

A38 Derby Junctions

TR010022

8.89 Applicant's Comments on the ExA's Schedule
of Changes to the dDCO

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(Examination Procedure) Rules 2010

A38 Derby Junctions
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Applicant's Comments on the ExA's Schedule of Changes to the dDCO

This document provides the comments of Highways England (the Applicant) on the ExA's Schedule of Changes to the dDCO received on 12th March 2020.

No	Reference	Text as set out in [REP6-002]	ExA's suggested change	ExA's reasoning	Highways England response
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. Please could a document that highlights all changes to the application version [APP-016] of the dDCO be provided?</p>	<p>To assist with the ExA's consideration of the dDCO during the preparation of the recommendation report.</p>	<p>This has been prepared and provided to the ExA as part of Deadline 8. It is worth noting that the reasons for the changes to the dDCO made since the first version submitted as part of the application are listed in the DCO Schedule of Changes document (which details the changes made to the dDCO at every deadline).</p> <p>Highways England would like to point out that Requirement 9 of the dDCO submitted at D6 should refer to ES chapter 6 instead of 9.</p> <p>Also, there are amendments that need to be made to Schedules 5 and 7 of the dDCO, as noted below at point 24.</p> <p>Should it assist the ExA, Highways England is content to provide the ExA with a further revised draft DCO which pick</p>

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					these changes up so that they are not lost. Highways England would be grateful to the ExA if they could please confirm whether this is something that would assist the Examination.
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 consultation during the detailed design stage in the dDCO and Outline Environmental Management Plan (OEMP); 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. 			Highways England's position is that all parties confirmed these points during the ISH3 hearings.

No	Reference	Text as set out in [REP6-002]	ExA's suggested change	ExA's reasoning	Highways England response
3.	Article 4 Maintenance of drainage works	No change suggested by the ExA, subject to: <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. 			Highways England's position is that all parties confirmed these points during the ISH3 hearings.
Part 2 – Principal Powers					
4.	Article 6 Maintenance of authorised development	No change suggested by the ExA, subject to: <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; 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; and there being no other related concerns. 			Highways England's position is that all parties confirmed these points during the ISH3 hearings.

No	Reference	Text as set out in [REP6-002]	ExA's suggested change	ExA's reasoning	Highways England response
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); and • there being no other related concerns. 			Highways England's position is that DCiC is content with article 13. Its main concern related to the application of section 4 of the Highways Act 1980, which Highways England has commented on in its responses submitted at D7.
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. 			Highways England's position is that DCiC is content with article 14.
7.	Article 15(6) Temporary stopping up and restriction of use of streets and highways		<u>(7) Any application for consent to which paragraph (6) applies must, on the letter accompanying the application, inform the street authority of the time period allowed by that paragraph (6), and inform them that if they do not respond</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	Highways England does not consider that this inclusion is needed in the DCO. Highways England reiterates the point it made during ISH3 – that from an administrative perspective Highways England is likely to

No	Reference	Text as set out in [REP6-002]	ExA's suggested change	ExA's reasoning	Highways England response
	"Guillotine" provisions		<u>before the end of the time period, then consent will be deemed to have been granted.</u>	have no previous experience of DCO projects. Similar provisions have been included in other DCO.	draw attention to the 28 day provision when it writes to the relevant body, in order to give the application context. Also, the relevant bodies to whom the 28 day period applies are aware of the time period as it is set out in the 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. 			Highways England understand that DCiC is content with the wording of this article.
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. 			Highways England understand that DCiC is content with the wording of this article.

No	Reference	Text as set out in [REP6-002]	ExA's suggested change	ExA's reasoning	Highways England response
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 be deemed to have been granted.</u>	<p>Additional provision requested by Derbyshire County Council and Derby City Council.</p> <p>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.</p> <p>Similar provisions have been included in other DCO.</p>	Highways England does not consider that this inclusion is needed in the DCO. Highways England reiterates the point it made during ISH3 – that from an administrative perspective Highways England is likely to draw attention to the 28 day provision when it writes to the relevant body, in order to give the application context. Also, the relevant bodies to whom the 28 day period applies are aware of the time period as it is set out in the DCO.
11.	Articles 11 to 19 Streets	<p>No other changes suggested by the ExA, subject to:</p> <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. 			Highways England understands that DCiC's main concern relates to article 13. See response to 5 above.

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>	<p>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.</p> <p>Similar provisions have been included in other DCO.</p>	Highways England does not consider that this inclusion is needed in the DCO. Highways England reiterates the point it made during ISH3 – that from an administrative perspective Highways England is likely to draw attention to the 28 day provision when it writes to the relevant body, in order to give the application context. Also, the relevant bodies to whom the 28 day period applies are aware of the time period as it is set out in the 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 watercourse forming part of a main river.</u>	The EA have stated that they are satisfied with the ExA's suggestion that this provision should be included.	Highways England has provided that this provision is not necessary as the Scheme will not be interfering with the bed or banks of any watercourse forming part of a main river. As such, Highways England does not consider that this inclusion is necessary.

14.	Article 20 Discharge of water	<p>No other changes suggested by the ExA, subject to:</p> <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; and there being no other related concerns. 	<p>Highways England has explained why it does not consider that this is necessary – please see the response submitted at D7, i.e.:</p> <p>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 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</p>
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					preceding bullet point) ensures that any discharge captured by the EPR regime will be secured.
Part 5 – Powers of Acquisition					
15.	Article 22(6) Authority to survey and investigate the land <i>“Guillotine”</i> 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.	Highways England does not consider that this inclusion is needed in the DCO. Highways England reiterates the point it made during ISH3 – that from an administrative perspective Highways England is likely to draw attention to the 28 day provision when it writes to the relevant body, in order to give the application context. Also, the relevant bodies to whom the 28 day period applies are aware of the time period as it is set out in the DCO.

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. 			For DCiC to confirm.
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	(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;	To require that (i) to (vii) are only to be carried out if notifications are provided to the relevant local authorities in advance.	Highways England is content to accept this amendment.

		<p>new footbridge;</p> <p>(ii) junction and slip road tie-in works to existing highways;</p> <p>(iii) installation of bridge decks;</p> <p>(iv) installation of sign gantries;</p>	<p>(iv) installation of sign gantries;</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.</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</u></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><u>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 reported in the environmental statement</p>		
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</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</p>	<p>Highways England considers that the amendments it made in the D6 DCO are sufficient to cover this issue off. The current definition of HEMP in Requirement 3 does include the points suggested by the ExA at (a) to (c).</p> <p>As mentioned at the ISH3 hearing (and recognised in the</p>

			<p><u>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>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>	<p>ExA's comment), the HEMP performs a different job to the CEMP. In terms of the wording in a), if these additions are considered necessary, Highways England would suggest a) instead reads:</p> <p>"be substantially in accordance with the <u>relevant</u> HEMP provisions included in the OEMP and CEMP".</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-paragraph (1) to the relevant consultees referred to in the requirement in relation to which	<p><u>(2) The consultation with another party referred to under sub-paragraph (1) is to be for a minimum period of 28 days unless otherwise agreed in writing by the relevant party.</u></p> <p><u>(3) 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 subparagraph (1) to the relevant consultees referred to in the requirement in relation to which</u></p>	<p>Additional provision to require a consultation period for what is considered a reasonable minimum period given the expected extent of matters to 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</p>	<p>As noted in its submission at D6, in response to ISH3, Highways England does not consider this is necessary as it gives no flexibility where the time period needs to be shorter and agreement in writing to curtail the period cannot be agreed. Highways England considers that the requirement as drafted is reasonable and there is not a need to make it more prescriptive. As noted previously, the essence of the</p>

		<p>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,</p>	<p>approval is being sought from the Secretary of State.</p> <p>(4) 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>(5) 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>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>	<p>requirement is to ensure that consultation with the relevant bodies takes place. Highways England needs to do this under the requirement and to also provide a report summarising the exercise.</p>
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		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.			
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. 			For DCiC, DCC, the EA and EBC to confirm.

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.	Highways England is content to accept this amendment to the dDCO.
22.	Requirement 13(1)	No other changes suggested by the ExA, subject to:			For EBC and the EA to confirm.

	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>	To preserve the validity of the environmental statement. To clarify requirements for detailed design; the development of the construction methodology and any amendments not explicitly considered in the environmental assessment. For consistency with Requirement 12(1).	Highways England does not consider that this addition is necessary, particularly in the context of the CEMP - see requirement 3 - which was discussed during ISH4. In signing off applications made under the DCO, the SoS has to give his approval in accordance with the process set out in the relevant requirement and R17 is essentially providing clarity that any subsequent approvals (made and controlled through the process under the specific requirements) need to be adhered to. As such, Highways England does not consider it is necessary and the requirement as drafted should remain.
Schedule 3 – Classification of Roads, etc.					

Schedule 4 – Permanent Stopping Up of Highways, etc.					
Schedule 5 – Land in Which New Rights, etc. May be Acquired					
24.	Schedule 5	No other changes suggested by the ExA, subject to: <ul style="list-style-type: none"> any further submissions from Cadent Gas Limited; and there being no other related concerns. 			<p>For Cadent to respond to this specific point.</p> <p>Highways England would like to point out that as part of the review of the position in respect of 253 and 255 Ashbourne Road (and subsequent discussions with DCiC), it transpires that less land take is required at these properties and that a number of the parcels can be reduced from compulsory acquisition to acquisition of rights only or temporary. This will require a change to the dDCO to be made (however, Highways England cannot at this stage make that change as it has submitted its final version of the dDCO to the ExA at D6).</p>

					<p>The following Land Plots need their status changed from Compulsory Acquisition:</p> <p>Plot 3/15a – Temporary Possession (TP) (Green)</p> <p>Plot 3/16a - Temporary Possession with rights (TPR) (Blue)</p> <p>Plot 3/17 - TPR (Blue)</p> <p>Plot 3/19 – TPR (Blue)</p> <p>This requires changes to be made to Schedules 5 and 7. Corresponding changes to the SoR, BoR and the Land Plans have been made and will be submitted to the ExA at D9.</p>
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>	<p>Highways England is content to accept these amendments.</p>
Schedule 9 – Protective Provisions					
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; 			<p>A position on Cadent's D7 submission is provided in Highways England's Responses to D7 Submission document, provided at D8.</p>

			<ul style="list-style-type: none"> • 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; and • updated 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>	<p>The most up to date references have been provided in the DCO submitted to the Examination at D6. Where these change as the Examination progresses, Highways England proposes to submit these to the ExA at D9 or D10 to ensure the ExA has the most up to date references.</p>