of Compensation and Compulsory Purchase Enactments, etc.			
29.	Applicant	Consistency with s126 of The Planning Act 2008 (PA2008) SWQ [PD-014] 1.31 Applicant response [REP4-024]	The Applicant's reasoning for why the provisions are consistent with s126 of PA2008, which includes that: <i>"(2) The order may not include provision the effect of which is to modify the application of a compensation provision, except to the extent necessary to apply the provision to the compulsory acquisition of land authorised by the order.</i> <i>(3) The order may not include provision the effect of which is to exclude the application of a compensation provision."</i>
o) Schedule 7 – Land for Which Temporary Possession Might be Taken			
30.	DCiC DCC EBC Affected Persons	Rolling review and updates SWQ [PD-014] 1.32 Applicant response [REP4-024]	Whether there are any comments on the Applicant's changes to the Schedules that were submitted at Deadline 4.
p) Schedule 8 – Trees Subject to Tree Preservation Orders			
31.	DCiC	Tree removal SWQ [PD-014] 1.33 DCiC response [REP4-029] Applicant response [REP5-010]	Whether any dDCO updates are required to address DCiC's comments. (Note: detailed discussion regarding DCiC's comment, the Applicant's response and OEMP updates to be held during ISH4.)
q) Schedule 9 – Protective Provisions			

No	Addressed to	Reference	Issues and questions
32.	Applicant EA	Update on discussions SWQ [PD-014] 1.34 Applicant response [REP4-024] EA response [REP4-027] Cadent [REP4-032]	<p>a) Update on discussions between the Applicant and relevant statutory undertakers and Network Rail regarding agreement of the provisions. The outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p> <p>b) Update on discussions between the Applicant and the EA regarding agreement of the provisions and disapplication of by-laws relevant to the EA. The outstanding matters for agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p>
r) Schedule 10 – Documents to be Certified			
33.	Applicant	Update SWQ [PD-014] 1.35 Applicant response [REP4-024]	<p>a) References to the latest versions of documents provided by the Applicant during the Examination including, but not limited to: [REP2-008], [REP2-010], [REP2-021], [REP2-022], [REP3-003], [REP3-005], [REP3-016], [REP3-017], [REP3-018], [REP3-019], [REP3-020], [REP3-021], [REP3-022], [REP3-023], [REP4-002], [REP4-003], [REP4-007], [REP4-009], [REP4-010], [REP4-019], [REP4-020], [REP4-021], [REP4-023], [REP4-026].</p> <p>b) Incorporation of changes and clarifications to paragraphs, tables, figures or other parts of ES documents provided by the Applicant in its' Written Representations during the Examination that have not been included in a), above.</p> <p>c) If any of a) or b) are not to be incorporated, why not?</p> <p>d) When further updates to Schedule 10 will be submitted to the Examination.</p>