

**A38 Derby Junctions**  
**TR010022**

**8.70 Written Summary of Oral**  
**Submissions to ISH3 18 February 2020**

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Rule 8 (1)(i)

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**The Infrastructure Planning  
(Examination Procedure) Rules 2010**

**A38 Derby Junctions  
Development Consent Order 202[ ]**

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**Written Summary of Oral Submissions to ISH3  
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# 1 INTRODUCTION

## 1.1 Purpose of this Document

- 1.1.1 This document sets out a written summary of the oral submissions made by Highways England at the third Issue Specific Hearing (ISH) for the A38 Derby Junctions Scheme. The ISH took place at 10:00 on 18 February 2020 at The Best Western - Stuart Hotel.
- 1.1.2 The 'ExA written question no.' referred to in the first column of Table 1-1 below is a reference to the questions in the ExA's detailed list of issues and questions relating to this ISH. The ExA's questions (and any additional comments made in the ISH) are reproduced in the second column of the table.

**Table 1-1 Written Summary of Oral Submissions to ISH3 18 February 2020**

ExA's question/ issue no.	ExA's question/issue	Summary of oral responses by Highways England
Item 1	Welcome, opening remarks and introductions	Attendees: Paul Clarke - DCiC Steve Buffery - DCC Jeremy Patterson, Nick Wakefield - EA
Item 2	<b>The purpose of ISH3 and how it will be conducted</b>	Discussion regarding emails from the applicant to the ExA sent on 17 Feb 2020.

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		<ol style="list-style-type: none"> <li>1. Re notices of hearings not published in local newspapers</li> <li>2. Air Quality agenda item in light of new DMRB guidance</li> </ol> <p>The applicant was invited to clarify issues and suggest remedies.</p> <p>Notices: an email was sent to PINS on Mon 17 January as soon as it came to Highways England's ("HE" or "Highways England") attention that the public notices required under the Infrastructure Planning (Examination Procedure) rules 2010 (Rule 13(6)(b) – newspaper notices) had not been published in the local press. Site notices went up and other requirements were met, however.</p> <p>Highways England acknowledged that, from a procedural perspective, the notification requirements for the hearing had not been met and therefore that the Examining Authority ("ExA") had discretion as to whether the present hearings should go ahead. In order to ensure that procedural requirements were met and that there was no question of this being an issue, HE requested further hearings to allow for both CAH and ISH.</p> <p>The ExA noted that notification had been provided as follows: via the project website, to all interested parties, and advertised by way of site notices. The missing element was the publication of notices in local newspapers. The suggested remedy of a further set of hearings to provide an opportunity for people who may not have been notified to make representations was also noted.</p>

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
		<p>Paul Clarke of Derby City Council (DCiC) observed that despite the absence of press notices, there was more publicity surrounding today's hearings than for previous hearings.</p> <p>Derbyshire County Council ("DCC") and the Environment Agency ("EA") expressed support for additional hearings at the ExA's discretion.</p> <p>A Friends of the Earth representative referred to the Aarhus convention and noted that other people would like to be able to attend the further proposed hearing.</p> <p>HE raised an additional procedural issue on the subject of air quality. This is an issue for HE at national level, and is high on government and local authority agendas. HE noted that it is required to exercise its functions with reference to the environment including air quality on the strategic road network. Highways England referred to the LA105 guidance discussed at the December hearings and in response to questions 24 of the ExA's Second Written Questions. HE acknowledged that its response to date has been that there is change to the assessment undertaken for the Derby Junctions scheme, however as a consequence of the latest draft DMRB guidance, there is a change in approach to LA105.</p> <p>Having become aware of this only very recently, Highways England requested that air quality should not be considered at ISH4 on 19 Feb 2020, in order to avoid being in the position of not being able provide answers to the ExA's</p>

ExA's question/ issue no.	ExA's question/issue	Summary of oral responses by Highways England
		<p>questions. Highways England stated that it is working on this and hoping to be able to put new information into the Examination by 28 February 2020.</p> <p>Highways England agreed to provide a written summary of this oral submission to the ExA.</p> <p>Highways England's position is that it needs to be able to take account of additional work that was not available when its original air quality response went in to the Examination. Work being done nationally has taken a different approach to the application of LA105. Highways England now needs to reconcile its approach with this, so as to ensure accurate information is before the Examination.</p> <p>The ExA expressed concern at the disruption to the Examination timetable given that there is not much time remaining.</p> <p>Highways England's suggested remedy was to update the ExA on 28 Feb. If there needs to be an additional hearing, Highways England would be supportive of that, with sufficient notice. This would enable Highways England to confirm the scheme's position from a technical standpoint.</p> <p>The ExA observed that a number of points on the agenda were directed to other parties and asked if value could still be obtained from addressing these at ISH4 (on 19 Feb).</p>



ExA's question/ issue no.	ExA's question/issue	Summary of oral responses by Highways England
		<p>Paul Clark of DCiC stated that ISH4 would be worthwhile with air quality taken out with a separate mini hearing at a later date.</p> <p>Steve Buffery (DCC) noted that no statutory response was required from the County Council. He noted that there are still lots of worthwhile issues to cover in ISH4.</p> <p>The EA noted that it has no role on air quality, so supported the applicant's position.</p> <p>The Friends of the Earth (FoE) representative welcomed air quality being examined in a lot more detail especially as Derby City has been designated a clean air zone. The representative confirmed that FoE had taken part in the XR demonstration taking place outside the hearing.</p> <p>After consultation, the ExA's were satisfied that parties had been notified to the extent that today and the hearings could continue. They recognised, nonetheless, the procedural risk and so were content for further hearings to be arranged.</p> <p>On the air quality point, the ExA noted that matters do directly relate to LA105 (which the ExA was not aware of until the present hearing). A number of points to be raised at ISH3 concern LA105, so on reflection the ExA felt that to explore</p>

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		<p>air quality at the present hearing might be of limited value. The ExA emphasised that this Examination must complete by 8 April.</p> <p>Preliminary dates were put forward by the ExA: Thurs 20 Feb (for the issue of a revised timetable and notification of hearings) with a hearing 28 days later, on 19 March. The ExA noted that this would be a commonly adopted duration.</p> <p>The ExA noted that post-hearing submissions would be due on 26 March.</p> <p>The date for a HE update on its position and detailed response to issues and questions was set by the ExA as 3 March.</p> <p>Reponses to that update to be submitted by 10 March.</p> <p>Agendas for the March hearings will be published on 12 March.</p> <p>The ExA confirmed that full notification would be given to all parties, via notices and newspapers.</p> <p>The ExA confirmed that the present hearing would address the version of the dDCO provided at Deadline 4. A further draft DCO is to be submitted at Deadline 6.</p>

ExA's question/ issue no.	ExA's question/issue	Summary of oral responses by Highways England
Item 3	<p><b>Specific issues and questions</b></p> <p>The ExA will take the hearing through the dDCO and the ExA's issues and questions that have been published on the project website</p>	

No.	Addressed to	Reference	Issues and questions	Applicant's response
<b>a) General matters and preamble</b>				
1.	Applicant Derby City Council (DCiC) Erewash Borough Council (EBC) Environment Agency (EA)	<p>"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]</p>	<p>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.</p> <p>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?</p> <p>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.</p>	<p>Highways England's current position is that point (a) has been covered off.</p> <p>In terms of (b), Highways England noted that Erewash Borough Council has requested to have attention drawn to the notification requirement (Article 20). Highways England does not consider this should be included on the face of the DCO.</p> <p>The ExA noted the lack of familiarity among Councils with DCO projects, so suggested it should not be problematic for a letter to be sent to the various parties. Paul Clarke (DCiC) would welcome a requirement within the DCO. Steve Buffery (DCC) agreed with this. The EA was not aware of this provision in other DCOs, but was generally content with a 28 day period.</p> <p>Highways England agreed to take this point away and look at how appropriate wording might be incorporated. Highways England noted the need to have regard to other Highways England DCOs and ensure consistent drafting. The point made by the Councils was understood.</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
				<p>Regarding (c) Article 20 Discharge of Water: request for a 12 week period as in Article 19 (Traffic Regulation), Highways England's view is that there is no integrated process for the discharge of water as there is for the regulation of traffic management; rather it involves seeking consent from a single body (usually a landowner). Highways England confirmed that Article 20 has been updated as requested by the EA. There is nothing that overrides the requirement to obtain environmental permits (with their own procedural requirements), so from a statutory perspective, Highways England noted that nothing in Article 20 will affect this.</p>
2.	Applicant	Tailpieces Requirements 15(2), 16(2) OEMP [REP3-003] PW-G4, MW-G12 SWQ [PD-014] 1.2	<p>Whether the tailpieces "... <i>taking into account the mitigation identified in it</i>" and "... <i>taking into account the lighting identified in it</i>" can be deleted.</p>	<p>Highways England stated that the first tailpiece is clarificatory in intention and is not intended to cause confusion as to the assessed baseline. The terms is meant to replicate the current position (i.e. effects plus mitigation) where alternative mitigation is proposed.</p> <p>Highways England agreed to reassess the inconsistencies noted by the ExA.</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
		Applicant response [REP4-024]		Highways England acknowledged that the requirement may be acceptable without the tailpiece, but would review and respond in writing.
<b>b) Part 1 – Preliminary</b>				
3.	Applicant	Interpretation Article 2(1) “ <i>maintain</i> ” SWQ [PD-014] 1.3 Applicant response [REP4-024]	Whether the definition of maintain should be amended to “... <i>and excludes any works that would give rise to any materially new or materially adverse environmental impacts compared to those assessed in the environmental statement.</i> ”	Highways England noted that the addition of the word ‘works’ could introduce ambiguity. The ExA is looking to exclude activities that would give rise to adverse effects. Highways England noted that its intention is to prevent the identified effects, rather than specify the works.  Highways England’s view is that ‘activities’ would be more appropriate than ‘works’ (because this is broad enough to allow flexibility).

No.	Addressed to	Reference	Issues and questions	Applicant's response
4.	Applicant EA DCiC Derbyshire County Council (DCC)	Article 3 - Disapplication of legislative provisions SWQ [PD-014] 1.4 Applicant response [REP4-024] DCiC response [REP4-029] DCC response [REP4- 030] EA response [REP4- 027] Applicant response [REP5-010]	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, 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.	Highways England stated that there are 4 points relating to disapplication of legislation:  (1) s 23 Land Drainage Act Highways England's position is that it needs to ensure a process through which it can interfere with water courses without the need to go through a secondary consenting process. Both Councils will be consulted through Requirement 13 (including pollution control and effects on water courses). Highways England maintained that adequate comfort was given through the CEMP. (2) Permit scheme adopted under traffic Management Act 2004 Both Councils have permit schemes in place secured by order under Traffic Management Act. NRSWA provisions are incorporated into Articles 11 and 12. Highways England stated that it would offer reassurance to the Councils through the TMP. The specifics around notification days are under discussion. Highways England noted that the latest version of the TMP at paragraphs 6.31

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				<p>– 6.34 provides high level comment regarding consultation with Councils.</p> <p>(3) Midlands Regional Byelaws; These byelaws relate to main rivers and flood systems affecting main rivers. Highways England stated that it does not consider that this scheme affects those. Highways England is proposing to dis-apply them in order to be cautious about any residual historic requirements that may sit behind those byelaws and could extend beyond main rivers.</p> <p>The EA noted that it understands the scheme does impact on a main river at Little Eaton, but that it is content with the principle of disapplication of byelaws on the basis that other provisions are unaffected.</p> <p>(4) The EA suggested the disapplication of the Environmental Permitting Regime insofar as it</p>



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				relates to flood risk activity permits – with an alternative process to be secured through protective provisions.

No.	Addressed to	Reference	Issues and questions	Applicant's response
5.	Applicant	Article 4 - Maintenance of drainage works SWQ [PD-014] 1.5 Applicant response [REP4-024]	<p>Amended dDCO wording to clarify responsibilities for maintenance of drainage works while the Applicant has temporary possession of land, for example:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• whether it should be secured that responsibilities would need to be agreed with the landowner in writing in advance of temporary possession being taken.</li> </ul>	<p>The ExA raised a question regarding maintenance of drainage during temporary possession and the potential gap in who would be responsible. The ExA requested clarification as to responsibility and noted the two suggested approaches (bullet points) might give more comfort.</p> <p>Highways England made reference to the practicalities of temporary possession of land. Highways England does not consider there is a need for a positive obligation to maintain because:</p> <ul style="list-style-type: none"> <li>• the definition of drainage in Article 4 includes features which are the responsibility of the EA and the Local Flood Authorities. This could incorporate assets belonging to statutory undertakers (although Highways England does not believe there are any).</li> <li>• Highways England wishes to have flexibility to agree responsibility with landowners.</li> <li>• Article as drafted does what it needs to.</li> </ul>

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				<p>The EA agreed to check whether the Local Flood Authority will continue to have access, noting that the Highways England Article 4 does stipulate that nothing in the order affects responsibility for maintenance.</p> <p>The ExA made the point that there is no obligation on the applicant to grant access.</p> <p>Highways England observed a possible conflation of the private land regime with the permitting regime. Whilst Highways England may be in temporary possession, it would be required to allow statutory bodies to carry out their functions and that is the intention of the wording of article 4.</p>
<b>c) Part 2 – Principal Powers</b>				
6.	Applicant DCiC DCC EBC	Article 6 – Maintenance of authorised development SWQ [PD-014] 1.6	<p>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:</p> <ul style="list-style-type: none"> <li>whether there should be an overall requirement for the Applicant to</li> </ul>	To be discussed at ISH4 on Wed 19 Feb.

No.	Addressed to	Reference	Issues and questions	Applicant's response
		Applicant response [REP4-024] Applicant [REP4-026] DCiC response [REP4-029] DCC response [REP4-030] EBC response [REP4-031] Applicant response [REP5-010]	maintain all mitigation measures identified in the ES, unless the dDCO provides otherwise or unless otherwise agreed in writing; or <ul style="list-style-type: none"> <li>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.</li> </ul>	
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.	Highways England explained that in terms of limits in Article 8, the intention is a 1-metre deviation for main carriageway and slip roads. Highways England noted that environmental assessments have been undertaken on this premise and confirmed that all other works are as shown on the plans. Areas of pink land on the Works Plans show the limits of deviation within which work items can sit. Given the exceptionally constrained nature of the scheme, Highways England noted that there is not much room for

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				<p>movement. Article 8 refers to the Environmental Statement and Highways England confirmed its position that this is sufficient based on those parameters.</p> <p>The ExA noted that works other than those involving the main carriageway would be subject to the process of detailed design leading to optimisation of location. The ExA also noted that the Environmental Statement (ES) does not give a specific limited deviation on e.g. culvert positions, or flood storage areas other than within pink area.</p> <p>Highways England agreed to consider further the ExA's point that a 1-metre deviation should be referenced to save anyone having to review a large number of documents e.g. the ES to identify exact distances.</p>
8.	Applicant Cadent Gas Limited	Article 10 – Consent to transfer Benefit of Order Cadent Gas Limited [REP5-	Amendments suggested by Cadent Gas Limited.	<p>Related to Q13 and Schedule 5.</p> <p>Highways England confirmed that there is ongoing correspondence with Cadent Gas including revised draft protective provisions and a side agreement. Highways England considers that the provisions of the DCO cover off the points Cadent</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
		012]		<p>have raised. Highways England noted that engagement with Cadent has been very positive, although there are some outstanding issues regarding the extension of rights sought by Cadent. Highways England hopes to agree these issues before end of the Examination.</p> <p>Highways England confirmed that there is no Statement of Common Ground with Cadent – all issues are dealt with through the protective provisions.</p>
<b>d) Part 3 – Streets</b>				
9.	DCiC DCC	Streets SWQ [PD-014] 1.8 DCiC response [REP4-029] DCC response [REP4-030]	<p>Whether DCiC have any outstanding concerns with respect to:</p> <ul style="list-style-type: none"> <li>• how Section 4 of the Highways Act would be affected;</li> <li>• provisions for construction and maintenance of new, altered or diverted streets and other structures (Article 13);</li> <li>• clearways (Article 18) or</li> <li>• traffic regulations (Article 19)?</li> </ul>	<p>DCiC noted that it was primarily looking at Article 13. The Councils concern is with the flexibility of this provision, which might determine the inventory of items to be maintained. DCiC noted that this is a matter to be worked through at detailed design stage.</p> <p>In DCiC's view, the tailpiece 'as agreed with Local Highway Authority' is helpful, but DCiC raised the question as to what happens if not agreed.</p>

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				<p>The ExA requested a written response from DCiC to each bullet point.</p> <p>In relation to Articles 18 and 19, DCiC stated that it was unsure how section 4 of the Highways Act relates to these articles (e.g. the wider impact of the scheme, or the onus on DCiC).</p> <p>With reference to HA section 4, Highways England confirmed that there is nothing in the order to disapply this provision. Highways England noted that this section is often used to secure payments where responsibility is being divided up. Highways England confirmed its position that this is outside DCO process and that financial commitments are not proposed in the DCO. These can be discussed at a later stage.</p> <p>Highways England agreed to respond in writing regarding Traffic Regulation Orders and to clarify responsibility for costs following further discussion with DCiC.</p> <p>Highways England drew attention to the process note submitted by Highways England at D4 which explains how Highways England's internal processes fit with Article 13. Highways England</p>

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				stated the wish to avoid replicating processes that are dealt with elsewhere. Highways England expressed its willingness to discuss this with DCiC and provide comfort.
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"> <li>• whether a process that satisfies the statutory duties of the Local Highways Authorities should be added to the TMP; or</li> <li>• whether the Local Highways Authorities' permit schemes should be disapplied.</li> </ul>	Already covered above (Item 9).



No.	Addressed to	Reference	Issues and questions	Applicant's response
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.	Partly addressed above (Item 9) Schedule 3 DCiC expressed the view that a detailed inventory would be too extensive for the DCO. It noted that the format of a side agreement would be discussed and identified in the OEMP. It agreed to provide a written submission on this point the ExA.  Highways England observed that much of this involves detail that is not required in the DCO, since it would be secured as discussed in process note.  Highways England stated that a DLOA and MRSS will ensure these issues are picked up as they arise further down the line. Highways England will maintain dialogue with DCiC.
<b>e) Part 4 – Supplemental Powers</b>				

No.	Addressed to	Reference	Issues and questions	Applicant's response
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]	<p>a) Whether the following provisions should be added:</p> <ul style="list-style-type: none"> <li>• <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></li> <li>• <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></li> </ul>	<p>a)</p> <p>First bullet point: Highways England's view is that the EA is covered by protective provisions and that this wording does not need to be added.</p> <p>Second bullet point: Highways England confirmed that this is now included in the DCO at Article 20(8).</p> <p>Third bullet point: Highways England's view is that this is not required from a DCO perspective. Highways England agreed to update the ExA in writing on this point. Highways England noted that Article 20 is specifically designed to give consent, whereas the bullet point seeks to ensure consent is obtained despite the article saying otherwise so there is inconsistency.</p> <p>b)</p> <p>Highways England confirmed that detailed discussions regarding technical aspects would take place at ISH4 on Wed 19 Feb.</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
			<ul style="list-style-type: none"> <li>• <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></li> <li>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 addressed by the Applicant's suggested addition of the following to the OEMP:</li> </ul>	<p>Highways England stated that would discuss with DCiC which discharge rates should apply. The EA noted that the Local Flood Authority has similar powers of entry to the EA under s64 of Land Drainage Act</p> <p>c) Highways England agreed to discuss this with DCC.</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
			<ul style="list-style-type: none"> <li>• <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></li> <li>c) DCC concerns for clarity regarding the discharge of water. The protection provided by the Water Industry Act and through the Environmental Permitting regime.</li> </ul>	
<b>f) Part 5 – Powers of Acquisition</b>				

No.	Addressed to	Reference	Issues and questions	Applicant's response
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).	To be discussed at ISH4 on 19 February.
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.	To be discussed at ISH4 on 19 February.
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.	Highways England noted that this is a relatively broad provision linked to Schedule 5 (and does not extend beyond what is assessed in the Environmental Statement). Highways England agreed to consider whether to amend the definition to include what is assessed in the ES.
<b>g) Part 6 – Operations</b>				

No.	Addressed to	Reference	Issues and questions	Applicant's response
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</p>	The ExA decided that Item 16 would be discussed in the hearing tomorrow (ISH4, 19 February).

No.	Addressed to	Reference	Issues and questions	Applicant's response
			<p>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>	

No.	Addressed to	Reference	Issues and questions	Applicant's response
<b>h) Part 7 – Miscellaneous and General</b>				
17.	DCiC	Article 50 - Appeals relating to the Control of Pollution Act 1974 SWQ [PD-014] 1.16 Applicant response [REP4-024] DCiC response [REP4-029] EBC response [REP4-031] Applicant response [REP5-010]	Update on any discussions between the Applicant and DCiC and whether DCiC have any outstanding concerns.	<p>Highways England considered the main issue for raised by DCiC here was to reduce the appeal period from 42 to 21 days, which it has done in the dDCO.</p> <p>The ExA noted that this relates to first written question no. 46 and that at Deadline 1, the applicant had responded that measures had not yet been agreed. The question was also referred to in the December hearings when the ExA requested an update on discussions.</p> <p>Highways England confirmed that it has not received any comments from the Councils and that the Article 50 question is being picked up in the SoGCs. Highways England noted that among the submitted documents and representations there have been no details regarding any Local Authority concerns, nor have any such concerns been revealed to the Examination.</p>



No.	Addressed to	Reference	Issues and questions	Applicant's response
				Highways England noted the difficulty of understanding what the issue is for the Local Authorities.
<b>i) Schedule 1 – Authorised Development</b>				
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.	<p>Highways England stated that its position has not changed and re-emphasised the need for flexibility. Highways England noted that the list of preliminary works are those that are necessary for the scheme. Highways England has already provided a schedule for the examination listing each ancillary work required with each Work number. Highways England noted that the A30 DCO took a similar approach regarding ancillary works.</p> <p>Highways England agreed to look at this question in more detail, but stated that it expected to maintain its current position. Highways England suggested that this could also be picked up in the CA discussion. Highways England noted that the ancillary works listed are integral and essential for the proposed development proposed. The list</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
				includes those works that are necessary for construction. Unnecessary works are not listed.
<b>j) Schedule 2 – Requirements</b>				
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.	With regard to discharging this requirement, Highways England stated that it is under an obligation to produce a report explaining: where consultation is taking place; what the responses have been; and why any responses have not been taken into account. If there were to be a response that was not included in the OEMP, Highways England confirmed that it would need to explain to the Secretary of State why this was the case. It was explained that the need to consult with the Derwent Valley Mills World Heritage Site Partnership was appropriately covered in the OEMP. DCC accepted that such consultation commitments in the OEMP are satisfactory.

No.	Addressed to	Reference	Issues and questions	Applicant's response
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] EA response [REP4-027] Applicant response [REP5-010]	<p>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</p> <p>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>".</p>	<p>a) Highways England confirmed to the ExA that the provisions are secured in the OEMP and that the OEMP is currently being updated.</p> <p>b) Highways England (and the EA) confirmed to the ExA that the provisions for a Verification Report will be included in the next version of the OEMP and that the applicable wording had been agreed with the EA. Highways England confirmed that the next version of the OEMP will include a footnote on page 3 to confirm that the update provisions cover all management and mitigation plans, strategies and written schemes.</p>
21.	Applicant DCiC	CEMP and Handover	a) Whether, to reduce doubt that the detailed design and construction	a) and b) - HE did not consider this necessary because the DCO is drafted to ensure that each

No.	Addressed to	Reference	Issues and questions	Applicant's response
	DCC EBC EA	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]	<p>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.</p> <p>b) Whether provisions should be added for the HEMP to:</p> <ul style="list-style-type: none"> <li>• be substantially in accordance with the HEMP provisions included in the OEMP and CEMP;</li> <li>• 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</li> <li>• incorporate the measures referred to in the ES as being incorporated in the HEMP.</li> </ul>	<p>document flows into each other and the relevant material from each will be incorporated.</p> <p>From Highways England's point of view, the requirement to ensure no materially new or materially worse adverse environmental effects is already covered in the drafting: the CEMP being in accordance with OEMP is secured in R3. The HEMP needs to be converted from the CEMP, under R5.</p> <p>Highways England noted that comfort is given by way of the approval (by the SoS) and consultation process that happens at each stage.</p> <p>Highways England recognised the continuation between the OEMP, the CEMP and the HEMP, but noted that the documents do different things. The HEMP becomes operative at the point where construction is complete since it refers to handover. Highways England highlighted the definition of HEMP given on page 42 of the dDCO.</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
				<p>The dDCO needs to recognise that the HEMP is a stage further on. Highways England noted that there are concerns regarding linking the HEMP to the ES and the CEMP. The HEMP will serve a different purpose to the CEMP for example. However, HE noted that it could amend the definition of HEMP to refer back to the measures in the OEMP as this does deal with operational matters.</p> <p>Regarding the definition of 'maintenance', Highways England noted that this is referred to in the definition of HEMP and would therefore be covered by the current drafting.</p>
22.	Applicant DCiC DCC EBC EA	Requirement 4 OEMP [REP3-003] SWQ [PD-014] 1.22 DCiC response [REP4-029] DCC response [REP4-030]	Whether a 28-day consultation period should be added to Requirement 4.	<p>The ExA expressed uncertainty as to whether this has been agreed previously.</p> <p>Highways England confirmed that there is nothing in the DCO at the moment and it is not required as this could limit the timeframe for consultation where a longer period is required.</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
		<p>EBC response [REP4-031] EA response [REP4-027] Applicant response [REP5-010]</p>		
23.	<p>Applicant DCiC DCC EBC EA</p>	<p>Preliminary works 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]</p>	<p>a) Whether DCiC's and DCC's concerns regarding the need for a written landscaping scheme for any preliminary works that could include landscaping works or new or replacement planting are addressed by OEMP PW-LAN2.</p> <p>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.</p>	<p>a) DCiC is content with the provisions added. It would be useful if they were fed through into the CEMP. DCC agreed that this is an acceptable approach.</p> <p>b) Highways England confirmed that the OEMP refers to preliminary works and that there will be a landscaping scheme that will be consulted with the Local Authorities.</p> <p>c) ExA noted that Erewash BC had suggested that retention of landfill capping might be beneficial, in which case preliminary works may be delivering a permanent feature. Highways England stated that this was not the</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
		Applicant response [REP5-010]	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.	intention at the moment and that the DCO requires it to leave the land in the same condition as when it took possession. Erewash BC made the point that retaining some components of the compound could be advantageous. Agreed that Highways England would consult with Erewash BC to investigate this issue further, recognising that the land remains in 3 <sup>rd</sup> party ownership and responsibility and amend the OEMP as applicable.
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.	Highways England noted that its position is as expressed by the wording in the DCO. Highways England confirmed that protected species have already been identified in the ES. Highways England clarified that the intention of the Requirement 10 is to cover nesting birds and any species that have not yet been identified.

No.	Addressed to	Reference	Issues and questions	Applicant's response
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.	To be discussed at ISH4 on 19 February.
<b>k) Schedule 3 – Classification of Roads, etc.</b>				



No.	Addressed to	Reference	Issues and questions	Applicant's response
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]	<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>• agreement of the dDCO provisions;</li> <li>• de-trunking; or</li> <li>• the Traffic Regulation Order making process.</li> </ul>	<p>a) Schedule 3 and 4 Highways England confirmed that it has received minor, rather than substantive comments on schedule 3 from DCiC. The Schedules will be updated in the DCO.</p> <p>b) DCiC and DCC responses.</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
<b>l) Schedule 4 – Permanent Stopping Up of Highways, etc.</b>				
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]	<p>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.</p> <p>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.</p>	DCiC and DCC responses
<b>m) Schedule 5 – Land in Which New Rights, etc. May be Acquired</b>				

No.	Addressed to	Reference	Issues and questions	Applicant's response
28.	DCiC DCC EBC Affected Persons	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.	To be discussed during CA hearing.
<b>n) Schedule 6 – Modification of Compensation and Compulsory Purchase Enactments, etc.</b>				
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. (3) The order may not include provision the effect of which is to exclude the</i>	Highways England stated that the tests are met and that changes to the CP regime are simply to reflect the ability through the DCO to acquire rights in land, in addition or as an alternative to permanent and/or temporary possession of the land. Article 26 of the DCO allows for rights in land that are compulsorily acquired to become compensatable interests.  Highways England confirmed that this is a relatively standard approach taken in a number of orders.

No.	Addressed to	Reference	Issues and questions	Applicant's response
			<i>application of a compensation provision."</i>	
<b>o) Schedule 7 – Land for Which Temporary Possession Might be Taken</b>				
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.	To be discussed at CAH2.
<b>p) Schedule 8 – Trees Subject to Tree Preservation Orders</b>				

No.	Addressed to	Reference	Issues and questions	Applicant's response
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.)	To be discussed at ISH4 on 19 February.
<b>q) Schedule 9 – Protective Provisions</b>				
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</p>	<p><b>Statutory undertakers and Network Rail</b></p> <p>Highways England confirmed that it is still negotiating with each of the separate undertakers and waiting for them to respond. It noted that good progress has been made.</p> <p>Cadent: Highways England expects to be in a position where protective provisions are finalised and agreed prior to close of examination. Cadent's comments were received on 16 February and Highways England is reviewing these.</p> <p>Network Rail – Highways England confirmed that various agreements are currently with NR for comment.</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
			<p>agreement, the next steps to be taken and whether agreement is anticipated during the Examination.</p>	<p>EA – Highways England confirmed that it is very close to agreeing protective provisions. There is one small point outstanding regarding costs and incorporating the FRAP within protective provisions. HE noted that it has not discussed specific wording but that it should not be too onerous to get those agreed by the close of the Examination.</p> <p>Highways England confirmed that it is in active discussion with statutory undertakers in order to agree provisions. Highways England noted that there are some complex issues, but that all of those parties have dealt with DCOs before and understand the importance. Highways England noted that commercial agreements made with those parties may contain sensitive terms and so any update cannot divulge that information. Highways England is pushing very hard to move things forward.</p> <p>Highways England noted that there are examples of discussions going on post-close of Examination with information then given to the Secretary of State. This means that there is a potential</p>

No.	Addressed to	Reference	Issues and questions	Applicant's response
				<p>extended window for negotiation. Highways England agreed to update the ExA as often as possible regarding where the discussions have got to.</p> <p>The ExA raised the possibility of SoCGs that address issues. Highways England's view is that completion of such a document would add an additional burden to Highways England and that a SoCG would not progress things much further.</p> <p>The ExA expressed a wish to be made aware of provisions that had not been agreed, particularly where they relate to protective provisions.</p> <p>Highways England noted that the scope of such an update to the ExA would depend on the commercial sensitivity of the provisions. Highways England agreed, where possible, to set out the areas of disagreement and advise the ExA as to plans going forward.</p>
<b>r) Schedule 10 – Documents to be Certified</b>				

No.	Addressed to	Reference	Issues and questions	Applicant's response
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>	a) Highways England confirmed that Schedule 10 will be updated to include these and correct Examination library references. New versions of the documents will be submitted as required.



No.	Addressed to	Reference	Issues and questions	Applicant's response
			<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>	
ITEM 4				
Any other concerns around DCO?				<p>DCiC, DCC and EA confirmed none.</p> <p>No other matters to be raised.</p>
ITEM 5				Written submissions by D6 on 25 Feb. Final dDCO and Explanatory Memorandum are also due then.