

A47 Wansford to Sutton Dualling

Scheme Number: TR010039

Volume 9

9.5 Applicant's Written Submission of Oral Submissions at ISH1

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

Planning Act 2008

January 2022

Deadline 1

Infrastructure Planning

Planning Act 2008

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

A47 Wansford to Sutton
Development Consent Order 202[x]

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

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1 INTRODUCTION

- 1.1.1 The Issue Specific Hearing (ISH1) for the A47 Wansford to Sutton (DCO) application was held virtually on Microsoft Teams on Wednesday 12 January 2022 at 10:00am.
- 1.1.2 The Examining Authority (ExA) invited the Applicant to respond to matters raised at ISH1 and in writing following the hearing. This document summarises the responses made at the ISH1 by the Applicant and also seeks to fully address the representations made by Affected Parties, Interested Parties and other parties attending.
- 1.1.3 The Applicant has responded to the topics raised by each of the attending parties in the order the ExA invited them to speak 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 Point 3: Draft DCO Articles			
1.	The ExA asked the Applicant to provide an overview of the dDCO as currently drafted.	<p>The Applicant confirmed that the text of the A47 Wansford to Sutton draft dDCO is mostly based on DCOs which have been previously made in respect of highway schemes. Pages 1 and 4 contain the contents of the dDCO, which comprises Articles 1 – 52 and Schedules 1 – 10. The DCO is divided into Parts 1 to 7.</p> <p>It was confirmed that since the dDCO was originally submitted with the application, there have been some very minor changes to the submission version dDCO now found at document AS-010 (clean) version of the DCO submitted following the Planning Inspectorate s51 letter dated 2 August 2021 requesting further information.</p> <p>Also the Explanatory Memorandum (EM), document APP-017, provides a full explanation of each of the Articles and Schedules in the dDCO.</p> <p>Overview of the Order in depth</p>	The Applicant has no further submissions to make.

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		<p>The Applicant confirmed that Article 2 contained the main definitions in the Order. While Part 2 relates to the principle powers. Specifically Article 5 as the key operational part of the Order, which would grant development consent for the authorised development by reference to the 59 Works set out in Schedule 1 and shown on the Works Plans. Development consent is subject to the requirements, which are similar to planning conditions in any normal planning permission, in Schedule 2.</p> <p>As for Article 8 this sets out limits of deviation for the Works from the positions shown on the Works Plans. Development is therefore authorised for the specified Works within the area defined by the limits of deviation both horizontally and vertically. The Works Plans show two different categories of works. (1) The first is the linear highway works which are shown by a centreline to which limits of deviation apply. (2) The second is used for non-highway works and shows limits of deviation as a specific area in which works can be carried out.</p> <p>Article 10 provides a standard mechanism for the transfer of the benefit of the Order with the consent of the Secretary of State. No consent is required for a transfer to certain named statutory undertakers</p>	

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		<p>(Anglian Water, Western Power Distribution, National Grid Electricity Transmission and National Grid Gas).</p> <p>Part 3 of the dDCO relates to streets, specifically Articles 11 to 20. Article 11 provides for the works to be major highway works under the New Roads and Street Works Act 1991 (NRSA), and then disapplies a number of requirements under NRSA to allow the works to proceed.</p> <p>Article 12 provides for the construction and maintenance of highways and streets which are not trunk roads to be completed to the reasonable satisfaction of the local highway authority.</p> <p>Article 13 makes provision for the classification of roads, by reference to Parts 1, 2 and 3 of Schedule 3 and the classification of roads plans. It also provides for:</p> <p>(i) the speed limits set out in Part 4 of Schedule 3 as shown on the traffic regulation plans;</p> <p>(ii) the revocation and variations of existing TROs under the Road Traffic Regulation Act 1984 (RTA) in Part 5</p>	

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		<p>(iii) The creation of footpaths, footways, cycle tracks and bridleways listed in Part 6 of Schedule 3 and shown on the rights of way and access plans.</p> <p>(iv) De-trunking of certain roads, shown on the de-trunking plans and listed in Part 7 of Schedule 3</p> <p>As for Article 17, this provides for the stopping up of streets and private means of access, as shown on the rights of way and access plans and set out in Schedule 4. Where a substitute is to be provided there are controls designed to ensure that the substitute is provided, or that a temporary alternative remains in place until it is provided.</p> <p>Article 19 provides a new clearway restriction for the new mainline of the A47 and slip roads as set out in Part 8 of Schedule 3 and shown on the traffic regulation plans.</p> <p>The Order then progresses into Part 4 relating to supplemental powers through articles 21 to 23. These are standard powers included in a DCO, and include provisions which govern the discharge of water into watercourses, sewers and drains; protective works to buildings; and the authority to survey and investigate land.</p>	

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		<p>Part 5 of the Order governs powers of compulsory acquisition under Articles 24 – 38. This is another key part of the draft Order which allows the undertaker to acquire the land and rights required for the scheme. The land is described in the Book of Reference and shown on the land plans where it divides into three categories:</p> <p>(i) Pink Land - which may be acquired permanently;</p> <p>(ii) Blue Land – in which new rights may be acquired permanently and which may be used temporarily; and</p> <p>(iii) Green Land – which may be used temporarily.</p> <p>The land in which only new rights may be acquired or restrictive covenants imposed is listed in Schedule 5, along with the purpose for which they may be acquired or imposed and the Works to which the new rights or restrictive covenants relate.</p> <p>The land over which only temporary possession can be taken is listed in Schedule 7, along with the purpose for which temporary possession may be taken and the Works to which the possession relates.</p>	

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		<p>The other important article in this Part relates to Article 26. This imposes the usual 5 year time limit for these powers to be exercised.</p> <p>The remaining articles in this Part provide for details of private and public rights to be extinguished, temporary possession and dealings with statutory undertakers.</p> <p>Part 6 of the Order deals principally with operations under Articles 39 – 40. It provides a power to fell or lop trees and shrubs and to remove the hedgerows set out in Schedule 8 and shown on the hedgerow plans or, with the consent of the local authority, any other hedgerow within the Order limits. As well as a power to fell or lop any trees with a TPO made after 23 March 2021 (being the date of the arboricultural survey).</p> <p>As for Part 7, this is the Miscellaneous and General section of the Order containing Articles 41 to 52, which will in the future contain the new Article 53 relating to human remains.</p> <p>This Part sets out a number of boilerplate articles in relation to matter such as:</p> <ul style="list-style-type: none"> ▪ The non-application of landlord and tenant law; ▪ Operational land; ▪ Defence to proceedings for statutory nuisance; 	

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		<ul style="list-style-type: none"> ▪ Provisions relating to the compulsory purchase compensation code, including preventing double recovery; and ▪ Appeals for proceedings under the Control of Pollution Act 1974 (which relates to noise on construction sites). <p>This Part also gives effect to the Protective Provisions in Schedule 9 and it deals with the certification of documents which are listed in Schedule 10 of the DCO.</p> <p>Schedule 1 of the draft Order deals with the works descriptions and alludes to the Works Plans (ref: AS-006).</p> <p>Schedule 2, Part 1 of the Order covers the Requirements. These are essentially the conditions subject to which development consent is granted. The requirements secure:</p> <ul style="list-style-type: none"> ▪ A 5 year time limit in which the authorised development must be commenced, beginning with the date the Order comes into force; ▪ That the detailed design accords with the preliminary scheme design on the Works Plans and Engineering and Section Drawings; and 	

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		<ul style="list-style-type: none"> ▪ The preparation and compliance with second and third iteration Environmental Management Plans (EMP) (ref: AS-027). <p>There is also a substantial interrelationship between the EMP and the Record of Environmental Actions and Commitments (REAC). As such, the EMP records how environmental effects are managed and how the impacts of the scheme will be managed and monitored. The REAC is contained within the EMP at Table 1.5 and records the environmental commitments made in the Environmental Statement.</p> <p>Specifically Requirement 4 of the DCO then secures the production of the second and third iteration EMPs and compliance with these control documents.</p> <p>The second iteration EMP will deal with the construction phase of the development and the third iteration EMP will deal with the operational phase of development. These more detailed management documents must be substantially in accordance with the first iteration EMP which is a certified document under Schedule 10 and they must be approved by the Secretary of State following consultation with the relevant planning authority, local highway authority, lead local flood authority and the Environment Agency.</p>	

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		<p>The requirement also lists out several secondary management plans which form part of the EMP and must be prepared and approved alongside the second iteration EMP.</p> <p>The Requirements also deal with the following:</p> <ul style="list-style-type: none"> ▪ Preparation and approval of a landscaping scheme and its implementation; ▪ A procedure for dealing with remediation of contaminated land and groundwater; ▪ The carrying out of protected species surveys – and the fact that works must cease where protected species are found until a scheme for their protection and for mitigation measures has been approved; ▪ Preparation of the final surface water drainage system; ▪ Preparation of a written scheme of investigation for Archaeological remains; ▪ Preparation of a traffic management plan; and ▪ Fencing must be constructed and installed in accordance with the Manual of Contract Documents for Highways. <p>Part 2 of Schedule 2, sets out the procedure for approval of requirements by the Secretary of State. It makes provision for requests for further information. It</p>	

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		<p>also provides how consultation under the requirements will work.</p> <p>Finally, Schedules 3-9 then provide for the details referred to in various articles throughout the Order.</p>	
Agenda Point 4: Part 1 – Preliminary Matters			
2.	<p>Regarding Article 2 the ExA then queried the judicial interpretation of the terms commence and begun, asking the applicant for any comments on the drafting as a result of recent case law?</p> <p>The ExA also queried the extent of the term commence as there was concern that certain preliminary works may not be controlled. For instance archaeology investigations. .</p> <p>The ExA then asked the Applicant to be conscious in their response of the need to undertake anticipatory steps to comply with requirement</p>	<p>The Applicant confirmed the term "commence" was defined in the dDCO as to carry out a material operation under the Town and Country Planning Act 1990, which was part of the authorised development.</p> <p>In the recent case law of <i>Tidal Lagoon (Swansea Bay)</i>, decided in November 2021, the claimants sought to argue that "begun" in s 154 PA 2008 is separate and distinct from "commence" as defined in the DCO which the court rejected. In essence, the judge agreed with the First Defendant that the definition of "commence" modifies s 155 to allow preliminary works to take place prior to commencement that might otherwise have operated to "begin" the development and so avoid the need to discharge pre-commencement requirements before such works.</p> <p>The Applicant confirmed it would consider the application of the case and the definition of "commence" to confirm whether S155 or S154 would be disapplied by the Order. In practice, however, the</p>	<p>The Applicant has considered the <i>Tidal Lagoon (Swansea Bay)</i> case, as well as the definition of "commence" in more detail and is satisfied that it is appropriate.</p> <p>The Applicant has considered whether to dis-apply sections 154 and/or 155 of the PA 2008 and considers that the high court ruling adequately resolves any confusion between "commence" and "begun". The Applicant will however monitor this issue in the event that there any further legal proceedings.</p> <p>In relation to the securing of matters that are excluded from the definition of "commence", the Applicant is satisfied that there are adequate controls in place to ensure that any excluded operations are carried with the necessary approvals in place. The Applicant referred to the archaeological investigations</p>

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	<p>16 in Schedule 2 to ensure there was sign off for environmental investigations given the interaction with the article and commencement of the project.</p>	<p>Applicant confirmed they have the resources necessary to ensure the project will commence within the five year time limit. Also the five year time limit under Article 26 for exercise of authority to acquire land compulsorily is adequate.</p> <p>Regarding how matters which are to be defined within the Order would be secured, if the development has not been commenced, Article 5 brings the DCO into operation. All requirements, including Requirement 2 setting a time limit of 5 years for the authorised development to commence, have legal authority. Certain preliminary works, which do comprise material operations but have minimal potential for adverse effects, are excluded from the definition of commence. This does not mean however that there is no control over these works. Take for instance the allowance for archaeological investigations and mitigation works. Requirement 9 requires an approved written scheme of investigation in accordance with the REAC (table 1.5 of the EMP AS – 027) to be approved before any commencement. Therefore, any archaeological investigations that are not approved would prevent commencement.</p> <p>However, the Applicant will consider the preliminary works and provide a written response. The Applicant</p>	<p>and how those are controlled in ISH1. Also, for site clearance, any such works that affect protected species would have to be the subject of applications for licenses for the relevant works if conducted in advance of commencement. On that basis the pre-commencement surveys referred to in requirement 7 would be carried out in advance of the licence application.</p> <p>The Applicant has also considered the full set of preliminary works and has concluded that they are works which are provided for in other DCOs and unless there are specific reasons for removing any of the works the Applicant's position is that the full set should remain.</p> <p>As requested by the ExA the Applicant has considered the terms of requirement 16 and the interaction with any preliminary works. Requirement 16 however does not deal with pre commencement control measures but steps (not "material operations") that the Applicant may take prior to the coming into force of the DCO. Those steps for instance may include approval applications to the relevant authority and approvals granted which would be taken into account for the</p>

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		<p>will also consider the interaction with requirement 16 in Schedule 2.</p> <p>The Applicant confirmed that the preliminary works were subject to environmental licensing but it would be picked up in responses in any case.</p>	<p>purposes of compliance after the DCO comes into force.</p>
3.	<p>The ExA queried whether certain terms were sufficiently precise in the order, whether the works has been assessed and whether the persons affected were aware of them. The terms related to the definitions of 'approximate', 'adjacent', 'deviation' and 'affected'.</p>	<p>The Applicant outlined that the term "adjacent" had been used in Article 5(2) to capture prior enactments. In the event that they are not discovered the article is designed to prevent old acts of parliament from effecting the scheme's implementation. As a result, any enactments adjacent to the order land would be subject to the development consent order. The term was adopted from the precedent A303 Sparkford order. This has in some cases been implicit to mean a common boundary with the scheme and in the event there is no common boundary the Applicant would need to explain how it is used in the context. The Applicant was to provide a full response on the definition of the term 'adjacent' as adopted in the order.</p> <p>The Applicant confirmed that a response to the ExA's question on Article 23 and the meaning of "affected" would be responded to for DL1. However, any interference from a human rights perspective for investigations on land which may be affected by the authorised development would be proportionate and in</p>	<p>In relation to the term "adjacent to", the Applicant confirms that this refers to 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>This intention of this is to ensure that there are no historical enactments or legislation that could hinder the implementation of the scheme because they were not known to the Applicant before the Order is made. It is not intended that the provisions would disapply any legislation that is not already listed in the draft Order.</p> <p>The Applicant has also considered the reference to "adjacent" out with Article 5 (2)</p>

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		<p>the public interest taking into account the notice provisions. The term had also been confirmed in the A1 Birtley DCO scheme. The Applicant was to undertake a search of the works to ascertain what the term 'affected' would mean in the context of each work.</p> <p>In relation to the term 'approximate' the Applicant believed that other DCOs had not explicitly defined its meaning and therefore its natural meaning should be adopted.</p> <p>While the rationale for the term "deviation" and its limits had been set out in the Explanatory Memorandum. The limits of deviation relate to minor changes to the precise location of works and fall within the scope of development assessed in the Environmental Statement. See paragraph 2.6.48 of Chapter 2 of Environmental Statement (APP-040) - regarding aspects not yet fixed (see advice note 9 on Rochdale Envelope) and need for flexibility . See also for example G8 of REAC in the EMP for visual and landscaping effects and reference to limits of deviation. It was made clear that the extent of lateral deviation was to a limit of 3 meters for linear works with a vertical limit of 1 meter based on the engineering drawings. Any deviation above these levels to ensure flexibility would be agreed with the Secretary of State</p>	<p>and is able to confirm that unless any specific case is raised to the contrary, reference to "adjacent" land refers to land sharing a common boundary.</p> <p>In relation to the term "affected", this is used minimally in the draft Order as follows:</p> <p>a) Article 9(2) (transfer of benefit of the Order) – the purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. rights for statutory undertakers. The reference to other persons "affected" by the authorised development provides additional flexibility to include any additional parties similar to statutory undertakers although it is limited by the requirement for express benefit to be granted.</p> <p>b) Article 16(3) (temporary alteration, diversion, prohibition and restriction on the use of streets) – the reference to "affected" in this context is that the undertaker is to provide reasonable access to pedestrians going to and from premises abutting a street affected by the temporary stopping up, alteration,</p>

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		for Transport.	<p>diversion or restriction of a street under the article. The Applicant considers that it is not necessary to include any further physical limits to the land referred to since it would be clear which premises are affected..</p> <p>c) Article 22(1) (Protective works to buildings) – allows the undertaker to carry out works to any building which may be "affected" by the authorised development as the undertaker considers expedient or necessary. It would become clear from the construction iteration of the EMP (AS-027) and ongoing consultation with the local community which buildings, if any, would be affected by the construction activities to warrant protective works. The Applicant therefore does not consider that any specific physical limit is required as it is not yet fully known which buildings could be affected at this stage.</p> <p>d) Article 23(2) (Authority to survey and investigate the land) – in this context the undertaker has the power to enter land affected by works for the purpose of surveying and investigating. This was included in the model provisions and has</p>

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			<p>been included in numerous made Orders. The Applicant believes that there are sufficient controls within the drafting that no further amendments are needed. Specifically, 14 days' notice is to be given and compensation is payable for any loss or damage caused. Moreover, any interference from a human rights perspective for investigations on land which may be affected by the authorised development would be proportionate and in the public interest taking into account the notice provisions.</p> <p>e) Requirement 7 (Protected Species) – in this context there is a restriction on the commencement of the authorised development until survey work has been carried out on land affected or likely to be affected by the relevant works. This would be in relation to land assessed in the ES as being affected by any works. This requirement is based on requirement 34 of the model provisions and recent Highways England orders such as requirement 10 of the M20 Order and requirement 13 of the M4 Order. As such</p>

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			<p>a physical limit for this requirement is not deemed necessary by the Applicant.</p> <p>The remaining references to "affected" are in relation to the protected provisions included for the benefit of National Grid Electricity Transmission/National Grid Gas which are considered to be relevant to those apparatus only and as such no further physical limit is proposed as being necessary, nor has been proposed by NGET/NGG.</p>
4.	The ExA queried whether the Applicant had reviewed the written question on the drawings and asked to confirm whether they agreed the plans would not be legible to people with visual impairments.	The Applicant set out that the question had been reviewed and that a potential overlay plan had been considered with particular reference to the size of the lines and the crossings of such lines on the drawings.	The Applicant will provide an update to this issue in its responses to ExWQ1 at Deadline 2.
Agenda Point 5: Part 2 – Principle Powers			
5.	Regarding Article 10 the ExA queried why the Applicant needed such wider powers to transfer the benefit of the	The Applicant confirmed they intended to provide a succinct version of the provision in the next proposed dDCO which will follow the precedent set by other transport DCOs.	The Applicant will be submitting updated wording to the dDCO at Deadline 3.

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	order to another statutory undertaker?		
6.	<p>The ExA queried whether the provisions under Article 14 relating to restoration should be subject to a time limit when the works should be completed? As well as whether the Article should contain a sunset clause which would require the Applicant to rely on other statutory provisions when it expires?</p> <p>The ExA also asked whether there should be time limits imposed on Article 16?</p>	<p>The position of the Applicant is that flexibility is required to implement the Order, that no such precedent existed to their knowledge and the current wording had been taken from the precedent A1 Birtley DCO which had been consented as drafted. The Applicant was to respond in writing in relation to time limits and the need for a sunset clause.</p> <p>The Applicant confirmed that flexibility was also required for Article 16 and that other orders had not specified time limits.</p>	<p>Article 14 (2): The Applicant considers that flexibility is required during its restoration programme which is to the reasonable satisfaction of the street authority who may impose conditions and/or may need to inspect and require further restoration. Time limits would not be practicable and each restoration will depend on circumstances. It is also noted that there is precedent in A1 Birtley (Article 11(2)) with identical wording i.e. no time limit.</p> <p>Article 16: There is no explicit restoration set out in Article 16, however assuming it is implicit by the temporary nature of the use, the Applicant considers that there is no need for such limitation. Moreover, the power is subject to the consent of the street authority who may impose conditions on that consent. Where it is reasonably required a street authority may seek to impose a reinstatement condition. It is noted that:</p>

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			<p>The current wording is justified by wording in recent precedent DCOs such as:</p> <ul style="list-style-type: none"> • Article 15, A1 Birtley DCO as made • Article 15, A303 Ilchester is identical too • Article 15, A30 Chiverton to Carland Cross <p>In relation to the sunset clause proposed by the ExA for Article 14, the Applicant does not consider that this is necessary. Sunset clauses are traditionally used in planning permissions where the condition relates to use of the land but not where development is to be carried out. This is on the basis that there is no requirement to actually commence development when planning permission is granted. That being said, the Applicant intends to commence the authorised development. On the basis that it commences development under the Order, within the 5 year time period for doing so, the Applicant considers that there is no requirement for any other restriction. Furthermore, the purpose of the DCO is to include all statutory consents within one statutory instrument. Having to fall back on</p>

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			any statutory provisions on expiry of a power under an Article would seem to defeat the purpose of the DCO. Finally, the Applicant is not aware of any other highway DCOs that have included such sunset clause.
Agenda Point 7: Part 4 – Supplemental Powers			
7.	The ExA queried whether Article 21(8) had the same effect as Article 20(12)?	The Applicant confirmed that the two articles might not need to be the same, which would be confirmed in writing.	Article 21: Neither the A1 Birtley DCO or A303 Sparkford DCOs have requirements to include a notification provision regarding the 28 day statement and therefore the Applicant is considering removing the requirement from Articles 20 (12) as not being necessary and therefore there is no need for it to be imposed in Article 21.
8.	The ExA queried whether the provisions in Article 22 would be used in relation to listed buildings? And whether a reference to listed buildings	The Applicant agreed to take this point away and respond in writing. The Applicant noted that the REAC would prevent works that would affect the character of the listed building.	The Applicant considers that the definition of "building" in the dDCO is sufficiently wide enough to include a listed building and so reference to this in the Article is not specifically needed. Furthermore, the purpose of the DCO is to include any statutory

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	was needed in the Article?		permissions, such as a listed building consent, within the dDCO itself. As the Applicant stated at the ISH1, any works to, or affecting, listed buildings would be subject to the mitigation contained in the REAC and EMP (AS-027) . This wording was included 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.
9.	The ExA invited Mr Grange to make a representation at the hearing.	<p>Michael Grange confirmed that there is a building of concern listed as an interest building being Old Station House. He was concerned that the building would be moved to a location far from the current location of relevant and important heritage assets in its current village location. There was a desire within the council that it should remain in an area linked to the bridge and station master's house.</p> <p>The Applicant responded that they were aware of Station House and that significant consideration was going into the relocation of the building.</p>	The Applicant has no further submissions to make.
Agenda Point 8: Part 5 – Powers of Acquisition			
10.	Regarding Article 34, if these powers are to be used for the delivery of permanent	In Article 34, the Applicant has sought powers to undertake temporary possession of land for mitigation including for replacement planting over a five year	Article 34 provides powers for the temporary use of land for carrying out the authorised development. By contrast, Article 35 provides

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	works (34(1)(d)), how can it be confirmed that those works will be secured permanently. The ExA was concerned that the assets they place in third party land could be removed after the maintenance period expired, either knowingly or unknowingly as they may not know about apparatus in their land. There is also no overlap between Schedules 5 and 7. How does the landowner know that permanent rights are to be secured?	period. Under 34(3), the Applicant is required to vacate the land works, compensate the owner under 34(5), and may acquire new rights for the permanent works under 34(8)(a) if also specified in column 1 of Schedule 5.	<p>powers for the temporary use of land for maintaining the authorised development.</p> <p>Pursuant to Article 34, the Applicant is required to vacate the land taken temporarily but there remains a power to retain permanent rights in third party land under 34(8)(a).</p> <p>In relation to the lack of knowledge of land owners the particular plot would need to be coloured blue and specified in Schedule 5 as acquiring permanent rights and therefore the land owner would have knowledge of the rights to be acquired.</p>
11.	ExA / Richard Clarke	The ExA invited Richard Clarke to make a representation.	Richard Clarke on behalf of Wansford Parish Council confirmed that there would be several points in order lands where drainage would be placed under third party land which could be subject to intervention and removal by land owners unknowingly. The Applicant would refer the above written response at item 10 above.

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Agenda Point 10: Part 7 – Miscellaneous and General			
12.	In relation to Article 47, the ExA asked why the appeals process under the Control of Pollution Act is to be followed in relation to the Order when Act is disappplies in relation to the application for consent.	The Applicant confirmed this was to ensure there was an adequate appeals process to an independent body with the relevant expertise to make a decision on appeals. The Order disappplies the magistrates appeals process to ensure a bespoke provision that fits with the requirements of the Order.	Article 47: The Applicant acknowledges that Article 47 does not disapply the s 61 consenting process. Article 43 (2) does disapply s 61 consenting in certain circumstances. The reasoning for Article 47 in respect of s 61 COPA is to provide for the circumstance where the Applicant makes an application under s 61 which is refused or issued subject to conditions and replaces the appeal mechanism to the Magistrates' Court with a bespoke appeal system before a technical expert appointed by the Secretary of State which is more conducive to the NSIP regime. This allows for a streamlined appeals system to ensure that any decisions are made quickly and so are not an impediment to the scheme progressing.
13.	Regarding Article 49 the ExA asked whether the applicant should adopt a single repository of documents that were to be certified under the order as was set out in the M54/M6 Link Road Order?	The Applicant confirmed that a single repository was logical but it had not been approved in any known made orders.	The Applicant will monitor M54/M6 Link Road Order and if a precedent is set will consider the ExA's suggestion for the next version dDCO at Deadline 3.

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Agenda Point 11: Schedule 1 – Works Descriptions			
14.	<p>The ExA queried whether there is normally a list of associated works in the Order?</p> <p>The ExA commented that the Applicant should be very specific about the list that was to be included in the revised Order. It should be specifically tailored.</p>	<p>The Applicant confirmed that there was an error in the current order and that the list of approved works would be included in the revised order at DL1.</p>	<p>The updated list of associated and compensatory works has been included in the draft DCO submitted at Deadline 3.</p>
15.	<p>The ExA asked if the Applicant could confirm the approach to the identification and definition of 'significant effects' and demonstrate the adequacy of the Mitigation Schedule in ensuring that all necessary mitigation measures that are relied upon in the EIA will be readily auditable at the discharge of Requirements? Are any parties aware of instances where this may not</p>	<p>The Applicant confirmed the REAC which is part of EMP (AS-070) identifies the environmental commitments, including the effects of the scheme. The robustness of the REAC will be considered at the hearing on environmental matters. The REAC is referred to in Requirement 4 and the second iteration of the EMP requires approval by the SoS and together this controls the construction process. The audit trail is therefore closed.</p>	<p>The Applicant has no further submissions to make.</p>

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	be the case?		
16.	<p>The ExA asked Mr Clarke whether he wanted to expand upon his representation relating to detailed design on behalf of Wansford Parish Council?</p> <p>Mr Clarke confirmed that the evolution of contractors design specifications had been placed onto developers instead as the former design plans would be based on the contractors incentives and decisions rather than by the ES implications and mitigation imperatives. Mr Clarke confirmed that as this mirrored the former process there was no incentive in the contract to ensure the ES mitigation was embedded in the schemes design.</p> <p>The ExA commented that the</p>	<p>The Applicant responded that the hearing was to deal with the consenting process for the proposed application, which is much wider than the contractual process. The REAC (contained within the EMP) contains the mitigation assessed as being required as part of the authorised development and it requires an engineering solution that would consider the ES implications. The different iterations of the EMP (including the REAC) that are to be approved throughout the process by the Secretary of State would sufficiently cover the issue.</p>	<p>The Applicant has no further submissions to make.</p>

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	Applicant and WPC should discuss the detailed design issue offline in a SoCG to resolve the issue. There was also intention that the Applicant should consider the incentives in the Order to ensure the contractor enacts environmentally conscious plans and designs.		
17.	The ExA asked the Applicant to confirm that the issues relating to the Rochdale Envelope had been adequately assessed and asked for an oral confirmation.	The Applicant confirmed that they had been assessed.	The Applicant has no further submissions to make.
18.	The ExA queried Work 32 relating to ground stabilisation and commented that the Planning Inspectorate had received a letter from the Environment Agency, who made it clear that they needed a minimum volume of 560 cubic meters	The Applicant confirmed it would include ground stabilisation but also likely to include ground works	The Applicant will update the description of Work No 32 to include reference to ground works not merely ground stabilisation in the next version dDCO at Deadline 3.

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	<p>to be provided in the scheme's design. The ExA asked whether the Applicant wished to make any comments on the terminology in Work 32.</p> <p>The ExA commented that he believed the wording of Work 32 required a variation to avoid ambiguity.</p>		
Agenda Point 12: Schedule 2 – Requirements			
19.	<p>The ExA reiterated that as the Applicant discussed in the background to the dDCO requirements are equivalent to planning conditions. As such, the ExA was concerned on the consultation arrangements in Requirement 4(3), the part to be approved by the SoS, which the ExA viewed as ambiguous</p>	<p>The Applicant confirmed it would review the provision and firstly, all relevant parties would be added, such as the lead flood authorities, and secondly to overcome its current ambiguity the Applicant will clarify that the undertaker is to consult the authorities prior to the reference to the Secretary of State</p>	<p>The Applicant has reviewed Requirement 4(3) and updates have been made to the draft DCO to be submitted at Deadline 3.</p>

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	<p>The ExA asked the Applicant to review the requirement and set it out in a clear form?</p> <p>Mr Grange also added that the Parish Councils should be consulted. The ExA noted that under the Town and Country Planning regime there is a statutory requirement to consult if requested by a Parish Council but not under the PA 2008. There may be times therefore when it is appropriate?</p>		
20.	<p>The ExA queried if for Requirement 3 the relevant highway authority should be consulted.</p> <p>Richard Clarke said there was the need to consult with the Parish Council as there</p>	<p>The Applicant agreed with consulting the highway authority for Requirement 3.</p> <p>It was also made apparent that the Applicant held the position that under the NSIP regime it is generally more appropriate to consult between government departments, national bodies and local authorities to</p>	<p>In relation to discharge of Requirements, the Applicant's view is that where the local planning authority or statutory body is required to be consulted on the discharge, it has satisfied its requirements to consult a the appropriate democratic body and as such no further consultation will be sought from, for</p>

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	have been multiple important issues overlooked by the senior authorities and that the parish councils possess considerable technical expertise.	ensure it is captured in the democratic process between the relevant authorities.	example, a Parish Council. It is not considered necessary or appropriate, and could introduce significant delay and uncertainty which is likely to be the reason it is not incorporated in the PA 2008.
21.	<p>The ExA asked whether the local highway authority needs to be consulted on Requirement 3.</p> <p>Also, under Requirement 4 whether Natural England needed consulting on soil management landscape and ecology management, the Environment Agency on site waste management plans and water management and Historic England on the detailed WSI</p> <p>It was also suggested that the Environment Agency and Natural England would need to be consulted for Requirement 5.</p>	The Applicant confirmed it would look at the bodies that needed to be consulted for the Requirements and a full response would be received at Deadline 3 along with the amends to the dDCO.	The Applicant is in the process of updating the consultees proposed by the ExA and the next version of the dDCO will be submitted at Deadline 3.

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	Also whether the local planning authority needed consultation under Requirement 7 and Historic England under Requirement 9?		
22.	The ExA asked the Applicant whether the consultees should be recompensed for their time?	The Applicant responded that no other precedent made orders had included a provision to this extent and the Applicant would not be minded to include one.	The Applicant has no further submissions to make.
23.	The ExA then asked whether there is approval to be undertaken at the proper level given the overall tenet of good administration is that approvals are undertaken at the lowest appropriate level?	The Applicant believes that the relevant approval body is the secretary of State for Transport as the scheme is an NSIP, which is of significance to the development of the country. The DfT holds the necessary resources to review and provide a determination on any approvals. Whilst local highway authorities have been considered elsewhere for approval, their resource level, piecemeal expertise on national highways in different areas makes the approval system less efficient. Overall, in terms of having a process which enables scrutiny with experts the SoS was considered the appropriate means by which consent should be forthcoming.	The Applicant has no further submissions to make.
24.	The ExA then asked about Requirement 6 –	Reference to the Hillingdon case where information was to the authority from HS2 . Here the information is	The Applicant will consider the wording of requirement 6 and provide any amendments

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	Contaminated land and groundwater – should the decision on whether to remediate unidentified contamination be left to the undertaker? Reference to the Hillingdon case law where HS2 hadn't given sufficient information to the Council for its determination.	being sent from the undertaker to the Secretary of State and the Applicant does not believe it was appropriate to have arbitration applicable to the provision given that the SoS was the correct approver of the information that was to be provided by the Applicant.	in the next dDCO version at Deadline 3.
25.	The ExA queried in relation to Requirement 9 – Archaeological remains – should there be measures to deal with previously unidentified remains, particularly human remains?	The Applicant confirmed precedent wording would be adopted for a new requirement in the next version of the dDCO and the process would use the Secretary of State for Justice as the approver.	The updated wording has been included in the dDCO to be submitted at Deadline 3.
26.	The ExA asked in relation to Requirement 13 – Applications made under requirements – whether there should be arrangements in place in the event that the undertaker does not supply requested information? If the	The Applicant agreed to take this away and look into the feasibility/implications of amendments to the provision: consideration would be placed upon the M54 to M6 Link Road DCO.	The Applicant has considered the wording in the M54 to M6 Link dDCO. The Applicant notes that the M54 to M6 dDCO has not yet been made and as such this is not yet a precedent. It will however monitor the text in that dDCO and come to a decision on any amendments to the Wansford dDCO at Deadline 3.

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	<p>information is not submitted to the SoS instead of it being approved by default should it not be refused?</p> <p>The ExA confirmed that there was an article to this affect in the as yet unmade M54 to M6 Link Road dDCO.</p>		
27.	<p>The ExA highlighted that the Environment Agency has submitted a request for a Requirement to be added to the DCO, albeit this has not yet been published.</p>	<p>The Applicant agreed to review the wording once published.</p>	<p>The Applicant is reviewing the wording proposed by the EA and will provide it's response at Deadline 3.</p>
Agenda Point 14: Schedules 9 and 10			
28.	<p>The ExA queried whether the local highway authority had made request for bespoke protective provisions in the Order?</p>	<p>The Applicant confirmed that no request had been made to the Applicant and that normally the position of National Highways is that protective provisions would not be provided. Instead the Applicant would intend to agree a SoCG with the LHA if and when negotiations begin.</p>	<p>The Applicant has no further submissions.</p>

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29.	<p>The ExA asked the applicant to provide an update on Protective Provisions (PPs).</p> <p>The ExA also commented that in Paragraph 1 of Schedule 9 there should be a provision that carves out other Statutory Undertakers already covered elsewhere in Schedule 9.</p>	<p>The Applicant confirmed that they were in negotiations with multiple parties concerning agreement for PPs.</p> <p>Overview of negotiations of PPs</p> <p>Vodafone:</p> <p>The Applicant set out that Vodafone was content with the order in its current form in regard to the protective provisions.</p> <p>National Grid Gas and Electricity Transmission:</p> <p>The Applicant is currently negotiating a standard set of provisions for National Grid in regard to both the gas and electricity transmission.</p> <p>Anglian Water:</p> <p>Three points of contention have arisen in negotiations with Anglian Water relating to their PPs. A SoCG will be submitted to confirm that the three issues will likely be extant by the close of examination.</p> <p>Western Power Distribution:</p> <p>In relation to WPD's assets the Applicant is in negotiations to adopt a bespoke set of protective provisions.</p>	<p>The Applicant has not come across this drafting in other orders, but will give further consideration to an amendment which clarifies that paragraph 1 of Part 1, and paragraph 13 of Part 2 of Schedule 9 to make clear that the general protective provisions do not apply to those statutory undertakers for whom specific provision is made in other Parts of the Schedule.</p>

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		<p>EXA (formerly Interoute) and Gigaclear:</p> <p>It was confirmed that both EXA and Gigaclear had accepted the standard PPs in the Order.</p> <p>BT Openreach:</p> <p>Negotiations are ongoing with BT Openreach who had accepted the vast majority of PPs with several ambiguous points outstanding, which the Applicant had sought clarity over.</p> <p>EE and Three:</p> <p>The Applicant also confirmed that some mast sites may be affected by the Order. While the masts themselves would not be affected the access rights would be altered or interfered with by the proposed consent. As such, negotiations had been entered with the relevant parties, including EE and Three with which the Applicant had entered into discussions with their agent MBNL, who hadn't requested anything above what has been provided in Part 2 of Schedule 9.</p> <p>O2:</p> <p>Meanwhile for O2 the Applicant had contacted their agent CTIL to enter into negotiations but no response had been received. Further attempts will</p>	

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		<p>be made to engage with O2 throughout the examination.</p> <p>The Applicant agreed to consider the carve out clause proposed by the examiner – that where utilities have their own protective provisions the general protective provisions in Part 1 or, as the case may be, Part 2 of Schedule 9 does not apply.</p>	
Agenda Point 15: Consents, Licenses and other agreements			
30.	The ExA asked the Applicant to provide an update on the status of consents required outside of the DCO and consent for Crown land.	<p>The Applicant confirmed that the protective species surveys for bats, water voles and badgers had been submitted to Natural England: negotiations are ongoing to resolve these licences. The Applicant was not aware of any current or anticipated impediment to their resolution.</p> <p>The Applicant also set out that they were in negotiations with the Government Legal Department to gain consent for the affected Crown land. There isn't considered to be any impediment to obtaining consent for Crown Land.</p>	The Applicant has no further submissions to make.