

Application by Highways England for an Order Granting Development Consent for the A38 Derby Junctions Scheme
The Examining Authority's schedule of changes to the Applicant's draft Development Consent Order
Issued on Thursday 12 March 2020

The following table sets out the Examining Authority's (ExA's) schedule of changes to the draft Development Consent Order (dDCO) submitted by the Applicant at Deadline 6 on Tuesday 3 March 2020 [REP6-002].

The Applicant and Interested Parties are invited to make comments on the ExA's schedule of changes. These should be received by the ExA by Deadline 8 on Tuesday 17 March 2020.

This document will be referred to at Issue Specific Hearing 5, which will be held on **Thursday, 19 March 2020**.

Abbreviations

dDCO	draft Development Consent Order [REP6-002]	ExA	Examining Authority
DCC	Derbyshire County Council	OEMP	Outline Environmental Management Plan [REP6-007]
DCiC	Derby City Council	CEMP	Construction Environmental Management Plan
EA	Environment Agency	HEMP	Handover Environmental Management Plan
EBC	Erewash Borough Council	ISH	Issue Specific Hearing
ES	Environmental Statement	TMP	Traffic Management Plan

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

No	Reference	Text as set out in [REP6-002]	ExA's suggested change	ExA's reasoning
General matters and preamble				
1.			<p>Applicant's document "8.34(d) A Comparison of the updated draft Development Consent Order with the Version Submitted for the Application" [REP6-012] appears to only highlight changes made since the previous version [REP4004] of the draft Development Consent Order (dDCO). Changes not highlighted include, but are not limited to, the preamble; Articles 2, 8, 10, 14, 20, 23, 33, 35, 38, 43 and 50; Schedule 1; Requirements 1, 3, 5, 8, 10, 11, 13, 14, and 16; Schedules 3, 4, 5, 6, 7, 9 and 10.</p> <p>Please could a document that highlights all changes to the application version [APP-016] of the dDCO be provided?</p>	To assist with the ExA's consideration of the dDCO during the preparation of the recommendation report.
Part 1 – Preliminary				
2.	Article 3 Disapplication of legislative provisions	<p>No change suggested by the ExA, subject to:</p> <ul style="list-style-type: none"> Derby City Council (DCiC) and Derbyshire County Council (DCC) confirming that they are content with the proposed disapplication of s.23 of the Land Drainage Act 1991 and that they are content with any other provisions required for them to accept disapplication, including those for 		

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		<p>consultation during the detailed design stage in the dDCO and Outline Environmental Management Plan (OEMP);</p> <ul style="list-style-type: none"> • DCiC and DCC confirming that they are content with the proposed disapplication of their permit schemes and that they are content with any other provisions required for them to accept disapplication, including those in Articles 11 and 12; in the Traffic Management Plan (TMP); and in the OEMP; • the Environment Agency (EA) confirming that they are content with the proposed disapplication of their regional byelaws and that they are content with any other provisions required for them to accept disapplication, including those in the protective provisions; and • there being no other related concerns. 		
3.	Article 4 Maintenance of drainage works	<p>No change suggested by the ExA, subject to:</p> <ul style="list-style-type: none"> • the EA and Lead Local Flood Authorities confirming that they are content that they would be able to fulfil their statutory duties; • no concerns or objections having been raised with respect to any private obligations; and • there being no other related concerns. 		
Part 2 – Principal Powers				
4.	Article 6 Maintenance of authorised development	<p>No change suggested by the ExA, subject to:</p> <ul style="list-style-type: none"> • the EA and Lead Local Flood Authorities confirming that they are content that they would be able to fulfil their statutory duties; • an acceptable process is secured for the identification of final maintenance and repair responsibilities; 		

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		<ul style="list-style-type: none">the broad principles for maintenance and repair being agreed and set out in the OEMP or a standalone document that would be certified by the dDCO;the measures covering the maintenance of all mitigation measures;no concerns or objections having been raised with respect to any private obligations; andthere being no other related concerns.		
Part 3 – Streets				
5.	Article 13 Construction and maintenance of new, altered or diverted streets and other structures	No change suggested by the ExA, subject to: <ul style="list-style-type: none">DCiC confirming that they have no outstanding concerns with respect provisions for construction and maintenance of new, altered or diverted streets and other structures;whether the tailpiece to 13(4) requires amendment to cover streets, as suggested at Issue Specific Hearing 3 (ISH3); andthere being no other related concerns.		
6.	Article 14 Classification of roads, etc.	No change suggested by the ExA, subject to: <ul style="list-style-type: none">DCiC confirming whether they are content that an acceptable process is secured the development of the detailed inventory and that they are content with any other provisions required, including those in Articles 12 and 13; in Schedule 3 and in the OEMP;there being no other related concerns.		
7.	Article 15(6) Temporary stopping up and restriction of use of		<u>(7) Any application for consent to which paragraph (6) applies must, on the letter accompanying the application,</u>	Additional provision requested by Derbyshire County Council and Derby City Council.

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	streets and highways "Guillotine" provisions		<u>inform the street authority of the time period allowed by that paragraph (6), and inform them that if they do not respond before the end of the time period, then consent will be deemed to have been granted.</u>	The ExA supports the views of the Councils and considers it helpful for them to be reminded on time periods for consent, particularly given that they have no previous experience of DCO projects. Similar provisions have been included in other DCO.
8.	Article 18 Clearways	No change suggested by the ExA, subject to: <ul style="list-style-type: none"> • DCiC confirming that they do not have any outstanding concerns; and • there being no other related concerns. 		
9.	Article 19 Traffic regulations	No change suggested by the ExA, subject to: <ul style="list-style-type: none"> • DCiC confirming that they do not have any outstanding concerns; and • there being no other related concerns. 		
10.	Article 19(11) Traffic regulation "Guillotine" provisions		<u>(12) Any application for consent to which paragraph (11) applies must, on the letter accompanying the application, inform the traffic authority of the time period allowed by that paragraph (11), and inform them that if they do not respond before the end of the time period, then consent will</u>	Additional provision requested by Derbyshire County Council and Derby City Council. The ExA supports the views of the Councils and considers it helpful for them to be reminded on time periods for consent, particularly given that they

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			<u>be deemed to have been granted.</u>	have no previous experience of DCO projects. Similar provisions have been included in other DCO.
11.	Articles 11 to 19 Streets	No other changes suggested by the ExA, subject to: <ul style="list-style-type: none">• DCiC having no outstanding concerns with respect to how Section 4 of the Highways Act would be affected; and• there being no other related concerns.		
Part 4 – Supplemental Powers				
12.	Article 20 Discharge of water “Guillotine” provisions		<u>(9) Any application for consent to which paragraph (7) applies must, on the letter accompanying the application, inform the person who receives an application for consent of the time period allowed by that paragraph (7), and inform them that if they do not respond before the end of the time period, then consent will be deemed to have been granted.</u>	The ExA considers it helpful for persons to be reminded on time periods for consent, particularly given that they may have no previous experience of DCO projects. Similar provisions have been included in other DCO.
13.	Article 20 Discharge of water Main rivers		<u>(10) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any</u>	The EA have stated that they are satisfied with the ExA’s suggestion that this provision should be included.

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			<u>watercourse forming part of a main river.</u>	
14.	Article 20 Discharge of water	No other changes suggested by the ExA, subject to: <ul style="list-style-type: none">the EA, DCiC and DCC confirming that they are content that the following provisions are not added: <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>DCiC and DCC confirming that they are content that the OEMP addresses its' concerns regarding the need to limit the amount of water discharged to a sewer drain or watercourse; andthere being no other related concerns.		
Part 5 – Powers of Acquisition				
15.	Article 22(6) Authority to survey and investigate the land "Guillotine" provisions		<u>(7) Any application for consent to which paragraph (6) applies must, on the letter accompanying the application, inform the local highway authority or street authority of the time period allowed by that paragraph (6), and inform them that if they do not respond before the end of the time period, then consent will be deemed to have been granted.</u>	Additional provision requested by Derbyshire County Council and Derby City Council. The ExA supports the views of the Councils and considers it helpful for them to be reminded on time periods for consent, particularly given that they have no previous experience of DCO projects. Similar provisions have been included in other DCO.

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Part 6 – Operations				
16.	Article 40 Trees subject to tree preservation orders	No other changes suggested by the ExA, subject to: <ul style="list-style-type: none">• DCiC confirming that they are content with Article 40 and with the related provisions in Schedule 8 and in the OEMP; and• there being no other related concerns.		
Part 7 – Miscellaneous and General				
Schedule 1 – Authorised Development				
Schedule 2 – Requirements				
17.	Requirement 3 Construction Environmental Management Plan Adherence to the core hours.	(2) (d) require adherence to the core hours, except for— (i) night time closures for Markeaton footbridge demolition and installation of a new footbridge; (ii) junction and slip road tie-in works to existing highways; (iii) installation of bridge decks; (iv) installation of sign gantries;	(2) (d) require adherence to the core hours, except for— (i) night time closures for Markeaton footbridge demolition and installation of a new footbridge; (ii) junction and slip road tie-in works to existing highways; (iii) installation of bridge decks; (iv) installation of sign gantries;	To require that (i) to (vii) are only to be carried out if notifications are provided to the relevant local authorities in advance.

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		<p>(v) installation of temporary and permanent line markings;</p> <p>(vi) overnight traffic management measures, as agreed with the local highway authority;</p> <p>(vii) works associated with traffic management and signal changes; and</p> <p>(viii) any emergency works.</p> <p>Any other work carried out outside the core hours or any extension to the core hours may be possible with the prior agreement of the relevant environmental health officer provided that the activity does not result in materially new or materially worse environmental effects as reported in the environmental statement.</p>	<p>(v) installation of temporary and permanent line markings;</p> <p>(vi) overnight traffic management measures, as agreed with the local highway authority;</p> <p>(vii) works associated with traffic management and signal changes; and</p> <p>(viii) any emergency works; <u>provided that written notification of the extent, timing and duration of each activity is given to relevant local authorities in advance of any works that are to be undertaken outside of core hours, except for any emergency works, which are to be notified to the relevant local authorities as soon as is practicable.</u></p> <p>Any other work carried out outside the core hours or any extension to the core hours <u>will only be permitted if there has been prior written</u> agreement of the relevant environmental health officer provided that the activity does not result in materially new or materially worse environmental effects as</p>	

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			reported in the environmental statement	
18.	Requirement 3 Construction Environmental Management Plan Provisions for the Handover Environmental Management Plan	(5) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP as approved under sub-paragraph (4).	<p>(5) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP as approved under sub-paragraph (4). <u>The HEMP must:</u></p> <p>(a) <u>be substantially in accordance with the HEMP provisions included in the OEMP and CEMP;</u></p> <p>(b) <u>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</u></p> <p>(c) <u>incorporate the measures referred to in the environmental statement as being incorporated in the HEMP.</u></p>	<p>Additional HEMP provision, consistent with similar provisions for the CEMP.</p> <p>The HEMP is focussed on the operations phase and the CEMP on the construction phase. It is considered unlikely that the CEMP that would be converted into the HEMP would include all necessary matters for the HEMP.</p> <p>The provision therefore clarifies the need for the HEMP to incorporate relevant measures from the ES and OEMP.</p> <p>Derbyshire County Council, Derby City Council, Erewash Borough Council and the Environment Agency have supported the addition of these provisions.</p>
19.	Requirement 4 Details of consultation	(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-	(2) <u>The consultation with another party referred to under sub-paragraph (1) is to be for a minimum period of 28 days</u>	Additional provision to require a consultation period for what is considered a reasonable minimum period given the expected extent of matters to

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		<p>paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.</p> <p>(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.</p> <p>(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.</p>	<p><u>unless otherwise agreed in writing by the relevant party.</u></p> <p><u>(3)</u> At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.</p> <p><u>(4)</u> The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.</p> <p><u>(5)</u> Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been</p>	<p>be consulted on; that there is expected to be ongoing liaison; and that there would be a need to avoid unnecessary delay to the proposed development.</p> <p>Provision for 28 days to be a minimum period and to allow for variation to the duration to be agreed in writing are included to give some flexibility, as raised by the Applicant and Derby City Council.</p> <p>28 days supported by Derbyshire County Council and Erewash Borough Council. Derby City Council consider 28 days to be sensible, subject to provision for flexibility.</p>

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			reflected in the submitted details.	
20.	Requirement 5 Landscaping Preliminary works	<p>No other changes suggested by the ExA, subject to:</p> <ul style="list-style-type: none"> • DCiC and DCC confirming that they are content with OEMP landscaping provisions, including for the preliminary works; • Erewash Borough Council (EBC) and the EA confirming that they are content with the OEMP provisions with respect to the main construction compound and any related features that might be retained permanently; • there being no other related concerns. 		
21.	Requirement 13(1) Surface and foul water drainage Preliminary works	(1) No part of the authorised development other than the preliminary works is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in chapter 13 of the environmental statement, including means of pollution control, have been submitted to, and approved in writing, by the Secretary of State following consultation with the relevant planning authority and the local highway authority.	(1) No part of the authorised development other than the preliminary works is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures <u>in the CEMP and</u> in chapter 13 of the environmental statement, including means of pollution control, have been submitted to, and approved in writing, by the Secretary of State following consultation with the relevant planning authority and the local highway authority.	To clarify that mitigation would also be set out in the CEMP.
22.	Requirement 13(1)	No other changes suggested by the ExA, subject to:		

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	Surface and foul water drainage	<ul style="list-style-type: none"> EBC and the EA confirming that they are content that OEMP provisions would provide sufficient protection for controlled and drinking waters in the vicinity of the main construction compound, including during the preliminary works; and there being no other related concerns. 		
23.	Requirement 17 Approvals and amendments to approved details	With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.	With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State, <u>provided that the Secretary of State is satisfied that any amendments would not give rise to any materially new or materially different significant effects in comparison with those reported in the environment statement.</u>	<p>To preserve the validity of the environmental statement.</p> <p>To clarify requirements for detailed design; the development of the construction methodology and any amendments not explicitly considered in the environmental assessment.</p> <p>For consistency with Requirement 12(1).</p>
Schedule 3 – Classification of Roads, etc.				
Schedule 4 – Permanent Stopping Up of Highways, etc.				

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Schedule 5 – Land in Which New Rights, etc. May be Acquired				
24.	Schedule 5	<p>No other changes suggested by the ExA, subject to:</p> <ul style="list-style-type: none"> any further submissions from Cadent Gas Limited; and there being no other related concerns. 		
Schedule 6 – Modification of Compensation and Compulsory Purchase Enactments, etc.				
Schedule 7 – Land for Which Temporary Possession Might be Taken				
Schedule 8 – Trees Subject to Tree Preservation Orders				
25.	Schedule 8	<p>Northern boundary of playing field and adjacent to 32 Queensway, Royal School for the Deaf</p> <p>Land to the north and east of Queensway, Land to the north of Markeaton Street</p> <p>Land at Sturgess Fields</p>	<p>Northern boundary of playing field and adjacent to 32 Queensway, Royal School for the Deaf <u>(160)</u></p> <p>Land to the north and east of Queensway, Land to the north of Markeaton Street <u>(116)</u></p> <p>Land at Sturgess Fields <u>(197)</u></p>	<p>Include tree reference numbers for clarity. No other changes subject to DCiC confirming that they are content.</p>
Schedule 9 – Protective Provisions				

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26.	Schedule 9	<p>No other changes suggested by the ExA, subject to:</p> <ul style="list-style-type: none">any further submissions from Network Rail, the Environment Agency, Cadent Gas Limited, Severn Trent Water, or any other relevant statutory undertakers;EA confirming that it is content with protective provisions, including in relation to the disapplication of legislation;consideration of the amendments suggested by Cadent Gas Limited [REP7-011];the ExA's consideration of any protective provisions that the Applicant, or another party, do not confirm as being agreed before the close of the Examination;there being no other related concerns.		
Schedule 10 – Documents to be Certified				
27.	Schedule 10		<p>References to be provided to:</p> <ul style="list-style-type: none">the latest versions of relevant new or updated documents provided by the Applicant during the Examination; andupdated Environmental Statement documents incorporating clarifications to paragraphs, tables, figures or plans provided by the Applicant in its' Written Representations during the Examination.	<p>To ensure that the certified documents reflect the clarifications and commitments provided during the Examination.</p>