

**A38 Derby Junctions
TR010022**

**8.72 Applicant's Responses to ExA's
Questions for ISH3 18 February 2020**

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Rule 8 (1)(i)

Infrastructure Planning (Examination Procedure) Rules 2010

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(Examination Procedure) Rules 2010**

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

**Applicant's Responses to ExA's Questions for ISH3
18 February 2020**

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1 INTRODUCTION

1.1 Purpose of this Document

- 1.1.1 This document sets out the Applicant's responses to the ExA's questions for 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.

No	Addressed to	Reference	Issues and questions	Applicant's Response
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]	<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>a) - b) All parties have confirmed that they are content with the guillotine provisions and the approach to deemed consent.</p> <p>c) Highways England's position on this has not changed since its response to the point at D5.</p> <p>From Highways England's perspective, it is not clear why DCiC requires notice to be given in this respect as the article gives Highways England the power to use any watercourse or any public sewer or drain for the drainage of water (and in connection with this the power to lay down, take up, alter pipes and make openings into and connection with any watercourse or public sewer or drain). The article requires the consent of the owner of the watercourse or the sewer or drain (which can be given subject to reasonable terms and conditions) and</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>any owner will have 28 days to provide a decision following a request for consent. As such, the intention of the article is to protect owners of watercourses, sewers and drains (be they private individuals or statutory undertakers). Highways England considers that 28 days is a sufficient period to consider any request for consent and 12 weeks as requested by DCiC is a significant period which could affect delivery of the Scheme.</p> <p>The 12-week period outlined in Article 19 is necessary because there are a number of other practical processes which need to take place within the Local Highway Authority/Traffic Authority's area (and within the local Police force's areas) in terms of noting and registering the changes to the highways network and for all integrated traffic and enforcement systems which rely on this information to be updated in time. As such, this extensive updating process required for traffic regulation measures is not</p>

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				<p>analogous to obtaining consent from an owner of a watercourse, sewer or drain.</p> <p>In addition, and for comfort, if DCiC has any concern about the environmental effects of any discharges, any discharges will be covered by the Environmental Permitting regime and will require a separate permit (which is outside the scope of the DCO). The EA has asked for the inclusion of new subparagraph (8) in Article 20 confirming this, which Highways England has included in the D4 version of the dDCO.</p> <p>Finally, as confirmed at the ISH3 hearing, nothing in the DCO affects DCiC's access and inspection rights under the Land Drainage Act 1991, particularly section 64. Highways England understands that DCiC's main concern is to ensure that its statutory functions as Lead Local Flood Authority will not be impeded. More detail on this is provided under</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				the Disapplication of Legislation – Article 3 section below.
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 "... <i>taking into account the mitigation identified in it</i> " and "... <i>taking into account the lighting identified in it</i> " can be deleted.	Highways England has responded to this point as part of SWQ1.2. Highways England considers that the tailpieces are to ensure that where any alternative mitigation is proposed as part of these requirements, these measures will not give rise to any materially new or materially worse adverse environmental effects taking into account the mitigation measures proposed in the ES. Highways England explained at the hearing that the text is meant to clarify the position and sets a baseline for the environmental effects (i.e. it permits alternative mitigation that will have the same result as the mitigation proposed in the ES). However, the ExA considers that these tailpieces are superfluous. In practice, Highways England and the ExA want to achieve the same goal i.e. that any alternative mitigation will not give rise to any materially new or materially

No	Addressed to	Reference	Issues and questions	Applicant's Response
				adverse environmental effects. On this basis, Highways England is content to delete the tailpieces on the basis that the ExA considers they are not required.
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> ”	Currently the dDCO is drafted such that maintain excludes any materially new or materially adverse environmental impacts compared to those assessed in the ES. This limits all maintenance activities to be carried out as part of the authorised development to the effects which have been assessed in the ES and excludes actions which would result in impacts which are outside of this assessment. The current DCO wording does not limit the work type, and the inclusion of “any works that would give rise to” could be construed as limiting the works permitted for

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>maintenance to those which have been identified in the ES. Also, not all maintenance activities are “works” per se so the inclusion of this phrase could be restrictive. It may transpire that other types of works are required for maintenance (e.g. through technological advances) which are different to those identified in the ES. The current wording allows for these works to be included for maintenance, provided their impacts are no worse than those assessed in ES. Highways England considers that the current wording of the dDCO is less open to an alternative interpretation, is less rigid and provides greater flexibility. However, Highways England recognises the ExA’s need to link maintenance actions to the assessed effects. As such, and to clarify the position, Highways England has replaced the ExA’s suggested word “works” with “activities” as this allows flexibility whilst also ensuring that no new or materially adverse</p>

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				environmental effects occur compared to those assessed in the ES.
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.	a) and b) Highways England met with both DCiC (on 27 February 2020) and DCC (on 28 February 2020) and these matters were discussed. At these meetings both Councils confirmed that they are content with the proposed disapplication of s.23 of the Land Drainage Act 1991 and their permit schemes (which have been created under the Traffic Management Act 2004). In respect of the Land Drainage Act, this is on the basis that both Councils will be consulted during the detailed design stage of the scheme and as part of the development of the drainage scheme (under R13). In addition, as there is nothing in the dDCO which disapplies s.64 of the Land Drainage Act, both councils are

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>content that their statutory powers to investigate and access land is not impeded (subject of course to health and safety restrictions which the councils would consult Highways England on during the construction phase of the scheme in order to ensure safe access).</p> <p>In respect of the Councils' permit schemes, both Councils are content that the provisions included in articles 11 and 12 of the dDCO (which incorporate a modified procedure under the New Roads and Street Works Act) together with assurances given in the outline TMP, and the fact that both Councils will be consulted on when the full TMP is submitted to the SoS for approval, are sufficient to give the Councils enough notification of proposed works that will affect the operation of their highway networks. The outline TMP covers a broad provision to consult with the local highway authorities on the measures</p>

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				<p>to replace the permit schemes and this commitment will be made more specific when the scheme detail is finalised and the specific timings around the construction of the scheme are known.</p> <p>In respect of b) specifically, it is worth noting that the OEMP includes a commitment to consult with DCiC and DCC during the brook diversion works (PW-WAT3). DCiC, DCC and the EA will also be consulted during the detailed design of flood risk mitigation features at Kingsway junction and Little Eaton junction (e.g. PW-WAT2 & PW-WAT4), noting that the Scheme environmental design includes appropriate mitigation measures such that flood risks elsewhere would be avoided.</p>

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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. 	<p>Highways England understands that this question is being asked in the context of a response it gave at SWQ that it would maintain drainage infrastructure during temporary possession because if it did not, and the land possessed was damaged, then it would be liable to pay a landowner compensation for the damage caused. This was an observation on a practical level and there is no positive obligation for Highways England to ensure that drainage works are maintained on temporarily possessed land.</p> <p>This is intentional because (notwithstanding the practical point noted in the preceding paragraph) responsibility for drainage maintenance can be agreed in writing between Highways England and the person responsible for the relevant drainage (as per article 4(1)). As such, Highways England can agree provisions in this respect separately</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>with landowners in advance (or retrospectively, depending on the circumstances) of taking temporary possession.</p> <p>Highways England would not want there to be a positive obligation on it to maintain drainage as this would cut across a number of statutory duties which are on the Lead Local Flood Authority under the Land Drainage Act and/or the Environment Agency under the Water Resources Act. This is why article 4 is drafted in the way it is i.e. that nothing in the DCO is to affect responsibility for drainage. If a positive obligation is placed on Highways England to maintain drainage whilst it is in temporary possession of that land it could impede the LLFA and EA's statutory functions from being undertaken. Also, whilst Highways England does not believe that there is any statutory undertaker apparatus in the land to be temporarily possessed, it is possible that such apparatus exists and, again,</p>

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				<p>were a positive obligation placed on Highways England to maintain the drainage, it could end up being responsible for statutory undertaker apparatus (which the undertaker is unlikely to consent to).</p> <p>Finally, there could also be long term arrangements in place on land between neighbouring landowners or other private obligations in relation to drainage maintenance which would create a disproportionate amount of liability for Highways England compared to the nature of the land use (e.g. temporary possession of land). Highways England is a publicly funded company and ensuring that appropriate limitations on liability are secured is proportionate and is usual on DCO schemes.</p>
c) Part 2 – Principal Powers				

No	Addressed to	Reference	Issues and questions	Applicant's Response
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]	<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"> • 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. 	<p>Highways England does not consider that it is necessary to include a positive obligation on Highways England to maintain mitigation measures. This is because the dDCO gives Highways England the power to maintain the mitigation that it has included in the dDCO. This is secured in a number of ways:</p> <ul style="list-style-type: none"> - Highways England is acquiring rights over a number of land plots to ensure that the maintenance of environmental mitigation measures is secured. These rights are detailed in Schedule 5 of the dDCO. - Article 34 permits Highways England to enter on any land for the purposes of maintaining the authorised development, provided adequate notice is given to the landowner (28 days) and this right lasts for a period of five years starting on the date the relevant

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>aspect of the development has been completed.</p> <ul style="list-style-type: none"> - Article 2(2) provides that references in the dDCO to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface, and references in the dDCO to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under the dDCO or is otherwise comprised in the Order land. On this basis Highways England can maintain mitigation measures as necessary. - The requirements in the dDCO allow for maintenance of aspects of the mitigation included as part of the development: <ul style="list-style-type: none"> (i) Requirement 13 (Surface and foul water drainage);

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>(ii) Requirement 14 (Flood compensation and storage).</p> <p>Finally, as is set out in the PCF Process Note submitted to the Examination at D4, detail of maintenance (including mitigation maintenance) will be included in the MMRS during detailed design.</p>
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 maintains its response given to Q 47 of the ExA's questions at ISH2: ES para. 2.5.41 [APP-040] states that given the constrained nature of the Scheme corridor, the A38 mainline and highway edge would not deviate horizontally by more than 1m from those lines and situations shown on the Works Plans [REP2-005], noting that the horizontal deviation through Kingsway and Markeaton junctions is anticipated to be no more than 0.5m. All such deviations are contained within the highway work limit of

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>deviation, again, as illustrated in the Works Plans. This thus defines the maximum A38 mainline and highway edge deviations as assumed within the ES. The air quality assessment, and the noise and vibration assessment as reported in the ES [APP-043 and APP-047] accommodate this potential highway horizontal alignment deviation. As such, Highways England has included reference to a 1m lateral deviation for the main carriageway and sliproads.</p> <p>In terms of all other works (i.e. not the mainline and highway edge) the limits are those shown on the Works Plans (shaded in pink on the works plans).</p> <p>For completeness, in terms of the actual assessments in the ES and their consideration of limits of deviation, the following detail may</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>assist the ExA's consideration of this point:</p> <ul style="list-style-type: none"> • The vertical limits of deviation are referenced against the vertical profile levels indicated on the Engineering Section Drawings [TR010022/APP/2.10] and are permitted to deviate by a maximum of 0.5m upwards or downwards, other than the link road from Kingsway junction to Kingsway Park Close which is permitted to deviate by a maximum of 1m upwards or downwards. • The A38 mainline and road edges would not deviate horizontally by more than 1m (noting that the horizontal deviation through Kingsway and Markeaton junctions is anticipated to be no more than 0.5m). In no case would the Scheme extend beyond the defined Order boundaries. • In respect of the excavations within the flood storage areas at

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				<p>Kingsway junction and the floodplain compensation area at Little Eaton junction, these can deviate vertically to a maximum of 0.5m downwards, but to any distance upwards to ground level.</p> <ul style="list-style-type: none"> • With regard to the floodplain compensation area at Little Eaton junction, this area could deviate horizontally within the confines of the area illustrated on the Works Plans (refer to Sheet 3 - Work No 31). <p>All other limits of deviation are included in the works plans.</p>
8.	Applicant Cadent Gas Limited	Article 10 – Consent to transfer Benefit of Order Cadent Gas Limited [REP5-012]	Amendments suggested by Cadent Gas Limited.	Highways England considers that the scope of the rights sought under the dDCO is sufficient for Cadent. The definition of “maintain” (and derivatives of this) secured in the dDCO, together with the clarification of the rights to be acquired over land (noted in article 2(2)) is broad enough to ensure that Cadent will have

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>sufficient rights to continue its operations.</p> <p>The PPs for the benefit of Cadent have been updated and the final version of the dDCO has been updated to reflect these.</p>
d) Part 3 – Streets				
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"> • 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)? 	<p>HE confirms that s.4 will not be affected by the DCO scheme as it is not being disapplied. The s.4 process is used in practice to secure commuted sums (which is outside of the scope of the DCO) and s.4 agreements are negotiated by the relevant authorities at the relevant time that they are required.</p> <p>Highways England understands that the Local Highway Authorities can apply to the Department for Transport for additional funding should there be an additional financial cost to any new infrastructure that will become their responsibility, as set out in article 13.</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>Neither Council has raised any specific concerns in respect of articles 13, 18 and 19. However, following Highways England's meeting with DCiC (on 27 February 2020), DCiC has requested further detail from Highways England regarding the extent of new roads which will, following completion of the development, form part of their network. Highways England is in the process of providing this to DCiC.</p>
10.	Applicant DCiC DCC	<p>Article 11 – Street works SWQ [PD-014] 1.9 Applicant response [REP4-024] DCiC response [REP4-029] Applicant response [REP5-010]</p>	<p>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:</p> <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. 	<p>Highways England understands that this is a reference to the disapplication of DCC's and DCiC's permit schemes. Highways England has discussed this with both Councils and they are both content for the disapplication to be included in the dDCO. This is on the basis that the process stipulated in articles 11 and 12 is followed (which is a modified NRSWA process) and that the detail in the TMP (see paragraphs 6.3.1 to 6.3.4 in the TMP) is worked up between the Councils and</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>Highways England as part of the discharge of requirements 11 and 12. Both councils want to ensure that they are engaged throughout the development process and understand (and are notified) in advance of development taking place on their highway networks. The process outlined above ensures that these objectives are met and both councils are content with the approach.</p>
11.	DCiC	<p>Article 14 – Classification of roads, etc. SWQ [PD-014] 1.10 DCiC response [REP4-029] DCC response [REP4-030] Applicant response [REP5-010]</p>	<p>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.</p> <p>b) The need for any agreement outside the Examination and whether that is material to the Examination.</p>	<p>For DCiC to respond. Highways England has met with DCiC (on 27 February 2020) and confirmed that as the inventory detail is not available now at the preliminary design stage, it will be worked up at a later date. DCiC has agreed that a commitment in the OEMP is sufficient to ensure that the inventory for detrunked roads is agreed at a later date. DCiC has confirmed that it is content with this approach and, as such, no agreement outside of the DCO process is required. In addition,</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>DCiC is content that Parts 2 and 3 of Schedule 3 of the dDCO, together with the associated plans details the extent of the detrunking and the council will be consulted through the discharge of article 12. Finally, article 13(2) provides that the altered highways which are not trunk road have to completed to the satisfaction of DCiC and they will form part of DCiC's network.</p>
<p>e) Part 4 – Supplemental Powers</p>				

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"> <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</i> 	<p>a)</p> <ul style="list-style-type: none"> No part of the Scheme is affecting a main river so it is not proposed to include this in the dDCO. This sub-paragraph is now included in Article 20 of the dDCO Highways England does not consider that this is necessary because it could potentially conflict with the purpose of the article itself. The article provides a means to secure the necessary consent from the person responsible for the watercourse, ditch or drain (this could be a landowner, statutory undertaker or other statutory body). This provides an efficient and streamlined way to ensure that the development can proceed expeditiously and undertake the activities specified in the article. Having to then obtain separately e.g. a s106 consent under the Water Industry Act 1991, would then cause undue delay and

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			<p><i>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></p> <p>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:</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>defeat the purpose of the article. In terms of discharges, no consent is needed for discharges which are not polluted and the addition of the EPR reference (see the preceding bullet point) ensures that any discharge captured by the EPR regime will be secured.</p> <p>b) Highways England understands that DCiC is content with the wording proposed in the OEMP regarding discharge rates – i.e. response 1.9 in Deadline 4 submission on the Applicants Response to Deadline 3 submissions: <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</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
			<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>	<p><i>system and that betterment will be provided where practical</i>’.</p> <p>Also note that the Deadline 5 submission on response the Deadline 4 submissions, HE committed to “<i>During the detailed design stage these will be further refined and appropriate treatment and attenuation will be applied accordingly. During this process HE will endeavour to achieve 30% betterment where it is practicable to do so</i>”. This commitment has been added to the amended OEMP as submitted at Deadline 6.</p> <p>c) From Highways England's perspective it is not clear why the WIA is relevant here as this relates to statutory undertakers. Please see preceding comments on this point.</p>
<p>f) Part 5 – Powers of Acquisition</p>				

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).	Please see response to q.8 above.
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.	DCiC and DCC to respond.
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.	<p>The intention is to give Highways England flexibility to ensure that mitigation works can be undertaken to land is required. Highways England has sought to identify the relevant mitigation works under Schedule 5 and included reference to mitigation works as necessary.</p> <p>However, Highways England is content to limit this to the works identified in the ES to avoid any</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				confusion or to extend the scope of these works outside of what has been identified and assessed in the ES.
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</p>	<p>a) As per our Deadline 5 response to comments received at Deadline 4 (3.9a), <i>“the requirement to consult with the DCiC Arboriculture and Parks officers regarding the removal of significant trees and retention of felled timber within DCiC land will be detailed in the next version of the OEMP”</i>. The amended OEMP submitted at Deadline 6 includes this commitment.</p> <p>b) As per our Deadline 5 response to comments received at Deadline 4 (3.9b), <i>“During the detailed design stage vegetation clearance plans will be finalised. Such plans will be made available to the local authorities. The need to consult with the DCiC in advance of commencement of any removal of existing trees, hedgerows</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
			<p>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>	<p><i>and shrubs will be detailed in the next version of the OEMP, noting DCiC's requirement for 14 days advance notice. With regard the queries from the public, these should be directed to HE's appointed Community Relations Manager." The amended OEMP submitted at Deadline 6 includes this commitment.</i></p> <p><i>c) As per our Deadline 4 response to comments received at Deadline 4 (6.7c), "The loss of hedgerows within the Order Limits are shown in the plan submitted at Deadline 3 [REP3-021]. It is thus not considered necessary for the dDCO to require the production of a further plan and schedule at this stage. However, during the detailed design stage vegetation clearance plans (including removal of hedgerows) will be finalised. Such plans can be made available to the local authorities. The need to consult with the DCC in advance of commencement of any removal of existing trees, hedgerows and shrubs</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p><i>will be detailed in the next version of the OEMP."</i></p> <p>To provide further clarity on this point the vegetation and tree clearance/ retention plans and the hedgerow clearance plans have now been included in the OEMP as submitted at Deadline 6. In addition, the hedgerow plan will be referenced in the article and the plan included as a certified document.</p> <p>d) The OEMP at D-B10 (Table 3.2c) states "<i>Retained trees to be protected as per British Standard BS: 5837 Trees in relation to design, demolition and construction – Recommendations (BSI, 2012).</i>"</p> <p>e) MW-LAN2 in the OEMP relates to the Arboricultural Mitigation Strategy. The landscape design (as illustrated in the Environmental Masterplan figures) covers areas that are anticipated to have been cleared. The areas where vegetation is to be retained would be covered by the Arboricultural Mitigation Strategy to</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				protect those trees retained within and immediately adjacent to the order limits (in accordance with the OEMP).
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] 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.	There have not been any further discussion between the parties on this point. Highways England reduced the appeal periods from 42 days to 21 and it understands that this position is now agreed by all Councils.
i) Schedule 1 – Authorised Development				

No	Addressed to	Reference	Issues and questions	Applicant's Response
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.	All of the DCOs granted to HE have further development listed as per the dDCO for the A38 (see, for example, the A556 (Knutsford to Bowdon), A160/A180, A14 Cambridge to Huntingdon, A19/A1058, M4 Motorway Junctions 3-12, M20 Junction 10a, A19/A184 Testos Junction Improvement, A30 Chiverton to Carland Cross). Highways England acknowledges that the A303 – Stonehenge dDCO was mentioned by the ExA as taking a different approach. The A303 Stonehenge DCO is still in draft and it is not clear what approach the SoS will take in respect of this point. Nevertheless, at this stage Highways England anticipates that each of the ancillary works could be required for each work item and, from an operational perspective, Highways England would prefer to keep the approach as standardized as possible across its schemes to ensure consistency. Highways England has provided the

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>ExA with an indicative itemised list (as it requested following comments made on the A14 DCO scheme see: Appendix B to REP1-004)) but HE cannot limit itself to this list as it is not certain at this preliminary design stage whether these limitations can be applied. As such, to ensure flexibility, the list specified in the dDCO has to remain.</p> <p>In terms of Highways England's case for CA or TP, all works are necessary for the development of the Scheme. The Works shown on the Works Plans indicate where these works will be undertaken and any ancillary works undertaken to facilitate their delivery will ensure the effective delivery of the Scheme.</p>
j) Schedule 2 – Requirements				
19.	Applicant DCC	Requirements 1-21	Whether a requirement for consultation with Derwent Valley Mills World Heritage Site	Highways England does not consider that the DVMWHSP should be included as a consultee in the dDCO

No	Addressed to	Reference	Issues and questions	Applicant's Response
		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]	Partnership should be added to Requirements 9 and 12. Whether OEMP provisions PW-CH1 to PW-CH5, D-CH4 and D-CH5 are enough.	<p>because it is not a statutory body and DCC has confirmed that it will consult with the DVMWHSP as necessary in respect of the discharge of these requirements.</p> <p>In addition, as per Highways England's Deadline 5 response to comments received at Deadline 4 (6.8), <i>"The need to consult with the Derwent Valley Mills World Heritage Site Partnership during the definition of the archaeological investigation works is already detailed in the updated OEMP [REP3-003] (refer to PW-CH1 to PW-CH5 in Table 3.2b) and thus does not need to be repeated within Requirement 9. In addition, it would not seem appropriate to require consultation with the Derwent Valley Mills World Heritage Site Partnership as part of Requirement 12 Detailed Design as only certain aspects of the design are of interest to the Partnership – the need to consult with the Partnership</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<i>on such design aspects is already detailed in the OEMP [REP3-003] – refer to D-CH4 and D-CH5 (Table 3.2c)."</i> This issue was discussed at the ISH3 and DCC indicated that they were content that consultation with the DVMWHSP is secured via the OEMP.
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- EA response [REP4-027]	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> ".	a) In response to previous comments, as per our response at Deadline 4 to ExA SWQ 1.19b (plus the response at Deadline 5 (6.14b)), the amended OEMP submitted at Deadline 6 states as follows: " <i>CEMPs and HEMPs are living documents and thus it is anticipated that CEMPs and the HEMP will be revised as necessary, in line with the principles of this OEMP. Each revised CEMP and HEMP will be prepared in consultation with the relevant stakeholders as set out in this OEMP</i> ". The various cited management and mitigation plans, strategies and written schemes form part of these documents, and thus this provision covers these. The

No	Addressed to	Reference	Issues and questions	Applicant's Response
		Applicant response [REP5-010] 031]		<p>amended OEMP being submitted at Deadline 6 clarifies that references to the CEMP refers to both the CEMP and the associated management plans that form part of it (refer to footnote on page 3).</p> <p>b) As per Highways England's response at Deadline 5 in response to comments received at Deadline 4 (refer to 4.6) <i>"It has been agreed with the EA that the requirement for a Verification Report is secured through the OEMP. Subsequent to Deadline 4, HE has agreed with the EA that the wording regarding the</i></p> <p><i>Verification Report as included in the OEMP [REP3-003] (MW-GEO3) is to be amended to state the following (additional wording is underlined):</i></p> <p><i>"Where remediation works have been undertaken, Highways England will prepare a Verification Report to illustrate that the works have been undertaken in accordance with the Remediation Strategy. The Verification Report shall be submitted to and</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p><i>agreed with the Environment Agency, noting that the Verification Report will report on the effectiveness of the implemented remedial measures. The EA is happy with this change, noting that this is now reflected in the final signed SoCG as submitted at Deadline 5." The amended OEMP submitted at Deadline 6 includes this commitment.</i></p>
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]	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; 	a) Highways England does not consider that this is necessary on the basis that the CEMP has to be substantially in accordance with the OEMP and is to be approved by the SoS. The OEMP is based on the findings and mitigation proposed in the ES and is a certified document. The HEMP has to be based on the CEMP and has to contain long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the

No	Addressed to	Reference	Issues and questions	Applicant's Response
		EBC response [REP4-031] EA response [REP4-027] Applicant response [REP5-010]	<ul style="list-style-type: none"> • 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. 	<p>environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the development (please see the definition of "HEMP" in Requirement 1 which outlines the detail to be included within the HEMP). Both the CEMP and the HEMP will be subject to discharge applications and both will be consulted on (to the LPAs, LHAs, EA etc.) and if there are any issues any of these parties can raise an issue through the consultation process outlined in requirement 4. In addition, the SoS has to approve them so there is an added layer to ensure compliance.</p> <p>Highways England also considers that the current wording in the requirements is sufficient as the OEMP, CEMP and HEMP are intended to fulfil different purposes. The CEMP is focussed predominantly on the construction phase and the HEMP the operations phase of the development. As such, to tie the</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>operational phase to the ES (which cannot know a number of measures which might occur during operation) could be unduly restrictive.</p> <p>b) Please see the definition of "HEMP" in R3 as this is already included. i.e. the HEMP is the CEMP to be developed and to contain the detail listed in the definition.</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] EBC response [REP4-031] EA response [REP4-027] Applicant response [REP5-010]	Whether a 28-day consultation period should be added to Requirement 4.	<p>Highways England does not consider this is necessary as it gives no flexibility e.g. to extend the period if necessary or account for the scenario where consultees do not respond.</p> <p>The requirements provide an obligation on Highways England to consult with the relevant bodies listed in the requirements. Highways England will undertake this consultation and will produce the consultation report specified in R4. As such, making this more prescriptive is not necessary. It is worth mentioning that no other party has suggested that this is necessary and all parties at</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				ISH3 (DCC, DCiC and the EA) are content with the provision as it is drafted.
23.	Applicant DCiC DCC EBC EA	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] Applicant response [REP5-010]	<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>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</p>	<p>a) As per our response at Deadline 5 in response to comments received at Deadline 4 (refer to 6.11a), "As detailed in the OEMP [REP3-003], a preliminary works CEMP will be prepared in consultation with relevant stakeholders and approved by the Secretary of State. As some landscaping will be undertaken during this phase, the OEMP states that such works will be undertaken in accordance with an approved landscaping scheme (see PW-LAN2). The next version of the OEMP will clarify 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." The amended OEMP</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
			<p>works CEMP including details of surface water drainage solutions at the main construction compound.</p>	<p>submitted at Deadline 6 includes this commitment.</p> <p>b) Refer to the above which indicates that vegetation retention and protection plans will be prepared and subject to consultation with the applicable local authorities.</p> <p>c) As per our response at Deadline 4 to the ExA SWQ (refer to 1.24), no elements of the compound are planned to be retained permanently. However, as based upon comments made at the ISH4, the amended OEMP submitted at Deadline 6 now states that:</p> <p><i>“Following completion of the Main Works, the main construction compound at Little Eaton junction will be decommissioned and the site suitably restored to pre-works conditions. Certain aspects of the compound may be left in situ where these features are deemed to be of benefit to site conditions, subject to the agreement of the landowner and following consultation with EBC, on</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p><i>the basis that this does not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement".</i></p> <p>The mitigation measures that will be applied during works at the compound to mitigate potential environmental effects are detailed in the OEMP [REP3-003] and secured through the DCO, noting that a preliminary works CEMP would be prepared and subject to consultation with the local authorities and the Environment Agency (refer to PW-G1). In addition, as per our response at Deadline 5 in response to comments received at Deadline 4 "As detailed in PW-WAT1, the preliminary works CEMP will include details regarding pollution risk prevention measures, with such measures being defined in consultation with the applicable local authorities and the Environment Agency. The next version of the OEMP will also state that the</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p><i>preliminary works CEMP should include details of surface water drainage solutions at the main construction compound at Little Eaton junction.</i>" This commitment has been included in the amended OEMP as submitted at Deadline 6.</p>
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.	As Highways England clarified in ISH3, the ES has identified and assessed the likely protected species that will be encountered during development and what measures will be undertaken to ensure all legislative requirements are fulfilled. NE has been consulted on this as part of the DCO process. The purpose of the requirement is to cover what happens where unidentified species are found during construction. When this occurs NE will be consulted as per the drafting of the article. As such, full protection is ensured through the drafting of the article.

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.	<p>As per our response at Deadline 4 to the ExA SWQ (refer to 1.26) <i>“Requirement 14 does not need amending since it appropriately reflects the differing climate change allowances associated with the assessment of flood risk at each junction. It is noted that both climate change allowances stated in Requirement 14 are based on the same UKCP09 climate projection i.e. the ‘Upper end’ for the 2080s epoch.”</i></p> <p>Further as per our response at Deadline 5 in response to comments received at Deadline 4 (refer to 3.16), <i>“Requirement 14 concerns floodplain compensation and flood (storage) mitigation. Although ‘floodplain compensation’ and ‘flood (storage) mitigation’ have the same underlying objectives (i.e. to ensure there is no increase in flood risk as a result of the Scheme) they achieve these objectives by serving different purposes. Floodplain compensation is required where there is a loss of ‘main</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p><i>river' floodplain, irrespective of whether there is a tangible increase in flood risk determined from hydraulic modelling. It seeks to address cumulative losses in floodplain, which may ultimately increase risk elsewhere. At Little Eaton junction, the proposed works remove existing floodplain of the River Derwent which is classed as 'main river'. As such, floodplain compensation is required. The assessment is made based on hydraulic modelling of the River Derwent for the 1 in 100-year design event with an allowance for climate change. The allowance is determined based on UKCP09 climate projection at the 'Upper end' scenario for the 2080s epoch. Since the hydraulic model is driven by flow inputs, the allowance percentage is accordingly 50%. At Kingsway junction, there is no 'main river' therefore floodplain compensation is not required. However, hydraulic modelling indicated that the Scheme results in</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p><i>increased flood risk from Bramble Brook, and therefore mitigation is required via flood storage areas. As with Little Eaton junction, the assessment is made based on hydraulic modelling of the Bramble Brook for the 1 in 100-year design event with an allowance for climate change. The allowance is determined based on UKCP09 climate projection at the 'Upper end' scenario for the 2080s epoch. However, since the hydraulic model is driven by rainfall inputs, the allowance percentage is accordingly 40%. Therefore, the climate change allowances are not different between the two junctions – the only difference is that the hydraulic models are driven by different input boundary conditions, hence why Requirement 14 references different percentages (i.e. a 40% increase in rainfall is equivalent to a 50% increase in flow). For further details, please see:</i></p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
				<p>https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances which confirms that in small and urban catchments (i.e. Bramble Brook at Kingsway junction) the climate change percentages for rainfall should be applied when developing FRAs."</p>
k) Schedule 3 – Classification of Roads, etc.				
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"> • agreement of the dDCO provisions; 	<p>a) Highways England has been provided with minor comments from DCiC on the content of the schedules and these are incorporated into the final version of the dDCO submitted at D6.</p> <p>b) Highways England considers that DCiC and DCC are content with the processes outlined for these items (and clarified above in terms of the detrunking inventory and the updates to the TMP).</p>

No	Addressed to	Reference	Issues and questions	Applicant's Response
			<ul style="list-style-type: none"> 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]	<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>	<p>a) All comments from the Councils in respect of the schedules have been incorporated into the dDCO.</p> <p>b) Highways England has sought through the dDCO to stop-up footways and cycle ways which cross the A38 and are no longer required (this is to ensure that there is no ambiguity over the public's right to access these routes. Particularly where there are issues around safety).</p>
m) Schedule 5 – Land in Which New Rights, etc. May be Acquired				

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.	For the Councils to respond.
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. (3) The order may not include provision the effect of which is to exclude the application of a compensation provision.”</i>	As explained during ISH3, the only modifications to the compulsory purchase regime permit the acquisition of rights only, as this is not permitted through the normal compulsory purchase regime. Article 26 allows for the acquisition of rights over private land and ensures that the imposition of these rights give landowners the right to compensation under the DCO.
o) Schedule 7 – Land for Which Temporary Possession Might be Taken				

No	Addressed to	Reference	Issues and questions	Applicant's Response
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.	For other parties to respond.
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.)	As per our response at Deadline 5 in response to comments received at Deadline 4 (refer to 3.19) an updated TPO plan and table were submitted at Deadline 5 [REP5-011] (namely updated Appendix F from the Arboricultural Impact Assessment Report). Part of the area marked as TPO 116 on the original plan is covered by TPO 197. It is also agreed that TPO 590 is missing from the figure, although this TPO is unaffected by the Scheme. Note that this change does not change the overall losses in areas covered by TPO. Given this, the dDCO has been updated to reflect these changes.

No	Addressed to	Reference	Issues and questions	Applicant's Response
q) Schedule 9 – Protective Provisions				
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>	Please see the separate document in the appendix to this response which provides an update in respect of these points.
r) Schedule 10 – Documents to be Certified				
33.	Applicant	Update SWQ [PD-014] 1.35 Applicant response [REP4-024]	a) References to the latest versions of documents provided by the Applicant during the Examination including, but not limited to:	a) References in the dDCO (Schedule 10) have been updated to reflect the most recent versions of the documents. However, it is expected that a number of the

No	Addressed to	Reference	Issues and questions	Applicant's Response
			<p>[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>	<p>documents to be certified will be provided to the Examination at further deadlines. As such, there are a number of square brackets in the dDCO submitted at D6 because these final references are not available to Highways England at D6.</p> <p>b) and c) these points are to be clarified by Highways England in due course.</p> <p>d) Updates have been made to the dDCO which has been submitted at D6.</p>

Protective Provisions: outstanding issues at deadline 6

1 CADENT

NO.	OUTSTANDING ISSUES	STATUS/REASON
1	Highways England has agreed to reinstate 'reasonably anticipated' expenses in paragraph 10(1) (dDCO Schedule 9, paragraph 58(1)) on the basis that the following wording is added: '(subject to an appropriate works agreement being agreed between Cadent and the undertaker).'	Additional wording to be agreed by Cadent.
2	Deadline 5 submission: Cadent requires the description of works in dDCO Schedule 5 to be broader. Cadent also requires permanent acquisition of rights over land where gas pipelines are proposed to be diverted (works 9, 21 and 35).	Highways England considers that Schedule 5 provides Cadent with adequate rights.
3	Deadline 5 submission: Cadent requires the definition of 'utilities' in dDCO Schedule 5 to be expanded to list all utilities and apparatus.	Highways England considers that the definition of 'utilities' in Schedule 5, together with the Schedule 1 work numbers identifying the nature of the apparatus to be diverted, provides sufficient detail as to the specific works that relate to Cadent.

2 SEVERN TRENT WATER

NO.	OUTSTANDING ISSUES	STATUS/REASON
1	Severn Trent Water and Highways England are in the process of agreeing a side agreement in respect of the protective provisions. Discussions are ongoing but the agreement is close	Highways England understands that STW is content with the proposed protective provisions in the dDCO,

	to being resolved subject to the agreement of a couple of minor issues which are being discussed.	subject to the side agreement being finalised between Highways England and STW.
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3 ENVIRONMENT AGENCY

NO.	OUTSTANDING ISSUES	STATUS/REASON
-	None	Protective provisions agreed

4 WESTERN POWER DISTRIBUTION

NO.	OUTSTANDING ISSUES	STATUS/REASON
1	<p>WPD and Highways England are in the process of agreeing a side agreement in respect of the protective provisions. Discussions are ongoing but the agreement is close to being resolved subject to the agreement of a couple of minor issues which are being discussed.</p> <p>WPD has raised an issue regarding the scope of the rights in schedule 5, however, Highways England is confident that this issue can be resolved with WPD.</p>	Highways England understands that WPD is content with the proposed protective provisions in the dDCO, subject to the side agreement being finalised between Highways England and WPD.

5 NETWORK RAIL

NO.	OUTSTANDING ISSUES	STATUS/REASON
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PROTECTIVE PROVISIONS		
1	Highways England has received the most recent draft of the Framework Agreement from NR and is currently considering the matters raised by NR.	Highways England understands that NR is content with the proposed protective provisions in the dDCO, subject to a framework agreement (and associated agreements) being finalised between Highways England and NR.
2	Highways England is waiting to review a draft Deed of Easement which is being produce by NR.	Highways England will review the Deed of Easement once this has been provided to it by NR.