

A12 Chelmsford to A120 widening scheme

TR010060

9.54 Written submission of oral case for Issue Specific Hearing 4

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A12 Chelmsford to A120 scheme
Development Consent Order 202[]

Written submission of oral case for Issue Specific Hearing 4

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1	Applicant's responses to Representations made at Issue Specific Hearing 4 z(ISH4) held on Thursday 27 April 2023 at 10.00am.....	1
1.1.	Introduction	1
1.2.	Post-hearing submissions in response to matters raised at Issue Specific Hearing 4 (ISH4)	2

1 Applicant's responses to Representations made at Issue Specific Hearing 4 (ISH4) held on Thursday 27 April 2023 at 10.00am.

1.1. Introduction

- 1.1.1 ISH4 for the A12 Chelmsford to A120 Widening Scheme (DCO) application was held virtually on Microsoft Teams and in person at First Floor, Kingsland Church, 86, London Road, Lexden, Colchester, CO3 9DW on Wednesday 26 April 2023, commencing at 10.00am.
- 1.1.2 The Examining Authority (ExA) invited the Applicant to respond to matters raised at the Hearing but also in writing following ISH4.
- 1.1.3 This document summarises the responses made at ISH4 by the Applicant and also seeks to fully address the representations made by Affected Parties, Interested Parties and other parties attending.
- 1.1.4 The Applicant has responded to the topics raised by each of the attending parties in the sequence that the ExA invited them to speak and provides cross-references to the relevant application or examination documents in the text below.
- 1.1.5 Where it assists the Applicant's responses, the Applicant has appended additional documentation to this response document.

1.2. Post-hearing submissions in response to matters raised at Issue Specific Hearing 4 (ISH4)

Ref:	Comment/Representation by:	Questions/Issues Raised at the ISH4	Applicant's Response
1.		Welcome, introductions, arrangements for Hearing	
2.		Articles and Schedules of the dDCO	
2.1		<p>Articles and Schedules of the dDCO</p> <ul style="list-style-type: none"> • Applicant to briefly highlight what changes have been made to the dDCO and explain why; • IPs will be invited to ask questions of clarification in relation to the dDCO Articles and Schedules; and • ExA will ask questions in respect of Articles and Schedules of the dDCO. 	<p><i>Changes made to the dDCO:</i></p> <p>Schedule of Changes to draft DCO [REP4-054] was submitted at Deadline 4 detailing all the changes made to the draft DCO up until Deadline 4.</p> <p>The Applicant does not propose to go through in detail any referencing, typographical errors or missing words (some following the Section 51 advice and others identified at a later stage).</p> <p>A summary of the changes made to the Articles of the dDCO at Deadline 3 and Deadline 4 is set out below, save for changes to Schedule 2 (Requirements) which is dealt with in the section below:</p> <p><u>Substantial changes made for Deadline 3:</u></p> <p>The Applicant notes that many changes appearing in the tracked changed document of the draft DCO submitted at Deadline 3 [REP3-003] were not changes to the dDCO but were showing as such due to formatting issues resulting from the validation process of orders. It is noted that the Schedule of Changes submitted at Deadline 4 [REP4-054] and the dDCO</p>

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			<p>(Tracked Changes) Rev 4 [REP4-009] are accurate and most up to date documents reflecting amendments to Version 3 and Version 4 of the dDCO.</p> <p>Definitions have been updated and clarified to align with changes within the dDCO to ensure that those referred to throughout the dDCO are defined.</p> <p>The definitions of statutory undertakers have been changed to accurately reflect the names of those statutory undertakers.</p> <p>Changes have been made to the definition of "<i>maintain</i>" within Article 2. As the Panel will be aware, it is usual for the ability for additional works to be provided for in this article as long as it does not give rise to any materially new or significant adverse effects. The reference to "significant adverse effects" has been included to reflect precedent in the M42 Junction 6 DCO as made.</p> <p>Article 15 (Classification of roads, etc.):</p> <p>The previous reference to "planning authority" was replaced with the "highway authority" to reflect the intention.</p> <p>Article 40 (Temporary use of land for carrying out the authorised development):</p> <p>Paragraph (2) of this article was amended following the Issue Specific Hearing 2, to confirm the agreed position requiring that the notice of intended entry should be served on the owners or occupiers not less than 28 days (instead of 14) before entering or taking temporary possession.</p> <p>Article 46 (Felling or lopping of trees and removal of hedgerows)</p> <p>In response to ExQ1, 6.0.6, Article 46 has been amended to clarify that removal of any hedgerows within the order will be subject to consultation with the relevant planning authority.</p>

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			<p>Article 53 (Crown Rights):</p> <p>Minor amendments have been made to Article 53 to replace references to "Her Majesty" with "His Majesty".</p> <p>Schedule 1 – Authorised Development</p> <p>Minor changes have been made to Schedule 1 to correct Colchester's city status and an additional reference to Section 20 of the Planning Act 2008 in respect of the Authorised Development to reflect the inclusion of the intermediate gas pipe diversion as a second Nationally Significant Infrastructure Project (NSIP).</p> <p>Schedule 9 (Hedgerows):</p> <p>Part 1 and 2 of Schedule 9 have been amended to reflect the relevant conclusions in the Environmental Statement.</p> <p>Additional provisions have been added regarding proposed works to trees in the Blue Mills following the making of a Tree Preservation Order in July 2022. Schedule 11 – Protective Provisions</p> <p>In response to ExQ1, 6.0.3, changes have been made to Schedule 11 to clarify that the definition of "commence" within the Protective Provisions Schedule 11 should be that included in Article 1 of Schedule 2 (Requirements).</p> <p><u>Substantial Changes made at Version 4 [REP4-009]</u></p> <p>Article 10 (Limits of deviation):</p>

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			<p>A new paragraph (4) has been added to reflect the fact that there is a need for limits of deviation for PRoW and cycle tracks which is shown by reference to the limits of deviation shaded purple in the Streets, Rights of Way and Access Plans. An updated version of the Streets, Rights of Way and Access Plans have been submitted to the Examination at Deadline 4 [REP4-003 and REP4-004].</p> <p>This approach broadly follows the precedent set by the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (A428 Order).</p> <p>Articles 15(5) and 20(2)(a) have also been updated to reflect this.</p> <p>Article 14 (Construction and maintenance of new, altered or diverted streets and other structures):</p> <p>Paragraph (6) in relation to powers to the construction, alteration or diversion of streets not intended to be a public highway has been deleted as this power is not required for this scheme.</p> <p>Article 46 (Felling or lopping of trees and removal of hedgerows)</p> <p>In addition to changes made for version 3, Article 46 has been amended to include a reference to a new Part 3 of Schedule 9 authorising works to potentially important hedgerows to ensure that all hedgerows are covered by the dDCO (Deadline 4).</p> <p>Article 47 (Trees subject to TPO):</p> <p>The referencing within Article 47 was changed from Part 3 to Part 4 as a consequence of the new Part 3 that was introduced into Schedule 9.</p> <p>Schedule 5 (Land in which new rights may be required)</p>

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			<p>This was amended to reflect the updated ownership position set out in the Book of Reference.</p> <p>Schedule 8 (Special Category Land):</p> <p>Changes to Schedule 8 relate to changes in plot numbers reflecting a change in ownership of part of the Special Category Land.</p> <p>Schedule 9 (Hedgerows):</p> <p>A new Part 3 has been added (Removal of important hedgerows). Due to the iterative nature of the design process, in the lead up to the DCO submission there were changes made to the Order Limits and a small number of hedgerows were not within the provisional order at the time of the original hedgerow survey. This survey has now been completed and the results are reflected in this new Part 3 of Schedule 9.</p> <p>The previous Part 3 which set out Trees subject to Tree Preservation Order has been renamed as Part 4.</p>
2.2	ExA	Can the Applicant provide the ExA with a clear definition of linear works and how far these works go?	<p>Linear works refer to the main carriageway works to the road and bridge works as opposed to the construction for a bund for example.</p> <p>The draft DCO for the A303 Stonehenge Scheme included a definition of the term "linear works" within the Article 7 (Limits of deviation) stating that:</p> <p>"(8) In this article, references to—</p> <p>(a) "linear works" are references to any works shown on the works plans by way of a centreline; and</p> <p>(b) "non-linear works" are references to any other works shown on the works plans.</p>

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2.3	<p>Essex County Council (ECC)</p> <p>Michael Humphries KC</p>	<p>As noted in ECC's oral submissions at ISH2 and in summaries of oral submissions [REP3-035], ECC are concerned with Article 14 (Construction and maintenance of new, altered or diverted streets and other structures) and ECC's liability to maintain de-trunked sections of road. ECC understand that no change has been made to reflect this concern. ECC will be submitting proposed further amendments which may allow for this to be dealt with.</p> <p>In relation to Article 15 (Classification of roads, etc.), the Applicant stated during the ISH3 that the A14 Cambridge to Huntingdon Improvement Scheme DCO is the only other scheme dealing with de-trunking. The effect of the wording in Article 15(6) regarding the Secretary of State's consent is that the Applicant may not de-trunk until such permission has been granted. A provision should be added, reflecting the A14's Article 12(5) as article 15(7).ECC will provide drafting to this effect.</p>	<p>The Applicant notes that discussions have been had with ECC after ISH3 where both parties have recognised the need to move issues forward.</p> <p>The Parties have discussed a route map and will explore mechanisms to achieve agreement on issues. Various meetings will be scheduled prior to Deadline 5 to narrow any outstanding issues.</p> <p>With the above in mind, the Applicant notes that ECC's statement that the Applicant have stated the A14 Cambridge to Huntingdon Improvement Scheme DCO to be the only scheme dealing with de-trunking is not correct. The A14 Cambridge to Huntingdon Improvement Scheme is, however, the only scheme of which the Applicant is aware which required a further stage – the consent of the Secretary of State – before a dual carriageway could be de-trunked. Of the more recent schemes, only The Applicant is only aware of the A428 Black Cat to Caxton Gibbet Scheme which has contained similar provisions regarding de-trunking. Other orders such as the A47 Blofield, Tuddenham, Thickthorn and Wansford schemes have contained the same wording as is contained in the dDCO</p> <p>In response to ECC's comments in relation to Article 14, the Applicant waits to receive further detail from ECC.</p> <p>In relation to Article 16 (Speed limits), the Applicant has held an initial workshop with ECC on 5 May 2023. During this workshop the Applicant provided a narrative of the rationale behind speed limit proposals. The Applicant will consider ECC's concerns about the enforceability of some proposed speed limits, and should any changes to the proposed speed limits arise from this workshop the Applicant will inform the ExA of the outcome.</p> <p>In relation to Article 18 (Street works), the drafting contained in Silvertown Tunnel is unusual drafting and is not to the Applicant's knowledge included in any made National Highways DCO. Most of the powers contained in Article 18 are ones which a statutory undertaker may exercise in a street by serving notices. The Applicant therefore considers that it would be excessive for it to be required to obtain consent from the street authority before exercising these powers.</p>

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		<p>In relation to Article 16 (Speed limits), there are four new sections of road that are set out in Schedule 3. Appendix C to ECC's summary of oral submissions [REP3-035] set out ECC's views on the changes of speed limits. ECC require Schedule 3 to be amended, hopefully by agreement, to secure more appropriate speed limits on some of the roads contained in Schedule 3.</p> <p>Article 18 (Street Works), ECC, as noted in Page 9 of ECC's summary of oral submission [REP3-035] suggests new wording be inserted based on the Silvertown Tunnel's Article 6(3) which would be Article 18(3) of the A12 DCO</p> <p>In relation to Article 20 (Permanent stopping up and restriction of use of streets and private means of access), ECC have made comments on permanent rights of way and stopping up and our rights of way unit was looking at those. ECC will provide more detail in writing.</p> <p>In relation to Article 23 (Traffic Regulation), ECC have referred to and have highlighted issues with the</p>	<p>In response to ECC's comments in relation to Article 20, the Applicant waits to receive further detail from ECC.</p> <p>In response to issues raised in relation to Article 23 (Traffic Regulation), this was addressed in the Applicant's Written submissions of oral case for Issue Specific Hearing 2 [REP3-013] and the position remains the same, being that Article 23 would allow the Applicant to impose speed limits on local highways, but only by way of revoking, amending or suspending an existing speed limit order. Such an order cannot be made except with the consent of Essex County Council as local traffic authority.</p> <p>In relation to Article 24(6), the Applicant confirmed that this can be discuss in more detail with ECC but note that the Applicant must ensure that progress in the implementation of the scheme is not delayed by consenting issues. The 28 day time period has been accepted in most of National Highways DCOs. By way of example of the many DCO that contain a 28 day period this was accepted in the A47 Tuddenham to Easton Scheme in Article 20, A19/A1058 Coast Road Junction Improvement Scheme in Article 15, A14 Cambridge to Huntington Improvement Scheme in Article 17, A417 Missing Link Article 21 and the A428 Black Cat Article 20</p>

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		<p>intention of the article as provided for in the Explanatory Memorandum within the summary of previous submissions [REP3-035] on pages 9 and 10.</p> <p>In relation to Article 24(6) (Discharge of water), ECC require the time limit of 28 days to be extended to 56 days.</p>	
2.4	ExA	Request for clarification why the Silvertown Tunnel DCO is unprecedented drafting	The Applicant has considered whether there is precedent for consent to be required under the street works article (Article 17 of the draft DCO). Some DCOs do require consent (e.g. Silvertown Tunnel) but consent is not required in others (e.g. A47 Blofield, A428 Black Cat). However the Applicant would reiterate its view that consent should not be required because the powers set out in Article 17 replicate (with a little more detail) the definition of "street works" under Section 48 of the New Roads and Street Works Act 1991, and statutory undertakers are not required to obtain consent from the street authority before carrying out street works under that Act.
2.5	<p>Messing and Inworth Action Group (MIAG)</p> <p>Stephen Humphreys (SH)</p>	<p>MIAG thank the Applicant for updating the DCO as a result of previous comments but would like further justification on the points that have not been agreed.</p> <p>Can the Applicant confirm whether the definition of "maintain" should</p>	<p>The Applicant is happy to respond to MIAGs concerns and understand why MIAG require the Applicant to review and determine whether we need to include more information. The Applicant welcomes MIAG concern with ECC's position. The Applicant is moving forward with discussions with ECC and these shall continue. If any agreement is reached with ECC, MIAG shall be updated.</p> <p>In MIAG's concern that the definition of "maintain" in Article 2 of the dDCO, the Applicant did not intend for this to include the term "environmental". The inclusion of the term is not necessary and the definition, as it stands, is consistent with the precedent drafting.</p>

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		<p>refer to significant adverse <i>environmental</i> effects.</p> <p>In relation to Article 10(5) (Limits of deviation) , MIAG have suggested that the highway authority be involved with consultation of the vertical limits of deviation to ensure ongoing engagement from ECC.</p> <p>MIAG would like to be updated on the discussions between the Applicant and ECC in regards to Articles 14, 15(5) and 15(6).</p> <p>In relation to Article 16, MIAG require clarification on what is meant by "open to traffic".</p> <p>MIAG requires clarity on the power contained in Article 17 and how this is to be used in Inworth and the extent to which the powers are going to be deviated from in order to understand the actual impacts.</p> <p>MIAG note that on page 53 they request that a reference should be included at the top of Schedule 1 for section 20 to reflect the ongoing discussions over the fact that they believe the project is an alteration project not a construction project.</p>	<p>The Applicant has previously responded in detail to MIAG's concern regarding section 22 of the Planning Act 2008 at page 261 of the Applicant's Response to Written Representations [REP3-009]. The Applicant's position is that the A12 scheme consists of development that forms alteration of a highway for the reasons set out in the Applicant's Response to Written Representations [REP3-009]. MIAG's submission regarding the construction between Feering and Marks Tey is incorrect and fails to recognise the wording of the Planning Act 2008 which is that an NSIP includes some or all of the subsections of the definition.</p> <p>In relation to MIAG's request for clarification on what is meant by "<i>open to traffic</i>" in Article 16, this was addressed at the ISH2 and the Applicant response was and is that "open to traffic" has precedent in other DCOs. The term is not defined within the dDCO, but has an obvious meaning. It refers to the throwing open of the road to traffic, which brings a highway constructed by a highway authority into existence.</p> <p>A scheme will be "Open for Traffic" when works are substantially complete, and the scheme is open to traffic. This will vary between projects, however there may at that stage still be partial or overnight closures to finalise any remedial works.</p> <p>Open for Traffic is a key project milestone which must be reported to DfT and ORR.</p> <p>National Highways has a governance requirement as to the steps which must be taken when a road is open for traffic, and this always includes the implementation of a communications strategy which would include a press release.</p> <p>Essentially the date when a highway is open for traffic is the date when the road is thrown open to traffic and becomes a highway maintainable at the public expense.</p> <p>Article 17 broadly replicates the wording of Sections 75 (variation of widths of carriageways and footways) and 77 (alteration of levels) of the Highways Act 1980. These are powers which may be exercised at any time by the relevant highway authority without giving notice or obtaining a legal order.</p>

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		<p>MIAG notes an issue on associated development within Schedule 1 and seeks clarification as to why the Applicant want to include all of the powers listed. the Applicant have previously justified these powers by reference to precision (at Inworth in particular) but MIAG seeks to understand the extent to which the powers are going to be used. If the powers are not required, it should not be included in the DCO</p>	<p>Schedule 1 sets of the Works which the Applicant intends to undertake. Paragraphs (a) to (t) of Schedule 1 set out the "ancillary or related development" which may be required as part of those works or to allow those works to be carried: development under paragraphs (a) to (t) must be "for the purposes of or connected with" those works. Such works must also not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement. Which, if any, of paragraphs (a) to (t) may be relied upon in relation to any particular Work will be depend on a number of factors, including physical factors present on site at the time and detailed design.</p> <p>By way of example, Work No. 122 permits the 'permanent works plans improvements to B1023 Kelvedon Road including localised widening of the carriageway and provision of means of access to adjoining land'. In this case it would be likely that the Applicant would rely on the following paragraphs of Schedule 1:</p> <ul style="list-style-type: none"> (c) would permit the layby in front of the church to be constructed, essential for the operation of the church, particular during funeral services (f) would permit, the footways, accesses, and driveways alongside the main highway (h) would permit the connections of existing drainage, such as lateral storm connections to the drainage network (i) would permit the replacement of street furniture (j) would permit the alteration of the watercourses required for the drainage and flood mitigation proposals (k) would permit the associated landscaping and hedgerows (o) would permit the storage of plant, such as earthworks plant overnight, and for local welfare facilities

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2.6	ExA	<p>Article 60 (Certification of documents etc.) and Schedule 12 (Documents to be Certified) do not include any design document such as the Design Principles or the Design Access Statement. Can the Applicant explain why these have not been included?</p>	<p>The documents that are listed as documents to be certified are included as they are referred to within the DCO to ensure clarity as to what is being referred to. The Design Principles and Design and Access Statement are not listed in Article 60 as they are not referred to in the dDCO. The Applicant has responded to this in detail in the Applicant's Response to the ExA's First Round of Written Questions [REF 2-025]. The Design Principles or Design and Access Statement are not referenced in Requirement 10 either and therefore do not need to be listed as certified documents and plans are referred to instead.</p>
2.7	Essex Local Access Forum (ELAF)	<p>It would be helpful if agreements regarding PRoW and bridges in relation to Article 20 could be made available prior to Deadline 5 to allow interested parties to comment at Deadline 5</p>	

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2.8	<p>Messing and Inworth Action Group (MIAG)</p> <p>Stephen Humphreys (SH)</p>	<p>MIAG endorses ECC's position and note that the Applicant have not changed the DCO regarding Article 20(b). MIAG has suggested that the design principles be referred to in Requirement 10 (detailed design) which was adopted in the A428 Black Cat to Caxton Gibbet.</p> <p>In relation to the point on comments in Appendix C to the Applicant's comments on Written Representations submitted after Deadline 4, the Applicant did not provide clarity as to how powers are to be exercised and whether they will.</p> <p>MIAG look forward to meeting with the Applicant and have been looking to sort a meeting</p>	<p>The Applicant has attempted to schedule a meeting with MIAG so is grateful for MIAG's meeting proposal. The Applicant will respond to any further issues in writing.</p>
3		<p>Schedule 2 of the dDCO – Requirements</p>	

Ref:	Comment/Representation by:	Questions/Issues Raised at the ISH4	Applicant's Response
3.1		<p>Schedule 2 of the dDCO – Requirements</p> <ul style="list-style-type: none"> The Applicant will be asked to provide a brief overview of the proposed Requirements in Schedule 2 of the dDCO and changes that have been made to them and why; 	<p>At the hearing the Applicant provided an overview of the Requirements of Schedule 2 of the dDCO that had been amended since the previous ISH2.</p> <p>Requirement 2 (Time limits):</p> <p>The wording has been amended (at Deadline 3) at the request of Essex County Council – replacing the word "begin" with "commence" to reflect recent caselaw (Tidal Lagoon (Swansea Bay) PLC -v- Secretary of State for Business Energy and Industrial Strategy and others, [2022] EWCA Civ 1579).</p> <p>The Applicant will review whether further clarity is required on the definition "commence" and sections 154 and 155 of the PA 2008 in response to ECC's comments at ISH3.</p> <p>Section 154(1) of the Planning Act 2008 provides that development for which development consent is granted must be begun before the end of "the prescribed period" or such other period (whether longer or shorter than that prescribed) as is specified in the order granting the consent. Section 155(1) of the Planning Act 2008 provides that, for the purposes of that Act, development is taken to begin on the earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out. Section 155(2) of the Planning Act 2008 defines a "material operation" as meaning any operation except an operation of a prescribed description.</p> <p>Consequently, it is not necessary define the meaning of begun/beginning development as sections 154 and 155 of the Planning Act 2008 will apply. As amended for D5 by the Applicant DCO only uses the phrases "commence" and "commencement" in relation to interpreting the timing for compliance with requirements in Schedule 2. The drafting refers to parts of the development commencing, whilst requirement 2 refers to the development beginning in accordance with S155 of the 2008 Act.</p>

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			<p>The Applicant has further sought to clarify matters by providing for a specific pre-commencement plan which will apply to initial works not forming a part of the authorised development.</p> <p>Requirements 3 (Second Iteration EMP), 4 (Third Iteration EMP), 6 (Contaminated Land and groundwater), 11 (Surface and foul water drainage):</p> <p>These requirements were amended to reflect that the Environment Agency has been made a consultee subject to it being limited to "matters related to its functions".</p> <p>Requirement 6 (Contaminated land and groundwater)</p> <p>Requirement 6 makes provision for dealing with any contaminated land and groundwater discovered during construction of the works. This requirement specifies requirements that will apply if any unexpected contamination is encountered during construction. This requirement was changed to reflect agreement with the EA in relation to the preparation of risk assessments and the prevention of impacts on controlled waters.</p> <p>This requirement is based on requirement 15 of the model provisions and recent National Highways orders such as requirement 6 of the 7 of the M42 Junction 6 Order.</p> <p>Requirement 13 (noise mitigation): This requirement was changed to clarify that the noise mitigation measures referred to in this requirement must be retained <u>and maintained</u> [additional text] reflecting our responses to the ExQ1.</p>

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3.2	ExA	What is the Applicant's view on the suggested amendment to Requirement 10 to include design documents, as was adopted in the A418 Black Cat to Caxton Gibbet Development Consent Order 2022?	As noted in the Applicant Response to ExA's First Written Questions [REP2-025], the inclusion of such documents within Requirement 10 is not required on the basis that it would serve to secure these within the order when they are already secured through other detailed documents. In the Applicant's Response to ExA's First Written Questions [REP2-025], the Applicant provided an updated version [of the Design Principles [REP2-006]] with an additional column explaining each design principle and where it is secured. The Applicant maintains the position that this amendment is not required on the basis that the Design Principles are already secured elsewhere.
3.3	ExA	The ExA thanks the Applicant for updating the Design Principles [REP2-006] but the document needs to be more specific as the document refers to itself.	The Applicant will update the Design Principles to address the ExA's comments. An updated version of the Design Principles is being submitted at Deadline 5.
3.4	ECC	Requirement 10 (specifically paragraph 1) as currently drafted makes it clear that detailed design must accord with the preliminary scheme design as shown on the Works Plans and the Engineering Drawings, and the principles in the Environmental Masterplan. There may be other forms of mitigation that are currently in discussion (e.g. de-trunking, wider-monitoring mitigation and village specific mitigation) which is not reflected in the preliminary	The Applicant deals with this issue below.

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		<p>scheme design or within the Environmental Masterplan. ECC would like Requirement 10 to be amended to avoid the possibility of the Applicant being restricted in the future. Whether or not such amendment is contained in the A428 Black Cat to Caxton Gibbet Development Consent Order 2022, ECC considers it necessary that design principles exist which set out the scheme design approach as the design principles. It is essential that Requirement 10 is subject to any works of mitigation that are required under other requirements. Whilst ECC understand the essence of Requirement 10, the Applicant must ensure that it does not accidentally preclude itself from doing anything better than that.</p>	
3.5	ExA	<p>Can the Applicant explain why the General Arrangement Plans are not referred to in Requirement 10?</p> <p>The ExA notes that this was adopted in the A418 Black Cat to Caxton Gibbet Development Consent Order 2022 at Requirement 12.</p>	<p>The Applicant has previously dealt with this issue in writing [REP2-025]. The General Arrangement Plans are illustrative so are not secured and this is standard for NH DCOs.</p> <p>There are various constraints on the design that are not included in Requirement 10, for example all the commitments included in the Register of Environmental Actions and Commitments as they are not within the order. Any changes that may be agreed in relation to de-trunking for example would become a new requirement. Requirement 10 specifically allows for future changes subject to approval by the Secretary of State, provided that such changes</p>

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			would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.
3.6	ECC	In relation to Requirement 10, it is only the Applicant who can apply for the written consent of the SoS. ECC require such amendments to be made so that it is not only the Applicant with the power to apply to the Secretary of State for such consent. ECC would welcome additional text, such as " <i>subject to..</i> ".	<p>The Applicant will consider adding text to Requirement 10 to clarify the existence of other restrictions.</p> <p>It is clear under Requirement 10(1)(c) that should the Applicant seek such approval from the Secretary of State, this will require consultation with the planning and highway authority which allows ECC to make representations to the Secretary of State. The Applicant notes that it is the Applicant's function and not ECC's function to apply for these changes directly, or to change the design.</p>
3.7	MIAG	As detailed in Written Representations [REP2-084], MIAG considers the definition of "commence" to be insufficient on the basis that it does not include a number of operations the Applicant can carry out, some of which are significant. MIAG's concern is that this is broad and propose that it is linked to what has been assessed in the Environmental Statement. In the Applicant's Comments on Written	<p>MIAG's understanding of preliminary works is not correct. It is usual for these works to be included within the DCO and they are incorrect in their statement that these are outside of what has been assessed in the Environmental Statement.</p> <p>The Applicant has already responded to ECC's concern regarding design and Requirement 10.</p> <p>In relation to MIAG's comments on Requirements 14 ad 16, the Applicant believes that MIAGs intention was to refer to Articles 14 and 16 and not requirements (there is currently no Requirement 16 and Requirement 14 is a standard requirement dealing with approvals and amendments to approved details). If it is correct that MIAG's intention was to address ECC's concerns in relation to Articles 14 and 16, the Applicant is pursuing discussions with ECC accordingly.</p>

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		<p>Representations [RE3-009], the Applicant justified this approach with reference to precedent, however MIAG requires clarity on how it can be used in practice.</p> <p>In relation to the First Iteration of the EMP [REP4-022] and how this documents feeds in to the Second and Third Iterations, MIAG propose that this is limited.</p> <p>In relation to design, MIAG supported ECC's propose amendments.</p> <p>In relation to Requirement 14, MIAG have suggested that amendments to be undertaken in consultation with the local highways or planning authorities</p> <p>In relation to Requirement 16, MIAG still consider that ECC should be able to request further information from the Applicant as part of the consultation process for the discharge of requirements.</p>	<p>The Applicant recognises that local authorities need to be involved in discussions regarding requirements.</p> <p>These matters are currently in discussion with ECC and draft wording was provided to them prior to a meeting on 4 May 2023. We will provide the Examining Authority with a copy of the drafting once those discussions have progressed, so that the Applicant can provide as agreed a position as possible.</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the ISH4	Applicant's Response
3.8	Chelmsford City Council (CCC)	CCC shares ECC's concerns about Requirement 10 and the lack of provision for change, specifically in relation to the need for mitigation at Boreham and the design of Paynes Lane Bridge. CCC are keen to be involved in discussions that the Applicant are having with ECC in relation to this as there will be local planning authority impacts that will need to be considered.	<p>The Applicant has already responded to ECC's concern regarding design and Requirement 10.</p> <p>The Applicant recognises that local authorities need to be involved in discussions regarding requirements.</p>
3.9	ECC	<p>ECC's proposed a new requirement for de-trunking, ECC have, in Comments on Responses to ExQ1 (REP3-035) provided additional wording requiring approval by the local highway authority.</p> <p>On page 22 of ECC's De-Trunking Scheme Brochure [REP3-082], ECC have explained that the preferred option would be to move one carriageway and re-purpose the other. ECC would expect the requirements to make clear that the de-trunking scheme would meet that objective. ECC do not require the removal of the carriageway.</p>	<p>The Applicant acknowledges ECC's points on de-trunking. To include the drafting proposed by ECC, the decision maker would need to be satisfied that those proposals would not give rise to different significant effects. Such assessment of ECC's proposals does not exist and ECC are not willing to provide one.</p> <p>In relation to monitoring and mitigation of future issues, the Applicant notes that the proposed requirement, as drafted, does not include any methodology to identify how to determine whether or not the impacts are a result of the A12 scheme or are as a result of any other factor which may arise in the future.</p> <p>These matters are currently in discussion with ECC and draft wording was provided to them prior to a meeting on 4 May 2023. We will provide the Examining Authority with a copy of the drafting once those discussions have progressed, so that the Applicant can provide as agreed a position as soon as possible.</p> <p>The Applicant will continue to work with ECC to narrow down any other points and provide a document setting out what is agreed and what is not agreed between the parties.</p>

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		<p>In relation to "Other associated development" at page 88 of the dDCO [REP4-008], ECC have powers to carry out works as the highway authority. A new requirement is required to ensure these works do not correspond with the timings of the A12 works. Alternatively, the Applicant have the ability to fund ECC should they not wish to carry out the works themselves</p> <p>In relation to the proposed new requirement for monitoring and managing, ECC wish to see a similar provision to what was adopted in the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 and the Lower Thames Crossing dDCO and requires a mechanism to exist which allows mitigation. ECC, at ISH3 identified Requirement 17 of the A14 Cambridge to Huntingdon Improvement Scheme which they submit would be appropriate for this scheme.</p> <p>ECC require a further requirement for village specific mitigation that would capture the measures set out</p>	

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		<p>in the Applicant's Letter of Intent as well as additional measures such as average speed cameras.</p> <p>ECC are discussing further issues with the Applicant such as the details of local operating agreements prior to works; pre and post- construction surveys of local diversion routes; and works that effect the local highway network.</p> <p>ECC will submit appropriate draft wording and will set out, in writing, any areas that cannot be agreed after discussions with the Applicant.</p>	
3.10	Lynfield Properties Limited (Lynfield Properties)	<p>Lynfield Properties has raised concerns in relation to the impact the design of the A12 Scheme will have to their Witham filling station. It considers that the design of the scheme currently causes accesses to the filling station ineffective. Additionally, the change of road patterns caused as a consequence of the new Junction 21 will deter HGV drivers from using the site. Lynfield Properties does not accept that it is necessary to stop up the slip road. Lynfield Properties deny the</p>	<p>The Applicant notes that the details contained in Lynfield Properties submission at Deadline 1 [REP1-036] and Lynfield Properties' comments on Written Representations [REP3-049] are inconsistent. The Applicant will continue discussions with Lynfield Properties.</p>

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		<p>Applicant's claim within previous responses to representations [REP3-009] of benefit cause by additional traffic going [south/north]. The Applicant's proposal to repurpose the slip road to allow cars to turn to proceed north is commercially ineffective, even with a technical solution, due to the acuteness of the manoeuvre. HGV drivers will be required to turn so far to the left within the site which would adversely impact the internal layout of the site, rendering it unusable. The HGV driver is being asked to make a perfect turn and our evidence suggests that this is atypical, causing it to be commercially redundant. A complication arises due to the granted planning permission for 400 houses to the north and opposite Hatfield Road by Vistry Homes. This will impact the roundabout, if implemented and so the A12 Scheme must be able to tie in with this development or be able to proceed without it.</p> <p>Lynfield Properties will submit details of such issues in writing.</p>	

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4		Schedule 11 – Protective Provisions	
4.1		<p>Schedule 11 Protective Provisions</p> <ul style="list-style-type: none"> The Applicant and Interested Parties will be asked to provide an update on progress regarding the bespoke Protective Provisions set out in Part 3 to Part 7 of Schedule 11, an explanation of any important differences of view and a timescale for resolution. 	<p>Part 3: Anglian Water (AW)</p> <p>It is understood that these PPs are in an agreed form save for one point which has only recently been raised by AW in relation to paragraph 27 of the PPs and how close works must be before a detailed plan of works must be submitted. AW are seeking to increase the width contained in previous protective provisions.</p> <p>The Applicant is working with AW to find an acceptable form of words and are awaiting to hear a response from AW.</p> <p>AW has raised concerns about access to Witham Water Recycling Works.</p> <p>As detailed in the Applicant response [REP1-002], the Applicant understands that AW is content that the PPs protect their access to the Witham Water Recycling Works and is not seeking additional protections.</p> <p>What remains is concerns in relation to the detail of how that access is to be protected. The Applicant is engaging with Anglian Water so as to fully understand the detail of its access requirements.</p> <p>The Applicant proposing to make changes to the OCTMP in order to deal with AW's concerns, to be submitted at Deadline 6.</p> <p>Part 4: National Grid</p> <p>These PPs are in an agreed form and we are just sorting out legal matters. We suspect that NG will be in a position to withdraw its objections within the next two weeks.</p>

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			<p>Part 5: Cadent</p> <p>The PPs are almost agreed. There are ongoing discussions on very technical matters. We expect these to be finalised before the end of the examination.</p> <p>Part 6: Network Rail</p> <p>Network Rail has made a written submission in lieu of attending ISH4 commenting that its objection remains in place, but acknowledging that negotiations are continuing.</p> <p>They have mentioned that there are outstanding concerns and have specifically mentioned signalling as an issue.</p> <p>The Panel will have seen from the Statement of Common Ground [REP4-039] that frequent meetings are held with Network Rail to seek to progress and resolve technical issues. However, details of Network Rail's concerns in relation to signalling have not yet been provided to National Highways.</p> <p>It might be helpful for the Panel to understand how relations with Network Rail work in practice, how the signalling issue has arisen and why the Applicant considers that no issues arise under section 127 of the Planning Act 2008.</p> <p>The protective provisions provide a restriction on the undertaker acquiring land or rights from Network Rail without their consent.</p> <p>In order to progress the scheme, the Applicant therefore has to agree to acquire land and rights from Network Rail by private treaty. Those negotiations are proceeding.</p> <p>In order for Network Rail to dispose of land or rights it will first undertake an internal process called clearance which is divided into two parts: business clearance and technical clearance. The signalling issue has arisen out of the technical clearance process as a technical issue which</p>

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			<p>needs to be resolved before clearance can be issued, and therefore before land or rights can be transferred for the affected plots.</p> <p>Two key points can therefore be made:</p> <ol style="list-style-type: none"> 1. Firstly, the protections afforded by the protective provisions preclude compulsory acquisition land and rights without their consent. This means that the Applicant must engage with Network Rail to secure acquisition by agreement. The protective provisions therefore provide sufficient power to Network Rail to avoid any conflict of the scheme with the railway and the ExA can be confident that no issues arise under section 127 of the Planning Act 2008 (serious detriment); and 2. Secondly the emergence of safety concerns around signalling through the clearance process, which is part of the process under which the Applicant is seeking to acquire under private treaty, demonstrates that this is the case. It allows Network Rail to control the situation: <ol style="list-style-type: none"> a. It can seek further information about the scheme; b. It can request that further work is done to allay its concerns about signalling. c. It can impose conditions on technical clearance and make any agreement to transfer land or rights subject to compliance with those conditions. <p>Network Rail can then seek to ensure that signalling is not adversely affected and that there is no serious detriment to its undertaking.</p> <p>Part 7: Environment Agency</p> <p>Article 3(4)(a) disappplies the requirement to obtain an environmental permit (regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016) in relation to the carrying on of a flood risk activity or a water discharge activity.</p>

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			<p>The protective provisions provide an alternative (replacement) mechanism.</p> <p>The Environment Agency has stated that it will not agree to the disapplication because of its objection to culverts.</p> <p>Discussions remain ongoing in relation to the use of culverts, and these PPs have remained in the DCO pending the outcome of those discussions.</p> <p>A meeting on culverts took place on 5 May 2023.</p> <p>It is acknowledged that under section 150 PA 2008 the Environment Agency would need to give its consent before the DCO could disapply the relevant part of the environmental permit regime, and by extension, that the inclusion of these protective provisions is subject to that consent being given.</p>
4.2	Anglian Water (AW)	<p>AW recognise the Applicant 's comments and can confirm the Applicant's statement regarding the position on the PPs. AW are requesting the change to paragraph 27 due to previous experiences with DCOs and more specifically based on the assessment of safe access undertaken by AW's engineers. AW recognise the current distance is based on NH precedent which aligns with previously made DCOs, however, the historic DCOs were based on AW's historic assessments which have since been updated and is specific for this scheme. A</p>	<p>The Applicant welcomes the Interested Party's comments.</p>

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		<p>technical note will be submitted to support this change.</p> <p>AW confirm that discussions are ongoing with the Applicant in relation to the Witham access.</p>	
5	ExA	Consents, licences and other agreements	
5.1		<p>Consents, licences and other agreements</p> <ul style="list-style-type: none"> The Applicant will be asked to provide an update of progress and timescales for completion of any other consents, licences and other agreements. 	<p>An updated Consents, Licences and Agreements Position Statement [reference REP3-007] was submitted by National Highways at Deadline 3.</p> <p>Whilst the majority of consents will be sought following completion of detailed design which will enable National Highways to include specific detail needed for the consent applications, we are progressing some consents where possible at this stage.</p> <p>With regards to Badger Licences, a 'letter of no impediment' has been secured which states some caveats for the final license. This license is to be issued once the DCO is granted.</p> <p>With regards to Great Crested Newts licences, an Impact Assessment and Conservation Payment has been secured and the licence will be issued once the DCO is granted.</p> <p>With regards to Bat Licences, a revised bat licence was submitted to Natural England on the 23 March 2023. The revised document addresses the minor comments received from Natural England on the Draft Bat Licence, submitted to the examination as part of the original submission [APP-140]. The Application is awaiting further comment from Natural England but we are expecting that this will lead to the issue of a Letter of No Impediment with respect to bats.</p>

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			We are also looking to begin the process for applying for the consents that have the longest lead in times, mainly being the groundwater Abstraction and discharge licences associated with the borrow pits.
6		Statements of Common Ground	
6.1		Statements of Common Ground <ul style="list-style-type: none"> The Applicant to provide an update on Statements of Common Ground relevant to the DCO. 	<p>The Applicant continue to pursue discussions and have meetings scheduled to progress the Statement of Common Grounds.</p> <p>The Applicant provided an update on the current status of negotiation of Statements of Common Ground with stakeholders. A Statement of Commonality submitted at Deadline 4 [REP4-047] contains a summary of this:</p> <ol style="list-style-type: none"> <u>Essex County Council</u>: 2 new items were added at a later date not allowing the Applicant to provide a considered response prior to the submission of the draft SoCG, engagement with ECC will continue to try agreeing the new and ongoing issues. Meeting following ISH4 occurred 4 May 2023 with a further meeting scheduled for 18 May 2023. <u>Maldon District Council</u>: comments were received shortly before the Deadline 4. A meeting was held on 18 April where it was agreed that the Applicant will provide comments to Maldon DC and submit a draft SoCG at Deadline 5. A meeting is being arranged for mid-May. <u>Colchester City Council</u>: the issue in relation to Air Quality monitoring has been agreed. Discussions on the remaining matters of heritage and hedgerows and further meetings have been agreed.

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			<p>4. <u>Braintree District Council</u>: the Applicant and Braintree DC are looking to set up a meeting for mid-May to discuss SoCG progress and the replacement land position.</p> <p>5. <u>Chelmsford City Council</u>: The parties have now agreed Air Quality, discussions still progressing on Paynes Lane Bridge and Boreham. Meeting following ISH4 occurred 3 May 2023.</p> <p>6. <u>Messing and Inworth Parish and MIAG</u>: The Applicant and MIAG are in the process of confirming a suitable date for a meeting to go through the SoCG.</p> <p>The Applicant had several attempts to discuss the draft SoCG and so far to no avail.</p> <p>7. <u>Boreham Parish Council</u>: A draft SoCG has been drafted and was shared with Boreham Parish Council on 13 February 2023. An updated version of the draft SoCG has not been submitted for Deadline 4 as no change to the status of topics. The applicant will keep trying to engage with the Interested Party to schedule a meeting and discuss the issues. Meeting following ISH4 occurred 5 May 2023.</p> <p>8. <u>Witham Town Council</u>: Whilst discussions have been productive, outstanding matters have not yet been agreed or changed status and therefore the SoCG remains as it did at Deadline 2, therefore no update has been submitted for Deadline 4. This is expected to be resolved with the proposed changes currently under Consultation which be part of the Change Application. The local elections also affected the Council to make decisions as the councillors in charge of planning and open spaces is not standing for re-election. With the elections gone the project will engage with the new elected councillors to explain the scheme and move the issues forward.</p> <p>9. <u>Cadent Gas</u>: A draft SoCG was shared with Cadent Gas Limited on 6 February 2023 to address their comments received on their representation. An updated draft SoCG was shared with Cadent Gas on 15 March 2023. The issues currently under discussion are: Protective Provisions, Cadent's rights to retain its apparatus in situ and rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the order limits should be maintained at all times and access to inspect such apparatus must not be restricted, Cadent is not yet satisfied that the DCO includes all land and rights required to accommodate diversions as detailed design studies will need to influence these requirements, Cadent will require the Applicant to obtain and grant to Cadent adequate rights to lay, access, protect and maintain</p>

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			<p>apparatus on Cadent's standard easement terms or equivalent rights acquired by compulsion including the imposition of restrictive covenants to protect apparatus.</p> <p>10. <u>Network Rail</u>: A draft SoCG was shared with Network Rail Infrastructure on 9 February 2023 and comments received at Deadline 3. Discussions commenced with Network Rail in August 2021. Weekly meetings have been happening since July 2022 with extensive collaboration since 20 March 2023 between both parties. Both parties reviewed the SoCG on 31 March 2023 and progressed outstanding issues. The key issues still under discussion are: Business and Technical Clearance. The Applicant is awaiting further detail around objections so they can be worked through, Protective Provisions, Framework Agreement and Overbridge Agreement or Asset Protection Agreement, Interactions with Network Rail and Countryside Zest including maintenance access to pedestrian bridge, and forthcoming land transfer from Countryside Zest to Network Rail. Overlay plans to be drafted, detailed design elements including on Network Rail embankments, signal sighting and interactions with New Beaulieu Park Station, design of Paynes Lane Bridge. • Land take at plot 2/18b.</p> <p>11. <u>Natural England</u>: final matter for BNG agreed, meeting planned to continue discussions before Deadline 6.</p> <p>12. <u>Environment Agency</u>: Discussions ongoing to resolve Culverts. Meeting following ISH4 occurred 5 May 2023..</p> <p>13. <u>Essex Waterways</u>: The Applicant is preparing drainage details of the outfall to river Chelmer to share with the Interested Party. Next Meeting scheduled for 12 May 2023.</p> <p>14. <u>The Crown Estate Commissioner</u>: the Applicant is in the process of drafting the Heads of terms and progressing details on land take, currently discussing dates for next SoCG meeting.</p> <p>15. <u>Brice Aggregates</u>: Discussions are ongoing with the next meeting schedule for the 16 of May to continue the SoCG details</p>