

A47 North Tuddenham to Easton Dualling

Scheme Number: TR010038

Volume 9

9.19 Applicant's Written Summary of Oral Submissions at ISH1

The Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8(1)(c)

Planning Act 2008

November 2021

Infrastructure Planning

Planning Act 2008

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

The A47 North Tuddenham to Easton
Development Consent Order 202[x]

**APPLICANT'S WRITTEN SUMMARY OF
ORAL SUBMISSIONS AT ISH1**

Rule Number:	Rule 8(1)(c)
Planning Inspectorate Scheme Reference	TR010038
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1 INTRODUCTION

- 1.1.1 The Development Consent Order (DCO) application for the A47 North Tuddenham to Easton scheme was submitted on 15 March 2021 and accepted for examination on 12 April 2021.
- 1.1.2 The first Issue Specific Hearing (ISH1) for the A47 North Tuddenham to Easton (DCO) application was held virtually on Microsoft Teams on Tuesday 2 November 2021 at 10.00am.
- 1.1.3 The Examining Authority (ExA) invited the Applicant to respond to the matters raised and the Applicant confirmed it would respond in writing after the hearing.
- 1.1.4 This document seeks to fully address the representations made by the Applicant and the Interested Parties at the ISH1.
- 1.1.5 The Applicant has responded to the issues raised by each of the attending parties and provided cross-references to the relevant application or examination documents in the text below.

2 THE APPLICANT'S SUBMISSIONS IN RESPONSE TO MATTERS RAISED AT ISH1

Ref	Questions / Issues Raised at ISH1 and Hearing Action Points	Summary of Applicant's Response at ISH1	Applicant's Written Response
Agenda Item 2 - Articles and Schedules of the dDCO			
1.1	<p>The ExA noted that in the term "authorised development" in the Interpretation section, there is a semi colon missing at the end.</p> <p>The ExA asked if this could be amended to include a semi-colon.</p>	<p>The Applicant agreed this would be amended in the next version of the dDCO.</p>	<p>The Applicant will include this change in the next version of the dDCO.</p>
1.2	<p>The ExA requested clarification that the dDCO was drafted in line with the statutory template, guidance from Parliamentary Counsel, PINS guidance and Article Note 15.</p> <p>Richard Hawker also questioned differences between articles and Schedules. ExA asked Applicant to confirm this in their answer to the above.</p>	<p>The Applicant confirmed that the dDCO is drafted in line with the statutory template, guidance from Parliamentary Counsel, PINS guidance and Article Note 15.</p> <p>The Applicant confirmed that articles are the name used for the provisions contained in the front end of the dDCO which start after the contents page and run from article 1 to article 54. The Schedules then follow on from the articles and are contained the back end of the document. Where a numbered provision is referred to in a Schedule, this is referred to as a paragraph or requirement, not an article.</p> <p>The DCO is drafted in line with previous DCOs which have been granted to the Applicant.</p>	<p>The Applicant has no further submissions to make.</p>

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1.3	<p><u>Article 5 – Development Consent etc. granted by the Order</u></p> <p>ExA queried what is meant by "any enactment" and "adjacent to" in Art. 5(2).</p>	<p>The Applicant confirmed that no search of local enactments can be entirely conclusive, so "any enactment" refers to any undiscovered or incompatible statutes not identified by the searches that may hinder the implementation of the Scheme.</p> <p>"Adjacent to" refers to, for example, any legislation that may apply to land in close proximity to, but not within the Order Land. For example, in the case of railway legislation, this affects railway land but can restrict activities on land adjacent to the railway. This article would ensure the railway legislation would have effect subject to the provisions of the dDCO.</p> <p>The Applicant confirmed that the adjacent land would need to share a common boundary with the Order limits.</p>	<p>The Applicant has no further submissions to make.</p>
1.4	<p><u>Article 7 – Planning Permission</u></p> <p>The ExA raised a question connected to the First Written Questions regarding the purpose of this article.</p> <p>The ExA requested more clarification on what this article is and whether changes could occur to the DCO without going through the correct process.</p>	<p>The purpose of the article is not to circumvent material change requirements but to give clarity to subsequent chapters of planning history.</p> <p>Where land is taken temporarily and then given back to those landowners, this article makes it clear that development under the Town and Country Planning Act 1990 is not precluded from coming forward at a later date. The procedure for applying for a change to a DCO would still apply.</p>	<p>This Article has been included to provide certainty that separate planning applications can be granted and implemented within the Order limits, but does not override or affect the application of section 153 and Schedule 6 of the Planning Act 2008.</p>

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1.5	<p><u>Article 8 – Limits of deviation</u></p> <p>The ExA asked what the process is for agreeing deviations to the authorised development beyond the established one metre limit.</p> <p>The ExA questioned when this would be agreed and certified accordingly. Would certification be in writing.</p> <p>The ExA also wanted to establish why it was necessary to be able to deviate beyond this one metre limit.</p>	<p>The flexibility to deviate is drafted into the dDCO to ensure the Scheme can still be constructed in the event of unforeseen circumstances arising. The Applicant confirmed this flexibility is necessary and that there is precedent for this in other orders.</p> <p>Ground condition surveys could identify drainage in an area going beyond the expected limits, for example. Therefore, the stage of design, and status of the topography (which is not yet fully known), we are currently at creates the need for flexibility at a later stage.</p> <p>The Applicant's understanding is that any deviation is subject to approval by the SoS in writing but will respond in writing to confirm the exact process.</p>	<p>This wording has been included in several made DCOs including the A303 Sparkford to Ilchester Dualling Development Consent Order 2021.</p> <p>The Applicant can confirm that the process of certifying is a written one. There is no exact process, but written evidence would need to be submitted to the Secretary of State in writing if a deviation in excess of 1 metre was found to be necessary.</p> <p>This would be considered by the Secretary of State in consultation with the relevant planning authority and if deemed appropriate, the Secretary of State would certify in writing that the exceedance was accepted.</p>
1.6	<p><u>Article 10 – Consent to transfer benefit of Order</u></p> <p>The ExA asked for confirmation on why this power to transfer the benefit is needed and if this is included, whether this includes the power to transfer compulsory acquisition powers as well.</p>	<p>The Applicant confirms that this article is contained within most DCOs and there is precedent for this.</p> <p>The undertaker is very narrowly defined and it is conceivable that a change of undertaker could be needed. The consent of the Secretary of State is needed for such a transfer of the benefit of the Order, subject to article 10(11).</p> <p>The statutory undertakers listed in article 10(11) are those that have utilities that are affected by the Scheme and would benefit from the diverted services, and thus from the DCO. As this need and these parties are known from the outset, provision to</p>	<p>This provision is broadly modelled on that contained in other orders such as the A30 Chiverton to Carland Cross Development Consent Order 2020 (A30 Chiverton Order); the A63 (Castle Street Improvement, Hull) Development Consent Order 2020; the A585 Windy Harbour to Skippool Highway Development Consent Order 2020 (A585 Windy Harbour Order); the M42 Junction 6 Order; and the A19/A184 Testo's Junction Alteration Development Consent Order 2018 (A19/A184 Order). The drafting does allow the undertaker to</p>

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		<p>transfer the benefit of the order can be established now rather than it being necessary to seek consent from the SoS at a later date. The companies listed in the dDCO all operate in highly regulated areas which will ensure that they comply with all relevant requirements. All works undertaken by the companies in connection with the Scheme will be funded by the Applicant. It is therefore not necessary to demonstrate that the companies have sufficient funds to meet any costs.</p> <p>The current drafting does allow the ability to transfer powers of compulsory acquisition. However the Applicant is reviewing this wording and will respond at Deadline 4.</p>	<p>transfer the benefit of compulsory acquisition powers.</p> <p>The Applicant is contemplating an update to Article 10 to reflect the drafting that was included in the A303 Stonehenge DCO (now quashed) and is being proposed in Article 11 of the draft Black Cat to Caxton Gibbet Improvements Development Consent Order and a revised dDCO will be submitted at Deadline 5.</p> <p>An amendment to Article 10(3) shown below could be included to ensure the person benefitting from any such transfer of grant would be subject to the same obligations as the Applicant, but an exception is made in relation to liability for the payment of compensation due in connection with the compulsory acquisition of land. This drafting specifically clarifies that the liability for the payment of compensation will remain with the Applicant.</p> <p><i>(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph Error! Reference source not found. is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker, <i>save where those benefits or rights are exercised by a statutory undertaker or by an owner or occupier of land pursuant to paragraph (2) of article 27</i></i></p>

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			<i>(compulsory acquisition of rights and imposition of restrictive covenants) of this Order, in which case liability for the payment of compensation remains with the undertaker.</i>
1.7	<p><u>Article 13 – Classification of roads, etc.</u></p> <p>The ExA posed a question regarding the cycle track referenced in Article 13(4).</p> <p>The ExA asked for cycle path to be identified and if it would be delivered if it is constructed at all as a part of the scheme.</p>	<p>The Applicant confirmed that all other rights of way will be delivered and be opened for public use when the scheme is completed. However, this particular section of cycle track will not be delivered if the Norwich Western Link receives consent to be constructed.</p> <p>It is not required to mitigate a direct impact of the scheme, so this is an optional element which has been allocated its own Work No. There is a possibility this may not be constructed but the Applicant remains in discussions with Norfolk County Council in relation to this point.</p>	The Applicant has no further submissions to make.
1.8	<p><u>Article 14 – Power to alter layout etc. of streets</u></p> <p>The ExA asked a question regarding Article 14(2) and requirement for the undertaker to restore any street temporarily altered to the reasonable satisfaction of the street authority.</p> <p>Also what is meant by 'must restore'. How is this secured and to what standard.</p>	<p>Because the detailed design of the Scheme has not yet been carried out, it is necessary to maintain a sufficient degree of flexibility so that the Scheme can proceed. The powers in Article 14 provide that flexibility.</p> <p>Article 14 broadly reflects the wide powers of a highway authority to make changes to a highway as they see fit and without consultation with third parties.</p> <p>The works to be carried out will be agreed between the parties at the time.</p> <p>The timescales for this are not currently set as these</p>	<p>The wording in Article 14(2) makes it mandatory for the undertaker to carry out such restoration works deemed necessary by the street authority. These must be carried out to the reasonable satisfaction of the street authority.</p> <p>The term restore is not defined in the dDCO, so the usual interpretation shall apply. Restore means putting something back in the condition it was in originally.</p>

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		will be dealt with as part of the Scheme in a more detailed programme at a later stage.	
1.9	<p><u>Article 16 – Temporary alteration, diversion, prohibition and restriction of use of streets</u></p> <p>The ExA asked why this wide power is necessary and if Applicant had given thought to which specific streets this would apply to.</p> <p>The ExA asked the Applicant to explain how the Applicant thinks that this power is proportionate and necessary given the effect it will have on pedestrians and road users.</p>	<p>As the detailed design of the Scheme has not yet been developed, it is necessary to maintain a sufficient degree of flexibility so that the Scheme can proceed. These powers apply to any road within the order limits.</p> <p>The powers in Article 16 provide that flexibility. Article 16 broadly reflects the powers of a highway authority to make a temporary traffic regulation order under the Road Traffic Regulation Act 1984.</p> <p>The Applicant clarifies that these powers are not unfettered and must be used to carry out the authorised development only. Consent is required from the street authority under Article 16(4), reasonable pedestrian access must be provided and there is compensation payable to anyone who loses access to a private right of way.</p> <p>The Applicant considers the power necessary, reasonable and proportionate given the design stage the Scheme is currently at.</p>	The Applicant has no further submissions to make.
1.10	<p><u>Article 18 – Access to works</u></p> <p>The ExA questioned the purpose of this power and also if the level of power conveyed by this article was appropriate.</p>	The Applicant relies on this power to create temporary accesses to the relevant land within the order limits during construction. This article is based on a model provision, but the drafting has been amended.	<p>The purpose of this Article is to allow the Applicant flexibility to undertake such works for the purposes of carrying out the Scheme.</p> <p>Whilst every effort has been made to identify all accesses and all works required to those</p>

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	<p>The ExA also followed on to state the article as currently drafted does not contain the word "temporary" and the Applicant should consider whether this should be inserted into the article.</p>	<p>The article is a general power and the intention is that this is in line with the powers contained in the Highways Act 1980.</p> <p>The Applicant cannot be specific at this point on the extent of access needed given the current stage of the design.</p> <p>The Applicant will take the ExA's point regarding adding drafting to reflect temporary nature of power away and reply in writing.</p>	<p>accesses, it is possible that unknown or informal accesses exist or the need to improve an access or lay out a further access will only come to light as the Scheme is carried out.</p> <p>This power is not intended to be limited to providing only temporary accesses. The intention of this article is to provide equivalent powers to those available to schemes authorised under the Highways Act 1980, which would benefit from the power in section 129 of that Act.</p> <p>It has been included in other Orders such as the A1 Birtley to Coal House Development Consent Order 2021 and the A303 Sparkford to Ilchester Dualling Development Consent Order 2021.</p>
1.11	<p><u>Article 21 – Discharge of water</u></p> <p>The ExA raised a question surrounding Article 21(5) and whether the drafting in this article was acceptable to all parties, especially the wording 'as free as may be practicable from gravel, soil etc'.</p> <p>The question was directed to the Environment Agency, so the ExA confirmed he would pose this question in the next set of Written Questions as the Environment</p>	No response required	The Applicant has no further submissions to make.

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	Agency were not in attendance.		
1.12	<p><u>Article 22 – Protective work to buildings</u></p> <p>The ExA asked the Applicant to clarify the effect of this article, what is classed as protective works and whether this is can go beyond the order limits. Justification was also sought for this power.</p> <p>The ExA also questioned if the 5 year time limit is sufficient and how this length of time was decided on.</p>	<p>The Applicant confirms this power allows the provision of protective works for buildings if they are deemed necessary. The inclusion of this power is prudent and is only needed if unforeseen effects from the scheme become apparent.</p> <p>There is precedent for this contained in other orders as set out in the Explanatory Memorandum. Article 22(1) limits this power to any building that may be affected and a wide definition is needed in case there is an impact on a building adjacent to the Scheme, for example, if there are issues from vibration affecting properties outside of the Order limits.</p> <p>The definition of protective works is contained in Article 22(11).</p>	<p>The five year period from the date the Scheme is first open for use was taken from the drafting in Paragraph 15 Schedule 1 of the Infrastructure Planning (Model Provisions)(England and Wales) Order 2009 model provision.</p> <p>This time period was deemed a suitable period of time for any impacts from the Scheme to become apparent.</p>
1.13	<p><u>Article 26 – Time Limit for exercise of authority to acquire land compulsorily</u></p> <p>The ExA requested clarification as to why this article is needed and if this is linked to Article 34.</p> <p>Confirmation also requested on if land can be retained indefinitely and if there are measures in place in the DCO to avoid this.</p>	<p>The Applicant confirms the link between Articles 26 and 34. These powers are both subject to the same limits, with Article 34 dictating the length of possession.</p> <p>The pink and blue land (shown on the Land Plans) are subject to the 5 year limit and show where permanent acquisition of land and rights may be exercised in relation to these plots. The green land is subject to temporary possession only as opposed to compulsory acquisition powers.</p> <p>Article 34(3) restricts the time limit for temporary possession of green land to no longer than one year</p>	<p>The Applicant has no further submissions to make.</p>

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		<p>from the completion of the authorised development unless the owner's permission is given to remain in possession.</p> <p>The Applicant confirms temporary possession can be taken for pink or blue land also and the same time limit in Article 34(3) applies unless a notice of entry or general vesting declaration change the parameters of possession.</p>	
1.14	<p><u>Article 35 – Temporary use of land for maintaining the authorised development</u></p> <p>The ExA noted this article appears to allow temporary possession regardless of whether this is covered in the schedules.</p> <p>Questioned whether the Applicant needs these powers and if they are appropriate. Clarification was also sought as to the efforts made to contact the landowners.</p> <p>The ExA also questioned what consultation had been carried out with regards to this and if it was a specific exercise or wrapped up in the wider consultation on the scheme.</p>	<p>The Applicant confirms this article relates to maintenance of the authorised development, rather than carrying out the authorised development. These powers are therefore only exercisable once the works are completed.</p> <p>The article is based on a model provision.</p> <p>Landowners have been consulted as part of the statutory consultation. The maintenance period is 5 years from completion so will not last indefinitely. These powers of maintenance may only be exercised if access is reasonably required subject to a 28 day notice period.</p> <p>The Applicant notes the ExA's question regarding the consultation process specifically and will respond in writing to this point.</p>	<p>This power would only need to be exercised in relation to land which is not acquired by the Applicant.</p> <p>All affected landowners have been consulted as part of the statutory consultation process and were served with a notice of acceptance of an application for a DCO pursuant to section 56 of the Planning Act 2008 [OD-001].</p> <p>This notice stated that " <i>DCO would authorise the compulsory acquisition of land, interests in land and rights over land, and the powers to use land permanently and temporarily for the construction, operation and maintenance of the scheme.</i>"</p> <p>However, there has not been a separate consultation exercise to communicate the impacts of Article 35.</p> <p>The Applicant endeavours to make specific reference to this article during land negotiations</p>

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			and ongoing access for maintenance is usually addressed in the property documents.
1.15	<p><u>Article 40 – Felling or lopping of trees and removal of hedgerows and Article 41 – Trees subject to tree preservation orders</u></p> <p>The ExA asked for clarification if under Article 40 the undertaker can fell or lop any tree or shrub.</p> <p>How does the this relate to the arboricultural assessment, Environmental Masterplan and those trees identified in the Environmental Statement which are identified as being retained?</p> <p>Article 40 also states that the undertaker must take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981. The ExA questioned if this wording is strong enough and why this wording isn't contained in Article 41.</p>	<p>The powers in Article 40 are limited by Article 41(1) (a) and (b) to trees which obstruct or interfere with construction of the development or constitute a danger to passengers or other persons using the development. It needs to be included to ensure the Applicant can keep the strategic road network safe for users.</p> <p>It is also subject to the commitments in the Environmental Management Plan (EMP), one of which specifies which trees are to be retained or removed. Compliance with the EMP is secured under Requirement 4 of the dDCO.</p> <p>The Applicant will come back to the ExA and respond in writing to the query regarding the Wildlife and Countryside Act 1981 although confirms this drafting is based on a precedent article.</p>	<p>The drafting used in Article 40(2) has also been included in the A303 Sparkford to Ilchester Dualling Development Consent Order 2021.</p> <p>The wording expressly requires the undertaker to take steps to avoid a breach of the Wildlife and Countryside Act 1981. However, in the unlikely event that a breach did occur, this would be dealt with by taking enforcement action in accordance with the Wildlife and Countryside Act 1981 as opposed to the provisions in the dDCO.</p> <p>Therefore, it is the Applicant's view that the drafting is adequate.</p>
1.16	<p><u>Article 53 – Arbitration</u></p> <p>The ExA noted that in some recently granted DCOs relating to</p>	<p>The Applicant stated the wind farm orders are approved by the Secretary of State for Business Energy and Industrial Strategy, whereas this DCO is</p>	<p>The Applicant has no further submissions to make.</p>

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	<p>wind farm projects, the Secretary of State for Business, Energy and Industrial Strategy (BEIS) has struck this clause out.</p> <p>The ExA requested clarification on why this is included in this dDCO and asked for the Applicant to justify its inclusion.</p>	<p>to be considered by the Secretary of State for Transport.</p> <p>The last six DCOs granted by the Secretary of State for Transport have all contained this article.</p> <p>The Applicant is aware of the issues surrounding arbitration for the wind farm schemes, but the same issues have not been raised by the Secretary of State for Transport. Therefore the Applicant considers the inclusion of this article necessary as there needs to be a dispute resolution provision within the Order.</p>	
1.17	<p><u>Article 22 – Protective work to buildings</u></p> <p>Simon Wood of Breckland Council questioned which party determines where works are necessary and whether they have been carried out to reasonable satisfaction?</p> <p>Is there a role for a party other than the undertaker in this process of determination?</p>	<p>The Applicant confirms that this power sits solely with the undertaker as the Order confers power on the undertaker. Buildings affected by this provisions will most likely be privately owned so it is a matter for the undertaker and the landowner. Therefore it is not appropriate to include any third parties in this process.</p> <p>This power is not unfettered and is limited by Article 22(6) which allows any owner or occupier of an affected building to serve a counter notice to the protective works. This can question whether the work is necessary or expedient. If there are any disputes in relation to this article, this will be referred to arbitration.</p>	<p>Article 22 mirrors the drafting set out in Paragraph 15 Schedule 1 of the Infrastructure Planning (Model Provisions)(England and Wales) Order 2009 model provision and has been included in the majority of DCOs granted to date.</p>
1.18	<p><u>Article 41 – Trees subject to tree preservation orders</u></p>	<p>Articles 41(1)(a) and (b) deal with the scenarios where there is interference to the operation of the strategic road network or there is a danger to passengers so</p>	<p>Article 41(2)(c) requires the Applicant to consult the relevant planning authority prior to any trees being felled or lopped under Article 41(1).</p>

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	<p>Simon Wood noted Article 41(2)(b) provides for the removal of the duty to replace trees.</p> <p>There is an assumption that this is to allow for the removal of trees which have not be previously identified after consultation with the local planning authority.</p> <p>There should be a duty to mitigate and replacements should be discussed with the local planning authority. Is there a process by which a party can raise concerns over the works?</p>	<p>replacement of trees is not likely to be appropriate in these circumstances.</p> <p>The Applicant is the party solely responsible for determining the safety of the strategic road network so it would not be appropriate to include another consultee.</p> <p>The Applicant will take this away to consider and respond in writing.</p>	<p>However, this provision can only be relied upon where a tree is obstructing or interfering with the authorised development or it constitutes a danger to passengers or other persons using the Scheme. Section 206 of the Town and Country Planning Act imposes a statutory duty to plant another tree of an appropriate size and species in the same place as soon as reasonably possible and given the circumstances in which a tree can be lopped or felled under Article 41(1), it is very unlikely a replacement tree in the same place would be appropriate.</p> <p>This duty also attaches to any person who is from time to time the owner of the land. If this Article needs to be exercised on land within the Order limits, but not owned by the Applicant, it is not appropriate that a landowner should be bound by the duty in section 206.</p> <p>Although Article 41(2)(b) disapplies the duty in section 206(1) it does require the undertaker to seek to replace any trees which are removed where possible.</p> <p>For these reasons, the Applicant is of the opinion the drafting in Article 41(2)(b) is appropriate fully justified.</p>
1.19	<p><u>Article 41 - Trees subject to tree preservation orders</u></p>	<p>The Applicant noted that Part 2 of Schedule 2 in the dDCO regarding discharge of requirements could be</p>	<p>A similar article was included in the A1 Birtley to Coal House Development Consent Order 2021.</p>

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	<p>Charles Judson requested clarification over Article 41(2)(c) and the consultation mentioned in this article.</p> <p>Is there a possibility for the planning authority to reject activity?</p>	<p>linked to Article 41(2)(c) and may deal with how the consultation process would work.</p> <p>The Applicant will take this away and respond in writing at a later stage.</p>	<p>The Article requires consultation with the relevant planning authority, but there is no requirement to secure consent from the relevant planning authority. Therefore, the activity proposed cannot be rejected by a third party.</p> <p>It has a very narrow application and is only relevant to any new Tree Preservation Orders which are made on trees situated within or overhanging the Order limits after 24 July 2020. Such trees may only be removed in the specific circumstances listed in Article 41(1).</p> <p>This Article has been included to ensure the Scheme, as a nationally significant infrastructure project, can be delivered with no impediments. On that basis, the Applicant is not proposing any amendments to the drafting in the current dDCO.</p>
1.20	<p><u>Schedule 10 – Document etc to be certified</u></p> <p>The ExA questions whether the Environmental Management Plan was to be listed as part of these documents as this didn't appear to be in the list.</p>	<p>The Applicant confirms the Environmental Management Plan is listed at the first item in the table contained in Schedule 10 of the DCO.</p>	<p>The Applicant has no further submissions to make.</p>
1.21	<p><u>Schedule 10 – Document etc to be certified</u></p> <p>Richard Hawker asked what the distinction was between the first</p>	<p>The certified documents listed in Schedule 10 of the DCO are those prepared and submitted as part of the application for the DCO at the time of submission of the application.</p>	<p>The Applicant has no further submissions to make.</p>

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	iteration of the Environmental Management Plan listed in the Schedule and the second iteration mentioned elsewhere in the DCO.	The second iteration of the Environmental Management Plan has not yet been prepared and will be prepared at a later date.	
Agenda Item 3 - Schedule of the DCO requirements			
2.1	<p><u>Schedule 2 – Interpretation</u></p> <p>The ExA noted that the reference to "ecological works" references work no's 56 and 97 and questioned why these two in particular are referred to.</p> <p>Requirements 4 and 8 also refer to only parts of the authorised development including these works no's. Again why only these works in particular?</p>	<p>Ecological works such as these need to be constructed quickly to allow habitats to be established.</p> <p>These works have been carved out of certain requirements so the Applicant can proceed without waiting for all pre-commencement requirements to be discharged.</p> <p>There are no impacts as a result of these works that would need controlling by the Environmental Management Plan (requirement 4) or the surface water drainage system (requirement 8).</p> <p>However, a written scheme of investigation does need to be in place before these works commence, so requirement 9 does not exclude ecological works.</p>	The Applicant has no further submissions to make.
2.2	<p><u>Requirement 4 – Environmental Management Plan</u></p> <p>Mr Hawker asked for clarification on the process for the Environmental Management Plan.</p> <p>How does the Environmental Management Plan first, second and</p>	The first iteration of the Environmental Management Plan has been submitted and records how environmental effects are managed and monitored. This includes the Register of Environmental Actions and Commitments (REAC) within which Table 3.1 records all environmental commitments made in the Environmental Statement chapters.	The Applicant has no further submissions to make.

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	<p>third iterations work, what are the timescales and how does everything work in practice?</p> <p>The ExA questioned if the Secretary of State will approve all documents before commencement of the development.</p> <p>Clarification requested by the ExA over meaning of acronym INNS found at 4(2)(k).</p> <p>Mr Hawker asked who monitors actions under these plans and who the planning authority is in this case.</p>	<p>The dDCO secures production of further iterations. The second is more detailed and is concerned with the construction phase. This will be prepared before commencement of the authorised development and ecological habitats which have been carved out early to be established earlier.</p> <p>The third iteration needs to be submitted on completion of the construction of each part as this deals with the operational phase of the development.</p> <p>Requirement 4(1) states that the development cannot commence until the second iteration of the Environmental Management Plan is approved by the Secretary of State.</p> <p>"INNS" stands for invasive non-native species.</p> <p>The relevant planning authority are the enforcing authority and can be contacted with regards to any suspected breach. The Applicant cannot say for certain how exactly this will be monitored, that is a matter for each relevant planning authority.</p>	
2.3	<p><u>Requirement 5 – Landscaping</u></p> <p>The ExA questioned how the landscape scheme is submitted and approved and at which point this takes place.</p>	<p>The requirement is not a pre-commencement requirement because these works will be carried out at the end of the construction period when the main works are finished.</p> <p>The wording is based on precedent from other DCOs and does not include a trigger.</p>	<p>The wording in Requirement 5(1) was also included in the A19 Downhill Lane Junction Development Consent Order 2020.</p> <p>The requirement does secure the preparation of a landscaping scheme which must be submitted to and approved in writing by the Secretary of State</p>

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	<p>Is this done prior to commencement as there is currently no trigger for this to occur.</p> <p>It was also noted that there is reference to the "landscaping scheme" rather just "landscaping". Does the scheme itself need to be approved prior to commencement?</p> <p>Requirement 5(4) references works carried out to British Standards or other codes of good practice. Why is there reference to other standards rather than solely British ones? ExA asks for wording to be altered to clarify it as British standards unless there is a change rather than relying on other standards</p>	<p>The landscaping design must be based on the environmental masterplan and reflect the Environmental Management Plan.</p> <p>The Applicant will take away the point regarding the scheme drafting and respond in writing. This is based on precedent but further instructions will need to be taken.</p> <p>Reference to British Standards is drafted as such in case the standards are revoked or renamed and allows for application for a non-material change. The Applicant will take this away to look at amended drafting and respond in writing.</p>	<p>(Requirement 5(1)). There are just no timescales for submitting this scheme.</p> <p>Because the landscaping will be carried out towards the end of the construction period, it is not appropriate to include this as a pre-commencement requirement.</p> <p>The Applicant will amend the wording in Requirement 5(1) in the next version of the dDCO as follows:</p> <p><i>All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice as may be applicable from time to time.</i></p>
2.4	<p><u>Requirement 7 – Protected species</u></p> <p>Paragraph (4) 2nd line references potential agreement from the Secretary of State after consultation. What is the process for this and is this agreement confirmed in writing?</p>	<p>The Applicant will respond to this point in writing.</p>	<p>Requirement 14 provides the ability for the Secretary of State to approve subsequent amendments to details approved under the requirements. There is no set procedure other than this must be done in writing.</p> <p>The Applicant will amend the wording in Requirement 7(4) in the next version of the dDCO as follows:</p>

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			<p><i>The relevant works under sub-paragraph Error! Reference source not found. must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State in writing after consultation by the undertaker with Natural England, and under any necessary licences.</i></p>
2.5	<p><u>Requirement 10 – Traffic Management</u></p> <p>The ExA noted that only Work no. 1 is referred to under this requirement. Is this because this acts as a catch-all for all associated works?</p>	<p>The Applicant confirmed that Work No. 1 is the new A47 dual carriageway and is therefore the most significant part of the authorised development. This would trigger implementation of the other works.</p>	<p>The construction phasing programme at Table 1.2 in the Environmental Management Plan [APP-143] confirms that the construction of the offline carriageway (Work No. 1) and other associated works is phase 1 of the programme and will start in month 1.</p> <p>The only works which will occur before this are enabling and site preparation works and the gas main diversion.</p>
2.6	<p><u>Requirement 11 – Fencing</u></p> <p>The ExA requested clarity around the types of fencing this requirement covered and whether it applied to both permanent and temporary fencing and whether it would apply to noise mitigation fencing.</p>	<p>The Applicant's understanding is that the standard listed in the requirement is the standard for all fencing types and is reflected in the Environmental Management Plan.</p> <p>The Applicant will take away this point and respond in writing.</p>	<p>The requirement states that all permanent and temporary fencing must be installed in accordance with the Manual of Contract Documents for Highway Works. Section 1 covers carriageway and other details of which fencing is covered in the H Series.</p> <p>The H series outlines the temporary and permanent boundary fencing along with gate options but does not cover noise barriers. On that basis, this requirement does not apply to performance related fencing or barriers required</p>

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			<p>for specific mitigation, just boundary fencing set out in Series H.</p> <p>The noise barrier specifications are set out in Chapter 11 of the Environmental Statement [APP-050] and delivery is secured by NV1 and NV2 of the REAC which is Table 3.1 in the Environmental Management Plan [APP-143].</p>
2.7	<p><u>Requirement 13 – Orsted Works</u></p> <p>The ExA requested clarity on how the works contained in this requirement will work in practice.</p>	<p>The work described in this requirement (Work No 94) forms part of the Hornsea Three Wind Farm Order 2020. It has been included to allow the cable to be laid as part of this Scheme before the new road is constructed.</p> <p>This requirement was included following discussions with Orsted. As there is a direct overlap between the Scheme's Order limits and Orsted's order limits, particularly in relation to cabling works, this requirement means that the works that relate to Orsted's cable route cannot be implemented without their consent and must be carried out in compliance with the relevant requirements in the Hornsea Three Order.</p> <p>This secures the additional mitigation required for those works over and above that set out in the Environmental Management Plan [APP-143].</p> <p>However, the Applicant's understanding is at the moment this is unlikely to be needed.</p>	<p>The Applicant has no further submissions to make.</p>

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Agenda Item 4 - Schedule 9 - Protective Provisions			
3.1	<p>The ExA asked for an update with the status of discussions on the Protective Provisions</p>	<p>The Applicant advised that in relation to the discussions with Anglian Water, the intention is to submit a SoCG at the next deadline. BT Openreach has confirmed that the standard PPs contained in Schedule 9 provide adequate protection for their interests. It is anticipated that BT Openreach will write to the ExA to confirm this.</p> <p>In relation to National Grid Gas, the Applicant noted that the PPs and side agreement discussions are progressing. Discussions are ongoing in relation to methodology for diverting the high pressure pipeline. No issues outstanding but will be covered in a SoCG. The Applicant commented that UKPN have confirmed that they are aware of the scheme. The Applicant is meeting regularly with UKPN. No representations were submitted and UKPN will be able to rely on the standard PPs contained in Schedule 9. If any issues are raised, the Applicant would be willing to enter into a SoCG.</p> <p>Vodafone Limited has confirmed that no assets are directly affected but the Applicant is engaging with Vodafone in relation to access to phone masts. This is still under discussion. Vodafone considering if a SoCG is appropriate and is reviewing the standard PPs in Schedule 9 of the dDCO.</p>	<p>The Applicant has no further submissions to make.</p>

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Agenda Item 5 - Consents, Licenses and Other Agreements			
4.1	<p>The ExA asked for an update in relation to the consents, licences and agreements that are required outwith the DCO.</p>	<p>The Applicant advised that the license for Great Crested Newts is still pending. Further information has been requested and the Applicant is continuing to liaise with the relevant authorities.</p> <p>Further information has also been requested for the license for Bats. Again the Applicant is continuing to liaise with the relevant authorities.</p> <p>The applications for licenses in relation to badgers and water voles are now complete. In both cases letters of no impediment have been received and submitted to the ExA.</p> <p>Other legal agreements are in progress too.</p> <p>Cooperation agreements are being sought with Orsted and Vattenfall to deal with inter-scheme interactions which cannot be dealt with in the dDCO or protective provisions. These both relate to the implementation of two other DCO schemes in the vicinity of the Order Land. The Applicant is not currently in a position to provide a date for completion of these agreements but these are in the process of negotiation and the parties will look to complete these as soon as possible.</p> <p>The Applicant is exploring whether a further agreement is needed with Mr Meynell of Berry Hall Estate. There is nothing to report to the ExA at this</p>	<p>The Applicant has no further submissions to make.</p>

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		time and will likely be able to provide an update at the next hearing.	
Agenda Item 6 - Statements of Common Ground			
5.1	The ExA questioned if there are any other DCO matters affected by the Statements of Common Ground	<p>The Applicant confirmed that there are no specific DCO points to be addressed in the SoCGs.</p> <p>SoCG are being pursued, some of these may include DCO points but will be wrapped up within the specific DCO.</p> <p>New SoCGs could be needed with statutory undertakers and the Applicant is discussing these. The Applicant will update the ExA as required</p>	The Applicant has no further submissions to make.