

Comments on the ExA's proposed changes to the draft Development Consent Order (dDCO)

This document sets out the comments on the ExA's proposed changes to the draft Development Consent Order (dDCO) by Cambridgeshire County Council (**CCC**), Huntingdonshire District Council (**HDC**) and South Cambridgeshire District Council (**SCDC**) (together, the **Councils**). The table below sets out the topic, reference, ExA's commentary and proposed changes and the Councils' response.

Reference	Directed to	ExA's commentary and proposed changes	Councils' response
Q4.1. GENERAL AND OVERARCHING			
Q4.1.1 Contents			
Q4.1.1.1	Applicant	<p>Applicant's confirmation of final review for D10</p> <p>a) Check internal references, statutory citations and references and legal footnotes and update as required.</p> <p>b) Review additions to the dDCO ensuring that the titles and numbering of all provisions remains consistent throughout and with the Table of Contents.</p> <p>c) Follow best practice in Planning Inspectorate Advice Notes 13 and 15 and (as relevant) guidance on statutory instrument drafting from the Office of the Parliamentary Counsel (June 2020). ExA notes Applicant's previous response [REP1-022, Appendix to Q.1.7.1.1].</p>	The Councils have no comment in relation to this matter.
Q4.1.1.2	Local Authorities	Discharging requirements and conditions	The Councils are broadly in agreement with this proposal, however, the Councils have requested the

		No amendments proposed with regards to the provision that the discharging authority for all requirements is the SoS, acknowledging that the SoS would consult with the relevant LA in relation to Requirements that would be of relevance to that LA [REP1-021] [REP1-022] [REP3-007] [REP3-039] [REP5-015], subject to further comments if any, from other parties.	right to approve the content of the Second Iteration EMP and Third Iteration EMP in the terms of the agreement currently being negotiated with the Applicant. The Councils consider that the right to approve the content of these plans is necessary due to the limited amount of information in the First Iteration EMP. The Applicant has so far resisted this request although has not provided details of its basis for doing so. The Councils therefore request that the local planning authority has the right to approve the Second Iteration EMP and Third Iteration EMP under Requirements 3 and 4 of the dDCO respectively [REP6-003].
Q4.2 PART 1 PRELIMINARY			
Q4.2.1 Article 1 Citation and commencement			
		No amendments proposed by the ExA at this stage.	The Councils have no comment in relation to this matter.
Q4.2.2 Article 2 - Interpretation			
Q4.2.2.1	All Parties Applicant	<p>Definition of commence and pre-commencement work</p> <p>ExA notes the proposed amendment to the definition of “commence”, the inclusion of a definition of “pre-commencement work”, and a pre-commencement plan [REP6-028] included in Schedule 10 of Documents to be Certified.</p> <p>No further amendments proposed by the ExA at this stage [REP1-022, Q1.7.2.1] [REP4- 037, Q2.7.2.1] [REP1-051] [REP3-007] [REP4-056] [REP6-033]; awaiting responses to WQ3.</p>	The Councils refer to their proposed amendment to the definition of “pre-commencement work” in their Comments on the Applicant’s updated dDCO [REP8-028].

		<p>Definition of maintain</p> <p>No amendments proposed by the ExA [REP1-022, Q1.7.2.2] [REP4-037, Q2.7.2.2].</p>	The Councils have no comment in relation to this matter.
Q4.2.2.2	Applicant	<p>Definition of Secretary of State</p> <p>Include in the EM, the explanation and reference to the joint letter dated 30 July 2021 confirming that the SoS for Transport would be the sole decision maker for the Proposed Development, taking account of comments from SoS for BEIS [REP1-022, Q1.7.2.3].</p>	The Councils have no comment in relation to this matter.
		<p>Article 2(4) and 2(5)</p> <p>No amendments proposed by the ExA [REP1-022, Q1.7.3.1] [REP4-037, Q2.7.3.1].</p>	The Councils have no comment in relation to this matter.
Q4.2.2.3	All Parties	<p>Definition of tree constraints plan</p> <p>Provide comment, if any. No amendments proposed by the ExA, subject to comments from other parties.</p>	The Councils have no comment in relation to this matter.
Q4.2.2.4	Applicant All Parties	<p>Definition of adjacent land</p> <p>ExA notes the Applicant's responses [REP1-022, Q1.7.3.3] [REP4-037, Q2.7.3.3] regarding the reasons for the necessity of the provision relating to land adjacent to order limits, as provided for under S120 of PA 2008. At this stage, the ExA remains unconvinced that powers so widely drawn would be reasonable for the purposes described by the Applicant.</p>	The Councils' only comment in relation to this matter is that any additional definition of " <i>land within or adjacent to the Order limits</i> " is readily distinguishable from the concept of "adjacent land" elsewhere in the dDCO. For example, Article 22(4) refers to "adjacent land" meaning adjacent to the relevant building and therefore should not be caught by the relevant definition. Similarly, in Part 3 of Schedule 4, column (4) states in several places that the new private means of access to be substituted or provided is " <i>The realigned private means of access to the adjacent land...</i> " In this case adjacent refers to land

		<p>The ExA notes that the provision relating to “land within or adjacent to the Order limits” appears in Article 4 – Development consent etc. granted by the Order, to “adjacent land” appears in Article 22 – Protective work to buildings, and to “any land which is adjacent to, but outside the Order limits” appears in Article 23 – Authority to survey and investigate the land.</p> <p>a) The ExA proposes a definition for “land adjacent to the order limits” to be added to Article 2, in line with the wording provided by the Applicant based on the A303 Sparkford to Ilchester Dualling made DCO:</p> <p><i>“land adjacent to the Order limits” means that land which is necessary to carry out the development of the authorised development or ensure the safe construction of any section or part of the authorised development;”</i></p> <p>b) ExA proposed related change of wording in Article 4 as follows:</p> <p><i>“4. – (2) Any enactment applying to land within or adjacent to the Order limits or where reasonably necessary land adjacent to the Order limits has effect subject to the provisions of this Order.”</i></p>	<p>adjacent to the relevant work referred to, whether or not that land is within the Order limits.</p> <p>The Councils note the suggestion of using the Sparkford to Ilchester Dualling DCO results in a widening of the relevant powers as the definition includes no notion of geographic limitation which, without the definition, the normal meaning of “adjacent land” would include. The Councils query whether this is the intention?</p>
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<p>Q4.2.3 Article 3 – Disapplication of legislative provisions</p>			

Q4.2.3.1	Environment Agency Internal drainage boards Lead local flood authorities Natural England	Article 3 Disapplication of legislative provisions No amendments proposed by the ExA, subject to further comments if any, from other parties.	The Councils have no comment in relation to Article 3. Discussions on the Protective Provisions for the benefit of the Drainage Authorities are ongoing.
Q4.3 PART 2 PRINCIPAL POWERS			
Q4.3.1 Article 4 – Development consent etc. granted by the Order			
Q4.3.1.1	All Parties Applicant	Provision relating to land adjacent to Order limits Refer to Q4.2.2.4 and Q4.5.2.1.	The Councils refer to their response to Q4.2.2.4.
Q4.3.2 Article 5 – Maintenance of authorised development			
Q4.3.2.1	Applicant Local Authorities	Article 5 – Maintenance of authorised development No amendments proposed by the ExA; however the ExA notes that discussions are currently ongoing with LAs and requests an update from Applicant. LAs may comment.	The Councils have no further comments on the text of this Article. The Councils have agreed in principle with the Applicant that, in respect of the roads to be de-trunked, the Applicant must maintain the roads to be de-trunked until the road is de-trunked in accordance with the Order and the agreement.
Q4.3.3 Article 6 – Application of the 1990 Act			
		No amendments proposed by the ExA.	The Councils have no comment in relation to this matter.
Q4.3.4 Article 7 – Planning Permission			
		No amendments proposed by the ExA.	The Councils have no comment in relation to this matter.
Q4.3.5 Article 9 – Limits of deviation			
Q4.3.5.1	All Parties Applicant	Article 9 – Limits of deviation a) No amendments proposed by the ExA; however the ExA notes that discussions are currently on-going with the Cambridgeshire Councils and	a) and d) The Councils refer to their proposed amendments to Article 9 as set out in their Comments on the Applicant's updated dDCO [REP8-028]. The Cambridgeshire Councils would be content for the right to approve the route of the public rights of way to be set

		<p>requests an update from Applicant. Cambridgeshire Councils may comment.</p> <p>b) Applicant, justify why such wide limits of deviation are necessary as shown on the updated streets, rights of way and access plans [REP4-003]. The ExA notes your response that it is not your intention to make wholesale changes to the public rights of way network [REP6-034]; and currently consider this to be all the more reason to provide justification for the widely drawn limits of deviation.</p> <p>c) Applicant, what would be required to identify specific limits of deviation for the rights of way in the manner that has been proposed for the utilities [APP-009, Sheet 2C]?</p> <p>d) Cambridgeshire Councils, are there changes in the wording of this Article that could provide the controls that you seek with respect to the matters raised in questions b) and c) above, relating to widely drawn limits of deviation for public rights of way.</p> <p>e) The ExA is persuaded by the Applicant's case that it is unnecessary for the LHA to have a separate approval role in relation to any proposal to extend the limits of deviation, given that LHAs would be consulted by the SoS during decision-making. Cambridgeshire Councils, what additional benefit or controls do you believe would be</p>	<p>out in the agreement, rather than the Order, and had previously understood this to be acceptable to the Applicant but the Councils are no longer clear that that remains the position.</p> <p>Following discussions at a meeting on 20 January 2022, the Councils understand that the Applicant is considering an update to the limits of deviation shown on the Streets, Rights of Way and Access Plans [REP8-003] and would welcome sufficient opportunity to comment on any updates submitted, noting the limited time remaining in the Examination.</p> <p>e) The Councils maintain their position that the agreement of the local highway authority to any extension to the limits of deviation in respect of local highways ought to be subject to the approval of the LHA. The local highways will ultimately be adopted and maintained by the LHA as part of the wider network of local highways. It is imperative that the route and alignment of the public rights of way fulfil the intended function of the relevant public right of way, avoiding severance of the network. The Councils consider that it is the LHA who is best placed to determine the adequacy of the route and function of any adjusted proposals for the public rights of way.</p> <p>The level of scrutiny afforded to the extended limits of deviation post-consent would not be equivalent to the level of scrutiny afforded to the original limits of deviation through this Examination process during which the Councils have had the opportunity to make multiple detailed submissions to the Applicant's proposals. A right to be consulted is not the same as a right to object.</p>
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		<p>embedded in the provision by adding a separate approvals process from the LHA?</p>	<p>Without further controls on the wording of Article 9(2), the extension of the limits of deviation could result in a considerable increase to the maintenance burden on the LHA.</p> <p>The Councils consider that the requirement that the extended limits of deviation do not result in any materially new or materially different environmental effects from those reported in the environmental statement does not give the LHA sufficient protection. The Councils are of the view that, for example, there would be some doubt over whether additional traffic impacts or a less convenient NMU route would be considered an environmental effect.</p> <p>The Councils consider that the limits of deviation applicable to the authorised development ought to have been sufficiently widely drawn from the outset so that the power under Article 9(2) is used only in very exceptional cases. If, as the Applicant asserts, there is no intention to make wholesale changes to the public rights of way network, the approval of the LHA to the extended limits of deviation ought not to materially contribute to the Applicant's programme for delivery.</p> <p>The LHA would be willing to consider the inclusion of timescales within which the LHA would be obliged to respond on this matter to alleviate any concerns as to the achievement of the desired programme.</p>
<p>Q4.3.6 Article 11 – Consent to transfer benefit of Order</p>			
<p>Q4.3.6.1</p>	<p>Applicant National Grid Gas Plc</p>	<p>Article 11 – Consent to transfer benefit of Order</p>	<p>The Councils have no comments to add on this matter.</p>

	<p>Cadent Gas Limited EXOLUM Pipeline System Ltd AWG Group Limited South Staffordshire Water PLC UK Power Networks (Operations) Limited Openreach Limited Virgin Media Limited Vodafone Limited</p>	<p>a) The ExA requests each of the bodies in Paragraph (5) to provide evidenced statements to demonstrate that they have the ability to deliver the works that could be transferred to them as stated in Paragraph (5). Applicant may comment.</p> <p>b) Alongside, Applicant to provide detailed justification for each of the bodies in Paragraph (5) to explain why the transfer of the benefit of the Order is acceptable without SoS consent.</p> <p>c) ExA notes Applicant's response [REP1-022, Q1.7.3.9], and the provision in Paragraph (3) where the liability for the payment of compensation remains with the undertaker, where the benefits or rights transferred are exercised by a statutory undertaker or an owner occupier of land pursuant to Article 28(2). The ExA is not convinced by the widely drawn powers and proposes that Article 11 should exclude the transfer of the liability for the payment of compensation to any party (including the 9 statutory bodies in Paragraph 5) without the consent of the SoS. To achieve this, the ExA proposes including an additional Paragraph explicitly stating the exclusions, and making related changes to wording in Paragraphs 3, 4, 5 and any others. Applicant to provide suitable wording to dDCO and relevant changes to EM.</p>	
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Q4.4. PART 3 STREETS			
Q4.4.1 Article 13 – Construction and maintenance of new, altered or diverted streets and other structures			
Q4.4.1.1	Applicant Local Highway Authorities	<p>Article 13 – Construction and maintenance of new, altered or diverted streets and other structures</p> <p>The ExA notes the Applicant’s proposed time-table for reaching agreement with LHAs [REP6-033] and the Overview of handover process for de-trunked assets and local highways [REP4- 039] and remains dissatisfied with the progress that would be expected at this this stage in the Examination or the assurance needed that agreement would be reached before the close of the</p>	<p>The Councils continue to negotiate with the Applicant and more frequent meetings between the parties are being arranged with the aim of reaching agreement in the coming weeks and prior to the close of the Examination.</p> <p>a) The Councils support the removal of “reasonable” from each of these paragraphs. The Councils also draw the ExA’s attention to the Councils’ proposed amendments to Article 13 set out in their Comments on the Applicant’s updated dDCO [REP8-028].</p> <p>The ExA’s points raised in relation to de-trunking at b) also generally apply in relation to new highways. The</p>

		<p>Examination.</p> <p>a) As such and to cover the eventuality that agreement is not reached between parties before the close of the Examination, the ExA proposes tightening the wording of both Articles 13 and 14 to ensure that there are adequate controls for LHA to assess the quality and purpose of the assets that they inherit:</p> <ul style="list-style-type: none"> • Paragraph (1) – delete the word “reasonable” before satisfaction • Paragraph (2) – delete the word “reasonable” before satisfaction • Paragraph (3) – delete the word “reasonable” before satisfaction • Paragraph (10) – delete the word “reasonable” before satisfaction <p>b) Additionally, the ExA proposes adding additional wording in the dDCO and corresponding explanation in the EM to secure:</p> <ul style="list-style-type: none"> • The definition of De-Trunking Handover Plan and De-trunked Road Standards, in Article 2; and • Paragraph to be included in Article 14 to include the scope and content of the De-Trunking Handover Plan and De-trunked Road Standards, and the process and timing of approvals. <p>c) LHAs and Applicant to provide suitable</p>	<p>Councils are looking to agree standards for new highways (both for new roads and for NMU routes) and to: (i) have a right of detailed design approval to ensure that what is to be constructed is generally in accordance with the standards; and (ii) thereafter a sign-off process to ensure that what is ultimately constructed accords with the relevant standards and the approved detailed design.</p> <p>However, pending such agreement and in light of the ExA’s request, the Councils propose, that the Order should mirror the approach to be taken in relation to de-trunking (see further the Council’s draft wording in response to Q4.4.2.1 in respect of new highways).</p> <p>Accordingly, the Councils propose that Articles 13(1) and (2) be replaced with the following:</p> <p><i>“(1) Subject to paragraphs (5) to (9) any highway (other than a special road or a trunk road) to be constructed under this Order must be completed in accordance with the relevant new highway standards and the approved detailed design in relation to local highways under paragraph 12 of part 2 of schedule 2 (detailed design) to the reasonable satisfaction of the relevant local highway authority in whose area the highway lies. The local highway authority will signify that it is reasonably satisfied by the issue of a certificate to that effect. Unless otherwise agreed in writing with the relevant local highway authority, the highway within the boundary specified in the certificate by the relevant local highway authority (including any culverts or other structures laid under it) must be maintained by and at the expense of</i></p>
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		<p>wording for b).</p>	<p><i>the relevant local highway authority from the date of issue of the certificate by the local highway authority.</i></p> <p><i>(2) Subject to paragraphs (5) to (9) where a highway (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed in accordance with the relevant new highway standards and the approved detailed design in relation to local highways under paragraph 12 of part 2 of schedule 2 (detailed design) to the reasonable satisfaction of the relevant local highway authority in whose area the highway lies. The local highway authority will signify that it is reasonably satisfied by the issue of a certificate to that effect. Unless otherwise agreed in writing with the relevant local highway authority, that part of the highway within the boundary specified in the certificate by the relevant local highway authority (including any culverts or other structures laid under it) must be maintained by and at the expense of the relevant local highway authority from the date of issue of the certificate by the local highway authority.”</i></p> <p>A new definition of “new highway standards” is required in article 2 as follows:</p> <p><i>““new highway standards” means the document of that description setting out standards for the construction of new or altered highways (for the avoidance of doubt including standards for roads and footpaths, cycle tracks, footways and bridleways) listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the new highway standards for the purposes of this Order”</i></p>
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			<p>Requirement 12 (detailed design) would be amended to provide for LHA involvement in the detailed design process and LPA approval of the final detail design. Please see the Councils' response to Q4.8.1.4 for the proposed drafting.</p> <p>b and c) The Councils' proposed wording is set out in the response to Q4.4.2.1.</p>
Q4.4.2 Article 14 – Classification of roads, etc.			
Q4.4.2.1	Applicant Local Highway Authorities	<p>Article 14 – Classification of roads, etc.</p> <p>Further to comments in Q4.4.2.1, the ExA proposes related amendments to include the scope and content of the De-Trunking Handover Plan and De-trunked Road Standards, and the process and timing of approvals. LHAs and Applicant to provide suitable wording.</p>	<p>The Councils maintain that much of the process for handover of the de-trunked roads could be contained in the agreement, however, the de-trunking date must be agreed with the LHA, as set out in the Councils' Comments on the Applicant's updated dDCO [REP8-028]. The Councils reiterate the need for these amendments and, should these amendments be incorporated, the Councils consider that these would provide sufficient protection for the LHA.</p> <p>If the ExA is minded to incorporate additional detail into Article 14, the Councils propose the following amendments.</p> <p>Article 14(9) would be replaced with the following drafting:</p> <p><i>“(9) The undertaker may only make a determination for the purposes of paragraph (8) with:</i> <i>(i) the consent of the Secretary of State; and</i> <i>(ii) the agreement of the local highway authority as to the date and that the highway to be de-trunked is of a satisfactory standard to be accepted into the relevant</i></p>

			<p><i>local highway authority's local road network by reference to the de-trunked road standards and that the handover plan has been complied with.</i></p> <p>New paragraphs (10) and (11) would be added to Article 14 as follows:</p> <p><i>“(10) Where the local highway authority withholds its agreement under paragraph (9), the local highway authority shall give reasons.</i></p> <p><i>(11) At least 12 months prior to the date or dates referred to in paragraph (8), the undertaker must submit the handover plan to the local highway authority for its approval, not to be unreasonably withheld or delayed.”</i></p> <p>A new definition of “handover plan” would be required in article 2 as follows:</p> <p><i>““handover plan” means the plan prepared by the undertaker in respect of the handover of the highways to be de-trunked in accordance with the de-trunked roads standards, which must include the following elements:</i></p> <ul style="list-style-type: none"> <i>(a) the assets that make up the roads to be de-trunked;</i> <i>(b) the existing condition of the roads to be detrunked;</i> <i>(c) the age and condition of the carriageway surfacing;</i> <i>(d) the inventory and condition information;</i> <i>(e) drainage facilities, to include outfalls, pollution control and attenuation measures;</i> <i>(f) signage and road marking;</i> <i>(g) lighting</i>
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			<p>(h) fencing; (i) planting and landscaping within the highway boundary; (j) vehicle restraint systems, to include type, condition and compliance with specifications; (k) extent of the highway boundary for each element to be adopted; (l) removal of equipment not required by the local highway authority; (m) all available records, including works drawings and design specifications, maintenance records and ongoing guarantees and warranties (where the benefit of which is proposed to be assigned to the local highway authority); and (n) details and timing of all works, repairs and upgrades necessary to bring the carriageway and structures up to the de-trunked roads standards by the date the undertaker proposes to determine under Article 14(8)”</p> <p>A new definition of “de-trunked roads standards” would be required as follows:</p> <p>““de-trunked roads standards” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as de-trunked roads standards for the purposes of this Order”</p>
Q4.4.3 Article 15 – Power to alter layout etc. of streets			
		<p>Article 15 – Power to alter layout etc. of streets No amendments proposed by the ExA at this stage.</p>	<p>The Councils draw the ExA’s attention to the Councils’ proposed amendments to Article 15 set out in their Comments on the Applicant’s updated dDCO [REP8-028].</p>

Q4.5. PART 4 SUPPLEMENTAL POWERS			
Q4.5.1 Article 22 – Protective work to buildings			
		<p>Notice period</p> <p>The ExA has not seen any evidence that 14 days' notice would be insufficient to serve notice on the owners and occupiers of relevant building under this Article, and does not propose any changes at this stage.</p>	The Councils have no comments to add on this matter.
Q4.5.2 Article 23 – Authority to survey and investigate the land			
Q4.5.2.1	All Parties Applicant	<p>Provision relating to land adjacent to but outside the Order limits</p> <p>Also refer to Q4.2.2.4 and Q4.3.1.1.</p> <p>The ExA notes the Applicant's response [REP6-033, Action 4] and requests the Applicant to provide a list of potential surveys that may be undertaken using this power.</p>	The Councils have no comments to add on this matter.
		<p>Notice Period</p> <p>The ExA is not persuaded that 14 days' notice would be insufficient to notify persons with an interest in the land effected by the provision in this Article, and does not propose any changes at this stage.</p>	The Councils have no comments to add on this matter.
Q4.6. PART 5 POWER OF ACQUISITION			
Q4.6.1 Article 25 – Compulsory acquisition of land			
Q4.6.1.1	Applicant	Confirm if the drafting change proposed at CAH1 [REP3-021, 9a] has been completed, and identify where with EL reference.	The Councils have no comments to add on this matter.
Q4.6.2 Article 28 – Compulsory acquisition of rights and imposition of restrictive covenants			

Q4.6.2.1	Applicant	<p>Article 28 – Compulsory acquisition of rights and imposition of restrictive covenants</p> <p>The ExA notes your justification [REP1-022, Q1.7.3.20, Q1.7.3.28] [REP3-021, 9b, 9c] for the wide power in Article 28(1), which is so the undertaker may be able to reduce the extent of permanent acquisition and rely on rights instead. The ExA is not convinced that this justification is sufficient for imposing such a wide power in relation to restrictive covenants.</p> <p>a) As such, the ExA proposes including the following wording in Article 28: <i>“The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5”</i></p> <p>b) Alternatively, the Applicant may provide further justification permitting the creation of undefined restrictive covenants over all of the order land.</p>	The Councils have no comments to add on this matter.
Q4.6.3 Article 40 – Temporary use of land for carrying out the authorised development			
Q4.6.3.1	Applicant	<p>Article 40 – Temporary use of land for carrying out the authorised development</p> <p>The ExA remains concerned that the interaction between Articles 28 and 40 could permit the creation of undefined</p>	The Councils have no comments to add on this matter.

		<p>new rights and imposition of undefined restrictive covenants in the land listed in Schedule 7 which is described as being land for TP. There is no clarity at this stage on the new rights that could be sought. As such, the ExA is also not convinced that appropriate consultation has taken place on the creation of new undefined rights. Consequently, it would not be possible to determine whether or not there is a justified case for the acquisition of such rights [REP1-022, Q1.7.3.29].</p> <p>a) The ExA notes that the Applicant [REP 1-022, 1.7.3.28, 1.7.3.29] would not seek to create new rights in the land listed in Schedule 7 as being for TP unless that land is also in Schedule 5. The ExA is not clear from the Applicant's case [REP3-021, 9b, 9c] if there are plots that appear in both Schedule 5 and Schedule 7. Applicant to confirm, and provide a list of cross over plots; that is plots that appear in both Schedule 5 and Schedule 7 where temporary possession plots could then also be subject to acquiring permanent rights. If there are cross over plots, then Applicant to confirm how the cross over plots have been colour coded in the Land Plans.</p> <p>b) In any event, the Applicant confirmed</p>	
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		<p>in its response that they would not create undefined new rights in the land listed in Schedule 7 and that the only CA that would be permitted in this land is the CA of new rights listed in Schedule 5 [REP1-022, Q1.7.3.29]. The ExA does not consider that the Applicant's current drafting achieves this intention. Subject to the Applicant's response to a), and if there are no cross over plots between Schedules 5 and 7, the ExA proposes the deletion of Paragraph 40(9)(a):</p> <p><i>"The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—</i></p> <p><i>(a) acquiring new rights over any part of that land under article 28 (compulsory acquisition of rights and imposition of restrictive covenants); or</i></p> <p><i>(b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 38 (acquisition of subsoil or airspace only)."</i></p> <p>c) Alternatively, if in response to a), the Applicant confirms that there are cross over plots then the ExA proposes including the following drafting:</p> <p><i>"The undertaker may not compulsorily acquire under this Order the land</i></p>	
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		<p><i>referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—</i></p> <p><i>(a) acquiring new rights or imposing restrictive covenant over any part of that land under article 28 (compulsory acquisition of rights and imposition of restrictive covenants) to the extent that such land is listed in column (1) of Schedule 5; or</i></p> <p><i>(b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 38 (acquisition of subsoil or airspace only).”</i></p>	
Q4.6.3.2	Applicant All Parties	<p>Notice Period</p> <p>NFU has consistently made the case on behalf of its members that before entering on and taking temporary possession of land under this article the undertaker must serve notice of a minimum of 28 days, as opposed to 14 days provided for [RR-074] [REP1-084] [REP3- 050] [REP4-071] [REP6-098]. While the NFU has not provided specific cases of individual members who might benefit from the 28 days’ notice period for specific reasons, the ExA is persuaded by the argument 14 days would not be adequate preparatory period for landowners to adjust farming operations, organise livestock and other activities prior to the undertaker taking</p>	The Councils have no comments to add on this matter.

		temporary possession. Conversely, the ExA notes the Applicant's case that 28 days' notice period could effect the construction programme and that in practice the notice given to landowners would likely be longer than 14 days anyway [REP4-037, WQ2.7.3.10, WQ2.7.3.11]. Alongside, the Applicant also states that increasing the notice period would not impact on the viability of the Proposed Development as a whole [REP6-039]. As such the ExA proposes increasing the notice period in Article 40(2) to 28 days.	
Q4.7. PART 6 MISCELLANEOUS AND GENERAL			
Q4.7.1 Article 55 – Traffic regulation			
		Article 55 – Traffic regulation No further amendments proposed by the ExA.	The Councils have no comments to add on this matter.
Q4.7.2 Article 58 – Works in the River Great Ouse			
Q4.7.2.1	Environment Agency Applicant	Article 58 – Works in the River Great Ouse No further amendments proposed by the ExA, subject to comments from EA.	The Councils have no comments to add on this matter.
Q4.8. SCHEDULE 2 – REQUIREMENTS			
Q4.8.1 PART 1 – REQUIREMENTS			
Q4.8.1.1	Applicant	Interpretation There has been detailed input from parties on the First iteration EMP during Examination, across wide ranging environmental effects of the Proposed Development and management of	The Councils consider that the existing wording is sufficient to secure the First Iteration EMP as a certified document without the need for further amendment. In relation to the definitions of "Second Iteration EMP" and "Third Iteration EMP", the Councils suggest that the following drafting is used:

		<p>mitigation measures. The ExA believes that this certified document should be secured in the dDCO to provide greater certainty to all parties than is afforded with the term “substantially in accordance with”. As such the ExA proposes deleting the word “substantially” from the definition of “Second Iteration EMP” and “Third Iteration EMP”.</p>	<p><i>““Second Iteration EMP” means the second iteration of the environmental management plan produced in accordance with the DMRB in electronic form suitable for inspection, containing detailed plans relating to the construction phase of the authorised development in accordance with the First Iteration EMP and with detail for all of the outline plans referred to in the First Iteration EMP;”</i></p> <p><i>““Third Iteration EMP” means the third iteration of the environmental management plan produced in accordance with the DMRB in electronic form suitable for inspection, containing detailed plans relating to the operational and maintenance phase of the authorised development in accordance with the First Iteration EMP and with detail for all of the outline plans referred to in the First Iteration EMP.”</i></p> <p>The Councils also refer to their comments on Requirements 3 and 4 in their response to Q4.1.1.2 above.</p>
Q4.8.1.2	Applicant	<p>Requirement 6 – Landscaping Replace the word “reflect” with “in accordance with” in Paragraph 2 for the same reasons in Q4.8.1.1.</p>	<p>The Councils agree with the ExA’s proposals in relation to this matter.</p>
Q4.8.1.3	Applicant	<p>Requirement 11 – Traffic management The ExA proposes deleting the word “substantially” from R11(1) for the same reasons in Q4.8.1.1.</p>	<p>The Councils agree with the ExA’s proposals in relation to this matter.</p>
Q4.8.1.4	Applicant	<p>Requirement 12 – Detailed Design</p>	<p>The Councils refer to their comments on Q4.4.1.1.</p>

		<p>The ExA believes that scheme design approach and design principles [REP3-014] is a high level document that provides overarching principles to guide detailed design outcomes of the Proposed Development. On the basis of the content in the document currently in the Examination, the ExA also believes that the application of the approach and principles embodied in this document to deliver design outcomes that meet the policy requirements in NPS NN (Paragraphs 4.29, 4.30, 4.31, 4.33) and the NPPF (Chapter 12) would be a matter of interpretation. As such, the ExA believes that the application of the approach and principles embodied in this document to specific sites and structures along the route should be subject to scrutiny by relevant parties, such as the LAs and Statutory bodies and landowners. While the ExA can see the Applicant's position that the document would not be updated post consent, it remains unconvinced about the extremely limited engagement on detailed design and application of the approach and principles embodied in this document post consent [REP6-037]. Subject to responses to WQ3, the ExA is minded to propose additional provision relating to the detailed design development process post consent, should consent be granted. Applicant</p>	<p>In light of the ExA's comments on this requirement, with which the Councils agree, the Councils propose that requirement 12 is replaced with the following:</p> <p><i>"12(1) The detailed design for the authorised development must accord with:</i></p> <p><i>(a) the preliminary scheme design shown on the works plans, the general arrangement plans and the engineering section drawings;</i></p> <p><i>(b) the principles set out in the environmental masterplan;</i></p> <p><i>(c) the design principles set out in the scheme design approach and design principles, and</i></p> <p><i>(d) in respect of any highway to be vested in the local highway authority under article 13, the requirements of the local highway authority,</i></p> <p><i>unless, in respect of paragraph 12(1)(a) only, otherwise agreed in writing by the Secretary of State following consultation with the relevant local authority or authorities on matters related to their functions, provided that the Secretary of State is satisfied that any amendments would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</i></p> <p><i>(2) Where amended details are approved by the Secretary of State under paragraph (1), those details are deemed to be substituted for the corresponding</i></p>
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		and LAs to provide suggested wording.	<p><i>plans or sections referred to in paragraph 1(a) and the undertaker must make those amended details available in electronic form for inspection by members of the public.</i></p> <p><i>(3) No part of the authorised development is to commence until, for that part, the detailed design has been approved by the relevant local planning authority in consultation with the relevant local highway authority.”</i></p>
Q4.8.1.5	Applicant Historic England	<p>Requirement 16 – Brook Cottages Subject to responses to WQ3 regarding the on-going conversation with HistE, the ExA is minded to propose additional provisions relating to the demolition and potential reconstruction of Grade II listed Brook Cottages, including greater clarity in terms of specific and detailed reasons that would prevent reconstruction and timescale and mechanism for demolition and reconstruction, if considered appropriate.</p>	The Councils have no comments to add on this matter.
Q4.8.1.6	Applicant	<p>Requirement 18 – Noise Mitigation In the ES [APP-080, Paragraph 11.10.2] the Applicant explains that noise surveys would be undertaken to ensure that measures, such as low noise surfacing materials were installed as required. However, little further detail is provided of such monitoring. In addition to responses to WQ3, the Applicant to propose additional wording for Requirement 18 or an additional section</p>	The Councils agree with the ExA’s proposed amendment and will comment on the Applicant’s additional wording at D10.

		in the First Iteration EMP [REP6-008, Annex B, B3] to secure operational noise monitoring described in the ES [APP-080, Paragraph 11.10.2] so as to ensure that intended noise mitigation measures would achieve their desired outcome, should consent be granted.	
Q4.8.1.7	Applicant	<p>New Requirement</p> <p>Throughout the Examination, LHAs have consistently raised concern regarding potential unanticipated traffic effects on the local road network during operational phases of the Proposed Development and the likelihood of either the Applicant or the LHA being able to mitigate such effects in a timely manner [REP6-060] [EV-069]. Whilst the ExA accepts that such potential effects are largely unknown at this stage, it remains concerned that there is a possibility that the Proposed Development could effect the local network and indeed the LHAs' ability to deliver their statutory Network Management Duty, as defined in S16 of the Traffic Management Act, 2004. In that regard, the ExA finds that the current traffic monitoring methodology being proposed by the Applicant is neither robust, nor secured through the dDCO [REP6-041]. Therefore, subject to responses to WQ3, the ExA is minded to propose a Requirement relating to quantitative Traffic Monitoring and Mitigation for the Proposed</p>	<p>The Councils refer to their proposed requirement relating to monitor and manage submitted at Deadline 6 [REP6-074]. The Councils would be content to consider further provision in relation to this matter should the ExA consider this necessary.</p>

		<p>Development's operational phase, should consent be granted. Applicant to provide suggested wording, including definitions if relevant. LHAs have provided wording for such a Requirement [REP6-074], which the Applicant may consider.</p>	
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