A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.120 Applicant's comments on other parties' responses to the ExA's proposed schedule of changes to the dDCO

Planning Act 2008

Rule 8(1)(b)

The Infrastructure Planning (Examination Procedure) Rules 2010

February 2022

Infrastructure Planning

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(Examination Procedure) Rules 2010**

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Development Consent Order 202[ ]

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1 Applicant's comments on other parties responses to the ExA's proposed schedule of changes to the dDCO

1.1.1 This document has been prepared by the Applicant to set out its comments on other parties' responses to the Examining Authority's (ExA's) proposed schedule of changes to the dDCO.

1.1.2 These can be found in **Table 1-1**.

1.1.3 It should be noted that in REP9-055, Natural England set out that they did not have any comments on the Examining Authority's proposed schedule of changes to the dDCO.

Table 1-1 Applicant's comments on other parties responses to the Examining Authority's proposed schedule of changes to the dDCO

No.	Question/Applicant's Comments
Q4.1	**General and Overarching**
Q4.1.1	**Contents**
Q4.1.1.1 – Applicant's confirmation of final review for D10 a) Check internal references, statutory citations and references and legal footnotes and update as required. b) Review additions to the dDCO ensuring that the titles and numbering of all provisions remains consistent throughout and with the Table of Contents. 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].	
Cambridgeshire Authorities	The Councils have no comment in relation to this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.1.1.2 – Discharging requirements and conditions 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.	
Cambridgeshire Authorities	The Councils are broadly in agreement with this proposal, however, the Councils have requested the 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]**.

No.	Question/Applicant's Comments
Applicant's comments	As the Applicant has consistently maintained throughout Examination (see for example, **[REP4-037]** and **[REP5-015]**), the appropriate route for approval of the second and third iteration Environmental Management Plans should rest with the Secretary of State (SoS). This is the standard approach taken for DCOs promoted by National Highways and is the tried and tested method included in all National Highways DCOs since 2017. In a letter to National Highways dated 9 June 2016, the Department for Transport (DfT) confirmed that DfT would provide the requirements sign-off function for Strategic Road Network (SRN) DCO projects. The letter is attached at Appendix A of this document. For linear schemes of this nature, which have the potential to cross multiple administrative areas, this provides a simplified and consistent approach. It is entirely appropriate that there is a single discharging body for all SRN schemes, and there is no distinguishing feature of the A428 Scheme which justifies an exception to this approach. The Cambridgeshire Authorities say their approval is necessary due to the limited amount of information provided in the First Iteration EMP, but the level of detail is no less than that provided in other First Iteration EMPs for which the SoS has been the approving body. In fact, numerous modified versions of the First Iteration EMP have been submitted throughout the course of the Examination (see **[REP6-008]**, **[REP8-023]** and **[REP9-009]**), with each new version incorporating details requested by the Councils and other interested parties. The Applicant notes the ExA's acknowledgement that "*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 mitigation measures*". It would be misrepresentative to describe the First Iteration EMP as containing a "limited amount of information" and the Applicant disagrees with this. The First Iteration EMP contains considerable detail on the mitigation which will be developed and incorporated into the Second and Third Iteration EMPs. In any event, there is express provision within Requirements 3 and 4 for the Cambridgeshire Authorities to be consulted on future iterations of the EMP before the SoS determines whether to approve them. Therefore, the SoS will have the benefit of the Cambridgeshire Authorities' knowledge in discharging these requirements. The Cambridgeshire Authorities do not explain why consultation is insufficient in this regard and, regardless of the level of information that the First Iteration EMP contains, why consultation should be elevated to approval for this particular Scheme despite DfT's express confirmation that it will provide the sign-off function for requirements of all National Highways DCOs.
Q4.2	**Part 1 Preliminary**
Q4.2.1	**Article 1 Citation and commencement**
No amendments proposed by the ExA at this stage.	
Cambridgeshire Authorities	The Councils have no comment in relation to this matter.

No.	Question/Applicant's Comments
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.2.2	**Article 2 – Interpretation**
Q4.2.2.1 – Definition of commence and pre-commencement work 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. 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.	
Cambridgeshire Authorities	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]**.
Applicant's comments	The Applicant has updated the dDCO at Deadline 9 **[REP9-004]** to reflect CCC's requested amendment to the "pre-commencement work" definition. The Applicant has also added an additional limb to the "pre-commencement work" definition, which seeks to cover unanticipated works which are not likely to have significant effects on the environment. Such works would still be in accordance with the pre-commencement plan and biodiversity pre-commencement plan and, as specified, would not be likely to have significant effects on the environment.
Definition of maintain No amendments proposed by the ExA [**REP1-022**, Q1.7.2.2] [**REP4-037**, Q2.7.2.2].	
Cambridgeshire Authorities	The Councils have no comment in relation to this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.

No.	Question/Applicant's Comments
Q4.2.2.2 – Definition of Secretary of State 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].	
Cambridgeshire Authorities	The Councils have no comment in relation to this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Article 2(4) and 2(5) No amendments proposed by the ExA [**REP1-022**, Q1.7.3.1] [**REP4-037**, Q2.7.3.1].	
Cambridgeshire Authorities	The Councils have no comment in relation to this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.2.2.3 – Definition of tree constraints plan Provide comment, if any. No amendments proposed by the ExA, subject to comments from other parties.	
Cambridgeshire Authorities	The Councils have no comment in relation to this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.

No.	Question/Applicant's Comments
Q4.2.2.4 – Definition of adjacent land 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. 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. 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: *""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;"* b) ExA proposed related change of wording in Article 4 as follows: *"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."* c) ExA proposes related change of wording in Article 23. Additionally, the ExA proposes a further amendment to remove from Paragraph (1) the words "operation or maintenance" to tighten the scope of this provision to only the construction period rather than for the life span of the Proposed Development. If the Applicant believes surveys would be required for operation and maintenance purposes then provide examples of the types of surveys and supporting justification. *"23. – (1) The undertaker may for the purposes of the construction, ~~operation or maintenance~~ of the authorised development enter on— (a) ~~any~~ land shown within the Order limits; and (b) where reasonably necessary, any land which is adjacent to, ~~but outside~~ the Order limits, and—"* d) Applicant, would similar change of wording be applicable to Article 22? Explain with reasons and provide suitable wordings. Also refer to Q4.3.1.1 and Q4.5.2.1.	
Cambridgeshire Authorities	The Councils' only comment in relation to this matter is that any additional definition of *"land within or adjacent to the Order limits"* 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 *"The realigned private means of access to the*

No.	Question/Applicant's Comments
	adjacent land…" In this case adjacent refers to land adjacent to the relevant work referred to, whether or not that land is within the Order limits. 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?
Applicant's comments	The Applicant has clarified in its response to Q4.2.2.4 that the definition is only suitable to be used within article 4 and 23 **[REP9-024]**. Due to the arrangement of wording for the definition used, it does not impact Article 22 nor Part 3 of Schedule 4. Whilst the term "adjacent land" is used elsewhere in the Order, the defined term is "land adjacent to the Order limits" and so the defined term is considered to be readily distinguishable from those instances where adjacent land should be given its plain meaning in the context of the article or provision within which it sits. The Applicant has amended the dDCO at Deadline 9 to incorporate the ExA's proposed amendment with some changes to ensure that the definition works within the parameters of the A428 Scheme specifically. This response can be seen at **[REP9-024]** and the updated dDCO can be seen at **[REP9-004]**. The Applicant has slightly tweaked the definition proposed by the ExA to ensure that it is geographically limited to 'land outside but adjacent to' the Order limits and accordingly does not consider that this definition widens the meaning of adjacent land in articles 4 and 23 because it is tied to geographic limitation.
Q4.2.3	**Article 3 – Disapplication of legislative provisions**
Q4.2.3.1 – Article 3 Disapplication of legislative provisions No amendments proposed by the ExA, subject to further comments if any, from other parties.	
Cambridgeshire Authorities	The Councils have no comment in relation to Article 3. Discussions on the Protective Provisions for the benefit of the Drainage Authorities are ongoing.
Applicant's comments	The Applicant and the Cambridgeshire Authorities have now reached agreement on the protective provisions contained within the Order.

No.	Question/Applicant's Comments
Q4.3	**Part 2 Principal Powers**
Q4.3.1	**Article 4 – Development consent etc. granted by the Order**
Q4.3.1.1 – Provision relating to land adjacent to Order limits Refer to Q4.2.2.4 and Q4.5.2.1.	
Cambridgeshire Authorities	The Councils refer to their response to Q4.2.2.4.
Applicant's comments	Please see the Applicant's response to Q4.2.2.4 above.
Q4.3.2	**Article 5 – Maintenance of authorised development**
Q4.3.2.1 – 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.	
Cambridgeshire Authorities	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.
Applicant's comments	The Applicant notes this comment from the Council's. Please also refer to **[REP9-001]** and the Applicant's Deadline 10 cover letter for further detail on the legal agreement negotiation progress with the Councils.
Q4.3.3	**Article 6 – Application of the 1990 Act**
No amendments proposed by the ExA.	
Cambridgeshire Authorities	The Councils have no comment in relation to this matter.

No.	Question/Applicant's Comments
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.3.4	**Article 7 – Planning permission**
No amendments proposed by the ExA.	
Cambridgeshire Authorities	The Councils have no comment in relation to this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.3.5	**Article 9 – Limits of deviation**
Q4.3.5.1 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 requests an update from Applicant. Cambridgeshire Councils may comment. 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 wholescale 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. 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]? 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. 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 embedded in the provision by adding a separate approvals process from the LHA?	

No.	Question/Applicant's Comments
Cambridgeshire Authorities	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 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. 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. 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. 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. 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. 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. 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 wholescale 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. 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.

No.	Question/Applicant's Comments
Applicant's comments	Please refer to Q4.3.5.1 within the Applicant's comments on the ExA's Proposed Schedule of Changes to the draft Development Consent Order **[REP9-024]** which explains how the Applicant has sought to strike a balance between certainty of the location in which the NMU will be delivered as well as flexibility to allow the NMU to follow any changes made to the wider works within the limits of deviation. The Applicant has maintained a consistent approach that it is not appropriate for the Cambridgeshire Authorities to have an approval right for NMU and the Applicant submitted updated Streets, Rights of Way and Access Plans at Deadline 9 **[REP9-002]** to significantly reduce the limits of deviation and provide the requisite comfort for the Cambridgeshire Authorities in this regard. Following Deadline 9, further discussions have been held with the Cambridgeshire Authorities on NMU matters and a further update to the Streets, Rights of Way and Access Plans **[TR010044/APP/2.6v5]** have been submitted at Deadline 10 to address their comments. The function of the public rights of way routes and alignments proposed in the Scheme has not changed since statutory and supplementary consultations, where the Applicant considered all feedback as shown in Appendix U of the Consultation Report **[APP-065]**. The functions of these routes have been assessed for any environmental impacts as shown in Chapter 12, Population and Human Health and the associated Figures and Appendices of the Environmental Statement **[APP-081]**. This assessment has not identified any significant operational impacts. The Applicant, in accordance with Article 9 and Requirement 12, cannot exceed the limits of deviation without demonstrating to the Secretary of State that this would not give rise to any new or different environmental effects, and the Cambridgeshire Authorities would be consulted on any such proposals. Amendments of roadside NMU routes and public rights of way that would result in severance would introduce a new or different environmental effect, and therefore could not be demonstrated to the Secretary of State's satisfaction. The Cambridgeshire Authorities would have sufficient opportunity to review the proposals and influence the Secretary of State's consideration through the consultation process, but this process would also ensure that delivery of the Scheme is not unnecessarily delayed or obstructed, especially if any concern raised by the Cambridgeshire Authorities is considered to be unfounded. For the same reasons set out in the Applicant's comments to Q4.1.1.2 above (on approval of Requirements by the Secretary of State), it is appropriate that the Secretary of State is the approval body in relation to any changes beyond the limits of deviation. The Approach proposed by the Applicant contains precedent in a high number of previous DCOs including the M42 Junction 6 Development Consent Order 2020, the A585 Windy Harbour to Skippool Highway Development Consent Order 2020, the A30 Chiverton to Carland Cross Development Consent Order 2020, the A19/A184 Testo's Junction Alteration Development Consent Order 2018, the M20 Junction 10a Development Consent Order 2017, The A63 (Castle Street Improvement, Hull) Development Consent Order 2020, the A19 Downhill Lane Junction Development Consent Order 2020, the A1 Birtley to Coal House Development Consent Order 2021, and the A303 Sparkford to Ilchester Dualling Development Consent Order 2021.

No.	Question/Applicant's Comments
Q4.3.6	**Article 11 – Consent to transfer benefit of Order**
Q4.3.6.1 Article 9 – Article 11 – Consent to transfer benefit of Order 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. 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. 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. d) Should the Applicant disagree with d), the Applicant and the 9 named bodies in Paragraph (5) to provide justification for permitting the transfer of CA powers, including the liability for the payment of compensation to each of the bodies in Paragraph (5). This justification must also include evidence (or, to the extent that it has already been provided, identify) that each of the bodies have the requisite funds to meet any CA costs. Applicant and the 9 bodies in Paragraph (5), provide confirmation that each of the bodies in Paragraph (5) would be covered by Paragraph (3) and the liability to meet the CA costs would remain with the undertaker where CA powers were transferred.	
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.

No.	Question/Applicant's Comments
Anglian Water	Anglian Water considers that it is entirely appropriate for elements of the benefit of the Order to be transferable, with the undertaker's permission, but without the necessity for consent to be obtained by the Secretary of State. The Order land is subject to the provisions of the DCO, and therefore it is unlikely to make a material difference to a landowner whether, for example, a covenant in, or right over land is to be granted to the undertaker or to a statutory undertaker. The burden is the same. The ability for the undertaker to transfer powers to the statutory undertaker improves the efficiency of the legal dialogue concerning the grant. It allows the statutory undertaker's legal representatives to treat directly with the landowner's legal representatives, without having to involve the undertaker's legal representatives for no particular added value. It is also appropriate for the liability to pay compensation to remain with the undertaker, since the scheme is not for the benefit of the statutory undertaker, which is seeking to make arrangements to facilitate scheme benefits for the undertaker, and would re-claim any compensation it has to pay from the undertaker in any event. The requirement to seek approval from the Secretary of State would introduce delay to the implementation of the Order which would be contrary to the objectives of the ongoing review of the 2008 Act.
Applicant's comments	The Applicant notes the comment from Anglian Water. This reflects the Applicant's position as submitted in the Applicant's response to Q4.3.6 at **[REP9-024]**.
Cadent Gas Ltd	I'm writing on behalf of Cadent Gas Limited ('Cadent') in response to the Examining Authority's commentaries and proposed changes to the latest version of the dDCO **[REP6-002]**. Cadent is the largest regulated distributor of gas in the UK, owning four of the eight regulated gas distribution networks and operating over 131,000 kilometres of lower-pressure gas distribution mains across the North West, West Midlands, East of England and North London. Cadent is the holder of a gas transporter licence under section 7 of the Gas Act 1986 and is required to comply with the terms of its Licence in the delivery of its statutory responsibilities. It is regulated by The Office of Gas and Electricity Markets (Ofgem), who set out Guaranteed Standards of Performance. Section 9 of the Gas Act states that a Gas Transporter has general duties in the planning and development of their system, which include the duty to develop and maintain an efficient and economical pipe-line system for the conveyance of gas and Cadent is committed to providing a resilient network. As the owner and operator of a large gas distribution network, Cadent from time to time receives requests to relocate apparatus in order to facilitate development. It's important for safety reasons that Cadent are made aware of planned works well in advance, as the new location of diverted apparatus will need to comply with safety guidance and policies such as Cadent's 'Specification for safe working in the vicinity of Cadent assets - requirements for third parties' (https://cadentgas.com/nggdwsdev/media/Downloads/Digging%20Safely/Dialbefore-you-dig-brochure.pdf). In relation to this specific project, Cadent has been asked by National Highways to relocate an existing high pressure (Major Accident Hazard) pipeline shown as work number 51 on sheet 4 of the Works Plans. Major Accident Hazard pipelines are regulated by the Pipeline Safety Regulations 1996. The Pipeline Safety Regulations 1996 requires that pipelines are operated so that the risks are as low as is reasonably practicable. Cadent has a statutory duty under its Licence to ensure that these Regulations are complied with. For these reasons, it's essential that Cadent has an appropriate level of control in relation to the delivery

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	of these diversionary works and confirms that as a licence holder under the Gas Act 1986, it has the ability to deliver the works which could be transferred under Article 11 (5).
Applicant's comments	The Applicant notes the comment from Cadent Gas Ltd. This reflects the Applicant's position as submitted in the Applicant's response to Q4.3.6 at **[REP9-024]**.
Bryan Cave Leighton Paisner LLP on behalf of National Grid	a) Article 11 (5) provides that the consent of the Secretary of State is not required, where the transfer or grant is made to NGG the purposes of undertaking Work No. 41. Work No. 41 is shown on sheet 3 of the Order works plans and comprises the diversion of an underground gas pipeline (320 metres in length), commencing north of the new dual carriageway (Work No. 40) and terminating south of the new dual carriage way, west of the realigned Barford Road (Work No. 43) (the "Diversion"). NGG confirms that the works comprising Work No.41 have already been undertaken and the Diversion completed. No further works are required to be carried out. b) Question for the Applicant. c) Question for the Applicant. d) Please see response to Q4.3.6.1(a) above. This is no longer relevant to NGG. NGG has seen a draft copy of the Applicant's response to Q4.3.6.1 (c) and (d). NGG otherwise supports the Applicant's response to these questions.
Applicant's comments	The Applicant notes the comment from National Grid. This reflects the Applicant's position as submitted in the Applicant's response to Q4.3.6 at **[REP9-024]**. The Applicant confirms that any compulsory acquisition rights acquired under the Order which relate to Work No. 41 are needed to give effect to ongoing proprietary interests.
Veale Wasbrough Vizards LLP on behalf of Exolum Pipeline Systems Limited	PART 6 FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD **Application**

No.	Question/Applicant's Comments
	68. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect. **Interpretation** **69**. In this Part of this Schedule — "alternative apparatus" means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipe-line operator in a manner no less efficient than previously; "apparatus" means the pipe-line and storage system owned or maintained by Exolum and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; "Exolum" means Exolum Pipeline System Ltd and any successor in title; "functions" includes powers and duties; "in" in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; "pipe-line" means the whole or any part of a pipe-line belonging to or maintained by Exolum and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in Exolum in respect of those items; "plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; "specified work" means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and "working day" means any day other than a Saturday, Sunday or English bank or public holiday. **Acquisition of apparatus** **70**. Irrespective of any provision in this Order or anything shown on the land plans— (a) the undertaker must not acquire any apparatus or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with Exolum; and

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	b) any right of Exolum to maintain, repair, renew, adjust, alter or inspect any apparatus must not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Exolum. **Removal of apparatus and rights for alternative apparatus** **71**.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of Exolum to maintain and use that apparatus in that land and to gain access to it must not be extinguished until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Exolum. (2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give Exolum not less than 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Exolum reasonably needs to remove any apparatus) the undertaker must, subject to subparagraph (3), afford to Exolum the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus. (3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in subparagraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must afford to and, if necessary, acquire for the benefit of Exolum the necessary facilities and rights (equivalent to those currently enjoyed by Exolum) for the construction, maintenance and use of the alternative apparatus and access to it. (4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration). (5) Exolum must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 54, and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraphs (2) and (3), proceed as soon as reasonably practicable using all reasonable endeavours to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule. (6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to Exolum that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Exolum.

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	(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3000 millimetres of the apparatus without Exolum's consent. **Facilities and rights for alternative apparatus** **72**.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Exolum facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Exolum or in default of agreement settled by arbitration in accordance with article 54 (arbitration). (2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must— (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted. (3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Exolum as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. **Retained apparatus: protection** **73**.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than 28 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 72(2), the undertaker must submit to Exolum a plan of the works to be executed. (2) The specified work must be executed only in accordance with the plan submitted under subparagraph (1) and approved by Exolum in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Exolum for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and Exolum is entitled to watch and inspect the execution of the specified work.

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	(4) Any requirements made by Exolum under sub-paragraph (3) must be made within a period of 14 days (unless a shorter period is otherwise agreed in writing between the undertaker and Exolum) beginning with the date on which a plan under sub-paragraph (1) is submitted to it. (5) If Exolum in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph 89(2). (6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing any specified work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan. (7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Exolum notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with subparagraph (2) in so far as is reasonably practicable in the circumstances. (8) In relation to any specified work, the plan to be submitted to Exolum under sub-paragraph (1) must include a material statement describing— (a) the exact position of the work; (b) the level at which the work is to be constructed or renewed; (c) the manner of its construction or renewal; (d) the position of any apparatus; and (e) by way of detailed drawings, every alteration proposed to be made to the apparatus. **Cathodic protection testing** **74**. Where in the reasonable opinion of the undertaker— (a) the authorised development might interfere with the existing cathodic protection forming part of a pipeline; or (b) a pipe-line might interfere with the proposed or existing cathodic protection forming part of the authorised development, Exolum and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection. **Expenses**

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	75.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable costs and expenses incurred by Exolum in, or in connection with— (a) the inspection, removal, alteration or protection of any apparatus; or (b) the construction of any new apparatus; or (c) the watching and inspecting the execution of any specified work; or (d) imposing reasonable requirements for the protection or alteration of apparatus, which may reasonably be required in consequence of the execution of any such works as are required under this Schedule. (2) The scrap value of any apparatus removed under the provisions of this Part of Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal. (3) If in accordance with the provisions of this Part of this Schedule— (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions (except where this has been solely due to using the nearest currently available type); or (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 54 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Exolum by virtue of sub-paragraph (1) is reduced by the amount of that excess. (4) For the purposes of sub-paragraph (3)— (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined. (5) An amount which apart from this sub-paragraph would be payable to Exolum in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer

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	on Exolum any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit. **Damage to property and other losses** **76**.—(1) Subject to the following provisions of this paragraph, the undertaker must— (a) pay Exolum for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum for which Exolum is legally liable as a result of legally sustainable claims brought against Exolum by any third party solely arising out of the carrying out of any relevant works and any protective building works; (b) pay the cost reasonably incurred by Exolum in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works or protective building work; (2) The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1). (c) pay the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and any protective building works. (2) Irrespective of anything to the contrary elsewhere in this Part of this Schedule— (a) the undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and (b) neither the undertaker nor Exolum are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Part of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents. (3) Exolum must give to the undertaker reasonable notice of any claim or demand to which this paragraph 76 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Exolum must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. Exolum must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing. (4) In this paragraph—

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	"protective building works" means the exercise by the undertaker of the powers conferred by article 22 (protective works to buildings); and "relevant works" means such of the authorised development as— (a) does, will or is likely to affect any apparatus; or (b) involves a physical connection or attachment to any apparatus. **Co-operation and reasonableness** 77.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Part of this Schedule or Exolum makes requirements for the protection or alteration of apparatus under this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Exolum's undertaking and Exolum must use its best endeavours to cooperate with the undertaker for that purpose. (2) The undertaker and Exolum must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed. **Miscellaneous** 78. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Exolum in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Part of this Schedule. In the case of any inconsistency, the provisions of this Order, including this Part of this Schedule, prevail. **Emergency circumstances** **79**. —(1) The Promoter acknowledges that Exolum provides services to Her Majesty's Government, using its apparatus, which may affect any works to be carried under this Order. (2) In the following circumstances, Exolum may on written notice to the Promoter immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and Exolum shall not be in breach of its obligations to proceed: (a) circumstances in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

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	(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by Her Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or (c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by Her Majesty's Government or the Secretary of State; or (d) any circumstances identified as such by the COBRA committee of Her Majesty's Government (or any successor committee thereof); or (e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity. (3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect Exolum's apparatus "mid-works") to account for the suspension. (4) Exolum shall not be liable for any costs, expenses, losses or liabilities the Promoter incurs as a result of the suspension of any activities under this paragraph or delays caused by it.
Applicant's comments	This submission appears to be a copy of the protective Provisions for the benefit of Exolum. The Applicant notes that protective provisions have now been agreed between the Applicant and Exolum. Therefore, the version of protective provisions contained within the dDCO **[TR010044/APP/3.1v6]** at Deadline 10, are the final form protective provisions as agreed.
Veale Wasbrough Vizards LLP on behalf of Exolum Pipeline Systems Limited	**Question 4.3.6** Today, we have received a copy (from the Applicant's solicitors, Womble Bond Dickinson) of your questions to various parties on statutory undertaker powers. Please would note our involvement so that we can receive correspondence directly from PINS. We answer the questions in the appendix to this letter. **Part 6 of Schedule 9** On the question of Part 6 of Schedule 9 we note that the Applicant did not submit the version of the Part that was in circulation between the parties at Deadline 8. We expected the Applicant to submit the version that we sent to them and we were not informed otherwise until this month. We attach a comparison between the version that was submitted by the Applicant at Deadline 8 and the version that we sent to Womble Bond Dickinson for inclusion. We ask that you substitute Part 6 for the version enclosed with this letter. The matters apparently still under discussion are commented on below:

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Amendment	Reason
Deletion in para 70(a)	Duplication of 77(2)
Deletion in para 73(3)	Duplication of 77(2) The deemed consent is unacceptable. It is a mechanism that avoid the dispute resolution provisions provided for elsewhere in the DCO; there is no reason to do this. The type of works to be carried out to protect or divert a pipeline are universally carried out by operators of cross-country oil pipelines. These are specialist works by contractors trained to work around live pipelines. The works are never carried out by promoters of other projects, so a deemed consent provision is not reasonable in the circumstances. If the Applicant is unhappy with a position that Exolum does or does not take, then it should exercise the dispute resolution procedures. The Applicant is not stuck; there is always a way through to resolve matters.
Compensation - Addition in para 76(1)(c)	Exolum's apparatus is a cross-country oil pipeline. It cannot be temporarily diverted for works and any shut-down incurs costs in fuel that must be reprocessed. If the pipeline needs to be drained, then this is specialist work and the pipeline may need to be subsequently inspected before being recommissioned. Again, the fuel in the pipeline will need re-processing. This is National Highways project and the Applicant needs to pay for the costs to which Exolum will be subject in order to accommodate its project. These are special costs that are not incurred in the ordinary course of Exolum's business. There is no reason, otherwise than for this scheme, for the pipeline to be shut down.
Emergency Circumstances - para 79	Exolum's network feeds the Ministry of Defence, among other customers. The wording in paragraph 79 mirrors the obligations to the UK Government which Exolum is under. If the Applicant or PINS is not prepared to allow this wording, we reserve the right to raise this with the Secretary of State.

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	Statutory Undertaker Regarding the point generally around statutory undertakers, the rights to the pipeline cannot be acquired compulsorily without serious detriment to the undertaker's business. There is no alternative pipeline that can be used, either temporarily or permanently. The Pipe-lines Act 1962 provides pipeline operators such as Exolum with compulsory powers. However, they are, practically speaking, hard to exercise. They require special parliamentary procedure for a standalone CPO. It would still take many months to prepare for and promote such an order. It is entirely correct for such powers to be contained in the DCO, not only because all relevant works should be within the Order Limits, but for the purposes of expediency. There does not appear to be any advantage for a third party to have to be involved in another set of CPO proceedings, merely for Exolum's enabling works for the Applicant's scheme. Regarding the comments about transfer of liability to Exolum, this would be unacceptable from Exolum's point of view. Exolum would not be carrying out the proposed works to its pipeline but for the Applicant's scheme. Therefore, any exercise of CPO powers would need to be entirely at the Applicant's expense. Furthermore, the timing of a new CPO by special parliamentary procedure may be unacceptable for the Applicant's scheme and prolong the time period for works. Any action under the Pipe-lines Act would need to be completed before the existing pipeline could be shut down, and indeed before any works could be carried out by the Applicant within the vicinity of the pipeline. **Conclusion** We ask that PINS substitutes Part 6 of Schedule 9 for the version that we submitted to the Applicant for submission at Deadline 8. In respect of CPO powers, we ask that the Applicant retains the power to acquire new rights for any diverted or (as are necessary) protected pipeline and that those rights can be transferred to Exolum. The imposition on Exolum of a requirement to use the Pipe-lines Act 1962 will be unreasonably burdensome and will have a detrimental effect on the Applicant's expected programme. All costs must be met by the Applicant. If PINS disagrees with Exolum's position on these matters we ask for a reasoned response so that we may review this further with Exolum and escalate matters - particularly around the contents of Part 6 of Schedule 9 of the DCO - as required. a) There is a power in clause 11 of the Pipe-Lines Act 1962 but this is only exercisable by the relevant Minister using a special parliamentary procedure. It is impracticable to start such a procedure part of the way through the programme for works for the Applicant's scheme. We would expect such a procedure to take several months at best to gain Parliamentary time to hear it, and perhaps over a year if it was contested. It does not appear to be for the benefit of the affected landowners or the Applicant's scheme to require the use of another CPO procedure when the powers could be contained within the DCO.

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	Exolum is able to carry out the works it needs to protect its existing pipeline and the expected diversion. Exolum owns approximately 2,000 km of cross-country oil pipeline in the UK. Its ability to deliver these works are self-evident and it carries out works of this type regularly each year in the maintenance of its network and where affected by schemes such as this. We are not sure what further evidence is reasonably required. b) & c) for the Applicant to answer. d) It is not clear what is meant by "should the Applicant disagree with d)". What is "d)" in this question? In any event, Exolum should not be liable for the payment of compensation to third parties. Any compulsory acquisition of rights necessary for the diversion and therefore to enable the Applicant's project to proceed, should be met in full by National Highways. There is no benefit to Exolum for this scheme. Any attempt to pass such costs or liability on to Exolum would be unreasonable and Exolum objects to it. PART 6 FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM ~~LIMITED~~ LTD **Application** **68**. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect. **Interpretation** **69**. In this Part of this Schedule — "alternative apparatus" means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipe-line operator in a manner no less efficient than previously; "apparatus" means the pipe-line and storage system owned or maintained by Exolum and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; "Exolum" means Exolum Pipeline System ~~Limited~~ Ltd and any successor in title; "functions" includes powers and duties; "in" in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

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	"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by Exolum and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in Exolum in respect of those items; "plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; "specified work" means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and "working day" means any day other than a Saturday, Sunday or English bank or public holiday. **Acquisition of apparatus** **70**. Irrespective of any provision in this Order or anything shown on the land plans— (a) the undertaker must not acquire any apparatus or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with Exolum; and b) any right of Exolum to maintain, repair, renew, adjust, alter or inspect any apparatus must not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Exolum, ~~such consent not to be unreasonably withheld or delayed;~~ and; **Removal of apparatus and rights for alternative apparatus** **71**.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of Exolum to maintain and use that apparatus in that land and to gain access to it must not be extinguished until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Exolum. (2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give Exolum not less than 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Exolum reasonably needs to remove any apparatus) the undertaker must, subject to subparagraph (3), afford to Exolum the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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	(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in subparagraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must afford to and, if necessary, acquire for the benefit of Exolum the necessary facilities and rights (equivalent to those currently enjoyed by Exolum) for the construction, maintenance and use of the alternative apparatus and access to it. (4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration). (5) Exolum must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 54, and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraphs (2) and (3), proceed as soon as reasonably practicable using all reasonable endeavours to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule. (6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to Exolum that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Exolum. (7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3000 millimetres of the apparatus without Exolum's consent. **Facilities and rights for alternative apparatus** **72**.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Exolum facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Exolum or in default of agreement settled by arbitration in accordance with article 54 (arbitration). (2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must— (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and

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	(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted. (3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Exolum as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. **Retained apparatus: protection** **73**.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than 28 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 72(2), the undertaker must submit to Exolum a plan of the works to be executed. (2) The specified work must be executed only in accordance with the plan submitted under subparagraph (1) and approved by Exolum in accordance with ~~. (3) Any approval of Exolum required under this paragraph —(a) must not be unreasonably withheld or delayed; (b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans or receipt of further particulars if such particulars have been required by Exolum for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and (c) may be given subject to~~ such reasonable requirements as may be made in accordance with sub-paragraph (4) by Exolum for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and Exolum is entitled to watch and inspect the execution of the specified work. (4) Any requirements made by Exolum under sub-paragraph (3) must be made within a period of 14 days (unless a shorter period is otherwise agreed in writing between the undertaker and Exolum) beginning with the date on which a plan under sub-paragraph (1) is submitted to it. (5) If Exolum in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph 89(2). (6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing any specified work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

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	(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Exolum notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with subparagraph (2) in so far as is reasonably practicable in the circumstances. (8) In relation to any specified work, the plan to be submitted to Exolum under sub-paragraph (1) must include a material statement describing— (a) the exact position of the work; (b) the level at which the work is to be constructed or renewed; (c) the manner of its construction or renewal; (d) the position of any apparatus; and (e) by way of detailed drawings, every alteration proposed to be made to the apparatus. **Cathodic protection testing** **74**. Where in the reasonable opinion of the undertaker— (a) the authorised development might interfere with the existing cathodic protection forming part of a pipeline; or (b) a pipe-line might interfere with the proposed or existing cathodic protection forming part of the authorised development, Exolum and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection. **Expenses** **75**.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable costs and expenses incurred by Exolum in, or in connection with— (a) the inspection, removal, alteration or protection of any apparatus; or (b) the construction of any new apparatus; or (c) the watching and inspecting the execution of any specified work; or (d) imposing reasonable requirements for the protection or alteration of apparatus, which may reasonably be required in consequence of the execution of any such works as are required under this Schedule.

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	(2) The scrap value of any apparatus removed under the provisions of this Part of Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal. (3) If in accordance with the provisions of this Part of this Schedule— (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions (except where this has been solely due to using the nearest currently available type); or (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 54 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Exolum by virtue of sub-paragraph (1) is reduced by the amount of that excess. (4) For the purposes of sub-paragraph (3)— (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined. (5) An amount which apart from this sub-paragraph would be payable to Exolum in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Exolum any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit. **Damage to property and other losses** **76**.—(1) Subject to the following provisions of this paragraph, the undertaker must— (a) pay Exolum for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum for which Exolum is legally liable as a result of legally sustainable claims brought against Exolum by any third party solely arising out of the carrying out of any relevant works and any protective building works; (b) pay the cost reasonably incurred by Exolum in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works or protective building work; (2) The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a

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	plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1). (c) pay the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and any protective building works. (2) Irrespective of anything to the contrary elsewhere in this Part of this Schedule— (a) the undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and (b) neither the undertaker nor Exolum are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Part of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents. (3) Exolum must give to the undertaker reasonable notice of any claim or demand to which this paragraph 76 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Exolum must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. Exolum must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing. (4) In this paragraph— "protective building works" means the exercise by the undertaker of the powers conferred by article 22 (protective works to buildings); and "relevant works" means such of the authorised development as— (a) does, will or is likely to affect any apparatus; or (b) involves a physical connection or attachment to any apparatus. **Co-operation and reasonableness** 77.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Part of this Schedule or Exolum makes requirements for the protection or alteration of apparatus under this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Exolum's undertaking and Exolum must use its best endeavours to cooperate with the undertaker for that purpose.

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	(2) The undertaker and Exolum must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed. **Miscellaneous** 78. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Exolum in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Part of this Schedule. In the case of any inconsistency, the provisions of this Order, including this Part of this Schedule, prevail. **Emergency circumstances** **79**. —(1) The Promoter acknowledges that Exolum provides services to Her Majesty's Government, using its apparatus, which may affect any works to be carried under this Order. (2) In the following circumstances, Exolum may on written notice to the Promoter immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and Exolum shall not be in breach of its obligations to proceed: (a) circumstances in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or (b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by Her Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or (c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by Her Majesty's Government or the Secretary of State; or (d) any circumstances identified as such by the COBRA committee of Her Majesty's Government (or any successor committee thereof); or (e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity. (3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect Exolum's apparatus "mid-works") to account for the suspension.

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	(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the Promoter incurs as a result of the suspension of any activities under this paragraph or delays caused by it.
Applicant's comments	Regarding the protective provisions, The Applicant confirms that protective provisions have now been agreed between the Applicant and Exolum. Therefore, the version of protective provisions contained within the dDCO **[TR010044/APP/3.1v6]** at Deadline 10, are the final form protective provisions as agreed. The Applicant understands Exolum's position to reflect its own with respect to the powers under Article 11. It is correct for the benefit of the Order to be capable of passing to Exolum without Secretary of State approval for the reasons given by Exolum and its statutory powers already in existence. As clarified by the Applicant in its response to Q4.3.6 at **[REP9-024]**, liability for compensation payments would rest with the Applicant on the drafting of Article 11 **[REP9-004]**.
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 – Article 13 – Construction and maintenance of new, altered or diverted streets and other structures 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 Examination. 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: • 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 b) Additionally, the ExA proposes adding additional wording in the dDCO and corresponding explanation in the EM to secure: • The definition of De-Trunking Handover Plan and De-trunked Road Standards, in Article 2; and	

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• 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. c) LHAs and Applicant to provide suitable wording for b).	
Bedford Borough Council	From a highways point of view, we welcome the ExA's suggestion to amend Articles 13 and 14 which will increase the controls for the LHA to assess the assets they inherit in a timely manner.
Applicant's comments	The Applicant strongly rejects Bedford Borough Council's submission and has provided a full response regarding the ExA's proposals for Articles 13 and 14 in the Applicant's Comments on the ExA's proposed schedule of changes to the dDCO **[REP9-024]**. It is of significant concern to the Applicant that Bedford Borough Council would support a suggestion that they should not be required to act reasonably given the requirement for them to do so as part of their public law duties. National Highways has a duty to maintain the condition of the Strategic Road Network (SRN) to a safe and serviceable standard in accordance with the Design, Manual for Roads and Bridges, and the Local Highway Authorities can be assured that any de-trunked assets will meet this standard. Similarly, in respect of new or altered roads, National Highways is not a commercial developer, it is a government company who has been entrusted to maintain and improve the SRN to make journeys safer and more reliable. It is quite wrong for the Local Highway Authorities to seek betterment to assets they inherit which cannot reasonably be justified. National Highways is publicly funded and ultimately any increased costs of delivering such betterment would reduce funds available to maintain and improve other sections of the SRN. The Scheme will bring substantial benefits and provide significant opportunities for growth in the local area which local authorities will directly benefit from.
Cambridgeshire Authorities	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. 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]**. The ExA's points raised in relation to de-trunking at b) also generally apply in relation to new highways. The 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. 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). Accordingly, the Councils propose that Articles 13(1) and (2) be replaced with the following:

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	"(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 the relevant local highway authority from the date of issue of the certificate by the local highway authority. *(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."* A new definition of "new highway standards" is required in article 2 as follows: *""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"* 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. b and c) The Councils' proposed wording is set out in the response to Q4.4.2.1.

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Applicant's comments	The Applicant strongly rejects the Councils' submission and has provided a full response regarding the ExA's proposals for Articles 13 and 14 in the Applicant's Comments on the ExA's proposed schedule of changes to the dDCO **[REP9-024]**. As noted above in the Applicant's comments on Bedford Borough Council's response, it is of significant concern to the Applicant that the Cambridgeshire Authorities would support a suggestion that they should not be required to act reasonably given the requirement for them to do so as part of their public law duties. The Applicant notes that the Cambridgeshire Authorities have never previously sought the removal of the word 'reasonable' within Articles 13 and 14 in their own proposed drafting of the dDCO (see for example the version submitted at Deadline 8 **[REP8-028]**) and no justification of this has been provided given their public law duties. Indeed, the Cambridgeshire Authorities are content to act 'reasonably' in the draft legal agreement currently being negotiated between the parties and the Cambridgeshire Authorities have never suggested any intention to act anything other than reasonably. The Applicant has adopted many of the amendments proposed by the Cambridgeshire Authorities at Deadline 8 in its updated version of the dDCO submitted at Deadline 9 **[REP9-004]**. For the reasons given in the Applicant's response to Q4.4.1.1 previously at **[REP9-024]**, the Applicant considers that this adequately deals with the ExA's request for amendments in relation to the process, timing and approval of the handover for new or altered highways. The Applicant will ensure the standards of roads to be detrunked are to the reasonable satisfaction of the LHA and this is secured through the present drafting of Article 14. Article 13 has been updated in the Applicant's dDCO submitted at Deadline 9 **[REP9-004]** to include a process for certification and adoption of new roads by the Local Highway Authorities which is based on the process that has been followed for new roads in respect of the A14 scheme. Accordingly, there is no instance when a road could be detrunked or a new or altered road inherited by the Local Highway Authorities which is not to a standard fit for the Local Highway Authorities' purposes. The existing A428 to be de-trunked as part of the Scheme is maintained by National Highways to a safe and serviceable standard in accordance with the Design, Manual for Roads and Bridges and will meet, at least, this standard at the point of de-trunking. Therefore, it is not necessary to include specific de-trunking standards in the DCO. In the case of the new, altered or diverted roads to be inherited by the Local Highway Authorities, the parties are close to reaching agreement on design standards and the Applicant understands that the Local Highways Authorities agree that the Applicant should be entitled to deliver roads within agreed standards without any further approval. Anything otherwise, has the potential to frustrate the delivery of the Scheme, to delay its delivery and to substantially increase the cost of delivering the Scheme unnecessarily and without reasonable justification (as explained further in comments to responses above). In any event, the Applicant considers that including certified design standards in the DCO, whether or not agreed between the parties, would remove necessary flexibility and would potentially set an unwelcome precedent for future schemes where different design standards may be required depending on the specific circumstances in question. The Applicant has submitted its own without prejudice wording in response to the Examining Authorities proposals. Whilst the Applicant considers such wording should not be necessary for inclusion in the DCO, it would form a more appropriate solution than the Councils' draft wording because it provides the requisite flexibility for dealing with matters specific to the detailed design of this Scheme.

No.	Question/Applicant's Comments
Q4.4.2	**Article 14 – Classification of roads, etc.**
Q4.4.2.1 – Article 14 – Classification of roads, etc. 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.	
Bedford Borough Council	From a highways point of view, we welcome the ExA's suggestion to amend Articles 13 and 14 which will increase the controls for the LHA to assess the assets they inherit in a timely manner.
Applicant's comments	The Applicant has provided a full response regarding the ExA's proposals for Articles 13 and 14 in document **[REP9-024]**. Please also see the Applicant's response to Q4.4.1.1 above.
Cambridgeshire Authorities	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. If the ExA is minded to incorporate additional detail into Article 14, the Councils propose the following amendments. Article 14(9) would be replaced with the following drafting: *"(9) The undertaker may only make a determination for the purposes of paragraph (8) with: (i) the consent of the Secretary of State; and (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 local highway authority's local road network by reference to the de-trunked road standards and that the handover plan has been complied with.* New paragraphs (10) and (11) would be added to Article 14 as follows: *"(10) Where the local highway authority withholds its agreement under paragraph (9), the local highway authority shall give reasons.* *(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."* A new definition of "handover plan" would be required in article 2 as follows:

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	""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: *(a) the assets that make up the roads to be detrunked;* *(b) the existing condition of the roads to be detrunked;* *(c) the age and condition of the carriageway surfacing;* *(d) the inventory and condition information;* *(e) drainage facilities, to include outfalls, pollution control and attenuation measures;* *(f) signage and road marking;* *(g) lighting* *(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)"* A new definition of "de-trunked roads standards" would be required as follows: *""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"*

No.	Question/Applicant's Comments
Applicant's comments	The Applicant has incorporated elements of the Council's proposed wording into the dDCO at Deadline 9 **[REP9-004]**. As explained above, National Highways has a duty to maintain the condition of the Strategic Road Network (SRN) to a safe and serviceable standard in accordance with the Design, Manual for Roads and Bridges, and the Local Highway Authorities can be assured that any de-trunked assets will meet this standard. It is quite wrong for the Local Highway Authorities to seek betterment of assets they inherit which cannot reasonably be justified. National Highways is publicly funded and ultimately any increased costs of delivering such betterment would reduce funds available to maintain and improve other sections of the SRN. The Scheme will bring substantial benefits and provide significant opportunities for growth in the local area which local authorities will directly benefit from. . The Applicant has proposed its own without prejudice wording. Whilst the Applicant considers such wording should not be necessary for inclusion in the DCO, it considers this would be more appropriate than that proposed by the Cambridgeshire Authorities because it acknowledges that the assets to be de-trunked are already in-existence, already maintained to a safe standard, and there will be a limit to the design standards which can be met retrospectively. In addition, as explained above, the Applicant considers that including certified design standards in the DCO, whether or not agreed between the parties, would remove necessary flexibility and would potentially set an unwelcome precedent for future schemes where different design standards may be required depending on the specific circumstances in question. This equally applies to the Cambridgeshire Authorities' proposed definition of 'handover plan', which includes a level of detail which is too restrictive, would limit flexibility and is unnecessary to include in a DCO. Similarly, setting a precise timescale within which to provide the handover plan to the Local Highway Authorities in advance of handover is unnecessarily prescriptive, and could lead to unintended consequences where de-trunking is unnecessarily and unreasonably delayed. Finally, it is not necessary for the Local Highway Authorities to agree the date of de-trunking where the consent of the Secretary of State is required. The Local Highways Authorities will be consulted on the de-trunking date and have the opportunity to make representations to the Secretary of State if they consider that consent to de-trunking should be withheld. To require otherwise would go significantly beyond the statutory process defined in section 10 of the Highways Act 1980.
Q4.4.3	**Article 15 – Power to alter layout etc. of streets**
Article 15 – Power to alter layout etc. of streets No amendments proposed by the ExA at this stage.	
Cambridgeshire Authorities	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]**.

No.	Question/Applicant's Comments
Applicant's comments	The Applicant has updated Articles 15 and 17 in the dDCO **[TR010044/APP/3.1v6]** submitted at Deadline 10 to incorporate a system by which further information can be requested by the street authority, provided by the Applicant and assessed by the street authority in advance of a deemed approval. This largely reflects the wording proposed by the Cambridgeshire Authorities at Deadline 8 **[REP8-028]** but has been amended to ensure that there is a controlled timeframe within which further information can be requested and considered. This protects against potential for delays to the construction of the Scheme whilst still allowing a greater depth of assessment by the street authority.
Q4.5	**Part 4 Supplemental Powers**
Q4.5.1	**Article 22 – Protective work to buildings**
Notice period 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.	
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.5.2	**Article 23 – Authority to survey and investigate the land**
Q4.5.2.1 - Provision relating to land adjacent to but outside the Order limits Also refer to Q4.2.2.4 and Q4.3.1.1. 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.	
Cambridgeshire Authorities	The Councils have no comments to add on this matter.

No.	Question/Applicant's Comments
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Notice period 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.	
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.6	**Part 5 Power of Acquisition**
Q4.6.1	**Article 25 – Compulsory acquisition of land**
Q4.6.1.1 Confirm if the drafting change proposed at CAH1 [**REP3-021**, 9a] has been completed, and identify where with EL reference.	
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.

No.	Question/Applicant's Comments
Q4.6.2	**Article 28 – Compulsory acquisition of rights and imposition of restrictive covenants**
Q4.6.2.1 - Article 28 – Compulsory acquisition of rights and imposition of restrictive covenants 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. a) As such, the ExA proposes including the following wording in Article 28: *"The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5"* b) Alternatively, the Applicant may provide further justification permitting the creation of undefined restrictive covenants over all of the order land.	
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.6.3	**Article 40 – Temporary use of land for carrying out the authorised development**
Q4.6.3.1 - Article 40 – Temporary use of land for carrying out the authorised development The ExA remains concerned that the interaction between Articles 28 and 40 could permit the creation of undefined 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]. 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. b) In any event, the Applicant confirmed 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	

No.	Question/Applicant's Comments
	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): *"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—* ~~*(a) acquiring new rights over any part of that land under article 28 (compulsory acquisition of rights and imposition of restrictive covenants); or*~~ ~~*(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)."* c) Alternatively, if in response to a), the Applicant confirms that there are cross over plots then the ExA proposes including the following drafting: *"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—* *(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* *(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)."*
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities. The Applicant's position on the ExA's proposal is responded to in full in **[REP9-024]**.
Q4.6.3.2 – Notice Period 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 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.	

No.	Question/Applicant's Comments
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities. The Applicant's position on the ExA's proposal is responded to in full in **[REP9-024]**.
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.	
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.7.2	**Article 58 – Works in the River Great Ouse**
Q4.7.2.1 - Article 58 – Works in the River Great Ouse No further amendments proposed by the ExA, subject to comments from EA.	
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.

No.	Question/Applicant's Comments
Q4.8	**Schedule 2 - Requirements**
Q4.8.1	**Part 1 - Requirements**
Q4.8.1.1 – 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 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".	
Cambridgeshire Authorities	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: *""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;"* *""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."* The Councils also refer to their comments on Requirements 3 and 4 in their response to Q4.1.1.2 above.
Applicant's comments	The Applicant has provided a full response to Q4.8.1.1 in **[REP9-024]**. Within this the Applicant made a clear case regarding the appropriateness of the existing definitions for the second and third iteration EMPs. The Applicant does not consider the Council's drafting proposals to be in line with such position nor even fulfil the ExA's original intention. The additional wording proposed by the Cambridgeshire Authorities in relation to the detail for the outline plans is unnecessary and superfluous. The requirement for an electronic form suitable for inspection is unclear and ambiguous. Neither is appropriate drafting to include in a statutory instrument. In any event, the Applicant has included drafting within the First Iteration EMP **[TR010044/EXAM/6.8v4]** to deal with the Cambridgeshire Authorities request for an electronic copy suitable for inspection.

No.	Question/Applicant's Comments
Q4.8.1.2 – Requirement 6 - Landscaping Replace the word *"reflect"* with *"in accordance with"* in Paragraph 2 for the same reasons in Q4.8.1.1.	
Cambridgeshire Authorities	The Councils agree with the ExA's proposals in relation to this matter.
Applicant's comments	The Applicant strongly rejects the Cambridgeshire Authorities' submission and has provided a full response to Q4.8.1.2 in **[REP9-024]**. The landscaping measures are illustrative and 'reflect' (or 'substantially in accordance', as proposed by the Applicant at Deadline 9) is therefore the appropriate term. The Applicant has provided numerous precedent DCOs which use the same formulation as proposed by the Applicant.
Q4.8.1.3 – Requirement 11 – Traffic management The ExA proposes deleting the word *"substantially"* from R11(1) for the same reasons in Q4.8.1.1.	
Cambridgeshire Authorities	The Councils agree with the ExA's proposals in relation to this matter.
Applicant's comments	The Applicant strongly rejects the Cambridgeshire Authorities submission and has provided a full response to Q4.8.1.3 in **[REP9-024]**. The OCTMP is an 'outline' document and therefore the final document cannot be expected to do more than 'substantially accord'. Again, the Applicant has provided numerous precedent DCOs which use the same formulation as proposed by the Applicant.
Q4.8.1.4 – Requirement 12 – Detailed Design 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 S#tatutory 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 and LAs to provide suggested wording.	

No.	Question/Applicant's Comments
Cambridgeshire Authorities	The Councils refer to their comments on Q4.4.1.1. 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: *"12(1) The detailed design for the authorised development must accord with:* *(a) the preliminary scheme design shown on the works plans, the general arrangement plans and the engineering section drawings;* *(b) the principles set out in the environmental masterplan;* *(c) the design principles set out in the scheme design approach and design principles, and* *(d) in respect of any highway to be vested in the local highway authority under article 13, the requirements of the local highway authority,* *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.* *(2) Where amended details are approved by the Secretary of State under paragraph (1), those details are deemed to be substituted for the corresponding 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.* *(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."*
Applicant's comments	The Applicant strongly disagrees with the Examining Authority's proposal to require further engagement on detailed design post consent and has provided a full response to Q4.8.1.4 in **[REP9-024]**. During the course of the Examination, the Applicant prepared the Scheme Design Approach and Design Principles **[REP9-015]** to provide all interested parties with further information on the parameters and principles to which the detailed design will adhere. This includes significant information on structures, palette and finishes and has been developed in response to engagement with, and requests from, interested parties during the course of the Examination. As already explained, in order to meet the programme for Scheme delivery, the detailed design of the Scheme will be substantially complete at the point the Secretary of State determines whether to grant consent. Therefore, should further engagement be required post consent, this will cause substantial delay and significantly increase the costs of delivery of the Scheme at the public's expense. Those costs will be in the order of tens of millions of pounds for even a short delay lasting a few months. Due to the seasonal construction requirements, a short delay of a matter of months can delay the Scheme programme by a year. Therefore, even a short delay could also substantially delay delivery of the Scheme benefits to local communities. There are alternative mechanisms already secured within the DCO through which the Cambridgeshire Authorities (and other

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	interested parties) have the ability to influence detailed design. For example, through consultation on the Second Iteration EMP in accordance with Requirement 3 and the Landscaping Scheme in accordance with Requirement 6. Additionally, the Local Highway Authorities have a certification right over the design of new or altered highways by virtue of Article 13. Accordingly, in practice, there will be little to gain from requiring further engagement post consent, but a requirement for this post consent will result in substantial public cost and delay to delivering the benefits of the Scheme. The Applicant has explained how it intends to continue to engage with interested parties on the detailed design in the run up to the Secretary of State's decision on whether to grant consent. Without prejudice to the Applicant's position that it is not necessary to include such a requirement, the Applicant has proposed its own wording which would minimise any potential delay or additional cost in delivering the Scheme, should the ExA recommend this. The wording proposed by the Cambridgeshire Authorities has continued to develop during the course of the Examination, and now goes far beyond the ExA's request by integrating elements of approval processes that are unprecedented for National Highways DCOs and already sufficiently dealt with in the DCO articles. The Cambridgeshire Authorities have also sought to remove all flexibility by only allowing deviations to the preliminary scheme design shown on the works plans, the general arrangement plans and the engineering section drawings. No justification for this new drafting has been proposed, and it is difficult to see how there could be any justification given that changes must not alter the conclusions of the Environmental Statement and be approved by the Secretary of State, in consultation with the local authorities. If this new approach was taken on future National Highway schemes, it would have significant, and potentially unintended, consequences for national cost and delivery programmes by reducing efficiencies, inhibiting innovation and delaying the delivery of national significant infrastructure projects and the many public benefits which flow from them.
Q4.8.1.5 – 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.	
Bedford Borough Council	The Council support the ExA's intentions to introduce additional provisions relating to the Requirement to help provide greater clarity. The Authority have, alongside Historic England, been in discussions with the Applicant on this matter and consider that the re-worded Requirement found in Annex A of the 'Joint Position Statement on methodology, practicalities and the value of relocating Brook Cottages' document **[REP8-017]** now provides sufficient clarity. The Requirement is also supported by the 'Brook Cottages Heritage Strategy' **[REP8-021]** which adds further detail including what might prevent reconstruction (see 5.1.2 which is agreed with). Both documents are mutually supportive and provide a clear pathway in terms of the discharge of the Requirement. The Authority consider the wording is robust enough to ensure the retention of the heritage asset if it is feasible and proportionate, and also a means for recourse if parties are in disagreement at the fundamental stage of considering future action.

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Applicant's comments	The Applicant welcomes this response from BBC confirming that the Requirement wording within the dDCO submitted at Deadline 9 **[REP9-004]** (identical to that appended to the Joint Position Statement on methodology, practicalities and the value of relocating Brook Cottages submitted at Deadline 8 **[REP8-017]**) now provides sufficient clarity. The form of Requirement included in the dDCO has also been agreed by Historic England.
Cambridgeshire Authorities	The Councils have no comments to add on this matter.
Applicant's comments	The Applicant notes the comment from the Cambridgeshire Authorities.
Q4.8.1.6 – 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 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.	
Bedford Borough Council	Having reviewed comments by the ExA on articles 13, 14 and 18 we welcome the comments of the ExA but note that the issues raised in article 18 relate purely to operational noise and do not work to resolve concerns in relation to the working of the borrow pits during the construction phase. The applicant has still yet to supply information to satisfy the LA Environmental Health with respect to above noise and dust from the borrow pits. These concerns were set out at examining question 3.6.2.1 and the Local Authorities response to it on deadline 8.
Applicant's comments	The Applicant confirms that Requirement 18, dealing with noise mitigation, is specific to the operation of the Scheme. The Applicant has set out its position in response to the Examining Authority's proposal in **[REP9-024]** and in response to Q4 in the Applicant's response to the Rule 17 request for further information **[TR10044/EXAM/9.121]** submitted at Deadline 10. Dealing with Bedford Borough Council's response, please see the Applicant's response to Bedford Borough Council's comments on Q3.6.2.1 in document **[REP9-023]**. In summary, this confirms that an assessment of the noise impacts specifically relating to the borrow pits is reported in paragraphs 2.3.47-2.3.48 (Site 4) and paragraphs 3.3.39-3.3.40 (Site 14) of the Borrow Pits Excavation and Restoration Report **[REP3-011]**. All mitigation in the Borrow Pits Excavation and Restoration Report **[REP3-011]** has been carried through into the Borrow Pit

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	Management Plan (Annex R of the First Iteration Environmental Management Plan **[REP9-009]**) and so is secured through Requirements 3 and 4 of the DCO.
Cambridgeshire Authorities	The Councils agree with the ExA's proposed amendment and will comment on the Applicant's additional wording at D10.
Applicant's comments	As explained in response to Q4.8.1.6 in **[REP9-024]** the Applicant has included additional wording within the First Iteration EMP **[REP9-009]** which ensures that the surfacing material procured for the Scheme meets the requirements of the manufacturer's specification to deliver the reduction in traffic noise assessed in the Environmental Statement. In its response, the Applicant also confirmed that it had not identified commitments in made DCOs for road Schemes which related specifically to operational noise monitoring. The Applicant refers to its responses to REP1-048bv in the Applicant's Comments on Written Representations **[REP3-008]** submitted at Deadline 3 and REP3-041b in the Applicant's Comments on Deadline 3 Submissions **[REP4-036]** submitted at Deadline 4, which provide further details on why post opening road traffic noise monitoring is not normally undertaken. Please see the Applicant's response to Q4 in the Applicant's response to Rule 17 request for further information **[TR10044/EXAM/9.121]** submitted at Deadline 10.
Q4.8.1.7 – New Requirement 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 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.	
Bedford Borough Council	The ExA's suggestion of the inclusion of a new requirement on Traffic Monitoring and Mitigation for the Proposed Development's operational phase and the subsequent impact on the LHA's ability to carry out the Traffic Management Duty is also welcome. Suggested wording from the LHAs has already been put forward for the new requirement in **REP6-074**. In addition to a new requirement on the operational phase, BBC would welcome the inclusion of a new requirement on construction traffic and baseline monitoring. Suggested text for such is also included in **REP6-074**.

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	Bedford Borough Council endorse the position of Central Bedfordshire Council on this matter (to be submitted at deadline 9).
Applicant's comments	In response to the Examining Authority's request, the Applicant has proposed a requirement for traffic monitoring at certain locations during the operational phase of the Scheme. The Applicant has also secured baseline monitoring for a number of areas through the OCTMP **[TR010044/APP/7.4v5]**. The Applicant strongly disagrees with the proposals set out in **[REP6-074]** as explained in the Applicant's response to Q 3.11.2.1 at **[REP8-014]**. The Applicant's initial proposals were set out in **[REP9-034]** (Operational Phase Monitoring) and **[REP9-036]** (Construction Phase Monitoring), which the Applicant considered to be a reasonable, proportionate and evidence-based response to the request for monitoring by the Local Highway Authorities. The Applicant's final position on traffic monitoring during the construction phase can be found in **[TR010044/EXAM/9.116v2]** and during the operational phase can be found in **[TR010044/EXAM/9.118v2]**.
Central Bedfordshire Council	CBC welcomes a new DCO requirement on this issue.
Applicant's comments	In response to the Examining Authority's request, the Applicant has proposed a requirement for traffic monitoring at certain locations during the operational phase of the Scheme. The Applicant has also secured baseline monitoring for a number of areas through the OCTMP **[REP9-011]**. The Applicant strongly disagrees with the proposals set out in **[REP6-074]** as explained in the Applicant's response to Q 3.11.2.1 at **[REP8-014]**. The Applicant's initial proposals were set out in **[REP9-034]** (Operational Phase Monitoring) and **[REP9-036]** (Construction Phase Monitoring), which the Applicant considered to be a reasonable, proportionate and evidence-based response to the request for monitoring by the Local Highway Authorities. The Applicant's final position on traffic monitoring during the construction phase can be found in **[TR010044/EXAM/9.116v2]** and during the operational phase can be found in **[TR010044/EXAM/9.118v2]**.
Cambridgeshire Authorities	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.
Applicant's comments	In response to the Examining Authority's request, the Applicant has proposed a requirement for traffic monitoring at certain locations during the operational phase of the Scheme. The Applicant has also secured baseline monitoring for a number of areas through the OCTMP **[REP9-011]**. The Applicant strongly disagrees with the proposals set out in **[REP6-074]** as explained in the Applicant's response to Q 3.11.2.1 at **[REP8-014]**. The Applicant's initial proposals were set out in **[REP9-034]** (Operational Phase Monitoring) and **[REP9-036]** (Construction Phase Monitoring), which the Applicant considered to be a reasonable, proportionate and evidence-based response to the request for monitoring by the Local Highway Authorities. The Applicant's final position on traffic monitoring during the construction phase can be found in **[TR010044/EXAM/9.116v2]** and during the operational phase can be found in **[TR010044/EXAM/9.116v2]**.

Appendix A – Department for Transport Letter dated 9 June 2016

Department for Transport

Department for Transport
Zone 3/27
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: 020 7944 6344

Web Site: www.gov.uk/dft

9th June 2016

Dear Tim Reardan, Highways England General Counsel

Development Consent Order (DCO) Requirements Sign-Off Process

I am writing to confirm the agreed arrangements for how the Planning Act 2008 DCO Requirements sign-off will be handled between the Department for Transport and Highways England.

Under the Planning Act 2008 the Planning Inspectorate covers certain matters of detailed design within a project's DCO by setting out individual "requirements". There is a statutory need for discharge of these requirements by the promoter (Highways England) to be approved, or "signed off" by a competent authority. Subject to the rigorous, evidenced governance in the attached, DfT (Road Investment Strategy Client Division, Strategic Roads, Economics & Statistics) will provide the requirements sign-off function for Strategic Road Network DCO projects. I am writing on the issue of how Ministers assure themselves of compliance now as this has been recently raised by the Planning Inspectorate.

The process is designed to provide clear evidence and assurance, with third party corroboration, of discharge of requirements. Evidence of discharge will be set out in a succinct document, listing all relevant 3rd party consultation correspondence and documentation, together with copies or links to those documents.

Requirements are on matters RIS Client Division sponsors are fully familiar with in their current roles. As such, based on our discussions, the level of work for RIS

Client is expected to be low, in the order of 5 working days/project, and without the need for additional specialist skills. However, independent specialist technical consultants will be funded by Highways England in exceptional circumstances.

Two projects (A14 Cambridge to Huntingdon and M4 J 3-12) with requirements in need of sign-off are planned to proceed to made DCO in 2016, with none currently scheduled for 2017. As discussed, once the agreed process is underway, we will jointly review its working to ensure our approach is efficient and effective, and, taking forward programme into account, revise accordingly.

Paul Williams will act as the DfT key contact, providing oversight and co-ordination, the Highways England key contact is Mima Garland. The key contacts will be jointly responsible for ensuring that propriety guidance is adhered to, to avoid any allegations of bias in the decision making process.

Yours faithfully

[redacted]

DfT: Paul O'Sullivan (Director Strategic Roads)

CC:
Highways England:
Jim O'Sullivan
Peter Adams
David Brewer
Anna Daroy
Mike Wilson
Mark Bottomley
Martin Fellowes
Martin Clarke
Sally Keith
Mima Garland
DfT:
Jon Griffiths
Mike Boon
Andrew Brunning
Paul Williams
Attachments:
Propriety guidance
Process flowchart