

**A57 Link Roads**

**TR010034**

**9.49 Written submission of Applicant's  
case at Issue Specific Hearing 1**

Rule 8(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

February 2022

# Infrastructure Planning

## Planning Act 2008

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

## A57 Link Roads Development Consent Order 202[x ]

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### 9.49 Written submission of Applicant's case at Issue Specific Hearing 1

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<b>Rule Number:</b>	Rule 8(k)
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## 1. Introduction

- 1.1.1. This document summarises the case made orally by National Highways, as the promoter of the A57 Link Roads scheme (the Scheme), at the first Issue Specific Hearing (ISH1) which commenced on 8 February 2022 at 10.00.
- 1.1.2. Vicky Fowler and Richard Thurling both of Gowling WLG represented National Highways.
- 1.1.3. This document sets out National Highways submissions on the points raised during the ISH1 set out in line with the Examining Authority's (ExA) agenda published on the Planning Inspectorate website on 31 January 2022.

## 1.2. Agenda item 1 – Welcome, introductions and arrangements for the hearing

- 1.2.1. No questions of an introductory or preliminary nature were raised by National Highways or by other attendees at the ISH1.

## 2. Agenda Item 2 – The Overall Structure of the dDCO

Agenda item	Agenda item	National Highways Response
Item 2	<p><b>THE OVERALL STRUCTURE OF THE DDCO</b>            The ExA will invite the Applicant to take up to 10 minutes to provide an overview of:</p> <ul style="list-style-type: none"> <li>its overall approach for the dDCO</li> <li>a brief description of the structure of the dDCO, including the Schedules, explaining why each section is required</li> <li>the role of the Explanatory Memorandum</li> </ul> <p>The ExA may ask questions.</p>	<p>In terms of the overall approach the core basis of the Applicant's approach is precedent. The Applicant has ensured that the dDCO is based on well-established precedent largely other Highway's Agency and National Highways DCOs that have been made.</p> <p>Where the substance of a provision is accepted as being necessary, the correct approach is for the promoter to adopt relevant and recent precedents, with the focus then being on justifying drafting changes (if any) which seek to depart from those precedents. That approach is consistent with the advice in Advice Note 15 ("Drafting a Development Consent Orders") (see paragraph 1.1):</p> <p><i>"1.1. Applicants should look at made DCOs published by the same Department as will authorise their DCO to identify that Department's drafting preferences. Before adopting any precedents, applicants should consider carefully whether they are relevant to or remain appropriate for that particular application or proposed application."</i></p> <p>There are good public policy reasons for following precedent. In particular:</p> <ol style="list-style-type: none"> <li>In relation to the consenting process, as the Applicant is a public body seeking to make best use of resources, there is a public benefit in the reliance on precedent since it allows the Applicant to promote DCOs without the need to revisit the particularities of legal drafting for standard provisions that have been deemed acceptable and operate effectively.</li> <li>The Applicant is bringing forwards a series of DCO schemes as part of the Road Investment Strategy (RIS) and has worked toward a standardised set of provisions in its DCOs, to allow for cost efficiencies and to set standard practice. Having divergent approaches in each DCO could potentially impose significant public cost and time to deliver very similar schemes.</li> <li>In this context it is worth noting that, insofar as those responsible for promoting this scheme are aware, there have been no significant issues in implementing and operating Highways England DCOs currently in force.</li> </ol> <p>There are also statutory instrument drafting conventions, which all Statutory Instruments are required to follow, and so those things have all been taken into account.</p> <p>In terms of the Order itself:</p> <p>It is split into seven parts. Going through the parts and the provisions known as Articles:</p> <p>Part one is preliminary.</p> <p>Article 1 sets out the name of the Order, establishing how it may be cited in subsequent legislation. It also states the date on which the Order comes into force.</p> <p>Article 2 defines terms used in the rest of the order</p> <p>Part two contains the principal powers</p> <p>Article 3(1) grants the development consent by giving National Highways the power to construct the authorised development, which is described in Schedule 1, subject to the provisions in the Order including the requirements in Schedule 2. The requirements are akin to planning conditions on an ordinary planning permission.</p> <p>Article 4 empowers National Highways to maintain the authorised development.</p>

Agenda item	Agenda item	National Highways Response
		<p>Article 5 clarifies who is responsible for maintenance of drainage works</p> <p>Article 6 permits certain development authorised by a planning permission granted under the Town and Country Planning Act that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order.</p> <p>Article 7 deals with limits of deviation. Since the Scheme involves linear works, article 7 provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development within the limits of deviation shown on the works plans, and vertical deviation of the linear works subject to maximum deviations upwards or downwards.</p> <p>Article 8 prescribes that the benefit of the Order is given to National Highways save where the Order will self-evidently benefit others, e.g. rights for statutory undertakers.</p> <p>Article 9 permits National Highways to transfer the benefit of the Order.</p> <p>Part 3 relates to streets powers.</p> <p>These are standard provisions that prescribe how this order interacts with the street regimes, Street works in article 10 and the New Roads and Street Works Act in article 11.</p> <p>Article 12 deals with the construction and maintenance of new, altered or diverted streets and makes specific provisions regarding maintenance. Article 13 deals with classification of the roads by reference to tables in Schedule 3.</p> <p>Article 14 allows for the temporary alteration, diversion, prohibition or restriction of the use of streets for the purposes of the Scheme.</p> <p>Article 15 allows highways, streets and private means of access named in Parts 1 and 2 in Schedule 4 to be stopped up.</p> <p>Article 16 allows works accesses to public highways to be created</p> <p>Article 17 (Clearways) makes it unlawful for road users to stop on the existing M67 roundabout approach and the proposed A57(T) dual carriageway save in certain circumstances.</p> <p>Article 18 provide National Highways with powers to make traffic regulation orders in relation to roads for which it is not the highway authority, so that it can implement traffic management measures.</p> <p>Part 4 contains Supplemental Powers in Articles 19 to 21 relation to the right to discharge water, the right to undertake works to protect buildings and the power to enter land for the purposes of surveying and investigating.</p> <p>Part 5 Powers of Compulsory Acquisition and Possession</p> <p>The core provision is article 22 which authorises the acquisition of land by compulsory purchase. Article 23 deals with the mineral code.</p> <p>Article 24 sets the time limits for the use of compulsory purchase powers. Article 25 allows for rights in land to be acquired as well as the land itself, and also for new rights to be created over land. The Article links to Schedule 5 which describes the land in which only new rights may be acquired. Article 26 provides for the extinguishment of private rights over the Order land subject to compulsory acquisition under the Order.</p>

Agenda item	Agenda item	National Highways Response
		<p>Articles 27 to 29, contain then certain standard provisions relating to the operation of various pieces of Compulsory purchase legislation.</p> <p>Article 30 allows National Highways to acquire land below the surface or the airspace above the surface, rather than having to acquire all of the land.</p> <p>Article 31 allows National Highways to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it.</p> <p>Article 32 is another core provision it allows the land set out in Schedule 7 to be occupied temporarily while the works are carried out. This is land which is required during construction of the Scheme but is not required permanently. The authorisation of temporary possession prevents National Highways having to permanently acquire land which is required to construct the Scheme but which is not needed permanently and therefore assists in minimising the interference with the landowners' rights.</p> <p>Article 33 permits National Highways may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development.</p> <p>Article 34 provides National Highways with clear statutory authority to acquire rights over land owned by statutory undertakers</p> <p>Article 35 governs what happens to statutory undertakers' apparatus under streets that are stopped up by the Order and Article 26 deals with the recovery of costs if a new service has to be established.</p> <p>Part 6 is operations and article 37 deals with works to trees and hedgerows, as does article 39 in the next part, Part 7.</p> <p>Part 7 is miscellaneous and general and includes a standard provision regarding landlord and tenant law. Equally standard regarding operational land for the purposes of the Town Country Planning Act 1990. Article 41 regards the protection from a statutory nuisance claim.</p> <p>Article 42 (Protection of interests) gives effect to Schedule 9, which contains provisions protecting the interests of third parties.</p> <p>Schedule 9 contains protective provisions for the benefit of electricity, gas, water and sewerage undertakers; electronic communications code network operators; drainage authorities and the Environment Agency.</p> <p>Article 43 concerns the certification of plans, so that there is complete clarity particularly if there have been any changes during the examination process as to which plans are being applied pursuant to the granted order, assuming it is granted.</p> <p>And then finally Article 44 deals with service of notices and Article 45 a standard provision regarding arbitration over disputes.</p> <p>There are 10 schedules in total which effectively they set out the working detail for the provisions in the main order eg what traffic regulations orders are being sought, what roads or private rights of way or access can be stopped up, diverted or altered.</p> <p>In terms of the role of the Explanatory Memorandum, that explains the purpose of each of the Articles. It is required by the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. It sets out what has been relied upon and how the drafting and model provisions relate to the drafting etc.</p>

### 3. Agenda Item 3 – General matters, other consents and preamble

Agenda item	Agenda item	National Highways Response
Item 3	<p><b>GENERAL MATTERS, OTHER CONSENTS, AND PREAMBLE</b></p> <p><u>Other consents</u></p> <p>The Applicant did not provide an updated Consents and Agreements Position Statement [<a href="#">REP1-009</a>] at Deadline 3.</p> <p>a) Please could <b>the Applicant</b> provide an updated Consents and Agreements Position Statements at Deadlines 5, 7 and 9?</p>	<p>a) The Applicant confirmed that there were no updates to the Consents and Position Statements in its covering letter dated 26 January 2022 which accompanied the Deadline 3 submissions submitted by National Highways.</p> <p>The Applicant confirms that it will provide updates at Deadlines 5, 7 and 9 as directed.</p>
	<p><u>Letter of no impediment from Natural England</u></p> <p>Natural England [<a href="#">REP2-054</a> Q1.4] said that before issuing a letter of no impediment, it needed the Applicant to submit satisfactory relevant European and Protected Species Licensing applications providing their findings of ongoing survey work and any additional bat survey work required by Natural England's bat specialists following their current review of the bat survey reports.</p> <p>b) Please could <b>the Applicant</b> provide an update? Has it agreed with Natural England which applications will be made?</p> <p>The ExA may ask more questions or invite more oral submissions.</p>	<p>The Applicant has agreed that applications for Protected Species Licences will be made for both bats and badgers.</p> <p>The updated bat surveys requested by Natural England are programmed to be undertaken between May to September 2022 because this work was delayed due to previous Covid restrictions and seasonal constraints with surveying for bats. The badger monitoring survey is being updated at regular intervals.</p> <p>The Applicant's response to WQ 12.8 (REP2-021) provided details of the approach to pre-commencement surveys, which the bat surveys are part of. That response advised that the mitigation that National Highway's is proposing is based on a worst-case scenario, therefore 'there is certainty that the mitigation identified and assumed within the assessment is sufficient to ensure that the Proposed Development will result in no likely significant effects'. The Applicant also explained that the REAC includes action BD1.6 committing the Applicant to pre-commencement surveys to ensure the mitigation proposed is sufficient and that there will be no likely significant effects.</p> <p>The Applicant's approach to mitigation has been approved by Natural England and is recorded in the Statement of Common Ground (REP2-028), Table 3.1, part 2.1, page 15. In that context the Applicant considers that the further bat and badger survey work is not likely to alter the submitted approach to mitigation and the Applicant expects to submit the draft licence applications after the updated bat survey results are available. The Applicant has no reason to believe that a letter of no impediment will not be achieved. It is acknowledged that bat surveys will not be completed in time for a letter of no impediment (LONI) to be issued before the end of the DCO examination, however the Applicant understands that the Statement of Common Ground agrees that a licence can be achieved in principle.</p>



## 4. Agenda Item 4 – Parts 1 to 7

Agenda item	Agenda item	National Highways Response
Item 4	<p><b>PARTS 1 TO 7</b></p> <p><u>Article 2(1) Interpretation - commence</u></p> <p>Pre-commencement activities are those that are excluded from the definition of “commence”. The Applicant [REP2-021 Q1.7] said that pre-commencement operations are minor and are either de minimis or have minimal potential for adverse effects.</p> <p>Please could the local authorities comment?</p>	<p>At the Hearing the local authorities confirmed they agreed the activities were minor with minimal potential for adverse effects.</p>
Item 4	<p>The Applicant [REP2-021 Q1.7] said that archaeological investigations would be in accordance with the Written Scheme of Investigation [REP1- 034]. It also said that the Environmental Management Plan (EMP) [REP3-010] and Register of Environmental Actions and Commitments (REAC) [REP1-037] set out pre-commencement surveys, operations and details of how the actions would be implemented.</p> <p>a) Given that the activities are pre-commencement, please could <b>the Applicant</b> comment on whether this mitigation is secured by the DCO?</p>	<p>The Applicant acknowledges that mitigation is not currently secured. In terms of archaeology there would be scope to bring in the archaeological works and any ground works into Requirement 10 which states:</p> <p>10 —(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, have been set out in a Written Scheme of Investigation (WSI) that has been submitted to and approved in writing by the Greater Manchester Archaeological Advisory Service (GMAAS), Derbyshire Council’s county archaeologist and the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</p> <p>Reference to “Part” would include any archaeological works or ground works. .</p>
Item 4	<p>The ExA is considering whether to add provisions to the DCO to secure mitigation for pre-commencement activities and, if so, what form that might take. The <a href="#">A38 Derby Junctions recommended DCO</a> included mitigation for pre-commencement activities that were identified by the Applicant on that project. It includes a definition of “preliminary works” to Requirement 1, linked to the preliminary works mitigation set out in the EMP. Requirement 1 also identifies “preliminary works” as a “part”, with provisions being added to Requirements 3, 8, and 14 for relevant mitigation measures to be produced “for that part” in advance. Other “forthat part” mitigation was already identified under</p>	<p>In terms of the approach on the A38 Derby Junctions the Local Authorities have confirmed that subject to the above change to Requirement 10 which deals with archaeology they are content that the pre-commencement works will have minimal impacts. The ExA agreed that this item could be left to one side.</p> <p>For completeness the Applicant confirms that it would be deeply concerned with this approach as this would involve an amendment to Requirement 4 and the need to have a Second Iteration EMP for the relevant pre-commencement works. The Second Iteration EMP has 19 Management Plans not all of which are going to be relevant to the pre-commencement works and so the Applicant submits such a change would be disproportionate and would lead to unnecessarily delay due to the need to complete a significant document ahead of time.</p>

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	<p>Requirements 5, 9 and 16. In addition “<i>other than the preliminary works</i>” was added to Requirements 5, 11 and 13 to identify mitigation that would not be required during the preliminary works, consistent with the EMP.</p> <p>Please could <b>the Applicant</b> comment on the A38 Derby Junctions approach, in case the ExA decides that additional provisions are required?</p>	
Item 4	<p><u>Article 2(1) – cycle track</u></p> <p>The Applicant [REP2-021 Q1.8] said that a “<i>cycle track</i>” is a way over which the public have a right of way on foot.</p> <p>Please could <b>the Applicant</b> update Article 2(1) to make that clear?</p>	<p>The term “cycle track” utilises an unamended definition of cycle track from the highways Act 1980 which can be with or without a right of way on foot. It is only used to relate to existing facilities which are likely to have been created using the Highways Act definition. The term is only referenced at items (a) and (d) in Schedule 1.</p> <p>The dDCO also includes the term “cycleway” which extends the definition within the Highways Act to include a right of way for pedal cycles, on foot and on horseback or leading a horse. New routes being provided as part of the DCO works are all identified as cycleways which include a right of way on foot.</p> <p>No further update to Article 2(1) is therefore proposed.</p>
Item 4	<p><u>Article 2(3) – rights over land</u></p> <p>The Applicant [REP2-021 Q1.11] said that Article 2(3) goes further than Article 2(2) to deal with rights granted to statutory undertakers. The main difference appears to be to allow rights to be granted directly by those with an interest in the land rather than via the undertaker.</p> <p>To improve precision, could <b>the Applicant</b> update Article 2(3) to limit the application to statutory undertakers?</p>	<p>To expand on the Applicant’s previous written response, Article 2(3) deals with the grant of rights to third parties or statutory undertakers.</p> <p>Rights will need to be granted to statutory undertakers in relation to their works and to third parties. The Examining Authority is also respectfully directed to the Applicant’s response (REP2-021) to Q1.25. Article 25 provides for the Applicant to take rights instead of outright acquisition. The grant of rights direct to third parties such as for Private Means of Access, is a real possibility and so reference to third parties does need to remain in Article 2(3) to retain flexibility.</p>
Item 4	<p><u>Article 3(3) - Development consent etc. granted by the Order</u> Replying to the ExA’s query whether this provision is necessary, the Applicant [REP2-021 Q1.11] said that the activities would not ordinarily be the subject of further control.</p> <p>b) Please could <b>the Applicant</b> set out whether anything in the dDCO would prevent the listed operations? If not, then</p>	<p>The Applicant is satisfied that Article 3(3) can be removed and so question g) is no longer relevant.</p>

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	<p>why is the provision necessary?</p> <p>The provision would appear to have the effect of no mitigation being secured for the listed activities.</p> <p>Please could <b>the Applicant</b> comment? Would it be necessary to remove Article 3(3) if, as suggested above, provisions were added to the DCO to secure mitigation for pre-commencement activities?</p>	
Item 4	<p><u>Article 5(1) - Maintenance of drainage works</u> The Applicant [REP2-021 Q1.13] said that responsibility for maintaining the drainage of any land while the Applicant holds it in temporary possession would lie with the landowner unless otherwise agreed.</p> <p>Please could <b>the Applicant</b> suggest how the DCO could provide the existing landowner with the rights needed to do that? Or should the Applicant have responsibility for maintaining the drainage of any land while it holds it in temporary possession?</p>	<p>Temporary possession is not necessarily exclusive possession, that will depend on the nature of the works. The Applicant accepts that if it is restricting access then it should have responsibility for maintaining.</p> <p>The Applicant is agreeable to amending Requirement 5 as follows:</p> <p><b>5. Maintenance of drainage works</b></p> <p>(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible <u>and save in circumstances where access to works connected with the drainage of land is restricted by the undertaker. Where access is restricted the undertaker shall be responsible for the maintenance of any works connected with the drainage of land during any period that access is restricted.</u></p> <p>The above change provides the firm undertaking which the ExA indicated it is seeking.</p>
Item 4	<p><u>Article 7(a) – Limits of deviation</u></p> <p>The Works Plans [REP1-002] state that “<i>The linear works for the highway carriageway alignment have a horizontal deviation of up to a maximum of 5m within the DCO boundary or highway work limit of deviation (where not coincident with the DCO boundary).</i>”</p> <p>h) Please could <b>the Applicant</b> clarify how Rochdale Envelope allowances have been made for this amount of deviation in the Environmental Statement (ES). For example, in relation to the assessment of noise, vibration and air quality effects at residential properties or other receptors, particularly those in close proximity to the linear works.</p>	<p>The ExA asked for the response in writing and the Applicant confirms as follows: For the EIA the design was frozen during the Preliminary Design stage so that assessments could be undertaken based on the design drawings, which forms the basis of quantitative environmental assessments. In practical terms, it is not possible to model every possible scenario and option within the Limits of Deviation, as there are too many variables. The Limits of Deviation are applied to this design for a qualitative consideration using the Rochdale Envelope to allow for some flexibility in the exact location of the Scheme and its design within set limits, while allowing the assessor to undertake a robust assessment. The Detailed design will be validated through the Evaluation of Change process, which will consider refinements that have been made within the Limits of Deviation. This involves undertaking a NEWT assessment (Not Environmentally Worse Than) to set out whether there would be an increase in effect from that published in the ES, and if so to confirm whether or not the residual effect is materially different. A copy of the Evaluation of Change Register will be included in Annex E of the Environmental Management Plan (Second iteration) (in accordance with DMRB LA 120).</p> <p><b>Some examples of how the Rochdale Envelope are provided below for noise and vibration, air quality and landscape:</b></p> <p>For noise the model was built from the design drawings. If there is a horizontal deviation in the roads of 5m, it would increase noise levels at sensitive receptors if it moves closer to them, or decrease noise levels if it moves further away. If there are noise sensitive receptors on both sides of the road, noise levels would decrease at some and increase at others. It is unrealistic to assume that the carriageway is positioned 5m closer to receptors on both sides of the road (amounting to an increase in road width).</p> <p>The horizontal limits of deviation are unlikely to affect the performance of mitigation measures designed into the Scheme. The significance of noise impacts at the limits of horizontal deviation would be similar to those reported in the ES as the noise sensitive receptors affected</p>

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		<p>the most by the Scheme are already located closest to the new roads. However, the predicted noise levels would be slightly different to those reported in the ES. Please refer to the written response to Issue Specific Hearing 2, Item 2, question n) and o) for further details.</p> <p><b>For air quality:</b> The air quality dispersion modelling was built based on scheme design drawings and did not include an inbuilt consideration of possible deviations of the scheme alignment horizontally or vertically.</p> <p>If there is a horizontal deviation in the roads of 5m, it could increase air pollutant concentrations at sensitive receptors, if it moves closer to them, or decrease air pollutant concentrations if it moves further away as compared to air quality modelling results for the with Scheme scenario as presented in the ES. If there are air quality sensitive receptors on both sides of the road, air pollutant concentrations would decrease at some and increase at others. It is unrealistic to assume that the carriageway is positioned 5m closer to receptors on both sides of the road (amounting to an increase in road width).</p> <p>However, where new road links are introduced by the Scheme these are in areas where air quality strategy objectives are not exceeded with or without the scheme and for much of the scheme route (except Roe Cross) there are no sensitive receptors in the immediate vicinity of the new roads to be constructed. As such deviations within 5m would not be expected to alter the outcome of the assessment reported in the ES.</p> <p><b>For Landscape:</b> The Scheme was assessed predominantly on the design provided but with some regard/consideration that there is some potential for vertical and horizontal change within that. There is tolerance within the assessment of the vertical alignment and given the size and scale of the scheme (and the distance of most receptors from the DCO boundary) changes within the LoD are unlikely to change the conclusions of the ES.</p> <p>With regards to a horizontal alignment change, in the non-urban areas is unlikely to result in a change to the assessment. However, for the receptors in the more urban areas and those associated with the built environment along the scheme, it might result in a change (e.g. if a 5m horizontal deviation were to result in further demolition of residential/commercial/recreational property we have not assessed for that). This would need to be addressed through the Evaluation of Change process, which would be addressed by a NEWT assessment (Not Environmentally Worse Than) to set out whether there would be an increase in effect from that published in the ES.</p>
Item 4	<p>The Applicant <a href="#">[REP2-021 Q1.14]</a> confirmed that a vertical limit of deviation of 0.5m provided for bunds, verges, carriageways, and other features. Few spot heights are provided in the Works Plans to provide a basis for compliance with this to be assessed, for the ExA to be able to conclude that an adequate description of the Works has been provided, or to ensure that the Works are secured consistent with the assumptions in the ES.</p> <p>i) Please could <b>the Applicant</b> add enough spot heights on the carriageways and other features to ensure that the Works are</p>	<p>Spot heights are provided on the Engineering Drawings and Section Plans. There are total of 10 perpendicular cross section locations throughout the Scheme and spot levels for carriageway, verges, earthworks and other features are provided at each of these locations. In addition, there are a further three separate longitudinal sections each of which provides 4 carriageway spot levels. On average, carriageway spot levels are therefore provided at intervals of approximately 160m throughout the Scheme.</p> <p>The ExA agreed to look at this again and asked the Applicant to do likewise. The particular area of concern is cuttings and embankments and the flexibility provided by the limits of deviation and landscape impact.</p> <p>A further review has been undertaken by the Applicant and two additional cross sections are proposed to ensure that key Scheme features are fully represented. The first additional cross section is proposed within Mottram Cutting at approximate chainage 1400 to provide representation of the variation in height of the cutting slopes. The second additional cross section is proposed at approximate chainage 2900 to ensure the proposed Balancing Pond number 3 is represented. These additional cross sections will be included on the Engineering Drawings and Section Plans at Deadline 5.</p>

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	adequately defined?	
Item 4	Please could the Applicant clarify how the heights, location, and extent of cuttings and embankments are secured, consistent with the ES?	<p>For the purposes of the EIA the design was frozen during the Preliminary Design stage so that assessments could be undertaken based on the design drawings. Any subsequent changes that were required for the design, due to recommendations resulting from the EIA assessments, or otherwise, were dealt with in an iterative way. The ES is therefore consistent with the design drawings (Work Plans, engineering drawings and section plans, and they are aligned with each other.</p> <p>Requirement 3 (Detailed Design) states that the authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering drawings and section plans, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and the local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering drawings and section plans showing departures from the preliminary scheme design would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement.</p> <p>Heights, location, and extent of cuttings and embankments need to be in accordance with the preliminary design. Any change would need to be environmentally reassessed through the evaluation of change process, to ensure they don't result in a material new or materially worse environmental effect.</p>
Item 4	<p><u>Article 10 – Street Works</u></p> <p>Derbyshire County Council [<a href="#">REP2-051</a> Q1.15] said that it operates a permitscheme and requested three months' notice of any works.</p> <p>Please could <b>the Applicant</b> respond? Would the dDCO disapply the permit scheme?</p>	<p>Works undertaken pursuant to the Order are to be exempt from the permit scheme. Article 11(8) (disapplication of Part 3 of the of the Traffic Management Act 2004) dDCO disapplies such permit schemes. The Applicant considers this reasonable and proportionate to the delivery of nationally significant infrastructure works and is consistent with other Orders.</p> <p>Derbyshire County Council indicated that they would wish to have notice as to when works are to start etc. The Applicant notes that there has been good dialogue with the local authorities and that dialogue will continue. The Environmental Management Plan also includes a Traffic Management Plan and that plan needs to be agreed by the SoS in consultation with relevant authorities. The reality is that none of the works or the plans behind the works are being developed in a vacuum. There are the discussions going on and there will be as those plans move forward.</p> <p>An outline of the Traffic Management Plan exists (REP1-038) and the Applicant has reviewed that to see if amendments could be made to meet Derbyshire County Council's request for consultation. Paragraph 3.6 of the Outline Traffic Management Plan (REP1-038) does set out how traffic management measures will be communicated and provides for advance warning to be provided to key stakeholders.</p>
Item 4	<p><u>Article 12(5) - Construction and maintenance of new, altered or diverted streets and other structures – responsibility for maintenance</u></p> <p>Please could <b>the Applicant</b> and <b>Derbyshire County Council</b> update on any requirements for Derbyshire County Council to maintain any highway works that would be constructed as part of the Works?</p>	<p>The Applicant understands that the principle of future maintenance has been agreed with Derbyshire Country Council. See item 5.3 within the DCC SoCG (REP2-035) which confirms agreement between the Applicant and DCC that the proposed A57 Link Road from the proposed river bridge over the River Etherow to the new junction on the existing A57 Woolley Bridge will be adopted and maintained by DCC.</p> <p>The detail regarding future maintenance of highways by the DCC will be contained in the 2<sup>nd</sup> iteration EMP which is secured by Requirement 4 in the dDCO in the same way as other DCO projects within DCC's administrative boundary. In addition, Articles 12(1)&amp;(2) require highways to be completed to the satisfaction of the highway authority and will ensure highways constructed as part of the Works are provided to the standard DCC require to adopt and maintain.</p>

Agenda item	Agenda item	National Highways Response
Item 4	<p><u>Article 13(9) - Classification of roads etc. - Public rights of way</u></p> <p>The Applicant [<a href="#">REP2-021</a> Q1.18] said that alternative locations for publicrights of way would not result in any materially new or worse effects.</p> <p>Please could <b>the Applicant</b> clarify how it is secured that there would not be any materially new or worse effects? Could a provision be addedto Article 13(9)?</p>	<p>The Applicant agreed to amend Article 13(9) accordingly and this will be included in the updated dDCO for Deadline 5.</p>
Item 4	<p><u>Articles 14(6), 18(11), 19(8), 21(6) – Deemed consent</u></p> <p>The ExA is concerned that there is the potential for a lack of awareness about a guillotine being in place when the consents would be applied for. Itis beneficial for consents to be properly considered and, therefore, for themnot to be given by default unless reasonable measures have been taken.</p> <p>The ExA is concerned that the 28-day period appears to be less than someparties are comfortable with and is minded that highlighting the guillotine in any application for consent would be helpful for ensuring that the timescale for dealing with consents is reasonable. The Applicant does not appear to have provided a compelling reason why providing a statement to highlight the guillotine would cause it difficulty.</p> <p>Please could <b>the Applicant</b> and the <b>local authorities</b> comment? Is this a matter that the parties should take away to discuss and attempt to seek agreement? Please could an update be provided for Deadline 5,on Wednesday 23 February 2022?</p>	<p>The Road Investment Strategy (RIS) sets out a programme of road works across the country. The Applicant's resources need to be used in such a way as to ensure best value for money and it is therefore essential that the proposed works will be carried out expeditiously; any delay to the Scheme would have a detrimental effect on this. The Applicant therefore considers that the provisions are necessary and appropriate on the basis that the Scheme needs to be delivered without any undue delay.</p> <p>Importantly the Scheme is not being developed in a vacuum. Requirement 12 for example provides a clear procedure for the discharge of requirements where any requirement requires details to be submitted to the Secretary of State following consultation with another party. In such circumstances a summary report setting out any consultation undertaken is to be provided to the Secretary of State. The reality is that the local authorities will be appraised of, for example the Transport Management Plan which in turn will inform the temporary alteration, diversion, prohibition and restriction of use of streets.</p> <p>In terms of Article 18 Traffic Regulation there are prescribed consultation requirements ahead of seeking consent to amend traffic orders or restrict the use of a road. Article 18(5) requires 12 weeks' advance notice to be given.</p> <p>Article 19(3) deals with consent for the discharge of water into any watercourse, public sewer or drain but again there are wider Requirements regarding drainage.</p> <p>The 'guillotine' provisions adopted by the Applicant in the dDCO have been adopted from precedents contained in other DCOs (both highway and non-highway schemes). Notice provisions have been discussed in the context of the DCOs, including the A19/A184 Testos Junction Improvement and indeed the A38 Derby Junctions and the drafting of these provisions did not change.</p> <p>The Applicant has agreed, however, to discuss further with the local authorities. The Applicant's understanding is that any notice or application which could be subject to deemed consent expressly brings that fact to the relevant local authorities' attention.</p>
Item 4	<p><u>Article 15(2)(b) - Permanent stopping up and restriction of use of highways, streets and private means of access - Temporary alternativeroutes for private means of access dDCO reference</u></p> <p>Please could <b>the Applicant</b> clarify whether private means of accesswould be <u>maintained</u>?</p>	<p>The Applicant can confirm that private means of access will be maintained. Article 15(2)(b) operates to ensure that a temporary route facilitating a private means of access is to be provided until the permanent replacement identified in para (a) and column 3 of Part 2 of Schedule 4 has been provided and is open for use.</p>

Agenda item	Agenda item	National Highways Response
Item 4	<p><u>Article 28 - Application of the 1981 Act</u></p> <p>The Applicant [<a href="#">REP2-021</a> Q1.25] explained that the powers to permit land/rights acquired by the undertaker to vest directly in third parties relates to powers invested in statutory undertakers where their apparatus is being relocated.</p> <p>To improve precision, could <b>the Applicant</b> update Article 28 to limit the application to statutory undertakers?</p>	<p>The Applicant considers that it would not be appropriate to limit the power at Article 28 to Statutory Undertakers only because rights may also need to be vested directly in other third parties, such as where rights need to be acquired and vested in a third party for access.</p>
Item 4	<p><u>Article 32(12) - Temporary use of land for carrying out the authorised development;</u>  <u>Article 33(12) - Temporary use of land for maintaining the authorised development</u>  <u>dDCO reference</u></p> <p>j) The ExA is considering whether, to ensure that the interference with human rights would be proportionate and justified, it should be secured that the part of the authorised development specified in relation to that land in column (3) of Schedule 7 must be completed within a reasonable timescale.</p> <p>k) Please could <b>the Applicant</b> comment and suggest appropriate wording?</p> <p>The ExA may ask more questions or invite more oral submissions.</p>	<p>This approach is not agreed and has not been adopted on any of the other highway related to DCOs. As noted earlier the RIS sets out a programme of road works across the country. The Applicant's resources need to be used in such a way as to ensure best value for money and it is therefore essential that the proposed works will be carried out expeditiously. National Highways will not be in possession of land any longer than it needs to be.</p> <p>Compensation is payable for any loss whilst National Highways is in possession.</p> <p>Adding timescales would be bringing the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 through the back door. Those provisions have not yet come into effect and we comment on that further in our response to the Examining Authority's First Questions (Question 1.27).</p> <p>Moreover if National Highways could not complete the works in the timescales stipulated due to unforeseen circumstances or a force majeure event, the powers would expire and the scheme would have to stop which would not be in the public interest. The Applicant's only remedy would be to make an application for an amendment to the DCO with the associated delays. Once the Neighbourhood Planning Act 2017 provisions come into effect there would be additional remedy in that a separate Compulsory Purchase Order could be applied for to deal with the extended temporary possession, although even that would not be ideal. At this point in time there is uncertainty over when the Neighbourhood Planning Act 2017 provisions will come into force.</p>

## 5. Agenda Item 5 – Schedules 1 and 2

Agenda item	Agenda item	National Highways Response
Item 5	<p><b>SCHEDULES 1 AND 2</b></p> <p><u>Further development</u></p> <p>The Applicant [<a href="#">REP2-021</a> Q1.29] has explained its approach regarding the items of “<i>further development</i>”. The ExA is concerned that not allocating the “<i>further development</i>” activities to relevant Works means that their locations are uncertain and the ExA remains concerned about consistency between what has been assessed and what is secured.</p> <p>Please could <b>the Applicant</b> suggest how it can be secured that “<i>further development</i>” activities (a) to (p) would not give rise to any materially new or worse effects?</p>	<p>The Applicant notes that it is standard drafting to have a list of development which may be undertaken within the Order limits for the purposes of or in connection with the construction of any of the numbered works. The Applicant has adhered to standard practice and drafting is not of the view that this list should be amended or altered as suggested.</p> <p>Importantly, addressing the specific concern re ensuring that the further development activities would not give rise to any materially new or worse effects the dDCO needs to be read as a whole and in conjunction with number of other documents, including the requirements in Schedule 2 Requirement 3 requiring compliance with the preliminary design, the references to the REAC and Schedule 7 of the dDCO which sets out the land which temporary possession may be taken as well as the purpose for it. To provide additional surety, the REAC (REP1-037), which is to be resubmitted at Deadline 5, will be updated to include a new General Environmental Management commitment to minimize land take and habitat loss. This is already embedded mitigation, as detailed in Table 2-5 of Chapter 2 The Scheme of the ES (REP2-005).</p> <p>Further, with regards to alterations to streets, the power needs to be read in conjunction with Art 10 where any alterations are to be completed to reasonable satisfaction of street authority.</p> <p>The Applicant has noted, however, the ExA’s continued concern and has agreed to adopt the wording in the M42 Junction 6 DCO, whereby introductory wording is added to confirm that such further development would not give rise to materially new or different environmental effects to those assessed in the ES. This additional wording will be added to the dDCO for Deadline 5.</p>
Item 5	<p><u>Requirements 3-11 - Provisions for consultation and agreement</u></p> <p>Tameside Metropolitan Borough Council [<a href="#">REP2-056</a> Q1.32] made a number of suggestions about where it might be helpful to add provisions for consultation or agreement to be required with relevant bodies. The Applicant [<a href="#">REP3-021</a> page 45] responded at Deadline 3.</p> <p>Does <b>Tameside Metropolitan Borough Council</b> have any outstanding concerns about the provisions for consultation or agreement?</p>	<p>Tameside Metropolitan Borough Council confirmed that they have no outstanding concerns.</p>
Item 5	<p><u>Requirement 4 – Requirement 4(1) and (2) second iteration EMP</u></p> <p>The Applicant [<a href="#">REP2-021</a> Q1.33] said that it had no objection to there being a requirement for consultation on the second iteration EMP with the local highway authorities and the Environment Agency, as well as with the relevant planning authority, should the local authorities and Environment Agency require this.</p> <p>t) Please could the <b>local authorities</b> and the</p>	<p>v) The Applicant is content to include consultation with local highway authorities and Environment Agency in the next iteration of the dDCO to be submitted at Deadline 5.</p> <p>w) The matters identified by Examining Authority are already provided for in the Environmental Management Plan (EMP). Figure 1.1 in the 1<sup>st</sup> iteration EMP provides a diagrammatic overview of the environmental management process and the formulation of each stage of the EMP. The nomenclature of the EMP has been amended with the publication of Design Manual for Roads and Bridges (DMRB) LA 120 Environmental management plans, but its purpose remains the same as in previously approved DCOs. For clarity the new and old terms are as follows:</p>



Agenda item	Agenda item	National Highways Response
	<p><b>Environment Agency comment?</b></p> <p>The ExA [PD-009 Q1.33] suggested that provisions be added for thesecond iteration EMP to be required to:</p> <ul style="list-style-type: none"> <li>incorporate the measures for the construction stage referred to inthe ES as being incorporated in the EMP</li> <li>contain a record of the consents, commitments and permissions resulting from liaison with statutory bodies</li> <li>be kept up to date with any material changes during constructionand for consultation to be required on those changes</li> </ul> <p>The Applicant [REP2-021 Q1.33] responded that those are covered by theDMRB. The ExA considers that the provisions are key to the proper implementation of the EMP and therefore seeks certainty that they will be followed. Their inclusion in Requirement 4 appears to be supported by Tameside Metropolitan Borough Council [REP2-056 Q1.33] and DerbyshireCounty Council [REP2-051 Q1.33].</p> <p>u) Please could <b>the Applicant</b> set out any reasons why the addition ofappropriate provisions would cause any difficulty?</p> <p>Please could <b>the Applicant</b> suggest appropriate wording?</p>	<ul style="list-style-type: none"> <li>1<sup>st</sup> iteration EMP = formerly Outline EMP (OEMP)</li> <li>2<sup>nd</sup> iteration EMP = formerly Construction EMP (CEMP); and</li> <li>3<sup>rd</sup> iteration EMP = formerly Handover EMP (HEMP).</li> </ul> <p>Specifically in relation to the points listed, the Applicant confirms that the 1<sup>st</sup> iteration EMP is before the Examination (REP3-029). DMRB LA 120 requires all mitigation measures recommended in the ES to be incorporated into the 1<sup>st</sup> iteration of the EMP. Paragraph 1.1.5 of the 1<sup>st</sup> iteration of the EMP confirms that the predicted environmental effects identified in the Environmental Statement (ES) and the related actions and mitigation measures from the Register of Environmental Actions and Commitments (REAC) have formed the basis for the 1<sup>st</sup> iteration EMP. Paragraphs 1.1.6 and 1.1.7 of the 1<sup>st</sup> iteration EMP confirm that the EMP will be updated to reflect the finalised design and construction plans and form the 2<sup>nd</sup> iteration EMP. Paragraph 3.1.3 confirms that the REAC table will be incorporated into section 3 of the 2<sup>nd</sup> iteration of the MEP and will reflect all the mitigation for the consented scheme. Requirement 4 prohibits the construction of the authorised development until the 2<sup>nd</sup> iteration EMP has been approved by the Secretary of State. In this way, the request at the first bullet point has already been satisfied.</p> <p>The 2<sup>nd</sup> EMP is a refinement and updated version of the 1<sup>st</sup>, paragraph 1.17 of the 1<sup>st</sup> iteration EMP confirms that the 2<sup>nd</sup> iteration EMP will be fully comprehensive and in the Applicant's written response to WQ 1.33, the Applicant confirmed that section 4 (Consents and Permissions) of the 2<sup>nd</sup> iteration EMP will include a record of relevant consents and permissions from statutory bodies (explained further at para 4.2.3 of the 1<sup>st</sup> iteration EMP with relevant consents identified in table 4.1). The mechanism for securing the consents identified in the second bullet, is therefore already incorporated into the 1<sup>st</sup> iteration EMP and will be enhanced in the 2<sup>nd</sup> iteration EMP.</p> <p>Paragraph 1.1.8 of the 1<sup>st</sup> iteration EMP confirms that the EMP is a live document which will be kept up to date to capture developments during the detailed design phase throughout the construction phase, thereby addressing the point raised in the third bullet. The Secretary of State is required to approve the 2<sup>nd</sup> iteration EMP in consultation with local authorities to provide a further safeguard that it will contain all the information and processes necessary to deliver the scheme. It will also be updated further on completion of the authorised development to inform the 3<sup>rd</sup> iteration EMP (Handover phase), see answer aa) below.</p> <p>Against that background, Requirement 4 operates to require the 2<sup>nd</sup> iteration of the EMP to accord with the 1<sup>st</sup> iteration EMP, the REAC and the matters listed in R4(2) as well as for it to be approved by the SoS and, with the additions the Applicant has agreed to at question v), the local planning, highway authorities and Environment Agency. Insofar as the 2<sup>nd</sup> iteration EMP will contain significantly greater detail it is required to accord with the 1<sup>st</sup> iteration, rather than follow it slavishly, and contains the safeguard that it has to be approved by the Secretary of State. The Authorised development <u>must</u> then be carried out in accordance with the approved 2<sup>nd</sup> iteration EMP (R4(3)).</p> <p>Question aa) below considers the third iteration in greater detail but in any event, R4(4) requires the 3<sup>rd</sup> iteration EMP to be prepared in accordance with a process set out in the 2<sup>nd</sup> iteration EMP which will have been approved by the Secretary of State in consultation with the relevant local authorities and the Environment Agency.</p> <p>x) For the reasons given above, the Applicant considers that the wording of Requirement 4 should remain as drafted.</p>

Agenda item	Agenda item	National Highways Response
Item 5	<p><u>Requirement 4(2)(c) - second iteration EMP - Working hours</u></p> <p>The ExA [PD-009 Q1.34] suggested that the following be added after Requirement 4(2)(c):</p> <p><i>“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 the specified hours, except for any emergency works, which are to be notified to the relevant local authorities as soon as is practicable.”</i></p> <ul style="list-style-type: none"> <li>• <i>“Any other work carried out outside the specified working hours or any extension to the working hours will only be permitted if there has been prior written agreement of the relevant environmental health officer and provided that the activity does not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement.”</i></li> </ul> <p>Their inclusion appears to be supported by Derbyshire County Council [REP2-051 Q1.34]. The Applicant raised concerns about restrictions to their flexibility.</p> <p>y) Please could <b>the Applicant</b> provide more detail on their concerns and suggest how the wording might be adjusted?</p> <p>z) Please could the <b>local authorities</b> comment?</p>	<p>The whole purpose of the exception to works being permitted outside core hours is to enable flexibility and the additions are seeking to close that flexibility down. To be clear we are not talking necessarily about night time working. Core working hours are 07:30–18:00 Mondays to Fridays and 07:30–16:00 on Saturday. A number of categories of work are minor in nature or essential to be done out of core hours eg works requiring complete road closures can be less disruptive at night.</p> <p>The Categories of works are as follows with the Applicant’s emphasis as to why the works will not cause significant effect or are required outside core hours:</p> <ol style="list-style-type: none"> <li>1. deliveries, movements to work, maintenance and general preparation works <b>but not including running plant and machinery for a period of one hour either side of the above times</b> – so not involving night working;</li> <li>2. night-time closures including for road crossings and final surfacing tie ins;</li> <li>3. any oversize deliveries or deliveries <b>but only where daytime working would be excessively disruptive to normal traffic operation;</b></li> <li>4. junction tie-in works;</li> <li>5. repair or maintenance of construction equipment – which should not cause significant effect;</li> <li>6. removal of overhead power lines – these works are more significant and could be subject to further control;</li> <li>7. overnight traffic management measures – the effect of these nights works have been environmentally assessed;</li> <li>8. cases of emergency; and</li> <li>9. as otherwise agreed by the relevant planning authority in advance;</li> </ol> <p>Those exceptions are justified and proportionate and consistent with other DCOs. Moreover those works still need to be undertaken in accordance with the second iteration EMP and the various management plans designed to minimise impacts.</p> <p>It may not always be possible to give notice eg work item 1 and work item 5. Notice may be appropriate for item 6. For item 7 there would be advance notice through the Traffic Management Plan and the Community Liaison Management Plan</p> <p>The Applicant does agree to the second limb of the suggested wording being added to the “any other works category”</p> <p>The Applicant will propose changes to Requirement 4(2)(c) in the next draft of the dDCO for deadline 5.</p>
Item 5	<p><u>Requirement 4(4) and 4(5) – third iteration EMP.</u></p> <p>The ExA [PD-009 Q1.35] suggested that provisions be added for the third iteration EMP to be required to:</p>	<p>aa) The 3<sup>rd</sup> iteration EMP is equivalent to the HEMP and is a refinement of the 2<sup>nd</sup> iteration EMP (which is developed from the 1<sup>st</sup> iteration EMP; please see the response to question w above) and the 3<sup>rd</sup> iteration EMP is prepared to facilitate the handover stage following completion of the scheme.</p>

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	<ul style="list-style-type: none"> <li>• be submitted to and approved in writing by the Secretary of State</li> <li>• be consulted on with relevant planning authorities, the local highway authorities and the Environment Agency</li> <li>• be substantially in accordance with the measures for the management and operation stage in the first iteration EMP</li> <li>• incorporate the measures for the management and operation stage referred to in the ES as being incorporated in the EMP [Req 4(5)]</li> </ul> <p>The Applicant [<a href="#">REP2-021</a> Q1.35] responded that those are covered by the DMRB. The ExA considers that the provisions are key to the proper implementation of the EMP and therefore seeks certainty that they will be followed. Their inclusion in Requirement 4 appears to be supported by Tameside Metropolitan Borough Council [<a href="#">REP2-056</a> Q1.35], Derbyshire County Council [<a href="#">REP2-051</a> Q1.35], and the Environment Agency [<a href="#">REP2-052</a> Q1.35], except that they didn't comment in relation to the Secretary of State.</p> <p>aa) Please could <b>the Applicant</b> suggest appropriate wording?</p> <p>bb) Please could the <b>local authorities</b> comment?</p>	<p>Importantly, Requirement 4(4) requires the 3<sup>rd</sup> EMP to be prepared in accordance with a process contained in the 2<sup>nd</sup> EMP which is already subject to approval by the Secretary of State in consultation with the relevant local authorities and Environment Agency at Requirement 4(1). Consequently, the Applicant considers that the matters identified by the Examining Authority in bullets 1 to 3 are already addressed and a further requirement to consult is not required because it would necessitate an already approved process to be signed off again which is not efficient practice.</p> <p>Practically it should be noted that where a handover will be to the relevant highway authority, such as in cases where a new or altered highway is to be maintained by that highway authority, they will be consulted as part of the process they will have contributed to and will have been approved by the Secretary of State within the 2<sup>nd</sup> iteration EMP. However, Article 12 provides further protection because such features are also to be completed to the reasonable satisfaction of the highway authority.</p> <p>In relation to future maintenance by the Applicant, paragraph 3.13.4 of the 1<sup>st</sup> iteration EMP references the legal obligations upon National Highways to maintain its assets appropriately pursuant to the Highways Act 1980 and the Infrastructure Act 2015.</p> <p>With this understanding of the process for formulating the 3<sup>rd</sup> iteration EMP, the Applicant confirms that the items raised in bullets 1 to 3 are already addressed by the operation and formulation of the EMP. Section 3 of the 1<sup>st</sup> iteration EMP records how the REAC relates to the ES and is incorporated into each stage of the EMP; paragraphs 3.1.4 and 3.4.5 confirm that the appropriate measures from the REAC will form part of the 3<sup>rd</sup> iteration EMP thereby satisfying the item raised in the fourth bullet point.</p> <p>Requirements 4(5) and 4(6) provide the requisite safeguards to support this process because the 3<sup>rd</sup> iteration EMP must contain the measures relevant to the operation and maintenance of the scheme and require the scheme to be operated and maintained in accordance with the 3<sup>rd</sup> iteration EMP.</p>
Item 5	<p><u>Requirement 5 – Landscaping</u></p> <p>cc) Please could the local authorities comment on whether it is sufficient to require the landscaping to be in accordance with an approved scheme? Or should the landscaping scheme be approved at a specified time, for example before pre-commencement works or before construction works commence?</p>	<p>Requirement 5(1) sets out that the authorised development must be landscaped in accordance with an approved scheme. As a result, no landscaping can take place until a scheme has been approved. The drafting has not 'regulated' the submission of approved details prior to the commencement of development on the basis that landscaping is not considered by National Highways to be a fundamental point that needs to be confirmed prior to any works being carried out. By its very nature, landscaping will take place later in the construction programme and there is therefore flexibility as to precisely when the scheme should be submitted for approval. This is considered reasonable and reflects the same approach taken in other DCOs.</p>

Agenda item	Agenda item	National Highways Response
	dd) Please could <b>the Applicant</b> comment?	<p>If the ExA is minded however to add a timescale then we suggest that Requirement 6 is instead updated so that no part of the authorised development can come into use until a landscaping scheme for that part has been submitted and approved.</p> <p>The Applicant notes that the ExA has concerns that construction activity could lead to adjustments being necessary to the landscaping scheme because some of the preferred options are no longer possible due to sequence of construction. That would create concern because the landscaping scheme should be what is required to mitigate effects most efficiently. The Applicant noted the reverse point that construction may need to guide the landscaping scheme. The Applicant needs to be able to deliver the highway scheme but also mitigate any adverse effects.</p> <p>The Applicant agreed to give this further thought and will update the dDCO for Deadline 5 with its suggested approach.</p>
Item 5	<p><u>Requirement 6 – Contaminated land and groundwater</u></p> <p>The Environment Agency [REP2-052 Q1.32] said that it wished to be consulted on any EMP detail to ensure mitigation for pollution prevention impacts of the construction are considered for the water environment.</p> <p>The Environment Agency [REP3-037] made recommendations regarding model procedures and good practice for contamination.</p> <p>The ExA [PD-009 Q1.39] and the Environment Agency [REP2-052 Q1.39] suggested additional provisions.</p> <p>ee) Please could <b>the Applicant</b> comment and suggest how Requirement 6 should be updated.</p> <p>ff) Please could the <b>Environment Agency</b> comment?</p>	<p>Insofar as the EA has requested to be consulted on details being formulated in the EMP, the Applicant proposes to include the EA as a consultee on matters related to its function in Requirement 4. Notably Requirement 4(2)(d) will include the Pollution Prevention Plan at item (iii) and the Construction Water Management Plan at item (vii).</p> <p>The Applicant has noted the EA's recommendations regarding model procedures and good practice and can confirm that the land contamination risk assessment has been completed in accordance with the EA guidance and the Ground Investigation was designed in accordance with the British Standard the EA referred to (BS 10175). The Ground Investigation Report was also reviewed by a Specialist in Land Condition. The Applicant considers that with the adjustment to Requirement 4, the EA can be satisfied that it will be consulted at all appropriate future stages.</p>
Item 5	<p><u>Requirement 7 – Protected species</u></p> <p>The ExA [PD-009 Q1.40] and Natural England [REP2-054 Q1.40] suggested additional provisions.</p> <p>gg) Please could the Applicant comment and suggest how Requirement 7 should be updated?</p>	<p>Requirement 7 needs to be read as a whole. Sub-paragraph (1) prohibits commencement until survey work has been completed identifying the land or forna occupied by protected species that is likely to be affect by the authorised development. The survey work will naturally inform the paragraphs that follow. For example, where a survey relates to aquatic ecology “the relevant parts of the relevant works” which <i>must</i> cease in accordance sub-paragraph (2), will relate to those elements of the works which may affect the identified aquatic life but other elements may continue.</p> <p>It is also important to put into context the fact that the cessation provisions only arise where an initial survey has shown an area to be clear of protected species but subsequent information suggests this has changed or a species is subsequently discovered and the</p>

Agenda item	Agenda item	National Highways Response
		<p>relevant works will result in a significant effect on the identified species that has not already been addressed by an approved scheme of protection and mitigation.</p> <p>Notwithstanding the above explanation of the operation of Requirement 7, should the ExA still require further wording to aid clarity the applicant would propose to add the words in red at the end of 7(2):</p> <p><i>“...the relevant parts of the relevant works likely to affect the identified protected species must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.”</i></p>
Item 5	<p><u>Requirement 8 - Surface and foul water drainage</u>          Tameside Metropolitan Borough Council [REP2-056 Q1.41] and Derbyshire County Council [REP2-051 Q1.41] suggested that the local highways authorities should be consulted.</p> <p>hh) Please could <b>the Applicant</b> update Requirement 8 accordingly?</p>	<p>Both authorities requested reference be made to the lead local flood authority and that is already included in R8.</p> <p>TMBC and DCC are each responsible for both functions as Lead Local Flood Authorities and highways authority.</p> <p>The Applicant would simply invite clarity as to where there is an instance where the identity of the Lead Local Flood Authority is different to the Local Highway Authority, rather than a different division within the same authority, thereby necessitating an additional reference to the local highway authority.</p>
Item 5	<p>The Environment Agency [REP3-037] commented in relation to the Environmental Permitting Regulations.</p> <p>ii) Are the Applicant and the Environment Agency satisfied that the matters raised are covered by the Environmental Permitting Regulations and that no update is needed to Requirement 8?</p>	<p>The Applicant confirms that surface water outfalls will be covered by both Environmental Permitting and Land Drainage Consents from the EA and LLFAs respectively.</p> <p>The Applicant will include reference to consult the EA at Requirement 8 in the next iteration of the dDCO.</p>
Item 5	<p><u>Requirement 9(2) – Flood risk assessment</u>          The Environment Agency [REP3-037] recommended that they should be consulted in relation to works proposed in accordance with the flood risk assessment and otherwise in accordance with the flood risk assessment. They also stated that all works should be carried out in accordance with an approved flood risk assessment regardless of whether affected landowners accept any exceedances of flood levels. They said that the flood risk assessment</p>	<p>The Environment Agency's response was in two parts. The first part confirmed that the proposed road crosses ordinary watercourses within the LLFA's remit and recommended they should be consulted. The Applicant is content to include consultation with the LLFAs in Requirement 9(2) of the next iteration of the dDCO. For completeness Tameside Metropolitan Borough Council as the LLFA have been consulted as part of the crossing of ordinary watercourse and surface water outfalls and land drainage consent requirements. Similarly the EA has been consulted in the development of the Flood Risk Assessment (FRA) and further consultation will be undertaken as part of the proposed works and Environmental Permit submissions.</p> <p>The LLFAs confirmed that they were satisfied with the wording of Requirement 9(2), subject to including consultation with themselves. However, the second part of the EA's response indicated that non-conformity with the FRA would need to demonstrate that flood risks</p>

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	<p>must show that risks would not be increased elsewhere.</p> <p>Tameside Metropolitan Borough Council [<a href="#">REP2-056</a> Q1.42] and Derbyshire County Council [<a href="#">REP2-051</a> Q1.42] made similar comments</p> <p>jj) Please could the Applicant comment and suggest how Requirement 9 should be updated?</p>	<p>would not increase elsewhere. The Applicant is reviewing the wording for Requirement 9(2) in light of that representation and will include any revisions that may be required at Deadline 5.</p>
Item 5	<p><u>Requirement 10 – Archaeological remains</u></p> <p>The ExA [<a href="#">PD-009</a> Q1.35] suggested that requirements be added for</p> <ul style="list-style-type: none"> <li>any matters to be consulted and/ or agreed in writing with the Secretary of State or the County Archaeologist</li> <li>any programme of archaeological reporting, post excavation and publication to be consulted on and/ or agreed in writing suitable resources and provisions for long term storage of any archaeological archives to be consulted on and/ or agreed in writing</li> </ul> <p>Their inclusion is supported by Tameside Metropolitan Borough Council [<a href="#">REP2-056</a> Q1.43], Derbyshire County Council [<a href="#">REP2-051</a> Q1.43], and HighPeak Borough Council [<a href="#">REP2-053</a> Q1.43].</p> <p>kk) Please could <b>the Applicant</b> comment and suggest how Requirement10 should be updated?</p>	<p>These requirements are acceptable and we will offer up revised drafting in the next draft of the dDCO at Deadline 5.</p>
Item 5	<p>The Applicant has submitted a Written Scheme of Investigation [<a href="#">REP1-034</a>].</p> <p>ll) Please could <b>the Applicant</b> comment on whether this should be referenced by Requirement 10 and included as a certified document in Schedule 10?</p> <p>mm) Do the <b>local authorities</b> have any comments on the Written Scheme of</p>	<p>The Written Scheme of Investigation (WSI) [<a href="#">REP1-034</a>] that was submitted relates to the pre-application phase of archaeological investigation comprising evaluation trial trenching and shovel test pitting. These works are now substantially complete, and the results of this work will be used to develop a mitigation strategy for archaeological remains – referred to as the Archaeological Fieldwork Strategy (AFS) as outlined in the REAC.</p>

Agenda item	Agenda item	National Highways Response
	<p>Investigation? Should be included in Requirement 10 and Schedule 10?</p>	<p>The approach to the subsequent archaeological mitigation will be set out in a WSI that will be developed in consultation and agreed with the relevant county archaeologist(s).</p> <p>Therefore, there is not a requirement to reference the WSI [REP1-034] in Requirement 10 or include it as a certified document in Schedule 10.</p> <p>The Applicant agreed to provide additional detail of how the WSI for the AFS (as outlined in the REAC) will be prepared. The following is a draft outline programme for consultation and delivery:</p> <ul style="list-style-type: none"> <li>• April 2022 – The Applicant will commence with preliminary consultation with Greater Manchester Archaeological Advisory Service (GMAAS), Derbyshire Council's county archaeologist (DCC) and Historic England on the scope of archaeological mitigation required.</li> <li>• May 2022 – The Applicant will prepare a draft AFS</li> <li>• June 2022 – The Applicant will undertake formal consultation on the AFS with GMAAS, DCC and Historic England</li> <li>• July 2022 – The Applicant will respond to comments on the AFS and update it accordingly</li> <li>• Aug 2022 – The Applicant will finalise the AFS and issue the WSI for approval to GMAAS, DCC and Historic England</li> </ul>
Item 5	<p><u>Requirement 12(1) Details of consultation – minimum period</u></p> <p>The Applicant and local authorities have suggested consultation periods ranging from 14 days to 28 days.</p> <p>nn) Please could <b>the Applicant, local authorities</b> and the <b>Environment Agency</b> comment further? Can a consultation period be agreed?</p> <p>The ExA may ask more questions or invite more oral submissions.</p>	<p>Requirement 12(1) makes reference to a period of not less than 14 days and this is considered reasonable but the Applicant agreed to take it away and discuss further with the local authorities. In terms of ordinary planning and the Town and Country Planning (Development Management Procedure Order) statutory consultees are expected to revert in 21 days, so the Applicant's case is that any prescribed consultation period should not be longer than 21 days.</p>

## 6. Agenda Item 6 – Schedules 3 to 10

Agenda item	Agenda item	National Highways Response																								
Item 6	<p><b>SCHEDULES 3 TO 10</b></p> <p><u>Schedule 3, 4 and 5</u></p> <p>The Applicant has updated Schedule 3 and 4.</p> <p>a) Have <b>Tameside Metropolitan Borough Council</b> and <b>Derbyshire County Council</b> reviewed the latest versions <a href="#">[REP3-002]</a>? Do they have any further comments?</p>	<p>Tameside Metropolitan Borough Council and Derbyshire County Council to respond in writing.</p>																								
	<p><u>Schedule 9 – Protective Provisions</u></p> <p>The Applicant <a href="#">[REP2-021 Q1.56]</a> summarised progress in agreeing Protective Provisions, side agreements and Statements of CommonGround.</p> <p>The Environment Agency advised <a href="#">[REP2-052 Q1.57]</a> that it would like to recommend a shorter form.</p> <p>The Applicant is reminded that if written confirmation is not received by all relevant parties before the close of the Examination, then the ExA will be minded to recommend to the Secretary of State that it does not make a decision until it has satisfied itself that the protective provisions and any relevant side agreements have been agreed with between the Applicant and any Statutory Undertakers that are named in Schedule 9 and/ or have raised relevant matters requiring agreement during the examination.</p> <p>b) Please could <b>the Applicant</b> provide an update, including for Drainage Authorities?</p> <p>c) Does <b>the Applicant</b> expect all agreements to be reached before the end of the Examination?</p>	<p>The Applicant has received the request from the EA to utilise a shorter form of PPs. The provisions requested have been included in other previously made DCOs (A1 Morpeth to Ellingham) and the Applicant expects to incorporate an amended Part 6 to Schedule 9 in the next iteration of the draft DCO at Deadline 5.</p> <p>In relation to the drainage authorities, the Applicant believes it has addressed the comments previously made by Tameside MBC prior to the application being made. The Applicant will seek to clarify if matters are agreed and include such representations in the relevant Statements of Common Ground.</p> <p>The Applicant's current understanding of the position with each statutory undertaker is recorded in the table below. The Applicant has, as previously advised, confirmed agreement with 2 providers, Electricity North West and Openreach. Dialogue is continuing with the other statutory undertakers and the protective provisions reflect the form that have been agreed with the Applicant on other made DCOs. The Applicant is therefore able to confirm that it expects agreement can and will be reached before the end of the examination.</p> <table border="1" data-bbox="937 1377 2466 1885"> <thead> <tr> <th>Statutory Undertaker</th> <th>Status of Protective Provisions</th> <th>Status of side agreement</th> </tr> </thead> <tbody> <tr> <td>Cadent Gas Limited</td> <td>Agreed subject to legal agreement being signed.</td> <td>Under discussion</td> </tr> <tr> <td>Cornerstone Telecommunications Limited</td> <td>Under discussion</td> <td>None</td> </tr> <tr> <td>Electricity North West Limited</td> <td>Agreed</td> <td>None</td> </tr> <tr> <td>Environment Agency</td> <td>Under discussion</td> <td>None</td> </tr> <tr> <td>National Grid Electricity Transmission plc</td> <td>Under discussion</td> <td>Under discussion</td> </tr> <tr> <td>Openreach Limited</td> <td>Agreed</td> <td>None</td> </tr> <tr> <td>United Utilities</td> <td>Under discussion</td> <td>None</td> </tr> </tbody> </table>	Statutory Undertaker	Status of Protective Provisions	Status of side agreement	Cadent Gas Limited	Agreed subject to legal agreement being signed.	Under discussion	Cornerstone Telecommunications Limited	Under discussion	None	Electricity North West Limited	Agreed	None	Environment Agency	Under discussion	None	National Grid Electricity Transmission plc	Under discussion	Under discussion	Openreach Limited	Agreed	None	United Utilities	Under discussion	None
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Agenda item	Agenda item	National Highways Response
	<p><u>Schedule 10</u></p> <p>The ES is referenced in the dDCO and a number of the documents are being updated during the Examination. The ExA wishes to ensure that the latest versions are certified.</p> <p>d) Please could the <b>Applicant</b> comment? Should the DCO refer to a separate register for the latest versions? Should that register be included in Schedule 10?</p>	<p>The Applicant acknowledges the ExA's comments and is reviewing how best to update Schedule 10 and, if necessary, to incorporate reference to a register. The Applicant will endeavour to include any revisions required into the next iteration of the dDCO at Deadline 5.</p>
	<p>The Register of Environmental Actions and Commitments has been removed from Schedule 10. Although it is part of the EMP, it is a separate document and the ExA wishes to ensure that the latest version is certified.</p> <p>e) Please could <b>the Applicant</b> add the Register of Environmental Actions and Commitments to Schedule 10?</p> <p>The ExA may ask more questions or invite more oral submissions.</p>	<p>The Environmental Management Plan and DMRB LA120 Environmental management plans requires the REAC to sit within the EMP at section 3 (See the 1<sup>st</sup> iteration EMP – REP3-029). The reason the Applicant's project team split them out was so that the REAC would be more accessible for the DCO examination. The Applicant's preference would be to amend Schedule 10 so that the reference to the REAC sits alongside the EMP by adding the words "(including REAC)".</p> <p>The Applicant will make this change in the dDCO for Deadline 5.</p>

## 7. Agenda Item 7 – Any other draft Development Consent Order matters

Agenda item	Agenda item	National highways Response
Item 7	<p><b>ANY OTHER DRAFT DEVELOPMENT CONSENT ORDER MATTERS</b></p> <p>Please could <b>the Applicant</b> provide a written summary of its responses for Deadline 4, on Wednesday 16 February 2022? Time permitting, and at its discretion, the ExA may invite other oral submissions related to the draft Development Consent Order.</p>	<p>This document is a written summary of National Highways' responses to Issue Specific Hearing 1.</p>

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