

M60/M62/M66 Simister Island Interchange Project

The Examining Authority's (ExA) Consultation draft Development Consent Order (dDCO)

Schedule of ExA's recommended amendments to the applicant's dDCO submitted at Deadline 5 [REP5-005]

Note to Interested Parties:

The following table sets out the ExA's recommended amendments to the applicant's draft dDCO that was submitted at deadline (D) 5 [REP5-005].

Regardless of the ExA's recommendation to the Secretary of State, the ExA is required to provide a recommended DCO with its recommendation report. Therefore, this document was produced on a without prejudice basis and should not be taken as an indication that the ExA has already made up its mind on the proposed development.

Interested parties (IPs) participation and written responses will be treated as being given without prejudice to any position or view they hold on the scheme. IPs are invited to identify any outstanding concerns previously raised that are not addressed below.

Please note that some aspects of the dDCO, such as the request by Bury Metropolitan Borough Council (BMBC) for a programme of air quality monitoring and agreement of protective provisions, are still the subject of examination, active discussion or disagreement between parties. As such, the non-inclusion of any recommended changes on these matters should not be taken to indicate what the ExA's recommendation might be on those matters.

Recommended amendments are set out in the same order that they appear in the DCO as currently drafted. Column 3 of the table indicates the current drafting as suggested by the applicant. Column 4 provides the ExA's recommended amendment with drafting that has been suggested to be added being shown in **bold** and where drafting has been suggested to be deleted, the relevant text is shown as a ~~striketrough~~. An explanation for the change or insertion is provided in column 5.

Responses to this document are due at **Deadline 7, Thursday 27 February 2025**.



No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
GENERAL				
1.	Use of 'significant adverse' within the dDCO in: <ul style="list-style-type: none"> definition of "maintain", article 6(2), schedule 1, and schedule 2 paragraphs 3, 8 and 12. 	"... give rise to any materially new or materially different significant adverse effects in comparison with those reported in the environmental statement."	... give rise to any materially new or materially different significant adverse worse effects in comparison with those reported in the environmental statement.	<p>The ExA has carefully considered the applicant's responses to questions raised on this matter in Issue Specific Hearing (ISH) 1 [EV7-001] and [REP1-024], ISH2 [EV10-014] and [REP4-028] and the ExA's second written questions (ExQ2) [REP5-033].</p> <p>The ExA considers that the use of the term 'significant' would add ambiguity rather than clarity and is concerned how the terminology would be interpreted in practice.</p> <p>The ExA is of the view that the terminology could allow for greater flexibility of changes as the extent of what would constitute a "materially new or materially different significant adverse effect" is unclear.</p> <p>For example, there could be a situation where a change in the appearance of a construction material would result in a materially worse appearance (such as from a negligible effect to a slight adverse effect) but would be permitted under the applicant's preferred wording as it would not reach the threshold of being a new or materially different significant adverse effect.</p>



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				<p>For these reasons, the ExA considers the terminology would be open to interpretation and introduce imprecision.</p> <p>It is also unclear to the ExA why this scheme requires different wording to that used in other made DCOs and, noting comments in response to DCO.2.1 in [REP5-033], how omission of the wording could lead to increased costs and delay to the applicant.</p> <p>The ExA has considered the applicant's comments for including the word 'adverse' which is to ensure the undertaker would not be restricted from incorporating changes that would result in beneficial effects. The ExA accepts that such a situation should not be restricted but has suggested alternative drafting in the form of 'worse', which has precedent in the A57 Links Road Development Consent Order 2022. The ExA considers that use of this term would negate the need for 'different' to be included.</p> <p>Overall, the ExA considers that use of "materially new or materially worse effects" would be clearer and less ambiguous to interpret and would accord with established wording used in other made DCOs.</p>



No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
2.	Articles 14(5), 19(11), 20(5), 25(5), 29(4) and 31(9)	"...to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act".	... to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.	The Secretary of State for Transport has added similar drafting in the following recently made transport orders to improve precision: <ul style="list-style-type: none"> • M3 Junction 9 Development Consent Order. • The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024. • The Associated British Ports (Immingham Green Energy Terminal) Order 2025.
ARTICLES				
3.	2. Interpretation - "maintain"	"maintain" in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish or replace..."	"maintain" in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, landscape , preserve, remove, reconstruct, refurbish or replace..."	The inclusion of 'landscape' does not appear to be necessary as landscape maintenance is covered by draft requirements 4 and 5.
4.	13. Classification of roads etc.	(3)(b) such date as soon as reasonably practicable following completion of the construction of the public right of way as may be agreed between the undertaker and the local highway authority.	(3)(b) such date as soon as reasonably practicable following completion of the construction of the public right of way as may be agreed in writing between the undertaker and the local highway authority.	To add precision to the process of agreeing any date, noting the response from BMBC to ISH1.A.23 [REP1-032] and the applicant's response to BMBC [REP2-007].
5.	13. Classification of roads etc.	(4) The private means of access specified in column (2) of Part 3 (private means of access) of Schedule 3 and identified on the	(4) The maintenance accesses and private means of accesses specified in column (2) of Part 3 (private means of access) of	To improve precision by clarifying that the article also includes the 'maintenance accesses' as identified on the Streets, Rights of Way & Access



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		streets, rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.	Schedule 3 and identified on the streets, rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.	Plans [APP-008], noting the applicant's response to ISH1 Action Point (AP) 8 [REP1-024] that the article is intended to cover both the both the maintenance access tracks listed in Schedule 3, Part 4 and the private means of access.
6.	14. Temporary closure and restriction of use of streets	(4) The undertaker must not temporarily close, alter, divert or restrict 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.	(4) The undertaker must not temporarily close, alter, divert or restrict any street without the consent of the relevant street authority in whose area the street lies , which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.	To improve precision and for consistency with similar wording used in article 12.
7.	20. Authority to survey and investigate the land	(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development including, where reasonably necessary, any land which is adjacent to, but outside the Order limits, and—	(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development including, where reasonably necessary, any land which is adjacent to, but outside the Order limits, and—	<p>The ExA has considered the applicant's response to questions in ISH1 [EV7-001]. However, the ExA considers that use of 'adjacent to' could add an element of ambiguity in this case as to the extent and location of any land which may need to be surveyed in the event of being affected, particularly noting the urban setting of the scheme.</p> <p>Recognising the intention of the article is to prevent unintended consequences arising from any authorised works, removing 'adjacent to' would, for example, remove any ambiguity as to</p>



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				whether a residential property that may be affected but may not be 'adjacent to' the order limits from being surveyed.
8.	24. Compulsory acquisition of rights and imposition of restrictive covenants	(5) The undertaker's power to create rights under paragraph (1) includes the power to create rights for the benefit of statutory undertakers or any other person. Where a right is for the benefit of a statutory undertaker or any other person that right shall on the exercise of the power of compulsory acquisition have effect for that party's benefit and be treated for all purposes as though it was vested in the statutory undertaker or other person directly.	(5) The undertaker's power to create rights under paragraph (1) includes the power to create rights for the benefit of statutory undertakers or any other person. Where a right is for the benefit of a statutory undertaker or any other person that right shall on the exercise of the power of compulsory acquisition have effect for that party's benefit and be treated for all purposes as though it was vested in the statutory undertaker or other person directly.	<p>The first sentence is considered unnecessary as it duplicates powers imposed in paragraph (1).</p> <p>The second sentence has been removed as a result of the recommended change to article 27(4) below.</p>
9.	27. Application of the 1981 Act	(4) In section 4 (execution of declaration) for "vesting the land in themselves" substitute "vesting the land or any interest in land in themselves or for the benefit of a statutory undertaker or any other person".	(4) In section 4 (execution of declaration) for "vesting the land in themselves" substitute "vesting the land or any interest in land in themselves or for the benefit of a statutory undertaker or any other person".	<p>The ExA has considered the content in paragraphs 5.64, 5.73 and 5.74 of the Explanatory Memorandum [REP5-007] and the responses in [REP1-023], Compulsory Acquisition Hearing 1 (CAH 1) [EV9-007], [REP4-028] and [REP5-033] to questions on this provision.</p> <p>The ExA notes the applicant's comments in response to DCO.2.3 in [REP5-033] regarding the potential for delays in the absence of this provision and the reference to a similar provision proposed in article 31(5) of the dDCO</p>



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				<p>for the A122 (Lower Thames Crossing. However for the proposed scheme, it is unclear to the ExA what engagement has been had with statutory undertakers and landowners on including these provisions and whether they would consent to it, or the extent of land that requires to be subject to this process.</p> <p>The ExA is aware that an identical provision was proposed in article 31(5) of the recommended DCO for the M25 Junction 28 Improvement Project which was subsequently removed by the Secretary of State in its decision on the grounds that insufficient justification had been provided for its inclusion.</p> <p>The ExA understands the general need to acquire rights on behalf of statutory undertakers for this scheme. However, for the reasons above the ExA considers that insufficient justification has been provided to demonstrate that it is necessary and reasonable to acquire those rights by way of the vesting declaration procedure through an amendment to section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.</p>



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10.	30. Temporary use of land for carrying out the authorised development	(1)(d) construct any works on that land as are identified in Schedule 1 (authorised development) or undertake any other mitigation works in connection with the authorised development.	(1)(d) construct any works on that land as are identified specified in Schedule 1 (authorised development) or undertake any other mitigation works in connection with the authorised development.	The ExA notes that 'mentioned' was changed to 'identify' [REP1-023]. Whilst the alteration of 'mentioned' is welcomed, the ExA has considered the use of 'identified' and is of the view that 'specified' would be more consistent with wording used in other parts of the dDCO where 'specified' has been used.
11.	30. Temporary use of land for carrying out the authorised development	(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from— (a) acquiring new rights over any part of that land under article 24 (compulsory acquisition of rights and imposition of restrictive covenants); or (b) acquiring any part of the subsoil or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only).	(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from— (a) acquiring new rights over any part of that land under article 24 (compulsory acquisition of rights and imposition of restrictive covenants); or (b) acquiring any part of the subsoil or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only).	<p>The ExA has carefully considered the applicant's responses in [REP3-023], [EV9-007] and [REP5-031]. However, the ExA remains concerned at the wide scope of powers this article seeks.</p> <p>The ExA does not agree that including this provision would benefit landowners and does not consider it can be justified on the grounds that the provision has always been included in the dDCO. This unreasonably places the burden on landowners to be aware of this provision. It is also not considered paragraph 9(a) can be justified on the grounds that landowners could request further clarity about the nature and implications of the proposed power should they wish to do so.</p> <p>The ExA considers that the full extent of rights the applicant requires should be clearly set out. It is not sufficient to justify its inclusion to capture any unknown situations that may arise</p>



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				<p>where permanent acquisition of rights may be required.</p> <p>Noting the applicant's response in CAH1 [EV9-007] and to AP14 [REP5-031] that they would be open to narrowing the scope of the provision, the ExA would be amendable to considering any further drafting changes to narrow the scope of any rights required for specific plots.</p>
12.	33. Apparatus and rights of statutory undertakers in stopped up streets	<p>(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—</p> <p>(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...</p> <p>(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—</p>	<p>(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—</p> <p>(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or...</p> <p>(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 statutory utility in or in connection with—</p>	<p>To improve precision noting that 'statutory utility' is defined in paragraph (8).</p>



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		(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.	(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 statutory 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.	
13.	36. Felling or lopping of trees and removal or management of hedgerows	(1) Subject to paragraph (3), the undertaker may fell or lop any tree or shrub with the exception of ancient woodland 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	(1) Subject to paragraph (3), the undertaker may fell or lop any tree or shrub (except for any tree or shrub in with the exception of ancient woodland) 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	To improve precision and drafting.



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		<p>with the authorised development; or</p> <p>(b) from constituting a danger to persons using the authorised development.</p> <p>(2) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (3), remove or manage any hedgerow within the Order limits and specified in Schedule 8 (hedgerows to be removed or managed) that is required to be removed or managed.</p>	<p>with the authorised development; or</p> <p>(b) from constituting a danger to persons using the authorised development.</p> <p>(2) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (3), remove, cut back or manage any hedgerow within the Order limits and as specified in column (5) of Schedule 8 (hedgerows to be removed or managed) that is required to be removed or managed.</p>	
14.	45. Disapplication and modification of legislative provisions	<p>(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(a) any building comprised in the authorised development is to be—</p> <p>(a) a building into which people do not normally go; or</p> <p>(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.</p>	<p>(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(a) any building comprised in the authorised development is to be—</p> <p>(a) a building into which people do not normally go; or</p> <p>(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.</p>	The ExA notes the applicant's response to ISH1.A.68 [REP1-023] but is of the view that insufficient justification has been provided explaining why this provision is necessary or required, particularly in the absence of any evidence confirming whether or not BMBC or any adjoining authority is a Community Infrastructure Levy charging authority.



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15.	New article to Part 3: Use of Private Roads		Use of private roads (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, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.	<p>It is unclear whether the draft DCO provides an obligation for the undertaker to be liable for the repair, loss or damage of any private roads to be used as part of the construction and operation of the proposed development, for example the use of Egypt Lane for access to maintain attenuation pond 1.</p> <p>Whilst the ExA is aware of the provisions of article 12, this would appear to extend to only new, altered or diverted streets; not streets that would be used solely for access purposes. The ExA has therefore recommended a new article to cover this situation.</p>



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SCHEDULES				
Schedule 1 – Authorised Development				
16.	Work No. 38	Work No. 38 – shown on sheet number 2 of the works plans as being the establishment of environmental mitigation areas to the north east of M60 Junction 18 and north of Egypt Lane, including woodland planting, hedgerow planting and species rich grassland. Works to Important Hedgerow (HG_80) as described in Schedule 8 of this Order.	Work No. 38 – shown on sheet number 2 of the works plans as being the establishment of environmental mitigation areas to the north east of M60 Junction 18 and north of Egypt Lane, including woodland planting, hedgerow planting and species rich grassland. Works to Important Hedgerow (HG_80) (HG_23) as described in Schedule 8 of this Order.	To correct an error.
Schedule 2, Part 1 Requirements				
17.	1. Interpretation	“commence” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and mitigation works, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, treatment of any invasive species and the	“commence” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and mitigation works, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, treatment of any invasive species and the	The ExA has suggested a new definition for “preliminary works” below as part of suggested changes to Requirement 4(1), which would incorporate the operations excluded from forming part of the authorised development.



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		temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;	temporary display of site notices or advertisements preliminary works , and "commencement" is to be construed accordingly;	
18.	1. Interpretation		<p>Add the following definitions:</p> <p>"Design Council" means the UK's national strategic advisor for design who is a Royal Charter charity (registered charity number 279099).</p> <p>"design review panel" means a panel appointed by the Design Council to conduct an independent review of certain elements of the proposed design of the authorised development;</p> <p>"environmental mitigation areas" means each of the environmental mitigation area(s) identified on the works plans comprising work numbers 20, 31, 32, 36, 38, 54, 55, 56, 57, 58, 59 and 60;</p> <p>"preliminary works" means operations consisting of archaeological investigations and mitigation works,</p>	<p>The recommended additions have been included as part of the ExA's recommendations to other requirements as set out below.</p> <p>In respect of "substantially in accordance with", the ExA notes the applicant's response to ISH1.S2.03 [REP1-023] but considers that a definition should be included to add clarity to its meaning.</p>



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			<p>ecological surveys and mitigation works, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, treatment of any invasive species and the temporary display of site notices or advertisements;</p> <p>“substantially in accordance with” means that the plan or detail to be submitted should in the main accord with the outline document and where it varies from the outline document should not give rise to any materially new or materially worse effects in comparison with those reported in the environmental statement;</p>	
19.	3. Detailed Design	(1) The authorised development must be designed in detail and carried out so that it is compatible with: (a) the preliminary scheme design shown on the general arrangement plans, works plans	(1) The authorised development must be designed in detail and carried out so that it is compatible with: (a) the preliminary scheme design shown on the general arrangement plans, works plans	<p>The ExA has considered the applicant's responses in ISH2 [EV7-001], ISH2 AP10 [REP4-028], to ExQ2 DES.2.3 [REP5-033] and the Design Principles Report [REP6-010].</p> <p>The ExA is of the view that given the visual prominence of these structures,</p>



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		<p>and the engineering section drawings; and (b) the design principles set out in the design principles report</p> <p>unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the general arrangement plans, works plans and the engineering section drawings showing departures from the preliminary scheme design or the design principles would not give rise to any materially new or materially different significant adverse effects in comparison with those reported in the environmental statement.</p> <p>(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 general</p>	<p>and the engineering section drawings; and (b) the design principles set out in the design principles report; and (c) the report mentioned in sub-paragraph (3)</p> <p>unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the general arrangement plans, works plans and the engineering section drawings showing departures from the preliminary scheme design or the design principles would not give rise to any materially new or materially different significant adverse worse effects in comparison with those reported in the environmental statement.</p> <p>(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be</p>	<p>they should seek to achieve the highest standards of design possible to satisfy the requirements of paragraphs 4.28 to 4.35 of the National Policy Statement National Networks (NPSNN).</p> <p>Whilst the ExA accepts that functionality requirements will ultimately require engineered solutions and standards to the design, paragraph 4.29 of NPSNN is clear that good design of national network projects should, amongst other matters, be matched by an appearance that demonstrates good aesthetics as far as possible.</p> <p>To ensure that these structures achieve good aesthetics and the highest design standards as far as possible, the ExA is of the view that their final detailed design should be subject to a further independent design review process.</p> <p>Definitions for "Design Council" and "design review panel" are included in Requirement 1 above.</p>



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		arrangement plans, works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.	substituted for the corresponding general arrangement plans, works plans or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public. (3) The report mentioned in sub-paragraph (1), is a report to be prepared by the undertaker of its findings following a review of the detailed design of Pike Fold Viaduct and Pike Fold Bridge; the review to be carried out in consultation with the design review panel, the relevant planning authority and the relevant highway authority.	
20.	4. Environmental Management Plan (EMP)	(1) The authorised development must be carried out substantially in accordance with the first iteration EMP.	(1) The authorised development preliminary works must be carried out substantially in accordance with the first iteration EMP.	The applicant's response to ISH1 AP20 [REP1-024] advised that sub-paragraph (1) would ensure that any preliminary works undertaken before the second iteration EMP is approved are carried out in compliance with the requirements of the first iteration EMP [REP6-006]. Given that the 'authorised development' cannot commence until the second iteration EMP has been approved, the ExA considers that the wording should specifically refer to preliminary works to



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				<p>make the relationship between these works and the first iteration EMP clearer.</p> <p>As the first iteration EMP already exists, the ExA considers it more appropriate that preliminary works be undertaken 'in accordance' with the measures within it rather than 'substantially in accordance'.</p> <p>A definition for "preliminary works" is included in Requirement 1 above.</p>
21.	4. Environmental Management Plan	<p>(3) The second iteration EMP must be written in accordance with ISO 14001 and must—</p> <p>(c) require adherence to any working hours set out in the REAC or, where no such hours are set, to working hours of 07:00–19:00 on Mondays to Fridays and 07:00–13:00 on Saturday except for—</p> <p>(xiv) as otherwise agreed by the local authority in advance in writing.</p>	<p>(3) The second iteration EMP must be written in accordance with ISO 14001 and must—</p> <p>(c) require adherence to any working hours set out in the REAC or, where no such hours are set, to working hours of 07:00–19:00 on Mondays to Fridays and 07:00–13:00 on Saturday except for—</p> <p>(xiv) as otherwise agreed by the local relevant planning authority in advance in writing.</p>	For consistency with terminology used throughout the draft order.
22.	4. Environmental Management Plan	<p>(3) The second iteration EMP must be written in accordance with ISO 14001 and must—</p> <p>(d) include the following management plans—</p>	<p>(3) The second iteration EMP must be written in accordance with ISO 14001 and must—</p> <p>(d) include the following management plans—</p>	<p>(d) (xiv): To replicate the full title of the outline document [APP-141].</p> <p>(d) (xvi): Given the proximity to residential dwellings, the ExA considers it appropriate that details of all lighting required for the construction phase is</p>



No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
		(xiv) Landscape and Ecology Plan; and (xv) Carbon Management Plan;	(xiv) Landscape and Ecology Management Plan; and (xv) Carbon Management Plan; and (xvi) Construction lighting plan.	included as part of the second iteration EMP.
23.	4. Environmental Management Plan	(4) No part of the authorised development is to commence until a second iteration EMP, substantially in accordance with the first iteration EMP, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and, to the extent that it relates to a matter relevant to their function, the Environment Agency.	(4-2) No part of the authorised development is to commence until a second iteration EMP, substantially in accordance with the first iteration EMP, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and, to the extent that it relates to a matter relevant to their function, the Environment Agency.	<p>The ExA considers that the requirement for the second iteration EMP in sub-paragraph (4) should be re-ordered earlier in the requirement before the two sub-paragraphs that stipulate the details to be included.</p> <p>Current sub-paragraphs (2) and (3) should be renumbered (3) and (4) with sub-paragraphs (5) to (8) inclusive remaining as currently numbered.</p>
24.	4. Environmental Management Plan	<p>(7) The third iteration EMP must address the matters set out in the approved second iteration EMP that are relevant to the operation and maintenance of the authorised development, and must contain—</p> <p>(a) the environmental information needed for the future maintenance and operation of the authorised development;</p> <p>(b) the long-term commitments to aftercare, monitoring and</p>	<p>(7) The third iteration EMP must address the matters set out in the approved second iteration EMP that are relevant to the operation and maintenance of the authorised development, and must contain—</p> <p>(a) the environmental information needed for the future maintenance and operation of the authorised development;</p> <p>(b) the long-term commitments to aftercare, monitoring and</p>	<p>The applicant's response to ExQ2 BIO.2.5 [REP5-033] stated that requirement 4(8) would secure the future maintenance of the environmental mitigation areas (EMAs) as part of the scheme in perpetuity.</p> <p>However, in the absence of any commitment regarding the long-term ownership of the EMAs, the ExA is concerned that the third iteration EMP would not necessarily secure the retention of the EMA's in perpetuity. As such, the ExA has suggested wording in sub-paragraph (7)(c) to stipulate this.</p>



No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
		<p>maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and</p> <p>(c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.</p>	<p>maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and</p> <p>(c) provision for the retention of the environmental mitigation areas in perpetuity; and</p> <p>(ed) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.</p>	
25.	6. Previously unidentified contaminated land and groundwater	<p>(2) Where the completed risk assessment determines that remediation of the contaminated land is necessary, work on or under the contaminated land must cease and 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,</p>	<p>(2) Where the completed risk assessment determines that remediation of the contaminated land is necessary, work on or under the contaminated land must cease and must not recommence until a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be has been submitted to and approved</p>	<p>The ExA welcomes the addition to the dDCO at D5 requiring operations to cease until any required remedial measures have been submitted to, and approved by, the Secretary of State.</p> <p>Whilst noting the applicant's response to DCO.2.7 in [REP5-033], the ExA maintains that the current drafting places an obligation on the Secretary of State to approve any written scheme. The ExA is of the view that the</p>



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No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
		following consultation with the relevant planning authority on matters related to its function and the Environment Agency.	in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.	recommended amendment would improve precision and enforceability. It would also replicate similar wording used in requirement 7(2).
26.	7. Protected species	(1) In the event that any protected species which were not previously identified in the environmental statement are found at any time when carrying out the authorised development the undertaker must cease the relevant parts of the relevant works and report it immediately to the ECoW.	(1) In the event that any protected species which were not previously identified in the environmental statement or pre-construction surveys prepared under the second iteration EMP are found at any time when carrying out the authorised development, the undertaker must cease the relevant parts of the relevant works and report it immediately to the ECoW.	Noting the applicant's response to ISH1.S2.15 [REP1-023], the ExA considers that it would also be appropriate to include reference to the pre-construction surveys.
27.	7. Protected species	(2) The relevant parts of the relevant works must not recommence until a written scheme of protection and mitigation measures (including their design and management) has been submitted to and approved in writing by the Secretary of State following consultation with Natural England. Details of any consultation undertaken with Natural England and any responses received from Natural	(2) The relevant parts of the relevant works must not recommence until a written scheme of protection and mitigation measures (including their design and management) has been submitted to and approved in writing by the Secretary of State following consultation with Natural England. Details of any consultation undertaken with Natural England and any responses received from Natural	The ExA notes the addition to the dDCO at D5 in response to DCO.2.8 [REP5-033]. However, the ExA has recommended alternative drafting as a new sub-paragraph at the end of the requirement to make it clearer who is to provide the details to the relevant planning authority along with a timescale to improve precision and enforceability.



No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
		England will be provided to the local planning authority.	<p>England will be provided to the local planning authority.</p> <p>Add new sub-paragraph (5):</p> <p>(5) Within 7 days of receiving written approval from the Secretary of State for the written scheme approved under sub-paragraph (2), the undertaker must provide to the relevant planning authority—</p> <p>(a) the approved written scheme of protection and mitigation measures; and</p> <p>(b) any responses provided by Natural England to the consultation undertaken under sub-paragraph (2).</p>	
28.	New Requirement Noise barriers		<p>Noise barriers</p> <p>(1) No part of the authorised development is to commence until a scheme of noise barrier mitigation in respect of the use and operation of that part of the authorised development has been submitted to and approved in writing by the Secretary of State following</p>	<p>The ExA has considered the applicant's responses to ISH2 AP22 in [REP4-028], ExQ2 NV.2.3 in [REP5-033] and [PD-015] in [REP6-012].</p> <p>The ExA considers that the inclusion of additional lengths of noise barriers within Noise Important Area 1671 is a proportionate and reasonable measure as required by paragraphs 5.197 to 5.200 of NPSNN.</p>



No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
			<p>consultation with the relevant planning authority.</p> <p>(2) The scheme prepared under sub-paragraph (1) must incorporate the noise barriers in the locations identified in the Environmental Statement and must include details of:</p> <ul style="list-style-type: none">(a) the continuation of noise barrier EB03 to the crossing of Sandgate Road;(b) the continuation of noise barrier EB04 to the crossing of Sandgate Road;(c) the continuation of noise barrier EB05 to noise barrier EB07; and(d) implementation timetables and future maintenance. <p>(3) The noise barrier mitigation must be implemented in accordance with the scheme approved under</p>	<p>The extended sections of noise barrier would provide additional long-term noise reductions for day and night-time operational noise over and above that already achieved by the inclusion of very low noise surfacing. The additional sections of noise barriers to the M60 carriageway would also improve the screening of the road from residential areas which would help to reduce the perception of the road and peak noise.</p>



No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
			sub-paragraph (1) and must be retained thereafter.	
Schedule 2, Part 2 Procedure for Discharge of Requirements				
29.	13. Consultation	(1) 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 14 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.	<p>(1) 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 44 15 business 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.</p> <p>(2) 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</p>	<p>The ExA notes and agrees with the Environment Agency [REP5-038] that a period of 15 business days for receipt of consultation responses would be a more sensible time period and would strike a reasonable balance between allowing consultees sufficient time to provide responses and avoiding implementation of the proposed development from being unduly delayed.</p> <p>The ExA acknowledges the applicant's comments in [REP6-011] that they have noted the Environment Agency's request and the dDCO to be submitted at D7 will incorporate the requested changes.</p>



No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes
			section 1 (bank holidays) of the Banking and Financial Dealings Act 1971.	
30.	14. Further information		Add new sub-paragraph (6): (6) When making an application for consent under sub-paragraph (1), the undertaker must include a letter informing the Secretary of State of the period mentioned in sub-paragraph (2) and the effect of sub-paragraph (3).	To ensure that the Secretary of State is fully aware of the timescales for requesting further information and the implications of sub-paragraph (3), and for consistency with similar provisions in articles 14 and 17.
31.	16. Anticipatory steps towards compliance with any requirement	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.	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.	Comma added after 'Order' to improve drafting.