The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

M25 Junction 28 Improvement Project

Examining Authority's Report
of Findings, Conclusions and Recommendation
to the
Secretary of State for Transport

Examining Authority

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16 SEPTEMBER 2021

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OVERVIEW

File Ref: TR010029

The principle works of the Proposed Development comprise:

- The creation of a new two-lane loop road with hard shoulder, for traffic travelling from the M25 northbound carriageway onto the A12 eastbound carriageway towards Essex.
- The new loop road would include four new bridges (Alder Wood bridge, Grove Farm bridge, Duck Wood bridge and Grove bridge) and an underpass (Grove Farm underpass) to carry the new loop road over a proposed access track.
- Realignment of the existing A12 eastbound exit off-slip road to accommodate the new loop road including the provision of a new bridge (Maylands bridge) and the extension of the existing Grove culvert.

Other works are:

- Improvements to the existing A12 eastbound and westbound carriageways and A12 eastbound entry (on-slip) road.
- Realignment of the existing M25 northbound on-slip.
- Improvements to the existing junction 28 roundabout, the existing M25 northbound carriageway and the M25 northbound off-slip.
- New gantries over the M25 carriageway.
- Alterations of existing private access and egresses and the provision of new private means of access and egresses to enable the Proposed Development.
- Earthworks including the deposit of surplus construction materials on two identified sites.
- New attenuation ponds and associated drainage and access roads, and a new drainage outfall pipe.
- Realignment of the Weald Brook and the Ingrebourne River.
- New flood compensation areas and the provision of new ecological compensation and mitigation areas and two new environmental ponds.
- The diversion of utilities.
- Accommodation works to provide replacement facilities for Maylands Golf Course.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

REPORT TABLE OF CONTENTS

1. INTRODUCTION 1
1.1. INTRODUCTION TO THE EXAMINATION 1
1.2. APPOINTMENT OF THE EXAMINING AUTHORITY 2
1.3. THE PERSONS INVOLVED IN THE EXAMINATION 2
1.4. THE EXAMINATION AND PROCEDURAL DECISIONS 3
1.5. ENVIRONMENTAL IMPACT ASSESSMENT 8
1.6. HABITATS REGULATIONS ASSESSMENT 8
1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS 9
1.8. OTHER CONSENTS AND LICENCES 9
1.9. STRUCTURE OF THIS REPORT 10
2. THE PROPOSAL AND THE SITE 12
2.1. THE APPLICATION AS MADE 12
2.2. THE APPLICATION AS EXAMINED 20
2.3. THE SITE AND SURROUNDINGS 26
2.4. RELEVANT PLANNING HISTORY 27
3. LEGAL AND POLICY CONTEXT 29
3.1. INTRODUCTION 29
3.2. NATIONAL INFRASTURCTURE 29
3.3. DETERMINING THE PROPOSED DEVELOPMENT 30
3.4. NATIONAL POLICY STATEMENT 31
3.5. OTHER RELEVANT NATIONAL POLICIES 32
3.6. UNITED NATIONS AND EUROPEAN LAW 34
3.7. RELEVANT UK LAW AND POLICY STATEMENTS 36
3.8. MADE DEVELOPMENT CONSENT ORDERS 45
3.9. TRANSBOUNDARY EFFECTS 45
3.10. LOCAL IMPACT REPORTS 46
3.11. THE DEVELOPMENT PLANS 46
3.12. THE SECRETARY OF STATE'S POWERS TO MAKE A DEVELOPMENT CONSENT ORDER 50
4. IDENTIFYING THE PLANNING ISSUES 51
4.1. RELEVANT REPRESENTATIONS 51
4.2. ISSUES ARISING IN LOCAL IMPACT REPORTS 53
4.3. THE RULE 6 LETTER 54
4.4. THE STRUCTURE OF THE REPORT IN CHAPTER 5 54
4.5. CONFORMITY WITH THE NATIONAL POLICY STATEMENTS 55
4.6. CONFORMITY WITH DEVELOPMENT PLANS 55
4.7. APPLICATION OF OTHER POLICIES 56
4.8. COMMENTS ON APPLICANT'S ENVIRONMENTAL IMPACT ASSESSMENT 56
4.9. COMMENTS ON APPLICANT'S HABITATS REGULATIONS ASSESSMENT 57
4.10. OUTSTANDING MATTERS AT THE CLOSE OF THE EXAMINATION 57
5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES 58

5.1. INTRODUCTION 58
5.2. THE PRINCIPLE AND NEED FOR THE PROPOSED DEVELOPMENT 58
5.3. CONSIDERATION OF ALTERNATIVES 60
5.4. TRAFFIC AND ACCESS 62
5.5. AIR QUALITY 76
5.6. NOISE AND VIBRATION 80
5.7. PEOPLE AND COMMUNITIES 83
5.8. DESIGN 98
5.9. LANDSCAPE AND VISUAL 105
5.10. BIODIVERSITY AND WILDLIFE 111
5.11. FLOODING AND WATER 120
5.12. GEOLOGY AND SOILS 125
5.13. HISTORIC ENVIRONMENT 128
5.14. MINERALS AND WASTE 132
5.15. CLIMATE CHANGE 134
5.16. GREEN BELT 138
5.17. CUMULATIVE AND COMBINED EFFECTS 140
5.18. CONCLUSION 143
6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT 144
6.1. INTRODUCTION 144
6.2. POLICY 145
6.3. PROJECT LOCATION 145
6.4. HRA IMPLICATIONS OF THE PROJECT 146
6.5. ISSUES RAISED DURING THE EXAMINATION 147
6.6. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS 152
6.7. CONSERVATION OBJECTIVES 153
6.8. CONCLUSIONS 153
7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT 154
7.1. INTRODUCTION 154
7.2. SUMMARY OF THE PLANNING ISSUES AND COMPLAINCE WITH NATIONAL POLICY 154
7.3. ASSESSMENT AGAINST S104 OF THE PLANNING ACT 2008 162
8. COMPULSORY ACQUISITION AND RELATED MATTERS 165
8.1. INTRODUCTION 165
8.2. LEGISLATIVE REQUIREMENTS 165
8.3. THE APPLICANT'S CASE FOR CA AND TP POWERS 166
8.4. THE EXAMINATION OF THE CASE FOR CA AND TP POWERS 172
8.5. STATUTORY UNDERTAKERS LAND 178
8.6. OUTSTANDING MATTERS TO CA AND TP 180
8.7. SPECIAL CATEGORY LAND 183
8.8. HUMAN RIGHTS ACT 1998 CONSIDERATIONS 183
8.9. THE EQUALITY ACT 2010 184
8.10. ExA RECOMMENDATION 185

9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS 186
9.1. INTRODUCTION 186
9.2. THE DCO AS APPLIED FOR 186
9.3. CONTENTIOUS MATTERS IN THE EXAMINATION 190
9.4. ExA's CONSULTATION DRAFT DCO 194
9.5. OUTSTANDING CONCERNS AT THE CLOSE OF THE EXAMINATION 201
9.6. ExA's RECOMMENDED CHANGES 208
9.7. CONCLUSION 215
9.8. APPENDIX – Protective Provisions for TfL 215
10. SUMMARY OF FINDINGS AND RECOMMENDATION 218
10.1. FINDINGS 218
10.2. RECOMMENDATION 221

APPENDIX A: EXAMINATION LIBRARY A1
APPENDIX B: LIST OF ABBREVIATIONS B1
APPENDIX C: THE RECOMMENDED DCO C1

List of Tables

Table 2.1 – ES Chapters, Figures and Appendices at the Open and Close of the Examination 20
Table 2.2 – Change Requests 23
Table 2.3 – Changes Made to Work Nos from the draft DCO as First Made [APP-015] 25
Table 4.1 – Summary of RRs 51
Table 8.1 – Documents Supporting the Application for CA and TP 167
Table 8.2 – Summary of Plots for CA and TP 169
Table 9.1 - Iterations of the draft DCO Post Submission 187
Table 9.2 – Summary of Applicant's Responses to the ExA's Consultation Draft DCO [PD-021] and ExA's Recommendation 195
Table 9.3 - Recommended Changes to the final draft DCO [REP9-012] 209
Table 10.1 – Matters Where the SoS May Wish to Reconsult 219

The Planning Inspectorate

ERRATA SHEET – M25 Junction 28 Improvement Project - Ref TR010029

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 16 September 2021

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
3	1.4.2	Footnote 1 is wrong reference is to another scheme	Replace with https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m25-junction-28-improvements
191	9.3.7	Beginning of third sentence Delete "This is"	Replace with "Thus, it"
203	9.5.11	Spelling of "deductable"	Should read "deductible"
203	9.5.13	Last sentence does not read right	Suggest say "The Applicant further stated that Orders for the M42, the A585, and the M42 included all such provisions and, as far as the Applicant is concerned has been in all orders since 2018."
221	Table 10.1	Knighton	Should be replaced with "Kingston"

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for the M25 Junction 28 improvement scheme (the Proposed Development) [TR010029] was submitted by Highways England (the Applicant) to the Planning Inspectorate (the Inspectorate) on 27 May 2020 under section (S)37 of the Planning Act 2008 as amended (PA2008) and accepted for Examination under s55 of the PA2008 on 24 June 2020 [PD-001].

1.1.2. The ExA acknowledges that on 19 August 2021, it was announced that Highways England had changed its name and would be known in future as National Highways. However, the ExA is not aware, at the time of writing, that the change had been formalised. Therefore, for the purposes of this Report, we continue to refer to the Applicant as Highways England.

1.1.3. The principle works of the Proposed Development comprise:

- The creation of a new two-lane loop road with hard shoulder, for traffic travelling from the M25 northbound carriageway onto the A12 eastbound carriageway towards Essex.
- The new loop road would include four new bridges (Alder Wood bridge, Grove Farm bridge, Duck Wood bridge and Grove bridge) and an underpass (Grove Farm underpass) to carry the new loop road over a proposed access track.
- Realignment of the existing A12 eastbound exit off-slip road to accommodate the new loop road including the provision of a new bridge (Maylands bridge) and the extension of the existing Grove culvert.

Other works are:

- Improvements to the existing A12 eastbound and westbound carriageways and A12 eastbound entry (on-slip) road.
- Realignment of the existing M25 northbound on-slip.
- Improvements to the existing junction 28 roundabout, the existing M25 northbound carriageway and the M25 northbound off-slip.
- New gantries over the M25 carriageway.
- Alterations of existing private access and egresses and the provision of new private means of access and egresses to enable the Proposed Development.
- Earthworks including the deposit of surplus construction materials on two identified sites.
- New attenuation ponds and associated drainage and access roads, and a new drainage outfall pipe.
- Realignment of the Weald Brook and the Ingrebourne River.
- New flood compensation areas and the provision of new ecological compensation and mitigation areas and two new environmental ponds.
- The diversion of utilities.

- Accommodation works to provide replacement facilities for Maylands Golf Course.

1.1.4. The location of the Proposed Development is shown in the Environmental Statement (ES) [APP-026] and in the following plans together with their respective Examination Library (EL) reference number:

- Location Plan [REP9-002].
- Land Plans [REP9-003].
- Works Plans [REP9-004].

1.1.5. The above drawings were submitted at the outset of the application. However, as will be explained later in this Report, the application evolved and as such those documents were subsequently updated at several points during the Examination.

1.1.6. The route of the Proposed Development lies within the following Local Authorities:

- Greater London Authority (GLA).
- The London Borough of Havering (LB Havering).
- Essex County Council (Essex CC).
- Brentwood Borough Council (Brentwood BC).

1.1.7. The site is wholly in England.

1.1.8. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Ministry for Housing, Communities and Local Government (MHCLG) in their decision to accept the application for Examination in accordance with s55 of PA2008 [PD-001].

1.1.9. The Inspectorate agreed with the Applicant's view stated in the application form [APP-003] that the Proposed Development is an NSIP as it is within S22(1)(b) of PA2008, and so requires development consent in accordance with s31 of PA2008. The Proposed Development therefore meets the definition of an NSIP as set out in s14(1)(h) of PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 25 June 2020, Richard Allen and Rod MacArthur were appointed as the Examining Authority (ExA) for the application under s61 and s65 of PA2008 [PD-003].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. Those involved in the Examination were:

- Persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a Statutory Party (SP) who requested to become an IP.
- Affected Persons (APs) who were affected by a Compulsory Acquisition (CA) and/ or Temporary Possession (TP) proposal made as

part of the application and who had raised concerns or comments to it at any stage in the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 07 January 2021 and concluded on 07 July 2021.

1.4.2. The principal components of, and events around the Examination, are summarised below. A fuller description, timescales and dates can be found on the Examination timetable page of the project webpage on the Inspectorate's National Infrastructure website (the Inspectorate's website)[1] and within the Examination Timetable which can be found at Appendix A to this Report.

Written Processes

1.4.3. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the EL (Appendix A) and published online. Individual document references to the EL in this Report are enclosed in square brackets []. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them. Key written sources are set out further below.

Relevant Representations

1.4.4. A total of 29 RRs were received by the Inspectorate [RR-001] to [RR-029]. All received our letter made under of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (the Rule 6 Letter) [PD-006] and were provided with an opportunity to become involved in the Examination as IPs and invited to attend the Preliminary Meeting (PM). All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapters 4, 5, 6, 8 and 9 of this Report.

1.4.5. As will be discussed below, three RRs [RR-002], [RR-008], and [RR-022] were withdrawn during the Examination.

Written Representations and Other Examination Documents

1.4.6. The Applicant and IPs were provided with opportunities to:

- Make Written Representations (WRs) (Deadline 2).
- Comment on WRs made by the Applicant and other IPs (Deadline 3a).
- Summarise their oral submissions at Hearings in writing (Deadlines 4 and 7).
- Make other written submissions requested or accepted by the ExA.
- Comment on documents issued for consultation by the ExA.

[1] https://infrastructure.planninginspectorate.gov.uk/projects/south-east/southampton-to-london-pipeline-project/?ipcsection=overview

1.4.7. All WRs and other Examination documents have been fully considered by the ExA. The issues that they raise are considered in Chapters 4, 5, 6, 8 and 9 of this Report.

1.4.8. At Deadline 7 [REP7-041], Luddington Golf Ltd withdrew its WR [REP2-032]. Luddington Golf Ltd did not indicate whether it was also withdrawing its RR [RR-019] and as such its interest in the application remains. However, because the points raised in its RR were largely replicated in its WR, and where Luddington Golf Ltd have stated it is now satisfied with the application, the ExA has treated Luddington Golf Ltd's concerns as having been addressed by the Applicant and to its satisfaction.

Local Impact Reports

1.4.9. The following Local Impact Reports (LIRs) were submitted into the Examination at Deadline 1:

- Brentwood BC [REP1-026].
- LB Havering [REP1-031], [REP1-032].
- Essex CC [REP1-040], [REP1-041], [REP1-042] and [REP1-043].

1.4.10. The LIRs have been taken fully into account by the ExA in all relevant Chapters of this Report.

Statements of Common Ground

1.4.11. Given the number of IPs involved, the Applicant produced a Statement of Commonality of Statements of Common Ground (Commonality Statement) [REP10-005] which lists the organisations with whom the Applicant tried to complete a Statement of Common Ground (SoCG). Table 6.1 of the Commonality Statement summarises in a tabular form the matters that have been agreed; that are subject to on-going discussion; or that have not been agreed with each organisation.

1.4.12. By the end of the Examination, the following had concluded SoCGs with the Applicant with all matters agreed:

- Brentwood BC [REP1-005].
- Essex CC [REP8-004].
- Eastern Power Networks (including UK Power Networks) (UKPN) [REP7-010].
- National Grid [REP7-008].
- Natural England (NE) [REP7-011].
- Environment Agency (EA) [REP7-004].

1.4.13. The following organisations had concluded SoCGs with the Applicant with some matters remaining not agreed:

- LB Havering [REP9-050].
- Cadent Gas [REP7-009].
- Transport for London (TfL) [REP10-004].

1.4.14. The ExA requested SoCGs with the Applicant and the following organisation in our Rule 6 letter [PD-006], dated 12 November 2020:

- GLA.
- Historic England.
- The Forestry Commission.
- Internal Drainage Boards and Lead Local Flood Authorities.

1.4.15. The Applicant confirmed in the Commonality Statement [REP10-005] that SoCGs would not be provided with these organisations. Further explanation is provided by the Applicant in Section 4 of the Commonality Statement.

1.4.16. All SoCGs have been taken into account by the ExA in all relevant Chapters of this Report.

Written Questions

1.4.17. The ExA asked two rounds of Written Questions.

- Written Questions (WQ1) [PD-008] and Procedural Decisions were set out in the Rule 8 of the EPR letter (the Rule 8 Letter) [PD-007], dated 13 January 2021.
- Further Written Questions (WQ2) [PD-015] were issued on 25 March 2021.

1.4.18. The following requests for further information and comments under Rule 17 of the EPR were issued on:

- 28 September 2020; to all IPs and SPs regarding their availability and capability to engage with the Examination remotely, including the use of virtual events, as necessitated by the lockdown restrictions put in place during the COVID-19 pandemic [PD-005].
- 26 February 2021; to all IPs regarding the Applicant's Change Requests No.3 and No.4 [PD-012].
- 16 April 2021; to all IPs and SPs regarding the securing of provisions for Non-motorised Users (NMUs) and to the Applicant regarding engagement with residents of Putwell Bridge Caravan Park [PD-017].
- 5 May 2021; to all IPs and SPs regarding the Applicant's Change Request No.7 [PD-018].
- 26 May 2021 to all IPs and SPs regarding the Applicant's Change Requests Nos.7 and 8 [PD-020].
- 27 May 2021 to all IPs regarding the London Plan 2021 [PD-022].

1.4.19. All responses to the ExA's Written Questions have been fully considered and taken into account in all relevant Chapters of this Report.

The Preliminary Meeting

1.4.20. On 12 November 2020, the ExA issued its Rule 6 Letter and invited all IPs and SPs to the PM [PD-006], outlining:

- The arrangements and agenda for the PM.
- An Initial Assessment of the Principal Issues (IAPI).

- The draft Examination timetable.
- Availability of RRs and application documents.
- The ExA's Procedural Decisions.

1.4.21. The PM took place over two sessions with Part 1 on Friday 11 December 2020 and Part 2 on Thursday 7 January 2021 at which point the PM was formally closed. The meetings were held virtually via Microsoft Teams owing to the COVID-19 restrictions in place at that time. A recording [EV-005] and notes of the meeting [EV-002] and [EV-004] were published on the Inspectorate's website. As far as we are aware and indeed no evidence has been submitted to suggest otherwise, no IP was prejudiced by this meeting taking place virtually and no IP experienced difficulties attending the meeting.

1.4.22. The ExA's Procedural Decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-007], dated 13 January 2021.

Key Procedural Decisions

1.4.23. The Procedural Decisions set out in the Rule 8 Letter [PD-007] related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 Letter and are not reiterated here.

Site Inspections

1.4.24. The ExA held two Unaccompanied Site Inspections (USIs). The first USI was held on 17 February 2021 and a further one on 4 June 2021. For Procedural Deadline B, the ExA invited responses from IPs as to where each would like the ExA to view the site on a USI. We received requests from:

- The Applicant [PDB-004].
- Mr & Mrs Jones of Grove Farm [PDB-006].
- LB Havering [PDB-007].
- Jane Allan [PDB-008].
- Gardens of Peace Muslim Cemetery (Gardens of Peace) [PDB-009].
- Brentwood BC [PDB-010].

1.4.25. The ExA viewed the Proposed Development site from all suggested locations. A Procedural Note of the sites we visited was published on the Inspectorate's website [EV-007] and [EV-050]. The USIs were held on both private and public land; the former with the permission of the landowners. At no point did the ExA discuss the merits of the Proposed Development with any IP during our USIs.

1.4.26. Owing to the COVID-19 restrictions which were in place during the pre-Examination and Examination stages of the application, the ExA determined in our Rule 6 letter [PD-006] that we would not be likely to hold an Accompanied Site Inspection (ASI). Notwithstanding this, both

the draft and final Examination timetable [PD-007] made provision for an ASI should the COVID-19 restrictions change, and Government advice conclude that the gathering of larger crowd gatherings was safe. At the PM [EV-001] Jane Allan raised concerns with this approach.

1.4.27. Unfortunately, the COVID-19 restrictions remained in place throughout the Examination period, such that it was not safe or prudent to hold an ASI. However, all matters which were raised in relation to items which could be viewed were considered in the USIs.

1.4.28. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant Chapters of this Report.

Hearings Processes

1.4.29. The ExA held Hearings to ensure the thorough Examination of the issues raised by the Proposed Development. The Hearings were held virtually via Microsoft Teams again owing to the COVID-19 restrictions in place at that time.

1.4.30. Issue Specific Hearings (ISHs) were held as follows:

- ISH1 on Environmental Matters held on Wednesday 3 and Thursday 4 March 2021 [EV-009].
- ISH2 on the draft Development Consent Order (draft DCO) held on Friday 5 March 2021 [EV-010].
- ISH3 on Environmental Matters held on Wednesday 12 May 2021 [EV-039], [EV-038].

1.4.31. The issues that were discussed at the ISH on environmental matters are set out in the agendas for the relevant hearing which are referenced above.

1.4.32. A Compulsory Acquisition Hearing (CAH) was held under s92 of PA2008 virtually via Microsoft Teams on Monday 1 March 2021 [EV-008].

1.4.33. All APs by CA and TP proposals were provided with an opportunity to be heard. The ExA also used this Hearing to examine the Applicant's case for CA and TP in the round.

1.4.34. An Open Floor Hearing (OFH) was held under s93 of PA2008 virtually via Microsoft Teams on the evening of 1 March 2021 [EV-016]. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

Requests to Join and Leave the Examination

1.4.35. There were a number of late requests received by parties to become IPs. They were:

- Suffolk County Council [AS-044].
- Hertfordshire County Council [AS-043].
- Metropolitan Police [REP1-037].

1.4.36. As all were automatically IPs because they were either SPs or APs and as such fell under the provisions of s102(1)(ca)(i) of the PA2008, the ExA accepted them into the Examination.

1.4.37. During the Examination, and as a consequence of discussion at Hearings and/or discussions between relevant IPs/APs and the Applicant, the following persons wrote to the ExA to inform us that their issues were settled, and their representations were withdrawn:

- Network Rail [REP10-024].
- UKPN [AS-042].
- Luddington Golf Ltd (Maylands Golf Course) [REP7-041].
- National Grid [REP10-021].

1.4.38. All of the withdrawals came from IPs and were the result of them either entering into a voluntary land agreement with the Applicant or where the draft DCO had been amended to include Protective Provisions (PP) that addressed their concerns. Network Rail confirmed [REP10-021] that it was satisfied with the Applicant's confirmation that no works were proposed to any part of the railway or its structures.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

1.5.2. On 14 November 2017 the Applicant submitted a Scoping Report [APP-094] to the SoS under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). It follows that the Applicant is deemed to have notified the SoS under Regulation 8(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Project.

1.5.3. On 20 December 2017 the Inspectorate provided a Scoping Opinion that in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES.

1.5.4. On 3 November 2020 the Applicant provided the Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with [OD-002].

1.5.5. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4 of this Report.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report [REP2-005] has been provided.

1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 6 of this Report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. In order to deliver the NMU scheme and to address outstanding concerns from IPs, the Applicant tabled a Unilateral Undertaking (UU) at Deadline 9 [REP9-070] and updated at Deadline 10 [REP10-023]. LB Havering, Essex CC and TfL tabled a tracked changed version of the UU at Deadline 10 [REP10-019] in which additional measures were sought. This is discussed further in Chapter 5 of this Report.

1.7.2. The Applicant had undertaken a number of side agreements with IPs which have not been submitted into the Examination. These are referred to, where relevant, in subsequent Chapters of this Report.

1.7.3. In its LIR [REP1-031], LB Havering made requests for developer contributions for matters concerning air quality, skills and training and sustainable travel. The Applicant has disagreed on the need for a contribution. These are discussed further in Chapter 5 of this Report.

1.8. OTHER CONSENTS AND LICENCES

1.8.1. The Applicant's Consents and Agreements Position Statement, the final version submitted at Deadline 9 [REP9-014] sets out the following matters where other consents are required.

- From NE:
  - Protected species licences in respect to Great Crested Newts, Bats, Badgers and European protected species under the Conservation of Habitats and Species Regulations 2017 and the Protection of Badgers Act 1992.
  - Invasive species licence for disposal of invasive species to a waste facility, if required and consent for associated storage of pesticides under the Control of Pesticides Regulations 1986 (as amended).

- From the EA:
  - Hazardous substances disposal if required under the Hazardous Waste (England and Wales) Regulations 2005.
  - The reuse of materials defined as non-waste or end-of-waste and greater than exemption limits.
  - Waste carrier licences under the Control of Pollution (Amendment) Act 1989.
  - Environmental Permits (EPs) (with Local Authorities) for mobile plant, waste exemption, waste operation and discharge of surface water or groundwater under the Environmental Permitting (England and Wales) Regulations 2016.
  - Notification of any Japanese Knotweed, Goldenrod, Himalayan Balsam or Giant Hogweed removal or burial under the Waste (England and Wales) Regulations 2011.

- From relevant Local Authority:
  - S61 (Control of Pollution Act 1974) consent for creation of noise during construction.

- From Highways England and relevant Local Authority:
  - Transport and highways consents/permissions under Highways Act 1980, which are not included within the DCO for additional consents required to support temporary highways works such as hoardings and crane oversail.

- From Health and Safety Executive, relevant Local Authority and Fire and Rescue Authority, Fire Inspector:
  - Notification to the Health and Safety Executive about the commencement of construction in accordance with the Construction (Design and Management) Regulations 2015 (F10 Notification).
  - Approvals under the Health and Safety at Work Act 1974.
  - Compliance with duties under The Regulatory Reform (Fire Safety) Order 2015.

1.8.2. The ExA has considered the available information in relation to the outstanding consents recorded above. Without prejudice to the exercise of discretion by future decision makers, the ExA concludes that there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant the Order or outstanding matters do arise and these are addressed in the Chapters of this Report. LB Havering's separate request for a new Requirement to be inserted into the Recommended DCO to control noise under s61 is discussed in Chapter 9 of this Report.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the planning issues that arose from the application and during the Examination and sets out the structure of Chapter 5.
- **Chapter 5** reports on our findings on the planning issues in the Examination.
- **Chapter 6** considers effects on European Sites and HRA.
- **Chapter 7** sets out the balance of planning considerations arising from Chapters 4 ,5 and 6, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 8** sets out the ExA's examination of CA and TP proposals.
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the Recommended DCO.

- **Chapter 10** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – The Examination Library.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – The Recommended DCO.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The application is for an Order for development consent to construct the M25 Junction 28 improvement scheme.

2.1.2. Schedule 1 of the draft DCO [APP-015] listed 32 separate Works which formed the application. A further description of these Works was also contained within Chapter 2 of the ES [APP-026]. In WQ1 GQ 1.9 [PD-008], the ExA felt that in the cases for Works Nos.11 to 32 the Applicant had provided very little detail or not explained at all what was involved with these Works. These sentiments were shared by Brentwood BC in its oral submissions at ISH1 [EV-009] and in writing at Deadline 5 [REP5-063]. The ExA considered that the Applicant did little to resolve this in its response to WQ1 GQ 1.9 at Deadline 2 [REP2-011] and the matter was raised again at ISH1 with Action Point 19 [EV-032] requiring the Applicant to resubmit them. This was provided in Appendix A to its Deadline 4 submission [REP4-021].

2.1.3. For the avoidance of doubt, the details that follow relate the Works as applied for at the outset of the application. The Works described below can be viewed on the Works Plans as originally submitted [APP-006]. The Works as currently before the SoS differ slightly from those as made in the application; these are discussed later in this Chapter.

The Principal Works

Work No.6

2.1.4. Work No.6 comprises the construction of a new loop road measuring approximately 1,450 meters (m) in length, connecting the northbound carriageway of the M25 with the westbound carriageway of the A12. The road would circumnavigate Grove Farm and would commence just north of the existing M25/A12 roundabout extending northwards into Alder Wood, before circling in a westerly direction towards the boundary with Maylands Golf Course, and then in a southerly direction towards and connecting with the A12. The loop road would be a dual carriageway. Work No.6 would require the construction of four bridges along the route as follows:

- Alder Wood bridge which would over pass the realigned M25 on-slip road (Work No.8).
- Grove Farm bridge which would overpass a new access track connected with Grove Farm (Work No.14).
- Duck Wood bridge, which would overpass the realigned Weald Brook (Work No.23C).
- Grove bridge which would overpass the realigned Weald Brook and Ingrebourne River (Works Nos.23B and 23D).

Work No.2

2.1.5. Work No.2 would see the realignment of the existing A12 off-slip measuring approximately 760m in length. The road would commence approximately 265m further to the west than the existing off-slip, and terminate at the M25/A12 roundabout and north of the existing junction. The road would be predominately at a higher level that the existing and would align through The Grove woodland after it overpasses Work No.6 via the construction of Maylands bridge. Work No.2 includes a footway within the verge and the extension of the existing Grove culvert not exceeding 80m in length, beneath the realigned A12 eastbound off-slip.

Work No.8

2.1.6. Work No.8 would involve the realignment of a stretch of the existing M25 northbound on-slip. The length would be approximately 1,230m, inclusive of the merge, including the extension of two existing culverts, commencing at the existing circulatory carriageway of the M25 junction 28 roundabout and terminating at a point approximately 1,180m north of the existing Brook Street viaduct. The new on-slip would sit west of the existing; the latter being demolished.

A12 Carriageway Works

Work No.1

2.1.7. Work No.1 concerns the existing eastbound stretch of the A12 in which improvement works are proposed. The length of the carriageway falling under Work No.1 would measure approximately 1,800m commencing at a location approximately 15m west of Woodstock Avenue, ending approximately 160m west of the existing Wigley Bush Lane overbridge. The applicant stated [REP4-021] that the works comprising Work No.1 include new signage, road markings, change of speed limit and new lighting columns.

Work No.3

2.1.8. Work No.3 would involve improvement works along a 550m stretch of road along the A12 commencing at the existing on-slip offside kerb at the circulatory carriageway of the M25 junction 28 roundabout and terminating at a location situated approximately 160m to the west of the existing Wigley Bush Lane overbridge. These improvements would consist principally of new road markings to delineate the new merge layout, associated pavement resurfacing as well as new traffic signs.

Work No.4

2.1.9. Work No.4 would involve improvements works to the existing A12 westbound carriageway, at a location approximately 230m east of Maylands Way primarily comprising the installation of new traffic signs either side of the carriageway.

M25 Carriageway and Off-Slip Works

Work No.5

2.1.10. Work No.5 would involve improvement works being carried out to the existing circulatory carriageway of the M25 junction 28 roundabout, along a length of approximately 610m. These works would involve resurfacing of the roundabout carriageway, reconfiguring directional signage and road markings as well as adjusting the traffic signals to reflect the traffic patterns through the junction 28 with the Proposed Development in place.

Work No.7

2.1.11. Work No.7 would involve improvement works to a stretch of the existing M25 northbound carriageway, along a length of approximately 1,775m, commencing at the Poplars Railway bridge and continuing north westwards until a location situated approximately 1,250m north of the existing Brook Street viaduct.

2.1.12. The length and location of this Work has been changed in the Recommended DCO and is discussed further below.

Work No.12

2.1.13. Work No.12 would see improvements to the existing M25 motorway northbound off-slip, along a length of approximately 166m, commencing at a location situated approximately 125m north of the Poplar Railway bridge and continuing north westwards until the existing circulatory carriageway of the M25 junction 28 roundabout. The Works would comprise new surfacing and revised layout and lane markings to reflect traffic patterns through junction 28 with the Proposed Development in place.

Gantries and Signage

Work Nos.9, 10 and 11

2.1.14. Work Nos.9, 10 and 11 would be for a new gantry, or similar signage, over the M25 carriageway. The location of Work No.9 would be situated approximately 215m north of the existing Brook Street Viaduct of the M25 junction 28 roundabout. Work No.10 would be situated approximately 1,272m north of the existing Brook Street viaduct. Work No.11 would be situated approximately 10m north of the Brook Street viaduct.

Access and Public Rights of Way Works

Work No.13

2.1.15. Work No.13 would introduce a new private means of access, approximately 600m in length, commencing at Work No.19B (new attenuation pond) and continuing in a north westerly direction, along the outer alignment of Work No.6 and terminating in a north-eastward and, separately, north-westwards direction at a location south of Work No.24A

(flood compensation area) and west of the proposed Duck Wood bridge. The need and purpose of this Work would be to provide an unbound access track for maintenance operations along the proposed loop road and access to the environmental mitigations (Work No.25), Cadent Gas pipeline diversion (Work No.29).

Work No.14

2.1.16. Work No.14 would introduce a new private means of access approximately 519m in length, commencing at a point situated approximately 100m north of the existing Grove Farm access, passing through the proposed Grove Farm underpass (Work No.6) and terminating approximately 125m north of it in a westward and, separately, southward direction. Work No.14 would also include a secondary section of private means of access, approximately 30m in length and branching westwards from a location to the northwest of the proposed Grove Farm underpass (Work No.6) and terminating in a northward and, separately, westward direction.

2.1.17. The need and purpose of this Work would be to provide an unbound access track for maintenance operations track for maintenance operations of Statutory Undertakers (SU). It would also be necessary to provide access Work No.21B (attenuation pond), Duck Wood bridge (part of Work No.6) and to enable access for Grove Farm to land north of the proposed loop road.

Work No.15

2.1.18. Work No.15 would result in alterations to the existing egress from Grove Farm, approximately 50m in length, commencing at a point situated immediately to the west of the existing Grove Farm residential property and terminating at Work No.2. This Work would see the removal of the existing egress, construction of a new road formation, including embankments, road foundation and pavement, drainage and all ancillary works.

2.1.19. The length and location of this Work has been changed in the Recommended DCO and is discussed further below.

Work No.16

2.1.20. Work No.16 would result in alterations to the existing access and egress serving land situated to the immediate north of the A12, commencing at a new junction with the new private means of access (Work No.19A), at a point situated 42m from the junction of the aforementioned new private means of access and the A12, and continuing northwards for a distance of approximately 35m in length. The Work is needed in order to provide a replacement field access in to land owned by Glebelands Estates Limited (Glebelands). The existing access would be stopped up to enable the construction of the proposed A12 off-slip. The access will be of unbound construction and gated.

Earthworks

Work No.17

2.1.21. Work No.17 would have involved the deposit of surplus construction materials over an area of land approximately 22,000 square metres (m^2) in area, at a location situated to the west of Weald Brook. As discussed below, Work No.17 has since been deleted from the application.

Work No.18

2.1.22. Work No.18 would involve the deposit of surplus construction materials, over an area of land approximately 23,100m^2 in area, at a location situated to the north of Work No.19B (attenuation pond).

2.1.23. The nature and description of this Work has been changed in the Recommended DCO and is discussed further below.

Drainage Works and Attenuation Ponds

Work No.19A

2.1.24. Work No.19A would involve the construction of a new private means of access, approximately 290m in length, commencing at a new junction with the A12 eastbound carriageway situated at a location lying approximately 50m to the east of the existing access to Maylands Golf Course and terminating at Work No.19B (attenuation pond). Work No.19A is required to maintain the proposed attenuation pond and would connect to the proposed access track to west side of loop road (Work No.13), the field access to Glebelands land (Work No.16), the proposed attenuation pond (Work No.19B) and environmental mitigation (Work No.25).

Work No.19B

2.1.25. Work No.19B, as alluded to above, would see a new attenuation pond, together with associated private means of access and drainage facilities, approximately 2,600m^2 in area, to be situated at a location to the north of Work No.2 and west of Work No.6.

Work No.20A

2.1.26. Work No.20A would involve a new private means of access, approximately 65m in length, commencing at a location situated approximately 110m south west of Duck Wood bridge and terminating at Work No.20B (attenuation pond). This is required for maintenance of the proposed drainage pond (Work No.20B), and access to the flood compensation area (Work No.24B) and Duck Wood bridge (Work No.6).

Work No.20B

2.1.27. Work No.20B would involve a new attenuation pond, together with associated private means of access and drainage facilities, approximately 7,000m^2 in area, and situated at a location to the west of the Weald Brook. The proposed attenuation pond would receive rainfall run off from

the new loop road (Work No.6). The excavated pond would include headwalls and will be serviced by a maintenance track.

Work No.21A

2.1.28. Work No.21A would involve the construction of a new private means of access, approximately 40m in length, commencing at a location situated 30m south of Grove Farm underpass and terminating at Work No.20B (attenuation pond). Its purpose is to connect Work No.14 and Work No.21B (attenuation pond). This access would also serve National Grid's overhead electricity transmission line.

Work No.21B

2.1.29. Work No.21B would involve new attenuation pond, together with associated private means of access and drainage facilities, approximately 4,200m^2 in area, and situated at a location to the north east of the Weald Brook. The proposed attenuation pond would receive rain fall run off from Work No.6, Work No.8 and the Grove Farm underpass. The excavated pond would include headwalls and will be serviced by a maintenance track. The pond would outfall to the Weald Brook via Work No.22 (drainage outfall pipe).

Work No.22

2.1.30. Work No.22 would see the construction of a new drainage outfall pipe, approximately 50m in length, between Work No.21B and the Weald Brook.

Realignment of Waterways

Work No.23A

2.1.31. Work No.23A would require the realignment of a stretch of the Weald Brook, along a length of approximately 85m, commencing at a location situated to the immediate east of Work No.20B and west of Work No.30. The Applicant stated [REP4-021] that the reason for this Work is to create a more natural sinuous channel and provide mitigation of impact to the watercourse elsewhere in the Proposed Development.

2.1.32. The location of this Work has been changed in the Recommended DCO and is discussed further below.

Work No.23B

2.1.33. Work No.23B would require realignment of a stretch of the Weald Brook, along a length of approximately 250m, commencing at a location situated within the proposed loop road (Work No.6), and passing beneath Work No.2 at the location of the proposed new Maylands bridge and beneath Work No.6 at the location of the proposed Grove bridge. The reason for this work is the same as per Work No.23A.

Work No.23C

2.1.34. Work No.23C would require the realignment of a stretch of the Weald Brook, along a length of approximately 70m, at a location situated towards the north western edge of Work No.6 and passing beneath Work No.6 at the location of the proposed Duck Wood bridge. The realignment was needed to accommodate a central pier to support Duck Wood bridge.

2.1.35. The length of this Work has been changed in the Recommended DCO and is discussed further below.

Work No.23D

2.1.36. Work No.23D would require the realignment of a stretch of the Ingrebourne River, along a length of approximately 200m, commencing at a point situated north of the A12 (Work No.1), beneath the proposed Grove bridge on Work No.6, and terminating at the location of the Grove culvert extension, proposed as part of Work No.2. In addition to the reasoning given for Work No.23A, the Applicant stated [REP4-021] that this Work is required to provide ecological mitigation measures by way of creating wetland habitat, including the flowing channel, backwater and marshy grassland.

Environmental Mitigation Works

Work No.24A

2.1.37. Work No.24A proposes a new flood compensation area, approximately 2,100m^2 in area, and situated to the immediate northwest of Work No.6. This Work would involve lowering the levels of the land upstream of Duck Wood bridge to accommodate flood flows and keep flooding in the existing watercourse corridor, whilst creating a wet grassland habitat.

Work No.24B

2.1.38. Work No.24B proposes a new flood compensation area, approximately 7,800m^2 in area, and situated within the proposed loop road (Work No.6), to the west of the realigned Weald Brook (Works Nos.23A and 23B). This Work would involve lowering the levels of the land upstream of Maylands and Grove bridges to accommodate flood flows and keep flooding in the existing watercourse corridor, whilst creating a wet grassland habitat.

Work No.25

2.1.39. Work No.25 would permit the construction of ecological compensation areas, approximately 90,000m^2 in area, on land situated to the west and northwest of Work No.6.

2.1.40. The Applicant stated [REP4-021] that this Work would include:

- The creation of a creation of a broad-leaved woodland belt along the western edge of the loop road to provide visual screening to nearby receptors and replace woodland habitat lost to the Proposed Development.

- Creation of flower abundant grassland.
- Creation of tussocky grassland and scrub mix.
- Enhancement of existing grassland/scrub habitats including management of non-native plant species.
- Creation of features specific for species such as ponds for great crested newts, dead wood habitat for invertebrates, sheltering and hibernating opportunities for newts and reptiles.

Work No.26

2.1.41. Work No.26 would see a new ecological mitigation area constructed, approximately 3,500m^2 in area, on land situated between Work No.2 and Work No.6. This would involve construction work to lower the floodplain alongside the realigned Ingrebourne river (Work No.23D) and create backwaters between Grove culvert and the confluence of Weald Brook/Ingrebourne river. This would also include the provision of wet grassy marshland planting to create wetland habitat.

Work No.27

2.1.42. Work No.27 would permit a new pond, for environmental mitigation purposes, approximately 500m^2 in area, which would be situated at a location to the south of Work No.17.

2.1.43. The location of this Work has been changed in the Recommended DCO and is discussed further below.

Work No.28

2.1.44. Work No.28 would allow for a new pond, for environmental mitigation purposes, approximately 500m^2 in area, which would be situated at a location to the south of Work No.27 and west of Work No.24A. For both Works Nos.27 and 28, this would involve the construction of a new pond to the north of the loop road and west of the Weald Brook to provide additional breeding opportunities for great crested newts.

Utility Works

Work No.29

2.1.45. Work No.29 requires the diversion of an existing underground Cadent Gas high pressure (33bar) gas pipeline, through installation of a new underground high pressure (33bar) gas pipeline, approximately 860m in length, commencing at a point situated west of Weald Brook and south of the A12 (Work No.1) and terminating north of Work No.24A.

Work No.30

2.1.46. Work No.30 requires the diversion and undergrounding of an existing United Kingdom Power Network (UKPN) 11 kilovolt (kV) overhead electric line. The application as made proposed this to be approximately 640m in length, commencing at a point situated south of Work No.6, in proximity of the proposed Grove bridge and terminating approximately 120m north of Work No.6 and Duck Wood bridge.

2.1.47. The length and location of this Work has been changed in the Recommended DCO and is discussed further below.

Work No.31

2.1.48. Work No.31 would permit works associated with the provision of ducting and cabling between the proposed new gantry (Work No.10) and the existing motorway communications cabinet on the M25 northbound, situated at a location approximately 825m northwards of the existing M25 northbound on-slip at M25 Junction 28.

Maylands Golf Course

Work No.32

2.1.49. Work No.32 arises as a result of proposals to re-align and provide replacement facilities for Maylands Golf Course, over an area of land approximately 13,521m^2 in area and situated at a location to the west of Work No.29.

2.1.50. The area of land take has changed considerably in the Recommended DCO and is discussed further below.

2.2. THE APPLICATION AS EXAMINED

2.2.1. Changes to the key application documents, including the wording of the Recommended DCO, were submitted and updated during the course of the Examination. The changes sought to address points raised by IPs and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.

2.2.2. It is not the intention of the ExA to list all changes to each document here. A list of the updated, revised and/or additional information is contained within the Guide to the Application, the final version of which was submitted at Deadline 10 [REP10-003]. Table 2.1 below summarises the ES documents at the start and close of the Examination.

Table 2.1 – ES Chapters, Figures and Appendices at the Open and Close of the Examination

ES Chapter	Topic	EL Ref as Submitted	EL FINAL
	Non-Technical Summary	APP-088	**REP9-044**
1-4	**Introductory Chapters**	APP-026	**REP9-018**
	Figures	APP-039	**REP9-026**
1.1, 4.1-4.2	Appendices	**APP-049 – APP-051**	n/a

ES Chapter	Topic	EL Ref as Submitted	EL FINAL
5	**Air Quality**	**APP-027**	n/a
	Figures	APP-040	**REP9-027**
5.1	Appendices	APP-052	**REP9-038**
6	**Noise and Vibration**	APP-028	**REP9-019**
	Figures	APP-041	**REP9-028**
6.1 6.2-6.4	Appendices	**APP-053** APP-054 – APP-056	n/a **REP9-039 – REP9-041**
7	**Biodiversity**	APP-029	**REP9-020**
	Figures	APP-042	**REP9-029**
7.1 – 7.15 7.16	Appendices	**APP-057 – APP-071** APP-072	n/a **REP9-042**
8	**Road Drainage and Water Environment**	APP-030	**AS-024**
	Figures	APP-043	**REP9-030**
8.1	Appendices	**APP-073**	n/a
9	**Landscape and Visual**	APP-031	**REP9-021**
	Figures	APP-044	**REP9-031- REP9-033**
9.1 9.2	Appendices	APP-074 AS-008	**REP9-043** **REP1-017**
10	**Geology and Soils**	**APP-032**	n/a

ES Chapter	Topic	EL Ref as Submitted	EL FINAL
	Figures	APP-045	**REP9-034**
10.1 – 10.7	Appendices	**APP-075 – APP-081**	n/a
11	**Cultural Heritage**	**APP-033**	n/a
	Figures	APP-046	**REP9-035**
11.1 – 11.2	Appendices	**APP-082 – APP-083**	n/a
12	**Minerals and Waste**	APP-034	**REP9-022**
13	**People and Communities**	APP-035	**REP9-023**
	Figures	APP-047	**REP9-036**
13.1	Appendices	**APP-084**	n/a
14	**Climate**	**APP-036**	n/a
14.1 – 14.2	Appendices	**APP-085 – APP-086**	n/a
15	**Cumulative Effects**	APP-037	**REP9-024**
	Figures	APP-048	**REP9-037**
15.1	Appendices	**APP-087**	n/a
16	**Summary**	APP-038	**REP9-025**

Change Requests

2.2.3. At Deadline 3a [REP3A-002], [REP3A-030] and [REP3A-031], the Applicant made a request to make four changes to the application. These changes are referenced Change Requests Nos.1, 2, 3 and 4. Change Request No.3 has since been superseded by Change Request No.7.

2.2.4. At Deadline 6 [REP6-002], [REP6-022] and [REP6-023], the Applicant made a request to make a further three changes to the application. These changes are referenced Change Requests Nos.5, 6 and 7.

2.2.5. At Deadline 7 [REP7-002], [REP7-029] and [REP7-030], the Applicant made a request to make one further change to the application. This is referenced as Change Request No.8.

2.2.6. Table 2.2 below summarises the Change Requests made. Where the ExA needs to, we discuss these changes further in Chapter 5 of the Report under the appropriate topics.

Table 2.2 – Change Requests

Change Request No.	Requested Change to the Application	Reason
1	Deletion of Work No.17	Following discussions with the EA
2	Remodelling of Work No.18. From a materials deposit location to the creation of environmental bund to follow the proposed loop road (Work No.6)	Following discussions with the EA
3	Work No.32 To increase the land take involving the Maylands Golf Course to allow for the redesign of Hole No.2 [Now superseded by Change Request No.7]	Ongoing discussions with Luddington Gold Ltd (*It should be noted at this point in the Examination, Luddington Golf Ltd held concerns regarding Work No.32*)
4	Work No.29. Amendments to the lateral limits of deviation from the Cadent Gas pipeline diversion concerning Plot 1/8 on the (then) Land Plans [REP3A-003]. Plot 1/8 would be divided into Plot 1/8 and Plot 1/8a with the latter (the area on which the burial plots would be) for TP only	Following discussions with Gardens of Peace and Cadent Gas
5	Work No.23C	Further works on detailed design

Change Request No.	Requested Change to the Application	Reason
	Redesign of the Duck Wood bridge and disposal of the need for a supporting column means that the realignment works can be reduced.	
6	Work No.30 Realignment of the undergrounding of the UK Power Network electric line to a location further to the west	Following discussion with UKPN
7	Work No.32 An extension to the Order limits to allow for the golf course remodelling works [Change Request No.7 supersedes Change Request No.3]	Following discussions with Luddington Golf Ltd
8	Work No.15 Amendments to the length and location of the egress road from Grove Farm to adjoin Work No.2	Following discussions with Grove Farm and further design investigations

2.2.7. Change Requests Nos.1 and 4 were accepted into the Examination on 26 February 2021 [PD-012]. Change Requests Nos.2 and 3 were accepted into the Examination on 19 March 2021 [PD-013] following a period for IPs to comment on the materiality of the changes; particularly as the ExA felt that Change Request No.2 may potentially trigger Regulations 4 through to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regs).

2.2.8. Change Requests Nos.5 and 6 were accepted into the Examination on 5 May 2021 [PD-018]. Change Request No.7 was accepted into the Examination on 26 May 2021 [PD-020] again following a period for IPs to comment on the materiality of the change.

2.2.9. Change Request No.8 was accepted into the Examination on 14 June 2021 [PD-023] following a period a period for IPs to comment on the materiality of the change.

Summary of Changes to the DCO

2.2.10. In summary, the Recommended DCO differs from the draft DCO submitted with the application [APP-015] as shown in Table 2.3 below:

Table 2.3 – Changes Made to Work Nos from the draft DCO as First Made [APP-015]

Work No.	Change Made	Reason
7	Work No.7 now reads as improvements to a stretch of the existing M25 northbound carriageway, commencing at the northern end of Brook Street viaduct on the M25 mainline and continuing westwards for a length of approximately 1,250m^2.	Applicant stated [REP6-005] "*to reflect the adjusted extent of carriageway resurfacing and tie in works (being the improvements to which the work refers) on the M25 main line carriageway*".
15	The location and length of the egress has changed. Previously located "*immediately to west*" of Grove Farm and at 50m in length, the Recommended DCO now states it commences "*at a point situated north west of Grove Farm*" and would be 87m in length.	Change request No.8
17	DELETED	Change Request No.1
18	Changed to seek consent for an environmental bund to be constructed on an increased land, take area from 23,100m^2 to 25,565m^2. The description of the location of the Works has been amended, with the addition wording stating it being alongside the new loop road (Work No.6).	Change Request No.2
23A	Words "*and west of Work No.30*" have been deleted.	Change Request No.6
23C	The initial length of Work No.23A has been reduced from 70m to 40m and its location has been amended to "*beneath Work No.6 at the location of the proposed Duck Wood bride*", replacing all other wording.	Change Request No.5
27	The location of Work No.27 has been amended, with it being changed from *"south of Work No.17"* to *"north of Work No.28"*.	Change Request No.1

Work No.	Change Made	Reason
30	The length of the diversion and its location has changed considerably. It now reads as being approximately "*890m in length, commencing at a point situated at the existing UKPN sub-station north of the existing Grove Farm access…and terminating adjacent to the southern proposed culvert extension to the west of the M25 northbound carriageway*" with all previous wording deleted.	Change Request No.6
32	The area of land take concerning Work No.32 has been increased from 13,251m^2 to 54,578m^2.	Change Request No.7

2.3. THE SITE AND SURROUNDINGS

2.3.1. The site for the Proposed Development is primarily located on land between the west side of the M25 motorway and the north side of the A12 carriageway. The land is privately owned and not publicly accessible. It is mostly open in character, although two significant groupings of trees at the northern end of the site, known as Alder Wood, and to the south known as The Grove are prominent and notable features of the area. Both woodlands are Tree Protection Orders (TPOs). The site also contains Veteran trees.

2.3.2. The Weald Brook meanders in an approximate north/south direction through roughly the centre of the Order land. To the east side is land within the Grove Farm ownership which comprises largely industrial land in various uses including the storage of scaffolding and vehicles. This land is substantially raised and drops sharply where it meets Alder Wood to the north and land to the west. Close to the south east corner of Grove Farm and the existing M25/A12 roundabout lies the principal residential dwelling of Grove Farm, which is the residence of Mr & Mrs Jones. A number of other residences belonging to family members are located close by within converted barns and a mobile home.

2.3.3. The west side of the Weald Brook is predominately open scrub land. This land is in the ownership of Glebelands. The land leads to the boundary with the Maylands Golf Course, which is also owned by Glebelands but is operated by Luddington Golf Ltd. Maylands Golf Course is an 18-hole course which, Luddington stated [REP2-032] was designed by notable golf architect Harry Colt, who also participated in the design or redesign of Wentworth, Sunningdale, Muirfield, Hoylake and Royal Portrush golf

courses. On the approach to Maylands Golf Course are the residential dwellings of Maylands Cottages.

2.3.4. Beyond Maylands Golf Course lies residential properties in Woodstock Avenue. To the south and on the other side of A12 carriageway lies the Gardens of Peace land, which is a site currently being developed as a burial ground. Adjacent to the Gardens of Peace land is Putwell Bridge Travellers site, which is a small square parcel of land which was the former site of a service station. To the east lies the M25 which is elevated at this point.

2.3.5. The Order limits lie predominately within the Greater London area, and thus within the administrative boundaries of the GLA and LB Havering. A small section of the Order land on the eastern side of the M25 and its on-slip road as well as Brook Street, are within Essex and thus falls within the administrative areas of Essex CC and Brentwood BC.

2.3.6. The Order land is designated within the Metropolitan Green Belt, and parts fall within the Ingrebourne Valley Site of Importance for Nature.

2.4. RELEVANT PLANNING HISTORY

2.4.1. The area of land for the principal works (Works Nos.6 and 2) do not appear to have any relevant planning history. In its LIR [REP1-031], LB Havering considered none of the following planning history to be relevant. Neither Brentwood BC [REP1-026] nor Essex CC [REP1-043] identified any relevant planning history.

Grove Farm

2.4.2. LB Havering alleges that Grove Farm has undertaken development on its land, namely the erection of buildings and the carrying out of operations without the benefit of planning permission. LB Havering stated that its officers are currently preparing a case to pursue enforcement action.

Putwell Bridge Travellers Site

2.4.3. Putwell Bridge Travellers Site is an enclosed and gated parcel of land currently housing one gypsy family. It is located adjacent to the westbound A12 carriageway and the Gardens of Peace land and the Ingrebourne river. An enforcement notice was quashed, and planning permission granted on 22 March 2011 for this site of the former Brook Street Service Station to be used for residential purposes.

Gardens of Peace Muslim Cemetery

2.4.4. The Gardens of Peace site is former agricultural land. It benefits from planning permission from 2015 (via appeal) for use of the land as a burial ground including removal of existing agricultural buildings and erection of two pavilion buildings for associated usage, hard and soft landscaping, new access to A12 and internal roads and paths, parking, and workshop area for storage of associated equipment, tools and materials. During the USI, the ExA was able to observe that enabling

works associated with the establishment of the site for its intended purpose were underway.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

3.1.1. This Chapter sets out the relevant legal and policy context for the application. It outlines the legislation and policy taken into account and applied by the ExA in carrying out the Examination and in making its findings and recommendations to the SoS.

3.1.2. Each chapter in the ES (see Table 2.1 above) contains a section setting out the overarching environmental legislation, policy and guidance for each topic.

3.1.3. The LIRs ([REP1-026], [REP1-031], [REP1-032], [REP1-040], [REP1-041], [REP1-042], [REP1-043]) amongst other things set out the Local Authorities' position on applicable development plan policies and other local strategies.

3.2. NATIONAL INFRASTURCTURE

3.2.1. Whether a scheme constitutes National Infrastructure is prescribed in sections 14 and 15 of the PA2008, which is the primary legislation for NSIPs. The Introduction to the Application [APP-001] and paragraph 1.1.3 of Chapter 1 of the ES [REP9-018] set out that the Application is an NSIP because it falls to be designated under s14(1)(h), s22(1)(b) and 22(3). This is because:

- The Proposed Development is for a highway-related development.
- That it is wholly within England.
- A strategic highways company (namely Highways England) is the highway authority.
- The area of the Proposed Development exceeds 15 hectares.

3.2.2. Having regard to the above, the ExA is satisfied that the Proposed Development falls under the designation of National Infrastructure for the purposes of the PA2008.

3.2.3. Further, the SoS may, under the provisions of s115 of the PA2008, grant consent for development that is associated with an NSIP. The Guidance on Associated Development Applications for Major Infrastructure Projects, issued by MHCLG (via its predecessor the DCLG) in 2013 describes associated development as being "*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*" and "*requires a direct relationship between associated development and the principal development*. *Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development*"

3.2.4. Annex B of the above-mentioned guidance lists the following as examples of associated development for highway NSIP schemes:

a. replacement roadside facilities where this becomes necessary due to the elimination of an existing facility by highway improvement;
b. infrastructure associated with cycle/pedestrian access;
c. offsite landscaping, habitat creation and other environmental works;
d. offsite drainage works;
e. alteration/diversion/stopping up of local roads, accesses and other rights of way; and
f. offsite diversion of SUs' equipment.

3.2.5. The Applicant's position, as stated in its Statement of Reasons (SoR) [REP9-016], is as follows. It is concerned that in some cases there may be some overlap or the absence of a clear boundary between Associated Development and works which form part of the NSIP. There is a danger that separating the two out in the Order could potentially lead to an error in defining them one way or another, given this potential for overlap between the two categories. For this reason, and as there is no requirement for a DCO to distinguish between these two categories, the Applicant has chosen not to differentiate the NSIP, and the Associated Development works in Schedule 1 to the Recommended DCO.

3.2.6. The ExA sought to question the Applicant's approach to Associated Development in WQ2 GQ 2.5 [PD-015] and the above was reaffirmed in the Applicant's response [REP5-041]. The Applicant further stated that the approach to Associated Development had been previously accepted by the SoS in recently made Orders for the A1 Birtley to Coal House 2021 and A38 Derby Junctions 2021 (albeit that the latter has since been returned to the SoS from the High Court for reconsideration). The Applicant further stated that the works listed in Schedule 1 of the Recommended DCO form part of the NSIP or are Associated Development within the meaning of S115(2) Planning Act 2008 or are both.

3.2.7. The Applicant stated [REP9-016] that the diversions of SUs' equipment and apparatus required for the Proposed Development do not constitute an NSIP in their own right.

3.2.8. In the absence of evidence to the contrary and having regard to the precedent set, the ExA is content to accept the approach taken by the Applicant. The ExA is therefore satisfied that the works listed in Schedule 1 of the Recommended DCO either constitute the physical infrastructure (such as Work No.2 and Work No.6) to create the new slip roads, or are related and necessary Works concerning new accesses, signage, earthworks, drainage, environmental mitigation and utility diversions. No IP has suggested that any of the identified Works are unrelated or have questioned the Applicant's approach to combine NSIP works and Associated Development in this case.

3.3. DETERMINING THE PROPOSED DEVELOPMENT

S104 of the Planning Act 2008

3.3.1. The PA2008 provides a different decision-making process for NSIP applications where a relevant National Policy Statement (NPS) has been

designated from that where there is no designated NPS. As NPS National Networks (NPS NN) has effect in relation to development that is the subject of this application, the ExA considers that it is to be assessed against s104 of the PA2008.

3.3.2. S104(3) of PA2008 requires that the SoS must decide an application for development consent in accordance with any relevant NPS, except to the extent that the SoS is satisfied that, in summary doing so:

- Would lead to the United Kingdom being in breach of its international obligations (s104(4)).
- Would lead to the SoS being in breach of any duty imposed on them under any enactment (s104(5)).
- Would be unlawful under any enactment (s104(6)).
- Would mean that the adverse impact of the proposed development would outweigh its benefits (s104(7)).
- Would fail to comply with any prescribed condition for deciding the application otherwise than in accordance with the NPS (s104(8)).

3.3.3. S104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary the matters set out include:

- Any relevant NPSs.
- Any LIRs.
- Certain prescribed matters (which in relation to this application are referred to in Section 3.5).
- Any other matters which the SoS thinks are both important and relevant to the decision.

3.3.4. NPS NN further sets out additional matters which the SoS must consider when determining an application for development consent. They include compliance with the Conservation of Habitats and Species Regulations 2017 (as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (the Habitats Regulations), design and a range of impact topics (such as traffic, landscape impacts, flood risk etc) which are considered by the Applicant in the ES.

3.3.5. The remainder of this Chapter addresses the identification and application of the relevant NPSs and, the LIRs and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.4. NATIONAL POLICY STATEMENT

3.4.1. The NPS NN has been designated as the NPS for roads for which the SoS for Transport is the highway authority. The NPS NN sets out the need for, and Government's policies to deliver, development of NSIPs on the national road network in England. It also provides planning guidance for such projects and the basis for the examination by the ExA and decisions by the SoS, covering a range of relevant topics including:

- Air quality.

- Carbon emissions.
- Biodiversity and ecological conservation.
- Waste management.
- Dust, odour, artificial light and related emissions.
- Flood risk.
- Land instability.
- The historic environment.
- Landscape and visual impacts.
- Land use effects.
- Noise and vibration.
- Impacts on transport networks.
- Water quality and resources.

3.4.2. These matters are addressed with references to individual paragraphs in the NPS NN in Chapter 5 of this Report where important and relevant.

3.4.3. The NPS NN also states that applicable policies from the relevant development plan can be important and relevant matters. These are identified here and addressed further in Chapter 5 of this Report.

3.5. OTHER RELEVANT NATIONAL POLICIES

The National Infrastructure Strategy

3.5.1. The National Infrastructure Strategy (NIS) (Nov 2020) sets out the Government's plans to transform the UK's infrastructure networks. It is based around three central objectives: economic recovery; levelling up and strengthening the Union; and meeting the UK's net zero emissions target by 2050. Underpinning the strategy is the commitment for infrastructure to support the immediate economic recovery and the Government's ambition to transform the UK's infrastructure networks over the coming decades. The NIS states that roads (along with railways) join the nation together. It commits the Government to high levels of investment in the strategic road network and to deliver projects such as motorway junctions more quickly.

3.5.2. Along with the NIS, The National Infrastructure Delivery Plan 2016-2021 (May 2016), produced by HM Treasury, commits the Government to spending over £100bn by 2021 in infrastructure projects. Section 3 of the document concerns roads.

Road Strategies

3.5.3. The Road Investment Strategy (RIS1) for 2015 – 2020, published in December 2014 and its successor the Road Investment Strategy (RIS2) for the period 2020 – 2025 published in March 2020 by the Department for Transport (DfT) set out the Government's commitment towards, strategic vision and delivery of a five-year funding settlement programme. This will allow Highways England to deliver the necessary scale of development and commits the Government to spend £27.4bn during the 2020 – 2025 period not only on new road capacity, but primarily to improve the quality and reduce the negative impacts of the existing highway network.

3.5.4. RIS2 identifies the Proposed Development within Part 3 as "Commitment E28" and thus one of the projects that falls within the programme.

3.5.5. The Highways England Strategic Business Plan (2020 – 2025) sets out the Applicant's response to the Government's RIS2. It states that the document presents the careful balance between maintaining and operating the strategic highway network safely and providing new capacity where needed.

3.5.6. The Highways England Delivery Plan (2020 – 2025) provides the detail of specific funding, activities and projects that Highways England will deliver over the five-year period.

3.5.7. The ExA has taken the above into consideration in its assessment of the Proposed Development.

The National Planning Policy Framework

3.5.8. The National Planning Policy Framework (NPPF) was adopted on 20 July 2021. This document replaced the February 2019 version which was live during the Examination. The ExA has compared the new document with the previous one undertaken and we find that in relation to the Proposed Development, the broad policies remain largely unaffected. It is therefore not necessary for the SoS to reconsult as to whether the new Framework has any bearing on the case.

3.5.9. The NPPF, and the accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied. Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the PA2008 and the relevant NPSs, but the NPPF is a relevant consideration on decision making for this application.

3.5.10. Paragraphs 7 and 8 state that the Government's approach to achieving sustainable development means that the planning system has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.

3.5.11. Paragraph 57 of the NPPF states that planning obligations must only be sought where they meet all of the following tests:

- Necessary to make the development acceptable in planning terms.
- Directly related to the development.
- Fairly and reasonably related in scale and kind to the development.

3.5.12. Both the NPPF and the PPG are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that project. NPSs ultimately prevail over the NPPF.

3.6. UNITED NATIONS AND EUROPEAN LAW

3.6.1. The UK left the European Union (EU) as a member state on 31 January 2020. The European Union (Withdrawal) Act 2020 provides for EU law to be retained as UK law and also to bring into effect obligations which may come into force during the transition period.

3.6.2. This Report has been prepared on the basis of retained law and reference in it to European terms such as Habitats have also been retained for consistency with the Examination documents. It will be a matter for the SoS to satisfy themselves as to the position on retained law and obligations at the point of the decision.

United Nations Convention on Biological Diversity 1992

3.6.3. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to this convention in considering the likely effects of the proposed development and appropriate objectives and mechanisms for mitigation and compensation.

3.6.4. The Convention is of relevance to Terrestrial Environment and Biodiversity, HRA, Historic Environment and Water Resources which are considered in Chapters 5 and 6 of this Report.

The Ramsar Convention on Wetlands and International Importance 1971 (as amended) ('The Ramsar Convention')

3.6.5. The Ramsar Convention is an international treaty that provides a national framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. The UK Government has chosen to apply, as a matter of policy, the legislative provisions that apply to the consideration of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) to Ramsar sites, even though these are not European sites as a matter of law. The Ramsar Convention and its implications, where relevant, have been taken into account in considering the application and these are addressed in this Report.

Council Directive 2008/50/EC on Ambient Air Quality and Cleaner Air for Europe (The 'Air Quality Directive')

3.6.6. The Air Quality Directive (AQD) consolidates four directives and one Council decision into a single directive on air quality. Under the AQD member states are required to assess ambient air quality with respect to sulphur dioxide (SO_2), nitrogen dioxide (NO_2), nitrogen monoxide (NO_X), particulate matter (PM_{10} and $PM_{2.5}$), lead, benzene and carbon monoxide. The Directive sets limiting values for compliance and establishes control actions where these are exceeded. It is transposed

into UK statute through regulations made under the Environment Act 1995 (EA1995).

Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (The 'Habitats Directive')

3.6.7. The Habitats Directive provides for a network of protected sites and a system of species protection. Habitat types requiring the designation of SACs are listed in Annex I of the Directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 ecological network of protected sites. Annex IV lists animal and plant species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species (EPS). There is one SAC, the Thursley, Ash, Pirbright and Chobham SAC that could be affected as a result of the Proposed Development.

Council Directive 2009/147/EC on the Conservation of Wild Birds (The 'Birds Directive')

3.6.8. The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the EU. It requires classification of areas comprising the most suitable territories for the protected species as SPAs.

3.6.9. SPAs which could potentially be affected as a result of the Proposed Development comprise the Thames Basin Heaths SPA, the South West London Waterbodies SPA, the Solent and Southampton Water SPA together with the Solent and Dorset Coast potential SPA (pSPA).

Establishing a Framework for the Community Action in the Field of Water Policy (200/60/EC) (The 'Water Framework Directive')

3.6.10. The Water Framework Directive (WFD) establishes a framework for water policy, managing the quality of receiving waters. Amongst other objectives, it requires EU Member states to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface and groundwater bodies by progressively reducing pollution and by restoration. To be in compliance with NPS NN the SoS must take the WFD into account.

Council Directive 2008/105/EC on the Environmental Quality Standards (as amended by Council Directive 2013/118/EC)

3.6.11. The Directive lists Environmental Quality Standards (EQS) for priority substances and certain other pollutants as provided for in Article 16 of the WFD, with the aim of achieving good surface water chemical status.

It includes certain substances that may be associated with runoff from highways.

Council Directive 2006/118/EC on Groundwater

3.6.12. The Directive complements the WFD. It requires measures to prevent or limit inputs of pollutants into groundwater to be operational so that WFD environmental objectives can be achieved.

Council Directive 2007/60/EC on Floods

3.6.13. The aim is of this Directive is to reduce and manage the risks that floods pose to human health, the environment, cultural heritage and economic activity. It sets the strategic level for flood risk with which any development will need to comply.

3.7. RELEVANT UK LAW AND POLICY STATEMENTS

Paris Agreement 2015

3.7.1. The Paris Agreement concluded in December 2015 with an agreement from all parties to the United Nations Framework Convention on Climate Change (UNFCCC) to the central aim: "*to keep the global temperature rise this century well below 2 degrees Celsius above pre-industrial levels, while pursuing efforts to limit the increase even further to 1.5 degrees Celsius*". The Paris Agreement requires all Parties to make ambitious efforts to combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low carbon future. For this purpose, the parties agree to making finance flows consistent with a low Greenhouse Gas (GHG) emissions and climate-resilient pathway.

3.7.2. The Paris Agreement requires all parties to put forward their best efforts through nationally determined contributions and report regularly on their emissions and implementation efforts. Some of the key aspects of the Agreement include a long-term temperature goal, global peaking of GHG and climate neutrality and mitigation. There will be a global stocktake every five years to assess the collective progress towards achieving the purpose of the Agreement and to inform further individual actions by Parties. The UK ratified the Agreement in 2016.

The Climate Change Act 2008 (as amended)

3.7.3. The Climate Change Act 2008 (CCA2008) (as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019) established the world's first long-term legally binding framework to tackle the dangers of climate change. A key provision is the setting of legally binding targets for GHG emission reductions in the UK of at least 100% by 2050 (increased from 80% by the June 2019 amendment order) and at least 26% by 2020, against a 1990 baseline. The Act also created the Committee on Climate Change, with responsibility for setting five-year Carbon Budgets covering successive periods of emissions reduction to 2050, advising and scrutinising the UK Government's associated climate

change adaptation programmes and producing a National Adaptation Plan for the UK Government to implement.

3.7.4. In December 2020, the Climate Change Committee put forward its recommendations for the UKs Sixth Carbon Budget, running from 2033 to 2037. Describing itself as "*the pathway to net zero*", the recommendations require a 78% reduction in UK territorial emissions between 1990 and 2035, bringing forward the UKs previous 80% target by nearly 15 years. The Carbon Budget Order 2021 came into force on 24 June 2021.

The Carbon Plan 2011

3.7.5. The Carbon Plan sets out how the UK will achieve the emissions reduction commitment of 80% by 2050, made in the Climate Change Act (2008). It sets out how the UK will make the transition to a low carbon economy, maintain energy security and minimise costs to consumers. The Carbon Plan does not relate directly to road improvement schemes, but the Proposed Development should support implementation of the plan by prioritising low carbon materials and construction and operational energy efficiency, where practicable. In addition, seven days after the close of this Examination the Government published "*Decarbonising Transport – A Better, Greener Britain*" which sets out commitments to reduce or remove carbon emissions from all forms of transport and to review the NPS NN.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)

3.7.6. The EIA Regulations establish the necessary information to be supplied by the Applicant within the ES, as well as information that can be requested as being reasonably justified given the circumstances of the case. Part 2 of Schedule 4 represents the minimum requirements for an ES under the EIA Regulations, and this is reinforced by Regulation 4(2), which sets out the core duty of the decision-maker in making a decision on EIA Development.

3.7.7. The Proposed Development falls under Schedule 2 paragraph 10(f) of the EIA Regulations as it constitutes the construction of roads not included within Schedule 1. The application is supported by an EIA in the form of an ES (see Table 2.1).

3.7.8. The ExA in reaching its conclusions and recommendation has taken into consideration the environmental information, as defined in Regulation 3 (including the ES and all other information on the environmental effects of the Proposed Development).

The Infrastructure Act 2015

3.7.9. S5(2) of the Infrastructure Act states that Highways England must, when exercising functions, have regard to the effect of those functions on the environment.

Environmental Protection Act 1990

3.7.10. S79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. Part II, S33 (1)(a) and (1)(b) establishes certain actions as offences with respect to depositing, treating, keeping or disposing of controlled waste without a permit. S33 (1)(c) makes it an offence to keep, treat or dispose of controlled waste in a manner likely to cause pollution of the environment.

3.7.11. Part IIA sets out the statutory contaminated land regime. This sets out procedures to make land suitable for its current use where there is a pollution linkage that can result in significant harm. Where land is being developed, the relevant planning regime addresses the risk posed by potential contamination.

3.7.12. Part III of the Act covers statutory nuisance provisions for dust and odour. Local Authorities can take action in cases where a statutory odour or dust nuisance is found to exist. The Proposed Development has the potential to generate dust during construction.

The Environment Act 1995

3.7.13. The Environment Act 1995 sets out provisions for protecting air quality in the UK and for local air quality management. Local Authorities are required to regularly review and assess local air quality and identify areas where AQS objectives may be exceeded. Where the authority has declared an Air Quality Management Area (AQMA), it is required to prepare an Air Quality Action Plan (AQAP) describing pollution reduction measures it will put in place.

Environmental Damage (Prevention and Remediation) Regulations 2015

3.7.14. The emphasis of these Regulations is proactively putting in place appropriate pollution prevention measures to reduce risks to the environment.

The 25-Year Environment Plan 2018

3.7.15. A Green Future: Our 25 Year Plan to Improve the Environment sets goals for improving the environment within a generation and leaving it in a better condition than its current state. There are a number of goals and targets, but the following targets are of particular relevance to biodiversity:

- Restoring 75% of our one million hectares of terrestrial and freshwater protected sites to favourable condition, securing their wildlife value for the long term.
- Creating or restoring 500,000 hectares of wildlife-rich habitat outside the protected site network, focusing on priority habitats as part of a wider set of land management changes providing extensive benefits.
- Taking action to recover threatened, iconic or economically important species of animals, plants and fungi, and where possible to prevent

human induced extinction or loss of known threatened species in England and the Overseas Territories.
- Increasing woodland in England in line with our aspiration of 12% cover by 2060: this would involve planting 180,000 hectares by end of 2042.
- Managing and reducing the impact of existing plant and animal diseases; lowering the risk of new ones and tackling invasive non-native species.

The Conservation of Habitats and Species Regulations 2017 (as amended)

3.7.16. These Regulations are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these Regulations are referred to as an HRA. It should be noted that whilst the Ramsar convention is a UK treaty obligation and not part of the body of European Law, HRA is the primary UK process that gives effect to the UK's obligations under the Ramsar Convention.

3.7.17. The Regulations provide for the designation of "European sites", the protection of EPS and the adoption of planning and other controls for the protection of European sites.

3.7.18. Under the Regulations, competent authorities i.e., any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the Habitats Directive and Birds Directive.

3.7.19. The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 which came into force on Implementation Period Completion Day, 31 December 2020. These amendment regulations reflect the arrangements in light of the UK's departure from the EU, including the introduction of new terminology with reference to the UK's National Site Network rather than the Natura 2000 network (which remains the collective term for sites in the EU).

3.7.20. The Applicant submitted an HRA [REP2-005] and Screening Matrices [PDB-001] and [REP2-007] to support its application. The HRA including the adequacy of information is considered in Chapter 6 of this Report.

Countryside and Rights of Way Act 2000 (as amended)

3.7.21. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of Public Rights of Way (PRoW) and brought in additional measures to further protect Area of Outstanding Natural Beauty (AONB). It also introduced improved provisions for the protection and management of Sites of Special Scientific Interest (SSSI).

The Wildlife and Countryside Act 1981 (as amended)

3.7.22. The Wildlife and Countryside Act 1981 (as amended) is the primary legislation which protects animals, plants and certain habitats in the UK. The Act contains measures for the notification, confirmation, protection and management of SSSIs. These sites are identified for their flora, fauna, geological or physiogeographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is NE.

3.7.23. The Act has relevance to consideration of SSSIs and on protected species and habitats including European sites. If a species protected under Part I of this Act is likely to be affected by the Proposed Development, a protected species licence would be required from NE in addition to any consent that may be granted by the SoS through a DCO.

Natural Environment and Rural Communities Act 2006

3.7.24. The Natural Environment and Rural Communities Act 2006 (NERC) includes a duty that every public body (including the ExA and the SoS) must have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. In complying with this, regard must be given to the United Nations Convention on Biological Diversity of 1992.

3.7.25. Under S41 of the Act, the Government must publish a list of the living organisms and type of habitat which are of principal importance for the purpose of conserving biodiversity. This list must then be used by all decision makers in England implementing their duty under s40 of the Act to have regard to the purposes of conserving biodiversity. This Report considers how the Proposed Development would affect biodiversity and ecology and landscape matters in Chapter 5 of this Report.

Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

3.7.26. The Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA Act) sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.

3.7.27. S66 of the LBCA Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, the LPA or, as the case may be, the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. By virtue of S1(5) of the Act a listed building includes any object or structure within its curtilage.

3.7.28. S72 of the LBCA Act establishes a general duty on a LPA or the SoS with respect to any buildings or other land in a conservation area to pay

special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

3.7.29. Chapter 11 of the ES [APP-033] assessed the effect of the Proposed Development on heritage assets within the vicinity of the Order limits.

Ancient Monuments and Archaeological Areas Act 1979 (as amended)

3.7.30. The Ancient Monuments and Archaeological Areas Act 1979 imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. For non-designated archaeological assets, protection is afforded through the development management process as established both by the Town and Country Planning Act 1990 (TCPA1990) and the NPPF.

The Air Quality Strategy for England

3.7.31. This policy, which applies to the whole of the UK, provides an overview and outline of the UK Government's and devolved administrations' ambient (outdoor) air quality policies. The strategy sets out the air quality objectives and the measures selected to achieve the desired improvements in air quality. The Proposed Development has the potential to affect air quality through generation of emissions from industrial and transport sources.

The Air Quality Standards Regulations 2010

3.7.32. The Air Quality Standards Regulations 2010 give statutory effect to the AQD[2] and transpose it into UK law. It requires the SoS, as the competent authority, to assess ambient air quality for the presence of SO_2, NO_2, NO_x, particulate matter (PM_{10} and $PM_{2.5}$), lead, benzene and carbon monoxide. It sets limit values for compliance and establishes control actions where the limit values are exceeded.

3.7.33. Chapter 5 of the ES [APP-027] and its Appendix [REP9-038] report on air quality matters. They identify that the Order limits pass through or are near to AQMAs. The assessment considered the potential effects of construction dust emissions, from construction-related road traffic and carbon emissions. No potentially significant effects in relation to air quality were identified and none of the AQMAs would be affected by the Proposed Development. Any local issues are considered within Chapter 5 of this Report.

The Air Quality (England) Regulations 2000

3.7.34. As amended by the Air Quality (England) (Amendments) Regulations 2002, these Regulations sets the objectives given in the Air Quality

[2] Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

Strategy for England, Scotland, Wales and Northern Ireland, applicable to local air quality management.

The National Air Quality Plan 2017

3.7.35. The National Air Quality Plan sets in place a strategy for tackling roadside nitrogen dioxide concentrations which sets out the approach for meeting the statutory EU limit values for nitrogen dioxide in the shortest possible time.

The Clean Air Strategy 2019

3.7.36. The Clean Air Strategy sits at national level for setting out the action that is required from across all parts of government and society to tackle air pollution and reduce emissions from transport, homes, farming and industry. It includes new goals to reduce public exposure to $PM_{2.5}$, as recommended by the World Health Organisation.

Control of Pollution Act 1974

3.7.37. S60 and s61 of the Control of Pollution Act 1974 (CoPA) provide the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the LPA with instructions to cease work until specific conditions to reduce noise have been adopted. S61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires that Best Practicable Means be adopted for construction noise on any given site.

Environmental Noise Regulations 2006

3.7.38. The Environmental Noise (England) Regulations are relevant to the operational phase of the Proposed Development. The Regulations implement the European Environmental Noise Directive (END) in England. Developments must take into account Noise Action Plans.

The Control of Noise Order 2015

3.7.39. The Control of Noise (Code of Practice for Construction and Open Sites) (England) Order 2015 is relevant to the construction phase of the Proposed Development and approves BS 5228:2009+A1:2014 Part 1 Noise and Part 2 Vibration for the purpose of giving guidance on appropriate methods for minimising noise and vibration.

Noise Policy Statement for England

3.7.40. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The NPSE sets out the long-term vision of the government's noise policy,

which is to "*promote good health and a good quality of life through the effective management of noise within the context of policy on sustainable development*".

3.7.41. The Explanatory Note within the NPSE provides further guidance on defining "significant adverse effects" and "adverse effects", one such concept identifies "Lowest Observable Adverse Effect Level (LOAEL)", which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and No Observed Effect Level (NOEL), which is the level below which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established.

3.7.42. When assessing the effects of the Proposed Development on noise matters, the aims of the development should firstly avoid noise levels above the SOAEL; and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

The Land and Compensation Act 1973

3.7.43. Part I of the Land Compensation Act 1973 includes provision for compensation for loss in property value resulting from physical agents including noise. Part II includes provision for noise mitigation measures at dwellings adjacent to new highways if certain conditions are satisfied.

Environmental Permitting Regulations 2016

3.7.44. These Regulations provide a consolidated system of environmental permitting in England and Wales and transpose provisions of fifteen EU Directives which impose obligations requiring delivery through permits or which are capable of being delivered through permits. It covers EA permits for flood risk (on main river) certain discharges to watercourses and waste management.

Water Resources Act 1991, Flood Water Management Act 2010, Water Act 2003 and 2014, Land Drainage Act 1991

3.7.45. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures; discharge and pollution; and for drainage management related to non-main rivers. This is covered in Chapter 5 of this Report.

Flood Risk Regulations 2009

3.7.46. The Flood Risk Regulations (as amended 2009) transpose the Floods Directive (2007/60/EC). They aim to provide a consistent approach to managing flood risk. The EA are responsible for managing flood risk from main rivers, the sea and reservoirs. LLFAs are responsible for local

sources of flood risk, in particular surface water, groundwater and ordinary watercourses.

Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

3.7.47. These Regulations outline the duties of regulators (EA in England) in relation to environmental permitting, abstraction and impoundment of water.

Water Resources (Environmental Impact Assessment) Regulations 2006

3.7.48. The Water Resources (Environmental Impact Assessment)(England and Wales) Regulations 2008 impose procedural requirements in relation to the consideration of applications or proposals for an abstraction or impounding licence under Chapter II of Part II of the Water Resources Act 1991 and require consent in other cases.

The Hazardous Waste Regulations 2005

3.7.49. The Hazardous Waste (England and Wales) Regulations 2005 confirms that all wastes listed as hazardous in the European Waste Catalogue (2000/532/EC) and the CLP (Classification, Labelling and Packaging) Regulation (EC 1272/2008). Hazardous waste will be produced throughout all lifecycle stages of a Scheme. Hazardous waste should be disposed of in accordance with the Regulations, including the need to produce a hazardous waste consignment note.

Equality Act 2010

3.7.50. S149 of the Equality Act 2010 establishes a duty (the public sector equality duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The ExA has had due regard to the PSED throughout the Examination.

Health and Social Care Act 2012

3.7.51. This is a wide-ranging piece of legislation that places a duty of care to protect and improve public health on the Secretary of State for Health as well as other bodies directed by the Secretary of State for Health.

Highways Act 1980

3.7.52. The Highways Act 1980 deals with the management and operation of the road network in England and Wales including the drainage of highways into environmental waters and sewers.

Other Legislation

3.7.53. The following additional legislation contains provisions which are relevant to the Proposed Development and must be complied with:

- Weeds Act 1959.
- Protection of Badgers Act 1992.
- The Environment Agency Groundwater Protection Policy 2018.
- Wild Mammals (Protection) Act 1996.
- The Eels (England and Wales) Regulations 2009.
- New Roads and Street Works Act 1991 (NRSWA1991).
- Treasure Act 1996.

3.8. MADE DEVELOPMENT CONSENT ORDERS

3.8.1. In a response made to the ExA's Written Questions [PD-008] and [PD-015] and to the ISHs on the draft DCO [EV-010] and [EV-038] the Applicant has cited as precedent the following made Orders:

- A38 Derby Junctions Development Consent Order 2021.
- A1 Birtley to Coal House Development Consent Order 2021.
- A303 Sparkford to Ilchester Dualling Development Consent Order 2021.
- A63 (Castle Street Improvement, Hull) Development Consent Order 2020.
- M42 Junction 6 Development Consent Order 2020.
- A30 Chiverton to Carland Cross Development Consent Order 2020.
- The A303 (Amesbury to Berwick Down) Development Consent Order 2020 (sometimes referred to as the A2020 Stonehenge DCO in the Applicants response).
- A19 Downhill Lane Junction Development Consent Order 2020.
- A585 Windy Harbour to Skippool Highway Development Consent Order 2020.
- Great Yarmouth Third River Crossing Development Consent Order2020.
- Lake Lothing (Lowestoft) Third Crossing Order 2020.
- Southampton to London Pipeline Development Consent Order 2020.
- Tees Combined Cycle Power Plan Order 2019.
- A19/A184 Testo's Junction Improvement Order 2018.
- Silvertown Tunnel Order 2018.
- M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016.

3.8.2. Where relevant the ExA has had regard to made Orders. The A38 Derby Junctions Development Consent Order 2021 was referred to by the Applicant but and the A303 (Amesbury to Berwick Down) Order 2020 have since been quashed and returned to the SoS for re-consideration.

3.9. TRANSBOUNDARY EFFECTS

3.9.1. The Proposed Development is of local and regional impact. A Transboundary Screening under Regulation 24 of the EIA Regulations [OD-006] was undertaken on behalf of the SoS on the 11 April 2018 prior to the Examination. The view of that screening was, based on the information supplied by the Applicant, that the Proposed Development would be unlikely to have a significant effect either alone or cumulatively on the environment in another European Economic Area State.

3.9.2. Furthermore, it was considered that the likelihood of Transboundary effects resulting from the Proposed Development would be so low that it did not warrant the issue of a detailed Transboundary Screening. Transboundary consultation under Regulation 32 was therefore not considered necessary. The ExA concurs with this view.

3.9.3. The Regulation 24 duty is an ongoing duty. Consequently, the ExA has considered whether any facts have emerged during the Examination to change the conclusions of these screenings. None did, and the ExA's conclusions of the screenings were not altered.

3.10. LOCAL IMPACT REPORTS

3.10.1. S104(2) of the PA2008 states that in deciding an application the SoS must have regard to any LIR within the meaning of s60(3) PA2008. There is a requirement under s60(2) PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit a LIR. In the Rule 6 letter [PD-006] the ExA issued a Procedural Decision to request LIRs from each Local Authority at Deadline 1. This Deadline was subsequently confirmed in the Rule 8 letter [PD-007].

3.10.2. For the avoidance of the reader returning Chapter 1 of this Report, we repeat again here the LIRs submitted at Deadline 1. The principal issues raised within them are discussed further throughout this Report.

- Brentwood BC [REP1-026].
- LB Havering [REP1-031], [REP1-032].
- Essex CC [REP1-040], [REP1-041], [REP1-042] and [REP1-043].

3.11. THE DEVELOPMENT PLANS

3.11.1. As outlined in the LIRs ([REP1-026] (Brentwood BC), [REP1-031] and [REP1-032] (LB Havering), [REP1-040], [REP1-041], [REP1-042] and [REP1-043] (Essex CC)) the development plans for the area and lists of relevant policies are listed below.

3.11.2. The policies listed below will be considered further in the relevant sections in Chapter 5 of this Report. However, it is important to note that, as stated in paragraph 4.1.5 of NPS EN-1, if there is any conflict between the policies below and an NPS, the NPS takes precedence due to the national significance of the proposed infrastructure.

Greater London Authority

3.11.3. The GLA did not participate in the Examination at any point. In its LIR [REP1-031], LB Havering confirmed that it would not undertake such an assessment of the Proposed Development against London Plan policies and would expect the GLA to do so. The Applicant had assessed the policies within the former iteration of the London Plan (2016 consolidated with alteration since 2011) within each chapter of the ES (see Table 2.1).

3.11.4. On 2 March 2021, the London Plan 2021 was adopted. No IP made any subsequent representations. The ExA thus made a request to all IPs on

27 May 2021 [PD-022] but particularly the GLA, TfL and the LB Havering to ask whether the policies within the London Plan 2021 were important and relevant to the Examination and whether there were any substantial changes from the previous iteration of the London Plan.

3.11.5. At Deadline 8 [REP8-037], TfL provided a list of the transport related policies which it said were relevant to the Examination and which were endorsed by the GLA. Also, and at Deadline 8 [REP8-027], LB Havering provided a list of policies. Summarising the two together, the policies identified were:

London Plan 2021:

- Policy H1 (Housing).
- Policy T1 (Strategic Approach to Transport).
- Policy T2 (Healthy Streets).
- Policy T3 (Transport Capacity).
- Policy T4 (Assessing and Mitigating Transport Impacts).
- Policy T5 (Cycling).
- Policy T7 (Deliveries, Servicing and Construction).
- Policy D14 (Noise).
- Policy G6 (Biodiversity and Access to Nature).
- Policy G7 (Trees and Woodlands).
- Policy SI1 (Improving Air Quality).
- Policy SD2 (Collaboration in the wider South East).
- Policy SD3 (Growth Locations in the wider South East and Beyond).

3.11.6. In addition, and in its LIR [REP1-031], LB Havering identifies the Mayor's Transport Strategy 2018 as being an important and relevant consideration.

3.11.7. The ExA has had regard to these policies in our assessment of the Application.

London Borough of Havering

3.11.8. In its LIR [REP1-031], LB Havering acknowledged that the adopted plan comprises the Local Development Framework (LDF) 2008.

3.11.9. However, paragraphs 9.26 to 9.2.10 of its LIR [REP1-031] stated the Council is currently bringing forward the Havering Local Plan (2016-2031) 2017 (the emerging Local Plan). The Council stated that emerging Local Plan has already been through its examination in public and, according the Council, the plan was found sound subject to modifications. The Council stated that "*the proposed Main Modifications have now been published and recently consulted on. It is expected the Inspector having considered all responses to the proposed Main Modifications, will finalise her report into the soundness of the Local Plan and the schedule of recommended Main Modifications in early 2021. If successful, the new Local Plan will be formally adopted and will replace the* [LDF]*".*

3.11.10. At the close of the Examination, the emerging plan had not been adopted. On 13 May 2021, the Inspectorate wrote to LB Havering to

inform them that, in the view of the development plan Inspector, the emerging Plan cannot be found sound without modifications. LB Havering responded to the Inspectorate on 1 June 2021 stating, amongst other things, that it would undertake the modifications despite being disappointed with the development plan Inspector's decision.

3.11.11. In its submission at Deadline 10 [REP10-011], LB Havering stated that "*the Council would like to re-emphasise that the Further Main Modifications only concern the matters the Inspector has concluded are not in conformity with the London Plan 2021 (residential parking standards, housing targets and affordable housing on industrial and public land) and do not involve other policies LB Havering has referred to throughout this Examination*".

3.11.12. Accordingly, LB Havering considered the emerging Plan holds significant weight and has, accordingly, advanced policies contained within it as being important and relevant to the consideration of this Application. The Applicant does not dispute the weight to be afforded emerging policies in the SoCG between itself and LB Havering [REP9-050].

3.11.13. Paragraph 10.1.1 of the LIR [REP1-031] stated that: "*LB Havering had reviewed its policy documents for compatibility or conflict against the proposed scheme. Rather than reiterating all the policies contained within these documents, for ease reference Havering has set out below the policies that are considered to be conflicted. All other policies are considered to be in agreement or neutral with the scheme".*

Local Development Framework Core Strategy and Development Control Policies 2008 (adopted plan):

- Policy CP8 (Community Needs).
- Policy CP9 (Reducing the Need to Travel).
- Policy CP10 (Sustainable Transport).
- Policy CP16 (Biodiversity and Geodiversity).
- Policy CP18 (Heritage).
- Policy DC8 (Gypsies and Travellers).
- Policy DC27 (Provision of Community Facilities).
- Policy DC31 (Cemeteries and Crematoria).
- Policy DC32 (Road Network).
- Policy DC52 (Air Quality).
- Policy DC55 (Noise).
- Policy DC67 (Buildings of Heritage Interest).
- Policy DC69 (Other Areas of Special Townscape or Landscape Character).
- Policy DC70 (Archaeology and Ancient Monuments).

Local Plan (2016-2031) 2017 (emerging):

- Policy 11 (Gypsy and Traveller Accommodation).
- Policy 22 (Skills and Training).
- Policy 23 (Connections).
- Policy 27 (Landscaping).
- Policy 28 (Heritage Assets).

- Policy 30 (Nature Conservation).
- Policy 33 (Air Quality).
- Policy 34 (Managing Pollution).

3.11.14. In addition, and in its LIR [REP1-031], LB Havering identifies its Local Implementation Plan 2019, which is its transport strategy, and its Air Quality Action Plan 2018 as being an important and relevant consideration.

Essex County Council

3.11.15. In its LIR [REP1-043], Essex CC confirmed that the following documents were relevant to the application and in each case, the Proposed Development was fully compliant with it.

Essex Transport Plan 2011

- Policy 3 (Congestion and Network Reliance).
- Policy 5 (Connectivity).
- Policy 10 (Road Safety).
- Policy 14 (Cycling).
- Policy 15 (Walking and Public Rights of Way).

Essex Development Management Policies 2011

- Policy DM15 (Congestion).

Brentwood Borough Council

3.11.16. The SoCG signed between the Applicant and Brentwood BC [REP1-005] agreed that the Brentwood Replacement Local Plan 2005 is the adopted plan for the Borough, and the policies cited by the Council are listed below.

3.11.17. The Applicant and Brentwood BC also agreed that the Brentwood Pre-submission Local Plan (2019) is in its early stages and the policies within it should attract limited weight in the Examination. However, the SoCG [REP1-005] noted that the examination in public was due to take place just prior to and during the Examination of this application and it is possible that the position of the parties may have changed as to the weight to be applied to the emerging plan by the time the SoS determines this Proposed Development.

3.11.18. Therefore, the SoS may wish to seek an update from both Brentwood BC and the Applicant to determine whether the emerging plan has advanced to a stage where policies contained therein are important and relevant to the consideration of the Proposed Development.

The Brentwood Replacement Local Plan 2005:

- Policy CP1 (General Development Criteria).
- Policy T2 (New Development and Highway Considerations).
- Policy T14 (Cycling).
- Policy T15 (Pedestrian Facilities).
- Policy GB1 (New Development in the Green Belt).

- Policy GB2 (Development Criteria in the Green Belt).
- Policy GB28 (Landscape Enhancements).
- Policy C8 (Special Landscape Areas).
- Policy C11 (Thames Chase Community Forest).

3.12. THE SECRETARY OF STATE'S POWERS TO MAKE A DEVELOPMENT CONSENT ORDER

3.12.1. The ExA was aware of the need to consider whether changes to the application documents meant that the application had changed to the point where it was materially different to that which was originally submitted.

3.12.2. The SoS will be aware of the March 2015 updated "*Planning Act 2008: guidance for the examination of applications for development consent*" issued by the (then) Department of Communities and Local Government. Paragraphs 109 and 115 provide guidance in relation to changing an application post-acceptance.

3.12.3. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made.

3.12.4. The application was amended during the Examination; such changes are set out in Chapter 2 of this Report.

3.12.5. In exercising this power, the ExA advises the SoS that the proposed changes were not deemed material so as to constitute a new application. The ExA's Procedural Decisions of 26 February 2021 [PD-012], 19 March 2021 [PD-013], 5 May 2021 [PD-018], 26 May 2021 [PD-020], and 14 June 2021 [PD-023] set out the reasons for the acceptance of these changes.

3.12.6. Therefore, the ExA advises the SoS that it would have the power under s114 of the PA2008, if minded to do so, to make the Recommended DCO incorporating the changes proposed during the Examination having regard to the development consent applied for.

4. IDENTIFYING THE PLANNING ISSUES

4.1. RELEVANT REPRESENTATIONS

4.1.1. A total of 29 RRs were received. Table 4.1 summarises those concerns raised:

Table 4.1 – Summary of RRs

RR No.	Topic	Issue Raised
007, 011, 014, 016, 017	Traffic	▪ Generic concern over increased traffic. ▪ Concerns raised about the effect on Brook Street. ▪ Ensure the A12 eastbound slip road remains open during construction (via Requirement 10 of the DCO). ▪ No examination of the Gallows Corner junction and the effects on it.
001, 003 007, 011, 012, 014, 017, 018, 020, 021, 025, 026	Access	▪ Already significant problems exiting Woodstock Avenue, proposal will make it worse. ▪ Exiting Woodstock Avenue requires circumnavigating the whole roundabout which is awful especially when already trafficked. ▪ Requesting ability to alleviate the A12 to allow right turning out of Woodstock Avenue. ▪ Concern over restricted access to footpaths and public transport. ▪ Grove Farm current egress is inadequate and needs moving further along the proposed off-slip road and the attenuation pond be moved further north.
001, 003, 014, 015, 016, 017, 021, 023, 029	Noise	▪ Generic "increased noise". ▪ Significantly worse during and after proposed development especially if night-time construction takes place. ▪ Worse for Leonard Way residents ▪ Long-term worry as link road will be closer to residential properties. ▪ Environmental Statement Chapter 13: People and Communities was developed using the methodology provided by Design Manual for Roads and Bridges (DMRB) Volume 11 Section 3. However, this methodology was superseded by DMRB LA112: Population and Human Health, in January 2020. ▪ More information is needed on the effects on the Havering Noise Important Area.

RR No.	Topic	Issue Raised
009, 014	Flooding	▪ Concerns about flooding at the roundabout and residential area from Maylands Fields and Grove Farm. ▪ Existing drainage problems on A12 slip road and Brook St roundabout. ▪ Works needed outside DCO boundary because works still lead to a deficit in riverine habitat. ▪ EA largely accepts evidence and conclusions on land contamination matters.
014	Biodiversity	▪ Disturbance to wildlife during construction.
001, 003, 014, 016, 017, 021, 029	Air Quality	▪ Generic "increased pollution". ▪ Significantly worse during and after proposed development especially if night-time construction takes place. ▪ Concern over increased effects as proximity to residential properties would decrease. ▪ More information is needed on the AQMA at Gallows Corner junction if increased traffic will use this area.
003, 007	Landscape and Visual	▪ Loss of view over the fields. ▪ Concerns over the representations of the panoramic photographs.
017	Heritage	▪ More evidence is needed on the effects on the two listed buildings at Tylers Farm and some Non-Designated Heritage Assets. The nineteenth century barn at Grove Farm has not been included in the assessment.
019, 020, 026	People and Communities	▪ Land Take – Detrimentally affects Maylands Golf course driving range and playability of first and second holes. IPs suggested mitigation including course redesign has been rejected by the Applicant. Course was designed by renowned architect Harry Colt. ▪ Gardens of Peace: Proposal will delay opening of additional land and cause a redesign. Opening will be entirely in the hands of the Applicant's contractors. Issue of a gas main under the land would prevent land being used for burial. ▪ Grove Farm effects on living conditions and the business park and that of the operation of the site – hard to understand that issues would be negligible.

RR No.	Topic	Issue Raised
009	Waste Management	▪ Concerned only mechanism for dealing with waste is a waste management plan through a specific process; the Applicant has not followed this and it is not appropriate for dealing with any landfill (contaminated) waste – which requires an EP. ▪ ES Chapter 12 needed to reference the need for an EP to complete these works and allow the treatment or redeposit of suitable waste to achieve the desired landform.
017	Cumulative Impacts	▪ Concerned that Lower Thames Crossing (LTC) has not been considered.

4.1.2. As set out in Chapter 1 of this Report and discussed in more detail in Chapters 5 and 9, three RRs [RR-002], [RR-008] and [RR-022] were withdrawn during the Examination.

4.2. ISSUES ARISING IN LOCAL IMPACT REPORTS

4.2.1. LB Havering identified the following important and relevant matters in its LIR [REP1-031]. In its signed SoCG with the Applicant submitted at Deadline 9 [REP9-050], not all matters were agreed, and we report on those matters where concerns remain:

- Need.
- Alternatives.
- Green Belt.
- Landscape and Visual.
- Archaeology and Heritage.
- Ecology.
- Geology and Soils.
- Contaminated Land.
- Air Quality including concerns over modelling and monitoring.
- Noise and whether adequate mitigation existed for existing residents during construction.
- Flood Risk and Drainage.
- NMUs.
- Traffic, Transport and Access including modelling of the Gallows Corner and provision for sustainable travelling.
- Skills and Training.
- People and Communities including Gardens of Peace, Maylands Golf Course and the Putwell Bridge Gypsy and Traveller site.
- Cumulative Effects.
- The draft DCO.
- Planning Obligations.

4.2.2. Brentwood BC in its LIR [REP1-026] identified the following as relevant in its consideration of the Proposed Development:

- Socio-Economic.
- Landscape and Visual.
- Noise and Air Quality.
- The draft DCO.

4.2.3. Essex CC in its LIR [REP1-043] undertook a focused assessment on traffic and transport looking into matters such as the modelling, baseline data and road safety audits.

4.2.4. Both SoCGs signed between the Applicant and Brentwood BC [REP1-005] and Essex CC [REP8-004] state that all matters are agreed upon.

4.3. THE RULE 6 LETTER

4.3.1. Annex B of the ExA's Rule 6 letter [PD-006] outlined the IAPI.

4.3.2. At the PM [EV-005] only one IP, Jane Allan, raised an issue in respect to LB Havering's RR which had highlighted concerns regarding the panoramic photographs within the Applicant's Landscape and Visual Impact Assessment. No other IP raised any concerns with the IAPI as topic headings.

4.4. THE STRUCTURE OF THE REPORT IN CHAPTER 5

4.4.1. Chapter 5 is structured to firstly examine the matters of principle including the need for the Proposed Development and the alternatives sought, followed by an assessment of the effects of the Proposed Development. Topics discussed first in chapter were generally the most contentious. Thus, following the above two mentioned topics, the structure is as follows:

- Traffic and Access.
- Air Quality.
- Noise and Vibration.
- People and Communities.
- Design.
- Landscape and Visual.
- Biodiversity and Wildlife.
- Flooding and Water.
- Geology and Soils.
- Historic Environment.
- Minerals and Waste.
- Climate Change.
- Green Belt.
- Cumulative and Combined Effects.

4.4.2. In each section, the ExA will identify the policy position for each followed by a summary of the findings in the ES. We then report on the main issues that were discussed for each topic. We will then draw findings and

conclusions for each including whether it represents a positive, neutral or negative planning effect.

4.4.3. In respect to Grove Farm, the principal issues of concern during the Examination were the potential significant effects from both noise and visual effects during the construction and operation phases of the Proposed Development. However, because both issues centred on whether or not there would be likely significant effects on the living conditions of Mr & Mrs Jones, the ExA deemed it more appropriate to report both issues together within the People and Communities Section of this Report as opposed to individually within the Noise, and Landscape and Visual Sections.

4.5. CONFORMITY WITH THE NATIONAL POLICY STATEMENTS

4.5.1. Chapter 3 of this Report identifies the NPS NN as the relevant NPS for this Proposed Development. Chapter 3 also identifies the NPPF and a number of road strategy documents. Each topic section in Chapter 5 of this Report will consider the important and relevant paragraphs from NPS NN (if applicable) and determine whether the scheme, with mitigation, would accord with it.

4.6. CONFORMITY WITH DEVELOPMENT PLANS

4.6.1. Chapter 3 of this Report sets out those plans and documents which comprise the development plans covering the Order limits. The LIRs set out which policies the relevant Local Authorities identified as being relevant to the Proposed Development. In their respective LIRs, Brentwood BC [REP1-026] and Essex CC [REP1-043] identified no conflict with their development plans.

4.6.2. Paragraph 10.1.1 of LB Havering's LIR [REP1-031] stated that "*for ease* [of] *reference Havering has set out … the policies that are considered to be conflicted. All other policies are considered to be in agreement or neutral with the scheme"*. Those said conflicted policies are set out below, which we report on in the individual Sections in Chapter 5 where relevant to do so:

- Emerging Local Plan policy 22 (Skills and Training).
- Local Plan policy CP8, DC27 and DC31 (Provision of Community Facilities and Cemeteries and Crematoria, concerning in this instance the Gardens of Peace).
- Local Plan policy CP9 and emerging Local Plan policy 23 (Sustainable Travel in respect to the NMU).
- Local Plan policy CP10 and emerging Local Plan policy 23 (Sustainable Travel in respect to the capacity of the Brook Street roundabout).
- Local Plan policy CP16 and emerging Local Plan policy 30 (Nature Conservation and the issue surrounding the quality of the outline CEMP).

- Local Plan policies CP18, DC67, DC69 and DC70 and emerging Local Plan policy 28 (Heritage concerning archaeological desk-based assessment and the presence of unknown archaeological sites).
- Local Plan policy DC8 and emerging Local Plan policy 11 (Gypsy and Travellers in respect to Putwell Bridge).
- Local Plan policy DC32 (Road Network in respect to traffic modelling).
- Local Plan policy DC52 and emerging Local Plan policy 33 (Air Quality and specifically to traffic modelling and the effect on the AQMA).
- Local Plan policy DC55 and emerging Local Plan policy 34 (Noise and the effects of the Proposed Development on the local community and the NIA at Gallows Corner).

4.7. APPLICATION OF OTHER POLICIES

4.7.1. The legislative and policy framework applicable to the assessment of this application is summarised in Chapter 3 above. Individual references to relevant legislation and policy detail are drawn out in the relevant sections of Chapter 5 of this Report where relevant and required. No IPs raised any concerns or objections regarding the Proposed Development's conformity with such legislation and policy.

4.8. COMMENTS ON APPLICANT'S ENVIRONMENTAL IMPACT ASSESSMENT

4.8.1. As set out in Chapter 2 of our Report, an ES (see Table 2.1) accompanied the submission of the application and was updated and supplemented during the Examination.

4.8.2. The changes to the ES occurred as a result of amendments to the Proposed Development discussed in Chapter 2 of this Report, and through the Applicant's responses to RRs, WRs, WQ1 [PD-008], WQ2 [PD-015] and the Change Requests Nos.1 to 8 [REP3A-002], [REP3A-030], [REP3A-031], [REP6-002], [REP6-022], [REP6-023], [REP7-002], [REP7-029], and [REP7-030]. The ExA was satisfied that such changes and updates to the ES were non-material and did not alter its scope, assessment or findings.

4.8.3. The ES stated [REP9-018] that the assessment follows a standard EIA methodology, and where possible, is based on legislation, definitive standards and accepted industry criteria. Its objective is to anticipate the changes or impacts that may occur to the receiving environment as a result of the Proposed Development, and to compare the existing environmental conditions (the baseline) and those that would occur in absence of the Proposed Development (future baseline).

4.8.4. The EIA process involved identification of sensitive receptors that may be affected by impacts resulting from the Proposed Development and assesses the extent to which these receptors may experience significant environmental effects as a result. Where significant effects are identified, the ES proposed mitigation measures to avoid, reduce, and offset the significance of the effect, expressed as residual effects after taking account of mitigation.

4.8.5. Our assessment of the Proposed Development undertaken in Chapter 5 of this Report will summarise the environmental effects from the identified stages as set out in the ES (see Table 2.1 of this Report).

4.8.6. Schedule 10 of the Recommended DCO sets out the documents proposed to be certified in the ES post examination. The ExA accepts the list to be correct and reflects the documents which comprise the ES. The ES is in our view sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

4.9. COMMENTS ON APPLICANT'S HABITATS REGULATIONS ASSESSMENT

4.9.1. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and hence is subject to an HRA.

4.9.2. As is conventional and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Chapter 6 of this Report below.

4.9.3. However, at this point in this Chapter it is necessary to record that the ExA has considered all documentation relevant to HRA as required by the NPS NN, and we have taken it into account in the conclusions reached here and in the planning balance in Chapter 7 of the Report. Further, project design and mitigation proposals included in the ES and secured in the Recommended DCO have been fully considered for HRA purposes.

4.9.4. As will be discussed in Chapter 6 of this Report, the ExA is satisfied on the adequacy of the data provided such that it does allow the SoS to act as the competent authority to undertake an Appropriate Assessment (AA).

4.10. OUTSTANDING MATTERS AT THE CLOSE OF THE EXAMINATION

4.10.1. At the close of the Examination, there were very few matters which were either not resolved or where, at the SoS's discretion, updated information may be required. These are discussed further in the relevant sections in Chapter 5 of the Report. Where the SoS may wish to seek updated evidence from IPs, we report on these in the relevant Sections and have also summarised them in Table 10.1 of Chapter 10 of this Report for the SoS's ease of reference.

5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

5.1. INTRODUCTION

5.1.1. This Chapter sets out our findings and conclusions on the planning issues, in the order as prescribed in Section 4.4 of Chapter 4 of this Report.

5.2. THE PRINCIPLE AND NEED FOR THE PROPOSED DEVELOPMENT

Policy and ES Findings

5.2.1. Paragraph 2.2 of the NPS NN recognises that there is a critical need to improve the national networks to address road congestion in order "*…to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth*".

5.2.2. Paragraph 2.13 of the NPS NN establishes the importance of the national road network which "*provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals. It provides a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment*". Paragraph 2.21 and Table 1 go on to find that, whilst there are a range of options for meeting the identified need, including maintenance and management, demand management and modal shift, relying solely on these alternatives is not viable or desirable.

5.2.3. Paragraph 2.22 advises that improvements to the road network will help to support further economic development, employment and housing. As such, the Government concludes that, at a strategic level, there is a compelling need for development of the national road network. Paragraph 2.23 finds that works may take the form of "*junction improvements, new slip roads and upgraded technology to address congestion and improve performance and resilience at junctions, which are a major source of congestion.*"

5.2.4. Chapter 2 of the ES [REP9-018] and Chapter 3 the document entitled "*Case for the Scheme and Schedule of Accordance with the National Policy Statement*" [APP-095] (Case for the Scheme) sets out the need for the Proposed Development. It stated that currently junction 28 is a heavily used junction which features a roundabout controlled by traffic lights and it is used by up to 7,500 vehicles an hour during peak times. It goes on to state that the junction is already operating at capacity, with motorists regularly experiencing congestion and delays. By 2037, traffic levels in the area are expected to increase by up to 22% by 2037, with more than 9,000 vehicles travelling through the roundabout every hour at peak times. Average delay due to congestion during peak travel times is predicted to increase by at least three times from over a minute per

vehicle at present, to four minutes per vehicle in 2037. The traffic modelling shows that without intervention, there will be further deterioration in traffic conditions at junction 28 with delays at over three times greater than currently experienced and average speeds reduced by 25%.

5.2.5. Chapter 2 of the ES [REP9-018] Chapter 3 and Table 3.1 of the Case for the Scheme [APP-095] further sets out the objectives of the Proposed Development is to:

- Increase capacity and reduce congestion and delays by providing an improved link from M25 to A12.
- Reduce the incident rate and resulting disruption by increasing the capacity of the roundabout.
- Improve safety on the roundabout by reducing traffic levels and redesigning the existing layout.
- Cater for future traffic demands to enable development and economic growth.
- Minimise the impact on local air quality and noise by smoothing traffic flow.
- Protect access for NMUs (pedestrians and cyclists) and improve conditions wherever possible.

5.2.6. Table 5.1 of the Case for the Scheme [APP-095] lists the Government's visions and strategic objectives against the Applicant's view in respect of conformity; concluding in each case that the Proposed Development would fully comply.

5.2.7. Chapter 5 of the Case for the Scheme goes on to outline the scheme in respect of policy against the NPPF, RIS1, RIS2, and the National Infrastructure Delivery Plan. It concludes that "*the NPS NN identifies the 'critical' need for improvements to national networks, including projects like this Scheme that make a significant contribution to the objectives set out in the NPS NN. The need for the scheme in general and this route in particular has been extensively studied through the processes needed to identify the Scheme as committed in the RIS, RIS 2 and other Highways England documents and strategies. The requirement for the Scheme is identified in numerous policy documents and plans at the national and local level, with widespread acknowledgement that the Scheme is needed and will deliver significant benefits for the area*".

5.2.8. While the principal elements of the Works concern the new loop road (Work No.6) and the replacement A12 off-slip (Work No.2), other connected Works are needed in respect of the construction of new accesses, drainage works, water diversions and environmental mitigation measures. These are set out in Work Nos.1 to 32 (excluding deleted Work No.17) in the Recommended DCO.

Examination Matters and Conclusion

5.2.9. No IPs raised any concerns regarding the need for the Proposed Development. In WQ1 [PD-008], the ExA asked a number of clarification

questions over specific Work Nos and these were satisfactorily answered by the Applicant at Deadline 2 [REP2-011].

5.2.10. The ExA is satisfied that the NPS NN, the NIS and the Highways England Strategic and Delivery Plans indicate a clear need exists for road improvement projects to come forward. RIS2 also specifically identifies the Proposed Development as "*committed for RP (road project) 2*" thus a scheme forming part of the RIS2 programme.

5.2.11. It is an agreed matter that the need for the Proposed Development is established in the SoCG signed between the Applicant and LB Havering [REP9-050], Brentwood BC [REP1-005] and Essex CC [REP8-004].

5.2.12. The ExA accepts that there is a national need for the provision of new national network infrastructure. In the absence of evidence to the contrary, the ExA accepts the case advanced by the Applicant that the existing junction needs to be replaced and upgraded as a whole to meet expected long-term traffic increases and demands.

5.2.13. Accordingly, we are satisfied that the Proposed Development would contribute to the established need and would help to ensure that the junction would be able to accommodate additional demand and avoid traffic waiting. In this respect, the Proposed Development attracts positive weight in the planning balance.

5.3. CONSIDERATION OF ALTERNATIVES

Policy and ES Findings

5.3.1. Paragraph 4.27 of the NPS NN states that all projects should also be subject to an options appraisal, which should consider viable modal alternatives. It goes on to advise that national road schemes will have been subject to a proportionate options appraisal as part of the investment decision making process. Further, that it is not necessary for the ExA to reconsider that process if it is satisfied that the assessment has been undertaken. Paragraph 2.21 also advises that relying solely on alternatives such as demand management and modal shift "*is not viable or desirable as a means of managing need*". Paragraph 3.23 states that Government policy is not to introduce road pricing to manage demand on the Strategic Road Network (SRN).

5.3.2. Chapter 3 of the ES [REP9-018], Chapter 5 of the SoR [REP9-016] and Chapter 2 of the Case for the Scheme [APP-095] set out the consideration of alternatives to the Proposed Development. Tables 3.1 of the ES and 2.1 of the Case for the Scheme indicate six strategic options were considered including do-nothing/minimum scenario, reduce traffic demand at the junction, improve public transport, maximum junction improvements and a major review of the SRN. The options listed in the above tables cited above were rejected as they were either too lengthy in time and would extend beyond the RIS2 programme or would be ineffective in resolving the current problems. It was Option 4 of the strategic options, entitled "*highway junction improvements*" which was taken forward.

5.3.3. Table 3.2 of the ES [REP9-018] indicated that nine further options of highways improvements were subsequently considered including the creation of a northern hook (Option 1), a "*hamburger through-about*" (Option 2), a satellite roundabout (Option 3), a compact northern loop (Option 4); a single cloverleaf junction (Option 5); a southern link (Option 6) and maximum double cloverleaf (Options 7A and 7B). Options 2, 4, 5 and 6 were advanced with the other options discounted for reasons of timeliness and ineffective at resolving the issue.

5.3.4. Option 5 contained six sub-options. Paragraph 3.2.12 of Chapter 3 of the ES [REP9-018] stated that three of these, Options 5B, 5C and 5F were seen to offer the most value against achieving the objectives including performing best in the traffic, environmental and economic assessments. These three options were taken forward into the option selection stage. The other options (Option 2, 4, 5A, 5D, 5E and 6) were rejected as the majority were significantly over budget and would be hard to implement and did not meet the desired objectives and outcomes for the Proposed Development.

5.3.5. Table 3.4 of the Chapter 3 of the ES [REP9-018] described the three shortlisted options. Figures 2.4.1, 2.4.2 and 2.4.3 of the SoR [REP9-016] illustrates the options. They were:

- Option 5B – a single lane loop road which would off-slip immediately above the M25/A12 roundabout and loop through Grove Farm and The Grove woodland before joining the A12 eastbound carriageway.
- Option 5C – a single lane loop road which would off-slip further to the north of Grove Farm, crossing the Weald Brook before circling round and joining the eastbound A12 carriageway.
- Option 5F – not too dissimilar to Option 5C but would be dual carriageway and the loop would be slightly further to the north and cutting into Alder Wood.

5.3.6. Table 3.5 of the Chapter 3 of the ES [REP9-018] stated that Option 5B was rejected because "*it involves a departure from safety standards relating to the substandard distance between the successive diverges on the M25 anti-clockwise carriageway. This presents a significant concern over operational safety of the road user*". Option 5C was rejected because it "*features a larger loop road than Option 5F, as moving the diverge further north along the M25 avoids the need to widen the existing M25 structures and addresses adverse safety and operational issues related to successive diverges*".

5.3.7. Option 5F thus forms the Proposed Development.

Examination Matters

5.3.8. No IPs raised any questions or concerns with the Applicant's alternatives and options considered.

5.3.9. Paragraph 3.2.19 of Chapter 3 of the ES [REP9-018] confirmed that Option 5B would have the least effects on landscape and visual, people and communities and biodiversity and would be the smallest in scale and

so would have fewer components effecting the water environment. However, as already referred to above, the option was discarded because of its safety standards and paragraph 3.3.2 further stated that it would be at capacity quickly and could not be widened. The ExA queried in WQ1 GQ 1.4 [PD-008] why this Option made the shortlist given its obvious flaws.

5.3.10. In its response at Deadline 2 [REP2-011], the Applicant stated that Option 5B was shortlisted because of its value for money and it was only at the option identification stage where the three options were assessed against a concept design that the operational and safety issues were identified.

5.3.11. The ExA wanted to test whether Option 5F was selected purely on the strength of public opinion. In response to our WQ1 GQ 1.4 [PD-008] in which we sought clarification on the matter [REP2-011], the Applicant provided greater details as to why Option 5F was preferred in respect to cost and meeting future demand. We were satisfied with this response.

5.3.12. The signed SoCG between the Applicant and LB Havering [REP9-050], Brentwood BC [REP1-005] and Essex CC [REP8-004] agreed that alternatives to the Proposed Development have been adequately examined.

ExA Conclusion

5.3.13. Taking these matters into consideration, the ExA is satisfied that the alternative options for the Proposed Development have been rigorously tested by the Applicant. While Option 5F was not the lowest in respect to land take or in its environmental effects particularly when compared with Option 5B, the ExA accepts that the flaws in the alternatives would mean that the objective of improving the junction would not have been met. The ExA also accepts that Option 5F enjoyed the greater public support over the other Options. Thus overall, the ExA accepts that the Applicant has reached a balanced judgement in advancing Option 5F. The requirements of NPS NN and the EIA Regulations have, in this regard been met.

5.4. TRAFFIC AND ACCESS

Policy and ES Findings

5.4.1. Paragraph 2.1 of NPS NN states that well-connected and high-performing networks with sufficient capacity are vital to meet the country's long-term needs and support for a prosperous economy. Paragraph 2.2 states that there is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth.

5.4.2. Paragraph 2.5 of NPS NN states that whilst advances in mobile technology are important and will influence travel demand, it is difficult

to predict by how much. It is expected that technology, both from better information and data, and in vehicles (e.g., autonomous cars) will have a significant effect on how the network performs. However, paragraph 2.5 goes on to state that it is not expected to remove the need for development of the networks. In recent years advances in mobile IT, teleconferencing, email, the internet and social media have occurred alongside growth in travel demand on the national networks.

5.4.3. Paragraph 2.6 of NPS NN states that need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Paragraph 2.10 states that the Government has concluded that at a strategic level there is a compelling need for development of the national networks, both as individual networks and as an integrated system. The ExA and SoS should therefore start their assessment of applications for infrastructure covered by this NPS on that basis.

5.4.4. The NPS NN then goes onto comment on the specific need for development of the national road network. Paragraph 2.13 emphasises that a well-functioning strategic road network is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies. Paragraph 2.16 states that ways in which traffic congestion constrains the economy and impacts negatively on quality of life include:

- Constraining existing economic activity by increasing costs to businesses damaging their competitiveness.
- A deterioration in the experience of road users, including frustration, stress and inconvenience.
- Constraining job opportunities as workers have more difficulty accessing labour markets.
- Causing more environmental problems, with more emissions per vehicle and greater problems of blight and intrusion for people nearby.

5.4.5. Paragraph 2.18 of NPS NN states that the pressure on the road network is forecast to increase with economic growth, substantial increases in population and a fall in the cost of car travel from fuel efficiency improvements.

5.4.6. Table 1 of the NPS NN sets out options for addressing need, comprising maintenance and asset management, demand management and modal shift. However, it is recognised that maintenance and asset management will not enhance safety, tackle pressure on the network or unlock economic development. Demand management measures can make more efficient use of capacity while modal shift, which aims to encourage sustainable transport modes, may not be suitable given the nature of some journeys on the strategic road network.

5.4.7. Paragraph 2.22 of NPS NN notes that without improving the road network it will be difficult to support further economic development and economic growth. Consequently, at a strategic level there is a compelling need for development of the national road network. Paragraph 2.24 goes on to

state that the Government's policy on development of the strategic road network is not that of predicting traffic growth and then providing for that growth regardless. Individual schemes will be brought forward to tackle specific issues rather than to meet unconstrained traffic growth.

5.4.8. The NPS NN refers extensively to transportation and traffic policy requirements; notable sections include:

- Paragraph 3.17 (sustainable transport): using reasonable endeavours to address the needs of cyclists and pedestrians in design.
- Paragraph 3.22 (accessibility): seek to deliver improvements that reduce community severance and improve accessibility where appropriate.
- Paragraphs 4.3 and 4.4 (weighing potential benefits against adverse impacts): environmental, safety, social and economic benefits and cumulative adverse impacts considered at national regional and local levels.
- Paragraph 4.6 (local transport model): is supported by a local transport model to provide detail of the impacts, including an assessment of the benefits and costs.
- Paragraph 4.10 (planning obligations): should be sought only where necessary to make the development acceptable in planning terms, directly related to the proposed development.
- Paragraphs 5.203 to 5.205 (impacts on transport networks): having regard to policies in Local Plans, consulting with the highway authority and LPAs, and supporting other transport modes.

5.4.9. Paragraph 5.211 of the NPS NN states that the SoS should consider impacts on the local transport network and local transport policies, including those in Local Plans. Paragraphs 5.215 to 5.216 advise that mitigation should focus on promoting sustainable development and that where development would worsen accessibility, such impacts should be mitigated as far as reasonably possible. In particular, there is a strong expectation that impacts on accessibility for NMUs should be mitigated.

5.4.10. Adopted LB Havering Local Plan policies CP9 and CP10, and emerging Local Plan policy 23 are concerned with sustainable travelling and improving connections. They require from new development to promote a reduction in the need to travel through a diverse range of uses, as well as improved connections for NMUs through the provision of improved walking and cycling paths. Adopted Local Plan policy DC32 concerns new development and the associated impacts on the functioning of the road hierarchy.

5.4.11. The Applicant's assessment of traffic and access issues is primarily contained within the Transport Assessment (TA) report [APP-098], which accompanied the application for the Proposed Development. The TA provides a summary of the assessment of the Proposed Development, including an assessment of the effects it would have on the performance of the strategic and local highway networks, road safety at M25 junction 28 and local sustainable modes of transport. The TA also considers the traffic and transport effects of the Proposed Development during its

construction phase. The TA report is supported by the following additional reports:

- Transport Assessment Supplementary Information Report (TASIR) [PDB-003].
- Outline Traffic Management Plan (TMP) [REP7-017].

5.4.12. The TA provides an assessment of the following:

- Current network performance.
- Future network performance.
- Road safety.
- Sustainable transport.
- Construction impacts.

5.4.13. The assessment concludes:

- The M25 junction 28 plays a key role on the SRN, connecting the M25 with the A12 trunk road and local connections. It is already operating at capacity, with motorists experiencing significant congestion and delays.
- Traffic levels in the area are expected to increase by up to 22% by 2037, with more than 9,000 vehicles travelling through the roundabout every hour during peak times.
- Average delays due to congestion during peak travel times are predicted to increase threefold from over a minute per vehicle at present to four minutes per vehicle in 2037 without the Proposed Development, with average speeds reducing by 25% and local air quality problems worsening.
- The Proposed Development is expected to bring significant improvements to capacity at junction 28 through the creation of a new loop road, reducing the number of traffic movements through the junction 28 roundabout.
- Key movements that would see a significant improvement include: all journeys using junction 28 via the A12 west approach; traffic movement from M25 south to A12 west; traffic movement from M25 south to A12 east and Brook Street and all movements from the A12 east.
- With the Proposed Development in place, it is anticipated that there will be 88 fewer collisions over the next 60 years.
- Associated reductions in queuing on the M25 and A12 off-slip roads to the roundabout would significantly alleviate congestions as well as addressing safety concerns.

Examination Matters

5.4.14. The RRs received concerning traffic and access are summarised as follows and on which formed the basis of the Examination:

- A Harding [RR-001], Anthony Arthur Manley [RR-003], Gillian Edwards [RR-012], Jane Allan [RR-014], Jessie McDonnell [RR-016] and Stephen Monksfield [RR-025] on the impacts of traffic during both construction and operation stages of the scheme on access to and

from local roads, with a specific request for a new right turn to be incorporated into the scheme for residents of Woodstock Avenue.
- Royal Mail Group [RR-004] on the impact of construction operations on Royal Mail's operations.
- Essex CC [RR-011] on the effect of the Proposed Development on traffic trying to access the junction from Brook Street.
- Ingatestone & Fryerning Parish Council [RR-013] welcoming any efforts to improve safety and traffic flow through the junction.
- LB Havering [RR-017] on the impact of construction traffic on roads in Havering, the cumulative impact on local roads of the Proposed Development and other developments, perceived deficiencies in local traffic modelling within the TA and the impact on the Gallows Corner junction.
- TfL [RR-028] on the forecast traffic and transport impacts of the Proposed Development.

5.4.15. The Applicant provided comments on these at Deadline 1 [REP1-002].

5.4.16. The LIR [REP1-040] from Essex CC indicated that issues around LTC traffic forecasts, construction traffic, Brook Street signalling and routes for pedestrians and cyclists had yet to be resolved. The Applicant provided a response to the issues at Deadline 3a [REP3A-021].

5.4.17. The LIR [REP1-031] from LB Havering indicated that its primary concerns were focussed on issues around NMUs, impacts on the local road network, adequacy of traffic modelling, impact of the Proposed Development on the Gallows Corner junction and cumulative and in-combination effects from major development sites including, but not limited to, the LTC. The Applicant responded to the issues raised by LB Havering at Deadline 3a [REP3A-020]

5.4.18. Where we considered that the Applicant had not adequately addressed IPs concerns, or where we formed the view that further information was required, the ExA went on to ask WQs on subjects that we believed would assist the Examination.

5.4.19. The Applicant and IPs provided their responses to the ExA's WQs at Deadline 2 [REP2-011], [REP2-018], [REP2-020] and [REP2-037].

5.4.20. The main issues that concerned the Examination were as follows:

- IPs request for the provision of a right turn on to the A12 for residents of Woodstock Avenue.
- The adequacy of traffic modelling carried out by the Applicant.
- Traffic light signalling changes affecting traffic approaching the M25 junction 28 roundabout from Brook Street.
- Provisions within the Proposed Development for NMUs.
- The justification for the omission of a TMP from the Examination documents.
- Clarifications to a number of road safety issues reported in the TA.

Woodstock Avenue

5.4.21. In its response to the ExA's WQ1 [PD-008], the Applicant [REP2-011] noted that the modelled reduction in traffic congestion and delay at junction 28 when the Proposed Development is completed will result in an improvement in journey times for residents of Woodstock Avenue travelling round the junction in order to travel westbound along the A12. TfL, in its response to the ExA's WQ1s [REP2-037], stated that it would not support the provision of a right turn from Woodstock Avenue onto the A12 because such a provision would require a signalised junction, and that the substantial adverse impact on journey times for all users of the A12 of a signalised junction in this location would significantly outweigh the benefit to the relatively small number of road users located in Woodstock Avenue.

5.4.22. Having obtained the views of all parties at Deadline 2, the ExA did not question the matter further during the Examination.

Strategic Road Modelling

5.4.23. In response to issues raised by LB Havering in its LIR [REP1-031] and the ExA's WQ1s [PD-008], the Applicant noted [REP2-011] that its strategic road model showed that changes in traffic flows on roads beyond Gallows Corner and on roads between Gallows Corner and junction 28 as a result of the Proposed Development are small and will not have a significant impact. These roads were, therefore, excluded from the operational traffic model. At ISH1 [EV-009] the ExA sought further input from IPs and the Applicant on the differences of opinion over the suitability of the traffic modelling undertaken.

5.4.24. In response to the ExA's request to contribute further at ISH1 [EV-009] LB Havering reiterated the view that further sensitivity testing was required to take account of housing growth in the borough and as defined in the London Plan. In addition, LB Havering expressed the view that the impacts from the Proposed Development have not been adequately covered and that detailed modelling was required to demonstrate the impacts on the area between Gallows Corner and Gubbins Lane.

5.4.25. The Applicant responded to these concerns at ISH1 to confirm that in its view the sensitivity testing that they have carried out is sufficient to adequately cover the potential impacts from the Proposed Development; changes in traffic flow are small and considered not significant by the Applicant, to the extent that the changes are so small that no further modelling was warranted.

5.4.26. The Applicant set out further detailed justification for its modelling approach in paragraph 20.1.3 to 20.1.9 of its response to LB Havering's LIR [REP3A-020], which LB Havering in turn responded to at deadline 3b [REP3B-006].

5.4.27. The Applicant's response to LB Havering [REP4-010] summarised that:

"The impact of the Scheme on Gallows Corner has been assessed by Highways England using the strategic traffic model. As explained in Section 4 of the Transport Assessment Supplementary Information Report [PDB-003], this has shown that the Scheme results in a negligible impact at Gallows Corner and on the local road network. Consequently, there is no justification for including Gallows Corner junction and other local roads in the vicinity of Gallows Corner in the operational traffic model."

5.4.28. TfL raised concerns at ISH1 [EV-009] that the National Trip End Model used by the Applicant was not up-to-date and not robust enough to accurately model the impact on London's road network. TfL would have preferred to see (and it uses) London Plan traffic model data to model London's roads. The Applicant responded that it was appropriate and right to use National Trip End Model data. The Applicant confirmed that it was satisfied that it had done enough to accurately model the impact of the proposed development since the uncertainty log presented with the application takes account of London Plan modelling. The ExA was satisfied with this explanation and TfL did not present evidence to demonstrate that the Applicant's approach was either unreasonable or unsound during the remainder of the Examination.

5.4.29. The ExA noted further responses from LB Havering and TfL in subsequent deadlines and the ExA did not consider the need to question the matter further in the Examination.

Inter-green Signal Timings

5.4.30. In response to the ExA's WQ1 TA 1.4 [PD-008] regarding inter-green signal timings at the Brook Street junction with the M25 junction 28 roundabout, as presented in the TASIR [PDB-003], the Applicant confirmed [REP2-011] that it was its intention to introduce the extended inter- green signal timing at the junction of the A12 east off-slip with the junction 28 roundabout as part of the Proposed Development. The Applicant also noted in its response that no explicit requirement to deliver the extended inter-green as part of the Proposed Development was included in the then draft DCO [APP-015].

5.4.31. At ISH1 [EV-009], TfL noted particular concern around potential delays to the 498 bus route if the signal timings were not adjusted. At the same hearing, Essex CC also noted that it shared the concerns expressed by TfL in its representation about the impact of not implementing the extended inter-green period.

5.4.32. Also, at ISH1 [EV-009], Brentwood BC requested further clarification around: Details over the change to the time period of the inter-green signalling; when the change to the signal timings would be introduced and what the status was of the additional funding identified for additional signalling.

5.4.33. The Applicant responded to the clarification requested by Brentwood BC at ISH1 [EV-009] and confirmed in the written submission of the Applicant's case put orally at ISH1 [REP4-014] that the time period

between green lights at the signal would increase by three seconds; that the change to signal timings would occur prior to first use and further clarified that the change would not occur during the construction phase of the Proposed Development and that additional funding is being considered under a separate process.

5.4.34. The ExA asked the Applicant during ISH1 [EV-009] what barriers were in place that prevented the proposed signal timing being secured within the DCO. The Applicant responded that it was its view that it would be excessive to attempt to secure a change in signal timings in law.

5.4.35. The Applicant and IPs were asked [EV-009] how the change in signal timings might otherwise be secured, if not within the DCO. The Applicant stressed that it fully intended to carry out the change in signal timings, but that it didn't believe that it was necessary to secure the change. TfL suggested that the change might otherwise be secured within the outline TMP or within a draft legal agreement or heads of terms agreement. In response to WQ2 TA 2.2 [PD-015] on this topic, the Applicant confirmed [REP5-041] that the draft DCO [REP5-011] had been amended to include a requirement to secure changes to the inter-green signal timings at the Brook Street junction with the roundabout.

5.4.36. The SoCGs agreed between the Applicant and TfL submitted at Deadline 7 [REP7-007] and between the Applicant and Essex CC submitted at Deadline 8 [REP8-004], confirmed that the Proposed Development would reduce delays on Brook Street, the ExA concluded that the matter had been resolved and did not question the matter further in the Examination.

Non-motorised Users

5.4.37. The ExA wanted to examine how the application was improving the connectivity and movement for NMUs. We particularly noted at our USI that crossing the M25/A12 roundabout was particularly uninviting and to some extent treacherous. Further, Jane Allan stated at ISH1 [EV-009] that NMU improvement formed part of the Applicant's pre-application advertising as a benefit of the scheme.

5.4.38. In its response to WQ1 TA 1.11 [PD-008], the Applicant confirmed the extent to which the Proposed Development has sought to identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a barrier to cycling and walking, by correcting historic problems, retrofitting the latest solutions and ensuring that it is easy and safe for cyclists to use junctions.

5.4.39. The Applicant's response to WQ1 TA1.11 clarifies that as well as a new NMU route along the A12 off-slip as part of the Proposed Development they were seeking to implement a scheme of further NMU improvements as part of a wider strategy and programme of works to deliver a comprehensive and coordinated approach to improving the corridor along with the A1023 and the A12 between Brentwood and Harold Hill.

5.4.40. These further improvements would be implemented as part of the Applicant's Designated Funds programme. At ISH2 [EV-010], the Applicant was asked to consider how an improved route for NMUs could be secured in the DCO. The Applicant responded that provision could be made by including the necessary additional works in the DCO and noted that sections of the NMU route subject to the Designated Funds application were outside the Order limits. The Applicant noted that in order to pursue this change, a change request would need to be made to the Application.

5.4.41. In its WQ2 TA 2.7 [PD-015], the ExA requested information to clarify how a change request, in which an additional work number would be inserted into the draft DCO [REP4-002] would secure delivery of a safe cycle and walkway route. In its response [REP5-041], the Applicant clarified that the NMU works involve not only measures at the junction 28 roundabout itself, but also land for a considerable distance to the east and west of it in order to provide appropriate connectivity for prospective users of the route.

5.4.42. The Applicant's response to WQ2 TA 2.7 drew particular attention to the works required at Brook Street, noting that *"the necessary works in Brook Street as the footpath/cycle track approaches the junction would be outside the current Order limits. They would also involve third party land, believed to be owned by Essex County Council, although most of the land needed is owned by Highways England. These works in Brook Street would have to be done because otherwise cyclists would not be able to safely and legally (as cyclists are not permitted to use footways) reach the crossings at the roundabout from Brook Street."*

5.4.43. The Applicant informed the ExA on 7 May 2021 [AS-041], that its application for Designated Funding to implement an integrated NMU improvement scheme had been approved. The Applicant's letter was accompanied by a description of the extent of the full NMU route and how NMUs would be able to negotiate the roundabout between Brook Street and the A12 west of junction 28, avoiding uncontrolled crossings. The Applicant confirmed that it proposes to enter into a planning obligation with (or given to) LB Havering to the effect that the central or junction section of the integrated NMU scheme (i.e., as it passes through the M25/A12 junction) will be delivered alongside the Proposed Development. The obligation will be given under s106 of the TCPA1990 and be enforceable by the LB Havering as the main LPA involved.

5.4.44. The Applicant also confirmed that in order that NMUs can access the route as it passes through the junction it will be necessary for some works to be carried out on Brook Street, which is under the control of Essex CC as the Highway Authority. Essex CC's cooperation is therefore needed and the Applicant believed that it will be readily given. However, delivery of the new NMU route through the junction under the S106 obligation will necessarily have to be dependent upon Essex CC co-operating in the delivery of the central section.

5.4.45. At Deadline 9 [REP9-070], the Applicant submitted a draft UU. Within it, the Applicant obligated itself to construct the Junction Section (the section within the Order limits) to an appropriate standard commensurate with its use by members of the general public no later than the date by which the proposed loop road forming Work No.6 is opened to the general public for traffic.

5.4.46. Also at Deadline 9 [REP9-082], TfL stated that it remained concerned that whilst Designated Funds had been secured to deliver the full NMU route, there remained no security in the final draft DCO [REP9-012] that the full NMU route will be delivered. TfL proposed that the Applicant should commit to delivering the full NMU route by (for example) a UU restricting the opening of the Proposed Development until the delivery of the full NMU route has been secured (using reasonable endeavours); and/or alternatively that a Requirement be included in the Recommended DCO to commit the Applicant to use reasonable endeavours to enter into agreements to deliver the full NMU route with the relevant Highway Authorities.

5.4.47. At Deadline 10 [REP10-018], a joint response from LB Havering, Essex CC and TfL reiterated its concerns in respect to the need to secure the whole NMU route. They also submitted a tracked changed version of the Applicant's UU [REP10-019] in which the following substantive changes had been made:

- Requirement to construct the remainder of the NMU Scheme by 31 March 2025.
- To consult and agree the detailed design of the NMU Scheme with LB havering, Essex CC and TfL.
- That the proposed loop road (forming Work No.6) will not be open to the public until the Junction Section has been completed and opened.
- That the Applicant pays a monitoring fee of £5,000.
- The Applicant pays the legal fees of Essex CC, LB Havering and TfL.

5.4.48. The Applicant updated the draft UU at Deadline 10 [REP10-023] in which it had added the agreement not to open Work No.6 until the NMU within the Junction Section had been agreed. However, it repeated its stance that it would be unreasonable to impose an obligation on the Applicant for the delivery of the NMU proposal in its entirety when agreement of others, namely Highway Authorities, is needed.

5.4.49. Deadline 10 immediately preceded the close of the Examination, and thus a response from the Applicant was not submitted. Accordingly, NMU provision was not resolved by the close of the Examination and was subsequently not an agreed matter in the SoCG signed between the Applicant and TfL [REP10-004].

5.4.50. The ExA agrees with LB Havering/Essex CC/TfL but only up to a point. We accept that the NMU Scheme as a whole should be secured in this application. Otherwise, and notwithstanding the Designated Funds position, there is a real risk that only the Junction Section will be completed, and the benefits of the NMU route would thus not be fulfilled. However, we agree that the Applicant should not be responsible for the

delivery of those elements outside of the Order limits, and as such land outside its control. Indeed, the ExA considers that to burden the Applicant with this responsibility would be unreasonable.

5.4.51. Because the legal agreements remained unresolved at the close of the Examination, the ExA considers that the insertion of new Requirement 17 in the Recommended DCO would ensure the whole NMU Scheme is approved and funded, with the option for an agreed end date for delivery, but that the Applicant is only responsible for the delivery of the Junction Section. We consider this would resolve the issues at hand of all IPs.

5.4.52. As for the remainder of the suggested changes made by LB Havering/Essex CC/TfL at Deadline 10 [REP10-019], the ExA finds no justification has been advanced for the Applicant to fund the legal costs of those IPs or to pay a monitoring fee. Indeed, given that the Applicant is funding the NMU route through its Designated Funds, the additional costs sought are unreasonable.

5.4.53. It is possible that, when the SoS makes their decision on this application, the Applicant may have tabled a UU which has been agreed with the relevant IPs. In such circumstances, the SoS may deem new Requirement 17 of the Recommended DCO to be unnecessary. In any event, the SoS may wish to seek an update from the Applicant and LB Havering/Essex CC/TfL on this matter prior to them making their decision.

Traffic Management Plan

5.4.54. From the outset, the ExA held concerns that a TMP was not before the Examination. We raised this apparent omission in WQ1 TA 1.1 [PD-008].

5.4.55. In response [REP2-011], the Applicant stated that *"Requirement 10 of the draft DCO (APP-015) requires the preparation and implementation of a traffic management plan (TMP) that will have to be submitted to and approved by the Secretary of State following consultation with the relevant highway authority before the works can start. Consequently, it is not necessary to submit an outline TMP with DCO applications for proposed schemes. Requirement 10 of the draft DCO (APP-015) provides adequate surety to interested parties that a TMP will be prepared prior to commencement of construction and will contain commitments to ensure that traffic will be managed appropriately in order to avoid, so far as practicable, adverse effects on the road network."*

5.4.56. Notwithstanding this, at the OFH [EV-016] the Applicant stated that it would submit a TMP by Deadline 4, and it duly obliged [REP4-013]. The ExA asked in WQ2 [PD-015] specific aspects of the outline TMP and invited comment from IPs as to its adequacy. At ISH3 [EV-038], IPs raised a number of concerns. LB Havering stated, and as confirmed in its written summary at oral submissions put at ISH3 [REP7-033] that it was concerned around the management of temporary closures of the A12 Eastbound off slip, discrepancies in responses given by the Applicant to

questions raised about the outline TMP, and around the use by construction traffic of the Gallows Corner junction roundabout.

5.4.57. TfL's written summary of its oral submissions put at ISH3 [REP7-042] also confirmed its concerns around the impacts of overnight closures of the eastbound A12 off slip, temporary lane closures on the eastbound A12 carriageway, narrow lane running on the eastbound A12 carriageway and the closure of the footway along the A12 eastbound off slip.

5.4.58. The Applicant responded also at Deadline 7 by tabling a revised outline TMP [REP7-017]. In its response at Deadline 8 [REP8-038], TfL stated that the majority of its concerns had been satisfactorily addressed, but that one concern remains, that being the apparent increase in total number of days of lane closures for lane 1 on the eastbound A12 for tie-in works for the new slip road.

5.4.59. The revised outline TMP [REP7-017] indicated an apparent increase in lane closures from 20 nights to 35 days with no further explanation to clarify whether the closures are all weekend days or if any lane closures are planned on weekdays at peak times. As a result of this amendment, TfL requested further clarification on the impacts of the scheme on traffic. The Applicant responded at Deadline 9 [REP9-065] confirming that temporary closures of lane 1 on the A12 eastbound carriageway would only take place at weekends and overnight and will not be in place during weekday peak or inter-peak periods.

5.4.60. LB Havering [REP8-023] set out a number of remaining concerns which the Applicant has responded to in its comments at deadline 9 [REP9-062]. Notable in this response is confirmation that LB Havering must be consulted on the final TMP, prepared on behalf of the Applicant by the appointed Principal Contractor, under Requirement 10 of the Recommended DCO.

5.4.61. The signed SoCG between the Applicant and LB Havering [REP9-050] stated that matters concerning the methodology, baseline data and scope of traffic modelling; cumulative impact and in-combination effects; impact on Gallows Corner and impacts on the local road network remain as not agreed. The signed SoCG between the Applicant and TfL [REP10-004], is discussed in paragraph 5.4.47 above and paragraph 5.4.62 below. SoCGs with other IPs that were required to include statements on traffic and access (Brentwood BC [REP1-005] and Essex CC [REP8-004]) have all reached agreement on this topic.

Change Request No.8

5.4.62. At Deadline 7, the Applicant submitted Change Request No.8 [REP7-002], [REP7-029] and [REP7-030]. This application was accepted into the Examination by the ExA on 14 June 2021 [PD-023]. The change consisted of a revision of the alignment of the egress road from Grove Farm onto Work No.2 (the proposed eastbound A12 off slip road) approximately 25m further to the west. The proposed change would result in an extension in length of the egress road by 37m to a total length of 87m. The Applicant acknowledged that the proposed Change

Request would result in additional environmental effects in respect to biodiversity and landscape and visual effects caused by additional tree loss at The Grove woodland which forms part of the Ingrebourne Valley Site of Metropolitan Importance (SMI). The Applicant stated [REP7-029], amongst other things, that:

- It would result in an increase in permanent loss of habitat within the SMI from 4.9 hectares (ha) to 5.1ha and to 5.2ha when cumulatively assessed with Change Request No.7.
- There are no opportunities to provide compensation for this loss with tree planting directly adjacent to The Grove woodland and as such, additional woodland planting is proposed to be carried out to the west of the loop road.
- The increase in percentage of loss of the SMI would be 0.1% above that identified in the Chapter 7 of the ES [APP-029] to 2% and thus does not alter the slight adverse effect identified.

5.4.63. TfL confirmed at Deadline 8 [REP8-037] that it considered that Change Request No.8 [REP8-002], [REP8-029] and [REP2-030] would have no material impacts on road safety, traffic flows or delays and that in its view the scope and the assessment of the ES with regard to transport impacts covers the proposed change. Notwithstanding this, since Change Request No.8 was introduced during the latter stages of the Examination the ExA considers that the SoS, in consultation with TfL, should satisfy themselves that the realigned Grove Farm egress forming Work No.15 meets safety standards. For that reason, we have inserted into Requirement 16 of the Recommended DCO that these details be submitted and agreed.

Other Matters

5.4.64. The SoCGs signed between the Applicant and Brentwood BC [REP1-005] and Essex CC [REP8-004] agree that there are no matters of concern relating to traffic and transport issues. The signed SoCG between the Applicant and TfL [REP9-051] agreed the majority of issues related to traffic and transport but does not agree on the provision of a commuted sum or the proposed wording of the planning obligation securing the NMU improvement works.

5.4.65. The SoCG between the Applicant and LB Havering [REP9-050] sets out that the parties are not in agreement over the following matters:

- Compliance with Local Plan Policy CP9 Reducing the need to travel.
- Compliance with Local Plan Policy 23 Transport Connections.
- Compliance with Local Plan Policy DC 32 The Road Network.
- Baseline data used for the Non-Motorised User assessment.
- Methodology and scope of the traffic modelling carried out for the Scheme in regard to sub-regional growth.
- List of proposed developments considered in traffic modelling.
- Cumulative impacts assessment of LBH's housing trajectory.
- Assessment of the operational performance at Gallows Corner.
- Assessment of impacts of construction at Gallows Corner.

5.4.66. The Applicant's responses to matters not agreed are set out in the SoCG between it and LB Havering [REP9-050] and its position has been noted by the ExA. Where we considered that the Applicant had not fully addressed LB Havering's points of concern the ExA sought further information during the examination before reaching our conclusion.

ExA Conclusion

5.4.67. The ExA has considered the analysis of the impact of the proposal on traffic and transport. We have also considered the measures identified to mitigate any impact, which would be incorporated into the Recommended DCO. In doing this we have considered all the written and oral submissions made in traffic and transport, in addition to those specifically identified in this section of the report.

5.4.68. The TA has been carried out using methodologies agreed in principle with the Highway Authorities, with the exception of LB Havering, and the results of the TA and subsequent evaluation in the ES have been accepted by all Highway Authorities except LB Havering. The Applicant has set out its methodology and justification for the methodology used during the examination. The ExA is satisfied that in doing so the Applicant has demonstrated that the methodology used is reasonable in this case and that the areas of disagreement between LB Havering and the Applicant do not suggest that the approach taken by the Applicant was unsound.

5.4.69. The ExA recognises the specific problems faced by residents of Woodstock Avenue when joining the A12 at the junction between these two roads. We also acknowledge that the impact of addressing the concerns of residents of Woodstock Avenue is predicted to have a significant adverse impact on users of the A12 as a whole. The ExA is satisfied that the Proposed Development is predicted to reduce journey times around the M25 junction 28 roundabout in its operational phase and that these reductions in journey times are in turn predicted to improve access to the A12 in both directions for residents of Woodstock Avenue.

5.4.70. The ExA has concluded that the entirety of the NMU provision ought to be secured in this Application, with the Applicant only responsible for delivery of those elements within the Order limits and the remainder of the route delivered by the highway authorities and relevant planning authorities via the Designated Funds.

5.4.71. In the absence of a signed UU securing this or any other form of agreement, the ExA finds that securing at least the NMU scheme itself within the Recommended DCO is entirely reasonable. We seek to do that with the insertion of new Requirement 17.

5.4.72. In the event that the Applicant submits a signed Obligation to the SoS before they make their decision, the SoS may conclude that the Requirement is not needed. The SoS may wish to seek an update from the parties on this matter prior to making their decision.

5.4.73. Accordingly, we are satisfied that the Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts positive weight in the planning balance.

5.5. AIR QUALITY

Policy and ES Findings

5.5.1. Paragraph 5.6 of NPS NN states that where the impacts of the project are likely to have significant air quality effects, the applicant should undertake an assessment of the impacts of the proposed project as part of the ES. The NPS NN paragraphs 5.7 to 5.9 set out the methodological requirements for this assessment.

5.5.2. Paragraph 5.10 of NPS NN states that where a project is likely to lead to a breach of the air quality thresholds, the applicant should work with the relevant authorities to secure appropriate mitigation measures with a view to ensuring so far as possible that those thresholds are not breached. Paragraph 5.12 states that the SoS must give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact in relation to EIA and/or where they lead to a deterioration in air quality in a zone/agglomeration.

5.5.3. Paragraph 5.13 of NPS NN states that the SoS should refuse consent where, after taking into account mitigation, the air quality impacts of the Proposed Development will: result in a zone/agglomeration which is currently reported as being compliant with the AQD becoming non-compliant; or affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision.

5.5.4. Paragraph 186 of the NPPF states that planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of AQMAs and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. Planning decisions should ensure that any new development in AQMAs and Clean Air Zones is consistent with the local air quality action plan.

5.5.5. Adopted LB Havering Local Plan policy DC52 and emerging Local Plan policy 33 refer to air quality matters. These policies commit to improve air quality and seek air quality neutral developments, where possible.

5.5.6. Chapter 5 of the ES [APP-027] assessed the effects of the Proposed Development on air quality matters. It stated that during construction, there is the potential for increased emissions of dust deposition and soiling at properties within 200m of the Order limits. However, with the application of appropriate mitigation measures such as regular water-

spraying and sweeping of unpaved roads, using wheel washes for vehicles, sheeting vehicles leaving site and enforcing speed limits, significant adverse effects at nearby receptors would be unlikely. Additional traffic during construction was considered unlikely to significantly adversely affect air quality, as it is not expected to meet the criteria for assessment. The ES stated that additional traffic from construction vehicles is considered unlikely to significantly affect air quality, given that the numbers of additional heavy goods vehicles per day does not meet the criteria for assessment.

5.5.7. Chapter 5 of the ES [APP-027] further stated that during operation, the assessment showed that overall, there was not considered to be a significant adverse effect on air quality. Five receptors representing the buildings at Grove Farm are expected to have a small increase in NO_2 concentrations with the Proposed Development due to the A12 off-slip road being realigned approximately 20m closer to these buildings. Conversely, those receptors to the south are expected to have a decrease in NO_2 concentrations with the Proposed Development. All other receptors are expected to experience an imperceptible change in NO_2 concentrations with the Proposed Development, including at locations within the AQMAs. There are not expected to be any exceedances of the PM_{10} objectives.

5.5.8. Chapter 5 of the ES [APP-027] stated that there are not expected to be any exceedances of the NO_2 annual mean air quality strategy objective at the selected human health receptors in the opening year, both with and without the Proposed Development.

5.5.9. In summary, the ES [APP-027] and [REP9-025] confirmed no likely significant adverse effects during construction and operation of the Proposed Development on air quality.

Examination Matters

5.5.10. There are two AQMAs that affect the Proposed Development that were highlighted in the Examination. One is within Brentwood BC and has been declared [REP1-026] for exceedances of the annual average NO_2 objective. The AQMA comprises parts of Brook Street, Brentwood and the A12. LB Havering [REP1-031] has declared a borough wide AQMA for exceeding the annual mean NO_2 and the 24-hour mean PM_{10} objective.

5.5.11. In its LIR [REP1-031] and WR [REP2-022], LB Havering raised concerns in respect to the assessments undertaken. It stated that because the Proposed Development lies within an AQMA, the operational phase effects had not been adequately demonstrated and that concerns that the air quality impacts of the operational phase of the Proposed Development may be greater than the current assessment suggests and that the residents may be exposed to unacceptable levels of air pollution.

5.5.12. In its response [REP3A-020], the Applicant stated that in its view, the air quality assessment was robust, and the approach adopted is conservative, and that it is not necessary to revise the assessment. The

overall significance of the effect on air quality depends on the changes in pollutant concentrations with the Proposed Development compared to the do minimum situation and the number of receptors affected, as well as whether any air quality criteria are exceeded. Any changes to the model inputs would apply to both future scenarios, with and without the Proposed Development in the opening year, and would be unlikely to alter the conclusion of the assessment. LB Havering made no further comment on this specific issue.

5.5.13. LB Havering [REP3A-010] continued to have concerns around the clarity of the specific mitigation measures within Table 3.2 of the outline Dust, Noise and Nuisance Management Plan (DNNMP) [APP-096]. At ISH3 [EV-038], the ExA enquired further as to the specific issues within Table 3.2 were of concern to LB Havering. LB Havering responded at the Hearing that there was not a specific measure, or lack of a specific measure that was causing concern. Instead, the issue was that the wording associated with the mitigation measures described them as *'likely measures'* and there was no certainty, therefore, that these measures would in fact be implemented.

5.5.14. We enquired whether the removal of the word "*likely*" from the heading describing the contents of Table 3.2 would in the view of LB Havering provide them with the certainty that they sought regarding the implementation of mitigation measures s set out in Table 3.2. LB Havering confirmed at ISH3 that they would be satisfied if the word *"likely"* was removed from Table 3.2. This was reiterated at Deadline 7 [REP7-033] where it made an additional request to add wording to Table 3.2 which the Applicant duly obliged with in the final iterations of the outline CEMP [REP9-046] and [REP10-002].

5.5.15. In its LIR [REP1-031], LB Havering stated that it considered developer contributions would be required because the Proposed Development conflicted adopted Local Plan policy DC52. At ISH2 [EV-010], confirmed in writing at Deadline 4 [REP4-031], LB Havering stated that further consideration had been given to the obligations sought, and it required the following:

- Installation of real-time PM_{10} continuous monitoring station to provide accurate information on air quality outputs given the uncertainty of the air quality data sets that have been used.

5.5.16. Its reasoning is set out in its Deadline 4 submission [REP4-031] and summarised in the People and Communities Section of this Report.

5.5.17. Where adopted policy DC52 could be said to be applicable, the Applicant has provided evidence contained within Chapters 5 [APP-027], 15 [REP9-024] and 16 [REP9-025] of the ES, that the Proposed Development would not have significant residual effects from the construction and operation phases of the Proposed Development in respect of air quality. In any event, the signed SoCG between the Applicant and LB Havering [REP9-050] stated that it is now an agreed matter that the effects of the Proposed Development on air quality are unlikely to be significant. In the absence of evidence to the contrary, the ExA finds that the Proposed

Development is compliant with the adopted Policy. Accordingly, the need for real-time continuous monitoring is not necessary and therefore not justified against the tests of Paragraph 57 of the NPPF.

5.5.18. In our WQ1 [PD-008], the ExA asked a number of clarification questions in relation to air quality on topics such as methodology, the assessment of effects, cumulative effects and mitigation. A further number of questions were posed at WQ2 [PD-015]. The ExA was satisfied with the responses received by the Applicant at Deadline 2 [REP2-011] and Deadline 5 [REP5-041].

5.5.19. Nonetheless, the SoCG signed between the Applicant and LB Havering [REP9-050] confirmed that outstanding matters of concern remain where they are not agreed between the parties. These relate to:

- Methodology of monitoring of sites.
- Model input data concerning unadjusted background concentration increases.
- Evaluation of model performance results at specific sites.
- Compliance with Local Plan policy 33.

5.5.20. Taking the first of these matters, LB Havering stated [REP1-031] and [REP9-050] that the approach taken by the Applicant on the modelling was *"very uncommon"*. The main issue is that LB Havering appeared to be concerned over the accuracy of the modelling because of this approach.

5.5.21. However, LB Havering did not, during the Examination, advance sufficient evidence to suggest that the "*uncommon*" approach was any less robust. The Applicant has provided evidence contained within Chapters 5 [APP-027] 15 [REP9-024] and 16 [REP9-025] that the Proposed Development would not have significant residual effects from the construction and operation phases of the Proposed Development in respect to air quality, and the signed SoCG between the Applicant and LB Havering stated that it is now an agreed matter that the effects of the Proposed Development on air quality are unlikely to be significant.

5.5.22. The same can be said for the third point. In WQ1 AQ 1.8 and AQ 1.12 [PD-008] the ExA questioned the Applicant on its choices and the Applicant provided its response at Deadline 2 [REP2-011]. Again, the ES Chapters 5 [APP-027], 15 [REP9-024] and 16 [REP9-025] did not find any likely significant effects from the scope and assessment undertaken and the ExA finds no reason to doubt that on the evidence before us. The ExA views this matter as a disagreement between the Applicant and LB Havering on how the verification process was undertaken.

5.5.23. On the second not agreed matter, the ExA concludes that while modelling verification is open to interpretation, the key is that the Local Air Quality Management Technical Guidance 16, produced by the Department for Environment, Food and Rural Affairs (DEFRA) (alongside the Scottish Government and Northern Ireland and Welsh Assemblies) 2007 has been followed. Chapter 5 of the ES [APP-027] stated that it has, and in the

absence of evidence of the contrary the ExA has no reason to disagree with the Applicant.

5.5.24. Dust matters are controlled in outline DNNMP which forms one of the ECPs appended to the outline CEMP, the final version submitted into the Examination at Deadline 10 [REP10-002]. The CEMP is secured by Requirement 4 of the Recommended DCO.

5.5.25. Aside from the above the signed SoCG between the Applicant and LB Havering [REP9-050] confirmed that it was agreed that the Proposed Development would have no likely significant effects from construction and operation in respect of air quality. The signed SoCG between the Applicant and Brentwood BC [REP1-005] and Essex CC [REP8-004] confirmed that all matters on air quality were agreed.

ExA Conclusion

5.5.26. The ExA is satisfied with the responses to the technical questions we posed in WQ1 [PD-008] and WQ2 [PD-015] from the Applicant [REP2-011] and [REP5-041]. We are further satisfied that the outline DNNMP adequately deals with dust matters. We are equally satisfied with the scope and assessment work undertaken to assess the effects of the Proposed Development on air quality matters and accordingly, we consider the request for air quality monitoring as part of a legal agreement does not meet the requirements of the paragraph 57 tests of the NPPF.

5.5.27. The ExA is satisfied that the Proposed Development would have no likely significant effects on air quality. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.6. NOISE AND VIBRATION

Policy and ES Findings

5.6.1. Paragraph 5.195 of NPS NN states that the SoS should not grant development consent unless satisfied that the proposals will meet the following aims, within the context of Government policy on sustainable development:

- Avoid significant adverse impacts on health and quality of life from noise as a result of the new development.
- Mitigate and minimise other adverse impacts on health and quality of life from noise from the new development.
- Contribute to improvements to health and quality of life through the effective management and control of noise, where possible.

5.6.2. Adopted LB Havering Local Plan policy DC55 and emerging Local Plan policy 34 state that planning permission will not be granted if it will result in exposure to noise or vibrations above acceptable levels affecting a

noise sensitive development and that the Council will support proposals which do not unduly impact on the amenity of human health receptors through noise and vibration.

5.6.3. Chapter 6 of the ES [REP9-021] detailed that a noise and vibration assessment of the Proposed Development had been undertaken, comprising identification of the baseline conditions, identification of sensitive receptors, prediction of the expected noise and vibration impacts and the mitigation measures that may be required to avoid significant effects.

5.6.4. The assessment indicated [REP9-021] that the Proposed Development would have no residual significant adverse effects from construction noise and vibration at any sensitive receptors from daytime and night-time construction activities and construction traffic.

5.6.5. The assessment also indicated [REP9-021] that the Proposed Development would have no significant adverse effects at any sensitive receptors from operational traffic noise and vibration. No significant adverse effects or perceptible noise increases are predicted at sensitive receptors located in Noise Important Areas.

5.6.6. In summary, the ES [REP9-021] and [REP9-025] confirmed no likely significant adverse effects during construction and operation of the Proposed Development on noise and vibration matters.

Examination Matters

5.6.7. The RRs received concerning noise and vibration matters are summarised as follows and on which formed the basis of the Examination:

- A Harding [RR-001], Anthony Arthur Manley [RR-003], Gillian Edwards [RR-012], Jane Allan [RR-014], Jason Ellis [RR-015] and Jessie McDonnell [RR-016] on the impact of traffic noise during the operational phase of the Proposed Development and noise during the construction phase.
- Mr & Mrs Jones of Grove Farm [RR-026] with concerns regarding the relocation of the A12 eastbound off slip road significantly closer to their property and the perceived lack of noise and vibration mitigation measures to specifically address the impact on living conditions. As stated in Chapter 4 of this Report, this matter will be discussed in the People and Communities Section of this Chapter.
- Glebelands [RR-020] on the adverse impact of noise on users of Maylands Golf Course.
- LB Havering [RR-017] on the noise impacts of the Proposed Development at a local level and any appropriate mitigation.

5.6.8. The Applicant provided comments on these at Deadline 1 [REP1-002] which were reviewed by the ExA.

5.6.9. In its LIR [REP1-031] LB Havering indicated that issues around aspects of the noise and vibration assessment methodology were not agreed. These aspects were:

- The potential wider effects of the Proposed Development on current noise hotspots such as Gallows Corner, A127 (Southend Arterial Road), Gubbins Lane and Squirrels Heath Lane which currently fall outside the current assessment area and have therefore not been considered.
- The adequacy of the position and number of long- and short-term monitoring positions and their effectiveness in determining the wider effects of the Proposed Development.
- The reliability of the traffic modelling carried out by the Applicant and the direct relationship between the findings of the traffic modelling and the noise assessment carried out based on these findings.
- The impact of rising noise levels on the wellbeing and health of affected residents where noise levels are already unacceptably high.
- Noise impacts related to traffic flow changes during the construction phase of the Proposed Development.

5.6.10. Where the ExA considered that the Applicant had not adequately addressed IPs concerns, or where we formed the view that further information was required, the ExA went on to ask WQs on subjects that we believed would assist the Examination.

5.6.11. The ExA raised concerns regarding the condition of road surfacing which we deemed to be a significant factor in determining the likelihood of ground-borne vibration impacts. We required additional information in WQ1 NV 1.2 [PD-008] as to whether the maintenance regime was sufficiently secured to ensure that ground-borne noise would not become a problem over the lifetime of the Proposed Development.

5.6.12. The Applicant confirmed at Deadline 2 [REP2-011], in response the ExA's WQs [PD-008], outlining its legal duties with respect to the maintenance and operation of the strategic highway, of which the Proposed Development forms a part. The ExA was satisfied with this response and did not pursue the matter further in the Examination.

5.6.13. Throughout the Examination, the ExA held concerns regarding the impact of peak noise events on the occupants of Grove Farm. The issues which arose during the Examination related to this matter is dealt with in further detail in Section 5.7 of this Chapter below.

5.6.14. The signed SoCG between the Applicant and LB Havering [REP9-050], Brentwood BC [REP1-005] and Essex CC [REP8-004] confirmed that the scope and assessment within Chapter 6 of the ES [REP9-019] is an agreed matter.

ExA Conclusion

5.6.15. For the reasons outlined above the ExA accepts that the Proposed Development would result in an increase in noise and vibration during site preparation and construction. However, we are satisfied that these impacts would be appropriately mitigated as far as they can be under the Proposed Development, and that the impacts would only be felt for a short-term.

5.6.16. The ExA is satisfied that the impact of the Proposed Development on background and average noise levels over a wider area would not be significant.

5.6.17. We are satisfied that the Proposed Development would have no likely significant effects on noise and vibration. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.7. PEOPLE AND COMMUNITIES

Policy and ES Findings

5.7.1. Paragraph 2.23 of NPS NN states that the Government's vision and strategic objectives for the national networks include improving overall quality of life, journey quality, reliability and safety and linking up communities. Junction improvement is cited as a measure which will be used to enhance the existing national road network towards this vision.

5.7.2. Paragraph 3.3 of the NPS NN establishes the expectation that delivery of new schemes will improve quality of life and avoid and mitigate environmental and social impacts in line with the principles set out in the NPPF and the Government's planning guidance.

5.7.3. Paragraphs 5.165 and 5.168 of NPS NN state that applicants should identify existing and proposed land uses, including best and most versatile agricultural land, near the Proposed Development and the likely effects on it. Paragraphs 4.79 and 4.80 acknowledge that new or enhanced national networks infrastructure can have direct and indirect impacts on health, wellbeing and the quality of life of the population. Paragraphs 4.81 and 4.8.2 state that where a proposed project has likely significant environmental impacts that would have an effect on human beings, any environmental statement should identify and set out the assessment of any likely significant adverse health impacts and that the applicant should identify measures to avoid, reduce or compensate for adverse health impacts as appropriate.

5.7.4. Chapter 8 of the NPPF states that planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

- Promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other.
- Are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.
- Enable and support healthy lifestyles, especially where this would address identified local health and well-being needs.

5.7.5. Adopted LB Havering Local Plan policies CP8, DC27 and DC31 seek to ensure that suitable range of community facilities are provided to meet existing and forecasted need and that sufficient land is retained to meet

demand for burial space and cremated remains. Adopted Local Plan policy DC8 and emerging Local Plan policy 11 are concerned with the provision of gypsy and traveller sites. The above are in relation to the Gardens of Peace and Putwell Bridge sites. Emerging Local Plan policy 22 concerns skills and training, which states that the Council will promote employment and skills development opportunities through, amongst other things, the provision of local labour targets.

5.7.6. Chapters 13 and 16 of the ES [REP9-023] and [REP9-025] identified that in terms of construction effects temporary moderate adverse effects would be caused to Maylands Golf Club in respect of visual and noise amenity as well as from Work No.32. The ES further stated that mitigation would be provided in the form of appropriate landscaping which is secured by Requirement 5 of the Recommended DCO and through construction practices set out in the CEMP, which in turn is secured by Requirement 4 of the Recommended DCO.

5.7.7. In respect to operational effects, Chapters 13 and 16 of the ES [REP9-023] and [REP9-025] identified that there would be a large adverse effect on Grove Farm caused by the land take that would be required as the property will be enclosed by the new loop road. However, this would be mitigated through landscaping works and a visual screen as secured by Requirements 4 and 5 of the Recommended DCO. The ES identified driver stress would be reduced through the improved traffic flows and this would amount to a moderate benefit of the Proposed Development.

5.7.8. Chapters 10 and 13 of the ES [APP-032] and [REP9-023] identified that land within the Order limits identified as agricultural land falls into either category 3b or 4, which is of moderate to poor quality. The ES reported that there is not expected to be any resultant loss of high-quality agricultural land from the Proposed Development.

5.7.9. In summary, the ES [REP9-023] and [REP9-025] confirmed that, subject to the measures set out in the REAC [REP9-047] and the outline CEMP [REP10-002] which is secured by Requirement 4 of the Recommended DCO and taken with the outline LEMP [REP9-042] which is secured by Requirement 5, the likely significant adverse effects identified above can be successfully mitigated and reduced in time.

Examination Matters

5.7.10. The main issues in the Examination concerned the effect of the Proposed Development on:

- Grove Farm in respect to the effect on living conditions from both visual and noise effects.
- The Gardens of Peace in respect to its future operation.
- Maylands Golf Course in respect to its future operation.
- The adequacy of the outline CEMP.
- The need for developer contributions for sustainable travel and skills and training.

Grove Farm

5.7.11. Grove Farm is currently only a short distance from the M25/A12 intersection roundabout. Access is currently served via the current M25 on-slip road.

5.7.12. Mr & Mrs Jones of Grove Farm have played an active part in the Examination process and made a number of representations [RR-026], [REP2-033], [REP3A-045] raising concerns on the effects of the Proposed Development on their living conditions. They also raised access concerns in respect to arrangements for entrance to and egress from the Grove Farm site; but because they do not directly concern living conditions, these are addressed in the Traffic and Access section of this Report. Here, Mr & Mrs Jones held specific concerns over noise, and their overriding requirement was for a noise barrier to be installed.

5.7.13. The ExA has, and continues to hold, concerns on the effect of the Proposed Development on the living conditions of the occupiers of Grove Farm. Our concerns were twofold, namely:

- The effect of the Proposed Development on outlook and visual amenity.
- The effect of the Proposed Development from noise, particularly peak-level noise from the traffic using the proposed A12 off-slip forming Work No.2.

5.7.14. Turning firstly to visual effects, from our USI [EV-007], we noted the M25 itself was visible owing to its elevated height. However, the current A12 off-slip is not. It is located approximately 60m away and at a lower level and separated by two banks of trees either side of the Ingrebourne river, which is at a much lower level.

5.7.15. The proposed A12 off-slip road forming Work No.2 would be located approximately 30m from the property. However, the original Section D-D of the Engineering Drawings and Sections document submitted with the application [APP-011] did not plot the dwelling on the plan. This was pointed out to the Applicant at ISH1 [EV-009] and a revised Section D-D was submitted at Deadline 4 [REP4-025].

5.7.16. The SoS will see from the revised Section D-D [REP4-025] that the property is indeed within close proximity of the proposed A12 off-slip forming Work No.2. For the revised drawing, the Applicant had added trees to the drawing to indicate the effect of tree planting at Year 15 alongside the retained trees. However, the ES [REP9-021] and [REP9-025] acknowledged that even at Year 15, there would remain a moderate adverse effect for Grove Farm.

5.7.17. The matter was discussed at ISH1 [EV-009] where the ExA expressed its concerns that the planting mitigation would by itself be insufficient to mitigate the harm to the residents of Grove Farm. The ExA requested that the Applicant consider whether an additional Requirement be imposed into the draft DCO [REP3A-004] for a site-specific plan for Grove Farm to consider specific planting and other measures to further reduce

the visual impact on the residents of the property. This was made Action Point 16 [EV-032].

5.7.18. In its response to Deadline 4 [REP4-021], the Applicant stated that a Requirement in respect of Grove Farm is not required or appropriate. This was because proposed planting of woodland and grassland would be provided for in the Preliminary Environmental Design [APP-039], with a proposed long-term management programme set out in the outline LEMP [APP-072]. In particular, the following management areas W7, W6, G8, G9 and W13 apply. The provision of this landscaping, along with all other landscaping will be approved by the SoS and secured under Requirement 5 of the draft DCO [REP4-002].

5.7.19. The ExA was dissatisfied with this response. Figure 2.2 of the Preliminary Environmental Design drawings [APP-039] showed the area at high-level and no indication of what planting and/or other measures would apply to Grove Farm. Moreover, the outline LEMP [APP-072] in respect of the above-mentioned management plots contain general information methods whereas the concern for the ExA has been whether a tailor-made approach was required given the issues at hand and findings of likely significant effects in the ES [REP9-021] and [REP9-025].

5.7.20. This point was raised again with the Applicant in WQ2 PC 2.4 [PD-015] with a specific instruction that we expected the Applicant to work with the occupiers of Grove Farm to find a solution. At Deadline 5 [REP5-041], that Applicant stated that it had discussed the following with the occupiers of Grove Farm:

- The relocation of the existing egress on the A12 eastbound off-slip further away from the dwellings. The Applicant discussed with Grove Farm's agents the proposal they submitted at Deadline 4 [REP4-036] highlighting the significant environmental and visual impacts of the proposed option.
- An alternative solution to the Grove Farm proposal involving a relocation of the egress further from the dwelling which would provide a balanced approach, considering safety, impacts on the dwellings and biodiversity on the Grove woodland. This was proposed to be brought forward as a Change Request.
- Provision of a new bund between the A12 eastbound off slip road and the Grove Farm dwellings, to visually screen the new slip road. This option has been discounted due to its effect on land, woodland, biodiversity and the lack of visual screening that would be provided.
- A visual screen to be installed on the proposed A12 eastbound off slip, as mentioned above in response to WQ2 PC 2.3 [PD-015]. This has been added to the REAC at Deadline 5 [REP5-028].
- Maximising the retention of established vegetation between the dwellings and the slip road, and the planting of a species mix in agreement with the Applicant's guidance and Grove Farm's preferences.

5.7.21. The Applicant opined [REP5-041] that the above measures would overcome any final concerns in respect to visual effects. The relocation of the current egress to a position westward would enlarge the garden area

for the existing property, and the additional bunding and the introduction of a visual screen would, it stated, further hide the proposed A12 on-slip road forming Work No.2 from the residents. The egress changes and visual screen were subject to Change Request No.8 which was accepted into the Examination on 14 June 2021 [PD-022] following a period for IPs to comment on the materiality of the change.

5.7.22. The egress change proposed by Change Request No.8 [REP7-002], [REP7-029] and [REP7-030] was welcomed by Mr & Mrs Jones in their submission at Deadline 7 [REP7-043]. However, Mr & Mrs Jones stated that they remained concerned over the level of noise that would be caused and remained committed to the need for an acoustic fence to be installed instead of a visual screen. This was again stated at Deadline 8 [REP8-034].

5.7.23. The ExA held concerns as to how the above measures would be delivered. The Applicant proposed an additional subparagraph (g) to Requirement 5(3) so that as part of the LEMP, the landscaping scheme must include details of a permanent visual screening fence and planting to the property. This was inserted into the iteration of the draft DCO submitted at Deadline 7 [REP7-003]. Paragraph 4 to Requirement 5 requires that development must be carried out in accordance with the approved LEMP.

5.7.24. Turning secondly to noise, the ExA held concerns that peak noise levels had not been accounted for in the ES [APP-027] and as such, could have a severe effect on Mr & Mrs Jones's living conditions. The SoS will note that the new A12 off-slip forming Work No.2 would be significantly closer, and at a more visible level that the existing off-slip road.

5.7.25. The Applicant clarified at Deadline 2 [REP2-011], in response the ExA's WQ1s [PD-008], the justification for omitting Grove Farm from its list of businesses that are sensitive noise receptors. In this same response the Applicant also provided additional night-time noise data that was missing from the ES [APP-055] at the submission stage and clarified that the reason for the non-designation of Grove Farm as an Important Area for Noise (NIA) was that these designations are defined by DEFRA as part of their strategic noise mapping process, beyond the control of the Applicant.

5.7.26. At ISH1 [EV-009] the ExA sought further input from IPs and the Applicant on the detail and effectiveness of mitigation measures during the construction phase. In addition, we requested further evidence to support the Applicant's assertion that the effects from noise during the operational phase of the Proposed Development would be negligible despite the new A12 eastbound off-slip road being significantly closer to Grove Farm and at a greater elevation along the section of road immediately adjacent to Grove Farm.

5.7.27. In response the Applicant noted that the predicted noise levels for both before and after the Proposed Development opens are reported in the ES [REP9-019] to decrease by just less than one decibel (dB) in the

operational phase, mainly due to the introduction of low noise surfacing to new and altered roads, which reduce the noise level on those roads.

5.7.28. The ExA suggested [EV-009] that individual noises which would occur in closer proximity to Grove Farm were not accounted for in the Applicant's assessment, for example brake noise or car horns. The Applicant explained that they had measured average noise levels over an 18-hour period and that while this average figure would include peak noises measured during the time period the actual peak noises encountered would be higher than the average figure but that there would, of course, be periods where traffic noise was lower than the average figures too. The Applicant acknowledged that low noise road surfacing would not reduce peak noises such as braking noise and car horns.

5.7.29. The ExA asked the Applicant whether a permanent noise barrier was necessary at Grove Farm. This is something Mr & Mrs Jones had sought throughout the Examination period [REP2-033], [REP3A-045], [REP5-067], [REP6-041], [REP7-043], [REP8-034] and [REP8-035]. The Applicant [EV-009] responded that the decision on mitigation is taken in terms of the overall annual average noise level and that since traffic modelling shows that there is no increase in noise level, the boundary to Grove Farm does not meet the criteria for erecting a permanent noise barrier.

5.7.30. At ISH3 [EV-038], the ExA sought to further understand the impact of peak noise events on the occupants of Grove Farm. The ExA was specifically concerned with noise events at and close to the junction between the new A12 eastbound off slip road and the roundabout. It is noted that the new A12 eastbound off slip will move to be approximately 20m closer to the main residential properties at Grove Farm and will be at a level equivalent to the main bedroom of the Grove Farm, which faces towards the roundabout.

5.7.31. The Applicant estimated [EV-038] that the movement of the slip road closer to the Grove Farm residence would result in an estimated maximum increase in noise of peak noises from individual vehicles of 4dB. Peak noises from traffic on the M25 junction 28 roundabout and the M25 on slip road are not predicted to change. However, the Applicant pointed out that background noise levels are generally driven and dominated by the traffic on the main carriageways of the M25, which are also not predicted to change.

5.7.32. As discussions centred around the appropriateness, or otherwise, of a noise barrier at the boundary between Grove Farm and the Proposed Development [EV-038], the Applicant estimated that a noise barrier at Grove Farm would only reduce overall noise levels by up to around half a decibel. Reductions would be small due to the continuous M25 noise, which is elevated above the junction. The Applicant also confirmed that a noise barrier would have some mitigation effect on a particularly loud noise, but only while the noise source was directly screened by the sound barrier. The Applicant considered it unlikely that a noise barrier would

affect the overall perception of peak noises as those sounds would remain distinctive within the overall noise climate.

5.7.33. Additionally, the Applicant confirmed [EV-038] and [REP7-018] that there is no data to represent the peak noise levels that will be experienced by residents of Grove Farm as there are no agreed standard methods for predicting the peak noise levels from individual vehicles and no means of quantifying the level of disturbance that an individual householder might perceive. The Applicant's position on an acoustic fence did not alter by the close of the Examination.

5.7.34. Notwithstanding the above, Mr & Mrs Jones maintained their stance at the close of the Examination [REP7-043], [REP8-034] and [REP8-035] and that a noise barrier was necessary to mitigate the harm from the Proposed Development.

5.7.35. Because of the potential impact of the issues discussed above the ExA raised the question at the CAH1 [EV-008] on alternatives to Grove Farm including whether either the Applicant or Mr & Mrs Jones had considered and/or pursued CA freehold powers for the dwelling, particularly if the dwelling were to become uninhabitable. In its response, also made in writing at Deadline 4 [REP4-14], the Applicant stated that blight provisions set out in the TCPA1990 may apply. But, if the owners of Grove Farm did not wish to leave the premises, then it is unlikely that the SoS, of his own volition, would seek to acquire the residence at Grove Farm. While the Applicant further stated that it had "*engaged with Mr & Mrs Jones on the possibility of early acquisition of land subject to compulsory acquisition in the draft DCO and the potential for agreement to any Heads of Terms*", this does not indicate that either party changed their minds.

Gardens of Peace Muslim Cemetery

5.7.36. The Gardens of Peace land is located opposite the Proposed Development on the southern side of the westbound A12 carriageway. The site borders the Ingrebourne River and the Putwell Bridge gypsy and traveller site.

5.7.37. In its RR [RR-024] and [AS-033], and in its WR [REP2-029], the Gardens of Peace expressed considerable concern about the effect of the Proposed Development. It stated that it currently has planning permission for up to 10,000 burial plots at the site. The ExA observed at our USI [EV-007] that construction work was already underway to implement the development.

5.7.38. The Land Plans [APP-005] indicated a parcel of land, identified as Plot 1/8 as being required for CA new rights. The SoR [APP-019] stated that Plot 1/8 was required in connection with Work No.29.

5.7.39. Principally, the Gardens of Peace was concerned in [RR-024], [AS-033] and [REP2-029] as to the extent of Plot 1/8 and the possible no-build easements over the land that Cadent Gas would require. This, it stated, would render 517 allocated burial plots as unusable. It considered the extent of land needed by the Applicant to be excessive. Gardens of Peace

also raised a number of other future operational matters it said it had yet to receive assurances over. The ExA asked a number of questions at WQ1s [PD-008] seeking further information from the Applicant.

5.7.40. In its response at Deadline 2 [REP2-011], the Applicant stated that talks were ongoing and as a result, it would be seeking a change request to reduce the land take and CA of new rights sought for Plot 1/8 to an area which would be occupied by an access road. Change Request No.4 was subsequently accepted into the Examination on 26 February 2021 [PD-012].

5.7.41. The remainder of the Examination sought to update the ExA on remaining outstanding issues. At Deadline 9, the Applicant [REP9-069] and Gardens of Peace [REP9-080] confirmed that matters concerning temporary drainage, temporary car parking, the content of the draft easement with Cadent Gas and concerns over trees adjacent to the boundary with the A12 remain outstanding. According to the parties [REP10-020] and [REP9-069] the temporary drainage matter is the most contentious as the parties are not yet in agreement on where the drainage from Plot 1/8 during construction should discharge to.

5.7.42. It is the Applicant's hope [REP9-069] that a tri-party agreement will be signed between the Applicant, Gardens of Peace and Cadent Gas agreeing all matters between them. The Applicant [REP9-071] and Gardens of Peace [REP8-031], [REP9-080] and [REP10-020] have made statements on progress, however at the close of the Examination the tri-party agreement had not been signed.

5.7.43. In its Deadline 10 submission [REP10-020], Gardens of Peace reported that it was very much hoped that the tri-party agreement can be completed in the coming weeks. However, if an agreement is not reached on any or some of the outstanding matters, Gardens of Peace stated that the Recommended DCO should include a provision to agree mitigation. The Applicant in its Deadline 9 submission [REP9-069] had agreed to this and had included draft wording to be inserted should the circumstances be needed and the SoS agree to it.

5.7.44. The SoCG signed between the Applicant and LB Havering [REP9-050] confirmed that, subject to signing of the tri-party agreement, the effects onto the Gardens of Peace in respect of open space and its operation, and noise would be negligible.

5.7.45. The ExA is confident that the tri-party agreement will be signed by the parties prior to the SoS making their decision. However, in the event that matters remain outstanding, particularly concerning drainage, the ExA has included a new Requirement 19 in the Recommended DCO using the wording suggested by the Applicant. This would ensure that drainage matters would be consulted upon and considered by the SoS before any works to Work No.29 commences. The ExA is satisfied that new Requirement 19 would provide the assurances Gardens of Peace seeks. The SoS may wish to seek an update on the position regarding the tri-party agreement prior to them making their decision.

Maylands Golf Course

5.7.46. Work No.32 would permit replacement facilities at Maylands Golf Course. Primarily, this would have seen the relocation and realignment of hole 2. In its RR [RR-019] and its WR at Deadline 2 [REP2-032], Luddington Golf Ltd, the operators of Maylands Golf Course, explained that the proposals being offered by the Applicant were unacceptable and would render the course both unplayable and unsafe.

5.7.47. Following further discussions between the Applicant and Luddington Golf Ltd, the Applicant tabled Change Request No.3 which was accepted into the Examination on 19 March 2021 [PD-013]. This showed some changes to hole 2, and other associated works. Luddington Golf Ltd's Deadline 2 response [REP2-032] stated that it was aware of Change Request No.2 and maintained its objection.

5.7.48. Discussions continued between the Applicant and Luddington Golf Ltd and at Deadline 6, the Applicant tabled Change Request No.7 in which the redesign of hole 2 and other associated works were put forward [REP6-002], [REP6-022] and [REP6-033]. Change Request No.7 resulted in an extension of the Order limits for TP powers. It was accepted into the Examination on 26 May 2021 [PD-020]. The Applicant stated that on acceptance of Change Request No.7, Change Request No.3 was superseded.

5.7.49. At Deadline 7 [REP7-041], Luddington Golf Ltd confirmed that it was content with the scope of works for Maylands Golf Course and it wished to withdraw its WR [REP2-032].

5.7.50. At ISH3 [EV-038], the ExA stated that it was concerned that while Work No.32 would consent changes to Maylands Golf Course and powers contained within the draft DCO [REP7-003] would allow for the land to be subject to CA and TP, there was nothing in the draft DCO which compelled the Applicant to deliver the works. In its response at Deadline 7 [REP7-019] the Applicant stated that it was hoped that a side agreement with Luddington Golf Ltd would ensure its delivery. But with no agreement before the ExA, we recommended an additional Requirement to that effect in our Consultation Draft DCO [PD-021]. The Applicant updated the draft DCO with its own suggested wording at Deadline 8 [REP8-002] which we deemed to be acceptable. As discussed in Chapter 8 of this Report, the presence of a side agreement may render the need for Requirement 15 of the Recommended DCO as unnecessary.

5.7.51. The ExA is satisfied that the Proposed Development would cause only short-term and temporary adverse effects to the Maylands Golf Course during construction which would reduce to neutral in the medium- to longer-term. The SoCG signed between the Applicant and LB Havering [REP9-050] confirmed that there would likely be no significant effects on the operation of the golf course.

Construction Practices and the Adequacy of the Outline CEMP

5.7.52. The issue of concern here lay with the adequacy of the outline CEMP in dealing with mitigating construction practices, particularly in the case of dust and noise on the local community. Individual concerns on technical matters are addressed in each Section of this Report where required.

5.7.53. In its LIR [REP1-031], LB Havering maintained that the SoS should not be approving the CEMP as it currently stands. This was because the outline CEMP [APP-096] lacked information and clarity, thus, LB Havering stated that people and communities would not have the full facts of the mitigation measures to alleviate the construction harm caused and thus have the opportunity to comment upon them.

5.7.54. As originally submitted, the outline CEMP [APP-096] included no environmental control plans (ECPs) (Appendix F to the outline CEMP) and therefore ExA had no evidence on how the Applicant's practical approach to mitigation would work. Furthermore, paragraph 4.4.3 stated that *"it is expected that some or all of the following ECPs will be prepared…"* which the ExA considered imprecise and non-committal on what would actually be submitted.

5.7.55. In our WQ1 [PD-008], the ExA identified the plans we felt were necessary for the Examination because we considered these documents were important and relevant to determining how such matters would be managed. These were a Surface Water Management Plan (SuWMP) (WQ1 FDW 1.14), an Archaeological Management Plan (AMP) (HE 1.1), and an Arboricultural Method Statement (AMS) (LV 1.10) and a DNNMP (NV 1.1). The Applicant submitted all such reports at Deadline 3a and Deadline 5 and the outline CEMP was updated in full at Deadline 9 [REP9-046] and Deadline 10 [REP10-002]. The draft DCO [REP2-002] was also updated in which the ECPs were listed as to be submitted as part of the CEMP.

5.7.56. However, LB Havering maintained [REP4-029] that matters concerning general dust and noise disturbances were not adequately dealt with in the Application and that an additional Requirement should be drafted. This would provide surety that residents would be protected from noise during construction because the Applicant had not provided surety from its responses through the Examination that the matter of noise disruption during construction has been adequately dealt with.

5.7.57. The ExA agreed and was initially surprised to find that given the proximity of the Proposed Development to a number of sensitive receptors, the Applicant had not provided an outline DNNMP to demonstrate how the measures set out in the REAC [APP-097] (now REP9-047]) were to be carried out.

5.7.58. At ISH3 [EV-038], the ExA sought comments from IPs in order to establish whether it was agreed that the outline DNNMP [REP5-027] was sufficient to deal with the issue of construction dust and noise, noting that LB Havering had raised concerns in response [REP5-057] to the

ExA's WQ2 NV 2.2 [PD-015] regarding the adequacy of the outline DNNMP.

5.7.59. The Applicant explained that it had been in discussion with LB Havering since reviewing its responses and that following these discussions it had sought to remove any ambiguities in wording and added further detail of mitigation measures that are likely to be implemented, in order to give comfort to LB Havering.

5.7.60. At ISH3 [EV-038], the ExA requested a detailed explanation from LB Havering as to its specific concerns in the outline DNNMP [REP5-027] in which the Local authority opined did not effectively deal with construction concerns. It was established that in Table 3.2, the control measures set out were headed as "*likely*" to be implemented during construction. The ExA questioned, and LB Havering confirmed, that its concern would be overcome if the term "*likely*" was removed, which it subsequently was at Deadline 9 [REP9-046]. LB Havering [REP9-077] confirmed that it remained concerned with the wording of Requirement 4 of the draft DCO [REP8-002]. This is discussed in Chapter 9 of this Report.

5.7.61. In respect of other plans submitted as part of the outline CEMP, the Ecological Habitats and Species Plan (EHSP) and the Invasive Species Management Plan (ISMP) were submitted at Deadline 6 [REP6-019] in response to WQ2 BHR 2.1 [PD-015]. The Community Engagement Plan was submitted at Deadline 8 [REP8-011] following a request for the Applicant to do so at ISH2 [EV-038]. The EA confirmed in its response at Deadline 6 [REP6-040] that a MMP was not required at this stage.

5.7.62. At ISH1 [EV-008], LB Havering stated its concerns raised at Deadline 3a [REP3A-040] and [REP3A-042] that it considered all ECPs listed in Requirement 4 of the Recommended DCO should be before the ExA, raising concerns that they cannot be properly scrutinised, and the effects of the local community could not be assessed during the Examination.

5.7.63. Of those documents listed in Requirement 4 of the Recommended DCO, five form part of the outline CEMP [REP10-002] and eight will first be submitted as part of the discharge of this Requirement. However, the ExA heard no substantive evidence as to why those other documents are necessary at this stage or why they could not be examined and discharged after the decision is made. In other words, those plans are not critical to the determination of the Proposed Development. The ExA considers that it obtained the ECPs it felt were necessary at the Examination stage and it was not necessary to seek all ECPs particularly where, for example in the case of the Emergency Response Plan, no matters of concerns were raised during the Examination.

5.7.64. LB Havering's secondary concern [REP1-031] with the outline CEMP [REP10-002] regarded the wording in the final draft DCO [REP9-012] and the wording "*substantially in accordance"* is discussed in Chapter 9 of this Report.

5.7.65. Because these matters remain outstanding, the content and adequacy of the outline CEMP [REP10-002] as a whole is not an agreed matter in the signed SoCG between the Applicant and LB Havering [REP9-050]. They are agreed with the content and mitigation of the outline DNNMP on the living conditions of surrounding people and communities. The signed SoCG between the Applicant and Brentwood BC [REP1-005] and Essex CC [REP8-004] are agreed on all matters in respect of the outline CEMP.

5.7.66. Therefore, aside from those matters to be discussed below, the ExA is content with Requirement 4 and we are further content that we have those documents before us which are important and relevant to the Examination.

Developer Contributions

5.7.67. In its LIR [REP1-031], LB Havering stated that it considered developer contributions would be required because the Proposed Development conflicted with a number of its development plan policies. The viewpoint was maintained throughout the Examination. The contributions sought, in relation to people and communities, were towards sustainable travel and local skills and training.

5.7.68. At ISH2 [EV-010], confirmed in writing at Deadline 4 [REP4-031] LB Havering confirmed that further consideration had been given to the obligations sought from those outlined in the LIR [REP1-031]. Its concerns were as follows:

- For non-compliance with emerging Local Plan policy 22, the Applicant to prepare a Local Training Skills and Brokerage Strategy.
- For non-compliance and to support adopted Plan policies CP9 and CP10 and emerging Plan policy 23, a total contribution of:
    - £300,000 to support the continued delivery of free cycle training to the Borough's school children and wider residents.
    - £600,000 to mitigate the impacts of traffic re-routing during construction of the Proposed Development.
    - £100,000 towards the delivery of electric charging points within the vicinity of the development.
    - To monitor the delivery of the CEMP and its ECPs as set out in Requirement 4 of the Recommended DCO, a full-time post at a cost of £59,376.

5.7.69. In its Deadline 4 submission [REP4-031], LB Havering stated that in its view, the obligations are reasonably related in scale and kind in terms of cost. LB Havering is seeking a total contribution of just over £1m, which is comparable to the overall Proposed Development cost which is currently expected to be in the regional of £124m (paragraph 2.1.1 of Funding Statement [APP-020]).

5.7.70. Looking at the policies which LB Havering say underpin the requests, all relate to schemes which are either residential, commercial or mixed used schemes. As the Proposed Development sits within the definition of national infrastructure as defined by the PA2008, the ExA concurs with the responses from the Applicant at Deadlines 3a and 4 [REP3A-020],

[REP4-010] and [REP4-017] that they do not apply to the Proposed Development as a matter of fact.

5.7.71. In respect of sustainable travel, both adopted Policies CP9 and CP10 and emerging Policy 23 seek to reduce the need for travel and promote sustainable travel. However, the policies are clearly aimed towards new development (as opposed to infrastructure improvements) through the promotion of settlement hierarchy, appropriate locations close to town centres and for the provision of informal recreation. Similarly, for emerging Policy 22 in respect to skills and training, the criteria for application of minimum labour targets concerns major commercial, mixed use and residential schemes.

5.7.72. The ExA find that the policies do not apply to the Proposed Development and as such, the request for developer contributions from a public body are not applicable or justified.

5.7.73. At ISH3 [EV-038], the Applicant stated in respect to the NMU delivery within the Order limits, that it proposes to secure the central part of the proposed upgrade by way of a s106 planning obligation, given under a planning agreement or, failing agreement, a unilateral planning obligation. At Deadline 9 [REP9-070] and updated at Deadline 10 [REP10-015], the Applicant produced a draft UU to secure it. The delivery of those parts of the route outside the Order limits form part of the Applicant's Designated Funds Scheme and are discussed further in Section 5.4 above.

5.7.74. At Deadline 9 [REP9-082], TfL voiced concerns regarding how the wider NMU would be secured. It stated that while the Applicant has secured the Designated Funds to deliver the full NMU route between Harold Hill and Brentwood, there is no security that the full NMU would be delivered.

5.7.75. As discussed in Section 5.4 above, the ExA concurs with this view and we have set out a new Requirement 17 in the Recommended DCO which would, in lieu of a signed or agreed UU which renders any Requirement redundant, secure the scheme for the whole NMU with the Applicant, as set out in the draft UU, only responsible for the delivery of the section within the Order limits.

Other Matters

5.7.76. Putwell Bridge Caravan Park gypsy and traveller site is located adjacent to the Gardens of Peace land, fronting the westbound A12 carriageway. The occupiers of that site have not participated in the Examination. Initially, in its LIR [REP1-031], LB Havering stated that it had concerns with paragraph 13.10.5 of Chapter 13 of the ES [REP9-023], which stated that the site would experience a slight adverse effect (not significant) during the construction phase. LB Havering disagreed on this point, stating that there is a potential for high levels of construction noise, dust, and issues over access over a 24-hour period to residents on this site as the proposed gas pipeline mains work is in very close proximity to site and the mitigation for this is unclear.

5.7.77. However, the SoCG signed between the Applicant and LB Havering [REP9-050] confirmed that the Applicant had had discussions with Cadent Gas and confirmed within the SoCG that there would be no intention to block access to or from the Putwell Bridge Caravan Park site and that occupiers can remain in-situ for the duration of the construction works as well as when the Proposed Development becomes operational. Furthermore, the Applicant confirmed that it met with residents of Putwell Bridge Caravan Park on 29 April 2021 to explain the impacts of the Proposed Development and has provided evidence to LB Havering. LB Havering confirmed that they are happy with the engagement that has taken place. The SoCG also stated that Chapter 6 of the ES was updated at Deadline 3a [REP3A-026] (updated to [REP9-019]) in which Putwell bridge gypsy and traveller site was added as a receptor and that it is an agreed matter that changes in noise and vibration would be negligible.

5.7.78. The signed SoCG between the Applicant and Brentwood BC [REP1-005] and Essex CC [REP8-004] agreed that the Proposed Development would have no likely significant impact on people and communities in their administrative area. The SoCG signed between the Applicant and LB Havering [REP9-050] are also agreed on all matters save for the NMU, which is discussed further in the Traffic Section of this Report.

ExA Conclusion

5.7.79. The ExA remains concerned about the effect of the Proposed Development on the living conditions of Mr & Mrs Jones.

5.7.80. In respect to visual effects, it is undeniable that Grove Farm would be, even at an approximately 30m distance, within very close proximity to the new A12 off-slip forming Work No.2. We concur with the ES [REP9-021] and [REP9-025] that the visual effects would be significantly adverse to Mr & Mrs Jones, even with mitigation. The ExA acknowledges that Change Request No.8 [REP8-002], [REP8-029] and [REP8-030] which would enlarge the private garden area of Grove Far as well as install a visual screen would have some mitigating effect in reducing the visual effect and of the Proposed Development.

5.7.81. Nevertheless, the ExA remains concerned that the measures proposed in the REAC [REP9-047] and outline LEMP [REP9-042], which control the planting regime across the whole site, is not sufficient to mitigate the harm because such reports are likely to be too generalised and promote planting which may not be adequate for Grove Farm.

5.7.82. The Applicant currently proposed to secure such planting and the visual screen via Requirement 5(3)(g) of the final draft DCO [REP9-012]. However, and for reasons given above, the ExA does not consider that this is sufficient. As currently drafted, the Applicant would only need to secure a visual screen and planting as part of an overall LEMP for the whole development site. Because of Grove Farm's very close proximity to the proposed A12 off-slip forming Work No.2, the ExA considers that mitigating the identified harm to Grove Farm should be "tailor-made" to the specifics of the site rather than form part of a site-wide generalised

LEMP, and thus should form its own report. Furthermore, a site-specific analysis may lead to the identification of additional measures not connected to landscape matters which would otherwise not be provided for.

5.7.83. Given the need for specific details of Work No.15 following Change Request No.8 [REP7-002], [REP7-029] and [REP7-030] as discussed in the Transport and Access Section of this Report, the ExA recommends, and has thus inserted, additional Requirement 16 into the Recommended DCO in which a site-specific plan is submitted which would have specific regard mitigation for Grove Farm. The ExA considers a site-specific plan would go some way to mitigating the visual harm and would be better regulated through a new Requirement 16 in the Recommended DCO. However, if the SoS disagrees, Requirement 5(3)(g) of the final draft DCO [REP9-012] as worded, would suffice in securing only the planting and visual screen as a minimum.

5.7.84. In respect to noise, the ExA is concerned that the reduction in distance between the main house at Grove Farm and the proposed location of the new A12 eastbound off-slip road forming Work No.2 will result in an increase in peak noise levels. No evidence has been submitted to demonstrate what the maximum peak noise levels that might be encountered by residents of Grove Farm are likely to be. The significance of the impact of these peak noise levels cannot, therefore, be assessed.

5.7.85. We concur with the Applicant that a permanent acoustic barrier would have a mitigating effect on peak noise levels, albeit that this effect might be localised. Thus, should peak noise levels be at a perceptible level above background noise levels, such a fence would be effective. But no evidence has been presented to accurately quantify the level of reduction that could be achieved since the Applicant takes the view that a permanent acoustic barrier is not required.

5.7.86. However, and somewhat critically, the Applicant has stated [EV-038] and [REP7-018] that no methodology exists to predict the peak noises above background noise levels that the occupants of Grove Farm might be subject to in the operational stage of the Proposed Development. We heard no contrary evidence from any other IPs on this matter. This has played a large part in our conclusion on this matter.

5.7.87. As originally worded in our Consultation Draft DCO [PD-021], the ExA's recommended additional Requirement for Grove Farm included the need for post-construction noise monitoring to determine; a) whether peak noise events occurred; b) their regularity; and c) their effects. This was supported by Mr & Mrs Jones of Grove Farm in their Deadline 8 submission [REP8-034].

5.7.88. However, having reflected on the responses from the Applicant [REP8-010] in this regard, the ExA considers that post-construction noise monitoring is not something we can recommend to the SoS, in light of the evidence presented by the Applicant that no methodology exists to undertake an assessment of peak traffic noise events post-construction.

We could not, with any degree of certainty or confidence, advise the SoS as to how the Applicant would realistically be expected to undertake post-construction noise monitoring; how peak noises would be measured; over what period; and what the criteria would be in determining whether an acoustic barrier was necessary. In other words, we are not confident on the evidence before us that post-construction noise monitoring to determine peak noise levels is realistic or reasonable.

5.7.89. We remain disappointed that peak noise evidence is absent from the application, and we remain of the view that we cannot conclude with any degree of certainty that peak noise levels would not result in potentially likely significant effects to Mrs & Mrs Jones, particularly at night-time hours.

5.7.90. However, we acknowledge that such effects may not be significant as traffic is generally lighter at night. Moreover, other legislation exists in the form of blight provisions as set out in the TCPA 1990 where Mr & Mrs Jones may be able to pursue means of compensation should the disturbance be severe. Furthermore, we have included within new Requirement 16(2)(1) the wording *"any other mitigation deemed necessary"* which, should there be agreement between the Applicant and Mr & Mrs Jones for other solutions including for the provision of an acoustic barrier, it can form part of the site-specific plan.

5.7.91. The ExA is satisfied that the Proposed Development would have no likely significant effects on the future operations of the Gardens of Peace land or Maylands Golf Course.

5.7.92. In respect to the need for a developer contribution towards, the ExA finds that adopted and emerging Local Plan policies relied upon by LB Havering do not apply to NI development and are not applicable to the Proposed Development. The contributions are therefore not justified.

5.7.93. The contribution requests are without justification and do not meet the paragraph 57 tests in the NPPF and thus should not be considered by the SoS. However, should the SoS disagree in part or in full, the SoS should request a s106 Agreement from the Applicant during their consideration of the Application.

5.7.94. The ExA is satisfied that the Proposed Development would have no likely significant effects on people and communities. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.8. DESIGN

Policy and ES Findings

5.8.1. NPS NN sets out criteria for "good design" for national network infrastructure.

5.8.2. Paragraph 4.28 and 4.29 of NPS NN establish that applicants should include design as an integral consideration from the outset of a proposal and that visual appearance should be a key factor in considering the design of new infrastructure, as well as functionality, fitness for purpose, sustainability and cost.

5.8.3. Paragraph 4.30 of NPS NN acknowledges that given the nature of much national network infrastructure development there may be a limit on the extent to which it can contribute to the enhancement of the quality of the area.

5.8.4. Paragraph 4.32 of NPS NN is clear that *"scheme design will be a material consideration in decision making. The SoS needs to be satisfied that national networks infrastructure projects are sustainable and as aesthetically sensitive, durable, adaptable and resilient as they can reasonably be (having regard to regulatory and other constraints and including accounting for natural hazards such as flooding)."*

5.8.5. Paragraph 4.35 of NPS NN sets out the expectation that that applicants should be able to demonstrate in its application how the design process was conducted and how the proposed design evolved.

5.8.6. In July 2021, an updated version of the NPPF was published by MHCLG. Underpinning the changes was a renewed emphasis on the importance of design, which further underlines the Government's commitment to achieving well-designed places. While the ExA accepts that design matters are covered adequately in the NPS NN and the NIS, we nevertheless reference the following paragraphs as important and relevant policy considerations.

- Paragraph 126, which discusses the importance of good design in the creation of high quality, beautiful and sustainable buildings and places.
- Paragraph 130 sets out a range of anticipated outcomes. It notes that planning policies and decisions should ensure that developments function well, are visually attractive, are sympathetic to local character and history, establish a strong sense of place and optimise the potential of the site to accommodate appropriate development and support local facilities and transport networks.
- Paragraph 131, which highlights the importance of trees to character and quality of urban environments.
- Paragraph 132, which stresses the importance of considering design quality from the outset and throughout the evolution and assessment of proposals.
- The importance of a robust design process to the success of all schemes is stressed in paragraph 134 of the NPPF, which is explicitly clear that development that is not well designed should be refused.

5.8.7. Paragraph 134 of the NPPF states that significant weight should be given to:

"a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and

supplementary planning documents such as design guides and codes; and/or

b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings."

5.8.8. Section 5.9 below addresses the specifics of the landscape and visual effects of the Proposed Development, as well as the Applicant's response to these matters in greater detail.

Examination Matters

5.8.9. The design of the Proposed Development was an important consideration in the Examination. The following IPs raised concerns as follows:

- Anthony Arthur Manley [RR-003] on the impact of the Proposed Development on visual amenity.
- Glebelands [RR-020] on the adverse impact of the Proposed Development on the visual amenity at the first hole of Maylands Golf Course.
- Mr & Mrs Jones of Grove Farm [RR-026] on the impact of the Proposed Development on living conditions.
- TfL [RR-028] on the extent of impact of the design and construction of the Proposed Development on TfL's assets, the lack of information provided to demonstrate that the design of the Proposed Development is fit for purpose both now and for the life of the Scheme, the requirement for consultation during the detailed design phase of the Proposed Development and the design of proposed structures that may become the responsibility of TfL.

5.8.10. The RR [RR-017] and LIR [REP1-031] from LB Havering raised the significance of the visual impact of the Proposed Development. While highlighting that it was generally satisfied with the landscape and visual impact assessment findings and the concluding significance of effect(s), it made the point that the areas of mitigation planting are solely responsible for mitigating the visual impacts of the Proposed Development.

5.8.11. The main issues that concerned the examination were as follows:

- The level of information submitted by the Applicant to demonstrate that good design has been an integral consideration, particularly with regard to the visual appearance of proposed structures and the integration of the Proposed Development within the public realm.
- The design process undertaken by the Applicant to ensure that the Proposed Development is as aesthetically sensitive, durable, adaptable and resilient as it can reasonably be.

5.8.12. The ExA asked a number of design-related questions in WQ1 [PD-008], in particular seeking to establish how the Applicant had arrived at its design solution and how it had implemented good design principles. In its response, the Applicant [REP2-011] set out the proposed landscape and

planting mitigation measures as one example of how it has implemented the principles of good design. The Applicant further describes the functional and environmental parameters that have informed the design of structures within the Proposed Development. The Applicant also made reference [REP2-011] to its own publication entitled "*The Road to Good Design"*, noting that it had considered the design principles set out in this document.

5.8.13. At ISH1 [EV-009], the ExA noted that whilst the Applicant had made reference to "*The Road to Good Design"*, this had not been submitted into the Examination and could not, therefore, be examined. We asked the Applicant if it would be prepared to provide this publication to the Examination and it confirmed that it would.

5.8.14. When asked by the ExA [EV-009] for further detail surrounding the design process and how it arrived at the aesthetic solutions proposed for new structures in the Proposed Development, the Applicant explained that materials and the form of structures had been chosen to harmonise with existing structures in the vicinity. Material choices have been made to achieve a balance between purpose, buildability and cost effectiveness while being easy to maintain in the long term. The Applicant confirmed that finishes to bridges would be important and would need to blend into the environment.

5.8.15. We sought further information [EV-009] to clarify the type of finish proposed. The Applicant expanded further to explain that it was important for the bridges to fit within the local environment. Finishes need to be self-maintaining and that generally a concrete finish is used where access is difficult. At Deadline 4 [REP4-022], the Applicant submitted "*The Road to Good Design"* into the Examination.

5.8.16. The ExA noted the objectives of "*The Road to Good Design"* [REP4-022], as set out in its introductory chapters, are to challenge thinking about the design and quality of our roads. Highways England note in the Introduction section that it has:

"established a set of principles for good road design which follow the themes of people, places and processes. These will encourage better design and provide the basis for road schemes to be objectively reviewed. For close engagement with communities, careful assessment of context, robust decision making and collaborative working, are all vital if ongoing road investment is going to truly enhance our urban and rural environments."

5.8.17. Within the themes of "connecting people"; "connecting places"; and "connecting processes" [REP4-022], 10 design principles are also established, based on universal ideas of good design. These principles state that good road design:

- Makes roads safe and useful.
- Is inclusive.
- Makes roads understandable.
- Fits in context.

- Is restrained.
- Is environmentally sustainable.
- Is thorough.
- Is innovative.
- Is collaborative.
- Is long lasting.

5.8.18. The *"Road to Good Design"* document [REP4-022] also sets out the role of the Highways England Strategic Design Panel as supporting the company to make a step change in the design quality of the strategic road network.

5.8.19. The ExA remained dissatisfied with the Applicant's design approach and level of design review that the Proposed Development had been subject to, and we asked further questions in WQ2 [PD-015]. In response [REP5-041], the Applicant confirmed that the preliminary design proposals had not been submitted to its Strategic Design Panel for review because the Proposed Development is not in an area which has been designated for conservation. This was due to it not having significant landscape value and that it had found that the Proposed Development was, accordingly, unlikely to have a substantial impact on the surrounding landscape.

5.8.20. The ExA sought to further understand how the principles of good design set out in "*The Road to Good Design"*, had been embedded into the design of the structures proposed and asked for further. We specifically sought to understand the following:

- The aesthetic design brief for each of the structures proposed, giving a description of the aesthetic quality that the Applicant aspires to achieve in each case.
- The design team's response to this brief, showing how the design of the proposed structures will address the brief requirements.
- Site analysis carried out to inform the design approach for proposed structures, indicating key site-specific challenges, including any sensitive areas that may be especially affected by the Proposed Development.
- The design team's response to this analysis, showing how they will successfully address the challenges identified and what specific design responses are required to ensure that areas that are most adversely affected by the proposed structures and/or are most visible in the public realm would satisfactorily mitigate adverse effects and achieve the highest possible aesthetic quality. The ExA is particularly interested in further detail that describes how the design of the proposed structures will seek to enhance their context while being true to their structural necessities.
- Further justification to demonstrate that the aesthetic of the existing bridges over the A12 at junction 28 is a suitable contextual response to apply to bridges over the existing re-formed landscape adjacent to the A12.
- Illustrated examples of the design language proposed for Alder Wood and Duck Wood bridges, that the Applicant believes can successfully be applied in the context of the Proposed Development.

- Illustrated examples of the material options that will be explored during the detailed design stage for each of the proposed structures.

5.8.21. In response, the Applicant stated [REP5-041] that it had not produced aesthetic design briefs for structures within the Proposed Development and that it would not be usual to do so for any of its schemes. However, the Applicant stressed again that it is guided by the DMRB and the principles set out in "*The Road to Good Design"*. The Applicant offered a summary of the design which noted that the orientation of the bridges aligns with the existing contours of the land and the design of tree planting and other landscape works would help to further assist in softening the visual appearance and integrate them into their surroundings. The Applicant did not respond in detail to provide the information sought by the ExA as set out above.

5.8.22. Remaining dissatisfied, the ExA tabled the item for discussion at ISH3 [EV-038]. Here, the ExA sought the Applicant's view on the insertion of additional wording into the DCO to ensure that the final design of structures be subjected to an independent design review.

5.8.23. The Applicant reiterated [EV-038] its view that the Proposed Development does not need to go through an independent design review process primarily because a number of structures have limited visibility and limited public access and that the area of the Proposed Development is not very sensitive in landscape terms. The Applicant further noted that if the ExA considered a design review process to be necessary, it would be more appropriate for the review to go to its's own design panel.

5.8.24. The Applicant provided a further summary of its design process at Deadline 7 entitled "*Highways England's Design Process Summary*" [REP7-028]. The ExA does not take the view that this document introduces additional important or relevant information to the Examination.

5.8.25. We have found that the Applicant has been unable to demonstrate that it has implemented the fundamental aspects of a design process when it comes to the visual appearance of the structures within the Proposed Development. No brief has been prepared or considered and the Applicant has not provided evidence of any analysis carried out with the purpose of informing the design decisions that have been made regarding the appearance of the structures and bridges of the Proposed Development.

5.8.26. Without evidence of analysis of the site, we find that the Applicant cannot reasonably come to the conclusion that the site of the Proposed Development is of no significant landscape value. Notwithstanding this, NPS NN does not distinguish between areas of significant landscape value and those without it, when it establishes that good design should be an integral consideration from the outset of a proposal and that visual appearance should be a key factor in considering the design of new infrastructure.

5.8.27. We find that the Applicant can, on balance, demonstrate that they have considered functionality, fitness for purpose, sustainability and cost in its design process. We have been unable to examine the Applicant's design process related to the visual appearance of the Proposed Development and can't therefore confirm that this fundamental aspect accords with NPS NN.

5.8.28. The ExA considers that a reasonable way forward would be for the structures and bridges of the Proposed Development to be subjected to an independent design review process. We proposed amending the draft DCO [REP7-003] in our Consultation Draft DCO [PD-021] to insert suitable wording for the scheme to be subjected to a design review process. The Applicant responded [REP8-010] that it considers such an approach is not necessary. The ExA disagrees and, accordingly, we have inserted additional wording to this effect in Requirement 3 of the Recommended DCO for the SoS's consideration, which we believe would ensure the design of the scheme meets policy objectives.

5.8.29. The SoCGs signed between the Applicant and LB Havering [REP9-050], Brentwood BC [REP1-005] and Essex CC [REP8-004] did not include design matters. In addition, they did not raise design matters in their respective LIRs [REP1-031], [REP1-026] and [REP1-043] and so the ExA concludes that such matters are not an objectionable point.

ExA Conclusion

5.8.30. The ExA remains concerned that the visual appearance of the Proposed Development has not benefitted from a robust design process carried out by the Applicant. During the course of the Examination, we have found that the mitigation of visual impact relies heavily on mitigation from landscape features.

5.8.31. While mitigation in the form of landscape screening has a role to play in addressing visual impact, if it is not used as a part of a well-formed design strategy for the design of visual appearance it can only be expected to be partly successful.

5.8.32. The ExA's comments and conclusions about the Landscape and Visual impact of the Proposed Development are set out in further detail in Section 5.9 below.

5.8.33. The ExA finds that the design of the Proposed Development, as it relates to visual appearance, has not been a key factor demonstrated by the Applicant in evidence presented to the Examination. We are therefore unable to confirm to the SoS that the Proposed Development has fully met the criteria for good design for national network infrastructure defined by the NPS NN, nor can we confirm that the Proposed Development will fully align with the objectives established by the current NPPF.

5.8.34. In order for the SoS to be satisfied that the Applicant has properly considered and addressed the visual impact of its design proposals to a level of detail appropriate at this stage of the design process, the ExA

recommends that no part of the authorised development is to commence until an independent design review and report on its findings on the design of the bridges and structures of the Proposed Development is submitted to and agreed by the SoS. We have therefore inserted appropriate wording into Requirement 3 of the Recommended DCO.

5.8.35. With this wording in place, we are satisfied that the Proposed Development would meet the criteria for good design set out in NPS NN and would, therefore, amount to a neutral effect in the planning balance.

5.9. LANDSCAPE AND VISUAL

Policy and ES Findings

5.9.1. Paragraphs 5.144 to 5.148 of NPS NN set out what should be included for assessment in an application. In particular, it should include any significant effects during construction of the project and/or the significant effects of the completed development and its operation on landscape components and landscape character as well as the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity.

5.9.2. In respect to landscape effects, paragraph 5.156 of NPS NN states that where a local development document in England has policies based on landscape character assessment, these should be given particular consideration. However, local landscape designations should not be used in themselves as reasons to refuse consent, as this may unduly restrict acceptable development. Paragraph 5.157 states that the SoS should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation.

5.9.3. In respect of visual effects, paragraph 5.158 of NPS NN states that the SoS will have to judge whether any negative visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the development.

5.9.4. Paragraph 5.160 of NPS NN states that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design (including choice of materials), and landscaping schemes, depending on the size and type of proposed project.

5.9.5. Chapter 7 of the ES [REP9-020] summarised the effects of the Proposed Development on trees. The application was accompanied by an Arboricultural Impact Assessment (AIA) [APP-063] and a Technical Note regarding Veteran Trees, which formed Appendix C to the Case for the Scheme [APP-095].

5.9.6. Chapters 9 [REP9-021] and 16 [REP9-025] of the ES summarise the effects of the Proposed Development on landscape and visual matters. They identify in landscape terms that the Proposed Development would

cause permanent significant adverse effects during construction due to the removal of vegetation and introduction and operation of new road elements will alter the character of the landscape on a local scale.

5.9.7. In respect to visual effects, Chapters 9 [REP9-021] and 16 [REP9-025] of the ES identify six visual receptors that would experience both permanent and temporary significant adverse effects during construction and operation from the removal of vegetation and introduction of new road elements and associated infrastructure. Those receptors are:

- The residents of Grove Farm.
- The residents of Maylands Cottages.
- The residents of Johns Terrace, Harrods Park.
- The patrons of the Maylands Golf Club.
- Users of the ProW north of Jermains Wood.
- Users of the bridleway following Nag's Head Lane.

5.9.8. Mitigation is proposed through the REAC [REP9-047] and LEMP [REP9-042] to replant with appropriate trees. The LEMP is secured by Requirement 5 of the Recommended DCO. Chapters 9 [REP9-021] and 16 [REP9-025] of the ES stated that there would be a moderate adverse effect at Year 15 for landscape effects. For visual impact at Year 15, there would be a moderate adverse effect for Grove Farm; and a slight adverse effect to Maylands Cottages, Maylands Golf Course, Johns Terrace, and users of the ProW and bridleways at the locations mentioned above.

5.9.9. In summary, the ES [REP9-021] and [REP9-025] confirmed that, subject to the measures set out in the REAC [REP9-047] and the outline CEMP [REP10-002] which is secured by Requirement 4 of the Recommended DCO, and together with Requirement 5 which secures the LEMP and Requirement 11 which secures the AMS, the likely significant adverse effects identified above can be successfully mitigated and reduced in time.

Examination Matters

5.9.10. The main issues in the Examination concerned the information contained within the application, and the Application's approach to tree loss and replacement.

Tree Loss and Replacement

5.9.11. The Order limits currently comprise two significant areas of woodland which are located approximately at either end of the Grove Farm industrial operations. At the northernmost end lies Alder Wood, the larger of the two with a substantial area of tree coverage. To the south lies The Grove woodland. Both are subject to group TPOs. Neither are ancient woodland. Figure 7.3 of Chapter 7 of the ES [REP9-029] illustrates that the closest ancient woodlands are Vicarage Wood and Lower Vicarage Wood located to the east and within the Brentwood BC administrative area, and Duck Wood located to the west adjacent to the Maylands Golf Course.

5.9.12. As indicated on the (then) Works Plans [APP-006] (updated to [REP9-004]) the proposed new loop road forming Work No.6 would cut through a not inconsiderable portion of Alder Wood, and the proposed A12 off-slip forming Work No.2 would do the same for The Grove woodland. Yet despite this, the ExA was concerned at how relatively little information was before the Examination on the number of trees required and how others were to be protected.

5.9.13. In respect to the AIA [APP-063], the ExA noted that Appendix B to the document listed a tree schedule. However, Table 4.2 only set out the area of land in which trees were to be removed and not the actual quantity. Therefore, the number of trees to be removed could exceed that identified in Appendix B if it were located within the area identified in Table 4.2. The risk of abuse from contractors removing more protected trees than they need could be significant. The ExA considered the level of information to be imprecise and wholly unacceptable for the identification of necessary protected trees to be removed.

5.9.14. Moreover, the (then) REAC [APP-097] (updated to [REP9047]) identified a number of measures designed to mitigate and protect trees to be retained but then signposted the outline CEMP [APP-096] as the principal document where such matters would be controlled. However, the outline CEMP made no further mention of trees in detail and neither the outline CEMP nor the REAC give any meaningful indication of management of TPO trees.

5.9.15. Furthermore, the AIA [APP-063] alongside the REAC [APP-097] and outline CEMP [APP-096] relied considerably on an AMS which was not before the ExA and no provision is made for it within the draft DCO [APP-015].

5.9.16. The ExA was thus concerned that the Applicant's approach did not satisfactorily address tree protection measures and places a heavy reliance on an as yet unseen AMS. Unanswered questions remained, including:

- The identification of the Root Protection Areas (RPAs) for the veteran trees within or close to the Order limits that are identified to be retained and the most appropriate approaches for their protection.
- The absence of identification of and survey work of the ancient woodlands and the potential indirect impacts on them, which contrary to the REAC are not set out in the CEMP in any detail.
- A precise indication of the trees to be removed to ensure only the minimum necessary would be removed.
- The appointment of the Ecological Clerk of Works and the Arboricultural Officer, their roles and responsibilities and the length of their appointments.

5.9.17. We posed these concerns in WQ1 LV 1.10 [PD-008]. In its response [REP2-011], the Applicant confirmed it would provide an AMS as part of the outline CEMP at Deadline 3a [REP3A-010]. It also listed the ECPs to form the outline CEMP in Requirement 4 of the then draft DCO [REP3A-004] to ensure the AMS was secured.

5.9.18. However, the ExA remained dissatisfied with the level of information provided and we tabled the matter for discussion at ISH1 [EV-009]. Once again, no evidence of the number of trees to be removed was before the Examination and the Applicant was asked to explain why. Given that both Alder Wood and The Grove woodland were covered by blanket TPOs, the ExA put it to the Applicant that it was unacceptable not to know this level of detail and precedent set on other schemes was not a sufficient excuse. Furthermore, the ExA put it to the Applicant that without some form of control on the trees to be removed, the contractor would be unrestrained to remove trees "at will" if they were deemed by the contractor to be inconveniently in the way. The ExA also noted the scarcity of information contained within Section 4.6 of the AMS (which at that stage was part of the outline CEMP) [REP3A-010] on TPO tree management.

5.9.19. We also put it to the Applicant [EV-009] that neither the outline LEMP [APP-072] nor the outline CEMP [REP3A-010] contained any meaningful mention on management and maintenance of ancient woodlands and Veteran trees despite the comments in the REAC [REP3A-011]. Moreover, we asked for clarification on the interrelationships between the outline CEMP and outline LEMP. The Applicant responded that the outline CEMP dealt with construction matters whereas the outline LEMP dealt with replanting.

5.9.20. As a result of the discussions at the ISH1 [EV-009], the Applicant produced a much-improved AMS at Deadline 5 [REP5-040] which contained more information on tree management. New sections on tree works were inserted as well as quantification in paragraph 5.2.6 that a total of 1,016 trees (as set out in the AMS Deadline 9 [REP9-061]) would be likely to be removed from the Order limits. Paragraph 6.1.2 states that approximately 11,750 species of replanting would take place comprising 70% trees and 30% shrubs. A section on ancient woodlands had also been added. The Tree Protection Plans found at Appendix C to the AMS also now illustrated in plan form the location of the trees to be removed.

5.9.21. A total of 15 Veteran trees were identified within the Order limits [APP-095]. The Proposed Development would result in the loss of two of these Veteran trees from the site. T021A is a Common Oak and is located within The Grove woodland, and accordingly would be removed to facilitate the A12 off-slip forming Work No.2. The second is T074 located within Alder Wood and is a Common Ash and would be removed to facilitate the proposed loop road forming Work No.6. A further eight are described as being potentially impacted from construction. Table 4.1 of the AMS [REP9-061] confirmed the likely mitigation and protection measures to be used with the final AMS setting out the confirmed measures.

5.9.22. Mitigation set out in the REAC [REP9-047], the Technical Note regarding Veteran Trees, which formed Appendix C to the Case for the Scheme [APP-095] and in the AMS [REP9-061] that eight trees for each Veteran tree lost would be replanted with two further trees to be 'veteranised' to promote deadwood habitat. In its LIR [REP1-031] LB Havering welcomes

the mitigation and at Deadline 6 [REP6-029], stated it was satisfied with the content of the AMS. The AMS is secured by Requirement 11 of the Recommended DCO.

5.9.23. As stated above, the Applicant confirmed at ISH1 [EV-009] that the outline LEMP's focus was on replanting and management of trees and shrubs. Given our concerns on the adequacy of the approach to trees in this application and having focused on construction practices, we requested responses on the adequacy of the outline LEMP [APP-072] in our WQ2 LV 2.4 [PD-015]. LB Havering responded [REP5-057] raising a number concerns with the document particularly regarding the strategy towards the thinning of woodland. The Applicant responded [REP6-013] stating that it would take on board the comments raised. An updated outline LEMP was submitted into the Examination at Deadline 9 [REP9-042]. In its response, LB Havering confirmed [REP10-013] that it was content with the document.

5.9.24. With changes to the outline CEMP, outline LEMP and the production and revision of an AMS, the ExA asked no further questions in this regard. The AMS is secured by Requirement 11 of the Recommended DCO, with a suggested change in wording which is set out in Chapter 9 of this Report.

Other Matters

5.9.25. Photomontages were submitted into the Examination on 20 July 2020 as Viewpoint A [AS-002], Viewpoint B [AS-003], Viewpoint C [AS-004], Viewpoint D [AS-005] and Viewpoint E [AS-006]. In its RR [RR-017], LB Havering raised concerns that the panoramic photographs submitted with the Application had not been presented in accordance with the technical guidance, and we put this to the Applicant in WQ1 LV 1.4 [PD-008].

5.9.26. Following the submission of winter photomontages at Deadline 1 Viewpoint A [REP1-018], Viewpoint B [REP1-019], Viewpoint C [REP1-020], Viewpoint D [REP1-021] and Viewpoint E [REP1-022] LB Havering confirmed in its response to WQ1 LV 1.4 [REP2-020] and in [REP2-021] that it was content with this matter.

5.9.27. Summer Viewpoint D was updated at Deadline 3a [REP3A-039] and Deadline 5 [REP5-022], and winter Viewpoint D updated at Deadline 5 [REP5-034] to reflect Change Requests Nos.1-4. Summer Viewpoint B [REP9-033] and Viewpoint D [REP9-033] and winter Viewpoint B [REP9-054] and Viewpoint D [REP9-055] were updated to reflect Change Requests Nos.5-8.

5.9.28. The SoCG signed between the Applicant and LB Havering [REP9-050], Brentwood BC [REP1-005] and Essex CC [REP8-004] are agreed on all matters in respect of the effect of the Proposed Development on the surrounding landscape, including the provision of large areas of mitigation planting.

ExA Conclusion

5.9.29. Following the introduction and updating of the AMS at Deadline 5 [REP5-040] and Deadline 9 [REP9-061], the ExA is satisfied that the Examination has a better understanding, and a greater control exists of trees to be retained.

5.9.30. The ExA is disappointed with the number of trees to be removed to facilitate the Proposed Development. The loss of 1,016 trees would be significant and there would be a noticeable scar of lost woodland within Alder Wood and The Grove.

5.9.31. However, the ExA notes that, potentially, some 8,225 trees (70%) would be replanted. Dependent on the species of trees advanced in the AMP and LEMP secured by Requirements 11 and 5 of the Recommended DCO respectively, and with a robust mitigation and management plan, the ExA is satisfied that in the longer term, the effects of the Proposed Development could be negligible.

5.9.32. That would not be the case for the short- to medium-terms. The loss of trees would be highly noticeable and would, in our judgement cause inevitable landscape harm to the area.

5.9.33. The ExA observed the Proposed Development from the visual receptor locations where the ES identifies potential significant adverse harm. With the exception of Grove Farm, the ExA was satisfied that the visual effect would not be significant. This is because in the case of Maylands Golf Course and Maylands Cottages, the proposed loop road forming Work No.6 would be seen against the backdrop of the existing road infrastructure including the M25. The residents of Johns Terrace already experience significant visual effects from its proximity to the existing A12 which is slightly elevated in front of the dwellings and the Proposed Development would not in our view significantly harm living conditions. We are satisfied that the users of the ProW and bridleway are sufficiently distant from the site not to be significantly visually harmed.

5.9.34. Drawing all matters together, the loss of vegetation would not be immediately repairable in the short- and medium-term. The not inconsiderable loss of protected trees at Alder Wood and The Grove would be highly noticeable; the landscape would change; and harm would result.

5.9.35. However, the ExA accepts that the following needs to be considered when considering this harm:

- This is an unavoidable occurrence for a project such as this.
- The Applicant has sought to quantify and minimise the vegetation to be removed.
- In the longer-term, the harm would reduce as the replaced vegetation establishes.

5.9.36. Even accounting for the mitigation measures including the replacement planting contained within the outline LEMP [REP9-042] and the longer-term effects establishment, the ExA finds that the loss of trees within the Order limits in the short- and medium-term would be sufficient to draw a conclusion that the Proposed Development would have a negative effect on the landscape.

5.9.37. However, the weight to be applied to this effect is reduced to a moderate level owing to the longer-term positive effects of planting which would go some way to repairing the damage, and that landscape harm is often invariably an inevitable consequence of national infrastructure projects. As such there would be some conflict with NPS NN. But, even taking into consideration the reduction in weight, the Proposed Development would amount to a negative effect in the planning balance.

5.10. BIODIVERSITY AND WILDLIFE

Policy and ES Findings

5.10.1. Paragraphs 5.20 to 5.37 of NPS NN outline the national policy position with regard to biodiversity and the natural environment.

5.10.2. Paragraphs 5.22 and 5.23 of NPS NN state that where the project is subject to EIA the Applicant should ensure that the ES clearly sets out any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance (including those outside England) on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The ES should also consider the full range of potential impacts on ecosystems. The Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

5.10.3. Paragraph 5.25 of NPS NN further states that as a general principle, and subject to the specific policies below, development should avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. The Applicant may also wish to make use of biodiversity offsetting in devising compensation proposals to counteract any impacts on biodiversity which cannot be avoided or mitigated. Where significant harm cannot be avoided or mitigated, as a last resort, appropriate compensation measures should be sought.

5.10.4. In regard to ancient woodland and veteran trees, paragraph 5.32 of NPS NN states that ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be recreated. The SoS should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss. Aged or veteran trees found outside ancient woodland are also

particularly valuable for biodiversity and their loss should be avoided. Where such trees would be affected by development proposals, the Applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons for this.

5.10.5. Paragraph 5.36 indicates that applicants should provide appropriate mitigation measures as an integral part of their proposed development.

5.10.6. Adopted LB Havering Local Plan policies CP16 and DC58 note the objective to enhance and protect biodiversity and geodiversity in line with the Borough's Biodiversity Supplementary Planning Document, in particular priority habitats, species and sites. Development should avoid adverse impact on existing natural heritage assets as a first principle and enable net gains by designing in landscape and biodiversity features and enhancements.

5.10.7. Chapter 7 of the ES [REP9-020] submitted by the Applicant considered biodiversity and outlines that an assessment has been undertaken of the effect of the Proposed Development on biodiversity resources. This includes a description of the ecological baseline, evaluation of biodiversity features present and assessment of impacts and effects on important biodiversity resources (in line with relevant guidance).

5.10.8. The Applicant stated [REP9-020] that it has identified a number of important biodiversity resources within and adjacent to the Order limits through desk based and field survey work.

5.10.9. The Proposed Development lies within the northern extent of Ingrebourne Valley SMI. This large SMI covers the Ingrebourne River corridor and associated habitats through LB Havering.

5.10.10. The ES [REP9-020] stated that the construction of the Proposed Development would result in the permanent loss of habitat including 1.9% of the total area of the Ingrebourne Valley SMI and the loss of two veteran trees. During construction, loss of habitat and disturbance of species has the potential to result in temporary adverse effects on Ingrebourne Valley SMI (approximately 9.3 % of the total area), Ingrebourne River, Weald Brook, great crested newts, bats, breeding birds, otter and terrestrial invertebrates.

5.10.11. To reduce these potential effects on biodiversity resources, the Applicant has incorporated mitigation and compensation measures into the Proposal, as outlined in the outline CEMP [REP10-002] and REAC [REP9-047]. These include, but are not limited to, protection of species during construction, appropriate reinstatement and creation of habitats within temporary construction areas and remodelling and enhancement of the Ingrebourne River and Weald Brook. The Applicant stated that when established, replacement habitats created during construction would be suitable to support a diverse range of species. All newly created habitats would be managed and monitored as part of a long-term management plan.

5.10.12. The location and design constraints of the Proposed Development (such as highways safety, structural stability, clearance from floodplain) would result in the unavoidable loss of habitats. The Applicant notes [REP9-025] that effort has been made within the design to minimise this loss and retain important features, such as reducing the permanent footprint of the Proposed Development on the existing floodplain (by replacing embankments with retaining walls) and providing wide-span bridges over watercourses. Despite the mitigation and compensation proposals, the Proposed Development has the potential to result in the following residual effects:

- Adverse effect of moderate significance in relation to the loss of two veteran trees.
- Adverse effect of slight significance to Ingrebourne Valley SMI due to the permanent loss of 1.9 % of the SMI.
- Adverse effect of moderate significance on the Ingrebourne River within the DCO boundary due to the permanent loss of open water and riparian habitat caused by the 80m culvert extension. Enhancement of riverine habitats outside the DCO boundary would result in a neutral effect on the Ingrebourne WFD waterbody (GB106037028130). However, the adverse effect on the Ingrebourne River within the DCO boundary remains.

5.10.13. ES Chapter 16 [REP9-025] identifies terrestrial invertebrates and otters as being potentially adversely affected during construction through loss of habitat and fragmentation of territories. However, ES [REP9-020] stated that no long-term residual effects are anticipated for great crested newts, bats, breeding birds, otter and terrestrial invertebrates with mitigation set out in the outline CEMP [REP10-002] and secured in Requirement 4 of the Recommended DCO.

5.10.14. An assessment of the environmental effects of the Proposed Development has been carried out and documented within the ES [REP9-020] and [REP9-025]. The mitigation measures proposed to offset the impacts identified include, but are not limited to:

- Provision of significant areas of environmental mitigation land.
- Planting of native species of trees and undertaking works to existing tree.
- Creation of new aquatic habitat.
- Minimisation of waste.
- Replacement of the Maylands Golf Course hole 2.
- Landscape and temporary noise buffers.

5.10.15. Notwithstanding this, it is noted through the ES [REP9-020] and [REP9-025] that there are residual significant adverse effects expected as a result of the Proposed Development. These include:

- The permanent and temporary loss of terrestrial habitat from the Ingrebourne Valley SMI.
- The loss of 2 veteran trees.
- Loss of habitat for aquatic invertebrates.
- Impact to regional landfill capacity.

- Permanent land take from Grove Farm and Maylands Golf Course.

5.10.16. The full set of mitigation measures are set out within the REAC [REP9-047]. Requirement 4 of the Recommended DCO secures the preparation of a CEMP which must be substantially in accordance with the outline CEMP [REP10-002] and reflect the mitigation measures set out in the REAC. The Applicant considered [APP-095] that the proposed mitigation measures would significantly reduce the adverse impact of the Proposed Development and have been developed utilising best practice measures, liaison with relevant planning authorities' representatives and through engagement with affected landowners. With these mitigation measures in place, the environmental effects of the Proposed Development are expected to be minimal.

5.10.17. At the outset of the Application, the Land Plans [APP-005] and Works Plans [APP-006] illustrated works to relocate and redesign second hole of Maylands Golf Course. The location and extent of the land proposed to facilitate the relocation and redesign of the second hole was determined, having regard to an indicative design for the works and in accordance with the advice of a specialist golf course architect regarding the quality of the golfing environment. It also took into account known environmental constraints in the vicinity. Discussions with Luddington Golf Ltd and Glebelands regarding the preferred design option for the replacement hole had not been concluded by the time that the Application was accepted for Examination.

5.10.18. In summary, the ES [REP9-020] and [REP9-025] confirmed that, subject to the measures set out in the REAC [REP9-047], the outline CEMP [REP10-002] which is secured by Requirement 4 of the Recommended DCO, and the outline LEMP [REP9-042] which is secured by Requirement 5, the likely significant adverse effects identified above can be successfully mitigated and reduced in time.

Examination Matters

5.10.19. RRs were received concerning biodiversity, as follows:

- Jane Allan [RR-014] on the impact the Proposed Development on wildlife in the vicinity of the Scheme during the construction phase.
- TfL [RR-028] on the alignment of the ES to London-specific environmental policy, particularly the London Environment Strategy.

5.10.20. The Applicant provided comments on these at Deadline 1 [REP1-002] which were reviewed by the ExA.

5.10.21. The ExA has noted the Applicant's response [REP1-002] with specific reference to the London Environment Strategy. In responding to TfL, the Applicant clarified its understanding that the London Environment Plan was published in May 2018 setting out the Mayor of London's overall vision to protect and improve London's environment.

5.10.22. The Applicant noted in its response to TfL's RR [REP1-001] that the primary policy framework under which the Proposed Development is

assessed in the NPS NN, but nevertheless confirmed that the vision and policy aims of the London Environment Strategy relevant to the scheme are reflected in the various ES chapters submitted as part of the application, which address biodiversity and green infrastructure [APP-029] (updated at Deadline 9 [REP9-020]), climate change [APP-036], air quality [APP-027], waste [APP-034] (updated at Deadline 9 [REP9-022]), ambient noise [APP-028] (updated at Deadline 9 [REP9-019]) and low carbon circular economy [APP-034] (updated at Deadline 9 [REP9-022]) and [APP-036].

5.10.23. The LIR [REP1-031] from LB Havering recognised that the ES had identified a number of important biodiversity features within and adjacent to the Proposed Development. These include an area within the northern extent of SMI which covers the Ingrebourne River corridor and associated habitats through LB Havering.

5.10.24. LB Havering was satisfied [REP1-031] that the Proposed Development is compatible with NN NPS and its relevant development plan policies. However, LB Havering noted that construction of the Proposed Development would result in the permanent loss of habitat of the Ingrebourne Valley SMI and the loss of two veteran trees, although it accepted these were unavoidable. LB Havering welcomed the proposal to replace each lost tree with eight new ones. This is secured in the outline AMS and Requirement 11 of the Recommended DCO.

5.10.25. LB Havering concluded [REP1-031] that the Applicant has placed biodiversity at the heart of the design process and explored opportunities for delivering a net gain for biodiversity, supporting the target of delivering no net loss of biodiversity on the strategic road network by 2020 and achieving net gain by 2040. LB Havering welcomed the proposed biodiversity enhancements for the Proposed Development including the use of native species for landscape planting as well as bird and bat boxes in retained habitat to ensure that measurable net gains are provided for biodiversity.

5.10.26. LB Havering agreed in [REP1-031] that no likely significant effects from the Proposed Development are predicted on habitat sites for the construction or operational phases, either alone or in-combination with other plans and projects. LB Havering does not consider any additional mitigation is required to make the Proposed Development acceptable either during its construction or operational stages.

5.10.27. In its comments on Deadline 1 responses, TfL [REP2-038] raised no further issues related to the alignment of the ES to London-specific environmental policy.

5.10.28. Where we considered that the Applicant had not adequately addressed IPs concerns, or where we formed the view that further information was required, the ExA went on to ask WQs on subjects that we believed would assist the Examination.

5.10.29. The main issues that concerned the Examination were as follows:

- Air quality impacts on existing and replacement habitats.
- The impact of the Proposed Development on Maylands Golf Course and the effect of mitigation works in the proximity of the golf course on habitats and species.

Effect on Habitats from Air Quality

5.10.30. In response to the ExA's WQs, the Applicant [REP2-011] clarified that the methodology and assessment criteria used to compile the air quality assessment of the Proposed Development are in accordance with the DMRB HA207/07 and the relevant Interim Advice Notes (IAN): IAN170/12, IAN174/13, IAN 175/13, which were the guidelines in place at the time the assessment was compiled.

5.10.31. The Applicant further clarified [REP2-011] that the methodology does not trigger any requirement for assessment of impacts to ecological receptors outside of the nature conservation sites listed at paragraph 3.13 of HA207/07, i.e., SACs, SPAs, SSSIs and Ramsar sites. None of these types of site lie within the air quality study area.

5.10.32. The Applicant acknowledged [REP2-011] that with the exception of the commercial and residential premises at Grove Farm, the habitats retained or replaced around the new loop road form part of a non-statutory designated SMI.

5.10.33. Anticipated changes in air quality and an assessment of effects of these changes on habitats within Ingrebourne Valley SMI, veteran trees and ancient woodland within 200m of the affected road network have been assessed by the DMRB Sensitivity Test carried out by the Applicant [APP-050]. All ecological receptors considered in this assessment lie in proximity to existing road infrastructure and data shows that the nitrogen deposition rates at all the receptor points assessed exceeded the critical load in the base year due to background nitrogen deposition rates.

5.10.34. For the majority of the receptor points assessed (including those for veteran trees and ancient woodland), nitrogen deposition rates are lower in the opening year than in the base year.

5.10.35. The only receptor points to experience slightly higher rates than base are immediately adjacent to the southern section of the new loop, between the loop road and realigned slip road of the A12 road. These receptor points all lie within Ingrebourne Valley SMI. These areas will be grassland habitats planted following construction. The assessment concludes that whilst there may be a slight adverse effect on these habitats, the localised area likely to be affected is a very small proportion of the whole SMI.

5.10.36. The Applicant asserts that any slight changes to these grassland habitats as a result of changes in air quality would not affect the overall integrity of the SMI and no significant effect on the SMI is anticipated in relation to changes in air quality.

5.10.37. The ExA was satisfied with the responses received from the Applicant and did not pursue matters further in the Examination.

Maylands Golf Course

5.10.38. Representatives of Maylands Golf Course operators, Luddington Golf Ltd, made a submission to the examination at Deadline 2 [REP2-032] setting out its objection to the CA of the land required for Work No.32, which it described as wholly unacceptable in health and safety, operational, playability, social, environmental, ecological and economic terms.

5.10.39. Also, at Deadline 2 and in response to the ExA's WQ1s [PD-008], the Applicant [REP2-011] confirmed that replacement facilities for Maylands Golf Course are listed as Work No.32 in the then draft DCO [REP2-002] and that a commitment to carry out these works as part of the Proposed Development would be added to the REAC (now [REP9-047]). The Applicant confirmed that mitigation works required for habitats and species are included within the REAC and further set out in both the outline CEMP [REP10-002], secured by Requirement 4 of Schedule 2 of the Recommended DCO and the outline LEMP [REP9-042], secured by Requirement 5 of Schedule 2 of the Recommended DCO.

5.10.40. The principal issues before the Examination that concerned the impact of the Proposed Development on Maylands Golf Course are discussed in Section 5.7 (People and Communities) of this Report.

5.10.41. As a result of discussions between the Applicant and Luddington Golf Ltd, the Applicant tabled Change Request No.3 which was accepted into the Examination on 19 March 2021 [PD-013], which showed some refinement of hole 2, and other associated works. Luddington's Deadline 2 response [REP2-032] stated that it was aware of Change Request No.2 and maintained its objection.

5.10.42. Discussions continued between the parties and at Deadline 6, the Applicant tabled Change Request No.7 in which the redesign of hole 2 and other associated works were put forward [REP6-002], [REP6-022] and [REP6-033]. The Change resulted in an extension of the Order limits for TP powers. The Applicant confirmed that if accepted, Change Request No.7 would supersede Change Request No.3 . Change Request No.7 was accepted into the Examination on 26 May 2021 [PD-020].

5.10.43. Prior to accepting Change Request No.7 into the Examination, the ExA issued a Rule 9 and 17 letter to all IPs and SPs seeking comment on the Applicant's proposed changes to the original application [PD-018], LB Havering [REP7-036] noted that it was satisfied that the design comprising Applicant's Change Request No.7 concerning the refinement of Maylands Golf Course accommodation works (Work No.32) proposes appropriate compensation for the removal of additional trees and a small area of woodland and the effects presented in the landscape and visual assessment chapter of the ES will not differ.

5.10.44. LB Havering noted [REP7-036] that the alternative solution for the re-design of the relevant parts of the golf course increases the impact on

SMI as it requires a slightly larger area of land within this designated site. However, LB Havering confirmed that it was satisfied that the design comprising Change Request No.7 proposes appropriate compensation for the removal of additional trees and a small area of woodland by including planting trees within the Order limits and confirms that it is also satisfied that additional protected species checks on the trees to be lost to the development have been undertaken.

Change Request No. 8

5.10.45. At Deadline 7, the Applicant submitted Change Request No.8 [REP7-002], [REP7-029] and [REP7-030]. This application was accepted into the Examination by the ExA on 14 June 2021 [PD-023]. The change consists of a revision of the alignment of the egress road from Grove Farm onto Work No.2 (the proposed eastbound A12 off slip road) approximately 25m further to the west. The proposed change would result in an extension in length of the egress road by 37m to a total length of 87m.

5.10.46. The Applicant acknowledged that Change Request No.8 would result in additional environmental effects in respect of biodiversity and landscape and visual caused by additional tree loss at The Grove woodland which forms part of the SMI. Change Request No.8 also included the relocation of the associated drainage works on both sides of the egress and boundary fencing which will run alongside the west side of the egress. The Applicant stated [REP7-029], amongst other things, that:

- It would result in an increase in permanent loss of habitat within the SMI from 4.9ha to 5.1ha and to 5.2ha when cumulatively assessed with Change Request No.7.
- There are no opportunities to provide compensation for this loss with tree planting directly adjacent to The Grove and as such, additional woodland planting is proposed to be carried out to the west of the loop road.
- The increase in percentage of loss of the SMI would be 0.1% above that identified in the Chapter 7 of the Environmental Statement [APP-029] to 2% and thus does not alter the slight adverse effect identified.

5.10.47. The ExA notes that the assessment of effects from Change Request No.8 [REP7-002] and [REP7-029] and [REP7-030] state that it would alter the landscape mitigation planting currently proposed in the submitted Application. It will require additional loss of trees within The Grove woodland to the west side of the egress but it will enable the retention of some parts of the woodland located to the east side of the egress which will provide visual screening for Grove Farm. Change Request No.8 will include additional tree planting on both sides of the realigned egress and replacement woodland planting along the west side of the proposed loop road (Work No. 6). A visual screen is proposed which will run parallel to the A12 off-slip and to the eastern side of the egress to provide additional visual screening to the residents at Grove farm.

5.10.48. In its response to the ExA's Rules 9 and 17 letter [PD-020], LB Havering [REP8-026] sought confirmation using DEFRA Biodiversity Metric v 2.0

that the quantity of compensatory woodland planting for this additional loss of priority habitat has taken into account the fact that The Grove woodland lies within the SMI and suggested that this should be confirmed by submission of the metric calculations to support the Applicant's view of significance of this effect.

5.10.49. Also, in response to [PD-020], NE noted [REP8-036] its agreement that while the increase in percentage of loss of the SMI would be 0.1% above that identified in the Chapter 7 of the ES [REP9-020], to 2%. This does not alter the "slight adverse" effect which is identified in the ES. NE expressed the view in this response that changes to the Proposed Development within Change Request No.8 fall within the scope and assessment of the ES.

5.10.50. The Applicant responded to LB Havering's request at Deadline 9 [REP9-062] giving confirmation using DEFRA Biodiversity Metric v 2.0 of the changes in habitat units. Whilst these showed that the change would result in a slight additional loss of biodiversity units, this loss amounts to 0.1% area change in the context of the Ingrebourne Valley as a whole. The Applicant further explained that the principal reason for a greater loss of biodiversity units is because grassland creation which accrues more units per hectare in the metric, is replaced by woodland planting. The Applicant confirmed that the design of habitat creation associated with the Proposed Development and Change Request No.8 had ensured there is no net loss of woodland area within the Order limits in terms of hectares of cover. It concludes that whilst Change Request No.8 results in a small increase in loss of habitat units for The Grove woodland, this should be considered in the context of both the size of the SMI and the bespoke nature of the mitigation and compensation.

5.10.51. The Applicant further states in [REP9-062] that the additional evidence presented in response to the request from LB Havering does not change the conclusion of residual slight adverse effect on the SMI as a whole.

Other Matters

5.10.52. At Deadline 6, the Applicant submitted outline versions of its EHSP and ISMP [REP6-019]. The ExA subsequently invited comments from IPs on these documents at ISH3 [EV-038]. Comments received from TfL and LB Havering at ISH3 indicated that their only concern in relation to the EHSP and ISMP was around mitigation for deer during the construction stage of the Proposed Development.

5.10.53. The Applicant agreed at ISH3 [EV-038] that it was necessary to establish mitigation measures to protect the deer population and motorists from the risk of accidents as a result of deer straying onto the road network.

5.10.54. The Applicant submitted a revised draft DCO at Deadline 7 [REP7-003] which included a new Requirement 13(2) of Schedule 2 which secures the provision of appropriate measures for the control of deer to be identified following consultation with TfL and LB Havering.

5.10.55. The signed SoCG between the Applicant and TfL [REP9-051] confirmed agreement that the correct London policies and guidance have been taken into consideration in assessing the Proposed Development and that it is in compliance with the relevant policies, including the London Environment Strategy it raised in its RR [RR-028].

5.10.56. The signed SoCGs between the Applicant and Brentwood BC [REP1-005], Essex CC [REP8-004], NE [REP7-011], EA [REP7-004] and LB Havering [REP9-050] confirm agreement that the Proposed Development would have no likely significant impact on biodiversity matters in their respective administrative areas.

ExA Conclusion

5.10.57. For the reasons outlined above the ExA accepts that whilst the Proposed Development would result in a small increase in loss of habitats within the SMI, this is sufficiently compensated for across the Proposed Development with mitigation works required for habitats and species included within the REAC and further set out in both the outline CEMP [REP10-002], secured by Requirement 4 of Schedule 2 of the Recommended DCO and the outline LEMP [REP9-042], secured by Requirement 5 of Schedule 2 of the Recommended DCO.

5.10.58. The proposed changes to the works at Maylands Golf Course have developed over the course of the Examination and have reached a conclusion that is acceptable to both the Applicant, the owners and the operators of the golf course. We are satisfied that the loss of trees that would occur specifically as a result of Work No.32 is adequately compensated for.

5.10.59. We are satisfied that the Proposed Development would have no likely significant effects on biodiversity. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.11. FLOODING AND WATER

Policy and ES Findings

5.11.1. NPS NN paragraphs 5.90 to 5.115 set out the requirement for a Flood Risk Assessment (FRA) to be submitted with the application and provides guidance on the methodology to be used. A FRA has been carried out in accordance with these requirements and is submitted in support of the ES [APP-090]. A summary of the methodology and findings of the FRA are also presented in Chapter 8 of the ES [AS-024].

5.11.2. Paragraph 5.99 of the NPS NN requires that when determining an application, the SoS should be satisfied that flood risk will not increase elsewhere and will only consider development appropriate in areas at risk of flooding where it can be demonstrated that:

- The most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location.
- Development is appropriately flood resilient and resistant and any residual risk can be safely managed.

5.11.3. Paragraph 5.105 of NPS NN states that preference should be given to locating development in Flood Zone 1 but acknowledges that if there are no reasonably available sites then projects can be located in Flood Zone 2, or if no suitable land is available in Flood Zone 2 the land in Flood Zone 3 can be used subject to the exception test.

5.11.4. Paragraph 159 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

5.11.5. Paragraph 161 of the NPPF sets the requirement for a sequential test followed by an exceptions test to be undertaken for a development location. Paragraph 162 states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Paragraphs 163 and 164 state that if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied and that the application of the exception test should be informed by a strategic or site-specific FRA.

5.11.6. Chapter 8 of the ES [AS-024] assesses the effect of the Proposed Development on water quality and flooding. In respect to the former, the ES stated that the water quality assessment identified potential impacts to the surface water and groundwater during the construction and operation of the Proposed Development. However, subject to the implementation of all mitigation measures such as the use of a sustainable drainage system and construction of wide-span bridges over the watercourses, the overall effect on surface water quality would be neutral which is not considered significant. The overall effect to groundwater quality during the construction and operation of the Proposed Development was also assessed as neutral (subject to the implementation of all mitigation measures) which is not considered significant.

5.11.7. During operation [AS-024], contaminants on the road surface and accidental spillages can cause pollution incidents by water runoff into watercourses, ponds, ditches and groundwater. The design of the drainage system will comply with all current standards and sustainable drainage best practice techniques. A combination of attenuation dry ponds, ditches, filter drains and sediment catch-pits are the proposed mitigation for surface water quality and sediment mitigation. Floodplain compensation areas have been constructed to mitigate against lost floodplain volume as a result of the Proposed Development.

5.11.8. A WFD compliance assessment report [APP-091] considered the impact of the construction and operation of the Proposed Development. It concluded that none of the construction components of the Proposed Development are considered to cause deterioration at water body scale, or prevent future attainment of good ecological status or ecological potential assuming mitigation already embedded in the preliminary design is implemented, any additional specific mitigation is implemented and generic guidance on the principles of WFD compliant design is adhered to.

5.11.9. The application was accompanied by a FRA [APP-090]. This stated that that EA flood risk mapping and the LB Havering Strategic Flood Risk Assessments (SFRA) were used as the main sources of flood risk information to inform the understanding of flood risk within the study area. This information has been supplemented with detailed hydraulic modelling undertaken specifically for the application both to provide a more robust understanding of flood risk and inform the Scheme design.

5.11.10. The FRA [APP-090] further stated that the primary source of flooding at the location of the Proposed Development is fluvial. Fluvial flood risk arises when watercourses exceed capacity and areas at risk are shown by the Environment Agency Flood Zone mapping. This Flood Zone mapping identifies that several areas of the Proposed Development are at high risk of fluvial flooding within Flood Zones 2 and 3. There are three geographical areas at risk from fluvial flooding, where the proposed works would impact on flood risk, either through the displacement of flood water or as a result of a constriction of flow conveyance. The works in these areas have been subject to extensive hydraulic modelling to inform suitable mitigation measures ensuring negligible overall increase in flood risk due to the Proposed Development.

5.11.11. The FRA confirmed [APP-090] that other key source of flood risk requiring consideration is surface water runoff. The existing drainage system manages the current surface water flood risk to the road network and this will be upgraded and supplemented with additional drainage systems (where necessary) to accommodate the Proposed Development. The drainage system has been developed in line with the current planning policy requirements and it is described in detail within the Drainage Strategy Report [APP-092].

5.11.12. The FRA stated [APP-090] that flood risk from all other sources is considered low, although requirements will be included within the CEMP, which is secured by Requirement 4 of the Recommended DCO, to be produced by the Principal Contractor to minimise the impacts on flood risk through appropriate mitigation measures. These mitigation measures include consideration of groundwater ingress into excavations and understanding the water transmission infrastructure network in the area.

5.11.13. Surface and foul water drainage matters are controlled by Requirement 8 of the Recommended DCO and requires details to be approved by the SoS. Other construction practices are controlled through the CEMP and

Requirement 4 of the Recommended DCO which similarly, the ECPs would need to be approved by the SoS.

5.11.14. Accordingly, Chapter 8 of the ES [AS-024] and Chapter 16 of the ES [REP9-025] identify no likely significant effects from construction and operation of the Proposed Development on the water environment with the implementation of mitigation measures on surface water, flood risk, groundwater and WFD compliance.

Examination Matters

5.11.15. No IPs raised any specific concern in respect to flooding and water within the Order limits or concerns caused by the construction and operation of the Proposed Development. The ExA asked a number of questions in WQ1 [PD-008] in respect to baseline assessment, methodology, and overall assessment. We were satisfied with the Applicant's responses at Deadline 2 [REP2-011].

5.11.16. A number of IPs raised concerns regarding an existing flooding issue at Brook Street, arguing that the area is perpetually flooded. We did not ask any specific questions on the matter in WQ1 because we did not find that the extant situation was directly related to the Proposed Development. However, we did discuss the matter at ISH1 [EV-009].

5.11.17. At ISH1 [EV-009] the Applicant stated, also confirmed at Deadline 4 [REP4-016] that this roundabout is the responsibility of Highways England and the issue has been raised with the company who maintain the roundabout and associated drainage on its behalf, Connect Plus Services (CPS).

5.11.18. The Applicant explained [REP4-016] that CPS had tried to clear the drains to solve the flooding problem however, they have found that the flooding is not due to a blockage in the drains but due to damage to the drains themselves. CPS has informed the Applicant that a scheme of remedial works is programmed to be implemented by summer 2022. The Applicant went on to stress that such remedial works were necessary before the roundabout was resurfaced as part of the Proposed Development works. The ExA was content that the matter was at hand and asked no further questions.

5.11.19. The ExA expressed concerns in WQ1 FDW 1.14 [PD-008] that it was surprised no outline surface water management plan (SuWMP) had been advanced by the Applicant, given the importance of the issue of surface water management. The Applicant responded [REP2-011] that one would be provided at Deadline 3a as part of an updated outline CEMP [REP3A-010]. In WQ2 2.2 [PD-015] we asked for views from IPs as to the adequacy of the document. In its response at Deadline 5, LB Havering [REP5-057], stated that it was broadly happy with the document. It nevertheless stated that there is an opportunity for improving catchment control for these areas, attenuation etc to provide some additional flood protection to areas downstream such as Romford or Rainham. The

Applicant responded [REP6-013] stating that an updated SuWMP [REP5-027] which covered long-term maintenance.

5.11.20. The EA stated [REP5-065] that the outline SuWMP [REP3A-010] was missing information about how the sustainable drainage measures will be managed for the long-term during the operational phase of the Proposed Development. This is essential to ensure the long-term effectiveness of the sustainable drainage measures in protecting water quality. It went on to state that it had seen a draft update to this and was content.

5.11.21. The SoCG signed between the Applicant and Brentwood BC [REP1-005], Essex CC [REP8-004] and the EA [REP7-004] agreed all matters in respect to the scope and assessment in the ES and its findings of no likely significant effects.

5.11.22. In our Rule 6 Letter [PD-006] we requested that the SoCG between LB Havering and the Applicant also state their positions in respect to flooding and water. No such section exists within it [REP9-050]. However, paragraph 16.1.2 of the LIR [REP1-031] stated that the assessment methodology is appropriate, and Havering recognises that positive drainage and sustainable drainage techniques will be employed. LB Havering officers have input into the appraisal process and consider the approach to be robust and agree with the outcomes of the appraisal, and the proposed mitigation measures which comprise flood compensation areas within the proposal. As LB Havering raised no further matters in the Examination in respect to flooding and water, the ExA concludes that it also concurs that there would be no likely significant effects in this regard.

ExA Conclusion

5.11.23. In terms of flood risk, the ExA concludes that the Proposed Development, which is supported by the FRA, does not give rise to unacceptable risks in terms of flooding. The FRA addressed both the Sequential and Exception Tests required by NPS NN.

5.11.24. In terms of water quality and resources the ExA is satisfied that the Proposed Development would be compliant with the WFD and have no unmanaged adverse effects.

5.11.25. In the Examination we considered all the written and oral submissions made in relation to flood risk and water quality, in addition to those specifically identified in this section of the Report. We are satisfied that they have been appropriately addressed in terms of the application, the additional work carried out by the Applicant, the agreements reached with various statutory bodies, and the Recommended DCO.

5.11.26. Accordingly, we are satisfied that the Proposed Development would have no likely significant effects on water and flooding. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.12. GEOLOGY AND SOILS

Policy and ES Findings

5.12.1. Section 5 of the NPS NN considers the impact of national networks on land stability, geotechnics, geology and soils.

5.12.2. Paragraph 5.117 of NPS NN states that if land stability could be an issue, applicants should seek appropriate technical and environmental expert advice to assess the likely consequences of proposed developments on sites where subsidence, landslides and ground compression is known or suspected.

5.12.3. Paragraph 5.118 of NPS NN requires applicants to carry out preliminary assessment of ground instability at the earliest possible stage and undertake any necessary investigations to ascertain that the site will remain stable or can be made so as part of the development. It also requires applicants to complete a land stability or slope stability risk assessment report, taking into account the surrounding areas where subsidence, landslides and land compression could threaten the development/neighbouring land or property.

5.12.4. Paragraph 5.168 of NPS NN requires applicants to consider the economic and other benefits of the best and most versatile agricultural land and, where significant development of agricultural land is demonstrated to be necessary, to seek to use areas of poorer quality land in preference to that of a higher quality.

5.12.5. Paragraph 174 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to unacceptable levels of soil pollution or land stability. Paragraph 183 states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land stability including risks from mining. Paragraph 184 states that where a site is affected by land stability the responsibility for securing a safe development rests with the developer.

5.12.6. Chapter 10 of the ES [APP-032] concerns the assessment of the Proposed Development on geology and soils. It confirmed that the Applicant has carried out an assessment with regards to geology and soils for the Scheme and a 250m buffer zone from the DCO boundary. The assessment comprises three components; land contamination, geomorphology and ground stability and agricultural land.

5.12.7. Chapter 10 of the ES [APP-032] stated that sources of potential contamination within the Order limits include the inactive Brook Street Landfill, recently deposited material at Grove Farm, a railway, made ground/infill associated with existing infrastructure, vehicle emissions, spills and leaks on the roads, four recorded minor pollution incidents and a BPA sub-surface pipeline. Sources of potential contamination that were identified within the Order limits include a garden centre and a waste management company (both at Grove Farm), two former fuel stations,

two active fuel stations, electricity substations, a sewage treatment works, a former aerodrome, vehicle service garages, vehicle cleaning services and agricultural activities. Identified receptors of potential contamination include residents, construction workers, maintenance workers, groundwater aquifers, surface water features and infrastructure.

5.12.8. A preliminary geo-environmental ground investigation was carried out by the Applicant [APP-075] on land to the northwest of the junction within the Order limits, targeting the recently deposited material at Grove Farm. This found no widespread, unacceptable concentrations of chemical parameters.

5.12.9. Chapter 10 of the ES [APP-032] stated that without mitigation measures, the construction effects associated with potential contamination sources would be minor adverse or negligible, temporary and not significant. The exception to this outcome would be the potential effect relating to the pathway linking on-site construction workers to asbestos identified in the sub-surface during the preliminary geo-environmental ground investigation, which is considered a moderate adverse, temporary and significant effect.

5.12.10. Chapter 10 of the ES [APP-032] stated that where adverse effects associated with land contamination have been identified, design and mitigation measures would be implemented. With these measures, the temporary effects to the identified receptors during construction are considered negligible, temporary and not significant, as the level of risk to receptors is expected to remain generally the same as before the Proposed Development.

5.12.11. With design and mitigation measures, including the adoption of Best Available Techniques, the ES [APP-032] considered that the operational phase will have a negligible to minor beneficial effect and has been assessed as permanent and not significant. The ES justified that the reason beneficial effects have been identified is that the reasonable worst-case scenario for the Proposed Development assumes that where potential sources of contamination have been identified but not intrusively investigated, contamination is present. This would lead to remediation which would therefore improve the conditions from before the Proposed Development.

5.12.12. With respect to geomorphology and ground stability, the assessment indicated that the construction phase is likely to have a minor adverse (temporary) to minor beneficial (permanent) effect and the operational phase is considered likely to have a negligible effect. These effects have been assessed overall as not significant.

5.12.13. Design and mitigation measures are proposed, as outlined within the REAC [REP9-047] and secured through Requirement 4 of the Recommended DCO. With these in place the Applicant asserts [APP-032] and [REP9-025] that there are no likely significant adverse residual effects concerning geology and soils. No cumulative effects with regard to

geology and soils are assessed as a likely as a consequence of the Proposed Development and surrounding development.

5.12.14. In summary, the ES [APP-032] and [REP9-025] stated that there would be no likely significant adverse effects during construction and operation of the Proposed Development on geology and soils.

Examination Matters

5.12.15. Both TfL and Public Health England in their respective RRs [RR-028] and [RR-023], and LB Havering in its LIR [REP1-031] expressed concern that the application documentation did not include a Ground Investigation Report (GIR). Accordingly, the construction and operational phase impacts of the Proposed Development associated with contaminated land could not be regarded as fully assessed and mitigation measures could not, in turn, be regarded as adequately considered.

5.12.16. The Applicant subsequently submitted into the Examination a GIR at Deadline 1 [REP1-023], [REP1-024] and [REP1-025].

5.12.17. The ExA noted that the EA had not provided a response to the adequacy of the GIR, and we tabled FWQ GS 2.2 [PD-015] to request this. The EA confirmed at Deadline 6 [REP6-040] that potential mitigation measures identified above were acceptable in principle and that contamination and groundwater matters were adequately secured by Requirement 6 of the Recommended DCO.

5.12.18. The ExA asked a number of WQ1s [PD-008] in respect to the assessment methodology. Assumptions and limitations and mitigation. WQ2s [PD-015] contained some additional questions on the GIR and pollutant linkage and the removal of some monitoring measures from the outline CEMP at Deadline 4 [REP4-024]. We were satisfied with the responses received [REP2-011] and [REP5-041].

5.12.19. SoCGs between the Applicant and the EA [REP7-004] and LB Havering [REP9-050] confirmed that it was agreed that the Proposed Development would have no likely significant effects from construction and operation on Geology and Soils.

ExA Conclusion

5.12.20. The ExA is satisfied that the project meets the aims of NPS NN advice on ground conditions and soil management. We have taken into account the representations received relating to soils and geology. We consider that the Recommended DCO contains adequate safeguards in Requirement 6 to manage any potential unacceptable residual impacts. This is the case both in terms of individual and cumulative effects, and during construction and operation.

5.12.21. The Applicant has adequately considered the construction and operation effects of the Proposed Development in Geology and Soils and has proposed suitable mitigation measures to address risks that have been identified and concerns raised by IPs during the Examination.

5.12.22. Accordingly, we conclude that the Proposed Development would have no likely significant effects on ground conditions. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.13. HISTORIC ENVIRONMENT

Policy and ES Findings

5.13.1. NPS NN paragraphs 5.120 to 5.142 consider the impacts on the historic environment.

5.13.2. Paragraphs 5.120 and 5.121 of NPS NN recognise that both the construction and operation of national networks has the potential to result in adverse impacts on the historic environment.

5.13.3. Paragraph 5.127 of NPS NN states that the Applicant should describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant Historic Environment Record should have been consulted and the heritage assets assessed using appropriate expertise. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, the Applicant should include an appropriate desk-based assessment and, where necessary, a field evaluation.

5.13.4. Paragraph 5.129 of NPS NN states that in considering the impact of a proposed development on any heritage assets, the SoS should take into account the particular nature of the significance of the heritage asset and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal.

5.13.5. Paragraph 5.133 of NPS NN states that where the proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, the SoS should refuse consent unless it can be demonstrated that the harm is necessary to deliver substantial public benefits that outweigh that harm.

5.13.6. Paragraph 194 of the NPPF states that in determining applications, local planning authorities should require an Applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.

5.13.7. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed

includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

5.13.8. Paragraph 199 of the NPPF states that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 202 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

5.13.9. Adopted LB Havering Local Plan policies CP16, CP18, DC67, DC69 and DC70 and emerging Local Plan policy 28 are concerned with the conservation of heritage assets and archaeology. Collectively, they state that the Council supports development which affects the significance of a heritage asset with archaeological interest where the proposals are supported by an appropriate assessment of the asset's significance and any harm is minimised, clearly justified and necessary to achieve public benefits that are substantial enough to outweigh loss or harm to the asset's significance. In addition, a particular asset or part of an asset to be lost should be recorded and made publicly accessible.

5.13.10. Section 11.5 of ES Chapter 11 [APP-033] presented the assessment methodology and follows the approach set out in the NPS. The methodology includes a desk-based review of available records, a ground investigation with archaeological monitoring and a geophysical survey. Details of the desk-based assessment and field evaluation are presented in Section 11.7 of the ES with consideration of the potential impacts is presented in Section 11.10.

5.13.11. Chapter 11 of the ES [APP-033] sets out that the cultural heritage assessment of the Proposed Development has considered impacts on heritage assets that may occur during the construction and operation of the Proposed Development. This includes direct physical impacts, as well as indirect impacts to heritage assets and their settings.

5.13.12. During the construction phase, potential slight adverse effects are predicted on five heritage assets. These are the result of the removal of materials from three areas of archaeological significance and changes in the setting of two heritage assets. These areas of significance are identified in Section 11.7 of Chapter 11 of the ES [APP-033]. None of the effects are assessed by the Applicant as significant.

5.13.13. In summary, the ES [APP-033] and [REP9-025] confirmed no likely significant adverse effects during construction and operation of the Proposed Development on heritage matters.

Examination Matters

5.13.14. In our WQ1 HE 1.1, the ExA expressed disappointment that an AMP had not been submitted into the Examination. The ExA considered it was necessary and required in order to explain in greater detail how measures set out in the REAC (now [REP9-047]) were to be carried out. In its response at Deadline 2 [REP2-011], the Applicant stated that one would be provided, and it duly arrived at Deadline 3a [REP3A-029].

5.13.15. The ExA asked IPs for comment on the outline AMP at ISH1 [EV-009]. Acting on behalf of LB Havering, the Greater London Archaeology Advisory Service (GLAAS) expressed, also confirmed in writing at Deadline 4 [REP4-031] that it held in-principle concerns with the Applicant's approach to trial trenching as set out in the outline AMP. The concerns raised by GLAAS centred around a hypothesis that a possible Roman and Saxon settlement site straddles the A12 at the application scheme location and is present within the southern edge of the application site, potentially in a better-preserved state than evidence of early to middle Saxon occupation or activity site, dating AD 450 to 650 that was discovered at the northern edge of the Gardens of Peace site.

5.13.16. GLAAS expressed [EV-009] the view that the Applicant has not assessed this potential, or any other archaeological potential at the site, using appropriate measures and that field survey work should inform a decision according to the process set out in paragraph 5.127 of NPS NN.

5.13.17. GLAAS went on to note [EV-009] that the Applicant has submitted an incomplete plan for post-consent archaeological recording, something which would not permit the appropriate management of significant archaeological remains as policy requires.

5.13.18. The Applicant responded at ISH1 [EV-009], confirmed in writing at Deadline 4 [REP4-016] by stating that the Saxon site discovered at Gardens of Peace was taken into consideration and was included in the updated information relating to historic environment in the ES [APP-033]. The Applicant stated that it considered the likelihood of significant archaeological remains at the site to be relatively low based on previous investigations.

5.13.19. Nevertheless, the ExA sought confirmation from the Applicant that it would be able and willing to carry out trial trenching during the period of the Examination.

5.13.20. The Applicant responded at Deadline 4 [REP4-021] that it had provided LB Havering with an indicative programme to undertake archaeological trenching in order to establish the potential for nationally significant archaeological remains on the site. The targeted initial trenching works as agreed with GLAAS were scheduled to take place in May 2021 subject to landowner permission and above ground site clearance being undertaken. A report following this initial trenching work would then be

provided to GLAAS shortly after the archaeological trenching works have been done.

5.13.21. The SoCG signed between the Applicant and LB Havering [REP9-050] agreed all matters with respect to the assessment, identification and evaluation of the historic environment and remains and the Applicant's findings of no likely significant effects in the construction of operational phases of the Proposed Development.

5.13.22. The LIR [REP1-031] from LB Havering provided further detail on the concerns raised during the RR period [RR-017] and repeats its request for evidence to support the finding that there would be no adverse effects on cultural heritage. This was particularly the case for Tylers Farm and one of the extant barns within Grove Farm, which LB Havering stated was a threshing barn dating from the nineteenth century.

5.13.23. In its response [REP3A-020], the Applicant confirmed that Tylers Farm was assessed in the ES [APP-033] and it would not be affected by the Proposed Development. The Applicant went on to state that heritage significance of the buildings at Grove Farm was investigated as part of the environmental assessments informing the ES. Whilst buildings have been shown as present on maps at the location from the nineteenth century, further investigations found no evidence that the buildings themselves held heritage interest that would merit consideration in planning decisions. Furthermore, as the Proposed Development would not have direct physical impacts on the buildings at Grove Farm, the only changes would be to their settings. The current setting of the buildings for industrial use does not contribute to any setting that could contribute to a historic farmstead. Accordingly, there would be no harm to the heritage asset.

5.13.24. At ISH1 [EV-009], the Applicant and LB Havering confirmed that following further discussions, LB Havering were satisfied with the information provided to support the effects of the Proposed Development on heritage assets at both Tyler's Hall Farm and at Grove Farm. This position was further clarified in an updated SoCG between the Applicant and LB Havering submitted at Deadline 4 [REP4-004].

5.13.25. Where we considered that the Applicant had not adequately addressed IPs concerns, or where we formed the view that further information was required, the ExA went on to ask WQ1 [PD-008] on subjects that we believed would assist the Examination. Where not discussed here, we were subsequently satisfied with the Applicant's response [REP2-011].

5.13.26. At the close of the Examination, a signed SoCGs was agreed between the Applicant and Essex CC [REP8-004] and Brentwood BC [REP1-005] which confirmed that all matters concerning the historic environment as assessed by the Applicant were agreed.

ExA Conclusion

5.13.27. This Section has had regard to the likely significant effects resulting from the Proposed Development on heritage assets including archaeological

sites, historic buildings and areas, and historic landscapes. It has considered the effects of the potential for direct physical disturbance and indirect effects on settings in terms of the overall effect and the significance of the predicted effects. As required by paragraph 5.129 of NPS NN, the route has been developed to reduce the impact on historic environment by avoiding known high value heritage assets where practicable.

5.13.28. Accordingly, we are satisfied that the Proposed Development would have no likely significant effects on the historic environment. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.14. MINERALS AND WASTE

Policy and ES Findings

5.14.1. Paragraphs 5.42 and 5.43 of NPS NN address waste management and state that the Applicant should set out the arrangements that are proposed for managing any waste produced.

5.14.2. Paragraph 210 of the NPPF states that planning policies should, so far as is practicable, take account of the secondary and recycled materials and minerals waste supply before considering the extraction and use of primary materials.

5.14.3. Chapter 12 of the ES [REP9-022] reported the assessed impacts of materials and waste associated with the Proposed Development during its construction, demolition and excavation phases. This chapter had been written in accordance with established principles which set out the requirements for assessing and reporting the effects on material assets and waste from the delivery of motorway and all-purpose trunk road projects.

5.14.4. The ES [REP9-022] stated that the operational phase of the Proposed Development was scoped out of the assessment at the scoping stage, because it is unlikely that the operational phase will result in significant effects with respect to material assets and waste.

5.14.5. The estimated quantities of materials consumed during the construction phase had been assessed against a regional or national material sales baseline. The estimated quantities of waste generated during the construction phase have been assessed against a local waste infrastructure capacity baseline. The assessment identifies the quantum of material which will be removed and re-used during the construction of the Proposed Development. It outlines that 325,562 cubic metres (m^3) of material would be excavated from site and 196,913m^3 of this could be re-used on site. These figures represent a worst-case scenario. A more detailed breakdown of the figures is provided within Chapter 12 of the ES [REP9-022].

5.14.6. The construction, demolition and excavation (CD&E) waste generated by the Proposed Development will be primarily non-hazardous and inert. However, there is likely to be some hazardous waste mainly from excavation due to the proximity of the Scheme to historic landfills and other sources of contamination.

5.14.7. The ES [REP9-022] stated that the Proposed Development's significance of in terms of material consumption is slight. The Proposed Development's significance of effect regarding CD&E waste arising from the Scheme is moderate, assuming a worst-case scenario of all excavated material being disposed of to landfill. With regards to cumulative effects, the significance of effect regarding material consumption has been assessed as neutral or slight.

5.14.8. The ES [REP9-022] stated that mitigation and enhancement measures associated with the materials and waste have been provided in line with Waste Framework Directive (2008/98/EC) waste hierarchy: prevention; reuse; recycle; recover; and disposal. These have been provided for the design phase, as well as the construction phase of the Proposed Development. The assessment is based on the findings of the preliminary ground investigation that was undertaken for the Proposed Development.

5.14.9. In summary, the ES [REP9-022] and [REP9-025] confirmed no likely significant adverse effects during construction and operation of the Proposed Development on minerals and waste matters.

Examination Matters

5.14.10. The EA raised concerns in its RR [RR-009] that the matter of waste was an outstanding issue to be resolved. Further advanced in its WR [REP2-025], the EA stated that the only mechanism referenced in the ES [REP9-022] for dealing with the re-use of waste materials through the construction process is a MMP. MMPs are normally used as part of a "*CL:AIRE Definition of Waste Code of Practice (DoWCoP)"* to permit the re-use of both natural soils and made ground without the need to apply for an EP. As the materials previously deposited on site within the historical landfill and the unauthorised recently deposited waste are considered controlled waste, the recovery of them will require an EP from the EA. An EP will ensure that these materials are dealt with in a manner that minimises any harmful impacts to the local environment.

5.14.11. In its response at Deadline 3a [REP3A-022], the Applicant confirmed that further discussions had taken place with the EA and it intended to apply for an EP for the reuse of controlled wastes excavated from the historical landfill and recently deposited material. A pre-application submission to the EA's National Permitting Team was submitted in December 2020 to define the type of EP required to be obtained. The Applicant further stated that Chapter 12 of the ES, the outline CEMP [REP3A-010] and the REAC [REP3A-011] had been updated to take into consideration the updated materials strategy. Chapter 12 of the ES was updated at Deadline 9 [REP9-022] alongside the updated REAC [REP9-047. The outline CEMP was updated at Deadline 10 [REP10-002].

5.14.12. Matters concerning the outline SuWMP where they overlap here are covered in the Flooding and Water Section of this Report. For the avoidance of doubt, the Applicant submitted a SuWMP at Deadline 3 [REP3A-010] as part of the outline CEMP. This was updated at Deadline 5 [REP5-027] and again at Deadline 10 [REP10-002]. The outline CEMP is secured by Requirement 4 of the Recommended DCO and surface and foul water drainage are controlled by Requirement 8 of the Recommended DCO.

5.14.13. The SoCG signed between the Applicant and the EA [REP7-004] agreed all matters in respect to the scope and assessment of the ES and its findings of no likely significant effects.

ExA Conclusion

5.14.14. We are satisfied that the Proposed Development that any effects of development on the management of waste would be dealt with through the provisions set out by the Applicant during the Examination. The Proposed Development would accord with all relevant legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.15. CLIMATE CHANGE

Policy and ES Findings

5.15.1. Paragraph 3.8 of NPS NN states that the impact of road development on aggregate levels of emissions is likely to be very small. Impacts of road development need to be seen against significant projected reductions in carbon emissions and improvements in air quality as a result of current and future policies to meet the Government's legally binding carbon budgets.

5.15.2. Paragraph 4.40 of NPS NN states that new national networks infrastructure will typically be long term investments which will need to remain operational over many decades in the face of a changing climate. This paragraph of the NPS NN requires that climate change is considered when planning the location, design, build and operation of a new project and any accompanying ES should set out how the proposal would take account of the projected impacts of climate change.

5.15.3. Paragraph 154 of the NPPF states that new development should be planned for in ways that avoid increased vulnerability to the range of impacts arising from climate change and also to help reduce GHG emissions through its design.

5.15.4. In regard to the effects of the Proposed Development on climate, Chapter 14 of the ES [APP-036] sets out that the Proposed Development has the potential to affect the earth's climate by increasing the emission of GHGs into the atmosphere, which will occur during construction and throughout its operational life.

5.15.5. The ES [APP-036] stated that the Proposed Development is likely to contribute 37,312 tonnes of carbon dioxide emissions (tCO_2e) to the UK's Third Carbon Budget (2018 – 2022) (3CB), representing 0.0015% of the budget. Whilst emissions from the Proposed Development will lead to a long-term negative effect on the atmosphere, the magnitude of emissions is considered to be minor. The Proposed Development is unlikely to cause significant effects on climate, or significantly affect the UK's ability to meet its emissions reduction targets. Despite this, further mitigation measures will be put in place in the construction phase to reduce emissions as far as possible.

5.15.6. Chapter 14 of the ES [APP-036] stated that climate projections from UK Climate Projections 18 (UKCP18) have been examined. It confirmed that the study area's climate is expected to change in the future. The assessment finds that the Proposed Development could be vulnerable to operational impacts linked to these changes in the climate. Mitigation measures built into the design (i.e., embedded mitigation) that either avoids these impacts, minimises them or reduces their consequences have been considered by the Applicant. After this consideration the Applicant concluded that none of the potential climate vulnerability impacts are found to be significant adverse.

5.15.7. In summary, Chapter 14 of the ES [APP-036] and Chapter 16 of the ES [REP9-025] confirmed no likely significant adverse effects during construction and operation of the Proposed Development on climate change.

Examination Matters

5.15.8. The main issues that concerned the Examination were as follows:

- The impact of the Proposed Development on the Government's Fourth Carbon Budget period 2023-2027 (4CB).
- The effects of phasing out of new petrol and diesel vehicles by 2030 on the assessment of CO_2 emissions of vehicles presented in the ES.

5.15.9. Where the ExA considered that the Applicant, or IPs, should provide further information, we went on to ask WQs on subjects that we believed would assist the examination.

5.15.10. The ExA asked a specific question in relation to carbon budgets on WQ1 GQ 1.13 [PD-008]. In response [REP2-011], the Applicant confirmed that when the assessment was carried out, the construction period and opening year fell within the 3CB. Construction is now expected to commence in spring 2022 and the opening year planned for 2024 which is in the 4CB period.

5.15.11. The Applicant further stated [REP2-011] that traffic modelling and air quality assessment has not been carried out for opening year in 2024 by the Applicant. Construction and opening year emissions would have contributed 0.0015% to the 3CB and the Applicant confirms that the contribution would be of a similar order of magnitude for the 4CB.

5.15.12. The Applicant noted [REP2-011] that, on the basis of these figures, the climate effects of the Proposed Development are not significant, are aligned with policy as set out in NPS NN and would not change if construction and opening occurred in the 4CB, rather than the 3CB period.

5.15.13. The Applicant [REP2-011] also confirmed that the effect of phasing out new petrol and diesel vehicles by 2030 would not have a material impact on the conclusions of the assessment of the CO_2 emissions from vehicles presented in the ES [APP-036], although it is likely to reduce emissions figures compared to those presented in the ES.

5.15.14. At ISH1 [EV-009] the ExA asked the Applicant to expand further on the figures given for the Proposed Development's contribution to the emissions target set by the 4CB.

5.15.15. In response to points raised by the ExA at this Hearing [EV-009] and also confirmed in writing at Deadline 4 [REP4-016] the Applicant clarified that construction of the Proposed Development is expected to commence in spring 2022 and the opening year planned for autumn 2024 which is in the 4CB period. Construction of the Proposed Development will therefore fall partly within the 3CB period and partly within the 4CB period. Operation will fall within the 4CB period onwards. The Applicant has undertaken an updated assessment based on this.

5.15.16. This assessment confirms that the Proposed Development's contribution to the 4CB is expected to be 0.001%. This is the contribution derived from both construction and operational emissions. This re-assessment reduces the contribution of the Proposed Development to the 3CB to 0.0005%. At ISH1 [EV-009], the Applicant also re-stated it's view that these figures do not alter the conclusion of the assessment, which is that the Proposed Development will not materially impact the UK's ability to meet its carbon budgets and will therefore not generate a significant effect on climate.

5.15.17. The ExA questioned [EV-009] whether the Applicant's predicted emissions contributions have been assessed on the affected road network, or on the Proposed Development in isolation; whether the cumulative effects of RIS/RIS2 have been considered in the Applicant's assessment. The Applicant responded that the operational emissions presented by them are assessed on the affected road network only. The Applicant did, however, note that all the projects funded by the RIS contribute to less than 0.1% of the 4CB period.

5.15.18. The Applicant submitted a revised Carbon Budget Assessment at Deadline 4 [REP4-024] following a request from ExA at ISH1 to provide revised calculations relating to the Proposed Development's emissions contributions to both the 3CB and 4CB.

5.15.19. In assessing the effects of the Proposed Development on climate change matters, the ExA has had regard to paragraph 3.8 of NPS NN paragraph

in respect to the likelihood of emissions being anything other than "*very small*".

5.15.20. NPS NN goes on to clarify that annual CO_2 impacts from delivering the Government's programme of investment on the SRN amount to well below 0.1% of average carbon emissions allowed for within the 4CB and that this increase would be outweighed by additional support for Ultra Low Emission Vehicles, which are also identified as overall policy.

5.15.21. Having regard to the scope and assessment in the ES [APP-036] and national policy, the ExA is satisfied that the likely emissions arising as a result of the Proposed Development taken on their own would be unlikely to have a material impact on the UK Government meeting the carbon reduction targets of the 4CB.

5.15.22. However, as the ExA has been unable to reach a conclusion on the cumulative climate change effects of the Government's road building strategy, of which the Proposed Development forms a part, we have had cause to consider whether s104(4) and/or s104(5) of the PA2008 apply in the determination of the application. This question also appears to have been raised by the ExA in the A38 Derby Junctions Scheme which is currently before the SoS.

5.15.23. An answer may have been provided in a recent High Court Judgement which was handed down after the Examination closed on 26 July 2021. In the case *R (oao Transport Action Network Ltd) vs SoS Transport and Highways England Ltd [2021]* the Judgement concluded that RIS2, on which this Scheme and other planned projects over the coming years, was written to take account of the Paris Agreement 2015 and the UK's net zero carbon emissions targets and deadlines. By association therefore, the ExA deems it reasonable to conclude that the Proposed Development, taken by itself or in-combination with other road projects must accord with, and as such not cause the UK to be in breach of, the Paris Agreement 2015 or cause the SoS to be in breach of the Climate Change Act 2008. Accordingly, a cumulative assessment discussed above is not necessary or required.

5.15.24. On 14 July 2021, seven days after the close of this Examination, the Government published "*Decarbonising Transport – A Better, Greener Britain*" which sets out commitments to reduce or remove carbon emissions from all forms of transport and to review the NPS NN. The commitments set out within this document have not been considered in this Examination. The SoS will need to determine whether this document could have a bearing on the Examination. In particular, whether the commitments set out in the document are sufficient to allow the SoS to determine that the reductions in CO_2 emissions are consistent with the cumulative effects of the RIS1 and RIS2 programmes considered in their assessments.

5.15.25. Neither the Judgement in the above-mentioned case nor the "*Decarbonising Transport – A Better, Greener Britain*" report have formed part of the Examination. It will therefore be a matter for the SoS to

consider the consistency of the current policy position on carbon emissions and the UKs obligations under agreements now entered into UK law.

ExA Conclusion

5.15.26. The ExA considers that the Proposed Development on its own would generate imperceptible and negligible increases in carbon emissions such that they would be unlikely to be responsible for an increase in levels that would result in any significant effects on carbon emissions targets or climate change.

5.15.27. The establishment of strategies that enable the UK to meet its carbon budget targets are a matter for the SoS to consider and to respond to, if required, through the formation of policy. As it currently stands, the ExA finds that the recent Judgement set out in paragraph 5.15.23 above provides clarity on the fact that RIS2, which includes the Proposed Development and other planned projects, would accord with the Paris Agreement and other domestic legislation. Indeed, no evidence was presented to the Examination to suggest that the Proposed Development would lead to the UK being in breach any international or national obligation or legislation.

5.15.28. Subject to the SoS's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions, the Proposed Development's contribution to the 4CB and their determination of the mitigating effects of the commitments set out in "*Decarbonising Transport – A Better, Greener Britain*", we find that the Proposed Development attracts neutral weight in the planning balance.

5.16. GREEN BELT

Policy and ES Findings

5.16.1. Paragraphs 5.170 and 5.171 of NPS NN states that the general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances. Applicants should therefore determine whether the proposal, or any part of it, is within an established Green Belt and, if so, whether its proposal may be considered inappropriate development within the meaning of Green Belt policy.

5.16.2. Paragraph 5.171 of NPS NN states that linear infrastructure linking an area near a Green Belt with other locations will often have to pass through Green Belt land. The identification of a policy need for linear infrastructure will take account of the fact that there will be an impact on the Green Belt and as far as possible, of the need to contribute to the achievement of the objectives for the use of land in Green Belts.

5.16.3. Paragraph 5.178 of NPS NN states that when located in the Green Belt national networks infrastructure projects may comprise inappropriate development. Inappropriate development by definition is harmful to the

Green Belt and there is a presumption against it except in very special circumstances. The SoS will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the SoS will attach substantial weight to the harm to the Green Belt, when considering any application for such development.

5.16.4. Both the NPS NN and the Section 13 of the NPPF contain similar Green Belt wording. Both state that inappropriate development is harmful by definition, and both identify that very special circumstances do not exist unless the harm to the Green Belt is outweighed by other considerations. The notable difference is the recognition in the NPS NN of the need for linear infrastructure which may pass through an area of Green Belt. The NPPF instead identifies operations that are not inappropriate. Of note are b) engineering operations and c) local transport infrastructure to paragraph 146 which can be not inappropriate if a requirement for a Green Belt location is demonstrated.

5.16.5. In paragraph 5.5.5 of the Case for the Scheme [APP-095], the Applicant contends that parts b) and/or c) to paragraph 146 of the NPPF could apply. Neither is defined in the Annex 2 and no IPs have advanced evidence to suggest that the Proposed Development would fall into either or both. But if neither apply, paragraphs 5.5.9 to 5.5.14 set out its reasons why other circumstances apply.

Examination Matters

5.16.6. No IPs raised any questions or concerns with the location of the Proposed Development within the Green Belt. The ExA asked no WQs [PD-008] and [PD-015] and the matter was not debated during the Examination.

5.16.7. The signed SoCG between the Applicant and LB Havering [REP9-050], Brentwood BC [REP1-005] and Essex CC [REP8-004] agreed:

- That the Proposed Development lies within the Green Belt and such development within it cannot be avoided.
- That the Proposed Development minimises its visual impact on surrounding receptors and limits the impact of the Green Belt.
- That the Proposed Development constitutes "very special circumstances" and would not constitute inappropriate development.

ExA Conclusion

5.16.8. The ExA is not persuaded that the Proposed Development falls within paragraph 146 of the NPPF. It is not an engineering operation per se because construction works will occur. While we accept that that local benefits would arise from the Proposed Development, it cannot be said to comprise local transport infrastructure. The Proposal would form part of the SRN and its consideration against the PA2008 demonstrates that it is national infrastructure in this context.

5.16.9. As the Proposed Development does not benefit from a direct exclusion within the NPPF, the ExA find that the Proposed Development constitutes inappropriate development in the Green Belt. Inappropriate development by definition is harmful.

5.16.10. Because the Proposed Development would result in the provision of a new loop road, much of it elevated, and in an area where there is currently no development, the ExA concludes that the Proposed Development would cause harm to openness. The harm caused by inappropriateness and to openness must attract substantial weight in the planning balance.

5.16.11. As discussed in Section 5.8 above, other harm would occur in the form of landscape and visual effects. This is due not only to the presence of additional infrastructure but also the considerable loss of trees that would occur. However, the weight to be attributed to this additional harm is reduced to a moderate level as the severe effects would be felt in the short to medium terms, with long-term effects reduced as planting establishes. Requirement 5 of the Recommended DCO would ensure the SoS in consultation with the relevant planning authorities controls the type and species of planting to ensure it would be effective.

5.16.12. In Section 5.2 of this Report, the ExA accepts that the need for the scheme is established by national policy. That alone affords very substantial weight in the planning balance. The benefits in relieving existing traffic issues and substantially improving movement and flows particularly for local residents who rely on the roundabout to travel westbound would be considerable and must also be taken into consideration. The ExA has also accepted that improvements to Junction 28 cannot avoid the Green Belt and we confirm in Section 5.3 of this Report that there are no reasonable alternatives. These other considerations carry very significant weight and, in our view, outweigh the substantial harm caused by inappropriateness, harm to openness and any other harm.

5.16.13. In conclusion, the other considerations amount to the "very special circumstances" necessary to outweigh harm caused by inappropriateness, harm to openness and any other harm. The Proposed Development would therefore accord with the requirements of NPS NN and the NPPF.

5.17. CUMULATIVE AND COMBINED EFFECTS

Policy and ES Findings

5.17.1. Paragraph 4.3 of NPS NN states that when considering any proposed development, the ExA should consider the potential adverse impacts including any cumulative adverse impacts. Paragraph 4.16 states that when considering significant cumulative effects, the ES should provide information on how the effects of the Applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been granted, as well as those already in existence).

5.17.2. Paragraph 4.17 of NPS NN states that the ExA should consider how significant cumulative effects and the interrelationship between effects might, as a whole, affect the environment, even though they may be acceptable when considered on an individual basis with mitigation measures in place. In addition, paragraphs 180 and 181 of the NPPF state that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects including cumulative effects of pollution on health, living conditions and the natural environment.

5.17.3. Chapter 15 of the ES [REP9-024] provided an assessment of the in-combination and cumulative effects of the Scheme. It stated that the Proposed Development has been cumulatively assessed with other developments in the area; and of particular note is the LTC proposal.

5.17.4. The ES [REP9-024] identified that development of LTC could result in adverse cumulative effects on landscape and visual receptors if the construction period of LTC and the Proposed Development align. It concluded that these would not be significant. Adverse cumulative effects between the Proposed Development and several sites in relation to biodiversity impacts are anticipated, due to disturbance to species and displacement of SMI land. These are also not expected to be significant. Adverse cumulative effects in relation to construction noise, should construction periods overlap with the scheme, are expected at several sites. However, these again are not expected to be significant. It should be noted that LTC is, at the time of writing, not a live application and thus traffic management plans have not yet been produced for that scheme.

5.17.5. The ES [REP9-024] stated that the in-combination effects during construction would principally affect human receptors due to land take and visual impact, including very large landscape adverse effects upon Grove Farm and large adverse effects on Maylands Cottages. The ES identified that overall, the construction effects on human receptors would likely be adverse but temporary. The ES further stated that ecological receptors would also be likely adversely affected but again would be temporary. There would also be likely adverse impact from construction activities on landscape and townscape matters due to the effect on character areas but again these would be temporary.

5.17.6. Mitigation is proposed through a series of measures set out in the REAC [REP9-047] and secured by Requirement 4 of the Recommended DCO to minimise the effects. These are discussed in further detail in the respective Sections above. The ES [REP9-024] and [REP9-025] concluded that with mitigation, the temporary adverse effects for all of the above will reduce to slight in-combination effects during operation.

5.17.7. The ES [REP9-024] and [REP9-025] identified that during operation, the improvement to vehicular traffic and movement would result in a moderate beneficial effect.

5.17.8. In summary, the ES [REP9-024] and [REP9-025] confirmed that mitigation for the matters identified above are covered in each ES Chapter. Measures set out in the REAC [REP9-047], the outline CEMP [REP10-002] which is secured by Requirement 4 of the Recommended DCO, and the outline LEMP [REP9-042] which is secured by Requirement 5, would successfully mitigate the identified likely significant effects, both individually and cumulatively.

Examination Matters

5.17.9. No IPs raised any particular concerns or questions in respect of the cumulative and combined assessment undertaken by the Applicant.

5.17.10. The ExA raised a number of questions in WQ1 [PD-008] on air quality, HRA, flooding and geology and soils. In all cases, matters on methodology were felt to not have been adequately explained. We raised a number of other questions in relation to HRA matters and in-combination assessments and on the assessment of other developments in respect to air quality. The ExA was satisfied with the responses given by the Applicant at Deadline 2 [REP2-011].

5.17.11. It is an agreed matter in the signed SoCG between the Applicant and LB Havering [REP9-050] on the following:

- Appropriate assessments have been undertaken to assess the potential cumulative and in-combination effects of the Scheme on, and with, other major projects and proposals, and that the cumulative impact of LTC and the Proposed Development on the local road network cannot be properly assessed at this stage because the Traffic Management Plans for LTC are still being prepared.
- That the cumulative effects assessments presented with the environmental documents are appropriate. The study area for the identification of 'other developments' for inclusion in the assessment of cumulative effects has been based upon thresholds and spatial areas. Only developments in the traffic model within 3 km of the DCO boundary have been included in the cumulative assessment.
- It is acknowledged in the ES Chapter 15 [REP9-024] that LB Havering sent through a number of lists of proposed developments which it considered should be taken into account in the development of the cumulative and in-combination assessment.

5.17.12. Cumulative and in-combination effects were not included in the signed SoCGs between the Applicant and Brentwood BC [REP1-005], Essex CC [REP8-004], and TfL [REP10-004]. However, the Commonality Statement [REP10-005] indicated that such matters were agreed. Given that neither IP raised this as an issue in its LIRs [REP1-026] and [REP1-043] respectively or during the Examination, the ExA concludes that the matter is agreed.

ExA Conclusion

5.17.13. While undoubtedly the construction of the Proposed Development would, both cumulatively with other developments and in-combination with

other schemes, cause some nuisance and disturbance on receptor points, they would be temporary only and limited to a specific time. We are satisfied that as a result it is not likely that there would be any significant cumulative effects from construction activities. For the reasons set out in other Sections in this Chapter, we are satisfied that the Requirements in the Recommended DCO would adequately mitigate against identified likely significant effects.

5.17.14. The ExA is satisfied, on the evidence before us, that the in-combination effects of the Proposed Development taken with the LTC proposal have been adequately tested. Should the LTC application be submitted prior to the SoS making their decision on this scheme, it will be a matter for the SoS to consider the in-combination effects, having specific regard to the scope and assessment, and any likely significant effects identified in the ES for the LTC scheme.

5.17.15. Accordingly, we are satisfied that the Proposed Development would have no likely significant effects taking cumulatively with all topic matters, or with other known and planned projects. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

5.18. CONCLUSION

5.18.1. The ExA has undertaken a thorough Examination of the principal and other issues in the Examination. We have reached sound and reasoned conclusions on each topic drawn from the evidence before us. The ExA applies the planning balance in Chapter 7 of this Report following consideration of HRA matters in Chapter 6 of this Report.

6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

6.1. INTRODUCTION

6.1.1. This Chapter sets out the analysis and conclusions reached relevant to the HRA. This will assist the SoS as the Competent Authority, in performing their duties under the Habitats Regulations[3].

6.1.2. Consent for the Proposed Development may only be granted if, after having assessed the potential adverse effects the Proposed Development could have on European Sites[4] , the Competent Authority considers it acceptable in light of the requirements stipulated in the Habitats Regulations.

6.1.3. The ExA has been mindful throughout the Examination of the need to ensure that the SoS has sufficient information required to carry out their duties as the Competent Authority. Evidence was sought from the Applicant and the relevant IPs, including NE as the SNCB.

6.1.4. Regulation 63 of the Habitats Regulations states that if an application proposal is likely to have a significant effect (either alone or in-combination with other plans or projects), then the Competent Authority must undertake an AA of the implications for that site in view of its conservation objectives.

6.1.5. During the course of the Examination, the Habitats Regulations were amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 which came into force on Implementation Period Completion Day, 31 December 2020. These amendment regulations reflect the arrangements in light of UK's departure from the EU, as discussed in Section 3.3 of this Report, including the introduction of new terminology with reference to the UK's National Site Network rather than the Natura 2000 network (which remains the collective term for sites in the EU).

6.1.6. Consent for the Proposed Development may only be granted if, having assessed the potential adverse effects of the Proposed Development on

[3] The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations)

[4] The term European sites in this context includes Special Areas of Conservation (SACs), Sites of Community Importance (SCIs), candidate SACs (cSACs), possible SACs (pSACs), Special Protection Areas (SPAs), potential SPAs (pSPAs), Ramsar sites and proposed Ramsar sites for which the UK is responsible. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see the Planning Inspectorate's Advice Note 10.

European Sites, the Competent Authority considers it passes the relevant tests in the Habitats Regulations.

6.1.7. A final version of the SoCG with NE was submitted at Deadline 7 [REP7-011] which concluded that there were no longer any outstanding matters of concern for NE. This is discussed below in Section 6.3.

6.2. POLICY

6.2.1. Paragraph 4.22 of NPS NN states that the applicant should seek the advice of NE and, where appropriate, for cross-boundary impacts, Natural Resources Wales and Scottish Natural Heritage to ensure that impacts on European sites in Wales and Scotland are adequately considered.

6.2.2. Paragraph 4.23 of NPS NN states that applicants are required to provide sufficient information with its applications for development consent to enable the SoS to carry out an AA if required. This information should include details of any measures that are proposed to minimise or avoid any likely significant effects on a European site. The information provided may also assist the SoS in concluding that an AA is not required because significant effects on European sites are sufficiently unlikely that they can be excluded.

6.2.3. Paragraph 4.24 of NPS NN states that if a proposed national network development makes it impossible to rule out an adverse effect on the integrity of a European site, it is possible to apply for derogation from the Habitats Directive, subject to the proposal meeting three tests. These tests are that no feasible, less damaging alternatives should exist, that there are imperative reasons of overriding public interest for the proposal going ahead, and that adequate and timely compensation measures will be put in place to ensure the overall coherence of the network of protected sites is maintained.

6.2.4. Paragraph 4.25 of NPS NN states that where a development may negatively affect any priority habitat or species on a site for which they are a protected feature, any Imperative Reasons of Overriding Public Interest (IROPI) case would need to be established solely on one or more of the grounds relating to human health, public safety or beneficial consequences of primary importance to the environment.

6.3. PROJECT LOCATION

6.3.1. The Order limits of the Proposed Development do not overlap with any European site or Ramsar site.

6.3.2. The Order land is within 30 kilometres (km) of four European sites: (Epping Forest SAC (the closest, located 12 km northwest of the Proposed Development)); Essex Estuaries SAC; Wormley-Hoddesdonpark Woods SAC and North Downs Woodlands SAC). Thames Estuary and Marshes SPA and Ramsar site are located within 36km of the Proposed Development site.

6.3.3. No other European sites or features were identified by NE or any other IP.

6.3.4. The ExA is satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

6.4. HRA IMPLICATIONS OF THE PROJECT

6.4.1. The Proposed Development is not directly connected with or necessary to the management of any of the European sites considered within the Applicant's assessment.

6.4.2. The Applicant did not identify any potential effects on European sites in any other European Economic Area (EEA) State and only European sites within the National Site Network and Ramsar sites are addressed in this Report.

6.4.3. In accordance with Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations), the Applicant provided a document entitled Habitats Regulations Assessment No Significant Effects Report (HRA NSER) [APP-093] with its application, which was updated at Deadline 2 [REP2-005], together with screening matrices [REP2-007].

6.4.4. The HRA NSER was undertaken using guidance in the DMRB on the Assessment of Implications (of Highways and/or Roads Projects) on European Sites (including AA), Planning Inspectorate Advice Note 10 (AN10): Habitats Regulations Assessment relevant to NSIPs and guidance from the European Commission on Managing Natura 2000 Sites.

6.4.5. The study area for the screening assessment presented in the HRA NSER [APP-093] and [REP2-005] was defined as:

- Sites within 2km of the Proposed Development.
- Any SACs within 30km of the Proposed Development where bats are a qualifying feature.
- Instances where the Proposed Development crosses, is adjacent to, upstream of, or downstream of, watercourses designated in part or wholly as SACs, candidate SACs (cSACs), possible SACs (pSACs), SPAs, potential SPAs (pSPAs) or Ramsar sites.
- SPA bird species where flight paths, feeding or roosting areas may occur outside the SPA boundary.

6.4.6. In addition, the HRA NSER stated that DMRB guidance (2007) Volume 11 Section 3 Part 1 Air Quality states that SACs, SCIs, cSACs, SPAs, pSPAs, and Ramsar sites located within 200m of an Affected Road Network (ARN) should be considered in relation to air quality impacts. This approach was further confirmed in recent NE guidance (Natural England Internal Guidance – Approach to Advising Competent Authorities on Road Traffic Emissions and HRAs V1.4 Final – June 2018) which stated that protected sites falling within 200m of the edge of a road affected by a

plan or project need to be considered within HRA. Therefore, the HRA NSER scoping included a search for any European Sites within 200m of the ARN.

6.4.7. The Order land is not located within any European sites or Ramsar sites, nor is it within 2km of such sites. The Order land is within 30km of four European sites (Epping Forest SAC (the closest located 12km northwest of the Proposed Development); Essex Estuaries SAC; Wormley-Hoddesdonpark Woods SAC and North Downs Woodlands SAC). However, none of these European sites have bats as a qualifying feature.

6.4.8. The qualifying interest features of the identified sites are listed in Appendices B.1 and C.1 of the HRA NSER submitted with the application [APP-093] and updated at Deadline 2 [REP2-005]. Screening matrices were also provided at Deadline 2 [REP2-007].

6.4.9. The Order land does not cross or lie adjacent to any watercourses which are designated in part or wholly as a SAC, cSAC, pSAC, SPA, pSPA or Ramsar site.

6.4.10. The Proposed Development is upstream of a European site as the Ingrebourne River flows downstream into the River Thames which in turn flows through the Thames Estuary and Marshes SPA and Ramsar site. The distance of these European sites from the Proposed Development is approximately 35km via watercourses (to the Ramsar site) and approximately 36km via watercourses (to the SPA).

6.4.11. No other potential constraints on European sites were identified and no in-combination effects with other plans or projects are anticipated.

6.4.12. No European sites or features were identified by any other IP in addition to those screened in by the Applicant.

6.4.13. NE was consulted on the HRA NSER as shown in the SoCG with NE that the Applicant submitted at Deadline 1 [REP1-011] and updated at Deadline 7 [REP7-011]. The SoCG stated that the Applicant considered potential impacts to European sites taking into account potential effects relating to air quality along the affected road network and potential effects relating to water quality downstream. The nearest European sites that were considered in the HRA NSER are 35km from the Proposed Development site. The SoCG states, among other things, that NE agreed with the findings of the HRA NSER and there were no outstanding issues.

6.4.14. NE did not make a RR for this Examination. No other IPs have raised concerns about the effects of the project on European sites. On this basis we did not consider that it was necessary to prepare a Report on the Implications for European Sites (RIES).

6.5. ISSUES RAISED DURING THE EXAMINATION

6.5.1. It was noted by the ExA that certain details within the HRA NSER [APP-093] had been omitted or required clarification. These matters were addressed through WQ1 [PD-008] BHR 1.8 to BHR 1.18 [PD-008] which

related to HRA matters and the content of the NSER. Relevant responses to the HRA-related questions contained in WQ2 [PD-015] were received at Deadline 2 [REP2-011].

6.5.2. An amended version of the HRA NSER received at Deadline 2 [REP2-005], which revised the original version [APP-093], was issued in response to the ExA's WQ1 to correct and clarify matters we raised. All references to the HRA NSER in this report are to this version unless stated otherwise. No subsequent versions of the HRA were submitted during the Examination.

6.5.3. We asked WQ1 [PD-008] in respect of the information we considered had been omitted from the HRA NSER within its description of works concerning the diversion of other utilities infrastructure within the highway boundary (WQ1 BHR 1.9) and also concerning Work No.31 and asked the Applicant to explain whether and how this had been considered as part of the HRA NSER (WQ1 BHR 1.10).

6.5.4. The Applicant responded at Deadline 2 [REP2-011] that the utilities diversions within the highway boundary referred to in WQ1 BHR 1.9 [PD-008] are not considered to be key elements of the works so were not included in the summary in the HRA NSER. It stated that paragraph 1.2.3 of the HRA NSER [APP-093] provided an overview of the main works elements of the Proposed Development as relevant to the assessment and cross references to Chapter 2 of the ES [REP9-018] where all of the works are listed, including the proposed utility diversion works within the highway boundary, and which were included in the consideration within the HRA NSER [REP2-005]. The original text remains unchanged in the amended version of the HRA NSER. We were satisfied that this response provided adequate clarification on this matter.

6.5.5. In response to WQ1 BHR 1.10 [PD-008], the Applicant stated [REP2-011] that Work No.31 were minor works, which would be included in figures within the updated HRA NSER. We considered that this clarification was sufficient and that these works did not require to be specifically referenced within the HRA NSER and had been considered by the Applicant.

6.5.6. We noted that the Benfleet and Southend SPA and Benfleet and Southend Ramsar site were shown in Appendix A, Figure 2 (European designated sites) in the HRA NSER [APP-093] but these were not referenced elsewhere in the HRA NSER. We also noted that these sites did not appear to have been included as part of the HRA screening because of their distance from the Proposed Development. With WQ1 BHR 1.11 [PD-008] we asked the Applicant to clarify why these sites had been omitted from the HRA screening process. The Applicant responded [REP2-011] that there is no hydrological linkage to the Benfleet designations, and they are beyond the other screening buffers. The Applicant also added that for clarity the amended version of the HRA NSER [REP2-005] contains a revised version of Figure 2, updated to highlight the hydrological linkage pathway to the River Thames. We considered that the Applicant's explanation adequately clarified how the

Applicant assessed the Benfleet and Southend SPA and Ramsar site as part of the HRA screening process.

6.5.7. In WQ1 BHR 1.12 [PD-008] the ExA considered that within the HRA NSER [APP-093], references were made to "cumulative" rather than "in-combination" effects and there was no direct reference to effects on European sites in-combination other than in the conclusion in paragraph 3.3.3. Twenty-two developments were identified with potential for in-combination effects of which three were identified as potentially having cumulative (in-combination) effects on biodiversity. Nineteen of these sites were screened out from the in-combination assessment. The ExA asked the Applicant to explain the basis for screening the other developments out and confirm that its references to "cumulative" effects should have been to "in-combination" effects. The Applicant responded by stating [REP2-011] that this was an error in terminology and that cumulative effects should be termed in-combination effects for the HRA NSER. We consider that this explanation provided sufficient clarification.

6.5.8. In WQ1 BHR 1.13 [PD-008] the ExA noted that the HRA NSER [APP-093] states that no in-combination likely significant effects were identified and the risk of both construction and operational phase effects was discounted for the reasons set out in Section 3.3 and in the conclusions in Section 4 of the HRA NSER. We considered that it was not made clear from the HRA NSER how the in-combination effects of the development sites identified were assessed by the Applicant. We also asked the Applicant to explain in more detail how the in-combination effects for the developments identified in Table 3.1 of the HRA NSER had been assessed and to clarify how a conclusion that the LTC will have a "slight adverse to neutral" effect on European sites in-combination with the Proposed Development was reached.

6.5.9. The Applicant clarified the matter, stating that [REP2-011] a brief summary of how effects could combine between these developments and the Proposed Development is included in Table 3.1 of the HRA NSER [APP-093] for each of the projects listed therein.

6.5.10. The Applicant argued [REP2-011] that how effects could act in-combination near to the Proposed Development is immaterial to the HRA in-combination screening process because there are no European sites within proximity of the Order limits and therefore no pathway for any local effects to combine. The Applicant further stated that the only identified effect pathway is the Thames Estuary and Marshes SPA and Ramsar site (35km and 36km respectively downstream) and that the downstream watercourse effect pathway for the Proposed Development was effectively discounted because the identified additional projects would not alter the conclusion that this effect pathway could be screened out both alone or in-combination. The Applicant concluded that there are no in-combination effects for the developments identified in Table 3.1 [APP-093] as there are no European sites within the screening distance buffers used (2km, 200m and 30km (designated for bats)), as described in the HRA NSER (paragraphs 2.2.2 and 2.2.3) and downstream in-combination effects have been discounted. We consider the Applicant to

have adequately clarified why they assessed potential in-combination effects and based on this evidence we agree with the Applicant's conclusion that there would be no in-combination effects on European sites.

6.5.11. In WQ1 BHR 1.14 [PD-008] it was noted that the Applicant submitted the screening matrices at Procedural Deadline B in Appendix A of the HRA screening matrices document [PDB-001]. The Thames Estuary and Marshes Ramsar site matrix which had been provided in this document omitted some elements of the designated features set out in the site description on NE's website. The ExA considered that the Applicant should revise the matrix in Appendix A to reflect all of the designated features as shown on the NE website for the Thames Estuary and Marshes Ramsar site. We also considered that the Applicant should show the likely effects of the Proposed Development on these missing elements as set out for the other features in the matrix, to be submitted in a revised version of the screening matrices document.

6.5.12. The Applicant responded [REP2-011] that the NE webpage for the Thames Estuary and Marshes Ramsar site has links to the Ramsar Information Sheets on both the Ramsar Sites Information Service and the Joint Nature Conservation Committee (JNCC) websites, and the Ramsar Sites Information Service version is dated (in the footer) 13/09/2007 and the JNCC version is dated (in the footer) 13/08/2008. Appendix A.4 of the HRA screening matrices document [PDB-001] took this information directly from the version on the Ramsar Sites Information Service of the Thames Estuary and Marshes Ramsar Site Information Sheet. The HRA screening matrices document [PDB-001] was updated to include all the features set out in the JNCC version (2008) and likely effects of the Proposed Development on these features. This updated version was resubmitted as requested at Deadline 2 [REP2-007]. The Applicant confirmed that the overall conclusions of the HRA NSER [APP-093] remained unchanged. On the basis of the response provided we consider that sufficient clarification has been given to allow us to conclude that the designated features have been adequately set out in the HRA NSER.

6.5.13. In WQ1 BHR 1.15 [PD-008] the ExA noted that in the application HRA NSER [APP-093] older JNCC designated site information was used rather than the current information on the NE website. Appendix B provided the qualifying features/interests of the Thames Estuary and Marshes SPA and Appendix C provided the Ramsar Information Sheet details for the Thames Estuary and Marshes Ramsar site. The ExA asked the Applicant to confirm that the HRA had considered all of the qualifying features according to the latest updated version of the Thames Estuary and Marshes Ramsar Information Sheet published on the NE website, and to provide an updated assessment if not.

6.5.14. The Applicant responded [REP2-011] that, as indicated in the response to WQ1 BHR 1.14 [PD-008], there are two versions of the Ramsar Information Sheet, and the version provided in Section C.1 of HRA NSER [APP-093], was based on the 2007 Ramsar Sites Information Service

version. The amended version of the HRA NSER [REP2-005] had been amended to include the 2008 JNCC version. The "Key features of the European Site including the primary reasons for selection and any other qualifying interests" cell in Table C.1 of the HRA NSER [APP-093] was amended accordingly.

6.5.15. The HRA screening matrices document [PDB-001] was updated to include all of the features set out in the JNCC version (2008) of the Ramsar Information Sheet and was resubmitted as requested at Deadline 2 [REP2-007], and the Applicant confirms that the overall conclusions of the HRA NSER remained unchanged. The Applicant stated that they had checked that the information used for the Thames Estuary and Marshes SPA was based on the version dated 12 December 2015, which is the most recent version available on the JNCC website, so that no amendments were made to this. The overall conclusions of the HRA NSER remained unchanged. On the basis of the response provided we consider that sufficient clarification has been given to allow us to conclude that all of the designated features of the Ramsar site and SPA have been considered in the HRA NSER.

6.5.16. In WQ1 BHR 1.16 [PD-008] the ExA noted that the footnotes in the HRA NSER had not been provided as references to support the evidence [APP-093], Chapter 7 of the ES [APP-029] (updated to [REP9-020]) or other application documents. The ExA requested the Applicant to provide footnotes which should refer to the specific paragraph numbers of the application documents where the evidence can be found. The Applicant responded [REP2-011] that cross references to the description of the Proposed Development and other relevant sections of the ES had been added as footnotes in the amended version of the HRA NSER [REP2-005]. On the basis of the response from the Applicant we are satisfied that the information has been provided in the footnotes as requested.

6.5.17. In WQ1 BHR 1.17 [PD-008] we asked NE and other IPs to provide a response to the HRA NSER [APP-093] having specific regard as to whether an adequate evidence plan was used at the pre-application stage; whether the correct qualifying features were identified for the two European sites considered; the appropriateness of the methodology and conclusions of the Applicant's HRA in-combination effects assessment; the appropriateness of the methodology used for the HRA and whether there was agreement with the conclusions in the HRA NSER of no likely significant effect on any European site. We also asked NE to confirm that a SoCG would be signed with the Applicant which would confirm this.

6.5.18. We note that LB Havering in its response [REP1-034] to WQ1 BHR 1.17 [PD-008] stated that they were satisfied with the methodology used for the consideration of the potential impact pathways for effects on each designated feature during construction and operation, the HRA matrices in the HRA NSER and with the notes provided to explain the conclusions. In its further response at Deadline 2 [REP2-020] LB Havering stated that they were in general agreement with the HRA NSER.

6.5.19. We also note that Brentwood BC stated in response to WQ1 BHR 1.17 [PD-008] that the HRA NSER [REP2-018] conclusions were appropriate, given the scale of the Proposed Development and the distance from European sites, on the effects either alone or in-combination during construction or operation on qualifying habitats or species.

6.5.20. The Applicant's response at Deadline 2 [REP2-011] indicated that the SoCG between the Applicant and NE submitted at Deadline 1 [REP1-011)] acknowledged NE's agreement with the conclusions of the HRA NSER [APP-093]. The minor amendments to the HRA NSER, submitted at Deadline 2 [REP2-005] were considered by the Applicant not to alter the conclusions presented in the HRA NSER which had been agreed with NE. We agree with the conclusions reached by the Applicant in the HRA NSER that there are no pathways from the Proposed Development which would lead to likely significant effects on European sites and Ramsar sites.

6.5.21. In WQ1 BHR 1.18 [PD-008] we noted that DEFRA had published a policy paper on 1 January 2021 relating to changes to the Habitats Regulations 2017 following the UK's departure from the EU. The ExA asked the Applicant to explain whether this paper has any bearing on or implications for the Proposed Development. The Applicant responded [REP2-011] that footnote references to this amendment have been made to paragraphs 1.1.2 and 1.1.3 of the amended version of the HRA NSER [REP2-005] issued at Deadline 2. The Applicant added that references to a Natura 2000 Site were changed to a European Site in Tables B.1, C.1 and D.1, in line with the advice referenced in WQ1 BHR 1.18 which indicated that UK sites no longer form part of the Natura 2000 network. These sites now form part of the National Site Network. We agree with this statement and consider it to be an accurate description of the current status of the European sites considered in the HRA NSER.

6.5.22. No other information came to light during the Examination to cast any doubt on the findings of the HRA NSER.

6.5.23. Having given careful consideration to all relevant evidence and tested the position on HRA in WQs and in examining the HRA NSER [REP2-005] and the HRA screening matrices [REP2-007], the ExA is satisfied that there would be no likely significant effects of the Proposed Development on any European sites that form part of the National Site Network or any Ramsar sites and their qualifying features.

6.6. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

6.6.1. We are satisfied that the Applicant has correctly identified the relevant European sites and qualifying features/interests for consideration within the HRA NSER and that it has not relied on mitigation measures in reaching its conclusion of no likely significant effects on any European sites.

6.6.2. Having given careful consideration to all relevant evidence and tested the position on HRA in written questions, we are satisfied with the HRA NSER conclusion. We therefore conclude that the Proposed Development would

have no likely significant effects on any European sites or their qualifying features, and therefore no European sites are required to be considered and taken forward to AA.

6.7. CONSERVATION OBJECTIVES

6.7.1. The conservation objectives for the relevant European sites identified above are summarised in Tables B.1 and C.1 of the HRA NSER [REP2-005].

6.8. CONCLUSIONS

6.8.1. Our understanding of HRA matters in relation to the Proposed Development is drawn from the information provided in the application, with reference to the Applicant's HRA NSER [REP2-005] and the HRA screening matrices [REP2-007], and in other documents submitted during the Examination as identified above. No new relevant or important HRA issues or concerns were raised during the Examination by any IPs, and NE supported the Applicant's findings in the HRA NSER.

6.8.2. The Proposed Development is not directly connected with or necessary to the management of any of the European sites considered within the Applicant's assessment. We are satisfied that sufficient consideration has been given to potential likely significant effects arising from the Proposed Development and that such effects can be ruled out due to the lack of effective pathways between the Proposed Development and the European sites identified in the HRA NSER. On this basis, we conclude that there is no requirement to undertake an AA of the Proposed Development. Accordingly, matters concerning IROPI are not triggered. However, the ExA finds adequate data exists in the application should the SoS decide that an AA needs to be undertaken.

7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1. INTRODUCTION

7.1.1. This Chapter provides an evaluation of the planning merits of the Proposed Development. It does so in light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 5 and 6 above. It applies relevant law and policy to the application in the context of the matrix of facts and issues set out in Chapter 5. Whilst HRA has been documented separately in Chapter 6, relevant facts and issues set out in that chapter are taken fully into account.

7.2. SUMMARY OF THE PLANNING ISSUES AND COMPLAINCE WITH NATIONAL POLICY

The Principle and Need for the Proposed Development

7.2.1. The ExA is satisfied that junction 28 of the M25 is already operating at capacity and that motorists are regularly experiencing congestion and delays. The ExA accepts that by 2037, traffic levels in the area are expected to increase by up to 22% and that, without intervention, there will be further deterioration in traffic conditions.

7.2.2. The ExA is satisfied that the Proposed Development has been designed to increase capacity and reduce congestion and delays by providing an improved link from M25 to A12. It would reduce the incident rate and resulting disruption by increasing the capacity of the roundabout. Safety at the roundabout would be improved due to a reduction in traffic levels and the redesigned road layout. The Proposed Development would cater for future traffic demands to enable development and economic growth.

7.2.3. The NPS NN, the National Infrastructure Strategy and the Highways England Strategic and Delivery Plans indicate a clear need exists for road improvement projects to come forward. RIS2 also specifically identifies the Proposed Development as "*committed for RP (road project) 2*" thus a scheme forming part of the RIS2 programme.

7.2.4. We find that there is a national need for the provision of new national network infrastructure. In the absence of evidence to the contrary, the ExA accepts the case advanced by the Applicant that the existing junction needs to be replaced and upgraded as a whole to meet expected long-term traffic increases and demands. The Proposed Development attracts positive weight in the planning balance.

7.2.5. Accordingly, we are satisfied that the Proposed Development would contribute to the established need and would help to ensure the junction would be able to accommodate additional demand and avoid traffic

waiting. In this respect, the Proposed Development attracts a positive weight in the planning balance.

Consideration of Alternatives

7.2.6. The Applicant has demonstrated that it considered alternatives to the Proposed Development at all levels, including options to do-nothing/minimum, reduce traffic demand at the junction, improve public transport, maximum junction improvements and a major review of the SRN. These alternatives were rejected as they would either take so long to implement that they would extend beyond the RIS/RIS2 programmes or would be ineffective in resolving the current problems.

7.2.7. The ExA is satisfied that the Applicant has reached a balanced judgement in advancing Option 5F [REP9-018] as the Proposed Development scheme. The requirements of NPS NN and the EIA Regulations have been met in this regard.

Traffic and Access

7.2.8. We are satisfied that the NPS NN sets out a compelling need for development of the national road network. Government policy on development of the strategic road network, as set out by NPS NN is not that of predicting traffic growth and then providing for that growth regardless. Individual schemes should be brought forward to tackle specific issues rather than to meet unconstrained traffic growth.

7.2.9. The TA [APP-098] has been carried out using methodologies agreed in principle with the highway authorities, with the exception of LB Havering, and the results of the TA and subsequent evaluation in the ES have been accepted by all other highway authorities. The Applicant has set out its methodology and justification for the methodology used during the Examination. In doing so the Applicant has demonstrated that the methodology used is reasonable in this case.

7.2.10. We are satisfied that the Proposed Development is predicted to reduce journey times around the M25 junction 28 roundabout in its operational phase and that these reductions in journey times are in turn predicted to improve access to the A12 in both directions.

7.2.11. We are satisfied that a UU is capable of delivering the NMUs works inside the Order limits. The ExA is proposing an additional Requirement for the NMUs scheme in its entirety if the final UU is not signed or does not cover the entire length of the NMUs route.

7.2.12. We are satisfied that the Proposed Development would accord with all legislation and policy requirements and that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts positive weight in the planning balance.

Air Quality

7.2.13. The ExA notes that LB Havering raised concerns on the methodology undertaken in the ES [APP-027]. However, the ExA finds on the evidence before us no obvious reason to question the Applicant's approach, and we are satisfied that the scope and assessment is sound. Accordingly, LB Havering's request for developer contributions for continued monitoring would not meet the tests in the NPPF.

7.2.14. The ExA is satisfied that the Proposed Development would have no likely significant effects on air quality matters and that the Recommended DCO would sufficiently address any outstanding concerns from IPs. In this respect, the Proposed Development attracts neutral weight in the planning balance.

Noise and Vibration

7.2.15. The ExA acknowledges that an increase in noise and vibration during site preparation and construction is inevitable particularly on the occupiers of Grove Farm, which are likely to be significant in the absence of the proposed mitigation. However, we are satisfied that these impacts would be appropriately mitigated through the construction of temporary noise barriers and other construction practices set out in the outline CEMP, which is secured by Requirement 4 of the Recommended DCO.

7.2.16. The ExA is satisfied that the impact of the Proposed Development on background and average noise levels over a wider area would not be significant.

7.2.17. We are satisfied that the Proposed Development would have no likely significant effects on noise and vibration. The Proposed Development would accord with all legislation and policy requirements and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

People and Communities

7.2.18. The ExA is concerned by the potential negative impact of the Proposed Development on the living conditions of Mr & Mrs Jones of Grove Farm from both visual and noise effects.

7.2.19. In respect of visual harm, we have been concerned that the measures proposed to mitigate the harm to the occupiers of Grove Farm are insufficient.

7.2.20. The ExA considers that a bespoke plan for tree planting and an appropriately sized visual screen would, alongside the realigned egress, go some way to mitigating the visual harm. The ExA finds this is better regulated through a site-specific plan for Grove Farm as set out in new Requirement 16 in the Recommended DCO, which would ensure mitigation is "tailor-made" for Grove Farm as opposed to being part of a site-wide LEMP or REAC. The site-specific plan would also allow for other

mitigation measures to be proposed should they be deemed to be needed as opposed to being purely restricted to planting and a visual screen. However, if the SoS disagrees, the ExA would accept that Requirement 5(3)(g) of the final draft DCO as worded [REP9-012] would suffice as a minimum.

7.2.21. In respect of noise, the ExA is concerned that the reduction in distance between the main house at Grove Farm and the proposed location of the new A12 eastbound off-slip forming Work No.2 could result in an increase in peak noise levels. No evidence has been submitted to demonstrate the range of peak noise levels that would be generated, their frequency or what effect this would have on Mr & Mrs Jones's living conditions. The significance of the impact of these peak noise levels cannot, therefore, be assessed.

7.2.22. The Applicant confirmed at ISH3 [EV-038] that a permanent acoustic barrier would have a mitigating effect on peak noise levels, albeit that this effect might be localised, and we have no reason to disagree with the Applicant. However, no evidence has been presented to accurately quantify the level of reduction that could be achieved since the Applicant takes the view that a permanent acoustic barrier is not required. The ExA accepts that the probable frequency of peak noise levels is likely to be low during sensitive periods.

7.2.23. However, because there are no agreed standard methods for predicting the peak noise levels from individual vehicles and no means of quantifying the level of disturbance that an individual householder might perceive, the ExA is unable to recommend to the SoS that post-construction noise monitoring should take place. We would, as a result, not be able to advise how the Applicant would realistically be expected to undertake post-construction noise monitoring; how peak noises would be measured; over what period; and what the criteria would be in determining whether an acoustic barrier was necessary.

7.2.24. As part of a site-specific plan for Grove Farm, should the SoS agree that it is necessary, the Applicant could investigate whether additional mitigation is necessary and propose such measures within the report to be approved. We have, therefore, included such wording within Requirement 16 of the Recommended DCO.

7.2.25. Turning to other areas, the principal issues of concern were the effects of the Proposed Development on the Gardens of Peace land and its ability to be able to implement its development; and on the Maylands Golf Course and its ability to operate successfully. In both cases, the positions at the outset of the Examination altered and the Applicant and the relevant parties reached agreements.

7.2.26. In the case of Gardens of Peace, Plot 1/8 [REP9-003] was considerably reduced in size to ensure the CA of new rights for Cadent Gas only extended over an access road and not the burial plots. Outstanding issues remain at the close of the Examination. However, the ExA is confident they are capable of resolution. In the meantime, the ExA has

inserted at a new Requirement 19 into the Recommended DCO to ensure that matters are agreed before development commences, although this Requirement may not be necessary if the Applicant tables a tri-party agreement before the SoS makes their decision.

7.2.27. In respect to Maylands Golf Course, Change Request No.7 [REP6-002], [REP6-022], [REP6-023] set out the details of plans which would realign hole 2 and to undertake other works which have met with the approval and subsequent withdrawal of Luddington Golf Ltd's WR [REP7-041]. Requirement 15 of the Recommended DCO ensures the works to the golf course are carried out prior to the opening of Work No.6.

7.2.28. The ExA also finds that the outline CEMP [REP10-002] is acceptable in providing sufficient information to adequately understand how the Applicant would mitigate the effects of the Proposed Development. The ExA also finds that the developer contribution requests towards local infrastructure and services required by LB Havering is not justified.

7.2.29. The ExA is satisfied that the Proposed Development would have no likely significant effects on people and communities and that mitigation is adequately provided for and secured in the Recommended DCO. The Proposed Development attracts neutral weight in the planning balance.

Design

7.2.30. We have not been satisfied that the visual appearance of the Proposed Development has benefitted from a robust design process carried out by the Applicant. During the Examination, we have found that the mitigation of visual impact relies heavily on mitigation from landscape features and while this has a role to play in addressing visual impact, if not used as a part of a well-formed design strategy for the design of visual appearance, such a strategy can only be partly successful.

7.2.31. We have concluded that the design of the Proposed Development, as it relates to visual appearance, has not been a key factor in the Applicant's evidence. We are therefore unable to confirm to the SoS that the Proposed Development has fully met the criteria for good design for national network infrastructure defined by the NPS NN.

7.2.32. For the SoS to be satisfied that the Applicant has properly considered and addressed the visual impact of its design proposals to a level of detail appropriate at this stage of the design process, we recommend that no part of the authorised development is to commence until an independent design review and report on its findings on the design of the bridges and structures of the Proposed Development is submitted to and agreed by the SoS. This has been inserted into Requirement 3 of the Recommended DCO for the SoS to consider.

7.2.33. On the basis that a robust design review process will be established, we are satisfied that the Proposed Development would meet the criteria for good design set out in NPS NN and would, therefore, amount to a neutral effect in the planning balance.

Landscape and Visual

7.2.34. The Proposed Development would lead to the removal of a significant number of mature trees in Alder Wood and The Grove woodlands including two veteran trees [APP-095]. The Applicant proposes an approximate eight-to-one replacement which, in the longer-term would negate the effect [REP9-061]. However, in the short-to-medium term the loss of trees would be highly noticeable; the landscape would change; and significant harm would result.

7.2.35. With the exception of Grove Farm, we have found that the impact of the Proposed Development on other visual receptors would not be significant.

7.2.36. Even accounting for the mitigation measures set out by the Applicant (which are adequately provided for and secured in the Recommended DCO) and the longer-term effects from their establishment, the ExA finds that the loss of trees within the Order limits in the short- and medium-term would be sufficient to draw a conclusion that the Proposed Development would have a negative effect on the landscape. As such there would be some conflict with NPS NN.

7.2.37. However, the weight to be applied to this effect is reduced to a moderate level owing to the longer-term effects which will be reduced by the mitigation measures. Nevertheless, the short- and medium-term harm is sufficient to conclude that the Proposed Development would amount to a negative effect in the planning balance.

Biodiversity and Wildlife

7.2.38. We conclude that whilst the Proposed Development would result in a small increase in loss of habitats within a specific area, this is mitigated and sufficiently compensated for across the Proposed Development. We are satisfied that the loss of trees that would occur specifically as a result of Work No.32 at Maylands Golf Course is adequately compensated for by replacement tree planting across the Proposed Development in the long term.

7.2.39. We are satisfied that the Proposed Development would have no likely significant effects on biodiversity and that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

Flooding and Water

7.2.40. We have found that the Proposed Development does not give rise to unacceptable risks in terms of flooding. The FRA [APP-090] addressed both the Sequential and Exception Tests required by NPS NN.

7.2.41. In terms of water quality and resources we have concluded that the Proposed Development would be compliant with the WFD and have no unmanaged adverse effects.

7.2.42. We are satisfied that the Proposed Development would have no likely significant effects on water and flooding and that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

Geology and Soils

7.2.43. We are satisfied that the Applicant has adequately considered the construction and operation effects of the Proposed Development in Geology and Soils and has proposed suitable mitigation measures [APP-032] to address risks that have been identified and concerns raised by IPs during the Examination.

7.2.44. We conclude that the Proposed Development would have no likely significant effects on ground conditions and that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

Historic Environment

7.2.45. The principal issue of interest to the Examination in this regard concerned the adequacy of archaeological surveys. During the Examination, the Applicant undertook trenching and updated its outline AMP [REP9-060]. All IPs were satisfied once this had taken place.

7.2.46. We are satisfied that the Proposed Development would have no likely significant effects on the historic environment and that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

Minerals and Waste

7.2.47. Initial concerns raised by the EA [RR-009] particularly in respect of waste management were addressed during the Examination.

7.2.48. We are satisfied that the Proposed Development would have no likely significant effects on minerals and waste and that any effects of development on the management of waste would be dealt with through the provisions set out by the Applicant during the Examination and that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

Climate Change

7.2.49. The ExA has concluded that the Proposed Development on its own would generate imperceptible and negligible increases in carbon emissions such that they would be unlikely to be responsible for an increase in levels that would result in any significant effects on carbon emissions targets or climate change.

7.2.50. The wider effects are less clear because the Applicant has not provided a cumulative assessment of all planned road schemes. The ExA has, therefore, had to question whether s104(4) and s104(5) are breached.

7.2.51. However, the judgement handed down after the close of the Examination in the case of *R (oao Transport Action Network Ltd) vs SoS Transport and Highways England Ltd [2021]* has perhaps provided some clarity on the matter. As the RIS2 was judged to have been written to take account of the Paris Agreement 2015 and the UK's net zero carbon emissions targets and deadlines, then by association, the ExA deems it reasonable to conclude that the Proposed Development, taken by itself or in-combination with other road projects must accord with and as such not cause the UK to be in breach of the Paris Agreement 2015 or the SoS to be in breach of the Climate Change Act 2008.

7.2.52. The SoS will also be aware that seven days after the close of this Examination, the Government published "*Decarbonising Transport – A Better, Greener Britain*" which sets out commitments to reduce or remove carbon emissions from all forms of transport and to review the NPS NN.

7.2.53. On this basis, we have concluded that a cumulative assessment as described above is not necessary or required. However, since neither the Judgement nor the "*Decarbonising Transport – A Better, Greener Britain*" report have formed part of the Examination it will, therefore, be a matter for the SoS to consider the consistency of the current policy position on carbon emissions and the UKs obligations under agreements now entered into UK law.

7.2.54. Subject to the SoS's consideration of compliance with the Paris Agreement 2015, cumulative carbon emissions, the Proposed Development's contribution to the 4CB and their determination of the mitigating effects of the commitments set out in "*Decarbonising Transport – A Better, Greener Britain*", we find that the Proposed Development attracts neutral weight in the planning balance.

Green Belt

7.2.55. The Proposed Development would amount to inappropriate development in the Green Belt. Inappropriate development by definition is harmful and must attract substantial weight in the planning balance. Because the Proposed Development would result in the provision of a new loop road, much of it elevated, and in an area where there is currently no development, the ExA concludes that the Proposed Development would cause harm to openness.

7.2.56. Other harm would occur in the form of landscape and visual effects. This is due not only to the presence of additional infrastructure but also the considerable loss of trees that would occur. However, the weight to be attributed to this additional harm is reduced to a moderate level as the severe effects would be felt in the short to medium terms, with long-term effects reduced as planting establishes.

7.2.57. We accept that the need for the Proposed Development is established by national policy. That alone affords very substantial weight in the planning balance. The benefits in relieving existing traffic issues and substantially improving movement and flows particularly for local residents who rely on the roundabout to travel westbound are demonstrable and must also be taken into consideration. We have also accepted that improvements to Junction 28 cannot avoid the Green Belt. These other considerations carry very significant weight.

7.2.58. In our view, the other considerations amount to the "very special circumstances" necessary to outweigh the substantial harm to the Green Belt by way of inappropriateness, harm to openness and any other harm. Therefore, the Proposed Development would accord with the requirements of NPS NN and the NPPF.

Cumulative and Combined Effects

7.2.59. While there can be no doubt that the construction of the Proposed Development would, both cumulatively with other developments and in-combination with other topics, cause some nuisance and disturbance on receptor points, they would be temporary only and limited to a specific time. As a result, we are satisfied that it is not likely that there would be any significant cumulative effects from construction activities. We are satisfied that the Requirements in the Recommended DCO would adequately mitigate against identified likely significant effects and that landscape harm would reduce over the longer period.

7.2.60. We are satisfied that the Proposed Development would have no likely significant effects taken cumulatively with all topic matters, or with other known and planned projects and that mitigation is adequately provided for and secured in the Recommended DCO. In this respect, the Proposed Development attracts neutral weight in the planning balance.

Habitats Regulations Assessment

7.2.61. We have considered all documentation relevant to HRA as required by the NPS NN, and we have taken it into account in the conclusions reached here. Further, project design and mitigation proposals included in the ES and secured in the Recommended DCO have been fully considered for HRA purposes.

7.2.62. The ExA is satisfied on the adequacy of the data provided conclude that there is no requirement to undertake an AA of the Proposed Development. Accordingly, matters concerning IROPI are not triggered. However, should the SoS disagree, the ExA is satisfied that adequate data exists in the application for an AA to be undertaken.

7.3. ASSESSMENT AGAINST S104 OF THE PLANNING ACT 2008

7.3.1. In examining this application, the ExA has been mindful of the legal framework within which the SoS must make a decision and has sought to

explore and seek representations on the operation of s104 of the PA2008 and the planning balance.

7.3.2. S104(2) and s104(3) of the PA2008 require the SoS to have regard to, and to decide the application in accordance with any NPS except to the extent that one or more of subsections (4) to (8) apply.

7.3.3. The ExA concludes that the NPS NN sets out the need for additional road infrastructure in general and that subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for national networks NSIPs that fall within the need for infrastructure established within the NPS NN.

7.3.4. The ExA concludes that the Proposed Development meets the need as established in the NPSs, and the Proposed Development should be considered as satisfying the tests of s104(2) and s104(3) of the PA2008 and accordingly should be determined as such.

7.3.5. S104(4), s104(5) and s104(6) of the PA2008 require the SoS to have regard to, and to decide the application in accordance with any NPS, unless the Proposed Development breaches any international obligation; any duty imposed on the SoS by or under any enactment; or would be unlawful by any enactment.

7.3.6. For the reasons set out above, the ExA finds that the Proposed Development, taken by itself or in-combination with other road projects as set out in the RIS2, accords with the Paris Agreement 2015 and the Climate Change Act 2008. No IPs raised any issue whereby any of these subsections would apply. The ExA therefore considers s104(4), s104(5) and s104(6) do not apply.

7.3.7. S104(7) of the PA2008 applies if the SoS is satisfied that the adverse impact of the proposed development would outweigh its benefits.

7.3.8. We have found that in most topic areas, the Proposed Development would have a neutral planning effect because any negative effect would be offset by adequate mitigation and is secured in the Recommended DCO.

7.3.9. The ExA has found that the Proposed Development would amount to inappropriate development in the Green Belt and conclude that it would cause harm to openness. We accept, however, that the Proposed Development cannot avoid the Green Belt and that it would result in benefits to traffic movement and flows around the existing junction 28 roundabout. We find that these considerations are sufficient to outweigh the harm to the Green Belt that the Proposed Development presents and thus amount to the "very special circumstances" to outweigh the substantial harm caused by inappropriateness, loss of openness and other harm identified.

7.3.10. The ExA has identified that harm would occur from the construction of the Proposed Development on landscape character because of the tree

loss, which could not be restored within the short- and medium-terms. This would result in a negative effect in the planning balance. However, the weight to be applied to this harm would be moderate owing to the longer-term potential success in restoring the landscape and that regard must be had to the inevitable landscape harm that often occurs by national infrastructure projects.

7.3.11. The need for the Proposed Development attracts considerable positive weight. Furthermore, addressing existing congestion, improving safety, promoting economic benefits for the region and the improvements for NMUs are also considered to amount to positive planning benefits.

7.3.12. In applying the overall planning balance, the substantial weight for the need for the Proposed Development as advocated by NPS NN, taken with the traffic movement and NMU improvements, are considered sufficient to outweigh the short- to medium-term landscape harm that would be caused by tree loss arising from construction and operation works. The ExA concludes therefore that because the adverse effects do not outweigh the benefits, s104(7) does not apply. The ExA also considers s104(8) is not applicable.

7.3.13. The ExA concludes that, on the planning merits, the adverse effects do not outweigh the benefits of the development.

8. COMPULSORY ACQUISITION AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. The application includes proposals for the CA of the freehold of land, the CA of rights over land, the creation of new rights in land and TP of land. Construction of the Proposed Development would be done by using the powers to enter and use land under TP.

8.2. LEGISLATIVE REQUIREMENTS

8.2.1. CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008, together with relevant guidance in "*Guidance Related to Procedures for the Compulsory Acquisition of Land*", DCLG, September 2013 (the Former Department of Communities and Local Government (DCLG) (the CA Guidance) are met.

8.2.2. S122(2) of the PA2008 requires that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.

8.2.3. S122(3) of the PA2008 requires that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. But this does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

8.2.4. S123 of the PA2008 requires that one of three conditions ae met by the proposal namely that:

- The application for the order includes a request for CA of the land to be authorised.
- All persons with an interest in the land consent to the inclusion of the provision, or.
- The prescribed procedure has been followed in relation to the land.

8.2.5. A number of general considerations also have to be addressed, either as a result of the following applicable guidance or in accordance with the legal duties on decision makers:

- All reasonable alternatives to CA must have been explored.
- The Applicant must have a clear idea of how it intends to use the land subject to CA powers.

- The Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers.
- The decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

8.2.6. The PA2008 requires that if changes are sought to the application, whether material or non-material, then the ExA must consider whether to accept the changes into the Examination. If the changes require additional land then if the consent of persons with an interest in the land is not obtained by the Applicant, the procedures prescribed in Regulations 5 to 19 of the CA Regs would apply.

8.2.7. Further to Part 1 of Schedule 5 to the PA2008 paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the 2013 Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land.

8.2.8. The Neighbourhood Planning Act 2017 (NPA2017) has been enacted and contains provisions which amount to a codification of new TP practice. In recognition of the greater extent to which TP is being sought by scheme promoters and of the extended durations to which TP can be sought, the NPA2017 provisions in general terms provide for enhancements to the rights of APs subject to TP, with a view to ensuring that they have equivalent or proportionate rights to notice and to relevant compensation to those already available to APs subject to CA. However, at the submission of this Report to the SoS, the relevant provisions had not yet commenced, and the SoS may wish to satisfy themselves that this remains unchanged prior to a decision being made on this application.

8.2.9. The ExA has taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this Chapter.

8.3. THE APPLICANT'S CASE FOR CA AND TP POWERS

Application Documents

8.3.1. Table 8.1 below lists the documents submitted in support of the application for CA and TP together with their updates throughout the Examination.

Table 8.1 – Documents Supporting the application for CA and TP

Document / Plan	EL Reference as Submitted	EL Reference as Updated	Reason for Change
Land Plans	[APP-005]	[REP3A-003] [REP5-002] [REP9-003]	Updates and in some Plot the subdivision to Plots 1/1, 1/2, 1/7, 1/9, 1/32, 1/33, 1/34 and 1/35 following discussions with LB Havering and TfL Reflecting Change Requests Nos.1 to 4 Reflecting Change Requests Nos.5 to 8
Works Plans	[APP-006]	[REP5-003] [REP6-003] [REP9-004]	Reflecting Change Requests Nos.1 to 4 Reflecting changes to Work N o.7 in relation to Network Rail, which was discussed in the Applicant's Deadline 4 response (REP4-027) to Network Rail's Deadline 3b submission (AS-034). Reflecting Change Requests Nos.5 to 8
Crown Land Plans	[APP-008]	N/A	No longer in use
Special Category Land Plans	[APP-014]	[REP5-010] [REP9-011]	Reflecting Change Requests Nos.1 to 4 Reflecting Change Requests Nos.5 to 8
Book of Reference	[APP-021]	[AS-009] [AS-021] [REP3A-005] [REP9-017]	Updates to Category 1 and 2 persons Updates to Category 1 and 2 persons Updates to Plots 1/1, 1/2, 1/7, 1/9, 1/32, 1/33, 1/34 and 1/35 following discussions with LB Havering and TfL, and updates to Category 1 and 2 persons Reflecting all Change Requests Nos.1 to 8 incorporating the Addendums submitted at Deadline 4 [REP4-019] and Deadline 5 [REP5-050] including the deletion of the SoS from Plots 4/5, 4/6 and 4/7 and updates to Category 1 and 2 persons
Statement of Reasons	[APP-019]	[REP9-016]	Reflecting all Change Requests Nos.1 to 8 and incorporating the Addendum submitted at Deadline 5 [REP5-055]

Document / Plan	EL Reference as Submitted	EL Reference as Updated	Reason for Change
Funding Statement	[APP-020]	N/A	N/A
Compulsory Acquisition Schedule	N/A	[REP1-015] [REP2-010] [REP4-006] [REP5-033] [REP8-006] [REP9-053]	Requested by the ExA is its Rule 6 Letter [PD-006], document updated to reflect ongoing discussions with APs and SUs

8.3.2. The application for Development Consent, and particularly the SoR [REP9-016] stated that CA of land or an interest in land or right over land issues are relevant to this application. Articles in the Recommended DCO seek both permanent and temporary powers to construct and maintain the Proposed Development. Consequently, the Applicant is seeking the CA of land and rights over land, and powers for the temporary use of land both for construction and maintenance.

8.3.3. The documents in Table 8.1 above taken together form the basis of the analysis in this Chapter. References to any of those documents in this Chapter from this point on should be read as reference to the latest revisions cited above.

8.3.4. Land over which CA and/or TP powers are sought is referred to in this Chapter as the Order land.

Removal of the Need for Crown Land Consent

8.3.5. The application as originally submitted identified Plots 4/5, 4/6 and 4/7 of the Land Plans [APP-005] and BoR [APP-021] as having Crown interest, in the form of the SoS for DEFRA. In response to WQ1 CA 1.17 [REP2-027], the Forestry Commission stated that Forestry England do not believe that they hold interests in these plots and that therefore, Crown consent is not required. At Deadline 5 [REP5-054], Forestry England, who manage forests on behalf of the Forestry Commission, stated that:

"The Forestry Commission and the Department for Environment, Food and Rural Affairs (DEFRA) do not consider that they have any rights over Plots 4/5, 4/6 and 4/7. As the Forestry Commission confirmed in its response to the Examining Authority's written questions on 3 February 2021 [REP2-027]*, we do not believe that Crown consent is required".*

8.3.6. At Deadline 4, the Applicant submitted an addendum to the BoR [REP4-019] in which the SoS for DEFRA had been removed from Plots 4/5, 4/6 and 4/7 as well as the removal of Part 4. This is reflected in the BoR and SoR submitted at Deadline 9 [REP9-017] and [REP9-016].

8.3.7. On the evidence before us, the ExA accepts that Crown land does not form part any CA for the application. It is therefore not necessary to engage this matter further in this Section.

The Purpose for Which the Land is Required

8.3.8. The Applicant stated [APP-019] and [REP5-055] that if the SoS makes a DCO in respect of the Proposed Development, it would be necessary for that DCO to contain powers to enable the Applicant to acquire compulsorily land and rights over land, and to take possession of land temporarily, to enable the construction and delivery of the Proposed Development. This is because land that is presently owned or occupied by persons other than the Applicant is required for the carrying out of the works. The Applicant advocated that without acquisition and temporary use of the land, the scheme could not be delivered.

8.3.9. The Land Plans [REP9-003] and BoR [REP9-017] identify land as being required for:

- The CA of all interests and rights (freehold powers shaded pink).
- The CA of rights over and temporary possession (new rights shaded blue).
- Temporary possession and use (TP shaded green).

8.3.10. The BoR [REP9-017] identified all plots of land required and these are shown on the Land Plans [REP9-003]. The latter comprises four plans (sheets 1-4) alongside an index plan. Each plot required for CA or TP is referenced by a plot number comprising the sheet number it is on, followed by a forward slash and either a single- or two-digit number. For example, CA of land within the Gardens of Peace landholding is shown on sheet 1 of the Land Plans and is referenced as Plot "1/8" and is coloured blue and indicated for new rights, and the northernmost part of the M25 is shown on sheet 3 and is referenced Plot "3/5" and is coloured pink and required for freehold powers.

8.3.11. The Land Plans submitted by the Applicant were revised and amended as the Examination proceeded. The primary reason for this was to accommodate the non-material changes and additional land referred to below but also to remove plots that were no longer needed. Changes to the application in respect of CA are described below.

8.3.12. Section 5 of the SoR [REP9-016] described the proposals for the use and development of the land and the purposes for which powers are sought. Appendix A to the SoR lists the following:

Table 8.2 – Summary of Plots for CA and TP

Power Sought	Plot Nos.
CA Freehold (Pink land)	1/4, 1/5, 1/10, 1/11a, 1/12, 1/13, 1/18, 1/24, 1/27a, 1/28, 1/29, 1/30, 1/31, 1/32, 1/32a, 1/32b, 1/32c, 1/32d, 1/32e, 1/32f, 1/33, 1/33a, 1/34, 1/34a, 1/35, 1/35a, 1/36, 1/37, 1/38, 2/1, 2/2, 3/1, 3/4, 3/5, 3/8, 3/9, 3/10, 3/11, 3/12, 3/13, 3/14, 3/20,

Power Sought	Plot Nos.
	3/22, 4/1, 4/2, 4/3, 4/4, 4/5, 4/6, 4/7, 4/7a, 4/8, 4/9, 4/10, 4/11
CA Rights (Blue Land)	1/1a, 1/3, 1/3a, 1/6, 1/8, 1/20, 1/21, 1/22, 1/25, 1/25a, 1/27, 3/17,
TP (Green Land)	1/1b, 1/1c, 1/1d, ½, 1/7, 1/8a, 1/11, 1/14, 1/15, 1/16, 1/17, 1/21a, 1/26, 1/28a, 3/2, 3/3, 3/6, 3/7, 3/15, 3/16, 3/18, 3/19, 3/21, 3/23

8.3.13. The Applicant has also identified land which may fall into a "special category" land forming part of a common, open space, National Trust land or fuel or field garden allotment. Part 4 of the BoR [REP9-017] identified the Plot 1/8 within the Gardens of Peace land. We return to this matter in Section 8.7 below.

8.3.14. SUs land and electronic communications code operators land is involved, and powers are sought to acquire land, interfere with interests and remove apparatus. All the land involved is included in the BoR [REP9-017] and is set out in Chapter 7 and Table 7.1 of the SoR [REP9-016].

8.3.15. Part 5, Article 25 of the Recommended DCO would grant the undertaker powers to acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

8.3.16. Part 5, Article 28 of the Recommended DCO would, inter alia, grant the undertaker such rights over the Order land as may be required for any purpose for which that land may be acquired compulsorily. However, paragraph (2) and Schedule 6 identifies such Plots where powers are limited to CA of new rights only.

8.3.17. Part 5, Article 35 of the Recommended DCO would, inter alia, grant the undertaker the power to enter on and take temporary possession of the land specified in in Schedule 8 in respect to:

- Remove buildings and vegetation from the land.
- Construct temporary works (including accesses), security fencing, storage areas, structures and buildings.
- Construct any works as are mentioned in Schedule 1 (authorised development) of the Recommended DCO and other mitigation works.

8.3.18. Part 5, Article 28(6) and Schedule 7 of the Recommended DCO incorporates the provisions of the Compulsory Purchase (General Vesting Declaration) Act 1981.

8.3.19. Part 5, Article 36 of the Recommended DCO would, inter alia, permit the undertaker for the purposes of maintaining the authorised development at any time during the maintenance period to enter upon and take temporary possession of any land within the Order limits if such

possession is reasonably required for the purpose of maintaining the authorised development.

8.3.20. The Examination of the application included consideration of all submitted written material relevant to CA and TP with the processes involved described below.

Written Questions

8.3.21. The ExA asked 23 questions in relation to CA and TP at WQ1 [PD-008] and a further three questions At WQ2 [PD-015]. Our questions concerned:

- The wording of PPs.
- Funding.
- Assessment of the public interest vs. the private loss.
- Human rights.
- The powers sought and land take at Maylands Golf Course.
- The powers sought and land take at Glebelands Estates Ltd.
- The powers sought and land take at Gardens of Peace.
- The powers sought and land take concerning TfL.
- The land take required for TP on a number of plots.

8.3.22. The ExA also questioned in WQ1 CA 1.12 [PD-008] and WQ2 CA 2.1 [PD-015] the need to CA freehold for Plots 4/2 through to 4/11 and the extent of land needed for Plots 1/11 and 3/5, both of which concern the M25 itself. As will be discussed below, the ExA is not satisfied that Plots 4/2 to 4/11 and Plot 4/1 are justified.

Compulsory Acquisition Hearing

8.3.23. The ExA held one CAH on Monday 1 March 2021 [EV-008]. The meeting was virtual via Microsoft Teams. The ExA discussed the following:

- The need and justification for Plots 4/2 to 4/11.
- The extent of land sought concerning Glebelands Estates Ltd. Maylands Golf Course.
- Grove Farm.

8.3.24. At the CAH1 [EV-008] the Applicant addressed the statutory tests and those within the DCLG CA Guidance. The Applicant's position that the powers of CA and TP sought in the Recommended DCO are necessary, proportionate and justified. Furthermore, the Applicant believes that the powers sought are in accordance with all relevant statutory and policy guidance. The powers would enable the Applicant to construct the Proposed Development in a way which minimises the costs to the Applicant (and hence the public purse) and the impact on affected landowners.

8.4. THE EXAMINATION OF THE CASE FOR CA AND TP POWERS

Reasonable Alternatives to CA

8.4.1. We discuss the alternative route options for proposed loop road (Work No.6) in Section 5.2 of Chapter 5 of this Report.

8.4.2. Consideration of possible alternatives to the Proposed Development is provided in Chapter 3 of the ES [REP9-018] and throughout the Consultation Report [APP-022]. These provided both the history of the scheme evolution, including the options considered, and the reasons for their rejection in favour of the preferred option. None of the alternative options would obviate the need for CA. While the CA of land for Work No.6 is predominantly land outside the Applicant's ownership, the majority of the remainder of the Works concerns land that the Applicant is either a Category 1 or Category 2 Person with an interest in the land.

8.4.3. Chapters 3 and 5 of the SoR [REP9-016] stated that the Applicant has considered alternatives and modifications to the Scheme to minimise the potential land take. These alternatives and modifications were consulted on and the preferred route has been chosen based on a thorough consideration of relevant issues. The Applicant acknowledged that the shortlisted approved Option 5F would involve the greatest amount of land take of the three, and thus need for CA would be greater. However, this was weighed against other planning issues including amongst other things, views of consultees (including persons with a land interest) meeting the objectives of the Proposed Development, affordability, value for money, safety, construction and operational circumstances. This balance determined the preferred route option.

8.4.4. Article 35 of the Recommended DCO would permit the Applicant to take TP of the Order land and only CA what is required subsequently. This would provide scope to reduce the land take following detailed design to enable the final land take to be as efficient as possible, thereby minimising CA.

8.4.5. No IPs or APs raised any concerns in this regard. The ExA is thus satisfied that the Applicant has considered reasonable alternatives and that, ultimately, the planning merits of the option considered and proposed in this application outweigh the higher quantum of CA land it would require.

Clear Idea of How Applicant Intends to use the Land

8.4.6. The SoR [REP9-016] also confirmed that CA powers are required as a means of overriding existing rights and interests in or over the land as well as creating new rights and granting the power to take TP.

8.4.7. The Applicant considered [REP9-016] that the land included in the Order land is the minimum land-take required to construct, operate, maintain and mitigate the Proposed Development and is therefore necessary to

achieve the objectives of the project. It has sought to achieve a balance between minimising land-take and securing sufficient land to ensure delivery, noting that the detailed design has yet to be developed.

8.4.8. Table A.1.1 of Appendix A to the SoR [REP9-016] lists those plots in which permanent CA powers are sought. Table A.1.2 sets out those plots in which CA of rights only are required. Table A.1.3 lists those plots where TP powers are only sought. Each Plot is accurately represented on the Land Plans with CA freehold Plots coloured pink; CA new rights Plots in blue and TP Plots in green.

8.4.9. No AP questioned the intended purpose for CA or TP and the ExA did not need to test this evidence in Examination. Save for the discussion below, the ExA is satisfied that the Plots sought for CA and TP are connected to the Works in which they relate.

Plots 4/1 to 4/11 (12 plots)

8.4.10. Plots 4/1 to 4/11 (Plots 4/1, 4/2, 4/3, 4/4, 4/5, 4/6, 4/7, 4/7a, 4/8, 4/9, 4/10 and 4/11) can be viewed on Sheet 4 of the Land Plans [REP9-003]. They concern solely the M25 motorway, commencing just north of the Network Rail railway bridge and terminating at point a short distance from where Warley Road overpasses.

8.4.11. The BoR [REP9-017] indicates that Plots 4/1 to 4/11 are owned by the Applicant but in all cases, other Category 1 and 2 persons also hold an interest in the land. With the exception of Cadent Gas and UKPN, which have significant infrastructure within the Order land and are subject to Works Nos.29 and 30 respectively, no other AP made any representation during the Examination and accordingly did not consent or object to its interests being CA.

8.4.12. In Table A.1.1 of the SoR [REP9-016] the Plots are stated as being required for either to ensure any rights inconsistent with the Proposed Development can be removed, or to rationalise the Applicant's ownership.

8.4.13. As Sheet 4 of the Works Plans confirms [REP9-004], there are no Works planned for any of these Plots. In WQ1 CA 1.12 [PD-008], the ExA expressed serious concerns that the CA of this land (referring to Plots 4/2 to 4/11), albeit that it is currently owned by the Applicant, was not justified. The ExA put it to the Applicant that it was using the PA2008 as a way of tidying up its land interests.

8.4.14. In its response to the question at Deadline 2 [REP2-011], further confirmed when the matter was discussed at CAH1 [EV-008], the Applicant confirmed it wanted to "cleanse" the land and was asking the SoS to grant CA powers accordingly.

8.4.15. The SoR submitted with the application [APP-019] indicated that Plot 4/1 was required in connection with Work No.7. Accordingly, it did not feature as a plot of concern in our WQ1 [PD-008]. However, by Deadline

9, the Applicant amended the SoR [REP9-016] correcting the reason to the same reason as for Plots 4/2 to 4/11.

8.4.16. The ExA does not consider that the PA2008 permits the SoS to grant CA powers over Plots 4/1 to 4/11 simply to cleanse or rationalise the Applicant's land ownership. Moreover, the Applicant did not advance sufficient evidence to suggest that any of the rights held by APs over these Plots were inconsistent with the Proposed Development particularly as none are needed for any Works.

8.4.17. Having regard to the tests in the PA2008 and, in particular, the test on proportionality, the ExA does not consider that any justification exists for the Applicant to request, and the SoS to grant CA powers over the said Plots for the stated purposes. Plots 4/1 to 4/11 are not required to implement the Proposed Development, with the Applicant confirming at CAH1 [EV-008] that any works to gantries or signage can be undertaken under other legislative provisions.

8.4.18. Furthermore, the BoR [REP9-017] identified in relation to Plots 4/5, 4/6, 4/7 and 4/8 Category 2 Persons that have, according to the CA Schedule [REP9-053] right of passage and right to service. The Applicant stated that in relation to these Plots, these rights are "*not readily acquirable*". The Applicant has not established what it means by this and neither AP made any representations during the Examination. Should the SoS concur with the ExA and remove Plots 4/1 to 4/11 from the BoR [REP9-017], the APs would be unaffected.

8.4.19. For the reasons given above, the ExA thus recommends that the SoS strike out Plots 4/1 to 4/11 from the BoR and in so doing, not authorise the CA of these Plots.

Plots 1/31, 1/35 and 3/5

8.4.20. A similar issue occurs in relation to Plots 1/31, 1/35 and 3/5. These Plots also refer to M25 starting a short distance to the north of the Network Rail railway line and ending further to the north at the point as shown on Sheet 3 the Land Plans [REP9-003].

8.4.21. In each case, CA freehold powers are sought for the whole of the M25 carriageway. The BoR [REP9-017] indicated that the Applicant is the freehold owner of the Plots but in each case, Category 1 and 2 Persons exist. With the exception of Cadent Gas and UKPN, which have significant infrastructure within the Order land and are subject to Works Nos.29 and 30 respectively, no other AP made any representation during the Examination and accordingly did not consent or object to its interests being CA.

8.4.22. Table A.1.1 of the SoR [REP9-016] stated that these Plots are required for:

- Plot 1/31 in connection with Works Nos.6, 7, 9 and 11.
- Plot 1/35 in connection with Work No.7 and 12.
- Plot 3/5 in connection with Works Nos.7, 8 and 10.

8.4.23. However, as illustrated on the Works Plans [REP9-004], there are no Works required on the whole of the Order land. For Plot 3/5, Sheet 3 of the Works Plans illustrates that the majority of the southbound carriageway has no works save for two small sections in connection with Work No.10 and Work No.7. For Plot 1/31, only the northbound carriageway is required in respect to Work Nos.6 and 7 and only for part of its length; the section which overpasses the roundabout is not shown as designated in the Works Plans. For Plot 1/35, only the off-slip is required in connection with Work No.12.

8.4.24. The ExA asked in WQ2 CA 2.1 [PD-015] in respect of Plots 1/31 and 3/5, whether the Applicant had been proportionate in its land take and whether the partial deletion of these Plots to reflect the Works in which they are needed would have any bearing on the delivery of the Proposed Development. The Applicant responded at Deadline 5 [REP5-041] that in its view it had been reasonable and as with Plots 4/2 to 4/11, it invites the SoS to include these Plots within its CA powers.

8.4.25. The ExA has carefully considered this issue. While the land take for Plots 1/31, 1/35 and 3/5 are larger than the Works needed, we are satisfied that the M25 motorway must be taken as a whole for each Plot. In other words, the need for CA for the northbound carriageway must automatically include the southbound carriageway because it is the same road; the two cannot and should not be separated. Therefore, we are satisfied that both sections of the carriageway would be required even if Works are only required to the northbound road, and even where there are gaps between works as is the case for Plot 1/31. Accordingly, the land take for Plots 1/31, 1/35 and 3/5 is considered to be reasonable.

Reasonable Prospect of Available Funds

8.4.26. The Funding Statement [APP-020] confirmed that the Proposed Development would be funded by the Department for Transport and consequently it is not dependent on funding contributions from other parties. Accordingly, the Applicant's view is that there is no impediment to the delivery of the Proposed Development, or the payment of compensation to Persons affected by CA, TP or a blight claim.

8.4.27. As the SoS is both the funder and arbiter of this Proposed Development, they will need to be satisfied that the funds are in place if they are minded to make the Order.

Proposed Acquisition is Legitimate, Necessary and Proportionate

8.4.28. The Applicant provided justification for the CA and TP of land in its SoR [REP9-016] on the basis of the DCLG CA Guidance which requires interference with the rights of those with an interest in land to be for a legitimate purpose, and that it is necessary and proportionate.

8.4.29. In undertaking a proportionality test for individual plots, the Applicant reviewed each plot on the basis of the practical engineering requirements

against the individual impacts that would occur at the local level. Moreover, the vast majority of land to be acquired is within the existing highway boundary. This process allowed the Applicant to refine the land requirements and, wherever possible, to mitigate the effects on landowners. As a result of the above process of challenge and scrutiny, the Applicant confirmed that the powers of CA and TP sought in the Recommended DCO are necessary, proportionate and justified acknowledging that an interference with private rights can only be justified where CA is for such purposes.

Glebelands Estate Land

8.4.30. In its RR [RR-020], Glebelands expressed concerns about the amount of land take proposed for Plots 1/10, 1/12, 3/20 and 3/22, for all of which it is the freeholder. We tabled this concern in WQ1 CA 1.10 [PD-008] noting particularly that Plots 1/10 and 3/20 appeared to be considerably larger than the Work Nos. to which they related.

8.4.31. The Applicant provided additional information in its response at Deadline 1 [REP1-002] and Deadline 2 [REP2-011] explaining the quantum of land in relation to Work No.6 and Work No.25. The ExA asked no further questions in relation to Plot 1/10 and no further response on the quantum of land required was submitted by Glebelands for the remainder of the Examination.

8.4.32. Plot 3/20 was required in connection with Work No.17. However, on 26 February the ExA made a Procedural Decision [PD-012] to accept the Applicant's Change Request No.1 [REP3A-002] to delete Work No.17. Despite this, the land take and powers sought over Plot 3/20 remained as submitted and the ExA sought clarification on this matter at CAH1 [EV-008] as to why this was the case. The Applicant responded that whilst the land raising works were no longer needed, the land itself remained required as the ecological mitigation works connected with Work No.25 still required the same land area. The ExA was content with the responses given in the absence of evidence to the contrary.

Transport for London Land

8.4.33. In its RR [RR-028] and WR [REP2-036] TfL expressed concerns in respect to the powers sought over Plots 1/1, 1/3 and 1/6.

8.4.34. In respect of Plot 1/1, the Land Plans as submitted at the outset of the application [APP-005] identified that Plot 1/1 referred to the land as the majority part of the A12 carriageway on the west side of the roundabout, and was sought for CA of rights. TfL stated that no justification had been advanced as to the need for this. The Applicant responded also at Deadline 3a [REP3A-022] and updated the Land Plans at Deadline 3a [REP3A-003] dividing the existing Plot 1/1 into Plots 1/1, 1/1a, 1/1b, 1/1c and 1/1d. Only Plot 1/1a was now needed for CA of new rights which the Applicant explained was in order to allow for drainage infrastructure to be maintained, and now primarily concerned only the eastbound carriageway. The remainder was downgraded to TP powers only.

8.4.35. TfL [REP4-038] nonetheless consider that Plot 1/1a need not be subjected to CA new rights. This is because, it says, powers under other legislation namely the NRSWA1991 permit such drainage maintenance matters and that CA powers are not required. In its response, the Applicant stated [REP6-011] that it did not want to rely on other legislation to deliver something that the PA2008 could do. In particular, the Applicant stated that the NRSWA1991 would only grant a licence for such works rather than the right to do so under PA2008 and the licence could be terminated by the street works authority and be subject to conditions. The PA2008 would guarantee the utility providers with rights to retain their apparatus in the street in perpetuity and also rights to access it. The ExA concurs with this view.

8.4.36. Plot 1/3 concerns a sizeable section of the existing A12 off-slip and a small section land before it. Initially proposed to be CA freehold, TfL [RR-028] and [REP2-036] questioned why all of the land was needed for this purpose and required further information. At Deadline 3a [REP3A-022] and [REP3A-003], the Applicant split Plot 1/3 into two: Plot 1/3 and Plot 1/3a; the latter comprising a small section of the land needed for an access and thus remaining CA freehold and the remainder downgraded to CA new rights. This was reflected in the Land Plans submitted at Deadline 5 [REP5-002].

8.4.37. TfL also sought clarification as to the reason for the need for CA rights over Plot 1/6, which concerns a small strip of land located adjacent to the A12 westbound on-slip and as indicated on Sheet 1 of the Land Plans [REP9-003]. In its Deadline 4 submission [REP4-038], TfL accepted the Applicant's explanation in that the power was considered necessary in respect to drainage matters.

8.4.38. TfL made further unrelated submissions which will be discussed in Chapter 9 of this Report, and the ExA has concluded that TfL is now satisfied that the evolution of Plots 1/1 and 1/3 have overcome its concerns. The ExA concurs and considers the acquisition of these Plots is now legitimate, necessary and proportionate.

8.4.39. In summary, the ExA is satisfied that the powers sought over the land as set out in the BoR [REP9-017] and Land Plans [REP9-003] and as argued in the SoR [REP9-016] are legitimate, necessary and proportionate.

Compelling Case in the Public Interest

8.4.40. The ExA has had regard to the objections raised by all APs. Nevertheless, the ExA concludes that the public benefits associated with the Proposed Development would outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction and operation of the Proposed Development.

8.4.41. The ExA is satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development. The objections raised do not persuade the ExA that there are any alternatives to the CA sought which ought to be preferred.

8.4.42. The ExA concludes that:

- The development for which the land is sought would be in accordance with national policy as set out in NPS NN and development consent should be granted.
- The NPS NN identifies a national need for road infrastructure of the type that is the subject of this application.
- The private loss of those affected has been minimised through the selection of the application land and the extent of the rights and interests proposed to be acquired are the minimum necessary.
- The Applicant has explored all reasonable alternatives to the CA of the rights and interests sought, and there are no alternatives which ought to be preferred.
- Adequate and secure funding would be available to enable the CA within the statutory period following the making of the Order.
- The resource implications of possible acquisition resulting from a blight notice have been taken into account.

8.4.43. Taking these various factors together, the ExA considers that there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans [REP9-003] with the exception of Plots 4/1 to 4/11. The proposal would, subject to the deletion of these Plots comply with s122(3) of the PA2008.

8.5. STATUTORY UNDERTAKERS LAND

8.5.1. Section 7.4 and Table 7.1 of the SoR [REP9-016] listed the land to which SUs have land interests. With the exception to TfL, no SU objected to land in which they have an interest being CA.

8.5.2. TfL did not object to the CA of its land as a matter of principle. However, concerns with the proportionality of land to be taken and powers sought were of concern, and we discuss these above. The Applicant's Position Statement submitted at Deadline 9 [REP9-069] stated that the Applicant and TfL have now reached an agreement in relation to all matters with TfL with the exception of the provisions in relation to the commuted sums and costs. The Applicant stated that these outstanding issues will be a matter for the SoS's determination. This is confirmed in the SoCG signed between the Applicant and TfL [REP9-051] and in TfL's own submission at Deadline 9 [REP9-082]. We return to the outstanding matters in Chapter 9 of this Report as they concern PP and not CA.

8.5.3. Both the UKPN (which includes Eastern Power Networks) and Cadent Gas made WRs during the Examination, as both have infrastructure which would be subject to Works Nos.29 and 30. Neither have objected to CA or TP of the land. Concerns raised by these SUs primarily concern PPs which, as stated above, are discussed in Chapter 9 of this Report. The Applicant's Position Statement submitted at Deadline 9 [REP9-069] confirmed that agreements have been reached with UKPN. Agreement with Cadent Gas cannot be reached owing to disagreement on a small number of matters in respect to PPs. Cadent Gas confirmed this and the outstanding matters in its submission at Deadline 9 [REP9-079]. The ExA

will make a finding and recommendation on this matter in Chapter 9 of this Report.

8.5.4. Similarly, National Grid Electricity Transmission (NGET) and National Grid Gas made RR [RR-022] and WR [REP2-034] raising no objections to CA but were seeking adequate PPs were in place in the Recommended DCO. At Deadline 5 [REP5-068] NGET confirmed no objection to the Proposed Development. The signed SoCG with the Applicant submitted at Deadline 7 [REP7-008] and the Applicant's Position Statement submitted at Deadline 9 [REP9-069] confirm that matters concerning alterations to the existing access arrangements provided to NGET will be subject to the grant of the necessary easements on appropriate terms and would form part of a Side Agreement. The Applicant stated that this has been settled and these are proceeding to completion. The Applicant will inform the SoS directly if these agreements are not concluded by the end of Examination on 7 July 2021. The SoS may wish to seek an update to this position prior to making their decision on this application.

8.5.5. In its RR [RR-002] and further written response [AS-034], Network Rail raised no objection to CA but did express concern about the effect of the Proposed Development on its infrastructure in relation to Plot 4/2. In response to our WQ1 GQ 1.5 [REP2-011], the Applicant stated that no part of Network Rail's infrastructure was required and at Deadline 3a [REP3A-005] Network Rail was removed from the BoR.

8.5.6. At Deadline 5 [REP5-069], Network Rail stated that it had yet to see the updated Works Plans and, on that basis, it would withhold further comments. In the absence of any comments, Network Rail stated that it wished its PPs to be inserted into the Recommended DCO. The need for PPs was refuted by the Applicant at Deadline 6 [REP6-016] for reasons previously given. At Deadline 10 [REP10-024], Network Rail withdrew its Representations.

8.5.7. The CA Schedule submitted at Deadline 9 [REP9-053] identified the following SUs where the Applicant stated that no private agreement is needed because PPs contained within the Recommended DCO provide the necessary protection of their respective infrastructure and rights to survey and inspect:

- The British Pipeline Association.
- British Telecommunications Plc.
- Essex and Suffolk Water Ltd.
- GTT Communications Holdings UK.
- Instalcom Ltd.
- NGET.
- Openreach Ltd.
- Telia Carrier UK Ltd.
- Telia Company AB.
- Thames Water Utilities Ltd.
- Telent Technology Services Ltd.

8.5.8. On the evidence before us, the ExA finds that no SU would be unduly prejudiced by the powers sought for the Order land. We are further

satisfied that final matters in respect to Cadent Gas and TfL can be resolved through changes to the Recommended DCO as suggested or through subsequent side agreements. These are discussed in further detail in Chapter 9 of this Report.

8.6. OUTSTANDING MATTERS TO CA AND TP

8.6.1. No AP raised any objections to CA powers being sought as a matter of principle.

8.6.2. The CA Schedule submitted at Deadline 9 [REP9-053] identified the following APs had not signed an agreement with the Applicant by the close of the Examination:

- Gardens of Peace.
- Luddington Golf Ltd/Glebelands in respect to Maylands Golf Course.
- Mr & Mrs Jones of Grove Farm.
- Helen Edwards, Rachel Kingston and Patricia Kingston in respect to Plot 1/6.

8.6.3. In respect to TfL and Cadent Gas, agreement between the parties' concern PP, which are discussed in Chapter 9 of this Report.

Gardens of Peace Muslim Cemetery

8.6.4. In its RR [RR-024] and in its WR [REP2-029], the Gardens of Peace were concerned about the extent of land needed in connection with Plot 1/8. It was particularly concerned that the easement for the Cadent Gas pipeline would render parts of the site redundant and would prevent it being used for burial. This, it said, would have a fundamental effect on viability. The ExA concurred and raised a question on this matter in WQ1 [PD-008].

8.6.5. The Applicant's response [REP2-011] was that talks were ongoing. Following the ExA's acceptance of Change Request No.4 on 26 February 2021 [PD-012], the lateral limits of Plot 1/8 were reduced to land forming the service access road only and on which CA new rights powers are being sought, which the remainder of the land needed becoming Plot 1/8a where only TP powers are sought.

8.6.6. At Deadline 8 [REP8-012], the Applicant reported that a number of outstanding matters remained but that the Applicant was looking to sign a tri-party agreement with Gardens of Peace and Cadent Gas to deal with outstanding operational matters; none of which relate specifically to CA matters. This position had not changed at Deadline 9 [REP9-069]. In its response at Deadline 9 [REP9-080], Gardens of Peace confirmed the outstanding matters. However, in a more negative tone, Gardens of Peace stated that "*we find it concerning that the above issues are still outstanding. Without these matters mitigated, or otherwise, it puts Gardens of Peace in a very precarious position in terms of daily impacts of the scheme on the cemetery and the potential substantial business interruption"*.

8.6.7. As has been discussed in Chapter 5 and will be discussed in Chapter 9 of this Report, the ExA will recommend an additional Requirement 19 be inserted into the Recommended DCO in which no works can commence until a site-specific construction plan has been agreed with the Gardens of Peace. This would act in lieu of the tri-party agreement being signed after the close of the Examination and the SoS being satisfied that the Requirement would not be necessary. The SoS may wish to request from the Applicant an updated position on a land agreement prior to the determination of the scheme.

8.6.8. However, in relation to CA matters, the ExA is content that all outstanding concerns in relation to CA have been resolved and that the extent of land needed for Plot 1/8 would not have a detrimental impact on the delivery and operation of the cemetery.

Luddington Golf Ltd/Glebelands Estates Ltd

8.6.9. Glebelands are the freehold landowners of the Maylands Golf Course and most of the land located west of the Weald Brook. Luddington Golf Ltd operate the golf course and both are APs.

8.6.10. The land required and powers sought at Maylands Golf Course had been a topic of discussion throughout the Examination, with Luddington Golf Ltd expressing concerns at the CA of land which would have a detrimental effect on the playability of the course.

8.6.11. As stated by the Applicant in its response at Deadline 2 [REP2-011], discussions between the parties had been ongoing throughout the Examination. The Applicant first tabled a Change Request No.3 which was accepted into the Examination on 19 March 2021 [PD-013] in which a small increase to the land take was required. Further, Change Request No.7, which was accepted into the Examination on 26 May 2021 [PD-020], superseded Change Request No.3 and this substantially increased the land take from 13,251m^2 as originally submitted, to 54,578m^2.

8.6.12. The increased area would only be for TP powers and thus no additional land was required. Furthermore, Luddington Golf Ltd's Deadline 7 response [REP7-041] stated that Change Request No.7 met and addressed all its concerns.

8.6.13. In its Position Statement submitted at Deadline 9 [REP9-069] the Applicant confirmed that a draft tri-party agreement between itself, Luddington Golf Ltd and Glebelands exists but that outstanding matters remain in respect to financial matters and property agreements in respect to the reconfigured golf course. The Applicant has indicated that it is confident matters can be addressed before the SoS determines the application. Neither Luddington Golf Ltd nor Glebelands have made further representations disputing this.

8.6.14. On that basis, the ExA is satisfied that there is unlikely to be any barrier to this agreement being reached shortly. Moreover, Requirement 15 of the Recommended DCO would ensure that the Proposed Development could not proceed until the details of the golf course realignment had

been undertaken and available for use. Nonetheless, the SoS may wish to request from the Applicant an updated position on a land agreement prior to the determination of the scheme.

Mr & Mrs Jones of Grove Farm

8.6.15. Grove Farm concerns most of the land located on the eastern side of the Weald Brook.

8.6.16. The CA Schedule [REP9-053] confirmed that agreement between the Applicant and Mr & Mrs Jones had yet to be reached, with matters to be resolved not concerning CA. The issues at hand concerning planning issues are discussed in Chapter 5 of this Report.

8.6.17. The ExA has established above that the land required for CA and TP is proportionate and necessary and that the private loss is outweighed by the public gain. Throughout the Examination, Mr & Mrs Jones have primarily raised concerns in respect to planning matters which are addressed in Chapter 5 of this Report. The SoS may wish to request from the Applicant an updated position on a land agreement with Mr & Mrs Jones. However, should this not be capable of being achieved, and taking into consideration that Mr & Mrs Jones do not object to CA as a matter of principle, the ExA is satisfied that the CA of the land meets the tests in the PA2008.

8.6.18. The SoS will be aware from Chapter 5 of this Report that the ExA are concerned regarding the effect of the Proposed Development on the living conditions of Mr & Mrs Jones, the owners and occupiers of Grove Farm. Having regard to the proximity between Grove Farm dwelling and the proposed A12 off-slip forming Work No.2, the ExA raised the question at the CAH1 [EV-008] on alternatives including whether either the Applicant or Mr & Mrs Jones had considered and/or pursued CA freehold powers for the dwelling, particularly if the dwelling were to become uninhabitable as a result of the Proposed Development.

8.6.19. In its response [EV008], Mr & Mrs Jones stated that they did not wish to leave the property, and the Applicant confirmed it did not wish to CA the dwelling. The Applicant further stated, also made in writing at Deadline 4 [REP4-14], that "*blight provisions set out in the TCPA1990 may apply if the dwelling were to become inhabitable. But, if the owners of Grove Farm did not wish to leave the premises, then it is unlikely that the SoS, of his own volition, would seek to acquire the residence at Grove Farm"*. While the Applicant further stated that it had "*engaged with Mr & Mrs Jones on the possibility of early acquisition of land subject to compulsory acquisition in the draft DCO and the potential for agreement to any Heads of Terms*", this does not indicate that either party changed their minds on this matter. The ExA did not pursue the matter further and the position had not changed by the close of the Examination [REP9-053].

8.6.20. Had either party sought CA for Grove Farm dwelling, it is likely the ExA would have recommended it. The subsequent removal of the dwelling would have removed any concerns relating to noise and visual effects on Mr & Mrs Jones's living conditions. However, we concur with the Applicant

that, as neither it nor Mr & Mrs Jones wish for Grove Farm to be subject to CA, the ExA should not recommend the SoS to nonetheless authorise it. However, if the SoS considers Grove Farm should be CA, they should seek the further views of the Applicant and Mr & Mrs Jones prior to making their decision.

Helen Edwards, Rachel Kingston and Patricia Kingston

8.6.21. Plot 1/6 concerns a small section of land adjacent to the A12 westbound on-slip road.

8.6.22. The CA Schedule submitted at Deadline 9 [REP9-053] confirmed that agreement had not yet reached with the owners. The Applicant stated that it is currently negotiating draft Heads of Terms with this party's land agent and hoping to conclude discussions as soon as possible. The ExA saw and heard no evidence to the contrary.

8.6.23. On that basis, the ExA is confident on the evidence before us that there would be no impediment to the Applicant reaching private agreements with the above in order for the land to be taken by agreement, and that the exercise of the powers conveyed in the PA2008 should not be necessary. The SoS may wish to request an update from the Applicant on progress towards these agreements prior to making their decision. However, should this not be capable of being achieved, and taking into consideration that the parties do not object to CA as a matter of principle, the ExA is satisfied that the CA of the land meets the tests in the PA2008.

8.7. SPECIAL CATEGORY LAND

8.7.1. Special Category Land is defined in Regulation 2 of the APFP Regulations as "*land identified as forming part of a common, open space, NT land or fuel or field garden allotment*".

8.7.2. For the avoidance of doubt, the Applicant has classified the Gardens of Peace land as potentially falling within this classification. However, and as discussed above, the matters concerning CA have been resolved.

8.8. HUMAN RIGHTS ACT 1998 CONSIDERATIONS

8.8.1. In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is necessary to consider the interference with human rights which would occur, if CA and TP powers were granted.

8.8.2. The Applicant acknowledged in the SoR [REP9-016] that the DCO would engage a number of Articles of the Human Rights Act 1998 (the Human Rights Act) including:

- Article 1 of the First Protocol (the right to those whose property would be compulsorily acquired to the peaceful enjoyment of their possessions).

- Article 6 of the First Protocol (which entitles those affected by the powers sought to a fair and public hearing).
- Article 8 of the First Protocol (which seeks to protect private and family life, home and correspondence).

8.8.3. No public authority is allowed to interfere with these rights except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.

8.8.4. The Applicant set out in the SoR [REP9-016] the considerations that arise in relation to the application and advises that it has carefully considered the balance to be struck between individual rights and the wider public interest.

8.8.5. Having regard to the relevant provision of the Human Rights Act the ExA has considered the individual rights interfered with and the submissions made by the APs in this regard and are satisfied that:

- In relation to Article 1 of the First Protocol that the proposed interference with individual's rights would be lawful, necessary, proportionate and justified in the public interest.
- In relation to Article 6 the ExA are satisfied that all objections which were submitted to the Examination have either been resolved with the Objector, or the Objector has had the opportunity to present their cases to us in writing and at the CAHs.
- In relation to Article 8 the interference is in accordance with the law and is necessary in the interests of the economic well-being of the country.

8.9. THE EQUALITY ACT 2010

8.9.1. S149 of the Equality Act 2010 requires a public authority, in the exercise of its functions to:

- Have due regard to the need to eliminate discrimination harassment and victimisation and any other conduct prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who do not share it.

8.9.2. The protected characteristics are age, sex, gender reassignment, disability, pregnancy and maternity, religion and belief and race.

8.9.3. The ExA considers that there is no evidence that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not or any indication that allowing the application would have any harmful equality implications.

8.10. ExA RECOMMENDATION

8.10.1. In the event that the SoS is minded to grant development consent for the Proposed Development, the ExA recommend that:

- The CA included in the Recommended DCO be granted, subject to the removal of Plots 4/1 to 4/11 from the BoR [REP9-017].
- The TP included in the Recommended DCO be granted.
- The CA of SUs land and rights over land included in the Recommended DCO be granted.
- The powers authorising the extinguishment of rights and removal of apparatus of SUs included in the Recommended DCO be granted.
- The CA of rights over land held by the Gardens of Peace included in the Recommended DCO be granted.
- The SoS can be satisfied that the Order land, in relation to open space land, when burdened with the order right, would be no less advantageous than it was before to: persons in whom it is vested; other persons; and, the public.
- The powers included in the Recommended DCO to apply, modify or exclude a statutory provision be granted.

9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1. INTRODUCTION

9.1.1. The application draft DCO [APP-015] and the EM [APP-016] were submitted by the Applicant as part of the application for development consent. The EM describes the purpose of the draft DCO as originally submitted, with each of its Articles and Schedules. The EM was updated once during the Examination at Deadline 9 [REP9-013].

9.1.2. The application draft DCO [APP-015] was broadly based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009; but departed from those clauses to draw upon drafting used in made Orders for similar development under the PA2008, the Transport and Works Act 1992 and other Acts authorising development. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remain a starting point for the consideration of the DCO. Precedent cases have also been considered where appropriate. The draft DCO and subsequent iterations are in the form of a Statutory Instrument as required by s117(4) of the PA2008.

9.1.3. This Chapter provides a summary of the main changes made to the DCO during the Examination, between the application draft DCO and a final draft DCO submitted by the Applicant at Deadline 9 [REP9-012]. We do not report on every change made in the updated versions. This is because many amendments were made as a result of typographical or referencing errors; slight revisions of the wording following either discussion between the Applicant and relevant IPs or from their WRs, or as a result of minor changes following WQ1 [PD-008] and WQ2 [PD-015]. The Recommended DCO in Appendix C of this Report incorporates these minor changes.

9.2. THE DCO AS APPLIED FOR

9.2.1. The Recommended DCO is structured as follows:

- Part 1, Articles 1 and 2 sets out how the Order may be cited and when it comes into force and the meaning of various terms used in the Order.
- Part 2, Articles 3 to 9 convey the principal powers and provide development consent for the Proposed Development, and allow it to be constructed, maintained and operated. Article 7 sets out the Limits of Deviation. Articles 7 sets out who has the benefit of the powers of the Order and how those powers can be transferred.
- Part 3, Articles 10 to 18 provide for the Undertaker to be able to carry out works to and within streets, alter layouts, to create or improve accesses, to permanently close streets, and to undertake agreements with street authorities.
- Part 4, Articles 19 to 24 concern supplemental powers relating to discharge of water, authority to survey land and protective works to buildings; and the provision of powers in relation to trees which need

to be removed or lopped in relation to the Proposed Development and any protective works to buildings.

- Part 5, Articles 25 to 41 provide for the Undertaker to be able to compulsorily acquire the Order land and rights over/ within it, and to be able to temporarily use parts of the Order land for the construction or maintenance of the Proposed Development. The provisions provide for compensation to be payable to Affected Persons in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to land and equipment of SUs.
- Part 6, Articles 42 to 54 are concerned with miscellaneous and other general matters including the disapplication of other legislative provisions; operational land in respect of the TCPA1990; service of notices; and arbitration.

9.2.2. There are 10 Schedules to the Order. These are:

- Schedule 1 is the description of the Authorised Development.
- Schedule 2 sets out the 21 Requirements agreed to by the Applicant.
- Schedules 3 and 4 list the streets subject to street works. Permanent and temporary alterations to the layout; access maintenance; and ProWs that would be temporarily and permanently stopped up.
- Schedule 5 lists those trees to be removed which are subject to TPOs.
- Schedule 6 list the plots as shown on the Land Plans [REP9-003] which would be subject to CA of new rights.
- Schedule 7 sets out compensation enactments in relation to CA.
- Schedule 8 lists the plots as shown on the Land Plans [REP9-003] which would be subject to TP.
- Schedule 9 lists the provisions protecting SUs and their apparatus.
- Schedule 10 lists the certified documents.

9.2.3. The ExA asked 32 WQ1s [PD-008] and six WQ2s [PD-013] based on the then current versions of the draft DCO [APP-015] and [REP4-002]. The Applicant responded [REP2-011] and [REP5-041] clarifying matters that we had sought; with suggested changes either accepted or rejected by the Applicant. In addition, the Applicant had also been in discussions with various IPs such that, at each Deadline, updated draft DCOs were submitted into the Examination. Table 9.1 below shows the draft DCO [APP-015] and its updates:

Table 9.1 - Iterations of the draft DCO Post Submission

Deadline No.	Examination Library Reference	Notable Changes Made
2	[REP2-002]	Changes to Article 2 definitions in response to WQ1 [PD-008], and ongoing discussions with IPs Re-wording of Schedule 2, Requirement 4(2) to list those plans subject to the CEMP

Deadline No.	Examination Library Reference	Notable Changes Made
		Update to Schedule 6 Column 2 for Plot 1/27 Numerous minor amendments to improve consistency with other Articles in the DCO and in accordance with drafting principles, and to correct errors
3A	[REP3A-004]	Addition to Part 5, Article 28 following WQ1 [PD-008] Definitions added to Schedule 2, Requirement 1 to define the GIR and outline AMP owing to changes to Schedule 2, Requirement 6 Re-written Schedule 2, Requirement 9 (Archaeology) and subsequent deletion of the AMP requirement in Requirement 4(2) following criticism of the approach to dealing with archaeology from the ExA and IPs
4	[REP4-002]	Updates to Part 6, Article 48 following discussions with the EA Definitions added to Schedule 2, Requirement 1 to define the outline AMS and TMP documents following their submissions into the Examination. Addition to Requirement 10 (Traffic Management) and new Requirement 11 to deal with trees separately from Requirement 4 at the request of the ExA and IPs TfL added to Schedule 2, Requirement 4(1), 5(1), 6(1) and 8(1) at its request Insertion of subparagraph (2) to Schedule 2, Requirement 13 to deal with deer fencing at the request of the ExA Changes to Schedule 6 at the request of TfL
5	[REP5-011]	Changes to Article 2 definitions in response to WQ2 [PD-015], and ongoing discussions with IPs New subparagraphs (8) to (11) to Part 3, Article 10 following discussions with TfL in respect to parking permits for construction activities Deletion of Schedule 1, Work No.17 and amendments to the wording of Works Nos. 18, 27 and 32, and changes to Schedule 8 following acceptance of Change Requests Nos.1-4 (see Chapter 2 of this Report) The EA added to Schedule 2, Requirement 4(1) and 5(1), at its request New Schedule 2, Requirement 14 to deal with the implementation of the Inter-Green signalling (see Section 5.4, Chapter 5 of this Report)

Deadline No.	Examination Library Reference	Notable Changes Made
6	[REP6-005]	Change to wording of Schedule 1, Work No.7 to reflect the adjusted extent of the carriageway resurfacing
7	[REP7-003]	Changes to wording of Schedule 1, Work No.23A, 23C and 30, and Schedules 5, 6 and 8 following acceptance of Change Requests Nos.5-7 (see Chapter 2 of this Report) New part (g) to subparagraph 3 of Schedule 2, Requirement 5 to ensure the visual screen is installed to Grove Farm following ExA concerns on the effect of the Proposed Development on the living conditions of the occupiers of Grove Farm and Action Point 8 at ISH3 [EV038] Amendments to Schedule 2, Requirements 13 and 14 following discussions with TfL Insertion of Schedule 9, Part 5 Protective Provisions for NGET and NGG following agreement with the SU
8	[REP8-002]	Deletion of paragraph (2)(c) to Part 3, Article 18 following the recommendation of the ExA in our Consultation Draft DCO [PD-021] Change to area of land needed for Schedule 1, Work No.32 following Change Request No.7 being accepted (see Chapter 2 of this Report) Insertion of new Schedule 2, Requirement 15 and amendments to Schedule 8 for Maylands Golf Course following the recommendation of the ExA in our Consultation Draft DCO [PD-021] Insertion of Schedule 9, Part 5 Protective Provisions for Cadent Gas following discussion with the SU. It should be noted that Cadent Gas and the Applicant remain in disagreement over a few areas which are discussed below. Insertion of new Schedule 9, paragraph 31(2) following discussions with Essex CC
9	[REP9-012]	Change to area of land needed for Schedule 1, Work No.15 and Schedules 6 and 8 following Change Request No.8 being accepted (see Chapter 2 of this Report)

9.2.4. No IPs raised any concern with the description of the Authorised Development during the Examination. No IP raised any concern with the description of the works or the documents to be certified. Our concerns with some definitions in the draft DCO submitted with the application [APP-015] were addressed within the Examination.

9.3. CONTENTIOUS MATTERS IN THE EXAMINATION

9.3.1. As stated above, it is not the intention of the ExA to list each change made to the various iterations of the draft DCOs. This would make this section of the Report unnecessarily lengthy and arduous, particularly as many of the changes were either sought by IPs or did not raise any concerns from them, or that we were satisfied with the changes such that we had no reason to examine them further. The SoS can refer to WQ1 [PD-008] and WQ2 [PD-015] together with the agendas for ISH2 [EV-010] and ISH3 [EV-038] for a full list of the questions and concerns raised by the ExA during the Examination.

9.3.2. The two main commentators on the adequacy of the draft DCO were LB Havering and TfL. Each raised issues, many of which were carried forward into the ExA's Consultation Draft DCO [PD-021] either as a recommended change or where we explained why we disagreed the change was necessary.

9.3.3. The main contentious matter in the Examination concerned the ownership, management and responsibility for Work No.2.

Ownership of Work No.2

9.3.4. The SoS should note that TfL's initial position [RR-028], [REP2-036] [REP3A-046], [REP4-038], [REP5-070], [REP7-042], [REP8-038] is that it does not want ownership or maintenance responsibilities for the new A12 off-slip road forming Work No.2, and that it should remain with the Applicant. As it currently stands, Part 3, Article 16 and Schedule 4 Part 2 would convey ownership and maintenance responsibility to TfL.

9.3.5. TfL give reasons [REP4-038] why it does not want ownership and maintenance of it:

- The new off-slip is significantly longer and a more complex structure, thus its responsibilities would be over and above that of the existing road including significant embankments, drainage systems, an attenuation pond, a large retaining structure supporting the eastern part of the new off slip road and a complex bridge interface with the new Maylands bridge.
- The new off slip road may well be associated with a number of necessary mitigation features contained within the Recommended DCO but unrelated to the new off-slip road itself and for which the Applicant, not TfL, should be responsible. This may include noise mitigation measures for Grove Farm and deer fencing along the slip road.
- The new structures associated with the new off-slip road are intrinsically linked with the new loop road between the northbound M25 and eastbound A12. Under the proposed split of responsibility set out in the Recommended DCO, it will be hard to properly split where responsibility for the new Maylands bridge ends and the new retaining structure for the eastern end of the slip road starts as the two are structurally linked together.

- The Applicant has the expertise and is more than able to maintain the new off-slip road. The Applicant already maintains the A12 eastbound on-slip and the A12 westbound off-slip roads which are situated on the east side of the motorway junction (within Essex CC/Brentwood BC administrative area). It therefore already maintains two of the four exit and entry points onto the A12 at this junction.
- The Applicant is already maintaining and will be maintaining further structures of a similar nature in the area including what will now be three additional bridges associated with the new M25 northbound to A12 eastbound loop road. As a result, TfL believes that it will be more cost effective for the Applicant to build, repair and maintain these new structures as part of its Design, Build, Finance and Operate contract for the M25 rather than TfL build them into its highway maintenance contract for the TLRN. In that sense, the public purse will be better served by the Applicant taking responsibility for the new off slip road.
- TfL is not funded to take on the additional cost of the operation and long-term repair, maintenance and replacement of the new off slip road and its structures. The Applicant has not offered to compensate TfL in respect of the costs it will incur in taking on responsibility for the new off slip road.
- Uncertainties around the split of maintenance responsibilities means that there is room for dispute between contractors appointed by the Applicant responsible for remedying construction defects and those contractors appointed by TfL responsible for day-to-day maintenance.
- It is not possible to determine from the wording in the Recommended DCO what features TfL would be taking on responsibility for. The Applicant has not, to date, been able to provide any clarity on this. The Recommended DCO should not be made while such ambiguity remains.

9.3.6. TfL thus invites the SoS [REP9-082] to relieve it of the ownership and maintenance of the new A12 off-slip forming Work No.2. To do this, the SoS would need to make the following changes to the Recommended DCO:

- Article 16(1)(b), Article 16(7) and Part 2 of Schedule 4 would need to be deleted.
- Suggested PPs as advanced at Deadline 9 [REP9-082] would still be required in relation to the remaining works and changes by the Applicant to the existing A12 main carriageway which will continue to be operated and maintained by TfL.

9.3.7. The Applicant maintained [REP5-049] that the ownership of Work No.2 should be with TfL. It stated that Part 3, Article 11 of the Recommended DCO follows drafting precedent in a number of made Orders and sets out that the Highway Authority(ies) will be responsible for new highways that are not trunk or special roads and that Highways England will be responsible for the bridges below the waterproofing membrane of the structure. This is does not place responsibility for the bridge structure on TfL save as regards the highway surface. The Applicant further stated that TfL also has the expertise to maintain the new off-slip as the existing off slip forms part of the existing road network and it disagrees

that it would be more cost effective for the Applicant to take on responsibility for the off-slip.

9.3.8. TfL has, in its submissions [REP2-036] [REP3A-046], [REP4-038], [REP5-070], [REP7-042], [REP8-038], stated that, without prejudice to its initial position, it will "*reluctantly*" be prepared to take on responsibility for the new off-slip road if the SoS is satisfied that it should, and suitable arrangements are agreed and protections in favour of TfL are put in place. Essentially these are either:

- A side agreement being reached and signed between the Applicant and TfL in which matters concerning, inter alia, the ownership, management, maintenance and divisions of responsibilities are set out; and/or
- Suitable PPs being included within the Recommended DCO.

9.3.9. Negotiations have been ongoing between the Applicant and TfL throughout the Examination. The ExA was prepared to allow as much time as possible to allow these discussions to conclude but did, at Action Point 7 to ISH3 [EV-038], request that the Applicant include full PPs for the SoS to consider should the side agreement not be signed by the close of the Examination. The Applicant provided this at Deadline 7 [REP7-027] and TfL provided a response together with its own version of PPs at Deadline 8 [REP8-038].

9.3.10. At Deadline 9 [REP9-082] TfL stated that it "*has been able to agree with the Applicant the majority of provisions that were sought in the protective provisions submitted by TfL at Deadline 8 (REP8-038 Appendix A). TfL and the Applicant are proposing to enter into a side agreement in relation to those provisions that have been agreed".*

9.3.11. TfL stated that it was no longer seeking any further amendments to the Recommended DCO as prescribed in Appendix A to its Deadline 4 submission [REP4-038], including the need for full PPs as set out at Deadline 8 [REP8-037]. However, disputes between the Applicant and TfL remain over the issue of commuted sums. TfL final position [REP9-082] is that, in the event of the SoS being satisfied that the ownership and maintenance of Work No.2 should be TfL's, then its PPs as set out in its Deadline 9 submission to cover the payment of a commuted sum and TfL's costs are the outstanding issues should be inserted into the Recommended DCO.

9.3.12. The SoS must therefore in the first instance determine whether the ownership of Work No.2 ought to fall within the Applicant's or TfL's ownership.

9.3.13. The ExA's view is that it does not see any logical reason why TfL shouldn't take on the responsibilities, as set out in the Recommended DCO. In many of the points raised above, the ExA considers these to be matters that can be negotiated between the Applicant and TfL for example, the division of responsibilities of maintenance. As the new off-slip road is a replacement of the existing and TfL operate both the A12

itself at this point and the westbound on-slip, the ExA is satisfied that TfL should own and manage Work No.2.

9.3.14. Should the SoS agree with TfL, they may need to consult the Applicant as to whether responsibility for Work No.2 would have any bearing on the delivery of the scheme.

9.3.15. The ExA returns to the matters of PPs and other changes needed to the final Draft DCO [REP9-012] below.

Schedule 2, Requirement 4 (CEMP)

9.3.16. In its LIR [REP1-031], LB Havering maintained that the SoS should not be approving the CEMP at the details stage i.e., after the Order has been made. It stated that in its view, "*the* [SoS must] *be assured that the CEMP must be in compliance with the submitted ES. LB Havering sees nothing that would prevent a substantive CEMP being submitted prior to the completion of the Examination to aid this determination. The view expressed by the Applicant in its supporting documentation is inconsistent with the requirement for the Applicant (or a successor body) as the undertaker to be responsible for seeking the discharge of the requirements".*

9.3.17. Its concerns were twofold. Firstly, the wording of Requirement 4 itself is discussed below as being a DCO matter. Its secondary concerns on the absence of outline ECPs themselves are a planning matter and which we discuss in the various sections in Chapter 5 of this Report.

9.3.18. As originally submitted, the outline CEMP [APP-096] included no outline ECPs (Appendix F to the outline CEMP). Paragraph 4.4.3 provided a list of documents but stated that "*it is expected that some or all of the following ECPs will be prepared…*". In the original draft DCO submitted with the application [APP-015], Requirement 4 listed none of the ECPs to support the outline CEMP [APP-096].

9.3.19. With the REAC [APP-097] updated final version at Deadline 9 [REP9-047] only providing a series of statements on mitigation, the ExA shared the concerns of LB Havering, considering the Applicant's position to be imprecise and non-committal. Had it remained, the Applicant would have had flexibility to submit whatever ECPs, and to the level of detail it sought fit. We put this to the Applicant in WQ1 DCO 1.25 [PD-008]. At Deadline 2 [REP2-002], the Applicant updated Requirement 4 and listed the documents which "*must*" be included within the final CEMP.

9.3.20. The updated Requirement 4 [REP2-002] included the AMP and AMS as part of the CEMPs ECP, but these were subsequently removed in updated versions of the draft DCO [REP3A-004] and [REP4-002] respectively and added to Requirement 9 (Archaeology) a new Requirement 11 (Trees) following the ExA's request for it to do so at ISH1 [EV-010].

9.3.21. LB Havering's other principal concern in this regard [REP1-031] was the wording "*substantially in accordance"* and *"must reflect"* remain in Requirement 4 (and in other Requirements) of the final Draft DCO [REP9-

012]. The Applicant has stood by its response to WQ1 DCO 1.26 and DCO 1.27 [REP2-011] that the words should be retained to allow for flexibility. LB Havering maintained its objection to the use of this wording, confirmed in its response to the ExA's Consultation Draft DCO [REP8-028A].

9.3.22. However, as also discussed below, the ExA does not agree with the Applicant that such wording is appropriate. While the detailed design stage may well result in some refinement of the mitigation, the ExA is of the firm view that the CEMP, secured by Requirement 4 of the Recommended DCO must not be allowed to depart from the outline CEMP other than in terms of minor changes. The ExA considers that allowing the CEMP to only be "*substantially"* in accordance potentially allows for a significant departure from it, as "*substantially*" is not defined in the final Draft DCO [REP9-012]. Furthermore, allowing the measures in the CEMP to "*reflect"* with the REAC also fails to adequately tie the Applicant to the commitments.

9.3.23. As set out in Tables 9.2 and 9.3 below, the ExA is recommending that all of these imprecise and ambiguous terms are removed. We have recommended that outline documents must be "*in accordance with"* its outline counterpart. The Applicant has not evidenced that such wording would cause it difficulty.

9.3.24. Therefore, subject to the changes we propose in the Recommended DCO, the ExA is content with Requirement 4.

9.4. ExA's CONSULTATION DRAFT DCO

9.4.1. Following a review of the responses from IPs and the discussions that took place at ISH3 [EV-038], the ExA issued its Consultation Draft DCO [PD-021] of the suggested changes it wished to be made to the Applicant's draft DCO that was submitted at Deadline 7 [REP7-003].

9.4.2. The Consultation Draft DCO [PD-021] set out matters where the ExA considered continued concerns arose. It also included recommendations for changes to PPs and we will discuss these matters further in Section 9.5 below, along with whether objections remain outstanding from other IPs.

9.4.3. Table 9.2 below sets out those changes we requested in the Consultation Draft DCO [PD-021]; where the Applicant has disputed the need for the change; and our comments as to whether the explanation afforded by the Applicant overcomes our initial concern. We make no further comment where the Applicant has accepted our suggested changes [REP8-010].

Table 9.2 – Summary of Applicant's Responses to the ExA's Consultation Draft DCO [PD-021] and ExA's Recommendation

Provision in Draft DCO [REP6-003]	Requested Change	Applicant's Response [REP8-010]	ExA's Response
Part 3, Article 13(6) *Temporary closure, alteration, diversion and restriction of use of streets* **Part 3, Article 18(11)** *Traffic regulation* **Part 4, Article 19(9)** *Discharge of water* **Schedule 2, Requirement 19** *Details of consultation*	Both TfL and LB Havering requested to the notice periods be extended from 28-days to a longer period up to 56-days. In its RR [RR-028], TfL stated that the Silvertown Tunnel Order as evidence where a longer timescale was allowed. LB Havering re-iterated at Deadline 10 [REP10-015] that it is and will be for some time to come operating under severe pressure on resourcing following the Covid-19 pandemic. While the ExA considered this to be overly long, we did consider a 42-day extension to be reasonable given the current circumstances.	The 28-day determination period is sufficient and standard practice even accounting for Covid-19. An additional 14 days to this period could cause unnecessary delay to the programme and result in significant additional expense being incurred.	The ExA **rejects** the explanation. The Applicant has not evidenced how a 14-day extension proposed by the ExA would cause it problems delays or expenses. The ExA is persuaded that the additional time would be needed and welcomed by relevant authorities The ExA recommends the change be made.
Schedule 2, Requirement 4(1) *CEMP* **Schedule 2, Requirement 5(2)**	The ExA considers the words "*substantially in accordance*" is imprecise. We put it to the Applicant that the words "*in accordance"* would ensure the CEMP to be	The term "*substantially in accordance*" is both proportionate and precedented. The use of the term 'substantially' provides a proportionate level of flexibility, which is necessary and appropriate in the delivery of complex major infrastructure	The ExA **rejects** the explanation. There are equally other Orders such as Southampton to London Pipeline Order 2020 in which "*in accordance"* was used. The ExA cannot comment on other

Provision in Draft DCO [REP6-003]	Requested Change	Applicant's Response [REP8-010]	ExA's Response
LEMP **Schedule 2, Requirement 9(2)** *Archaeological remains* **Schedule 2, Requirement 10(2)** *Traffic management* **Schedule 2, Requirement 11(2)** *Trees*	submitted to the SoS would be aligned to its outline counterpart whilst allowing for some minor departures where necessary.	projects. It is also in the public interest that a degree of flexibility, within the envelope of the environmental statement, to construct the Scheme in the most appropriate manner. Wording used in M42 Junction 6 Order 2020 and the A63 (Castle Street Improvement) Order 2020 and others. The ExA will recall that this matter has arisen previously. The Secretary of State's decision letter following the examination into The A1 Birtley to Coal House DCO 2021, which included his view on the use of the "substantially".	Orders. In this Examination, the ExA considers a greater degree of certainty is needed and it is appropriate to use "*in accordance*". The ExA remains of the view that the use of the word "*substantially*", which is not defined in the Order, is imprecise and allows for a considerable departure from the outline document to fall under this definition. The SoS will note that other Requirements in the final Draft DCO [REP9-012] do not use "*substantially*" The ExA recommends the change be made.
Schedule 2, Requirement 4(2) *CEMP* **Schedule 2, Requirement 8(1)** *Surface and foul water drainage*	In a similar issue to Requirement 4(1) above, the term "*must reflect"* is deemed imprecise and should be changed to "*in accordance with".*	The term" reflect" is appropriate and that the term 'in accordance with' is not appropriate in this instance given that the details of the mitigation measures outlined within the REAC are still to be determined through the detailed design stage.	The ExA **rejects** the explanation. The Applicant should be confident that its evidence in the CEMP and examined in this application is capable of being implemented at detailed design stage. The ExA remains of the view that "*must reflect*" is imprecise and too general. The ExA recommends the change be made.
Schedule 2, Requirement 5(3)(g) *Landscaping*	Part (g) was added to the draft DCO at Deadline 7 [REP7-003] to require a visual screen and planting to Grove Farm. The ExA	See below.	The ExA **rejects** the explanation. The ExA recommends the deletion be made.

Provision in Draft DCO [REP6-003]	Requested Change	Applicant's Response [REP8-010]	ExA's Response
	recommended this is removed as it prefers a separate Requirement for Grove Farm following concerns outline in Chapter 5 of this Report and as discussed below.		
Schedule 2 New Requirement *Grove Farm*	Because of concerns surrounding the effect of the Proposed Development on the living conditions of the occupiers at Grove Farm, the ExA recommended a separate Requirement be added requiring details of planting and visual screen (replacing the current Requirement 5(3)(g), and post-construction monitoring of peak noises be carried out.	A site-specific plan for Grove Farm would not be appropriate. Change Request No.8 proposes site specific arrangements. The Applicant has already provided evidence of peak noise levels from traffic using the new A12 eastbound off-slip and why an acoustic barrier would not be effective or an appropriate use of funds. The revised egress on to the A12 and planting proposals and visual screen are shown on the Change Request 8 plans and thus form part of the LEMP.	The ExA **partially accepts and partially rejects** the explanation. For reasons discussed in Chapter 5 of this Report, the ExA accepts that post-construction noise monitoring cannot be reasonably required, and this element is dropped. However, again for reasons set out in Chapter 5, the ExA considers a site-specific plan is required to deal specifically with the sensitivity of Grove Farm and to ensure the measures are adequate in mitigating the harm to Mr & Mrs Jones's living conditions. The ExA recommends the change be made.
Schedule 2, Requirement 5(4) *Landscaping*	The Requirement as worded permits the Applicant to use "*other recognised codes of good practice*" if not using British Standards. The ExA finds this imprecise and	Does not need amending. The purpose of the wording is not to enable inferior codes to be followed but is to ensure all the appropriate codes/standards are adhered to. Alongside the British Standards it might also be necessary to work in	The ExA partially **accepts** the explanation. Nevertheless, the wording as drafted would allow the Applicant to depart from the British Standard without any regulation, and the ExA remains of the view

Provision in Draft DCO [REP6-003]	Requested Change	Applicant's Response [REP8-010]	ExA's Response
	allows for inferior codes to be used without scrutiny. The ExA recommended that the SoS should at least approve the other codes.	accordance with guidance provided by industry associations. This guidance would not replace the use of British Standards but would be in addition to them where required. The wording is also well precedented.	that "*other recognised codes of good practices*" is vague and imprecise. The issue could be resolved by the replacement of the word "*or*" with "*and*". That would ensure the "*other recognised codes of good practices*" can only be used alongside, as opposed to instead of the British Standard. The ExA recommends the change be made.
Schedule 2, New Requirement *Code of Construction Practice*	The ExA considered that notwithstanding the Scheme would benefit from a single document to deal with construction practices, both environmental and practical, in the form of a CoCP. The ExA recognised that the information to support a CoCP was before the Examination contained in a number of documents (on which a signposting document was submitted at Deadline 5 [REP5-052] to identify where they were). We proposed that they be amalgamated for ease of reference. We	The Applicant maintain its position that a CoCP is not necessary as the requisite information is provided within the Outline CEMP (REP5-027) and REAC (REP5-028).	The ExA **rejects** the explanation. See paragraph 9.4.5 below. The ExA recommends the change be made.

Provision in Draft DCO [REP6-003]	Requested Change	Applicant's Response [REP8-010]	ExA's Response
	did not need an outline document but proposed a CoCP be produced for the SoS.		
Schedule 9, Protective Provisions *Cadent Gas*	Protective Provisions were inserted as drafted by Cadent Gas in order to gauge the Applicant's response.	See Section 9.5 below	See Section 9.5 below
Schedule 9, Protective Provisions *Transport for London*	The Applicant was requested to insert draft Protective Provisions in lieu of any side agreement reached	See Section 9.5 below	See Sections 9.5 and 9.8 below

9.4.4. In summary, the principal changes concern time limits and the use of "*substantially in accordance/must reflect"* wording. The ExA considers that a 14-day extension to the said Articles and Requirements to allow further time for IPs to assess discharge material is reasonable particularly having regard to recovery from the Covid-19 pandemic. In the interests to clarity, the ExA recommends the removal of any ambiguous "*substantially*" and "*must reflect*" wording in the Requirements to ensure the documents that come forward are not capable of departing from what has been examined in the application. Matters concerning Grove Farm and the reasoning for an additional Requirement are discussed in more detail in Chapter 5 of this Report.

9.4.5. On the matter of the CoCP, the ExA was initially surprised that the application was not accompanied by such a document. This document, a common submission in NSIP cases, sets out a consistent approach the standards and procedures, as well as mitigation to which a developer or contractor must adhere in order to manage the potential environmental and people impacts of construction works. A CoCP can sit alongside a CEMP, LEMP and TMP and can inform, as an example construction programming, timing of works and measures to be neighbourly. In our WQ1 GQ 1.6 [PD-008], the ExA pointed to the benefits of having a CoCP before an Examination and requested one be submitted.

9.4.6. In its response [REP2-011], the Applicant stated that its previous schemes did not require the preparation of a CoCP. Instead, it only

requires an outline CEMP to be prepared in accordance with the design guidelines of DMRB (amongst others). The outline CEMP [REP9-046] was submitted as part of the DCO application and it sets out the purpose and the actions needed to manage environmental effects identified within the environmental assessment during construction and operation of the Scheme.

9.4.7. In its response at Deadline 3a [REP3A-042], LB Havering disagreed with the Applicant and stated that DMRB does not preclude a CoCP being produced and that a CoCP would allow for detailed consideration of the application and for clarity in any eventual DCO.

9.4.8. The matter was discussed at ISH1 and in our WQ2 TA 2.1 [PD-015] we requested a signpost document or navigation document explaining where measures normally contained within a CoCP are found in the Examination documentation and how they interdepend on one another. The application duly provided such a document at Deadline 5 [REP5-052].

9.4.9. LB Havering's Deadline 6 assessment [REP6-034] of the Signposting document [REP5-052] stated the following:

- *"The current Signposting document does not provide an understanding as to why a CoCP is not required. The principles of a CoCP are not discussed, instead the Signposting document illustrates the interdependencies between the various outline documents including the proposed management plans.*
- *The Traffic Management Plan (TMP) is not seen to be linked to the outline CEMP which is particularly important in regard to matters of pollution and community engagement.*
- *In the paragraphs dealing with transport interdependencies, no reference is given to the waste and materials movements. This omission highlights the Applicant's lack of appreciation of what a CoCP deals with, as waste and materials handling and movements form a critical component of a CoCP.*
- *One of the key benefits of a CoCP is that it brings together all the processes of: general site management; neighbour engagement; transport (deliveries and collections; management of the areas around the work compounds for non-motorised users; parking management; contractor low emission vehicle use requirements); permitted hours of working (with permits); noise and vibration notices; and dust and air quality.*
- *Community Engagement is a fundamental element of the CoCP. The scope of the community engagement, the methods and techniques to be employed, the duration of the works, the cumulative impacts of any construction sites operating in the vicinity needs to be included in the CoCP".*

9.4.10. The ExA has noted the Applicant's response to the above at Deadline 7 [REP7-020] where it largely repeated its previous points. However, the ExA concurs with LB Havering and considers that a CoCP would be a useful and required document for IPs, irrespective as to whether precedent does not exist for a CoCP in previous Highway England schemes. Our conclusion on this matter was reinforced by the Applicant's

Signposting document submitted at Deadline 5 [REP5-052], which demonstrates how scattered such information is and how a CoCP would be a useful and concise document to which the SoS and IPs could refer to.

9.4.11. In our Consultation Draft DCO [PD-021] the ExA recommended that an additional Requirement for CoCP should be inserted into the Recommended DCO, but without need for the Applicant to produce an outline for the Examination. The ExA noted the Applicant's response [REP8-010]. Nevertheless, the ExA considers the benefits of such a document being produced outweigh any concerns raised by the Applicant. LB Havering [REP8-028A], TfL [RR-028] and [REP8-038] and the EA [REP8-030] all made written representations supporting a CoCP document.

9.5. OUTSTANDING CONCERNS AT THE CLOSE OF THE EXAMINATION

Statutory Undertakers

9.5.1. No SUs, other than those reported below made any written submissions during the Pre-Examination or Examination periods.

9.5.2. Following an agreement with the Applicant on PPs, UKPN/EPN [RR-008] withdrew its representation on 14 May 2021 [AS-042]. Network Rail [RR-002] was satisfied that its infrastructure was not affected by the Proposed Development and it also withdrew its RR at Deadline 10 [REP10-024]. This followed the Applicant's stated unequivocal confirmation that the Network Rail would be consulted in circumstances where amendments to the application resulted in the reduction of the distance to the Works being less than 75m from its railway bridge. The ExA accepts that PPs for Network Rail are not therefore required or needed.

9.5.3. The PPs for both Cadent Gas and TfL remain outstanding matters not agreed by the close of the Examination.

Cadent Gas

9.5.4. Cadent Gas [RR-006], [REP2-024], [REP5-064], [REP6-039], [REP7-037] stated throughout the Pre-Examination and Examination periods that PPs remains a concern. Because negotiations were ongoing, the ExA was content to allow matters to proceed without significant questioning, particularly as the matters in dispute appeared to be narrowing.

9.5.5. At Deadline 7 [REP7-037] Cadent Gas tabled its PP amendments (three in total) to the draft DCO submitted at Deadline 6 [REP6-005]. They concerned changes to matters concerning on street apparatus, expenses and indemnity. The changes requested by Cadent Gas were copied verbatim into the ExA's Consultation Draft DCO [PD-021] for the Applicant to comment on. The Applicant included all changes in the final draft DCO [REP9-012] but outlined where dispute between the Applicant and Cadent Gas remained. The paragraphs in question are 56(3), 63(2)

to (5) and 64(3)(c) of Schedule 9, Part 6. We examine each in turn below.

9.5.6. Both the Applicant and Cadent Gas refer to the following Orders to support their respective positions:

- A1 Birtley to Coal House Order 2021 (A1 Order).
- M42 Junction 6 Order 2020 (M42 Order).
- A585 Windy Harbour to Skippool Order 2020 (A585 Order).
- A38 Derby Junctions Scheme (A38 Scheme) (referred to here as a Scheme as the Decision was returned to the SoS).

On street apparatus (Schedule 9, Part 6, paragraph 56(3))

9.5.7. The Applicant stated [REP6-017] that this paragraph concerns cost-sharing provisions in the NRSWA1991. S85 continues to apply to on-street diversion works (i.e., major highway works, major bridge works or major transport works) and are not displaced, as Cadent Gas contends, they would be by paragraph 56(1) and paragraph 63 of the final draft DCO [REP9-012].

9.5.8. Cadent Gas stated [REP5-064] that its position is consistent with the example Orders. The Applicant stated [REP6-017] that the continued application of cost-sharing provisions for such works is entirely consistent with the statutory position in Part 3 of the NRSWA1991. The Applicant further stated that it is a publicly funded body and should be able to continue to benefit from the statutorily permitted cost sharing provisions for major works. If this sub-paragraph was to be excluded, it would increase the costs of delivering the scheme. Cadent has not demonstrated that the continued application of statutory cost-sharing provisions that regulate the relationship between every other street authority and statutory undertaker will result in a detriment, and certainly not a serious detriment, to the carrying on of its undertaking. The Applicant stated that it respectfully requests that its proposed wording for sub-paragraph (3) is included. Neither party advanced its positions further at Deadline 7 [REP7-037] and Deadline 8 [REP8-014].

9.5.9. Notwithstanding the Applicant's response at Deadline 6 [REP6-017] including reference to a similar position being taken in the Southampton to London Pipeline Order 2020, the ExA cannot find anything directly similar in the other cited Highways England Orders. The A585 Order and M42 Order contain no such equivalent paragraph 56(3) as set out in the final Draft DCO [REP9-012]. While the ExA understand the point made by the Applicant, it has not been sufficiently explained why, in this application, the circumstances have so changed from Orders made very recently and why the SoS should take a different approach and insert the subparagraph.

9.5.10. The ExA concludes, on the evidence before us, that paragraph 56(3) should be deleted, and we have carried this through into the Recommended DCO.

Expenses (Schedule 9, Part 6, Paragraph 63(2) to (5))

9.5.11. This paragraph refers to payment of costs and expenses required in connection with the Authorised Development. Subparagraphs (2) to (5) set out the circumstances where sums would be deductable from any apparatus removed and not reused, such as the value of any apparatus used for scrap value or betterment value from the new equipment.

9.5.12. In its Deadline 5 response [REP5-064], Cadent Gas stated that the inclusion of such a deduction or reduction has the potential to lead to significant cost liabilities that are not catered for because Cadent Gas does not make allowance for such deductions and reductions. If the scheme were not consented through a DCO, such deductions and reductions would not apply. Cadent Gas stated that the diversions are scheme costs that should be borne by the Applicant, and that there is no justification for Cadent Gas being liable for a proportion of such costs when (but for the Project) Cadent would not incur them. Cadent Gas further stated that it could, under these circumstances, be in breach of its statutory duty under s9 of the Gas Act 1986 to develop and maintain an efficient and economical pipeline system for the conveyance of gas.

9.5.13. The Applicant responded [REP6-017] stating that the subparagraphs mirror other legislation and have been in substantially similar form since at least the Public Utilities Street Works Act 1950. The Applicant further stated that their effect is to ensure that, where a utility undertaker is moved because of another scheme, it is compensated for its net loss, and any betterment that it does derive from the scheme is properly taken into account when calculating that net loss. The Applicant further stated that SoS for the M42 Order, the A585 Order and A38 Scheme included all such provisions in the respective Orders and, as far as the Applicant is concerned, has been in all Orders since 2018.

9.5.14. The ExA has examined the three Orders made. As is the case for the Recommended DCO, the A585 Order and M42 Order both contain separate PPs for Cadent Gas; the A1 Order does not. In both, paragraphs 63(2) to (5) of the final draft DCO [REP9-012] are replicated almost verbatim in Schedule 12, Part 5, paragraph 52 for the M42 Order and Schedule 10, Part 3 paragraph 27 for the A585 Order. Moreover, they are further reflected in Part 1 of both Orders concerning other electricity, gas, water and sewage undertakers.

9.5.15. Cadent Gas has not adequately demonstrated in further submissions [REP6-039], [REP7-037], [REP8-029] or [REP9-063] why the ExA should depart from other Orders which the SoS has made. In the absence of such evidence, the ExA sees no reason to remove the paragraphs which appear to otherwise be accepted standard practice for PPs. The ExA thus concludes paragraph 63(2) to (5) as set out in the final draft DCO [REP9-012] should be retained. This is set out in the Recommended DCO with the Applicant's commentary wording and square brackets removed from the final draft DCO [REP9-012]. We do not list this change in Table 9.3 below.

Indemnity (Schedule 9, Part 6, Paragraph (64)(3)(c)

9.5.16. The paragraph concerns the exclusion of consequential loss from the indemnity. Cadent Gas had initially sought the complete removal of the paragraph but has accepted that it can remain subject to the additional wording as shown in the square brackets in the final draft DCO [REP9-012]. In essence, the additional wording would extend Cadent Gas's indemnity referred to in paragraph (64)(1)(b) to its contract liability of the indirect or consequential loss of a landowner where the apparatus is located or the subject of the works.

9.5.17. Cadent Gas stated [REP5-064] that without this provision, it is exposed to any third-party consequential loss claims from landowners where Cadent has legal easements. As a matter of industry practice Cadent Gas is required to give full indemnities in its gas easements which do not include a consequential loss carve out. Otherwise, Cadent Gas would not be able to obtain those land rights. Unlike other utilities (for example those in the electricity sector), Cadent Gas has to obtain legal easements as Cadent does not have statutory rights across third party land. Cadent Gas cannot rely upon contractual wayleaves or statutory rights as a way of obtaining access across private land.

9.5.18. Cadent Gas also stated [REP5-064] that it is unreasonable and unacceptable that a loss Cadent Gas suffers as a result of the actions of the Applicant, and which may be recoverable under common law, should be excluded from the indemnity. This risk is clearly identifiable and quantifiable by the Applicant as it only applies in respect of landowners in whose land apparatus is situated so is a narrow exclusion to a broad carve out to the indemnity which Cadent Gas is otherwise content to accept. This issue has the potential to cause serious detriment to Cadent Gas in the event that it is subject to such a claim by a landowner. Cadent Gas derives no benefit from this scheme and should not be exposed to any risk.

9.5.19. The dispute between the Applicant and Cadent Gas is whether this additional wording is reasonable. The Applicant, in its response at Deadline 6 [REP6-017], stated that the SoS has considered the matter of consequential losses in both the A38 Derby Junction Scheme and the M42 Junction 6 Order 2020. The SoS ruled that the ExA (in the A38 Scheme) concluded that "*s127 [PA 2008] requires Cadent to be protected from serous detriment in undertaking its functions, however it does not protect it from all the costs of doing so*". Similar wording appears in the M42 J6 examination report. The exclusion of indirect and consequential losses was held to be entirely consistent with the Applicant's position as a publicly funded body.

9.5.20. However, Cadent Gas argued [REP5-064] that neither the A38 Scheme nor the M42 Junction 6 Order dealt specifically with the consequential loss wording in any detail. The Order where this issue was considered, the A1 Birtley to Coal House Order 2021, which in turn reflected the A585 Windy Harbour Order 2020, the SoS ruled in favour of the SU (referred to as s81 to 85 of the A1 Decision Letter).

9.5.21. The Applicant acknowledged [REP6-017] that the A38 Scheme and the M42 Junction 6 Order did not consider the specific point (because it was not raised by Cadent Gas on those scheme). However, the Applicant nonetheless stated that those schemes were deemed not to expose Cadent Gas to "*serious detriment*" and that the risk and detriment arising from a claim under an easement is part of what the SoS and ExA's previously considered reasonable to exclude from the Applicant's indemnity. Moreover, contrary to Cadent Gas's contention, the Applicant is not required to bear all costs of the scheme.

9.5.22. For the three Orders made, only the A585 Order and the M42 Order have PPs for Cadent Gas. For the former, an equivalent paragraph 64(3)(c) does not exist while in the M42 Order, only the first part exists, that being the part which is an agreed matter between the parties.

9.5.23. In the SoS's Decision Letters, only the A1 Order discusses the issue of consequential losses. For that Order, the issue before the SoS appears to be a reversal of the one here, in that Highways England was seeking to add words to the Order to remove its liability whereas in paragraph (64)(3)(c) of the final draft DCO [REP9-012] the Applicant is seeking to remove wording an indemnity extension upon itself.

9.5.24. The ExA notes the absence of the disputed wording for paragraph 64(3)(c) in the M42 Order would suggest that it ought to be removed. However, the SoS's A1 Decision Letter postdates the M42 Order. Moreover, and in the view of the ExA, the SoS was clear that, irrespective of the fact that it concerned Network Rail, the SU should not be put to unnecessary risk.

9.5.25. Should the circumstances of paragraph 64 of the draft final draft DCO [REP9-012] be triggered, the ExA considers it reasonable that Cadent Gas's indemnity should extend to its other liabilities to landowners, which as it stated at Deadline 5 [REP5-064] if it did not agree to it would not be able to obtain land rights. Further responses from the Applicant at Deadline 8 [REP8-012] and Deadline 9 [REP9-063] did not alter previous comments.

9.5.26. Having regard to s127 of the PA2008, which permits the CA freehold and rights over SU land providing that it does not cause "*serious detriment to the carrying on of the undertaking"*, the ExA is persuaded that the disputed wording of paragraph 64(3)(c) from the final draft DCO [REP9-012] should be retained. This is reflected in the Recommended DCO, minus the Applicant's commentary wording.

9.5.27. The ExA has thus found in Cadent Gas's favour on two of the three disputed points, and it is satisfied with that the PP for Cadent Gas as set out in our Recommended DCO would protect its interests. The SoS may, however, wish to seek an update from the Applicant as to whether a final agreement between the parties has been reached.

Transport for London

9.5.28. As discussed in Section 9.3 above, the need for PPs for TfL has rested on whether a side agreement could be reached and signed between it and the Applicant. While the ExA debated the progress and remaining disputes between the parties at ISH3 [EV-038], we have largely been content to allow matters to proceed without significant questioning during the Examination, in the knowledge that both the Applicant and TfL were still in negotiation.

9.5.29. At our request, the Applicant submitted at Deadline 7 the draft PPs for TfL [REP7-027]. TfL responded to this at Deadline 8 [REP8-038] with its own clean and tracked changed version. However, by Deadline 9 [REP9-082] TfL reported that a side agreement had largely been agreed and that, save for the following, PPs as set out by it at Deadline 8 were no longer needed.

9.5.30. However, TfL stated [REP9-082] that agreement had not been reached on the matter of costs and commuted sums. It stated that it did not agree that a local Highway Authority should be responsible for finding the additional funding arising from a third-party scheme, whether from the DfT or elsewhere and that it should fall to the undertaker to meet costs. Moreover, TfL stated that if the increased costs associated with the new off slip are not to be covered from the project budget that the Applicant has for this Proposed Development, then the ExA can have no confidence that TfL will be in a position to apply sufficient resources to work with the Applicant. This would be to ensure a suitable detailed design and to safely assure the new off slip, and that following the development the new off slip will be effectively operated. TfL has no budget to deal with those increased costs.

9.5.31. TfL concluded [REP9-082] that payments of a commuted sum as well as its reasonable costs are a standard position. Not to provide a commuted sum and payment of reasonable costs would leave TfL to find funds to pay for a third-party development diverting its limited resources away from other much needed operational issues.

9.5.32. In its response at Deadline 10 [REP10-008], the Applicant stated that the ongoing responsibility for the operation and maintenance of the A12 eastbound off-slip should remain with TfL as the current and most appropriate highway authority. The Applicant, it stated, does not have statutory responsibility for the local highway network and, insofar as the Scheme involves TfL incurring greater expense for the management of the TLRN, this is a matter between the DfT and TfL. It would be inappropriate to hand over the entire maintenance of the local highway to the Applicant, whose statutory responsibility is to maintain the SRN. It would also be not appropriate for the Applicant to pay TfL to perform its statutory duties. The Applicant further confirms that the matters of dispute will be a matter for the SoS to determine.

9.5.33. The ExA disagrees with the Applicant. As has been advanced by TfL throughout the Examination [RR-028], [REP2-036] [REP3A-046], [REP4-038], [REP4-038], [REP7-042] and [REP8-038], the Proposed

Development could potentially increase the responsibilities of TfL over and above the existing situation. The ExA considers that TfL's suggested PPs submitted at Deadline 9 [REP9-082] seek only to mitigate against the additional burdens placed upon it. Indeed, we find no evidence that TfL is seeking to offload responsibilities onto the Applicant.

9.5.34. The Applicant has not disputed the wording of TfL's suggested PPs [REP9-082] and on that basis, the ExA recommends they be inserted as Schedule 9, Part 7 of the Recommended DCO.

9.5.35. However, by the time the SoS makes their decision, it is possible that the Applicant and TfL will have signed the side agreement which may include provisions for costs and commuted sums. Should that be the case, the PPs for TfL may not be needed and can be struck out. The SoS thus may wish to seek an update from the parties on this matter.

9.5.36. Turning to other matters, at Deadline 4 [REP4-038] TfL set out a table of amendments it wishes to see to the then draft DCO [REP3A-004]. It was established at ISH [EV-038] that many of these suggested changes were tied up with the PPs/side agreement matters. Aside from those matters already discussed above, TfL cited two Articles it wished to see amended. They were:

- Part 4, Article 22(2) to increase the period from 14-days to 28-days.
- Part 5, Article 35(2) to increase the period from 14-days to 28-days.

9.5.37. In our Consultation Draft DCO [PD-021], the ExA did not recommend they be changed, considering the time limit to be satisfactory. TfL did not comment on this in its response at Deadline 8 [REP8-038].

9.5.38. In its response to the Applicant's Change Request No.8 [REP8-037], TfL concluded that the revised egress from Grove Farm forming Work No.15 was unlikely to have any material impacts on road safety. However, because this was a recent change to the application and made shortly before the close of the Examination, the specific details of this revised egress are not known. The ExA considers that the SoS, in consultation with TfL, should satisfy themselves that the realigned Grove Farm egress forming Work No.15 meets safety standards. For that reason, we have inserted into Requirement 16 of the Recommended DCO that these details be submitted. We do not consider this change would come as a surprise to the Applicant and as such we do not consider consultation on this matter is necessary.

Interested Parties

9.5.39. The ExA's Consultation Draft DCO [PD-021] also listed changes sought by LB Havering but where the ExA did not agree. These were: Part 3, Article 13(1) and (2) to remove the term "*use of any street*"; and Schedule 2 – insertion of new Requirement.

9.5.40. In its response [REP8-028A] to the ExA's Consultation Draft DCO [PD-021] LB Havering maintained its view that the words "*use of any street*" in Part 3, Article 13(1) and (2) is too broad a power and should be

removed. As explained by the ExA in our Consultation Draft DCO, we consider subparagraph (4) acts as the check and balance to the use of the Article. We stand by that assessment and do not propose the change is necessary.

9.5.41. LB Havering confirmed at Deadline 10 [REP10-015] the following outstanding queries which are not addressed above:

- Whether Schedule 2, Requirement 13(1) or (2) needs updating to ensure fencing to control deer during construction is inserted.
- That Schedule 6 makes reference to deer fencing.
- That the outline Community Engagement Plan is inserted into Schedule 10.

9.5.42. In respect to deer fencing, TfL in its response to Deadline 8 [REP8-038] appeared to be supportive of LB Havering's position, stating "*the Applicant therefore still needs to set out how deer movements will be managed during the construction of the scheme to avoid an increased risk of collisions between deer and traffic, whether this is in the outline Construction Environmental Management Plan or elsewhere*".

9.5.43. The Applicant responded at Deadline 9 [REP9-065] inserting a new commitment into the REAC [REP9-047] (GN0.1 in Table 1.1) to the effect that appropriate fencing and/or other measures will be installed during construction to reduce the risk of deer collisions with traffic along the A12 and other roads. This, the Applicant stated, is secured under Requirement 4 as the CEMP "*must reflect the relevant mitigation measures set out in the REAC*" and the "*construction of the authorised development must be carried out in accordance with the CEMP*". Aside from the "*must reflect*" wording discussed above, the ExA is satisfied that deer fencing is adequately provided for and controlled in the Recommended DCO.

9.5.44. In respect to Schedule 6, because LB Havering tabled this question one day before the close of the Examination the Applicant has not had an opportunity to respond to it. However, subparagraph (2) to Schedule 2, Requirement 13 was added to the draft DCO at Deadline 4 [REP4-002] and the ExA is confident that, had Schedule 6 needed updating, the Applicant would have been done so. The ExA does not therefore consider it likely that an oversight has occurred. Nevertheless, the SoS may wish to confirm this with the Applicant.

9.5.45. In respect to the outline Community Engagement Plan, as this forms part of the outline CEMP, which is a certified document in Schedule 10, the ExA does not consider any further action is needed.

9.6. ExA's RECOMMENDED CHANGES

9.6.1. Table 9.3 sets all suggested changed to the final draft DCO and as set out in the Recommended DCO.

Table 9.3 - Recommended Changes to the final draft DCO [REP9-012]

No.	Article/Schedule	Wording in final draft DCO [REP9-012]	ExA's Recommended Change
1.	**Part 3, Article 13(6)** Temporary closure, alteration, diversion and restriction of use of streets	*(6) "If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is made, it is deemed to have granted consent".*	*(6) "If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of ~~28~~ **42** days beginning with the date on which the application is made, it is deemed to have granted consent".*
2.	**Part 3, Article 18(11)** Traffic regulation	*(11) "If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent".*	*(11) "If the traffic authority fails to notify the undertaker of its decision within ~~28~~ **42** days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent".*
3.	**Part 4, Article 19(9)** Discharge of water	*(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.*	*(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within ~~28~~ **42** days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.*
4.	**Schedule 2, Requirement 3(1)** Detailed design	*(1) "The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function…"*	*(1) "The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following **an independent design review and a report on its findings on the design of the bridges and structures and** consultation by the undertaker with the relevant planning authority*

No.	Article/Schedule	Wording in final draft DCO [REP9-012]	ExA's Recommended Change
			and relevant highway authority on matters related to its function…"
5.	**Schedule 2, Requirement 4(1)** Construction Environmental Management Plan	*(1) "No part of the authorised development is to commence until a CEMP, substantially in accordance with the Outline CEMP…"*	*(1) "No part of the authorised development is to commence until a CEMP, ~~substantially~~ in accordance with the Outline CEMP…"*
6.	**Schedule 2, Requirement 4(2)** Construction Environmental Management Plan	*(2) "The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must reflect the mitigation measures set out in the REAC…"*	*(2) "The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, ~~must reflect~~ **is in accordance with** the mitigation measures set out in the REAC…"*
7.	**Schedule 2, Requirement 5(2)** Landscaping	*(2) "The landscaping scheme and LEMP must reflect the mitigation measures set out in the REAC and be substantially in accordance with the Preliminary Environmental Design and the Outline LEMP".*	*(2) "The landscaping scheme and LEMP must ~~reflect~~ **be in accordance with** the mitigation measures set out in the REAC and ~~be substantially in accordance~~ with the Preliminary Environmental Design and the Outline LEMP".*
8.	**Schedule 2, Requirement 5(3)(g)** Landscaping	*(g) "a permanent visual screening fence to be installed and planting to be undertaken in the interests of the visual amenity of the residents of Grove Farm".*	[DELETE]
9.	**Schedule 2, Requirement 5(4)** Landscaping	*(4) "All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice".*	*(4) "All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards ~~or~~ **and** other recognised codes of good practice".*
10.	**Schedule 2, Requirement 8(1)** Surface and foul water drainage	*(9) "No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC…"*	*(9) "No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, ~~reflecting the~~ **in accordance with the** mitigation measures set out in the REAC…"*

No.	Article/Schedule	Wording in final draft DCO [REP9-012]	ExA's Recommended Change
11.	**Schedule 2, Requirement 9(2)** Archaeological remains	*(2) "The Archaeological Management Plan must be substantially in accordance with…"*	*(2) "The Archaeological Management Plan must be ~~substantially~~ in accordance with…"*
12.	**Schedule 2, Requirement 10(2)** Traffic management	*(2) "The traffic management plan prepared under sub-paragraph (1) must be substantially in accordance with the Outline Traffic Management Plan and reflect the relevant mitigation measures set out in the REAC".*	*(2) "The traffic management plan prepared under sub-paragraph (1) must be ~~substantially~~ in accordance with the Outline Traffic Management Plan and ~~reflect~~ the relevant mitigation measures set out in the REAC".*
13.	**Schedule 2, Requirement 11(2)** Trees	*(2) "The Arboricultural Method Statement must be substantially in accordance with the Outline Arboricultural Method Statement and reflect the relevant mitigation measures set out in the REAC".*	*(2) "The Arboricultural Method Statement must be ~~substantially~~ in accordance with the Outline Arboricultural Method Statement and ~~reflect~~ the relevant mitigation measures set out in the REAC".*
14.	**Schedule 2, NEW REQUIREMENT 16** Grove Farm	N/A	INSERT: - ***(1) "No part of the authorised development is to commence until a site-specific plan for Grove Farm has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London and the London Borough of Havering.*** ***(2) The site-specific plan shall include:*** ***(a) details of the planting, visual screen to be installed, and any other mitigation deemed necessary for the boundary to the new A12 off-slip forming Work No.2; and*** ***(b) details of the egress route forming Work No.15 onto the new A12 off-slip forming Work No.2.***

No.	Article/Schedule	Wording in final draft DCO [REP9-012]	ExA's Recommended Change
			(3)The authorised development must be carried out in accordance with the approved site-specific plan for Grove Farm".
15.	**Schedule 2, NEW REQUIREMENT 17** Non-motorised users	N/A	INSERT: - ***"No part of the new loop road forming Work No.6 shall be opened for traffic until:*** ***(a) a scheme or agreement to secure the full non-motorised users' route between Harold Hill and Brentwood has been submitted to and approved in writing with the Secretary of State in consultation with the relevant highway authorities and relevant planning authorities; and*** ***(b) the junction section of non-motorised users' route within the Order limits has been delivered.***
16.	**Schedule 2, NEW REQUIREMENT 18** Code of construction practice	N/A	INSERT: - ***"No part of the authorised development shall commence until a Code of Construction Practice has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London and relevant planning authorities. The development shall be carried out in accordance with those approved details".***
17.	**Schedule 2, NEW REQUIREMENT 19** Gardens of Peace Muslim Cemetery	N/A	INSERT: - ***(1) No part of Work No.29 is to commence within plot Nos. 1/8a or 1/8 until a site-specific construction plan has been submitted to and***

No.	Article/Schedule	Wording in final draft DCO [REP9-012]	ExA's Recommended Change
			approved in writing by the Secretary of State following consultation with the Gardens of Peace and Cadent Gas. ***(2) Work No. 29 within plot Nos. 1/8a and 1/8 must be constructed in accordance with the approved site-specific construction plan referred to in sub-paragraph (1).***
18.	**Schedule 2, ~~Requirement 20~~ Requirement 24** Details of consultation	*"In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days for any response…"*	*"In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than ~~28~~ **42** days for any response…"*
19.	**Schedule 9, Part 6, paragraph 56(3)** Protective Provisions for Cadent Gas	*(3) [Paragraph 63 does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—* *(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and* *(b) the allowable costs are to be borne by the undertaker and Cadent in such proportions as may be prescribed by any such regulations.]* *Note: Highways England considers that sub-paragraph (3) should be included in the Order, Cadent does not.*	[DELETE]

No.	Article/Schedule	Wording in final draft DCO [REP9-012]	ExA's Recommended Change
20.	**Schedule 9, Part 7,** Protective Provisions for Transport for London	N/A	INSERT: - See Section 9.8 below Appendix
21.	**Contents Part 9**	N/A	INSERT: - ***"PART 7 – FOR THE PROTECTION OF TRANSPORT FOR LONDON"***

9.6.2. Most of the changes recommended above alter wording to allow for additional time periods and the removal of terminologies such as *"substantially"* and *"must reflect"* from a number of Requirements. The ExA has already explained its reasoning in the preceding paragraphs and in the Consultation Draft DCO [PD-021].

9.6.3. Recommended Change No.4 arises from our findings on design matters which are explained in Section 5.7 of Chapter 5 of this Report. A new Requirement for the CoCP is discussed above.

9.6.4. The ExA is recommending a new Requirement for Grove Farm. The reasoning for it is set out in further detail in Chapter 5 of the Report. The site-specific plan is considered by the ExA to be a sensible provision so that the SoS can be assured that mitigation from planting, the visual screen introduced into the Examination by Change Request No.8 [REP7-002], [REP7-029], and [REP7-030] and any other identified matter has been properly considered, and that those measures would effectively mitigate the effects of the Proposed Development on Mr & Mrs Jones's living conditions. This is considered a better option given the sensitivity of Grove Farm over relying on more general site-wide mitigation as set out in the outline LEMP [REP-042] and REAC [REP9-047]. Should the SoS agree with our recommendation, Requirement 5(3)(g) as prescribed in the final draft DCO [REP9-012] would not be needed.

9.6.5. Section 5.4 of Chapter 5 of this Report discusses in considerable details the issues surround the provision of the NMU. The ExA notes that the Applicant tabled a UU at Deadline 10 [REP10-019] (which updated a version submitted at Deadline 9), however this only a draft and only secures the provision within the Order limits. For reasons already set out, the ExA considers the wider scheme should be secured in this Order but that the Requirement should only obligate the Applicant to provide those elements within the Order limits and thus within its control. However, should the Applicant update the SoS prior to them making their decision that a side agreement/UU has been signed, the SoS may conclude that the Requirement is not needed.

9.6.6. As set out in Chapter 5 of this Report, discussions between the Applicant and Gardens of Peace have been taking place throughout the Examination. By the close and as confirmed by the Applicant at Deadline

9 [REP9-066], a tri-party agreement to be signed between the Applicant, gardens of Peace and Cadent Gas has not yet been completed, with outstanding concerns remaining. Should the agreement be signed and Gardens of Peace confirm it is content, the additional Requirement suggested by the ExA may not be needed. However, in lieu of the agreement, the ExA concurs with the Applicant in that the protection of the Gardens of Peace operation must be assured by the SoS before development within its area commences.

9.6.7. The SoCG signed between the Applicant and Brentwood BC [REP1-005], Essex CC [REP8-004] NE [REP7-011] and the EA [REP7-004] confirm agreement on the content and wording of the Recommended DCO.

9.7. CONCLUSION

9.7.1. The SoS can be satisfied that the ExA has considered all iterations of the draft DCO as provided by the Applicant and is satisfied that it has addressed outstanding matters.

9.7.2. There are 21 recommended changes to the final draft DCO [REP9-012]. The Recommended DCO in Appendix C of this Report reflects the final draft DCO submitted by the Applicant with the addition of those changes listed above. The ExA therefore recommends that the SoS should make this Order, with the recommended changes, if they are satisfied the Proposed Development should be consented.

9.8. APPENDIX – Protective Provisions for TfL

9.8.1. Insert after Schedule 2, Part 6, paragraph 69:

"PART 7

FOR THE PROTECTION OF TRANSPORT FOR LONDON

70. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Transport for London.

Definitions

71. In this Part of this Schedule—

"Commuted Sum" means the sum to be paid by the undertaker to Transport for London for the future maintenance of any highway assets not previously forming part of the TLRN which will be transferred to Transport for London, as calculated in accordance with paragraph 73 of this Part;

"Detailed Local Operating Agreement" means an agreement to be made between the undertaker and Transport for London detailing the traffic management arrangements to be implemented during the carrying out of the authorised development;

"TfL Road" means any public, vehicular highway which is vested or vests or is intended at the completion of works to vest in or be otherwise maintainable by Transport for London;

"TLRN" means the Transport for London Road Network comprising highways for which Transport for London is the responsible highway authority; and

"Works" means any works authorised by the Order undertaken on, to or under any part of the TLRN or a TfL Road.

Costs

72. The undertaker must pay to Transport for London in respect of the Works a sum equal to the whole of any costs and expenses which Transport for London reasonably incur in–

(a) requests from the undertaker to participate in the design of any part of the authorised development, the examination or approval of design or construction information required for the Works including for the protection of the TLRN and for Work No. 29, and reaching agreement on the schedule of highway assets pursuant to paragraph 73;

(b) including the schedule of highway assets agreed pursuant to paragraph 73 within its road maintenance framework contracts;

(c) agreeing and operating a Detailed Local Operating Agreement;

(d) participation in road safety audits relating to the Works;

(e) inspecting the construction and completion of the Works including any remediation works;

(f) the issue of certificates relating to the Works required for the completion, hand over and defects;

(g) carrying out any surveys and testing which are reasonably required in connection with the construction of the Works; and

(h) the transfer or vesting in Transport for London of any land and rights acquired by the undertaker.

Commuted Sum

73.—(1) The undertaker must use reasonable endeavours to agree with Transport for London a schedule of new highway assets which are proposed to become the maintenance responsibility of Transport for London as a result of the authorised development under article 11 (construction and maintenance of new, altered or diverted streets and other structures) and article 16(1)(b) (classification of roads, etc.) of the Order.

(2) Where the schedule prepared under paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 74.

(3) Following agreement of the schedule under sub-paragraph (1) or determination under subparagraph (2), Transport for London must prepare a calculation of the Commuted Sum based on the maintenance Transport for London considers to be required for the schedule of highway assets agreed under sub-paragraph (1) or determined under sub-paragraph (2) and must use reasonable endeavours to agree it with the undertaker.

(4) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by Transport for London under sub-paragraph (3) including any assumptions used.

(5) Where the calculation prepared under sub-paragraph (3) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 58.

(6) The undertaker must pay the Commuted Sum to Transport for London in one instalment within 10 working days of the later of –

(a) the date of completion of the authorised development; or

(b) the date of agreement of the value of the Commuted Sum under sub-paragraph (3) or determination under sub-paragraph (5).

Disputes

74. Any difference arising between the undertaker and Transport for London under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be escalated to a more senior level within Transport for London and the undertaker and if the matters of dispute still cannot be resolved then they will be resolved by arbitration under article 54 (arbitration).”

10. SUMMARY OF FINDINGS AND RECOMMENDATION

10.1. FINDINGS

10.1.1. In relation to s104 of PA2008, the ExA concludes that the Proposed Development is designated by the NPS NN. The making of the Recommended DCO would be in accordance with the said policy documents. Accordingly, s104(3) is satisfied. The ExA has concluded that s104(4), s104(5) and s104(6) do not apply.

10.1.2. The Proposed Development would also accord with the development plans when taken as a whole; and other relevant policies, all of which have been taken into account in this Report. The ExA has had regard to all LIRs produced by the relevant planning authorities listed in Chapters 3 and 4 of this Report in making this recommendation.

10.1.3. In making the DCO, the SoS would be fulfilling their duty under the relevant EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the Natural Environment and Rural Communities Act 2006. Whilst the SoS is the Competent Authority under the Habitats Regulations and will need to determine whether an AA is required, we conclude that the Proposed Development would not adversely affect European sites, species or habitats, and we have taken this into account in reaching our recommendation.

10.1.4. With regard to all other matters and representations received, we have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.

10.1.5. Not all issues had been resolved by the close of the Examination. In the vast majority of cases, the SoS in consultation with Relevant Planning and/or Highway Authorities and other IPs will have control over approval of documents which are secured in the Recommended DCO. The resolution of these matters at that stage does not undermine the ExA's ability to make our recommendation to the SoS, and as such no further action is required. In a very limited number of cases which were the subject of ongoing resolution by the Applicant, the ExA recommends that the SoS reconsult those IPs. These are set out in Table 10.1 below and principally relate to outstanding voluntary agreements (as set out in the CA Schedule [REP9-053]) for use of land for CA/TP.

10.1.6. The ExA considers that the Proposed Development would have no adverse effects that would outweigh its benefits and as such s104(7) of the PA2008 does not apply. Consequently, there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.

10.1.7. In relation to the application for CA and TP powers within the Recommended DCO, the ExA concludes that the Proposed Development for which the land and rights are sought would be in accordance with

national policy, as set out in the NPS NN, and that it identifies a national need for road improvement schemes.

10.1.8. The need to secure the land and rights required, and to construct the Proposed Development within a reasonable commercial timeframe, represent a significant public benefit. The private loss to those affected is mitigated through the fact that the construction period would be limited, and the Applicant is seeking to acquire the minimum possible rights and interests that they would need to construct and maintain the Proposed Development. This view is caveated on the removal of Plots 4/1 to 4/11 from the BoR [REP9-017].

10.1.9. The Applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred. We are satisfied that adequate and secure funding would be available to enable CA within the statutory period following the Order being made.

10.1.10. The proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree. Furthermore, throughout the Examination the ExA has had due regard to the PSED.

10.1.11. Considering all of the above factors together, there is a compelling case in the public interest for the CA and TP powers sought in respect of the plots listed in the BoR [REP9-017]. The ExA concludes that the Proposed Development would comply with s122(2) and s122(3) of PA2008.

10.1.12. The ExA concludes that the Order be made subject to the changes to the final draft DCO [REP9-012] as prescribed in the Recommended DCO, which would overcome any final concerns with the scheme.

Table 10.1 – Matters Where the SoS May Wish to Reconsult

Interested Party	Reason	Paragraph(s) in Report
Brentwood BC	<u>New Local Plan</u> It is possible that Brentwood BC's emerging plan may be at a more advanced stage in its examination by the time the SoS makes their decision on this application. The SoS therefore may wish to seek an update from Brentwood BC and the Applicant as to progress of the emerging plan and whether policies contained therein have become important and relevant considerations in the application.	3.11.16 to 3.11.18
LB Havering/TfL/Essex CC	<u>NMUs</u>	5.4.43 to 5.4.51

Interested Party	Reason	Paragraph(s) in Report
	The SoS will note that securing the NMU was not resolved by the close of the Examination. The Applicant proposed a UU [REP10-023] which secures the NMU within the Order limits whereas LB Havering/TfL/Brentwood BC/Essex CC considered the whole of the route including those elements outside the Order limits should be secured. An alternative UU from IPs was tabled at Deadline 10 [REP10-019]. The ExA has inserted new Requirement 17 into the Recommended DCO to secure the whole NMU route with the Applicant only responsible for delivering the element within the Order limit. However, the SoS may wish to ask the IPs and the Applicant for an update on this position prior to finding whether new Requirement 17 is required.	
National Grid Electricity and National Grid Gas	<u>Voluntary Agreement</u> The Applicant has indicated that a side agreement is currently being drafted and that the SoS would be informed if these agreements were not concluded by the close of the Examination, which they were not. The SoS may, accordingly, wish to ask for an update from the Applicant	8.5.4
Gardens of Peace/Cadent Gas	<u>Voluntary Agreement</u> The SoS may wish to ask for an update from the Applicant as to whether the tri-party agreement between the three parties has been reached and signed for the land to be used for CA/TP and other matters resolved. The SoS will then need to consider whether ExA suggested new Requirement 19 of the Recommended DCO is subsequently necessary.	8.6.4 to 8.6.8
Luddington Golf Ltd/Glebelands Estates Ltd	<u>Voluntary Agreement</u> The SoS may wish to ask for an update from the Applicant as to whether a side agreement between the three parties has been reached and signed for the land to be used for CA/TP and consider whether Requirement 15 of the Recommended DCO is necessary.	8.6.9 to 8.6.14

Interested Party	Reason	Paragraph(s) in Report
Grove Farm	Voluntary Agreement The SoS may wish to ask for an update from the Applicant as to whether a side agreement between the three parties has been agreed and signed for the land to be CA/TP. For the avoidance of doubt, the ExA considers suggested Requirement 16 of the Recommended DCO is necessary regardless of the agreement as the parties disagree as to the mitigation necessary.	8.6.15 to 8.6.20
Helen Edwards/Rachel Knighton/Patricia Knighton	Voluntary Agreement The SoS may wish to ask for an update from the Applicant as to whether an agreement between the three parties has been reached and signed for the land to be used for CA.	8.6.21 to 8.6.23
Cadent Gas	Voluntary Agreement The SoS may wish to ask for an update from the Applicant as to whether an agreement on all matters including PPs has been reached and signed.	9.5.4 to 9.5.27
TfL	Voluntary Agreement The SoS may wish to ask for an update from the Applicant as to whether an agreement on all matters including PPs has been reached and signed.	9.5.28 to 9.5.35

10.2. RECOMMENDATION

10.2.1. For all of the above reasons and in the light of our findings and conclusions on important and relevant matters set out in the Report, the ExA recommends that the Secretary of State for Transport makes the M25 Junction 28 Order in the form recommended at Appendix C to this Report.

APPENDICES

APPENDIX A: EXAMINATION LIBRARY A1
APPENDIX B: LIST OF ABBREVIATIONS B1
APPENDIX C: THE RECOMMENDED DCO C1

APPENDIX A: EXAMINATION LIBRARY

M25 Junction 28 Improvements Examination Library

Updated – 9 July 2021

Please note that the changes made on 8 July 2021 were to add late submissions received before the close of Examination and to correct an inadvertent duplication.

This Examination Library relates to the M25 Junction 28 Improvements application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

TR010029 – M25 Junction 28 Improvements **Examination Library - Index**	
Category	**Reference**
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
Representations – by Deadline	
Procedural Deadline A:	PDA-xxx
Procedural Deadline B:	PDB-xxx
Deadline 1:	REP1-xxx
Deadline 2:	REP2-xxx
Deadline 3A:	REP3A-xxx
Deadline 3B:	REP3B-xxx

Deadline 4:	REP4-xxx
Deadline 5:	REP5-xxx
Deadline 6:	REP6-xxx
Deadline 7:	REP7-xxx
Deadline 8:	REP8-xxx
Deadline 9:	REP9-xxx
Deadline 10:	REP10-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

TR010029 – M25 Junction 28 Improvements Examination Library	
Application Documents	
APP-001	Highways England 1.1 Introduction to the Application
APP-002	Highways England 1.2 Covering Letter and Schedule of Compliance with Section 55 of the Planning Act 2008
APP-003	Highways England 1.3 Application Form
APP-004	Highways England 2.1 Location Plan
APP-005	Highways England 2.2 Land Plans
APP-006	Highways England 2.3 Works Plans
APP-007	Highways England 2.4 Streets, Rights of Way and Access Plans
APP-008	Highways England 2.5 Crown Land Plans
APP-009	Highways England 2.6 Speed Limits and Traffic Regulations Plans
APP-010	Highways England 2.7 Scheme Layout Plans
APP-011	Highways England 2.8 Engineering Drawings and Sections
APP-012	Highways England 2.9 Biodiversity Sites and Features Plans
APP-013	Highways England 2.10 Historic Environment Sites and Features Plans
APP-014	Highways England 2.11 Special Category Land Plans
APP-015	Highways England 3.1 Draft Development Consent Order
APP-016	Highways England 3.2 Explanatory Memorandum
APP-017	Highways England 3.3 Consents and Agreements Position Statement
APP-018	Highways England 3.4 Development Consent Order Validation Report
APP-019	Highways England 4.1 Statement of Reasons
APP-020	Highways England 4.2 Funding Statement
APP-021	Highways England 4.3 Book of Reference
APP-022	Highways England

	5.1 Consultation Report
APP-023	Highways England 5.1 Consultation Report - Annex A - Scoping Request to the Inspectorate and Annex B - Options Consultation
APP-024	Highways England 5.1 Consultation Report - Annex C - Statutory Consultation (Section 42)
APP-025	Highways England 5.1 Consultation Report - Annex D - Statutory Consultation (Section 42), Annex E - Statutory Consultation (Section 47), Annex F – Supplementary Consultation and Annex G – Targeted Consultation
APP-026	Highways England 6.1 Environmental Statement - Chapters 1-4 - Introductory Chapters
APP-027	Highways England 6.1 Environmental Statement Chapter 5 - Air quality
APP-028	Highways England 6.1 Environmental Statement - Chapter 6 - Noise and Vibration
APP-029	Highways England 6.1 Environmental Statement - Chapter 7 - Biodiversity
APP-030	Highways England 6.1 Environmental Statement - Chapter 8 - Road Drainage and the Water Environment
APP-031	Highways England 6.1 Environmental Statement - Chapter 9 - Landscape and Visual
APP-032	Highways England 6.1 Environmental Statement - Chapter 10 - Geology and Soils
APP-033	Highways England 6.1 Environmental Statement - Chapter 11 - Cultural Heritage
APP-034	Highways England 6.1 Environmental Statement - Chapter 12 - Materials and Waste
APP-035	Highways England 6.1 Environmental Statement - Chapter 13 - People and Communities
APP-036	Highways England 6.1 Environmental Statement - Chapter 14 - Climate
APP-037	Highways England 6.1 Environmental Statement - Chapter 15 - Assessment of Cumulative Effects
APP-038	Highways England 6.1 Environmental Statement - Chapter 16 - Summary
APP-039	Highways England 6.2 Environmental Statement - Chapters 1-4 - Introductory Chapters Figures
APP-040	Highways England 6.2 Environmental Statement - Chapter 5 - Air Quality Figures
APP-041	Highways England 6.2 Environmental Statement - Chapter 6 - Noise and Vibration Figures

APP-042	Highways England 6.2 Environmental Statement - Chapter 7 - Biodiversity Figures
APP-043	Highways England 6.2 Environmental Statement - Chapter 8 - Road Drainage and the Water Environment Figures
APP-044	Highways England 6.2 Environmental Statement - Chapter 9 - Landscape and Visual Figures
APP-045	Highways England 6.2 Environmental Statement - Chapter 10 - Geology and Soils Figures
APP-046	Highways England 6.2 Environmental Statement - Chapter 11 - Cultural Heritage Figures
APP-047	Highways England 6.2 Environmental Statement - Chapter 13 - People and Communities Figures
APP-048	Highways England 6.2 Environmental Statement - Chapter 15 - Assessment of cumulative effects figures
APP-049	Highways England 6.3 Environmental Statement - Appendix 1.1 - Scoping Opinion
APP-050	Highways England 6.3 Environmental Statement - Appendix 4.1 - DMRB Sensitivity Test
APP-051	Highways England 6.3 Environmental Statement - Appendix 4.2 - Major Accidents and Disasters Long List
APP-052	Highways England 6.3 Environmental Statement - Appendix 5.1 - Air Quality
APP-053	Highways England 6.3 Environmental Statement - Appendix 6.1 - Baseline Noise Survey Data
APP-054	Highways England 6.3 Environmental Statement - Appendix 6.2 - Construction Noise and Vibration
APP-055	Highways England 6.3 Environmental Statement - Appendix 6.3 - Noise Sensitive Receptors
APP-056	Highways England 6.3 Environmental Statement - Appendix 6.4 - Noise Nuisance
APP-057	Highways England 6.3 Environmental Statement - Appendix 7.1 - Biodiversity Legislation
APP-058	Highways England 6.3 Environmental Statement - Appendix 7.2 - Desk Study Report
APP-059	Highways England 6.3 Environmental Statement - Appendix 7.3 - Phase 1 Habitat Survey
APP-060	Highways England

	6.3 Environmental Statement - Appendix 7.4 - National Vegetation Classification
APP-061	Highways England 6.3 Environmental Statement - Appendix 7.5 - River Corridor Survey
APP-062	Highways England 6.3 Environmental Statement - Appendix 7.6 - Aquatic Survey Report
APP-063	Highways England 6.3 Environmental Statement - Appendix 7.7 - Arboricultural Impact Assessment
APP-064	Highways England 6.3 Environmental Statement - Appendix 7.8 - Invertebrate Scoping Survey
APP-065	Highways England 6.3 Environmental Statement - Appendix 7.9 - Great Crested Newt Survey
APP-066	Highways England 6.3 Environmental Statement - Appendix 7.10 - Reptile Survey
APP-067	Highways England 6.3 Environmental Statement - Appendix 7.11 - Breeding Bird and Barn Owl Survey
APP-068	Highways England 6.3 Environmental Statement - Appendix 7.12 - Bat Survey
APP-069	Highways England 6.3 Environmental Statement - Appendix 7.13 - Dormouse Survey
APP-070	Highways England 6.3 Environmental Statement - Appendix 7.14 - Badger Survey (CONFIDENTIAL)
APP-071	Highways England 6.3 Environmental Statement - Appendix 7.15 - Otter and Water Vole Survey
APP-072	Highways England 6.3 Environmental Statement - Appendix 7.16 - Outline Landscape and Ecological Management and Monitoring Plan
APP-073	Highways England 6.3 Environmental Statement - Appendix 8.1 - HAWRAT Outputs
APP-074	Highways England 6.3 Environmental Statement - Appendix 9.1 - Landscape and Visual Impact Assessment
APP-075	Highways England 6.3 Environmental Statement - Appendix 10.1 - Preliminary Geo-Environmental Assessment Report
APP-076	Highways England 6.3 Environmental Statement - Appendix 10.2 - Classification of Probability and Consequence
APP-077	Highways England 6.3 Environmental Statement - Appendix 10.3 - Envirocheck Datasheets and 1:10,000K Scale Historical Maps
APP-078	Highways England

	6.3 Environmental Statement - Appendix 10.4 - Historical Maps Summary
APP-079	Highways England 6.3 Environmental Statement - Appendix 10.5 - UXO Risk Map
APP-080	Highways England 6.3 Environmental Statement - Appendix 10.6 - Email Correspondence
APP-081	Highways England 6.3 Environmental Statement - Appendix 10.7 - Risk Assessment and Impact Assessment
APP-082	Highways England 6.3 Environmental Statement - Appendix 11.1 - Cultural Heritage Gazetteer
APP-083	Highways England 6.3 Environmental Statement - Appendix 11.2 - Archaeological Desk-Based Assessment
APP-084	Highways England 6.3 Environmental Statement - Appendix 13.1 - Driver Stress
APP-085	Highways England 6.3 Environmental Statement - Appendix 14.1 - Climate Carbon Tool
APP-086	Highways England 6.3 Environmental Statement - Appendix 14.2 - Climate Vulnerability Baseline Conditions
APP-087	Highways England 6.3 Environmental Statement - Appendix 15.1 - Assessment of Cumulative Effects Stage 1 Long List
APP-088	Highways England 6.4 Environmental Statement - Non-Technical Summary
APP-089	Highways England 6.5 Statutory Nuisance Statement
APP-090	Highways England 6.6 Flood Risk Assessment
APP-091	Highways England 6.7 Water Framework Directive Compliance Assessment Report
APP-092	Highways England 6.8 Drainage Strategy Report
APP-093	Highways England 6.9 Habitat regulations assessment - No Significant Effects Report
APP-094	Highways England 6.10 Scoping report and opinion (as submitted in November 2017 and received December 2017)
APP-095	Highways England 7.1 Case for the Scheme and Schedule of Accordance with National Policy Statement
APP-096	Highways England 7.2 Outline Construction Environmental Management Plan
APP-097	Highways England 7.3 Register of Environmental Actions and Commitments
APP-098	Highways England

	7.4 Transport Assessment Report
APP-099	Highways England 8.1 Statement of Common Ground with the Environment Agency
Adequacy of Consultation Responses	
AoC-001	Brentwood Borough Council Adequacy of Consultation Representation
AoC-002	Chelmsford City Council Adequacy of Consultation Representation
AoC-003	Essex County Council Adequacy of Consultation Representation
AoC-004	Hertfordshire County Council Adequacy of Consultation Representation
AoC-005	London Borough of Barking and Dagenham Council Adequacy of Consultation Representation
AoC-006	London Borough of Havering Council Adequacy of Consultation Representation
AoC-007	London Borough of Waltham Forest Council Adequacy of Consultation Representation
AoC-008	Southend-on-Sea Borough Council Adequacy of Consultation Representation
AoC-009	Thurrock Council Adequacy of Consultation Representation
Relevant Representations	
RR-001	A Harding
RR-002	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited **Submission withdrawn** via REP10-024 on 7 July 2021
RR-003	Anthony Arthur Manley
RR-004	BNP Paribas Real Estate on behalf of Royal Mail Group
RR-005	Brentwood Borough Council
RR-006	Cadent Gas Limited
RR-007	Chelmsford City Council
RR-008	Eastern Power Networks PLC **Submission withdrawn** via AS-042 on 14 May 2021
RR-009	Environment Agency
RR-010	Essex County Council
RR-011	Essex County Council
RR-012	Gillian Edwards
RR-013	Ingatestone & Fryerning Parish Council
RR-014	Jane Allan
RR-015	Jason Ellis
RR-016	Jessie Mcdonnell
RR-017	London Borough of Havering
RR-018	Louise Bowyer
RR-019	Luddington Golf Limited
RR-020	Matthew Bodley Consulting Limited on behalf of Glebelands Estates Limited

RR-021	Mr Groves on behalf of the Groves family
RR-022	National Grid Electricity Transmission PLC and National Grid Gas **Submission withdrawn** via REP10-021 on 7 July 2021
RR-023	Public Health England
RR-024	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery
RR-025	Steven Monksfield
RR-026	The Jones Family
RR-027	Thurrock Council
RR-028	Transport for London
RR-029	Wasif Ahmed
Relevant Representations on Proposed Change 2	
RR-030	London Borough of Havering
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 55 Checklist
PD-003	Notice of Appointment of Panel for Examination
PD-004	Procedural Decision following issue of Acceptance decision
PD-005	Rule 17 - Request for Further Information
PD-006	Rule 6 letter - Notification of the preliminary meeting and matters to be discussed
PD-007	Rule 8 – notification of timetable for the examination
PD-008	Written Questions
PD-009	**Reference not in use**
PD-010	Rule 13 - Notification of Hearings and Rule 9 - Procedural Decision
PD-011	**Reference not in use** – this document is available at PD-010
PD-012	Rule 9 and Rule 17 - Request for Further Information Response to the Change Request submitted at Deadline 3a
PD-013	Procedural Decision to accept the Change Request submitted at Deadline 3a - Rules 9 and 17
PD-014	Proposed Provision Checklist for the compulsory acquisition of additional land
PD-015	Further Written Questions
PD-016	Rule 13 - Notification of Hearings and Rule 9 - Notification for the second round of Hearings
PD-017	Rule 17 - Request for further information
PD-018	Rules 9 and 17 - Request to Make Changes to the Original Application Procedural Decision and a Request for Further Information (Rule 17) in relation to Change Request 5-7 submitted at Deadline 6
PD-019	Changes to the Examination Timetable - Rule 8(3)
PD-020	Rule 9 and Rule 17 - Request to Make Changes to the Original Application

	Procedural Decision in relation to Change Request 7 submitted at Deadline 6 and a Request for Further Information (Rule 17) in relation to Change Request 8 submitted at Deadline 7
PD-021	Examining Authority's (ExA) Consultation Draft Development Consent Order (DCO) Schedule of ExA's recommended amendments to the Applicant's draft DCO (Version 6)
PD-022	Rule 17 - Request for Further Information
PD-023	Rules 9 and 17 - Request to Make Changes to the Original Application Procedural Decision in relation to Change Request 8 submitted at Deadline 7
PD-024	Notification of completion of Examination
Additional Submissions	
AS-001	Highways England Additional Submission - Highways England's response to Procedural Decision - Accepted at the discretion of the Examining Authority
AS-002	Highways England Additional Submission - 6.2 Environmental Statement - Chapter 9: Landscape and visual figures - photomontages viewpoint A - Accepted at the discretion of the Examining Authority
AS-003	Highways England Additional Submission - 6.2 Environmental Statement - Chapter 9: Landscape and visual figures – photomontages viewpoint B - Accepted at the discretion of the Examining Authority
AS-004	Highways England Additional Submission - 6.2 Environmental Statement - Chapter 9: Landscape and visual figures - photomontages viewpoint C - Accepted at the discretion of the Examining Authority
AS-005	Highways England Additional Submission - 6.2 Environmental Statement - Chapter 9: Landscape and visual figures – photomontages viewpoint D - Accepted at the discretion of the Examining Authority
AS-006	Highways England Additional Submission - 6.2 Environmental Statement - Chapter 9: Landscape and visual figures – photomontages viewpoint E - Accepted at the discretion of the Examining Authority
AS-007	Highways England Additional Submission - 6.2 Environmental Statement - Chapter 9: Landscape and visual figures – photomontage viewpoints location plan - Accepted at the discretion of the Examining Authority

AS-008	Highways England Additional Submission - 6.3 Environmental Statement - Appendix 9.2: Photomontage methodology - Accepted at the discretion of the Examining Authority
AS-009	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - 4.3 Book of Reference (Clean)
AS-010	Highways England Additional Submission - Accepted at the discretion of the Examining Authority – 4.3 Book of Reference (Tracked)
AS-011	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Regulation 16 Notice - Certificate of Compliance
AS-012	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Panorama Photo A - E
AS-013	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Panorama 1 - 10a
AS-014	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Site Context Panorama Location Plan Rev B
AS-015	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - M25 Junction 28 Maylands Golf Course Photographs
AS-016	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Aerial Photographs
AS-017	Highways England Additional Submission - Accepted at the discretion of the Examining Authority - Panorama Photographs 11a - 15a
AS-018	Highways England Additional Submission - s56 notice issued on 30 September 2020 - Accepted at the discretion of the Examining Authority
AS-019	Highways England Additional Submission - Updated position on s56 notice - Accepted at the discretion of the Examining Authority
AS-020	Highways England Additional Submission - S56 Notice - PiLs and Consultation Bodies - Accepted at the discretion of the Examining Authority
AS-021	Highways England Additional Submission - Accepted at the discretion of the Examining Authority – 4.3 Book of Reference
AS-022	Highways England Additional Submission - 6.1 Environmental Statement - Chapter 8: Road drainage and the water environment - Accepted at the discretion of the Examining Authority

AS-023	Highways England Additional Submission - Accepted at the discretion of the Examining Authority – 4.3 Book of Reference (Tracked)
AS-024	Highways England Additional Submission - 6.1 Environmental Statement - Chapter 8: Road drainage and the water environment clean - Accepted at the discretion of the Examining Authority
AS-025	**Reference not in use** – this document is available at OD-002
AS-026	**Reference not in use** – this document is available at OD-003
AS-027	**Reference not in use** – this document is available at OD-004
AS-028	**Reference not in use** – this document is available at OD-005
AS-029	Highways England Additional Submission - Notification of intention to make a request for changes to the scheme - Accepted at the discretion of the Examining Authority
AS-030	Historic England Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Statements of Common Ground update
AS-031	Highways England Additional Submission – Additional Submission accepted at the discretion of the Examining Authority - Direction sought in relation to Rule 13(6) of The Infrastructure Planning (Examination Procedure) Rules 2010
AS-032	Woodland Trust Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Non-Interested Party Submission - Comments on the Proposed Development
AS-033	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Additional Submission- Additional Submission accepted at the discretion of the Examining Authority - Further information to the Gardens of Peace Muslim Cemetery's Written Representation
AS-034	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited (WITHDRAWN) Additional Submission – **Submission withdrawn** via REP10-024 on 7 July 2021
AS-035	**Reference not in use** – this document is a duplicate of REP2-039
AS-036	Highways England Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Further comments to the change request submitted at deadline 3a
AS-037	Highways England Additional Submission – Additional Submission accepted at the discretion of the Examining Authority- Notification of intention to submit change request to the scheme (Changes 5-7)

AS-038	Highways England Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Newspaper Hearing Notice for the Hearings week commencing 1 March 2021
AS-039	Highways England Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Newspaper Hearing Notice for the Hearings week commencing 10 May 2021
AS-040	Jason Ellis Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Comments on the Proposed Development
AS-041	Highways England Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Notification of approval of Designated Funding for the non-motorised user improvements (NMU) scheme
AS-042	UK Power Network Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Withdrawal of Objection
AS-043	Hertfordshire County Council Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Notification of wish to be considered an Interested Party
AS-044	Suffolk County Council Additional Submission - Additional Submission accepted at the discretion of the Examining Authority - Notification of wish to be considered an Interested Party
Events and Hearings	
Preliminary Meeting – 11 December 2020 and 7 January 2021	
EV-001	Recording of Preliminary Meeting Part 1 - 11 December 2020
EV-002	Preliminary Meeting - Transcript - 11 December 2020 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-003	Recording of Preliminary Meeting Part 2 – 07 January 2021
EV-004	Preliminary Meeting - Transcript - 7 January 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-005	Preliminary Meeting Note
Hearing Notice	
EV-006	**Reference not in use** – this document is available at AS-038

Unaccompanied Site Inspection	
EV-007	Note of Unaccompanied Site Inspection - 17 February 2021
Hearing Agendas	
EV-008	Agenda for Compulsory Acquisition Hearing 1 (CAH1) - 01 March 2021
EV-009	Hearing Agenda for Issue Specific Hearing 1 (ISH1) - 03 March 2021
EV-010	Agenda for Issue Specific Hearing 2 (ISH2) - 05 March 2021
Compulsory Acquisition Hearing 1 – 1 March 2021	
EV-011	Recording of Compulsory Acquisition Hearing Session 1 - 01 March 2021
EV-012	Compulsory Acquisition Hearing 1 (Session 1) - Transcript - 01 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-013	Recording of Compulsory Acquisition Hearing Session 2 - 01 March 2021
EV-014	Compulsory Acquisition Hearing 1 (Session 2) - Transcript - 01 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-015	Action points from Compulsory Acquisition Hearing 1 (CAH1) - 01 March 2021
Open Floor Hearing 1 – 1 March 2021	
EV-016	Recording of Open Floor Hearing 1 - 01 March 2021
EV-017	Open Floor Hearing 1 (Session 1) - Transcript - 01 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
Issue Specific Hearing 1 – 3 and 4 March 2021	
EV-018	Recording of Issue Specific Hearing 1 Session 1 - 03 March 2021
EV-019	Issue Specific Hearing 1 (Session 1) - Transcript - 03 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-020	Recording of Issue Specific Hearing 1 Session 2- 03 March 2021

EV-021	Issue Specific Hearing 1 (Session 2) - Transcript - 03 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-022	Recording of Issue Specific Hearing 1 Session 3 - 03 March 2021
EV-023	Issue Specific Hearing 1 (Session 3) - Transcript - 03 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-024	Recording of Issue Specific Hearing 1 Session 1 - 04 March 2021
EV-025	Issue Specific Hearing 1 (Session 1) - Transcript - 04 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-026	Recording of Issue Specific Hearing 1 Session 2 - 04 March 2021
EV-027	Issue Specific Hearing 1 (Session 2) - Transcript - 04 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-028	Recording of Issue Specific Hearing 1 Session 3 - 04 March 2021
EV-029	Issue Specific Hearing 1 (Session 3) - Transcript - 04 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-030	Recording of Issue Specific Hearing 1 Session 4 - 04 March 2021
EV-031	Issue Specific Hearing 1 (Session 4) - Transcript - 04 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-032	Action points from Issue Specific Hearing 1 (ISH1) - 03 March 2021
Issue Specific Hearing 2 – 5 March 2021	
EV-033	Recording of Issue Specific Hearing 2 Session 1 - 05 March 2021
EV-034	Issue Specific Hearing 2 (Session 1) - Transcript - 05 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.
EV-035	Recording of Issue Specific Hearing 2 Session 2 - 05 March 2021
EV-036	Issue Specific Hearing 2 (Session 2) - Transcript - 05 March 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited.

EV-037	Action points from Issue Specific Hearing 2 (ISH2) - 05 March 2021
Issue Specific Hearing 3 – 12 May 2021	
EV-038	Agenda for Issue Specific Hearing 3 (ISH3) - 12 May 2021
EV-039	Recording of Issue Specific Hearing 3 Session 1 - 12 May 2021
EV-040	Issue Specific Hearing 3 (Session 1) - Transcript - 12 May 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-041	Recording of Issue Specific Hearing 3 Session 2 - 12 May 2021
EV-042	Issue Specific Hearing 3 (Session 2) - Transcript - 12 May 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-043	Recording of Issue Specific Hearing 3 Session 3 - 12 May 2021
EV-044	Issue Specific Hearing 3 (Session 3) - Transcript - 12 May 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-045	Recording of Issue Specific Hearing 3 Session 4 - 12 May 2021
EV-046	Issue Specific Hearing 3 (Session 4) - Transcript - 12 May 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-047	Recording of Issue Specific Hearing 3 Session 5 - 12 May 2021
EV-048	Issue Specific Hearing 3 (Session 5) - Transcript - 12 May 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-049	Action points from Issue Specific Hearing 3 (ISH3) - 12 May 2021
Unaccompanied Site Inspection 2	

EV-050	Note of Unaccompanied Site Inspection - 4 June 2021
Representations	
Procedural Deadline A – 9 December 2020 **Deadline for receipt by the ExA of:** • Any changes that are considered necessary to the draft Examination Timetable; and • Agenda items the parties wish to speak on, points to make, and why these need to be made orally rather than in writing.	
PDA-001	Highways England Procedural Deadline A - Changes that are considered necessary to the draft Examination Timetable
PDA-002	The London Borough of Havering Procedural Deadline A - Changes that are considered necessary to the draft Examination Timetable
Procedural Deadline B – 21 December 2020 **Deadline for receipt by the ExA of:** • Written submissions, if required, from the Applicant and any Interested Party on procedural matters relating to the purpose or proceedings of the Preliminary Meeting; • Submissions of suggested locations/site for the Panel to include as part of the Unaccompanied Site Inspection, information on whether the site can be accessed on public land and reasoning for each nominated site.	
PDB-001	Highways England Procedural Deadline B submission - 9.4 HRA Screening Matrices
PDB-002	Highways England Procedural Deadline B submission - Covering letter
PDB-003	Highways England Procedural Deadline B submission - 9.5 Transport Assessment Supplementary Information Report
PDB-004	Highways England Procedural Deadline B submission - 9.3 Suggested locations for the Panel
PDB-005	BNP Paribas Real Estate on behalf of Royal Mail Group Procedural Deadline B Submission - Position Statement
PDB-006	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Procedural Deadline B Submission - Suggested locations for the Unaccompanied Site Inspection
PDB-007	London Borough of Havering Procedural Deadline B Submission - Written submission on procedural matters relating to the purpose or proceedings of the Preliminary Meeting and suggested locations for the Unaccompanied Site Inspection

PDB-008	Jane Allan Procedural Deadline B Submission - Written submission on procedural matters relating to the purpose or proceedings of the Preliminary Meeting and suggested locations for the Unaccompanied Site Inspection
PDB-009	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Procedural Deadline B Submission - Suggested locations for the Unaccompanied Site Inspection
PDB-010	Brentwood Borough Council Procedural Deadline B Submission – Suggested locations for the Unaccompanied Site Inspection

Deadline 1 – 21 January 2021

Deadline for receipt by the ExA of

- Local Impact Reports (LIR) from Local Authorities;
- Notification of wish to speak at a Compulsory Acquisition Hearing;
- Notification of wish to speak at an Open Floor Hearing;
- Responses to Relevant Representations (RRs);
- Comments on the Applicant's response to the Planning Inspectorate's s51 advice;
- Progressed statements of Statement of Common Grounds (SoCG);
- Progressed Statement of Commonality for SoCG;
- The Compulsory Acquisition Schedule;
- Notification by Statutory Parties of wish to be considered an Interested Party (IP);
- Any further information requested by the ExA under Rule 17 of the Examination Rules.

REP1-001	Highways England Deadline 1 Submission - Submission Cover Letter
REP1-002	Highways England Deadline 1 Submission - 9.7 Applicant's Responses to Relevant Representations
REP1-003	Highways England Deadline 1 Submission - 8.1 Statement of Common Ground with the Environment Agency
REP1-004	Highways England Deadline 1 Submission - 9.8 Statement of Common Ground with London Borough of Havering
REP1-005	Highways England Deadline 1 Submission - 9.9 Statement of Common Ground with Brentwood Borough Council
REP1-006	Highways England Deadline 1 Submission - 9.10 Statement of Common Ground with Essex County Council

REP1-007	Highways England Deadline 1 Submission - 9.11 Statement of Common Ground with Transport for London
REP1-008	Highways England Deadline 1 Submission - 9.12 Statement of Common Ground with National Grid
REP1-009	Highways England Deadline 1 Submission - 9.13 Statement of Common Ground with Cadent Gas
REP1-010	Highways England Deadline 1 Submission - 9.14 Statement of Common Ground with Eastern Power Networks
REP1-011	Highways England Deadline 1 Submission - 9.15 Statement of Common Ground with Natural England
REP1-012	Highways England Deadline 1 Submission - 9.16 Statement of Common Ground with Network Rail
REP1-013	Highways England Deadline 1 Submission - 9.17 Statement of Common Ground with DEFRA
REP1-014	Highways England Deadline 1 Submission - 9.18 Statement of Commonality
REP1-015	Highways England Deadline 1 Submission - 9.19 The Compulsory Acquisition (CA) Schedule from the Applicant
REP1-016	Highways England Deadline 1 Submission - 9.1 The Guide to the Application
REP1-017	Highways England Deadline 1 Submission - 6.3 Environmental Statement Appendix 9.2 Photomontage Methodology
REP1-018	Highways England Deadline 1 Submission - 9.20 Landscape and Visual Figures Winter Photomontages Viewpoint A
REP1-019	Highways England Deadline 1 Submission - 9.21 Landscape and Visual Figures Winter Photomontages Viewpoint B
REP1-020	Highways England Deadline 1 Submission - 9.22 Landscape and Visual Figures and Winter Photomontages Viewpoint C
REP1-021	Highways England Deadline 1 Submission - 9.23 Landscape and Visual Figures Winter Photomontages Viewpoint D
REP1-022	Highways England Deadline 1 Submission - 9.24 Landscape and Visual Figures Winter Photomontages Viewpoint E
REP1-023	Highways England Deadline 1 Submission - 9.25 Ground Investigation Report

REP1-024	Highways England Deadline 1 Submission - 9.25 Ground Investigation Report Appendix A to G
REP1-025	Highways England Deadline 1 Submission - 9.25 Ground Investigation Report Appendix H to L
REP1-026	Brentwood Borough Council Deadline 1 Submission - Local Impact Report
REP1-027	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 1 Submission - Notification to speak at an Open Floor Hearing
REP1-028	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 1 Submission - Notification to speak at a Compulsory Acquisition Hearing
REP1-029	Keith Murray Consultants Ltd on behalf of Luddington Golf Limited Deadline 1 Submission - Notification to speak at a Compulsory Acquisition Hearing / Open Floor Hearing and position statement
REP1-030	London Borough of Havering Deadline 1 Submission - Notification to speak at an Open Floor Hearing
REP1-031	London Borough of Havering Deadline 1 Submission - Local Impact Report
REP1-032	London Borough of Havering Deadline 1 Submission - Local Impact Report Appendix 1
REP1-033	London Borough of Havering Deadline 1 Submission - Response to Applicant's Transport Assessment Supplementary Information Report
REP1-034	London Borough of Havering Deadline 1 Submission - Comments on Relevant Representations and submissions received by Procedural Deadline B
REP1-035	London Borough of Havering Deadline 1 Submission - Comments on Applicant's response to the Inspectorate's S51 advice
REP1-036	Matthew Bodley Consulting Limited on behalf of Glebeland Estates Limited Deadline 1 Submission - Notification to speak at a Compulsory Acquisition Hearing
REP1-037	Metropolitan Police Deadline 1 Submission - Notification of wish to be considered an Interested Party
REP1-038	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 1 Submission - Notification to speak at an Open Floor Hearing and Compulsory Acquisition Hearing
REP1-039	Transport for London

	Deadline 1 Submission - Responses to Relevant Representations, notification to speak at an Open Floor Hearing / Compulsory Acquisition Hearing and position statement
REP1-040	Essex County Council Deadline 1 Submission - Late submission accepted at the discretion of the Examining Authority - Local Impact Report Appendix 1
REP1-041	Essex County Council Deadline 1 Submission - Late submission accepted at the discretion of the Examining Authority - Local Impact Report Cover Letter
REP1-042	Essex County Council Deadline 1 Submission - Late submission accepted at the discretion of the Examining Authority - Local Impact Report Appendix 2
REP1-043	Essex County Council Deadline 1 Submission - Late submission accepted at the discretion of the Examining Authority - Local Impact Report

Deadline 2 – 4 February 2021

Deadline for receipt by the ExA of

- Written Representations (WRs);
- Responses to ExAs Written Questions (WQ1);
- Comments on responses for Deadline 1;
- Progressed SoCGs;
- Progressed Statement of Commonality for SoCG;
- An updated Guide to the Application;
- Updated Compulsory Acquisition Schedule;
- Updated draft Development Consent Order (draft DCO);
- Schedule of changes to the draft DCO;
- Any further information requested by the ExA under Rule 17 of the Examination Rules.

REP2-001	Highways England Deadline 2 Submission - Cover Letter
REP2-002	Highways England Deadline 2 Submission- 3.1 Draft Development Consent Order
REP2-003	Highways England Deadline 2 Submission - 6.2 Environmental Statement Chapter 5 : Air quality figures
REP2-004	Highways England Deadline 2 Submission- 6.2 Environmental Statement Chapter 8 : Road drainage and the water environment figures
REP2-005	Highways England Deadline 2 Submission- 6.9 Habitats regulations assessment: No significant effects report
REP2-006	Highways England Deadline 2 Submission- 9.1 Guide to the Application

REP2-007	Highways England Deadline 2 Submission - 9.4 Habitats Regulation Assessment (HRA) Screening Matrices
REP2-008	Highways England Deadline 2 Submission- 9.10 Statement of Common Ground with Essex County Council
REP2-009	Highways England Deadline 2 Submission- 9.18 Statement of Commonality for Statements of Common Ground
REP2-010	Highways England Deadline 2 Submission- 9.19 The Compulsory Acquisition (CA) Schedule from the Applicant (Clean Version)
REP2-011	Highways England Deadline 2 Submission - 9.26 Applicant's Response to the Examining Authority's Written Questions
REP2-012	Highways England Deadline 2 Submission - 9.27 Appendices relating to Applicant's Responses to the Examining Authority's Written Questions
REP2-013	Highways England Deadline 2 Submission- 9.28 Schedule of Changes to draft Development Consent Order
REP2-014	Highways England Deadline 2 Submission - 9.29 Habitat Regulations Assessment: No significant effects report (Tracked)
REP2-015	Highways England Deadline 2 Submission- 9.30 Habitats Regulation Assessment (HRA) Screening Matrices (Tracked)
REP2-016	Highways England Deadline 2 Submission - 9.31 The Compulsory Acquisition (CA) Schedule from the Applicant (Tracked)
REP2-017	Highways England Deadline 2 Submission - 9.32 Updated draft Development Consent Order (Tracked)
REP2-018	Brentwood Borough Council Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-019	London Borough of Havering Deadline 2 Submission - Response to Statement of Commonality
REP2-020	London Borough of Havering Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-021	London Borough of Havering Deadline 2 Submission - Response to Winter Photomontages
REP2-022	London Borough of Havering Deadline 2 Submission - Written Representation
REP2-023	Anthony Manley Deadline 2 Submission - Written Representation
REP2-024	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas

	Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-025	Environment Agency Deadline 2 Submission - Written Representation and response to ExA's Written Questions
REP2-026	ESP Utilities Group Ltd Deadline 2 Submission - Written Representation
REP2-027	Forestry Commission Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-028	Forestry Commission Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-029	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 2 Submission - Written Representation
REP2-030	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 2 Submission - Response to Examining Authority's Written Questions
REP2-031	Matthew Bodley Consulting Limited on behalf of Glebeland Estates Limited Deadline 2 Submission - Written Representation
REP2-032	Keith Murray Consultants Ltd on behalf of Luddington Golf Ltd (WITHDRAWN) Deadline 2 Submission - **Submission withdrawn** via REP7-041 on 10 May 2021
REP2-033	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 2 Submission - Written Representation and response to Examining Authority's Written Questions
REP2-034	Bryan Cave Leighton Paisner LLP on behalf of National Grid (WITHDRAWN) Deadline 2 Submission - **Submission withdrawn** via REP10-021 on 7 July 2021
REP2-035	Nikki Francini Lacovou Deadline 2 Submission - Written Representation
REP2-036	Transport for London Deadline 2 Submission - Amended submission accepted at the discretion of the Examining Authority due to confidential information - Written Representation
REP2-037	Transport for London Deadline 2 Submission - Responses to Examining Authority's Written Questions
REP2-038	Transport for London Deadline 2 Submission - Comments on Deadline 1 responses
REP2-039	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited (WITHDRAWN) Deadline 2 Submission - **Submission withdrawn** via REP10-024 on 7 July 2021

Deadline 3a – 18 February 2021

Deadline for receipt by the ExA of:

- Comments on responses to ExA's WQ1;
- Responses on LIRs;
- Responses on WRs;
- Comments on responses for Deadline 2;
- An updated Guide to the Application;
- An updated version of the draft DCO;
- Progressed SoCGs;
- Progressed Statement of Commonality for SoCG;
- Any further information requested by the ExA under Rule 17 of the Examination Rules.

In preparation of an Accompanied Site Inspection (ASI) should the ExA gives notice on Wednesday 19 May 2021 of intention to hold an ASI:

- Submission of suggested locations / sites and draft itinerary for the ExA to include as part of the ASI including the issues to be observed there, information on whether the site can be accessed on public land and reasoning for each nominated site.

REP3A-001	Highways England Deadline 3a Submission - Cover Letter
REP3A-002	Highways England Deadline 3a Submission - Application for change to an accepted Development Consent Order (Changes 1-4)
REP3A-003	Highways England Deadline 3a submission - 2.2 Land Plans
REP3A-004	Highways England Deadline 3a Submission - 3.1 Draft Development Consent Order
REP3A-005	Highways England Deadline 3a Submission - 4.3 Book of Reference
REP3A-006	Highways England Deadline 3a Submission - 6.1 Environmental Statement Chapter 6: Noise and vibration
REP3A-007	Highways England Deadline 3a Submission - 6.2 Environmental Statement Chapter 6: Noise and vibration figures
REP3A-008	Highways England Deadline 3a Submission - 6.3 Environmental Statement Appendix 6.2: Construction noise and vibration
REP3A-009	Highways England Deadline 3a Submission - 6.3 Environmental Statement Appendix 6.3 Noise sensitive receptors
REP3A-010	Highways England Deadline 3a Submission - 7.2 Outline construction environmental management plan

REP3A-011	Highways England Deadline 3a Submission - 7.3 Register of Environmental actions and commitments
REP3A-012	Highways England Deadline 3a Submission - 9.1 Guide to the Application
REP3A-013	Highways England Deadline 3a Submission - 9.2 Book of Reference (Tracked)
REP3A-014	Highways England Deadline 3a Submission - Draft Itinerary for the Accompanied Site Inspection
REP3A-015	Highways England Deadline 3a Submission - 9.11 Statement of Common Ground with Transport for London
REP3A-016	Highways England Deadline 3a Submission - 9.18 Statement of Commonality for Statements of Common Ground
REP3A-017	Highways England Deadline 3a Submission - 9.28 Schedule of Changes to draft Development Consent Order
REP3A-018	Highways England Deadline 3a Submission - 9.32 Updated draft Development Consent Order (Tracked Version)
REP3A-019	Highways England Deadline 3a Submission - 9.33 Applicant's Comments on Responses to Examining Authority's Written Questions
REP3A-020	Highways England Deadline 3a Submission - 9.34 Applicant's comments on Local Impact Report submitted by London Borough of Havering
REP3A-021	Highways England Deadline 3a Submission - 9.35 Applicant's comments on Local Impact Report submitted by Essex County Council
REP3A-022	Highways England Deadline 3a Submission - 9.36 Applicant's Responses to Written Representations
REP3A-023	Highways England Deadline 3a Submission - 9.37 Schedule of Changes to Book of Reference
REP3A-024	Highways England Deadline 3a Submission - 9.40 Outline construction environmental management plan (Tracked)
REP3A-025	Highways England Deadline 3a Submission - 9.41 Register of Environmental actions and commitments (Tracked)
REP3A-026	Highways England Deadline 3a Submission - 9.42 Environmental Statement: Chapter 6 Noise and Vibration (Tracked)
REP3A-027	Highways England Deadline 3a Submission - 9.43 Environmental Statement: Appendix 6.2 Construction Noise and Vibration (Tracked)

REP3A-028	Highways England Deadline 3a Submission - 9.44 Environmental Statement: Appendix 6.3 Noise sensitive receptors (Tracked)
REP3A-029	Highways England Deadline 3a Submission - 9.45 Outline Archaeological Management Plan (AMP)
REP3A-030	Highways England Deadline 3a Submission - 10.1 Report on Proposed Scheme Changes 1-4
REP3A-031	Highways England Deadline 3a Submission - 10.2 Proposed Scheme Changes 1-4 - Drawings
REP3A-032	Highways England Deadline 3a Submission - 10.4 Book of Reference Addendum (Tracked)- Changes 1-4
REP3A-033	Highways England Deadline 3a Submission - 10.5 Schedule of Change to Book of Reference - Changes 1-4
REP3A-034	Highways England Deadline 3a Submission - 10.6 Environmental Statement: Chapter 6: Noise and vibration - Changes 1-4
REP3A-035	Highways England Deadline 3a Submission - 10.7 Environmental Statement Chapter 9: Landscape and visual - Changes 1-4
REP3A-036	Highways England Deadline 3a Submission - 10.8 Environmental Statement Chapter 12: Materials and waste - Changes 1-4
REP3A-037	Highways England Deadline 3a Submission - 10.9 Environmental Statement Chapter 6: Noise and vibration figures - Changes 1-4
REP3A-038	Highways England Deadline 3a Submission - 10.10 Environmental Statement: Appendix 6.2 Construction noise and vibration - Changes 1-4
REP3A-039	Highways England Deadline 3a Submission - 10.11 Landscape and visual figures photomontages viewpoint D - Changes 1-4
REP3A-040	London Borough of Havering Deadline 3a Submission - Responses to schedule of Changes to the draft Development Consent Order
REP3A-041	London Borough of Havering Deadline 3a Submission - Responses to Written Representations
REP3A-042	London Borough of Havering Deadline 3a Submission - Comments on responses to the Examining Authority's Written Questions
REP3A-043	Savills (UK) Ltd on behalf of Garden of Peace Muslim Cemetery Deadline 3a Submission - Submission of suggested ASI locations
REP3A-044	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 3a Submission - Submission of suggested ASI locations

REP3A-045	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 3a Submission - Comments on responses to the Examining Authority's Written Questions
REP3A-046	Transport for London Deadline 3a Submission - Comments on responses to the Examining Authority's Written Questions and responses to Written Representations
Deadline 3b – 25 February 2021 **Deadline for receipt by the ExA of:** • Comment on responses to WRs; • Comments on responses to LIRs; • Any further information requested by the ExA under Rule 17 of the Examination Rules.	
REP3B-001	Highways England Deadline 3b - Cover Letter
REP3B-002	Highways England Deadline 3b - 9.1 Guide to the Application
REP3B-003	Highways England Deadline 3b - 9.46 Applicant's comments on responses to London Borough of Havering Deadline 3a Response
REP3B-004	Highways England Deadline 3b - 9.47 Applicant's comments on responses to Transport for London Deadline 3a Response
REP3B-005	Highways England Deadline 3b - 9.48 Applicant's comments on responses to Mr and Mrs Jones Deadline 3a Response
REP3B-006	London Borough of Havering Deadline 3b Submission - Responses to Deadline 3a submissions
REP3B-007	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 3b Submission - Comments on responses to Gardens of Peace's Written Representation
REP3B-008	Transport for London Deadline 3b Submission - Suggested agenda items for Compulsory Acquisition Hearing 1

Deadline 4 – 18 March 2021

Deadline for receipt by the ExA of:

- Written summaries of oral submissions put at any Hearings;
- Comments on responses for Deadlines 3a and 3b;
- Comments on the Applicant's draft Itinerary for the ASI;
- An updated Guide to the Application;
- Updated Compulsory Acquisition Schedule;
- Updated draft DCO;
- An updated Schedule of Changes to the draft DCO;
- Progressed SoCGs;
- Progressed Statement of Commonality of SoCG;
- Comments on responses on submission of suggested locations / sites for the ExA to include as part of the ASI;
- Any further information requested by the ExA under Rule 17 of the Examination Rules.

REP4-001	Highways England Deadline 4 Submission - Cover Letter
REP4-002	Highways England Deadline 4 Submission - 3.1 Draft Development Consent Order (clean)
REP4-003	Highways England Deadline 4 Submission - 9.1 Guide to the Application
REP4-004	Highways England Deadline 4 Submission - 9.8 Statement of Common Ground London Borough of Havering
REP4-005	Highways England Deadline 4 Submission - 9.18 Statement of Commonality for Statements of Common Ground
REP4-006	Highways England Deadline 4 Submission - 9.19 Compulsory Acquisition Schedule from the Applicant (clean)
REP4-007	Highways England Deadline 4 Submission - 9.28 Schedule of Changes to draft Development Consent Order
REP4-008	Highways England Deadline 4 Submission - 9.31 The Compulsory (CA) Schedule from the Applicant (tracked)
REP4-009	Highways England Deadline 4 Submission - 9.32 Updated draft Development Consent Order (tracked)
REP4-010	Highways England Deadline 4 Submission - 9.49 Applicant's response to the London Borough of Havering Deadline 3b submission
REP4-011	Highways England Deadline 4 Submission - 9.50 Applicant's response to the Transport for London Deadline 3b submission

REP4-012	Highways England Deadline 4 Submission - 9.51 Applicant's response to the Gardens of Peace Deadline 3b submission
REP4-013	Highways England Deadline 4 Submission - 9.52 Outline Traffic Management Plan
REP4-014	Highways England Deadline 4 Submission - 9.53 Written submission of Applicant's case put orally at Compulsory Acquisition Hearing 1
REP4-015	Highways England Deadline 4 Submission - 9.54 Written submission of Applicant's case put orally at Open Floor Hearing 1
REP4-016	Highways England Deadline 4 Submission - 9.55 Written submission of Applicant's case put orally at Issue Specific Hearing 1
REP4-017	Highways England Deadline 4 Submission - 9.56 Written submission of Applicant's case put orally at Issue Specific Hearing 2
REP4-018	Highways England Deadline 4 Submission - 9.57 Applicant's response to action points from Compulsory Acquisition Hearing 1
REP4-019	Highways England Deadline 4 Submission - 9.58 Addendum to Book of Reference, Land Plans and Schedule of Change in response to action points from the Compulsory Acquisition Hearing
REP4-020	Highways England Deadline 4 Submission - 9.59 Overlay plan of Plot 1-8 and burial plots
REP4-021	Highways England Deadline 4 Submission - 9.60 Applicant's response to action points from Issue Specific Hearing 1
REP4-022	Highways England Deadline 4 Submission - 9.61 Larger scale drawing of area around Grove Farm dwellings
REP4-023	Highways England Deadline 4 Submission - 9.62 The road to good design guide summary table
REP4-024	Highways England Deadline 4 Submission - 9.63 Carbon Budget Assessment
REP4-025	Highways England Deadline 4 Submission - 9.65 Revised engineering sections (DD and EE)
REP4-026	Highways England Deadline 4 Submission - 9.66 Applicant's response to action points from Issue Specific Hearing 2
REP4-027	Highways England Deadline 4 Submission - 9.67 Applicant’s response to Network Rail's Deadline 3b Submission

REP4-028	Highways England Deadline 4 Submission - 9.68 Response to additional representation from Savills on behalf of Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery
REP4-029	London Borough of Havering Deadline 4 Submission - Request for additional requirements for draft Development Consent Order
REP4-030	London Borough of Havering Deadline 4 Submission - Response to Deadline 3b Submissions
REP4-031	London Borough of Havering Deadline 4 Submission - Written summary of oral submissions put at the Hearings held the week commencing 1 March 2021
REP4-032	Anthony Manley Deadline 4 Submission - Written summary of oral submissions put at the Hearings held the week commencing 1 March 2021
REP4-033	Christopher Strutt and Tina Preston-Strutt Deadline 4 Submission - Written Representation
REP4-034	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 4 Submission - Written summary of oral submission put at the Hearings held the week commencing 1 March 2021, response to action points arising from Compulsory Acquisition Hearing 1 and comments on the Applicant's Draft Itinerary for the Accompanied Site Inspection
REP4-035	Jane Allan Deadline 4 Submission - Written summary of oral submissions put at the Hearings held the week commencing 1 March 2021
REP4-036	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 4 Submission - Transportation and highway supplementary representations
REP4-037	Sukhjit Singh Deadline 4 Submission - Written Representation
REP4-038	Transport for London Deadline 4 Submission - Written summary of oral submissions put at the Hearings held the week commencing 1 March 2021

Deadline 5 – 13 April 2021

Deadline for receipt by the ExA of:

- Responses to ExA WQ2 (if required);
- Comments on responses for Deadline 4;
- An updated Guide to the Application;
- Updated Compulsory Acquisition Schedule;
- Updated draft Development Consent Order;
- Progressed SoCGs;
- Progressed Statement of Commonality for SoCG;
- Any further information requested by the ExA under Rule 17 of the Examination Rules

REP5-001	Highways England Deadline 5 Submission - Cover Letter
REP5-002	Highways England Deadline 5 Submission - 2.2 Land Plans
REP5-003	Highways England Deadline 5 Submission - 2.3 Work plans
REP5-004	Highways England Deadline 5 Submission - 2.4 Streets, rights of way and access plans
REP5-005	Highways England Deadline 5 Submission - 2.6 Speed limits and traffic regulations plans
REP5-006	Highways England Deadline 5 Submission - 2.7 Scheme layout plans
REP5-007	Highways England Deadline 5 Submission - 2.8 Engineering drawings and sections
REP5-008	Highways England Deadline 5 Submission - 2.9 Biodiversity sites and features plans
REP5-009	Highways England Deadline 5 Submission - 2.10 Historic environment sites and features plans
REP5-010	Highways England Deadline 5 Submission - 2.11 Special Category Land Plans
REP5-011	Highways England Deadline 5 Submission - 3.1 Draft Development Consent Order
REP5-012	Highways England Deadline 5 Submission - 3.3 Consents and agreements position statement
REP5-013	Highways England Deadline 5 Submission - 6.1 Environmental Statement Chapters 1-4: Introductory chapters
REP5-014	Highways England Deadline 5 Submission - 6.1 Environmental Statement Chapter 6: Noise and vibration
REP5-015	Highways England Deadline 5 Submission - 6.1 Environmental Statement Chapter 9: Landscape and visual
REP5-016	Highways England Deadline 5 Submission - 6.1 Environmental Statement Chapter 12: Materials and waste
REP5-017	Highways England Deadline 5 Submission - 6.1 Environmental Statement Chapter 13: People and communities

REP5-018	Highways England Deadline 5 Submission - 6.1 Environmental Statement Chapter 15: Assessment of cumulative effects
REP5-019	Highways England Deadline 5 Submission - 6.1 Environmental Statement Chapter 16: Summary
REP5-020	Highways England Deadline 5 Submission - 6.2 Environmental Statement Chapters 1-4: Introductory chapters figures
REP5-021	Highways England Deadline 5 Submission - 6.2 Environmental Statement Chapter 6: Noise and vibration figures
REP5-022	Highways England Deadline 5 Submission - 6.2 Environmental Statement Chapter 9: Landscape and visual figures -photomontages viewpoint D
REP5-023	Highways England Deadline 5 Submission - 6.3 Environmental Statement Appendix 6.2: Construction noise and vibration
REP5-024	Highways England Deadline 5 Submission - 6.3 Environmental Statement Appendix 6.3: Noise sensitive receptors
REP5-025	Highways England Deadline 5 Submission - 6.3 Environmental Statement Appendix 6.4: Noise nuisance
REP5-026	Highways England Deadline 5 Submission - 6.3 Environmental Statement Appendix 9.1: Landscape and visual impact assessment
REP5-027	Highways England Deadline 5 Submission - 7.2 Outline construction environmental management plan
REP5-028	Highways England Deadline 5 Submission - 7.3 Register of Environmental actions and commitments
REP5-029	Highways England Deadline 5 Submission - 8.1 Statement of Common Ground with Environment Agency
REP5-030	Highways England Deadline 5 Submission - 9.1 Guide to the Application
REP5-031	Highways England Deadline 5 Submission - 9.11 Statement of Common Ground with Transport for London
REP5-032	Highways England Deadline 5 Submission - 9.18 Statement of Commonality for Statements of Common Ground
REP5-033	Highways England Deadline 5 Submission - 9.19 Compulsory Acquisition Schedule from the Applicant (Clean Version)

REP5-034	Highways England Deadline 5 Submission - 9.23 Landscape and visual figures photomontages viewpoint D - Winter
REP5-035	Highways England Deadline 5 Submission - 9.29 Schedule of Changes to draft Development Consent Order
REP5-036	Highways England Deadline 5 Submission - 9.31 The Compulsory Acquisition (CA) Schedule from the Applicant (Tracked Version)
REP5-037	Highways England Deadline 5 Submission - 9.32 Updated draft Development Consent Order (Tracked Version)
REP5-038	Highways England Deadline 5 Submission - 9.45 Outline Archaeology Management Plan (AMP)
REP5-039	Highways England Deadline 5 Submission - 9.59 Overlay plan of Plot 1/8 and the burial plots
REP5-040	Highways England Deadline 5 Submission - 9.64 Outline Arboricultural Method Statement (AMS)
REP5-041	Highways England Deadline 5 submission - 9.69 Applicant's Response to the Examining Authority's Further Written Questions
REP5-042	Highways England Deadline 5 Submission - 9.70 Applicant's response to London Borough of Havering Deadline 4 Submissions
REP5-043	Highways England Deadline 5 Submission - 9.71 Applicant's response to A Manley's written summary of hearings
REP5-044	Highways England Deadline 5 Submission - 9.72 Applicant's response to S Singh's written representations
REP5-045	Highways England Deadline 5 Submission - 9.73 Applicant's response to the Gardens of Peace's written summary of hearings
REP5-046	Highways England Deadline 5 Submission - 9.74 Applicant's response to J Allan's written summary of hearings
REP5-047	Highways England Deadline 5 Submission - 9.75 Applicant's response to Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm's Deadline 4 submission
REP5-048	Highways England Deadline 5 Submission - 9.76 Applicant's response to Mr and Mrs Strutt's written representation
REP5-049	Highways England Deadline 5 Submission - 9.77 Applicant's response to Transport for London's written summary of hearings

REP5-050	Highways England Deadline 5 Submission - 9.78 Addendum to Book of Reference
REP5-051	Highways England Deadline 5 Submission - 9.79 1:1000 plan of Grove Farm using topographical survey
REP5-052	Highways England Deadline 5 Submission - 9.80 Signposting document in response to GQ2.2 and TA2.1
REP5-053	Highways England Deadline 5 Submission - 9.81 Schedule of Change to the Book of Reference Addendum
REP5-054	Highways England Deadline 5 Submission - 9.82 Forestry Commission confirmation letter
REP5-055	Highways England Deadline 5 Submission - 9.83 Addendum to the Statement of Reasons
REP5-056	Highways England Deadline 5 Submission - Notification of intention to submit change request to the scheme (Change 8)
REP5-057	London Borough of Havering Deadline 5 Submission - Response to the Examining Authority's Further Written Questions
REP5-058	London Borough of Havering Deadline 5 Submission - Response to the Applicant's response to London Borough of Havering's Deadline 3b submission
REP5-059	London Borough of Havering Deadline 5 Submission - Response to the Applicant's response to Action Points from Issue Specific Hearing 1
REP5-060	London Borough of Havering Deadline 5 Submission - Response to the Applicant's response to Action Points from Issue Specific Hearing 2
REP5-061	London Borough of Havering Deadline 5 Submission - Response to the Updated draft Development Consent Order
REP5-062	London Borough of Havering Deadline 5 Submission - Comments on the Applicant's engagement
REP5-063	Brentwood Borough Council Deadline 5 Submission - Response to the Examining Authority's Further Written Questions and requests for information
REP5-064	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Deadline 5 Submission - Response to the Examining Authority's request for an update on the status of protective provisions
REP5-065	Environment Agency Deadline 5 Submission - Response to the Examining Authority's Further Written Questions and requests for information

REP5-066	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 5 Submission - Response to the Examining Authority's Further Written Questions and comments on the Applicant's Deadline 4 submission
REP5-067	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 5 Submission - Response to the Examining Authority's Further Written Questions
REP5-068	National Grid (WITHDRAWN) Deadline 5 Submission - **Submission withdrawn** via REP10-021 on 7 July 2021
REP5-069	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited (WITHDRAWN) Deadline 5 Submission - **Submission withdrawn** via REP10-024 on 7 July 2021
REP5-070	Transport for London Deadline 5 Submission - Responses to the Examining Authority's Further Written Questions and requests for information
REP5-071	Highways England Deadline 5 Submission - Late submission accepted at the discretion of the Examining Authority - 6.2 Environmental Statement Chapter 9: Figures
Deadline 6 – 27 April 2021 **Deadline for receipt by the ExA of:** • Comments on responses to the ExA WQ2 (if required); • Comments on responses for Deadline 5; • An updated Guide to the Application; • Updated Compulsory Acquisition Schedule; • Updated draft DCO; • Progressed SoCGs; • Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP6-001	Highways England Deadline 6 Submission - Cover Letter
REP6-002	Highways England Deadline 6 Submission - Application for change to an accepted Development Consent Order (Changes 5-7)
REP6-003	Highways England Deadline 6 Submission - 2.3 Works plans
REP6-004	Highways England Deadline 6 Submission - 2.6 Speed limits and traffic regulations plans
REP6-005	Highways England Deadline 6 Submission - 3.1 Draft Development Consent Order

REP6-006	Highways England Deadline 6 Submission - 9.1 Guide to the Application
REP6-007	Highways England Deadline 6 Submission - 9.19 The Compulsory Acquisition (CA) Schedule from the Applicant (Clean)
REP6-008	Highways England Deadline 6 Submission - 9.28 Schedule of Changes to draft Development Consent Order
REP6-009	Highways England Deadline 6 Submission - 9.31 The Compulsory Acquisition (CA) Schedule from the Applicant (Tracked)
REP6-010	Highways England Deadline 6 Submission - 9.32 Updated draft Development Consent Order (Tracked Version)
REP6-011	Highways England Deadline 6 Submission - 9.84 Applicant's comments on Transport for London's response to the Examining Authority's Further Written Questions
REP6-012	Highways England Deadline 6 Submission - 9.85 Applicant's comments on Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm's response to the Examining Authority's Further Written Questions
REP6-013	Highways England Deadline 6 Submission - 9.86 Applicant's comments on the London Borough of Havering's Deadline 5 submissions
REP6-014	Highways England Deadline 6 Submission - 9.87 Applicant's comments on Gardens of Peace's response to the Examining Authority's Further Written Questions
REP6-015	Highways England Deadline 6 Submission - 9.89 Applicant's comments on Brentwood Borough Council's response to the Examining Authority's Further Written Questions
REP6-016	Highways England Deadline 6 Submission - 9.90 Applicant's comments on Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited's Deadline 5 submission
REP6-017	Highways England Deadline 6 Submission - Deadline 6 Submission - 9.91 Applicant's comments on CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas' Deadline submission
REP6-018	Highways England Deadline 6 Submission - 9.92 Applicant's response to J Ellis' additional submission
REP6-019	Highways England Deadline 6 Submission - 9.93 Response to the Examining Authority's Further Written Question BHR2.1 Environmental Management Plans

REP6-020	Highways England Deadline 6 Submission - 9.94 Applicant's response to Rule 17 request for information dated 16 April 2021
REP6-021	Highways England Deadline 6 Submission - 9.95 Addendum to the Case for the Scheme
REP6-022	Highways England Deadline 6 Submission - 10.12 Report on Proposed Scheme Changes 5-7
REP6-023	Highways England Deadline 6 Submission - 10.13 Proposed Scheme Changes 5-7 - Drawings
REP6-024	Highways England Deadline 6 Submission - 10.14 Book of Reference Addendum Changes 5-7 (Clean)
REP6-025	Highways England Deadline 6 Submission - 10.15 Schedule of Change to Book of Reference addendum Changes 5-7
REP6-026	Highways England Deadline 6 Submission - 10.16 Book of Reference Addendum Changes 5-7 (Tracked)
REP6-027	Anthony Manley Deadline 6 Submission - Response to the Examining Authority's Rule 17 Letter requesting further information about provisions for Non-Motorised Users (NMUs)
REP6-028	Brentwood Borough Council Deadline 6 Submission - Response to the Examining Authority's Further Written Questions and requests for information
REP6-029	London Borough of Havering Deadline 6 Submission - Response to the outline Arboricultural Method Statement
REP6-030	London Borough of Havering Deadline 6 Submission - Response to Applicant's response to the Gardens of Peace Written summary of hearings
REP6-031	London Borough of Havering Deadline 6 Submission - Response to Applicant's responses to London Borough of Havering's Deadline 4 Submissions
REP6-032	London Borough of Havering Deadline 6 Submission - Response to Environmental Statement Chapter 6 Noise and Vibration, associated appendices and outline CEMP
REP6-033	London Borough of Havering Deadline 6 Submission - Response to Savills on behalf of Gardens of Peace Deadline 6 submission
REP6-034	London Borough of Havering Deadline 6 Submission - Response to the Applicant's Signposting document
REP6-035	London Borough of Havering Deadline 6 Submission - Response to the Updated draft Development Consent Order

REP6-036	London Borough of Havering Deadline 6 Submission - Recommendations for noise mitigation for Grove Farm
REP6-037	London Borough of Havering Deadline 6 Submission - Update on London Borough of Havering Emerging Local Plan
REP6-038	London Borough of Havering and Essex County Council Deadline 6 Submission - London Borough of Havering and Essex County Council's response to the Examining Authority's Rule 17 Letter requesting further information about provisions for Non-Motorised Users (NMUs)
REP6-039	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Deadline 6 Submission - Comments on the Proposed Development
REP6-040	Environment Agency Deadline 6 Submission - Comments on the Environment Agency's position on the Ground Investigation Reports
REP6-041	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 6 Submission - Response to the Applicant's Deadline 5 submission
REP6-042	Jane Allan Deadline 6 Submission- Response to the Examining Authority's Rule 17 Letter requesting further information about provisions for Non-Motorised Users (NMUs)
REP6-043	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 6 Submission - Comments on responses to the Examining Authority's Further Written Questions and the Applicant's response to the Gardens of Peace written summary of hearings
REP6-044	Transport for London Deadline 6 Submission - Response to the Examining Authority's Further Written Questions and requests for information
REP6-045	Transport for London Deadline 6 Submission - Response to the Examining Authority's Rule 17 Letter requesting further information about provisions for Non-Motorised Users (NMUs)

Deadline 7 – 20 May 2021

Deadline for receipt by the ExA of:

- Written summaries of oral submissions put at any Hearings held during the week commencing Monday 10 May 2021;
- Comments on responses submitted at Deadline 6;
- An updated Guide to the Application;
- Updated Compulsory Acquisition Schedule;
- Updated draft Development Consent Order;
- Finalised SoCGs;

• Final Progressed Statement of Commonality for SoCG; • Any further information requested by the ExA under Rule 17 of the Examination Rules.	
REP7-001	Highways England Deadline 7 Submission - Cover Letter
REP7-002	Highways England Deadline 7 Submission - Application for change to an accepted Development Consent Order (Change 8)
REP7-003	Highways England Deadline 7 Submission - 3.1 Draft Development Consent Order
REP7-004	Highways England Deadline 7 Submission - 8.1 Statement of Common Ground with Environment Agency
REP7-005	Highways England Deadline 7 Submission - 9.1 Guide to the Application
REP7-006	Highways England Deadline 7 Submission - 9.8 Statement of Common Ground with London Borough of Havering
REP7-007	Highways England Deadline 7 Submission - 9.11 Statement of Common Ground with Transport for London
REP7-008	Highways England Deadline 7 Submission - 9.12 Statement of Common Ground with National Grid
REP7-009	Highways England Deadline 7 Submission - 9.13 Statement of Common Ground with Cadent Gas
REP7-010	Highways England Deadline 7 Submission - 9.14 Statement of Common Ground with Eastern Power Networks
REP7-011	Highways England Deadline 7 Submission - 9.15 Statement of Common Ground with Natural England
REP7-012	Highways England Deadline 7 Submission - 9.18 Statement of Commonality for Statements of Common Ground
REP7-013	Highways England Deadline 7 Submission - 9.19 The Compulsory Acquisition (CA) Schedule from the Applicant (Clean Version)
REP7-014	Highways England Deadline 7 Submission - 9.29 Schedule of Changes to draft Development Consent Order
REP7-015	Highways England Deadline 7 Submission - 9.31 The Compulsory Acquisition (CA) Schedule from the Applicant (Tracked Version)

REP7-016	Highways England Deadline 7 Submission - 9.32 Updated draft Development Consent Order (Tracked Version)
REP7-017	Highways England Deadline 7 Submission - 9.52 Outline Traffic Management Plan
REP7-018	Highways England Deadline 7 Submission - 9.96 Written submission of Applicant's case put orally at Issue Specific Hearing 3 on Environmental matters held on 12 May 2021
REP7-019	Highways England Deadline 7 Submission - 9.97 Applicant's response to action points from Issue Specific Hearing 3 held on 12 May 2021
REP7-020	Highways England Deadline 7 Submission - 9.98 Applicant's comments on the London Borough of Havering's Deadline 6 submissions
REP7-021	Highways England Deadline 7 Submission - 9.99 Applicant's comments on London Borough of Havering and Essex County Council Rule 17 Response
REP7-022	Highways England Deadline 7 Submission - 9.101 Applicant's response to Transport for London's Deadline 6 submissions
REP7-023	Highways England Deadline 7 Submission - 9.103 Applicant's comments on Gardens of Peace Deadline 6 submission
REP7-024	Highways England Deadline 7 Submission - 9.104 Applicant's comments on Grove Farm's Deadline 6 submission
REP7-025	Highways England Deadline 7 Submission - 9.105 Applicant's comments on Jane Allan's response to the Rule 17 request
REP7-026	Highways England Deadline 7 Submission - 9.106 Applicant's comments on T Manley's response to the Rule 17 request
REP7-027	Highways England Deadline 7 Submission - 9.107 Applicant's proposed Protective Provisions for the protection of Transport for London
REP7-028	Highways England Deadline 7 Submission - 9.108 Highways England's Design Process Summary
REP7-029	Highways England Deadline 7 Submission - 10.17 Report on Proposed Scheme Change 8
REP7-030	Highways England Deadline 7 Submission - 10.18 Proposed Scheme Change 8 - Drawings
REP7-031	Highways England Deadline 7 Submission - 10.20 Book of Reference Addendum Change 8 (Tracked)

REP7-032	Highways England Deadline 7 Submission - 10.21 Schedule of Change to Book of Reference addendum Change 8
REP7-033	London Borough of Havering Deadline 7 Submission - Written Summary of Issue Specific Hearing 3 Submissions
REP7-034	London Borough of Havering Deadline 7 Submission - London Borough of Havering's response to updated draft Development Consent Order
REP7-035	London Borough of Havering Deadline 7 Submission - London Borough of Havering's response to the Applicant's response to Rule 17 request for information (16 April 2021)
REP7-036	London Borough of Havering Deadline 7 Submission - Comments on Report on Proposed Scheme Change 5-7
REP7-037	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Deadline 7 Submission - Response to Deadline 6 submissions
REP7-038	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 7 Submission - Response to Deadline 6 submissions and written summary of oral submissions put at Issue Specific Hearing 3
REP7-039	Matthew Bodley Consulting Limited on behalf of Glebeland Estates Limited Deadline 7 Submission - Comments on Change Request 7
REP7-040	Jane Allan Deadline 7 Submission - Comments on the Proposed Development
REP7-041	Keith Murray Consultants Ltd on behalf of Luddington Golf Ltd Deadline 7 Submission - Comments on Change Request 7 and notice of withdrawal of objection
REP7-042	Transport for London Deadline 7 Submission - Written Summary of Oral Submissions made at Issue Specific Hearing 3
REP7-043	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 7 Submission - Late submission accepted at the discretion of the Examining Authority - Response to Deadline 6 submissions and comments on the Proposed Development from the Grove Family

Deadline 8 – 10 June 2021

Deadline for receipt by the ExA of:

- Comments on the ExA's proposed schedule of changes to the draft DCO;
- An updated Guide to the Application;
- An updated version of the draft DCO;
- An updated Compulsory Acquisition Schedule;

• Comments on responses submitted for Deadline 7; • Any further information requested by the ExA under Rule 17 of the Examination Rules (if required). If the ExA gives notice of intention to hold an ASI on Wednesday 19 May 2021; • Requests to attend the ASI.	
REP8-001	Highways England Deadline 8 Submission - Cover Letter
REP8-002	Highways England Deadline 8 Submission - 3.1 Draft Development Consent Order
REP8-003	Highways England Deadline 8 Submission - 9.1 Guide to the Application
REP8-004	Highways England Deadline 8 Submission - 9.10 Statement of Common Ground with Essex County Council
REP8-005	Highways England Deadline 8 Submission - 9.18 Statement of Commonality for Statements of Common Ground
REP8-006	Highways England Deadline 8 Submission - 9.19 Compulsory Acquisition Schedule from the Applicant (Clean Version)
REP8-007	Highways England Deadline 8 Submission - 9.28 Schedule of Changes to draft Development Consent Order
REP8-008	Highways England Deadline 8 Submission - 9.31 The Compulsory Acquisition (CA) Schedule from the Applicant (Tracked Version)
REP8-009	Highways England Deadline 8 Submission - 9.32 Updated draft Development Consent Order (Tracked Version)
REP8-010	Highways England Deadline 8 Submission - 9.109 Applicant's comments on the Examining Authority's proposed schedule of changes to the draft Development Consent Order
REP8-011	Highways England Deadline 8 Submission - 9.110 Response to Action Point 4 from Issue Specific Hearing 3 Outline Community Engagement Plan
REP8-012	Highways England Deadline 8 Submission - 9.111 Position Statement - Proposed Agreement between Highways England, Gardens of Peace and Cadent Gas Limited
REP8-013	Highways England Deadline 8 Submission - 9.112 Applicant's comments on the London Borough of Havering's Deadline 7 submissions

REP8-014	Highways England Deadline 8 Submission - 9.113 Applicant's comments on Cadent Gas's Deadline 7 submission
REP8-015	Highways England Deadline 8 Submission - 9.114 Applicant's comments on Transport for London's Deadline 7 submission
REP8-016	Highways England Deadline 8 Submission - 9.115 Applicant's comments on the Garden of Peace's Deadline 7 submission
REP8-017	Highways England Deadline 8 Submission - 9.116 Applicant's comments on Jane Allan's Deadline 7 submission
REP8-018	Highways England Deadline 8 Submission - 9.117 Applicant's comments on Grove Farm's Deadline 7 submission
REP8-019	Highways England Deadline 8 Submission - 9.118 Position statement with Glebelands Estates Ltd and Luddington Golf Ltd
REP8-020	Highways England Deadline 8 Submission - Applicant's response to the Examining Authority's Rule 9 and 17 Letter (26 May 2021)
REP8-021	London Borough of Havering Deadline 8 Submission - Response to the Applicant's Statement of Commonality for Statements of Common Ground submitted at Deadline 7
REP8-022	London Borough of Havering Deadline 8 Submission - Response to the Applicant's updated draft Development Consent Order submitted at Deadline 7
REP8-023	London Borough of Havering Deadline 8 Submission - Response to the Applicant's Outline Traffic Management Plan submitted at Deadline 7
REP8-024	London Borough of Havering Deadline 8 Submission - Response to the Applicant's response to action points from Issue Specific Hearing 3
REP8-025	London Borough of Havering Deadline 8 Submission - Response to the Applicant's comments on London Borough of Havering's Deadline 6 submissions
REP8-026	London Borough of Havering Deadline 8 Submission - Response to the Examining Authority's Rule 9 and 17 Letter (26 May 2021)
REP8-027	London Borough of Havering Deadline 8 Submission - Response to the Examining Authority's Rule 17 Letter (27 May 2021)
REP8-028	**Reference no longer in use** – this document is available at REP8-028A
REP8-028A	London Borough of Havering Deadline 8 Submission - Response to the Examining Authority's Consultation draft Development Consent Order

REP8-029	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Deadline 8 Submission - Response to the Examining Authority's Schedule of recommended amendments to the Applicant's Consultation draft Development Consent Order Version 6
REP8-030	Environment Agency Deadline 8 Submission - Comments on the Examining Authority's Consultation draft Development Consent Order and comments on the Proposed Development
REP8-031	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 8 Submission - Statement in relation to the progress of the Tri-party Agreement
REP8-032	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 8 Submission - Comments on the Applicant's Deadline 7 written submission put orally at Issue Specific Hearing 3, the Applicant's Deadline 7 response to action points from Issue Specific Hearing 3 and responses to the Applicant's comments on Gardens of Peace Deadline 6 submission
REP8-033	Ministry of Defence Deadline 8 Submission - Response to the Examining Authority's Rule 9 and 17 Letter (26 May 2021)
REP8-034	Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm Deadline 8 Submission - Response to the Applicant's Deadline 7 submissions
REP8-035	Mr and Mrs Jones of Grove Farm Deadline 8 Submission - Comments on the Proposed Development
REP8-036	Natural England Deadline 8 Submission - Response to the Examining Authority's Rule 9 and 17 Letter (26 May 2021)
REP8-037	Transport for London Deadline 8 Submission - Response to the Examining Authority's Rule 9 and 17 Letter (26 May 2021)
REP8-038	Transport for London Deadline 8 Submission - Response to submissions made at Deadline 7
REP8-039	Telia Carrier UK Ltd Deadline 8 Submission - Late submission accepted at the discretion of the Examining Authority - Comments on the Proposed Development

Deadline 9 – 30 June 2021

Deadline for receipt by the ExA of:

- Comments on responses for Deadline 8;
- Final version of the draft DCO;
- Final Guide to the Application;
- Final Compulsory Acquisition Schedule;

• Any further information requested by the ExA under Rule 17 of the Examination (if required).	
REP9-001	Highways England Deadline 9 Submission - Cover Letter
REP9-002	Highways England Deadline 9 Submission - 2.1 Location Plan
REP9-003	Highways England Deadline 9 Submission - 2.2 Land Plans
REP9-004	Highways England Deadline 9 Submission - 2.3 Works plans
REP9-005	Highways England Deadline 9 Submission - 2.4 Streets, rights of way and access plans
REP9-006	Highways England Deadline 9 Submission - 2.6 Speed limits and traffic regulation plans
REP9-007	Highways England Deadline 9 Submission - 2.7 Scheme layout plans
REP9-008	Highways England Deadline 9 Submission - 2.8 Engineering drawings and sections
REP9-009	Highways England Deadline 9 Submission - 2.9 Biodiversity sites and features plan
REP9-010	Highways England Deadline 9 Submission - 2.10 Historic environment sites and features plans
REP9-011	Highways England Deadline 9 Submission - 2.11 Special Category land plans
REP9-012	Highways England Deadline 9 Submission - 3.1 Draft Development Consent Order
REP9-013	Highways England Deadline 9 Submission - 3.2 Explanatory Memorandum
REP9-014	Highways England Deadline 9 Submission - 3.3 Consents and agreements position statement
REP9-015	Highways England Deadline 9 Submission - 3.4 Development Consent Order validation report
REP9-016	Highways England Deadline 9 Submission - 4.1 Statement of Reasons
REP9-017	Highways England Deadline 9 Submission - 4.3 Book of Reference

REP9-018	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 1-4: Introductory Chapters
REP9-019	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 6: Noise and vibration
REP9-020	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 7: Biodiversity
REP9-021	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 9: Landscape and visual
REP9-022	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 12: Materials and waste
REP9-023	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 13: People and communities
REP9-024	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 15: Assessment of cumulative effects
REP9-025	Highways England Deadline 9 Submission - 6.1 Environmental Statement Chapter 16: Summary
REP9-026	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 1-4: Introductory chapters figures
REP9-027	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 5: Air quality figures
REP9-028	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 6: Noise and vibration figures
REP9-029	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 7: Biodiversity figures
REP9-030	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 8: Road drainage and the water environment figures
REP9-031	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 9: Landscape and visual figures
REP9-032	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 9: Landscape and visual figures - photomontages viewpoint B
REP9-033	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 9: Landscape and visual figures - photomontages viewpoint D

REP9-034	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 10: Geology and soils figures
REP9-035	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 11: Cultural heritage figures
REP9-036	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 13: People and communities figures
REP9-037	Highways England Deadline 9 Submission - 6.2 Environmental Statement Chapter 15: Assessment of cumulative effects figures
REP9-038	Highways England Deadline 9 Submission - 6.3 Environmental Statement Appendix 5.1: Air quality
REP9-039	Highways England Deadline 9 Submission - 6.3 Environmental Statement Appendix 6.2: Construction noise and vibration
REP9-040	Highways England Deadline 9 Submission - 6.3 Environmental Statement Appendix 6.3: Noise sensitive receptors
REP9-041	Highways England Deadline 9 Submission - 6.3 Environmental Statement Appendix 6.4: Noise nuisance
REP9-042	Highways England Deadline 9 Submission - 6.3 Environmental Statement Appendix 7.16: Outline landscape and ecological management and monitoring plan
REP9-043	Highways England Deadline 9 Submission - 6.3 Environmental Statement Appendix 9.1: Landscape and visual impact assessment
REP9-044	Highways England Deadline 9 Submission - 6.4 Environmental Statement: Non-technical summary
REP9-045	Highways England Deadline 9 Submission - 6.5 Statutory nuisance statement
REP9-046	Highways England Deadline 9 Submission - 7.2 Outline construction environmental management plan
REP9-047	Highways England Deadline 9 Submission - 7.3 Register of Environmental actions and commitments
REP9-048	Highways England Deadline 9 Submission - 9.1 Guide to Application
REP9-049	Highways England Deadline 9 Submission - 9.2 Book of Reference (tracked)

REP9-050	Highways England Deadline 9 Submission - 9.8 Statement of Common Ground with London Borough of Havering
REP9-051	Highways England Deadline 9 Submission - 9.11 Statement of Common Ground with Transport for London
REP9-052	Highways England Deadline 9 Submission - 9.18 Statement of Commonality for Statements of Common Ground
REP9-053	Highways England Deadline 9 Submission - 9.19 Compulsory Acquisition Schedule from the Applicant (Clean Version)
REP9-054	Highways England Deadline 9 Submission - 9.21 Landscape and Visual Figures - Photomontages Viewpoint B - Winter
REP9-055	Highways England Deadline 9 Submission - 9.23 Landscape and Visual Figures - Photomontages Viewpoint D – Winter
REP9-056	Highways England Deadline 9 Submission - 9.28 Schedule of Changes to draft Development Consent Order
REP9-057	Highways England Deadline 9 Submission - 9.31 The Compulsory Acquisition (CA) Schedule from the Applicant (Tracked Version)
REP9-058	Highways England Deadline 9 Submission - 9.32 Draft Development Consent Order (tracked)
REP9-059	Highways England Deadline 9 Submission - 9.37 Schedule of Changes to Book of Reference
REP9-060	Highways England Deadline 9 Submission - 9.45 Outline Archaeology Management Plan (AMP)
REP9-061	Highways England Deadline 9 Submission - 9.64 Outline Arboricultural Method Statement (AMS)
REP9-062	Highways England Deadline 9 Submission - 9.119 Applicant's comments on London Borough of Havering's Deadline 8 submissions
REP9-063	Highways England Deadline 9 Submission - 9.120 Applicant's comments on Cadent Gas's Deadline 8 submission
REP9-064	Highways England Deadline 9 Submission - 9.121 Applicant's comments on the Environment Agency's Deadline 8 submission
REP9-065	Highways England Deadline 9 Submission - 9.122 Applicant's comments on Transport for London's Deadline 8 submission

REP9-066	Highways England Deadline 9 Submission - 9.123 Applicant's comments on the Garden of Peace's Deadline 8 submission
REP9-067	Highways England Deadline 9 Submission - 9.124 Applicant's comments on Grove Farm's Deadline 8 submission
REP9-068	Highways England Deadline 9 Submission - 9.125 Response to Gardens of Peace comments on Issue Specific Hearing 3 regarding the Non-Motorised Users Scheme
REP9-069	Highways England Deadline 9 Submission - 9.126 Position statement on status of agreement with third parties
REP9-070	Highways England Deadline 9 Submission - 9.128 Draft Unilateral Undertaking to London Borough of Havering and Brentwood Borough Council
REP9-071	Highways England Deadline 9 Submission - 9.129 Applicant's response to the Garden of Peace's statement on the progress of the Tri-party agreement
REP9-072	Highways England Deadline 9 submission - 9.130 Statement of Reasons (Tracked)
REP9-073	London Borough of Havering Deadline 9 Submission - Response to Rule 9 and 17 - Request to Make Changes to the Original Application (14 June 2021)
REP9-074	London Borough of Havering Deadline 9 Submission - Response to Applicant's proposed schedule of changes to draft Development Consent Order submitted at Deadline 8
REP9-075	London Borough of Havering Deadline 9 Submission - Response to Applicant's Updated draft Development Consent Order submitted at Deadline 8
REP9-076	London Borough of Havering Deadline 9 Submission - Response to the Applicant's response to Action Point 4 from Issue Specific Hearing 3 Outline Community Engagement Plan submitted at Deadline 8
REP9-077	London Borough of Havering Deadline 9 submission - Response to the Applicant's comments on London Borough of Havering's Deadline 7 submissions
REP9-078	London Borough of Havering Deadline 9 Submission - Response to Savills (UK) on behalf of the Gardens of Peace Muslim Cemetery Deadline 8 submission
REP9-079	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Deadline 9 Submission - Response to the Examining Authority's consultation draft Development Consent Order
REP9-080	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery

	Deadline 9 Submission - Comments on the Proposed Development and update on the Tri-party Agreement between Gardens of Peace, Cadent Gas and Highways England
REP9-081	Jane Allan Deadline 9 Submission - Response to Deadline 7 submissions
REP9-082	Transport for London Deadline 9 Submission - Transport for London's position in relation to amendments sought to the draft Development Consent Order, protective provisions and the Non-Motorised Users route
Deadline 10 – 7 July 2021 **Deadline for receipt by the ExA of:** • Responses to any additional information requested by the ExA; • Any further information requested by the ExA under Rule 17 of the Examination (if required).	
REP10-001	Highways England Deadline 10 Submission - Cover Letter
REP10-002	Highways England Deadline 10 Submission - 7.2 Outline construction environmental management plan
REP10-003	Highways England Deadline 10 Submission - 9.1 Guide to the Application
REP10-004	Highways England Deadline 10 Submission - 9.11 Statement of Common Ground with Transport for London
REP10-005	Highways England Deadline 10 Submission - 9.18 Statement of Commonality for Statements of Common Ground
REP10-006	Highways England Deadline 10 Submission - 9.131 Applicant's comments on the London Borough of Havering's Deadline 9 submissions
REP10-007	Highways England Deadline 10 Submission - 9.132 Applicant's comments on Cadent Gas's Deadline 9 submission
REP10-008	Highways England Deadline 10 Submission - 9.133 Applicant's comments on Transport for London's Deadline 9 submission
REP10-009	Highways England Deadline 10 Submission - 9.134 Applicant's comments on the Garden of Peace's Deadline 9 submission
REP10-010	Highways England Deadline 10 Submission - 9.135 Applicant's comments on Jane Allan's Deadline 9 submission
REP10-011	London Borough of Havering Deadline 10 Submission - Update on London Borough of Havering emerging Local Plan

REP10-012	London Borough of Havering Deadline 10 Submission - Response to Environmental Statement Chapter 13: People and Communities submitted at Deadline 9
REP10-013	London Borough of Havering Deadline 10 Submission - Response to Outline Landscape and Ecological Management and Monitoring Plan submitted at Deadline 9
REP10-014	London Borough of Havering Deadline 10 Submission - Response to Statement of Commonality for Statements of Common Ground and Statement of Common Ground with London Borough of Havering submitted at Deadline 9
REP10-015	London Borough of Havering Deadline 10 Submission - Response to Updated Draft Development Consent Order submitted at Deadline 9
REP10-016	London Borough of Havering Deadline 10 Submission - Response to Position Statement on status of agreement with third parties submitted at Deadline 9
REP10-017	London Borough of Havering Deadline 10 Submission - Response to Savills on behalf of Gardens of Peace Muslim Cemetery Deadline 9 submission
REP10-018	London Borough of Havering Deadline 10 Submission - Responses by London Borough of Havering, Essex County Council and Transport for London to Unilateral Undertaking to London Borough of Havering and Brentwood Borough Council submitted at Deadline 9
REP10-019	London Borough of Havering Deadline 10 Submission - Revised Unilateral Undertaking by London Borough of Havering and Brentwood Borough Council
REP10-020	Savills (UK) Ltd on behalf of Gardens of Peace Muslim Cemetery Deadline 10 Submission - Comments on the Proposed Development and update on the Tri-Party Agreement
REP10-021	Bryan Cave Leighton Paisner LLP on behalf of National Grid Deadline 10 Submission - Notification of the withdrawal of National Grid Electricity Transmission PLC and National Grid Gas' Relevant Representation in respect of the DCO application
REP10-022	Transport for London Deadline 10 Submission - Clarifications of Transport for London's Statement of Common Ground with the Applicant and their Deadline 9 Submission
REP10-023	Highways England Deadline 10 Submission - Late submission accepted at the discretion of the Examining Authority - s106 Unilateral Undertaking and Relevant Plans
REP10-024	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 10 Submission - Late submission accepted at the discretion of the Examining Authority - Withdrawal of Objections in respect of the DCO Application

Other Documents	
OD-001	Highways England Section 56 Notice
OD-001a	Highways England Certificate of Compliance - Cover Letter
OD-001b	Highways England Compliance with Section 56 Certificate
OD-001c	Highways England Section 59 Certificate
OD-002	Highways England S56 Compliance Certificate - submitted 3 November 2020
OD-003	Highways England Certificate of Compliance with Reg 16 EIA - submitted 3 November 2020
OD-004	Highways England Cover letter for S56 - Submitted 3 November 2020
OD-005	Highways England S59 Compliance Certificate - submitted 3 November 2020
OD-006	M25 Junction 28 Regulation 24 Transboundary Screening Document
OD-007	Highways England Certificates of Compliance, under Regulation 9a of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
3CB	Third Carbon Budget Period 2018-2022
4CB	Fourth Carbon Budget Period 2023-2027
5CB	Fifth Carbon Budget Period 2028-2032
A12	The A12 Highway
AA	Appropriate Assessment
AIA	Arboricultural Impact Assessment
AMP	Archaeology Management Plan
AMS	Arboricultural Method Statement
AeoI	Adverse Effects on Integrity
ALC	Agricultural Land Classification
AONB	Area of Outstanding Natural Beauty
AP	Affected Person
The APFP Regulations	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
AQAP	Air Quality Action Plan
AQD	Air Quality Directive
AQS	Air Quality Standards
AQMA	Air Quality Management Areas
AQS	Air Quality Standards
ARN	Affected Road Network
ASI	Accompanied Site Inspection
BC	Borough Council
BoR	Book of Reference
Brentwood BC	Brentwood Borough Council
CA	Compulsory Acquisition
CA Guidance	Guidance related to Procedures for the Compulsory Acquisition of Land, DCLG September 2013 (the former Department of Communities and Local Government (DCLG) (CA Guidance)
CAH	Compulsory Acquisition Hearing
CA Regs	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
Case for the Scheme	Case for the Scheme and Schedule of Accordance with National Policy Statement document
CC	County Council
CCA2008	Climate Change Act 2008
CD&E	Construction, Demolition and Excavation
CEMP	Construction Environmental Management Plan
CoCP	Code of Construction Practice
CoPA	Control of Pollution Act 1974
Commonality Statement	Statement of Commonality of Statements of Common Ground document(s)
CPS	Connect Plus Services
cSAC	candidate Special Areas of Conservation
dB	Decibel
DCLG	Department of Communities and Local Government

Abbreviation or usage	Reference
DCO	Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
DNNMP	Dust Noise and Nuisance Management Plan
DoWCoP	Disposal of Waste: Code of Practice
EA	Environment Agency
EA1995	Environment Act 1995
Essex CC	Essex County Council
ECP	Environmental Contol Plans
EEA	European Economic Area
EHSP	Ecological Habitats and Species Plan
EIA	Environmental Impact Assessment
EL	Examination Library
EM	Explanatory Memorandum
END	Environmental Noise Directive
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EPS	European Protected Species
EQS	Environment Quality Standards
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FRA	Flood Risk Assessment
GHG	Green House Gas(es)
GIR	Ground Investigation Report
GLA	Greater London Authority
GLAAS	Greater London Archaeology Advisory Service
Gardens of Peace	Gardens of Peace Muslim Cemetery
Ha	Hectares
HE	Highways England
HRA	Habitats Regulations Assessment
Human Rights Act	Humans Rights Act 1998
HRAR	Habitats Regulations Assessment Report
IAN	Interim Advice Note
IAPI	Initial Assessment of Principal Issues
IP(s)	Interested Party(ies)
IROPI	Imperative Reasons of Overriding Public Interest
IT	Information Technology
ISH	Issue Specific Hearing
ISMP	Invasive Species Management
JNCC	Joint Nature Conservation Committee
km	Kilometre
kV	Kilovolt

Abbreviation or usage	Reference
LB Havering	London Borough of Havering
LBCA Act	Planning (Listed Buildings and Conservation Areas) Act 1990
LDF	Local Development Framework
LEMP	Landscape Ecological Management Plan
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LOAEL	Lowest Observable Adverse Effect Level
LPA	Local Planning Authority
LSE	Likely Significant Effects
LTC	Lower Thames Crossing
m	Metre(s)
m^2	Square metres
m^3	Cubic Meters
M25	The M25 Motorway
MHCLG	Ministry for Housing, Communities and Local Government
MMP	Material Management Plan
NE	Natural England
NERC	Natural Environment and Rural Communities Act 2006
NGET	National Grid Electricity Transmission
NGG	National Grid Gas
NIA	Important Area for Noise
NIS	National Infrastructure Strategy
NMU	Non-motorised User
NN	National Networks
NO2	Nitrogen dioxide
NOEL	No Observed Effect Level
NO_x	Mono-nitrogen oxides
NPA2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS NN	National Policy Statement for National Networks
NPSE	Noise Policy Statement for England
NRSWA1991	New Roads and Street Works Act 1991
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
NT	National Trust
OFH	Open Floor Hearing
OP	Other Person
PA2008	Planning Act 2008
PM	Preliminary Meeting
PM10 and PM2.5	Particulate matter
PP	Protective Provision
PPG	Planning Practice Guidance

Abbreviation or usage	Reference
PRoW	Public Rights of Way
PSED	public sector equality duty
pSPA	potential Special Protection Area
REAC	Register of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RIS1	Road Investment Strategy 2015 - 2020
RIS2	Road Investment Strategy 2020 - 2025
RP	Road project
RPA	Root Protection Area
RR	Relevant Representation
Rule 6	Rule 6 letter of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
S()	Section of an Act
SAC	Special Areas of Conservation
cSAC	Candidate Special Areas of Conservation
pSAC	Potential Special Areas of Conservation
SCI	Sites of Community Importance
SFRA	Strategic Flood Risk Assessment
SINC	Site of Important Nature Conservation
SMI	Site of Metropolitan Importance
SNCB	Statutory Nature Conservation Body
SO_2	Sulphur Dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoST	Secretary of State for Transport
SP	Statutory Party
SPA	Special Protection Areas
pSPA	Potential Special Protection Areas
SPP	Special Parliamentary Procedure
SPZ	Special Protection Zone
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
Statement of Commonality	Statement of Commonality for Statements of Common Ground
SU	Statutory Undertakers
SuWMP	Surface Water Management Plan
SWMP	Site Waste Management Plan
TA	Transport Assessment
TASIR	Transport Assessment Supplementary Information Report
TCPA1990	Town and Country Planning Act 1990
tCO_2e	Tonnes of Carbon Dioxide Emissions

Abbreviation or usage	Reference
TfL	Transport for London
The Inspectorate	The Planning Inspectorate
The Inspectorate's website	Planning Inspectorate National Infrastructure website
TLRN	Transport for London Road Network
TMP	Traffic Management Plan
TP	Temporary Possession
TPO	Tree Preservation Order
UK	United Kingdom
UKCP18	United Kingdom Climate Projections 18
UKPN	United Kingdom Power Networks/ Eastern Power Networks
UNFCCC	United Nations Framework Convention on Climate Change
USI	Unaccompanied Site Inspection
UU	Unilateral Undertaking
W&CA	Wildlife and Countryside Act 1981 (as amended)
WFD	Establishing a Framework for the Community Action in the Field Water Policy (200/60/EC) (the Water Framework Directive)
WQ	Written Questions
WQ1	First Written Questions
WQ2	Further Written Questions
WR	Written Representation

APPENDIX C: THE RECOMMENDED DCO

S T A T U T O R Y I N S T R U M E N T S

202[ ] No. 0000

INFRASTRUCTURE PLANNING

The M25 Junction 28 Development Consent Order 202[ ]

Made - - - - ***

Coming into force - - ***

CONTENTS

PART 1
PRELIMINARY

1. Citation and commencement 5
2. Interpretation 5

PART 2
PRINCIPAL POWERS

3. Development consent etc. granted by the Order 9
4. Maintenance of authorised development 9
5. Maintenance of drainage works 9
6. Planning permission 9
7. Limits of deviation 9
8. Benefit of Order 10
9. Consent to transfer benefit of Order 10

PART 3
STREETS

10. Application of the 1991 Act 10
11. Construction and maintenance of new, altered or diverted streets and other structures 12
12. Access to works 13
13. Temporary closure, alteration, diversion and restriction of use of streets 13
14. Use of private roads 14
15. Permanent stopping up of streets 14
16. Classification of roads, etc. 15
17. Clearways 16
18. Traffic regulation 17

PART 4
SUPPLEMENTAL POWERS

19.	Discharge of water	18
20.	Powers in relation to watercourses	19
21.	Protective work to buildings	19
22.	Authority to survey and investigate the land	20
23.	Felling or lopping of trees and removal of hedgerows	21
24.	Trees subject to tree preservation orders	22

PART 5
POWERS OF ACQUISITION AND POSSESSION OF LAND

25.	Compulsory acquisition of land	22
26.	Compulsory acquisition of land – incorporation of the mineral code	22
27.	Time limit for exercise of authority to acquire land compulsorily	23
28.	Compulsory acquisition of rights and imposition of restrictive covenants	23
29.	Private rights over land	23
30.	Modification of Part 1 of the 1965 Act	25
31.	Application of the 1981 Act	25
32.	Modification of the 2017 Regulations	26
33.	Acquisition of subsoil or airspace only	27
34.	Rights under or over streets	27
35.	Temporary use of land for carrying out the authorised development	28
36.	Temporary use of land for maintaining the authorised development	29
37.	Crown rights	30
38.	Statutory undertakers	31
39.	Apparatus and rights of statutory undertakers in stopped up streets	31
40.	Recovery of costs of new connections	32
41.	Special category land	33

PART 6
MISCELLANEOUS AND GENERAL

42.	Application of landlord and tenant law	33
43.	Operational land for purposes of the Town and Country Planning Act 1990	33
44.	Defence to proceedings in respect of statutory nuisance	34
45.	Protection of interests	34
46.	Certification of documents, etc.	34
47.	Service of notices	34
48.	Disapplication of legislative provisions	36
49.	Amendment of local legislation	36
50.	No double recovery	37
51.	Disregard of certain improvements etc.	37
52.	Set off for enhancement in value of retained land	38
53.	Appeals relating to the Control of Pollution Act 1974	38
54.	Arbitration	40

SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT 41
SCHEDULE 2 — REQUIREMENTS 47
PART 1 — REQUIREMENTS 47
PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS 52
SCHEDULE 3 — PERMANENT STOPPING UP OF STREETS 55
PART 1 — HIGHWAYS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED 55
PART 2 — PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED 55
SCHEDULE 4 — CLASSIFICATION OF ROADS, ETC. 56
PART 1 — SPECIAL ROADS 56
PART 2 — TRANSPORT FOR LONDON ROAD NETWORK 56
PART 3 — TRUNK ROADS 56
PART 4 — SPEED LIMITS 57
PART 5 — TRAFFIC REGULATION MEASURES (CLEARWAYS) 59
PART 6 — OTHER PUBLIC RIGHTS OF WAY 59
SCHEDULE 5 — TREES SUBJECT TO TREE PRESERVATION ORDERS 60
SCHEDULE 6 — LAND IN WHICH NEW RIGHTS ONLY ETC. MAY BE ACQUIRED 61
SCHEDULE 7 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS 63
SCHEDULE 8 — LAND OF WHICH TEMPORARY POSSESSION ONLY MAY BE TAKEN 67
SCHEDULE 9 — PROTECTIVE PROVISIONS 69
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS 69
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS 74
PART 3 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY 75
PART 4 — FOR THE PROTECTION OF DRAINAGE AUTHORITIES 79
PART 5 — FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER 82
PART 6 — FOR THE PROTECTION OF CADENT GAS LIMITED 91
PART 7 — FOR THE PROTECTION OF TRANSPORT FOR LONDON 99
SCHEDULE 10 — DOCUMENTS TO BE CERTIFIED 102

An application has been made to the Secretary of State, under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**) for an Order granting development consent.

The application was examined by [ ] appointed person(s) (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The [ ] appointed person(s), having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the [ ] appointed person(s), has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State is satisfied that the special category land (as defined in article 41(3) of this Order), when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122 and 123 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the M25 Junction 28 Development Consent Order 202[ ] and comes into force on [ ].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**d**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**e**);

"the 1980 Act" means the Highways Act 1980(**f**);

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I 2014/469, S.I. 2014/2381, S.I 2015/377, S.I. 2015/1682, S.I 2017/524 and S.I 2017/572.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.
(**d**) 1961 c. 33.
(**e**) 1965 c. 56.
(**f**) 1980 c. 66.

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**a**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**b**);

"the 1990 Act" means the Town and Country Planning Act 1990(**c**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**d**);

"the 2008 Act" means the Planning Act 2008(**e**);

"the 2017 Regulations" means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017(**f**);

"address" includes any number or address for the purposes of electronic transmission;

"apparatus" has the same meaning as in Part 3 of the 1991 Act;

"authorised development" means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

"the book of reference" means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"Cadent" means Cadent Gas Limited (company number 10080864) whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry CV7 8PE;

"carriageway" has the same meaning as in the 1980 Act;

"CEMP" means the construction environmental management plan;

"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, consisting of archaeological surveys and evaluations, ecological surveys, installation of amphibian fencing and pre-construction ecological mitigation under licenses, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, site clearance in connection with Work No. 29 and the establishment of construction compounds, and the temporary display of site notices or information, and "commencement" is to be construed accordingly;

"cycle track" has the same meaning as in the 1980 Act(**g**);

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form,

and in this definition "electronic communications network" has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003(**h**);

"the engineering drawings and sections" means the drawings and sections of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the engineering drawings and sections for the purposes of this Order;

(**a**) 1981 c. 66.
(**b**) 1984 c. 27.
(**c**) 1990 c. 8.
(**d**) 1991 c. 22.
(**e**) 2008 c. 29.
(**f**) S.I. 2017/3.
(**g**) The definition of "cycle track" (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).
(**h**) 2003 c. 21.

"environmental statement" means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the environmental statement for the purposes of this Order;

"footway" and "footpath" have the same meaning as in the 1980 Act;

"highway", "highway authority" and "local highway authority" have the same meaning as in the 1980 Act;

"the land plans" means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the land plans for the purposes of this Order;

"limits of deviation" means the limits of deviation referred to in article 7 (limits of deviation);

"maintain" in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, decommission, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, and any derivative of "maintain" is to be construed accordingly;

"Order land" means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

"the Order limits" means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

"the Outline CEMP" means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the Outline CEMP for the purposes of this Order;

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**a**);

"permit scheme" means any schemes made under Part 3 of the Traffic Management Act 2004(**b**) in force at the date in which this Order is made;

"relevant planning authority" means in any given provision of this Order, the planning authority for the area to which the provision relates;

"Secretary of State" means the Secretary of State for Transport;

"special road" means a highway which is a special road in accordance with section 16 (general provisions as to special roads) of the 1980 Act or by virtue of an order granting development consent;

"the speed limits and traffic regulation plans" means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the speed limits and traffic regulation plans for the purposes of this Order;

"statutory undertaker" means any statutory undertaker for the purposes of section 127(8) (statutory undertakers' land) of the 2008 Act;

"street" means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"streets, rights of way and access plans" means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the streets, rights of way and access plans for the purposes of this Order;

(**a**) 1981 c. 67. The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 7 which are not relevant to the Order.

(**b**) 2004 c. 18.

"traffic authority" has the same meaning as in section 121A(**a**) (traffic authorities) of the 1984 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"trunk road" means a highway which is a trunk road by virtue of—

(a) section 10(**b**) (general provision as to trunk roads) or 19(1)(**c**) (certain special roads and other highways to become trunk roads) of the 1980 Act;

(b) an order or direction under section 10 of that Act;

(c) an order granting development consent; or

(d) any other enactment;

"UKPN" means Eastern Power Networks Plc (company registration number 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;

"undertaker" means Highways England Company Limited (company number 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"the works plans" means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the discretion of the undertaker, either—

(a) to an affected person directly, where that person's land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or

(b) to any statutory undertaker for the purpose of their undertaking.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(5) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(6) References to any statutory body includes that body's successor bodies from time to time that have jurisdiction over the authorised development.

(7) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the streets, rights of way and access plans.

(8) References in this Order to numbered works are references to works as numbered in Schedule 1 (authorised development).

(9) In this Order, the expression "includes" is to be construed without limitation.

(**a**) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 of Schedule 8, to the New Roads and Street Works Act 1991 (c. 22).

(**b**) Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991; paragraph 22 of Schedule 2 to the Planning Act 2008; and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(**c**) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(**a**).

Planning permission

6. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

(a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or

(b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Limits of deviation

7.—(1) In carrying out and maintaining the authorised development the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and

(b) subject to paragraphs (c) and (d), deviate vertically from the levels of the authorised development shown on the engineering drawings and sections up to a maximum of 1 metre upwards or 1 metre downwards;

(c) in respect of those parts of Work No. 6 situated between Duck Wood bridge and Grove bridge, deviate vertically from the levels of the authorised development shown on the engineering drawings and sections up to a maximum of 2 metres upwards or 2 metres downwards;

(**a**) 1991 c. 59. The definition of "drainage" was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(d) in respect of Work No. 18 deviate vertically from the levels of the authorised development shown on the engineering drawings and sections up to a maximum of 1 metre upwards only,

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction, and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

Benefit of Order

8.—(1) Subject to paragraph (2) and article 9 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

9.—(1) Subject to paragraphs (4) and (5), the undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the grantee") for a period agreed between the undertaker and the grantee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), includes references to the transferee or the grantee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

(a) Cadent (or a related subsidiary company) for the purposes of Work No. 29;

(b) UKPN (or a related subsidiary company) for the purposes of Work No. 30; or

(c) the Environment Agency for the purposes of Work Nos. 23A, 23B, 23C and 23D.

PART 3

STREETS

Application of the 1991 Act

10.—(1) Works constructed or maintained under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(**a**) (dual carriageways and roundabouts) of the 1980 Act or section 184(**b**) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act (including any equivalent or modified provisions in any permit scheme) do not apply in relation to any works executed under the powers conferred by this Order—

section 56(**c**) (power to give directions as to timing);

section 56A(**d**) (power to give directions as to placing of apparatus);

section 58(**e**) (restrictions on works following substantial road works);

section 58A(**f**) (restriction on works following substantial street works);

section 73A(**g**) (power to require undertaker to re-surface street);

section 73B(**h**) (power to specify timing etc. of re-surfacing);

section 73C(**i**) (materials, workmanship and standard of re-surfacing);

section 78A(**j**) (contributions to costs of re-surfacing by undertaker); and

Schedule 3A(**k**) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any alteration, diversion or restriction of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), whether or not the alteration, diversion or restriction constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(**l**) referred to in paragraph (4) are—

section 54(**m**) (advance notice of certain works), subject to paragraph (6);

section 55(**n**) (notice of starting date of works), subject to paragraph (6);

section 57(**o**) (notice of emergency works);

section 59(**p**) (general duty of street authority to co-ordinate works);

(**a**) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
(**b**) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.
(**c**) Section 56 was amended by section43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
(**d**) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
(**e**) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.
(**f**) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
(**g**) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
(**h**) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
(**i**) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
(**j**) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
(**k**) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.
(**l**) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.
(**m**) As also amended by section 49(1) of the Traffic Management Act 2004.
(**n**) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(**o**) As also amended by section 52(3) of the Traffic Management Act 2004.
(**p**) As amended by section 42 of the Traffic Management Act 2004.

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to an alteration, diversion or restriction (as the case may be) required in a case of emergency.

(7) Nothing in article 11 (construction and maintenance of new, altered or diverted streets and other structures)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act and the undertaker is not by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 (street works in England and Wales) of that Act; or

(b) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 (street works in England and Wales) of the 1991 Act apply.

(8) Subject to paragraphs (3), (9) and (10), permit schemes will apply to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(9) For the purposes of this Order a permit under a permit scheme may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(10) Without restricting the undertaker's recourse to any appeal mechanism which may be available under a permit scheme the undertaker may alternatively refer the matter to arbitration under article 54 (arbitration).

(11) Any order which may be made by the Secretary of State under section 74A(2) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012(**a**) will not have effect in relation to the construction or maintenance of the authorised development.

Construction and maintenance of new, altered or diverted streets and other structures

11.—(1) Any highway (other than a trunk road or special road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, the street including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a trunk road or special road) is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, be maintained by and at the expense of the local highway authority from its completion.

(3) Where a street which is not, and is not intended to be, a highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing,

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(**a**) S.I. 2012/425.

be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(4) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road or special road) over a trunk road or special road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority unless otherwise agreed in writing between the undertaker and the local highway authority, and the remainder of the bridge, including the waterproofing membrane, and structure below, must be maintained by and at the expense of the undertaker.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street or other structure under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street or structure to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

(a) the character of the street or structure and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street or structure of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street or structure;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or structure to which the action relates was likely to cause dangers to users of the street or structure; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street or structure before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street or structure to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street or structure and that the competent person had carried out those instructions.

Access to works

12. The undertaker may, for the purposes of the authorised development, form and layout such means of access, or improve existing such means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Temporary closure, alteration, diversion and restriction of use of streets

13.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily alter, divert or restrict the use of any street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

Use of private roads

14.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction and maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Permanent stopping up of streets

15.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in column (1) of Parts 1 and 2 of Schedule 3 (permanent stopping up of streets) to the extent specified and described in column (2) of that Schedule.

(2) No street specified in column (1) of Parts 1 and 2 of Schedule 3 is to be wholly or partly stopped up under this article unless—

(a) the new street to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, is open for use and been completed to the reasonable satisfaction of the street authority; or

(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

(a) all rights of way over or along the street so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article is subject to article 39 (apparatus and rights of statutory undertakers in stopped up streets).

Classification of roads, etc.

16.—(1) On the date on which the relevant part of the authorised development is completed and open for traffic—

(a) the roads described in Part 1 (special roads) of Schedule 4 (classification of roads, etc.) will be—

(i) special roads for the purpose of any enactment or instrument which refers to highways classified as special roads;

(ii) trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads;

(iii) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act;

and the undertaker will be the highway authority for those roads;

(b) the roads described in Part 2 (Transport for London network) of Schedule 4 (classification of roads, etc.) will be—

(i) GLA Roads as if they had become so by virtue of an order under section 14B (order of the authority changing what are GLA roads) of the 1980 Act specifying that date as the date on which they were to become GLA roads; and

(ii) Transport for London will be the highway authority for those roads;

(c) the roads described in Part 3 (trunk roads) of Schedule 4 (classification of roads, etc.) will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads; and

(d) the public rights of way described in Part 6 (other public rights of way) of Schedule 4 (classification of roads, etc.) will be of the types described in column (1) to the extent described in column (2).

(2) Subject to paragraph (3) the undertaker may vary the classification of the roads, or any part of those roads, provided for in paragraph (1) and such variation may provide for any trunk road comprised in the authorised development and referred to in paragraph (1)(c) to be classified as a special road under paragraph (1)(a).

(3) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

(a) given not less than 4 weeks' notice in writing of the undertaker's intention to do so to the chief officer of police and to the local highway authority in whose area the road is situated; and

(b) published a notice, declaring the date on which that road or part of it is to be classified, not less than 7 days before that date, in at least one local newspaper circulating in the area in which the road, or as the case may be, the relevant part of it is situated and in the London Gazette.

(4) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.

(5) From the date on which the roads specified in Part 4 (speed limits) of Schedule 4 (classification of roads, etc.) are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(6) The application of paragraph (1) and (5) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

(7) In this article, and in Schedule 4 (classification of roads, etc.)—

"the GLA" means the Greater London Authority;

"GLA Road" has the same meaning as in the 1980 Act; and

"Transport for London" means the body corporate established under section 154 of the 1999 Act, of 5 Endeavour Square, London, E20 1JN.

Clearways

17.—(1) From the date on which the roads described in column (2) of Part 5 (traffic regulation measures (clearways)) of Schedule 4 (classification of roads, etc.) and identified in the corresponding row of column (3) of that Part as to become a clearway, are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) may apply—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

(iii) the laying, erection, maintenance or renewal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(**a**); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(**b**); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(**c**); or

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, "traffic officer" means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(**d**).

(**a**) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).
(**b**) 1991 c. 56.
(**c**) 2000 c. 26.
(**d**) 2004 c. 18.

Traffic regulation

18.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) make provision as to the direction or priority of vehicular traffic on any road; and

(d) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32(a) (power of local authorities to provide parking spaces) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(**a**).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.

(**a**) 2004 c. 18.

(8) Before exercising the powers conferred by paragraph (2), the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

19.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**a**).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining the works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river subject to the works that are authorised under this Order.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Subject to article 48(1)(a) (disapplication of legislative provisions), nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) In this article—

(**a**) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(**b**) S.I. 2016/1154.

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**a**) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 42 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

Powers in relation to watercourses

20. Subject to Schedule 9 (protective provisions), the undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—

(a) temporarily alter, interfere with, occupy and use the banks, bed, waters and walls of a watercourse; and

(b) construct, place, maintain and remove temporary works and structures within the banks, bed, waters and walls of a watercourse,

in such manner and to such extent as may appear to it to be necessary or convenient.

Protective work to buildings

21.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it),

(c) and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

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(**a**) 1991 c. 57.

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 54 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 50 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152(**a**) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (compulsory acquisition provisions) of the 2008 Act.

(11) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(12) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; or

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of the construction, operation or maintenance of the authorised development enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);

(b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and ground water and remove soil and water samples and discharge water from sampling operations onto the land;

(**a**) Section 152 was amended by S.I. 2009/1307.

(c) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes and other investigations as may be necessary to investigate the extent and nature or underground structures, foundations, plant or apparatus;

(d) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes for such purposes; and

(e) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or boreholes.

(4) No trial holes or boreholes are to be made under this article—

(a) in land located within a highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

(7) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the entry onto land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Felling or lopping of trees and removal of hedgerows

23.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(**a**) and includes important hedgerows.

(6) Development consent granted by this Order is to be treated as planning permission pursuant to Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012(**b**).

Trees subject to tree preservation orders

24.—(1) The undertaker may fell or lop any tree described in Schedule 5 (trees subject to tree preservation orders) or cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker will do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act will not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land

25.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 28 (compulsory acquisition of rights and imposition of restrictive covenants) and article 35 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

26. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**c**) are incorporated in this Order subject to the modification that—

(a) paragraph 8(3) is not incorporated;

(b) for "the acquiring authority" substitute "the undertaker";

(c) for "undertaking" substitute "authorised development"; and

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(**a**) S.I. 1997/1160.
(**b**) S.I. 2012/605.
(**c**) 1981 c. 67.

(d) for “compulsory purchase order” substitute “this order”.

Time limit for exercise of authority to acquire land compulsorily

27.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

(a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by this Order; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

28.—(1) Subject to paragraphs (2) to (5), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which new rights only etc. may be acquired) the undertaker’s powers of compulsory acquisition under article 25(1) are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 6.

(4) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 6 for the benefit of statutory undertakers or for the benefit of any other person—

(a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as may be required for the benefit of any other statutory undertaker or any other person; and

(b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as are required for the benefit of any other statutory undertaker or any other person.

(5) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land, the undertaker is not required to acquire a greater interest in that land.

(6) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Private rights over land

29.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

(a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1)(**a**) (power of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

(a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(**b**) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 38 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the right or the imposition of the restrictive covenant over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(**a**) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186 (1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(**b**) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modification of Part 1 of the 1965 Act

30.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(**a**)(application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1)(**b**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118(**c**) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the M25 Junction 28 Development Consent Order 202[ ](**d**)".

(3) In section 11A(**e**) (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision";

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 27 (time limit for exercise of authority to acquire land compulsorily) of the M25 Junction 28 Development Consent Order 202[ ]".

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 33(3) (acquisition of subsoil or airspace only) of the M25 Junction 28 Development Consent Order 202[ ], which excludes the acquisition of subsoil or airspace only from this Schedule."; and

(b) after paragraph 29, insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 21 (protective work to buildings), 35 (temporary use of land for carrying out the authorised development) or 36 (temporary use of land for maintaining the authorised development) of the M25 Junction 28 Development Consent Order 202[ ].".

Application of the 1981 Act

31.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), in subsection (1), omit the words "in themselves".

(4) In section 1 (application of Act), for subsection 2 substitute—

(**a**) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).
(**b**) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.
(**c**) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).
(**d**) S.I. 202[ ]/[ ].
(**e**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.".

(5) In section 4 (execution of declaration), for subsection (1) substitute—

"(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 below is completed).".

(6) In section 5(**a**) (earliest date for execution of declaration), in subsection (2), omit the words from ", and this subsection" to the end.

(7) Omit section 5A(**b**) (time limit for general vesting declaration).

(8) In section 5B(1)(**c**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the M25 Junction 28 Development Consent Order 202[ ]".

(9) In section 6(**d**) (notices after execution of declaration) in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(10) In section 7(**e**) (constructive notice to treat) in subsection (1)(a), omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(11) In section 8 (vesting, and right to enter and take possession), after subsection (3), insert—

"(4) In this section references to the acquiring authority include any third party referred to in section 4(1).".

(12) In section 10 (acquiring authority's liability arising on vesting of the land), in subsection (1), after "vested in an acquiring authority" insert "or a third party".

(13) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—

"(1) This section applies where after the execution of a general vesting declaration a person ("the claimant") claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.".

(14) In Schedule A1(**f**) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(15) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Modification of the 2017 Regulations

32.—(1) Schedule 1 to the 2017 Regulations is modified as follows.

(2) In paragraph (3) of Form 1, after "from the date on which the service of notices required by section 6 of the Act is completed", insert—

(**a**) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.
(**b**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
(**c**) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.
(**d**) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
(**e**) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016.
(**f**) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

"(1A) The [insert land or rights or both] described in Part [ ] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the third parties in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed.".

(3) References in Form 2 to "in themselves" is substituted with "in themselves and any identified third parties".

(4) In paragraph (b) of the notes on use of Form 2—

(a) after "Insert the name of the authority" insert "and, where the context so requires, a reference to third parties"; and

(b) omit "Thereafter rely on that definition wherever "(b)" appears in the text.".

Acquisition of subsoil or airspace only

33.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 25 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 30 (modification of Part 1 of the 1965 Act));

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A)(**a**) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

34.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be

(**a**) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

35.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 27 (time limit for exercise of authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

(i) the land specified in column (1) of Schedule 8 (land of which temporary possession only may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any electric line, electrical plant, apparatus, buildings, landscaping and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts;

(b) the public; and/or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of two years beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8; or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of two years beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d);

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;

(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or

(e) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13(**a**) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

Temporary use of land for maintaining the authorised development

36.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter onto land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

(**a**) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(a) the authorised development or any of its parts;

(b) the public; and/or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not required to restore the land to a condition better than the relevant land was in before temporary possession was taken.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (6) does not prevent the undertaker giving up possession of the land.

(8) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(9) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(10) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Crown rights

37.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary—

(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

Statutory undertakers

38.—(1) Subject to the provisions of Schedule 9 (protective provisions), article 28 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may—

(a) acquire compulsorily, acquire existing rights, create new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and

(b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

(a) Part 3 (street works in England and Wales) of the 1991 Act; and

(b) article 39 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

39.—(1) Where a street is stopped up under article 15 (permanent stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 15 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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,

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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, 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 the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

"relocation works" means work executed, or apparatus provided, under paragraph (2); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(**a**).

Recovery of costs of new connections

40.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 38 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 38, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 39 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003; and

"public utility undertaker" means a gas, water, electricity or sewerage undertaker.

(**a**) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

Special category land

41.—(1) So much of the special category land as is required for the purposes of the exercising by the undertaker of the Order rights will be discharged from all rights, trusts and incidents to which it was previously subject but only in so far as their continuance would be inconsistent with the exercising by the undertaker of the Order rights.

(2) So far as the temporary use of land under article 35 (temporary use of land for carrying out the authorised development) is concerned, then the discharge in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

"Order rights" means the rights and powers exercisable over the special category land by the undertaker under article 28 (compulsory acquisition of rights and imposition of restrictive covenants) and article 35 (temporary use of land for carrying out the authorised development);

"the special category land" means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the plan entitled "special category land plans"; and

"special category land plans" means the plans of that description listed in Schedule 10 (documents to be certified) and certified as the special category land plans by the Secretary of State for the purposes of this Order.

PART 6

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

42.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the Town and Country Planning Act 1990

43. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

44.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(**b**) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(**c**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) For the purposes of paragraph (1), compliance with the controls and measures relating to noise described in the CEMP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

45. Schedule 9 (protective provisions) to the Order has effect.

Certification of documents, etc.

46.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

47.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(**a**) 1990 c. 43. There are amendments to this subsection which are not relevant to this Order.

(**b**) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.

(**c**) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to this subsection which are not relevant to this Order.

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Disapplication of legislative provisions

48.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction or maintenance of the authorised development—

(a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**a**) in relation to the carrying on of a flood risk activity;

(b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(**b**);

(c) section 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991;

(d) section 32 (variation of awards) of the Land Drainage Act 1991;

(e) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991; and

(f) the provisions of any byelaws made under, or having effect as if made under, paragraph 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991.

(2) In paragraph (1)(a) "flood risk activity" has the meaning given to that term in the Environmental Permitting (England and Wales) Regulations 2016.

(3) The provisions of the Neighbourhood Planning Act 2017(**c**), insofar as they relate to temporary possession of land under articles 35 (temporary use of land for carrying out the authorised development) and 36 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 36(13), any maintenance of any part of the authorised development.

(4) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(**d**) any building comprised in the authorised development is to be—

(a) a building into which people do not normally go; or

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Amendment of local legislation

49.—(1) The following local enactments and local byelaws, and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

(a) sections 20, 22, 25 of an Act for inclosing and dividing the Commons and Waste Lands in the Parishes of Hornchurch, Romford, and Havering, within the Manor and Liberty of Havering-atte-Bower, in the County of Essex 1811(**e**);

(b) section 25 of an Act for inclosing Lands in the Manor of Great Warley in the several Parishes of Great Warley and Shenfield in the County of Essex 1838(**f**);

(c) sections 13 and 15 of the South Essex Waterworks Act 1861(**g**);

(**a**) S,I, 2016/1154.
(**b**) 1991 c. 59.
(**c**) 2017 c. 20.
(**d**) S.I. 2010/948.
(**e**) 1811 c. clxxxvii.
(**f**) 1838 c. 20.
(**g**) 1861 c. cxxxvii.

(d) section 53 of the Brentwood Gas Act 1905(**a**);

(e) sections 41 and 44 of the London County Council (General Powers) Act 1907(**b**);

(f) section 15 of the British Transport Commission Act 1952(**c**);

(g) sections 7 and 11 of the Essex River and South Essex Water Act 1969(**d**);

(h) sections 6 and 8 of the Essex Act 1987(**e**);

(i) byelaws of the Rural District Council of Romford as to the nuisances in connection with the removal of offensive noxious matters 1899;

(j) byelaws of the Rural District Council of Romford with respect to the Drainage of Buildings 1908;

(k) byelaw 4 of the Essex County Council byelaws for the Good Rule and Government 1938;

(l) byelaws 4, 6 and 7 of the Urban District of Hornchurch byelaws for Nuisances 1938;

(m) byelaws of the Urban District Council of Hornchurch as to removal through streets of offensive or noxious matter or liquid 1938; and

(n) byelaws 4, 6, 7, 9, 14, 16 and 17 of the Thames Region Land Drainage Byelaws 1981.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

(a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;

(b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or

(c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

(a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;

(b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and

(c) the extent of that exclusion.

No double recovery

50. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract, or any rule of law, or under two or more different provisions of this Order.

Disregard of certain improvements etc.

51.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(**a**) 1905 c. lix.
(**b**) 1907 c. clxxv.
(**c**) 1952 c. xxxiv.
(**d**) 1969 c. xlix.
(**e**) 1987 c. xx.

(b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Set off for enhancement in value of retained land

52.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 28 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

Appeals relating to the Control of Pollution Act 1974

53.—(1) The undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not give consent or grants consent but subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(**a**).

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;

(**a**) 1974 c. 40.

(d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(8) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(10) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(11) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(12) Except where a direction is given under paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(14) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Ministry for Housing, Communities and Local Government or such guidance as may from time to time replace it.

Arbitration

54. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Name
Title
Date Department for Transport

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

The authorised development comprises a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act and associated development, as defined in section 115(2) of the 2008 Act, comprising—

HIGHWAY WORKS – A12 CARRIAGEWAY

In the London Borough of Havering and the Borough of Brentwood

Work No. 1 — Improvements to a stretch of the existing A12 eastbound carriageway, along a length of approximately 1,800 metres, commencing at a location situated approximately 15 metres to the west of Woodstock Avenue and continuing eastwards to a point situated approximately 160 metres to the west of the existing Wigley Bush Lane overbridge, as shown on sheets 1 and 2 of the works plans.

In the London Borough of Havering

Work No. 2 — Realignment of the existing A12 eastbound off-slip, along a length of approximately 760 metres, inclusive of the diverge, commencing at a location situated approximately 265 metres west of the existing off-slip, and terminating at the existing circulatory carriageway of the M25 Junction 28 roundabout, as shown on sheet 1 of the works plans. Work No. 2 includes a footway within the verge, a new bridge (Maylands bridge) to carry the realigned A12 eastbound off-slip over Work No. 6 and the extension of the existing Grove culvert not exceeding 80 metres in length, beneath the realigned A12 eastbound off-slip.

In the Borough of Brentwood

Work No. 3 — Improvements to a stretch of the existing A12 eastbound on-slip, along a length of approximately 550 metres, commencing at the existing on-slip offside kerb at the circulatory carriageway of the M25 Junction 28 roundabout and terminating at a location situated approximately 160 metres to the west of the existing Wigley Bush Lane Overbridge, as shown on sheets 1 and 2 of the works plans.

In the London Borough of Havering

Work No. 4 — Improvements to the existing A12 westbound carriageway, at a location situated approximately 230 metres east of Maylands Way, as shown on sheet 1 of the works plans comprising the installation of new traffic signs either side of the carriageway.

HIGHWAY WORKS - M25 JUNCTION 28 ROUNDABOUT

In the London Borough of Havering

Work No. 5 — Improvements to the existing circulatory carriageway of the M25 Junction 28 roundabout, along a length of approximately 610 metres, at the location shown on sheet 1 of the works plan.

HIGHWAY WORKS – NEW M25 JUNCTION 28 LOOP ROAD

In the London Borough of Havering

Work No. 6 — A new loop road, approximately 1,450 metres in length, inclusive of the diverge and merge, connecting the existing M25 northbound carriageway and the existing A12 eastbound carriageway, commencing at the northern end of the Brook Street Viaduct and terminating at the

western end of Poplars West bridge; running generally northwards, passing over the proposed M25 northbound on-slip (Work No. 8), then looping west of the M25 carriageway, passing over the realigned Weald Brook (Work No. 23C), then looping southwards, passing beneath Work No. 2, passing over the Weald Brook and the Ingrebourne River before tying into the existing A12 eastbound carriageway at the existing Poplar West bridge, as shown on sheet 1 of the works plans. Work No. 6 includes—

(a) a new bridge, labelled 'Alder Wood bridge' on sheet 1 of the works plans, to carry Work No. 6 over the M25 northbound on-slip (Work No. 8);

(b) a new underpass, labelled 'Grove Farm Underpass' on sheet 1 of the works plans, to carry Work No. 6 over a proposed access track (Work No. 14);

(c) a new bridge, labelled 'Duck Wood bridge' on sheet 1 of the works plans, to carry Work No. 6 over the realigned Weald Brook (Work No. 23C); and

(d) a new bridge, labelled 'Grove bridge' on sheet 1 of the works plans, to carry Work No. 6 over the realigned Weald Brook (Work No. 23B) and Ingrebourne River (Work No. 23D).

HIGHWAY WORKS – M25 CARRIAGEWAY

In the London Borough of Havering and the Borough of Brentwood

Work No. 7 — Improvements to a stretch of the existing M25 northbound carriageway, commencing at the northern end of the Brook Street viaduct on the M25 mainline and continuing north westwards for a length of approximately 1,250 metres as shown on sheets 1 and 3 of the works plans.

In the London Borough of Havering

Work No. 8 — Realignment of a stretch of the existing M25 northbound on-slip, along a length of approximately 1,230 metres, inclusive of the merge, including the extension of two existing culverts, commencing at the existing circulatory carriageway of the M25 Junction 28 roundabout and terminating at a point approximately 1,180 metres north of the existing Brook Street Viaduct, as shown on sheets 1 and 3 of the works plans.

M25 GANTRIES AND SIGNAGE

In the London Borough of Havering

Work No. 9 — A new gantry, or similar signage, over the M25 carriageway, at a location situated approximately 215 metres north of the existing Brook Street Viaduct of the M25 junction 28 roundabout, as shown on sheet 1 of the works plans.

Work No. 10 — A new gantry, or similar signage, over the M25 carriageway, at a location situated approximately 1,272 metres north of the existing Brook Street Viaduct as shown on sheet 3 of the works plans.

Work No. 11 — A new gantry, or similar signage, over the M25 carriageway, at a location situated approximately 10 metres north of the Brook Street Viaduct, as shown on sheet 1 of the works plans.

HIGHWAY WORKS – M25 NORTHBOUND OFF-SLIP

In the London Borough of Havering and the Borough of Brentwood

Work No. 12 — Improvements to the existing M25 motorway northbound off-slip, along a length of approximately 166 metres, commencing at a location situated approximately 125 metres north of the Poplar Railway bridge and continuing north westwards until the existing circulatory carriageway of the M25 Junction 28 roundabout, as shown on sheet 1 of the works plans.

OTHER HIGHWAYS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS

In the London Borough of Havering

Work No. 13 — A new private means of access, approximately 600 metres in length, commencing at Work No. 19B and continuing in a north westerly direction, along the outer alignment of Work No. 6 and terminating in a north-eastwards and, separately, north-westwards direction at a location south of Work No. 24A and west of the proposed Duck Wood bridge, as shown on sheet 1 of the works plans.

Work No. 14 — A new private means of access approximately 519 metres in length, commencing at a point situated approximately 100 metres north of the existing Grove Farm access, passing through the proposed Grove Farm Underpass (Work No. 6) and terminating approximately 125 metres north of the aforementioned Underpass in a westwards and, separately, southwards direction, as shown on sheets 1 and 3 of the works plans. Work No. 14 includes a secondary section of private means of access, approximately 30 metres in length and branching westwards from a location to the northwest of the proposed Grove Farm Underpass (Work No. 6) and terminating in a northwards and, separately, westwards direction as shown on sheet 1 of the works plans.

Work No. 15 — Alterations to the existing egress from Grove Farm, approximately 87 metres in length, commencing at a point situated to the north west of the existing Grove Farm residential property and terminating at Work No. 2, as shown on sheet 1 of the works plans.

Work No. 16 — Alterations to the existing access and egress serving land situated to the immediate north of the A12, commencing at a new junction with the new private means of access (Work No. 19A), at a point situated 42 metres from the junction of the aforementioned new private means of access and the A12, and continuing northwards for a distance of approximately 35 metres in length as shown on sheet 1 of the works plans.

EARTH WORKS

In the London Borough of Havering

Work No. 17 — Not used

Work No. 18 — Construction of an environmental bund over an area of land approximately 25,565 square metres in area, situated alongside the new loop road (Work No. 6) and to the north of Work No. 19B as shown on sheet 1 of the works plans.

DRAINAGE WORKS

In the London Borough of Havering

Work No. 19A — A new private means of access, approximately 290 metres in length, commencing at a new junction with the A12 eastbound carriageway situated at a location lying approximately 50 metres to the east of the existing access to Maylands Golf Course and terminating at Work No. 19B, as shown on sheet 1 of the works plans.

Work No. 19B — A new attenuation pond, together with associated private means of access and drainage facilities, approximately 2,600 square metres in area, and situated at a location to the north of Work No. 2 and west of Work No. 6, as shown on sheet 1 of the works plans.

Work No. 20A — A new private means of access, approximately 65 metres in length, commencing at a location situated approximately 110 metres south west of Duck Wood bridge and terminating at Work No. 20B, as shown on sheet 1 of the works plans.

Work No. 20B — A new attenuation pond, together with associated private means of access and drainage facilities, approximately 7,000 square metres in area, and situated at a location to the west of the Weald Brook, as shown on sheet 1 of the works plans.

Work No. 21A — A new private means of access, approximately 40 metres in length, commencing at a location situated 30 metres south of Grove Farm Underpass and terminating at Work No. 20B as shown on sheet 1 of the works plans.

Work No. 21B — A new attenuation pond, together with associated private means of access and drainage facilities, approximately 4,200 square metres in area, and situated at a location to the north east of the Weald Brook, as shown on sheet 1 of the works plans.

Work No. 22 — A new drainage outfall pipe, approximately 50 metres in length, between Work No. 21B and Weald Brook, as shown on sheet 1 of the works plans.

REALIGNMENT OF WATERCOURSES

In the London Borough of Havering

Work No. 23A — Realignment of a stretch of the Weald Brook, along a length of approximately 85 metres, commencing at a location situated to the immediate east of Work No. 20B as shown on sheet 1 of the works plans.

Work No. 23B — Realignment of a stretch of the Weald Brook, along a length of approximately 250 metres, commencing at a location situated within the proposed loop road (Work No. 6), and passing beneath Work No. 2 at the location of the proposed new Maylands bridge and beneath Work No. 6 at the location of the proposed Grove bridge, as shown on sheet 1 of the works plans.

Work No. 23C — Realignment of a stretch of the Weald Brook, along a length of approximately 40 metres, at a location situated beneath Work No. 6 at the location of the proposed Duck Wood bridge, as shown on sheet 1 of the works plans.

Work No. 23D — Realignment of a stretch of the Ingrebourne River, along a length of approximately 200 metres, commencing at a point situated north of the A12 (Work No. 1), beneath the proposed Grove bridge on Work No. 6, and terminating at the location of the Grove Culvert extension, proposed as part of Work No. 2, as shown on sheet 1 of the works plans.

ENVIRONMENTAL MITIGATION AND COMPENSATION

In the London Borough of Havering

Work No. 24A — A new flood compensation area, approximately 2,100 square metres in area, and situated to the immediate northwest of Work No. 6, as shown on sheets 1 and 3 of the works plans.

Work No. 24B — A new flood compensation area, approximately 7,800 square metres in area, and situated within the proposed loop road (Work No. 6), to the west of the realigned Weald Brook (Works Nos. 23A and 23B), as shown on sheet 1 of the works plans.

Work No. 25 — Environmental works, including the construction of ecological compensation areas, approximately 90,000 square metres in area, on land situated to the west and northwest of Work No. 6, as shown respectively on sheets 1 and 3 of the works plans.

Work No. 26 — A new ecological mitigation area, approximately 3,500 square metres in area, on land situated between Work No. 2 and Work No. 6, as shown on sheet 1 of the works plans.

Work No. 27 — A new pond, for environmental mitigation purposes, approximately 500 square metres in area, and situated at a location to the north of Work No. 28 as shown on sheet 3 of the works plans.

Work No. 28— A new pond, for environmental mitigation purposes, approximately 500 square metres in area, and situated at a location to the south of Work No. 27 and west of Work No. 24A as shown on sheet 3 of the works plans.

UTILITIES

In the London Borough of Havering

Work No. 29 — Diversion of an existing underground Cadent high pressure (33bar) gas pipeline, through installation of a new underground high pressure (33bar) gas pipeline, approximately 860 metres in length, commencing at a point situated west of Weald Brook and south of the A12 (Work No. 1) and terminating north of Work No. 24A as shown on sheets 1 and 3 of the works plans.

Work No. 30 — Diversion underground of an existing UKPN 11 kV overhead electric line, approximately 890 metres in length, commencing at a point situated at the existing UKPN sub-station north of the existing Grove Farm access as shown on sheet 1 of the works plans and terminating adjacent to the southern proposed culvert extension to the west of the M25 northbound carriageway as shown on sheet 3 of the works plans.

Work No. 31 — Works associated with the provision of ducting and cabling between the proposed new gantry (Work No. 10) and the existing motorway communications cabinet on the M25 northbound, situated at a location approximately 825 metres northwards of the existing M25 Northbound on-slip at M25 Junction 28, as shown on sheet 3 of the works plans.

ACCOMMODATION WORKS

Work No. 32 — Accommodation works to provide replacement facilities for Maylands Golf Course, over an area of land approximately 54,578 square metres in area and situated at a location to the west of Work No. 29 as shown on sheets 1 and 3 of the works plans.

In connection with the construction of any of the works mentioned above, such ancillary development within the Order limits which does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, consisting of—

(a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycle track or verge within the street; and altering the level of any such kerb, footway, cycle track, or verge within the street;

(b) works required for the strengthening, improvement, protection, repair, maintenance or reconstruction of any street;

(c) works for the strengthening, alteration or demolition of any existing bridge, building or structure;

(d) the remediation of any carriageway made redundant by the stopping up of any highway or means of access;

(e) ramps, means of access (including private means of access), footpaths, footways, cycle tracks, non-motorised links and crossing facilities;

(f) embankments, cuttings, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, barriers (including road restraint, safety barriers), parapets, wing walls, new and replacement highway lighting, roadside signage, fencing and drainage works (including carrier drains, filter drains, outfalls, pumping stations, culverts headwalls, ditches, attenuation earthwork ditches, soakaways, pollution control devices, and catch pits);

(g) the erection of highway boundary fencing, including gates, anti-dazzle fencing and the realignment of existing highway fencing;

(h) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;

(i) works to place, alter, divert, relocate, remove or maintain street furniture, apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, hydrants, cables, ducts and associated cabinets, CCTV, radar and traffic detection equipment and lights;

(j) works to alter the course of, or otherwise interfere with a watercourse;

(k) landscaping, noise barriers, works associated with the provision of ecological mitigation, and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(l) works for the benefit or protection of land affected by the authorised development;

(m) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths), earthworks (including soil stripping and storage and site levelling) and remediation of any contamination;

(n) the felling of trees and hedgerows;

(o) the establishment of construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, hoarding and perimeter enclosure, security fencing, construction-related buildings, welfare facilities, temporary worker accommodation facilities for vehicle recovery crew, vehicle recovery, construction lighting, haulage roads; borrow pits and other buildings, machinery, apparatus, works and conveniences;

(p) the provision of other works including pavement works, carriageway surfacing, kerbing and paved areas works, signing, signals, the modification or demolition of existing gantries, new and replacement highway safety barriers, road markings, traffic management measures including temporary roads, temporary earthworks and construction site accesses and such other works as are associated with the construction of the authorised development; and

(q) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

"completion or completed" means the relevant parts of the authorised development are completed and fully open to traffic;

"contaminated land" has the same meaning as that term is given in section 78A of the Environmental Protection Act 1990(**a**);

"European protected species" has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(**b**);

"Ground Investigation Report" means the Ground Investigation Report referred to in Schedule 10 (documents to be certified);

"HEMP" means the Handover Environmental Management;

"LEMP" means the Landscape and Ecology Management and Monitoring Plan;

"the Manual of Contract Documents for Highway Works" means the document of that name published electronically by or on behalf of the strategic highway authority for England or any equivalent replacement published for that document;

"nationally protected species" means any species protected under the Wildlife and Countryside Act 1981(**c**);

"Outline Arboricultural Method Statement" means the Outline Arboricultural Method Statement referred to in Schedule 10 (documents to be certified);

"Outline Archaeological Management Plan" means the Outline Archaeological Management Plan referred to in Schedule 10 (documents to be certified);

"Outline LEMP" means the Outline Landscape and Ecology Management and Monitoring Plan annexed to the Environmental Statement referred to in Schedule 10 (documents to be certified);

"Outline Traffic Management Plan" means the Outline Traffic Management Plan referred to in Schedule 10 (documents to be certified);

"Preliminary Environmental Design" means the Preliminary Environmental Design referred to in Schedule 10 (documents to be certified); and

"REAC" means the Register of Environmental Actions and Commitments referred to in Schedule 10 (documents to be certified).

(**a**) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).
(**b**) S.I. 2017/1012.
(**c**) 1981 c. 69.

Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Detailed design

3.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following an independent design review and a report on its findings on the design of the bridges and structures and consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design 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 sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available online for inspection by members of the public.

Construction Environmental Management Plan

4.—(1) No part of the authorised development is to commence until a CEMP, in accordance with the Outline CEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, relevant highway authority and the Environment Agency to the extent that it relates to matters relevant to its functions.

(2) The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, is in accordance with the relevant mitigation measures set out in the REAC, and must include the following management plans—

(a) pollution prevention plan;

(b) dust noise and nuisance management plan;

(c) ecological habitats and species plan;

(d) invasive species management plan;

(e) surface water management plan;

(f) contaminated land management plan;

(g) soil handling management plan;

(h) material management plan;

(i) site waste management plan;

(j) material, waste storage and refuelling plan;

(k) energy and resource use management plan;

(l) emergency response plan; and

(m) community engagement plan.

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(4) A HEMP must be developed and completed by the end of the construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(5) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) The authorised development must be landscaped in accordance with a landscaping scheme and LEMP which set out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, relevant highway authority and the Environment Agency on matters related to its functions.

(2) The landscaping scheme and LEMP must be in accordance with the relevant mitigation measures set out in the REAC and with the Preliminary Environmental Design and the Outline LEMP.

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

(a) location, number, species mix, size and planting density of any proposed planting;

(b) cultivation, importing of materials and other operations to ensure plant establishment;

(c) existing trees to be retained, with measures for their protection during the construction period;

(d) proposed finished ground levels;

(e) implementation timetables for all landscaping works; and

(f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged.

(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards and other recognised codes of good practice.

Contaminated land and groundwater

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement or in the Ground Investigation Report, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority, relevant highway authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

Protected species

7.—(1) No part of the authorised development is to commence until for that part, final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by that part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

(a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;

(b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and

(c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation by the undertaker with Natural England, and under any necessary licences.

Surface and foul water drainage

8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, in accordance with the relevant mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

9.—(1) No part of the authorised development is to commence until an archaeological management plan has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.

(2) The archaeological management plan must be in accordance with the Outline Archaeological Management Plan and reflect the relevant mitigation measures set out in the REAC.

(3) The authorised development must be carried out in accordance with the approved archaeological management plan referred to in sub-paragraph (1).

Traffic management

10.—(1) No part of the authorised development comprising the construction, alteration or improvement of the M25 or A12 is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant highway authority on matters related to its function.

(2) The traffic management plan prepared under sub-paragraph (1) must be in accordance with the Outline Traffic Management Plan and the relevant mitigation measures set out in the REAC.

(3) The authorised development must be constructed in accordance with the traffic management plan referred to in sub-paragraph (1).

Trees

11.—(1) No part of the authorised development is to commence until an arboricultural method statement has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.

(2) The arboricultural method statement must be in accordance with the Outline Arboricultural Method Statement and the relevant mitigation measures set out in the REAC.

(3) The authorised development must be carried out in accordance with the approved arboricultural method statement referred to in sub-paragraph (1).

Approvals and amendments to approved details

12. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

Fencing

13.—(1) Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Manual of Contract Documents for Highway Works maintained by or on behalf for the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development, following consultation by the undertaker with the relevant highways authority to the extent that it relates to matters relevant to its function.

(2) No part of the new loop road forming Work No. 6 or the new A12 eastbound off-slip forming Work No. 2 is to be opened for traffic until any appropriate measures for the control of deer, including deer fencing, identified following consultation with the relevant planning authority and relevant highway authority on matters related to its function has been installed.

Operation of M25 Junction 28 Roundabout

14.—(1) No part of the new loop road forming Work No. 6 is to be opened for traffic until a plan for the M25 Junction 28 roundabout containing details of the proposed operation of traffic signal timings or such other related measures as may be reasonably practicable to prevent any increase in delays for traffic on the A1023 Brook Street entering the M25 Junction 28 roundabout arising as a result of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the highway authorities within the Order limits.

(2) The authorised development must be operated in accordance with the approved plan referred to in sub-paragraph (1) or such amended plan following consultation with the highway authorities within the Order limits.

Maylands Golf Course accommodation works

15. Accommodation works to provide replacement facilities for Maylands Golf Course forming Work No. 32 must be undertaken and available for use prior to the opening to traffic of the new loop road forming Work No. 6.

Grove Farm

16.—(1) No part of the authorised development is to commence until a site-specific plan for Grove Farm has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London and the London Borough of Havering.

(2) The site-specific plan shall include:

(a) details of the planting, visual screen to be installed, and any other mitigation deemed necessary for the boundary to the new A12 off-slip forming Work No. 2; and

(b) details of the egress route forming Work No. 15 onto the new A12 off-slip forming Work No. 2.

(3) The authorised development must be constructed in accordance with the site-specific plan referred to in sub-paragraph (1).

Non-motorised users' route

17. No part of the new loop road forming Work No. 6 shall be opened for traffic until:

(a) a scheme or agreement to secure the full non-motorised users' route between Harold Hill and Brentwood has been submitted to and approved in writing by the Secretary of State in consultation with the relevant highway authorities and relevant planning authorities; and

(b) the junction section of the non-motorised users' route within the Order limits has been delivered.

Code of construction practice

18. No part of the authorised development shall commence until a code of construction practice has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London and the relevant planning authorities. The development shall be carried out in accordance this those details.

Gardens of Peace Muslim Cemetery

19.—(1) No part of Work No. 29 is to commence within plot nos. 1/8a and 1/8 until a site-specific construction plan has been submitted to and approved in writing by the Secretary of State following consultation with the Gardens of Peace Muslim Cemetery and Cadent Gas.

(2) Work No. 29 within plot nos. 1/8a and 1/8 must be constructed in accordance with the approved site-specific plan referred to in sub-paragraph (1).

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

20.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

(a) the day immediately following that on which the application is received by the Secretary of State;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 16 (further information); or

(c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

(a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;

(b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and

(c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

21.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within that 21 day business period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 15 (applications made under requirements) and in this paragraph.

(5) In this paragraph, "business day" means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(**a**).

Register of requirements

22.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in a form suitable for inspection by members of the public an online register of the documents to be certified under Schedule 10 and those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

23. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

(**a**) 1970 c.80.

Details of consultation

24. In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 42 days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted including copies of any representations made by a consultee about the proposed application and the undertaker's response to those representations.

SCHEDULE 3

Article 15

PERMANENT STOPPING UP OF STREETS

PART 1

HIGHWAYS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) *Highway to be stopped up*	*(2)* *Extent of stopping up*	*(3)* *New highway to be provided*
A12 Eastbound Off-Slip (including the non-segregated footway in the verge)	Between points 1/18 to 1/19 on sheet 1 of the streets, rights of way and access plans	Work No. 2
M25 Northbound On-Slip	Between points 1/14 on sheet 1 to 3/3 on sheet 3 of the streets, rights of way and access plans	Work No. 8
Non-segregated footway in the verge of the existing A12 Eastbound Carriageway	Between points 1/10 to 1/18 on sheet 1 of the streets, rights of way and access plans	Work No. 2

PART 2

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) *Private means of access to be stopped up*	*(2)* *Extent of stopping up*	*(3)* *New private means of access to be substituted or provided*
Private means of egress from Grove Farm	At point A as shown on Sheet 1 of the streets, rights of way and access plans	Work No. 15
Private means of access to land situated to the immediate north of the A12 Eastbound Carriageway	At point B as shown on Sheet 1 of the streets, rights of way and access plans	Work No. 16

SCHEDULE 4

Article 16, 17 and 18

CLASSIFICATION OF ROADS, ETC.

PART 1

SPECIAL ROADS

(1) *Highway*	*(2)* *Extent*
M25 Northbound	Between points 4/1 on sheet 4 to 3/1 on sheet 3 of the streets, rights of way and access plans
M25 Junction 28 Loop Road	Between points 1/16 on sheet 1 to 1/17 on sheet 1 of the streets, rights of way and access plans
M25 Northbound On-Slip	Between points 1/13 on sheet 1 to 3/1 on sheet 3 of the streets, rights of way and access plans
M25 Northbound Off-Slip	Between points 1/30 on sheet 1 to 1/6 on sheet 1 of the streets, rights of way and access plans
M25 Southbound	Between points 3/5 and 3/6 and between 3/7 and 3/8 on sheet 3 of the streets, rights of way and access plans

PART 2

TRANSPORT FOR LONDON ROAD NETWORK

(1) *Highway*	*(2)* *Extent*
A12 Eastbound Off-Slip	Between points 1/10 on sheet 1 to 1/11 on sheet 1 of the streets, rights of way and access plans

PART 3

TRUNK ROADS

(1) *Highway*	*(2)* *Extent*
M25 Junction 28, circulatory carriageway	Entire M25 Junction 28 circulatory carriageway linking points 1/3, 1/6, 1/7, 1/8, 1/11, 1/12 and back to 1/3 on sheet 1 of the streets, rights of way and access plans
A12 Eastbound On-Slip	Between points 1/3 and 1/34 on sheet 1 of the streets, rights of way and access plans
M25 Northbound On-Slip	Between points 1/12 to 1/13 on sheet 1 of the streets, rights of way and access plans
A12 Eastbound	Between points 1/2 on sheet 1 to 2/1 on sheet 2 of the streets, rights of way and access plans

PART 4

SPEED LIMITS

(1) *Road name and number*	*(2)* *Extent*	*(3)* *Speed Limit*
M25 Junction 28 Circulatory Carriageway	The whole length of the improved M25 Junction 28 circulatory carriageway, for a total distance of 610 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	National speed limit (70 miles per hour, as existing limit)
M25 Northbound Carriageway	Along the length of the improved M25 northbound carriageway, for a total distance of 3720 metres, as shown on sheets 1, 3 and 4 of the speed limits and traffic regulations plans.	National speed limit (70 miles per hour, as existing limit)
M25 Junction 28 Diverge to Loop Road	Along the length of the new slip road, from its diverge from the M25 northbound carriageway to point C, for a total distance of 265 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	National speed limit (70 miles per hour)
M25 Northbound On-Slip and Merge	Along the length of the improved slip road from the M25 Junction 28 circulatory carriageway to its merge with the M25 northbound carriageway, for a total distance of 1234 metres, as shown on sheets 1 and 3 of the speed limits and traffic regulations plans.	National speed limit (70 miles per hour)
M25 Northbound Off-Slip and Diverge	Along the length of the improved slip road from its diverge from M25 northbound carriageway to M25 Junction 28 circulatory carriageway, for a total distance of 149 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	National speed limit (70 miles per hour, as existing limit)
A12 Eastbound Carriageway	Along the length of the improved A12 eastbound carriageway from the western-most Order limits to point A, for a total distance of 330 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	50 miles per hour, as existing limit

(1) *Road name and number*	*(2)* *Extent*	*(3)* *Speed Limit*
A12 Eastbound Carriageway	Along the length of the improved A12 eastbound carriageway between point A and B, for a total distance of 908 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	50 miles per hour
A12 Eastbound Carriageway	Along the length of the improved A12 eastbound carriageway from point B, for a total distance of 693 metres, as shown on sheets 1 and 2 of the speed limits and traffic regulations plans.	National speed limit (70 miles per hour, as existing limit)
A12 Eastbound Off-Slip and Diverge	Along the length of the realigned slip road, from its diverge from the A12 eastbound off-slip to the M25 Junction 28 circulatory carriageway, for a total distance of 773 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	50 miles per hour
A12 Eastbound On-Slip and Merge	Along the length of the improved A12 eastbound on-slip from the M25 Junction 28 circulatory carriageway to its merge with the A12 eastbound carriageway, for a total distance of 546 metres, as shown on sheets 1 and 2 of the speed limits and traffic regulations plans.	National speed limit (70 miles per hour, as existing limit)
M25 Junction 28 Loop Road and Merge	Along the length of the new loop road from point C to its merge with A12 eastbound carriageway for a total distance of 1176 metres, as shown on sheet 1 of the speed limits and traffic regulations plans.	50 miles per hour

PART 5

TRAFFIC REGULATION MEASURES (CLEARWAYS)

(1) *Road name and number*	*(2)* *Extent of Regulation*	*(3)* *Measures*
A12 Eastbound Off-Slip	From the start of A12 eastbound diverge, as shown by point 1/1 on sheet 1 of the speed limits and traffic regulations plans, eastbound for a distance of 773 metres, to the junction with the M25 Junction 28 circulatory carriageway, as shown by point 1/2 on sheet 1 of the speed limits and traffic regulations plans.	Clearway (to include verge and hard strips)
A12 Eastbound Carriageway	From the start of the A12 eastbound diverge, at the location illustrated by point 1/1 on sheet 1 of the speed limits and traffic regulations plans, eastbound for a distance of 918 metres along the mainline carriageway, to point 1/3 on sheet 1 of the speed limits and traffic regulations plans.	Clearway (to include verge and hard strips)

PART 6

OTHER PUBLIC RIGHTS OF WAY

(1) *Highway*	*(2)* *Extent*
Non-segregated footway in the verge of the A12 Eastbound Off-Slip	Between points 1/10 to 1/11 and between points 1/11 and 1/20 on sheet 1 of the streets, rights of way and access plans

SCHEDULE 5

Article 24

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) *Type of tree*	*(2)* *Work to be carried out*	*(3)* *Relevant part of the authorised development*	*(4)* *TPO reference*
Area TPO Multiple Species	Potential felling of trees or works to trees to permit the gas main diversion	Work No. 29	TPO 2-02 – A1 Land on south side of Colchester Road. London Borough of Havering
Area TPO Multiple Species	Felling of trees or works to trees to permit the construction of the scheme being submitted as part of the DCO	Work Nos. 6 and 23C	TPO 18-06 – A1 Maylands Golf Course, Colchester Road, Romford. London Borough of Havering.
Group TPO Multiple Species woodland	Felling of trees or works to trees to permit the construction of the scheme being submitted as part of the DCO	Work Nos. 6, 14 and 30	TPO 5/1948 Map 16, Alder Wood. Brentwood District Council.
Group TPO Multiple Species woodland	Felling of trees or works to trees to permit the construction of the scheme being submitted as part of the DCO	Work Nos. 2, 15, 18, 23B, 23D and 26	TPO 5/1948 Map 21 Grove Wood. Brentwood District Council.

SCHEDULE 6

Article 28

LAND IN WHICH NEW RIGHTS ONLY ETC. MAY BE ACQUIRED

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which rights over land may be acquired*	*(3)* *Relevant part of the authorised development*
Land Plans – Sheet 1 of 4		
1/1a	To construct, protect, operate, access and maintain diversion of an existing underground high pressure gas pipeline. To construct, access and maintain drainage works. To construct, operate, access and maintain diversions to existing utilities apparatus.	Work Nos. 6 and 29 and other ancillary development (utilities)
1/3	To construct, operate, access and maintain diversions to existing utilities apparatus. To construct and maintain a new private means of access.	Work No. 19A and other ancillary development (utilities)
1/6	To construct, access and maintain drainage works from the new loop road.	Work No. 6
1/8	To construct, protect, operate, access and maintain diversion of an existing underground high pressure gas pipeline.	Work No. 29
1/20	To construct, access and maintain a new drainage outfall pipe.	Work No. 22
1/21	To construct, access and maintain a new drainage outfall pipe.	Work No. 22
1/22	To construct, access and maintain a new drainage outfall pipe.	Work No. 22
1/25	To install, access, monitor and maintain bird boxes.	Other ancillary development (bird boxes)
1/25a	To install, access, monitor and maintain bird boxes.	Work Nos. 2, 6, 23B, 23D and 26 and other ancillary development (bird boxes and utilities)
1/27	To install, access, monitor and maintain bird boxes. To construct, access and maintain— (a) improvements to the A12 eastbound off-slip (including Maylands Bridge and Grove culvert); (b) Grove Bridge; and (c) realigned stretches of Weald Brook and Ingrebourne River.	Work Nos. 2, 6, 23B, 23D and 26 and other ancillary development (bird boxes and utilities)

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which rights over land may be acquired*	*(3)* *Relevant part of the authorised development*
	To construct, operate, access and maintain diversions to existing utilities apparatus.	
Land Plans – Sheet 3 of 4		
3/15	To install, access, monitor and maintain bird boxes.	Other ancillary development (bird boxes)
3/17	To install, access, monitor and maintain bird boxes.	Other ancillary development (bird boxes)

SCHEDULE 7

Articles 28(6) and (7)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights) to the M25 Junction 28 Development Consent Order 202[ ] ("the 202[ ] Order"));

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the 202[ ] Order) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.".

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

Application of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 25 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 28 (compulsory acquisition of rights and imposition of restrictive covenants)—

(**a**) 1973 c. 26.

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modification referred to in paragraph 4(a) are as follows.

(2) References in the 1964 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restrictive covenant imposed to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 (measure of compensation) of the 1965 Act substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(**a**) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22 (authority to survey and investigate the land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(**b**) (powers of entry; further notices of entry), 11B(**c**) (counter-notice requiring possession to be taken on specified date), 12(**d**) (penalty for unauthorised entry) and 13(**e**) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(**f**) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent

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(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), section 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(**c**) Section 11B was inserted by section 187(2) of the Housing and Planning act 2016 (c. 22).

(**d**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) (compulsory acquisition of rights and imposition of restrictive covenants) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 31 (application of the 1981 Act) of the M25 Junction 28 Development Consent Order 202[ ] in respect of the land to which the notice to treat relates.

(2) But see article 33(3) (acquisition of subsoil and airspace only) of the M25 Junction 28 Development Consent Order 202[ ] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the acquiring authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the proposed use of the right or the imposition of the covenant, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

Application of the 2017 Regulations

6. References in Schedule 1 to the 2017 Regulations to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

(a) the right acquired or to be acquired or the restrictive covenant imposed or to be imposed; or

(b) the land over which the right is to be exercisable, or the restrictive covenant is or is to be enforceable.

SCHEDULE 8

Article 35

LAND OF WHICH TEMPORARY POSSESSION ONLY MAY BE TAKEN

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which temporary possession may be taken*	*(3)* *Relevant part of the authorised development*
Land Plans – Sheet 1 of 4		
1/1	Construction works relating to improvements to the A12 eastbound carriageway.	Work No. 1
1/1b	Construction works relating to improvements to the A12 westbound carriageway.	Work No. 4
1/1c	Construction works relating to improvements to the A12 westbound carriageway and to the diversion of an existing underground high pressure gas pipeline.	Work Nos. 4 and 29
1/1d	Construction works relating to improvements to the A12 westbound carriageway and to the diversion of an existing underground high pressure gas pipeline.	Work Nos. 4 and 29
1/2	Construction works relating to improvements to the A12 eastbound carriageway.	Work No. 1
1/7	Construction works relating to improvements to the A12 westbound carriageway and to the diversion of an existing underground high pressure gas pipeline.	Work Nos. 4 and 29
1/8a	Construction works relating to the diversion of an existing underground high pressure gas pipeline.	Work No. 29
1/11	To establish an environmental bund and construction compound and to undertake associated construction activities.	Work No. 18 and, in respect of the construction compound, all works
1/14	Construction works relating to the provision of accommodation works for Maylands Golf Course.	Work No. 32
1/15	Construction works relating to the establishment of a new attenuation pond with associated drainage works and the realignment of a stretch of Weald Brook.	Work Nos. 21B, 22 and 23C
1/16	Construction works relating to the realignment of stretches of Weald Brook.	Work Nos. 23A and 23B
1/17	Construction works relating to the new loop road.	Work No. 6
1/21a	Construction works relating to the realignment of stretches of Weald Brook.	Work Nos. 23A and 23B
1/26	Construction working area for alterations to the existing egress from Grove Farm.	Work No. 15
1/28a	Construction working area for alterations to the existing egress from Grove Farm.	Work No. 15

(1) *Plot Reference Number shown on Land Plans*	*(2)* *Purpose for which temporary possession may be taken*	*(3)* *Relevant part of the authorised development*
Land Plans – Sheet 3 of 4		
3/2	Construction working area for improvements to the M25 northbound carriageway, the realignment of the existing northbound on-slip and a new gantry.	Work Nos. 7, 8 and 10
3/3	Construction working area for improvements to the M25 northbound carriageway, the realignment of the existing northbound on-slip and a new gantry.	Work Nos. 7, 8 and 10
3/6	Construction working area for a new gantry.	Work No.10
3/7	Construction working area for a new gantry.	Work No.10
3/16	Construction working area for improvements to the M25 northbound carriageway, the realignment of the existing northbound on-slip, and a new private means of access.	Work Nos. 8 and 14
3/18	To establish an ecological mitigation area.	Work No. 25
3/19	Construction working area for improvements to the M25 northbound carriageway, the realignment of the existing northbound on-slip, and a new private means of access.	Work Nos. 8 and 14
3/21	Construction works relating to the provision of accommodation works for Maylands Golf Course and to establish an ecological mitigation area.	Work Nos. 25 and 32
3/23	Construction works relating to the provision of accommodation works for Maylands Golf Course.	Work No. 32

SCHEDULE 9

Articles 38 and 39

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

Application

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

Interpretation

2. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991(**a**);

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**b**)), belonging to or maintained by that undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(**c**) for the purposes of gas supply;

(c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act 1991(**d**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"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;

(**a**) 1991 c. 22.
(**b**) 1989 c. 29.
(**c**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).
(**d**) 1991 c. 56.

"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;

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 15 (permanent stopping up of streets), any utility undertaker has the same powers and rights in respect of any apparatus in the street as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary alteration, diversion or restriction of a street under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(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 requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in accordance with sub-paragraphs (2) to (6).

(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, the undertaker must give to the utility undertaker 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 a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker 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 sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(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 the utility undertaker and the undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay 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 Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(8) For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction, maintenance of the utility 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 the utility undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(2) 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 the utility undertaker 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 that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker 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, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, 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.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give the utility undertaker notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, 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; 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 the utility undertaker by virtue of sub-paragraph (1) must be 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 is not to 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 is to 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 a utility undertaker 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 the utility undertaker 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.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless a utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Co-operation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use 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 the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**b**);

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 38 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(**a**) 2003 c. 21.
(**b**) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 54 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

18.—(1) The following provisions will apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" will be construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"the fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

"plans" includes sections, drawings, specifications, calculations and method statements;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(c) cause obstruction to the free passage of fish or damage to any fishery;

(d) affect the conservation, distribution or use of water resources; or

(e) affect the conservation value of the main river and habitats in its immediate vicinity;

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

19.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 28.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds of refusal;

(c) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval and

(d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(c).

20. Without limiting paragraph 19, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

21.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 20, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker 's own expense to comply with the requirements of this part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing will be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 28.

22.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from

obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing will be recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 28.

(6) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person, including the highway authority, is liable to maintain and is not proscribed by the powers of the Order from doing so;

(b) or any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

23. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

24. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

25.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be

reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing will be recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any reasonable expenditure reasonably incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

26. The undertaker must repay to the Agency all reasonable costs, charges and expenses which the Agency may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

27.—(1) The undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the Agency by reason of—

(a) the construction of any specified works comprised within the authorised works; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

"costs" includes—

(a) expenses and charges;

(b) staff costs and overheads;

(c) legal costs;

(d) "losses" includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

"claims" and "demands" include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;

(b) any interest element of sums claimed or demanded; and

"liabilities" includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand.

(6) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(7) The Agency must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(8) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(9) The Agency 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 its reasonably expenses reasonably incurred in so doing.

(10) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, will not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

28. Any dispute arising between the undertaker and the Agency under this part of this Schedule will, if the parties agree, be determined by arbitration under article 54 (arbitration), but will otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

29. The following provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed between the undertaker and the drainage authority.

30. In this Part of this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are to be construed accordingly;

"drainage authority" means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(**a**);

"drainage work" means in relation to any key watercourse and includes any land which is expected to provide flood storage capacity for a key watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with a key watercourse;

"key watercourse" means any of the following ordinary watercourses—

Ordinary watercourse to be regarded as a key watercourse	*Ordnance Survey coordinates of ordinary watercourse to be regarded as a key watercourse*
existing ditch 1	TQ 56608 92369 to TQ 56429 92244
existing ditch 2	TQ 56427 92408 to TQ 56438 92260
existing ditch 3	TQ 56593 92504 to TQ 56444 92744
existing ditch 4	TQ 56442 92747 to TQ 56255 92665
existing ditch 5	TQ 56339 92531 to TQ 56289 92673
existing ditch 6	TQ 56243 92551 to TQ 56273 92556
existing ditch 7	TQ 56202 92680 to TQ 56255 92558
existing ditch 8	TQ 56216 92637 to TQ 56229 92642
existing ditch 9	TQ 56192 93002 to TQ 56284 92682
existing ditch 10	TQ 56264 93010 to TQ 56193 93002

(**a**) 1991 c. 59.

Ordinary watercourse to be regarded as a key watercourse	*Ordnance Survey coordinates of ordinary watercourse to be regarded as a key watercourse*
existing ditch 11	TQ 56192 93140 to TQ 56174 93104
existing ditch 12	TQ 56078 93264 to TQ 56098 93223

and in each case includes any land or area which is being used or is expected to be used to provide temporary or permanent flood storage capacity or relief for the watercourse and any bank, wall, embankment or other structure, or any appliance constructed or used for land drainage or flood defence in connection with the watercourse;

"ordinary watercourse" has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(**a**);

"plans" includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements; and

"specified work" means any of the following works carried out in relation to any ordinary watercourse—

(a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;

(b) the construction or alteration of a bridge or other structure;

(c) erecting a culvert in the watercourse; or

(d) altering a culvert in a manner that would be likely to affect the flow of the watercourse.

31.—(1) Before beginning to construct any specified work in relation to a key watercourse, the undertaker must submit to the drainage authority plans of the work, and such further particulars available to the undertaker as the drainage authority may within 14 days of the first submission of the plans reasonably require.

(2) On receipt of the plans submitted under sub-paragraph (1) the drainage authority may within 14 days of the first submission of the plans—

(a) request such further particulars as the drainage authority may reasonably require; or

(b) request up to a further 14 days in which to review the plans to identify if any further particulars are required.

(3) Any such specified work in relation to a key watercourse must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 35.

(4) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is to be deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval or submission of further particulars (where required by the drainage authority under sub-paragraph (1), whichever is the later; and

(c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any key watercourse or for the prevention of flooding.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

32. The requirements or conditions which the drainage authority may make under paragraph 31 include conditions requiring the undertaker at its own expense to construct such protective works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or) as are reasonably necessary—

(**a**) 1951 c. 59.

(a) to safeguard any key watercourse against damage, or

(b) to secure that the efficiency of any key watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work in relation to a key watercourse.

33.—(1) Any specified work in relation to a key watercourse, and all protective works required by the drainage authority under paragraph 32, must be constructed to the reasonable satisfaction of the drainage authority and an officer of the drainage authority is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The undertaker must give to the drainage authority not less than 14 days' notice of its intention to commence construction of any specified work in relation to a key watercourse and the undertaker must give to the drainage authority notice of completion of a specified work in relation to a key watercourse not later than 7 days after the date on which it is brought into use.

(3) If any part of the works comprising a structure in, over or under a key watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice require the undertaker at its own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 14 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 36.

34.—(1) Subject to sub-paragraph (6), from the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work ("the maintenance period"), the undertaker must maintain in good repair and condition and free from obstruction the drainage work which is situated within the limits of deviation for that specified work and on land held by the undertaker for the purposes or in connection with the specified work, whether the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) Upon the expiry of the maintenance period, the drainage work must be maintained by the highway authority for the highway to which the specified work relates.

(3) If any such drainage work is not maintained to the reasonable satisfaction of the drainage authority it may by notice require the person liable for maintenance of the drainage work to maintain the drainage work, or any part of it, to such extent as the drainage authority reasonably requires.

(4) If, within a reasonable period being not less than 14 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (3) on the person liable for maintenance, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the person liable for maintenance.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the drainage authority must not except in a case of emergency exercise

the powers of sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 36.

(6) This paragraph does not apply to—

(a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

(7) Subject to paragraphs 34(6)(b) and 36, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover from the undertaker the expense reasonably incurred by it in doing so.

35.—(1) The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur in—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of a specified work in respect of a key watercourse or any protective works required by the drainage authority under this Part of this Schedule.

(2) The maximum amount payable to the drainage authority under sub-paragraph (1)(a) or (b) is to be the same as would have been payable to the drainage authority in accordance with the scale of charges for pre-application advice and land drainage consent applications published on the drainage authority's website from time to time.

36. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule is to be determined in accordance with article 54 (arbitration).

PART 5

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

37.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 9 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 48(3)(b)).

Interpretation

38. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989(**a**), belonging to or maintained by National Grid or any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by National Grid for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"commence" and "commencement" in paragraph 45 and 46 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid " means National Grid Electricity Transmission Plc or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989 and National Grid Gas Plc or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development (including maintenance) which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 43(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 43(2) or otherwise.

(**a**) 1989 c. 29.

39. Except for paragraphs 40 (apparatus of National Grid in stopped up streets), 45 (retained apparatus: protection of electricity undertaker), 46 (retained apparatus: protection of gas undertaker), 47 (expenses), and 48 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provision of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

40.—(1) Where any street is stopped up under article 15 (permanent stopping up of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 43 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 45 or 46.

(2) (Notwithstanding the temporary closure, alteration, diversion or restriction of use of any street under the powers of article 13 (temporary closure, alteration, diversion and restriction of use of streets), National Grid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure, alteration, diversion or restriction of use was in that street.

Protective works to buildings

41. The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

Acquisition of land

42.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 45 or 46 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

43.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over 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 to National Grid advance 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 National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 44(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and

(b) 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 or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay 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 Part of this Schedule.

Facilities and rights for alternative apparatus

44.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid 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 matter may be referred to arbitration in accordance with paragraph 52 (arbitration) of this Part of this Schedule and the arbitrator must

make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

45.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works

or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) 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, paragraphs 37 to 39 and 42 to 44 apply as if the removal of the apparatus had been required by the undertaker under paragraph 43(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, 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.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11) "emergency works" means works whose execution at the time when they are executed is required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Retained apparatus: protection of gas undertaker

46.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

(b) must not be unreasonably withheld or delayed.

(5) National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

(a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and

(b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) 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, paragraphs 37 to 39 and 42 to 44 apply as if the removal of the apparatus had been required by the undertaker under paragraph 43(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development or its maintenance—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 47.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

47.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development or its maintenance including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 43(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, 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; 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 paragraph 52 (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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, 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 National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

48.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any part of the authorised development (including maintenance) carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

49. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

50.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 43(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 45 or 46, 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 National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

Access

51. If in consequence of the agreement reached in accordance with paragraph 42(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

52. Save for differences or disputes arising under paragraphs 43(2), 43(4) and 44(1) any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 54 (arbitration).

Notices

53. Notwithstanding article 47 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 45 or 46 must be sent to National Grid Plant Protection at plantprotection@cadentgas.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

54. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

55. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of

Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"Cadent" means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**);

"Cadent's undertaking" means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995(**b**));

"commence" and "commencement" include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"facilities and rights" for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" have effect as if Cadent's existing apparatus was authorised development and as if the term maintain includes protect and use;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"rights" includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

"specified works" means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 60(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 60(2) or otherwise.

(**a**) 1986 c. 44.
(**b**) 1995 c. 45.

On street apparatus

56.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

(a) paragraphs 57, 62, 63 and 64; and

(b) where sub-paragraph (2) applies, paragraphs 60 and 61.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

Apparatus of Cadent in stopped up streets

57.—(1) Where any street is stopped up under article 15 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 60.

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 13 (temporary closure, alteration, diversion and restriction of use of streets), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction of use in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

58.—(1) The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed).

Acquisition of land

59.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such

relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 62 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 60 do not apply, the undertaker must, unless Cadent agrees otherwise—

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

60.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 59, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over 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 to Cadent advance written notice of that requirement, together with a plan and section 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 61(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus; and

(b) subsequently for the maintenance of that apparatus.

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation

the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

61.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 68 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

62.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and

(b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, 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, paragraphs 54 to 56 and 59 to 61 apply as if the removal of the apparatus had been required by the undertaker under paragraph 60(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan (and ground monitoring scheme if required), instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan (and ground monitoring scheme if required).

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 63.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

63.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 60(3) if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;

(g) any watching brief pursuant to sub-paragraph 62(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, 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; 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 paragraph 68 (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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will 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 will 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 Cadent in respect of works by virtue of sub-paragraph (1) will, 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 Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

64.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 21 (protective work to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;

(b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of the Order);

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1) save that the undertaker's indemnity under sub-paragraph (1)(b) extends to any contractual liability Cadent has in respect of the indirect or consequential loss of a landowner in whose land apparatus is, or pursuant to the works will be, located.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

65. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

66.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 60(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 62, 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 Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

67. If in consequence of any agreement reached in accordance with paragraph 59(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

68. Save for differences or disputes arising under sub-paragraphs 60(2) and 60(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 54 (arbitration).

Notices

69. Notwithstanding article 47 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 62(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF TRANSPORT FOR LONDON

70. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Transport for London.

Notices

71. In this Part of this Schedule—

"Commuted Sum" means s the sum to be paid by the undertaker to Transport for London for the future maintenance of any highway assets not previously forming part of the TLRN which

will be transferred to Transport for London, as calculated in accordance with paragraph 73 of this Part;

"Detailed Local Operating Agreement" means an agreement to be made between the undertaker and Transport for London detailing the traffic management arrangements to be implemented during the carrying out of the authorised development;

"TfL Road" means any public, vehicular highway which is vested or vests or is intended at the completion of works to vest in or be otherwise maintainable by Transport for London;

"TLRN" means the Transport for London Road Network comprising highways for which Transport for London is the responsible highway authority; and

"Works" means any works authorised by the Order undertaken on, to or under any part of the TLRN or a TfL Road.

Costs

72. The undertaker must pay to Transport for London in respect of the Works a sum equal to the whole of any costs and expenses which Transport for London reasonably incur in–

(a) requests from the undertaker to participate in the design of any part of the authorised development, the examination or approval of design or construction information required for the Works including for the protection of the TLRN and for Work No. 29, and reaching agreement on the schedule of highway assets pursuant to paragraph 73;

(b) including the schedule of highway assets agreed pursuant to paragraph 73 within its road maintenance framework contracts;

(c) agreeing and operating a Detailed Local Operating Agreement;

(d) participation in road safety audits relating to the Works;

(e) inspecting the construction and completion of the Works including any remediation works;

(f) the issue of certificates relating to the Works required for the completion, hand over and defects;

(g) carrying out any surveys and testing which are reasonably required in connection with the construction of the Works; and

(h) the transfer or vesting in Transport for London of any land and rights acquired by the undertaker.

Commuted Sum

73.—(1) The undertaker must use reasonable endeavours to agree with Transport for London a schedule of new highway assets which are proposed to become the maintenance responsibility of Transport for London as a result of the authorised development under article 11 (construction and maintenance of new, altered or diverted streets and other structures) and article 16(1)(b) (classification of roads, etc.) of the Order.

(2) Where the schedule prepared under paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 74.

(3) Following agreement of the schedule under sub-paragraph (1) or determination under subparagraph (2), Transport for London must prepare a calculation of the Commuted Sum based on the maintenance Transport for London considers to be required for the schedule of highway assets agreed under sub-paragraph (1) or determined under sub-paragraph (2) and must use reasonable endeavours to agree it with the undertaker.

(4) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by Transport for London under sub-paragraph (3) including any assumptions used.

(5) Where the calculation prepared under sub-paragraph (3) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 74.

(6) The undertaker must pay the Commuted Sum to Transport for London in one instalment within 10 working days of the later of–

(a) the date of completion of the authorised development; or

(b) the date of agreement of the value of the Commuted Sum under sub-paragraph (3) or determination under sub-paragraph (5).

Disputes

74. Any difference arising between the undertaker and Transport for London under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be escalated to a more senior level within Transport for London and the undertaker and if the matters of dispute still cannot be resolved then they will be resolved by arbitration under article 54 (arbitration).

SCHEDULE 10

Article 46

DOCUMENTS TO BE CERTIFIED

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

(1) *Document*	*(2)* *Document Reference*	*(3)* *Revision*
Book of Reference – Regulation 5(2)(d)	TR010029/APP/4.3	4
Engineering drawings and sections – Regulation 5(2)(o), 5(4) and 6(2)	TR010029/APP/2.8	2
Environmental Statement – Main Report – Regulation 5(2)(a)	TR010029/APP/6.1	1
Environmental Statement – figures – Regulation 5(2)(a)	TR010029/APP/6.2	1
Environmental Statement – appendices– Regulation 5(2)(a)	TR010029/APP/6.3	1
Ground Investigation Report – Regulation 5(2)(q)	TR010029/EXAM/9.25	0
Habitats Regulation Assessment Report – Regulation 5(2)(g)	TR010029/APP/6.9	2
Land plans – Regulation 5(2)(i)	TR010029/APP/2.2	3
Location plan – Regulation 5(2)(o)	TR010029/APP/2.1	1
Outline Arboricultural Method Statement	TR010029/EXAM/9.64	1
Outline Archaeological Management Plan – Regulation 5(2)(q)	TR010029/EXAM/9.45	2
Outline Construction Environmental Management Plan – Regulation 5(2)(q)	TR010029/APP/7.2	4
Outline Traffic Management Plan	TR010029/EXAM/9.52	1
Register of Environmental Actions and Commitments – Regulation 5(2)(q)	TR010029/APP/7.3	4
Scheme layout plans – Regulation 5(2)(o)	TR010029/APP/2.7	2
Special category land plans – Regulation 5(2)(i)(iv)	TR010029/APP/2.11	2
Speed limits and traffic regulation plans – Regulation 5(2)(o)	TR010029/APP/2.6	3
Statutory Nuisance Statement – Regulation 5(2)(f)	TR010029/APP/6.5	2
Streets, rights of way and access plans – Regulation 5(2)(k)	TR010029/APP/2.4	2
Water Framework Directive Assessment Compliance Report – Regulation 5(2)(a) and 5(2)(l)(iii)	TR010029/APP/6.7	1
Works plans – Regulation 5(2)(j)	TR010029/APP/2.3	3

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to alter junction 28 of the M25 near Brentwood in Essex and carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the book of reference, plans, engineering drawings and sections, the environmental statement, the habitats regulations assessment report, the statutory nuisance statement, the register of environmental actions and commitments, the Outline CEMP, the preliminary environmental design, the register of environmental actions and commitments, the statutory nuisance statement and the Water Framework Directive Assessment Compliance Report mentioned in this Order and certified in accordance with article 46 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.