M60/M62/M66 Simister Island Interchange

TR010064

7.33 APPLICANT'S RESPONSES TO THE EXAMINING AUTHORITY'S COMMENTARY ON THE DRAFT DCO

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Volume 7

February 2025

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

M60/M62/M66 Simister Island Interchange

Development Consent Order 202[ ]

7.33 APPLICANT'S RESPONSES TO THE EXAMINING AUTHORITY'S COMMENTARY ON THE DRAFT DCO

Regulation Reference	Regulation 5(2)(q)
Planning Inspectorate Scheme Reference	TR010064
Application Document Reference	TR010064/APP/7.30
Author	M60/M62/M66 Simister Island Interchange Project Team

Version	**Date**	**Status of Version**
P01	27 February 2025	Deadline 7

Table of Contents

1. Introduction

1.1.1. The Development Consent Order (DCO) application for the M60/M62/M66 Simister Island Interchange (the "Scheme") was submitted by National Highways (the "Applicant") on 2 April 2024 and accepted for Examination on 30 April 2024.

1.1.2. This document has been prepared by the Applicant to set out its responses to the Schedule of ExA's recommended amendments to the Applicant's draft DCO submitted at Deadline 5 [PD-016] ("draft DCO"). This document is submitted at Deadline 7 of the Examination.

2. Applicant's responses to the ExA's commentary on the draft DCO

2.1.1. Table 2-1 below documents the Applicant's responses to the ExA's commentary on the draft DCO

Table 2-1 - Applicant's responses to the ExA's commentary on the draft DCO

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
General					
1.	Use of 'significant adverse' within the dDCO in: • 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.	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]. 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. 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. 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. For these reasons, the ExA considers the terminology would be open to interpretation and introduce imprecision. 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. The ExA has considered the applicant's comments for including the word 'adverse'	The Applicant has included this change in the draft DCO submitted at Deadline 7.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
				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. 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.	
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: • 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.	The Applicant has included this change in the draft DCO submitted at Deadline 7.
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.	The Applicant has included this change in the draft DCO submitted at Deadline 7.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
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].	The Applicant has included this change in the draft DCO submitted at Deadline 7.
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 access**es** 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	The Applicant has included this change in the draft DCO submitted at Deadline 7 save for the "es" on private means of access which is not required.
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.	The Applicant has included this change in the draft DCO submitted at Deadline 7.
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—	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. 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 whether a residential property that may be affected but may not be 'adjacent to' the order limits from being surveyed.	The Applicant has included this change in the draft DCO submitted at Deadline 7.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
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.~~	The first sentence is considered unnecessary as it duplicates powers imposed in paragraph (1). The second sentence has been removed as a result of the recommended change to article 27(4) below.	The Applicant agrees that the wording in the first sentence of paragraph (5) is duplication and has therefore deleted it in the draft DCO submitted at Deadline 7. The Applicant has retained an amended form of the second sentence for the reasons stated in point 9 of this table.
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".~~	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. 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 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. 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. 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	The Applicant does not agree with the deletion of article 27(4) for the reasons previously given in paragraphs 5.64, 5.73 and 5.74 of the Explanatory Memorandum [REP5-007] and the responses in [REP1-023], [EV9-007], [REP4-028] and [REP5-033]. The ExA appears to accept that the undertaker may "acquire rights or impose restrictive covenants including rights and restrictive covenants for the benefit of a statutory undertaker or any other purpose" as set out in article 24(1) of the draft DCO [REP5-005]. Article 27(4) does not extend the power in article 24(1) in any way or impose anything in addition to that power. It merely provides a mechanism by which those rights may be acquired (i.e. by general vesting declaration). Given this and the fact that the ExA appears to accept that the power in article 24(1) is justified then it is unclear to the Applicant what further justification could be required for the inclusion of article 27(4) over and above what has been provided for article 24(1). As for engagement with statutory undertakers, National Highways has, as the promoter of numerous DCOs, and continues to engage extensively with all statutory undertakers affected by their schemes. Those statutory undertakers all require rights / restrictive covenants to be secured by National Highways for the installation or diversion of their

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
				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.	apparatus to facilitate delivery of the relevant DCO schemes. The means by which those rights are secured is a matter for National Highways rather than the statutory undertaker albeit that they generally express a preference for the necessary rights to be vested by National Highways. It is unclear therefore why consent from the statutory undertakers would be required. As regards engagement with and consent from landowners, the vesting of rights for statutory undertakers pursuant to articles 24(1) by means of the mechanism in article 27(4) is no different to land or rights being acquired for other purposes or over other land pursuant to article 21 or 24(1) generally. It is unclear therefore why further justification is necessary. In addition, it is unclear why further justification is necessary to show that it is necessary and reasonable to acquire rights by vesting declaration. The power operates to enable rights to be acquired by the undertaker and the use of the vesting declaration provides no real disadvantage to the landowner. If anything, the Applicant considers that a vesting declaration is advantageous to the landowner providing properly documented rights at an early stage of land acquisition which provides certainty to the landowner as well as to the statutory undertaker and the undertaker.
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.	The Applicant has included this change in the draft DCO submitted at Deadline 7.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
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 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~~ -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).	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. 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. 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 where permanent acquisition of rights may be required. 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.	The Applicant does not agree with the deletion of article 30(9)(a) for the reasons previously given. However, having reviewed each plot identified in Schedule 7 of the draft DCO [REP5-005], the Applicant is satisfied that it could limit the scope of article 30(9)(a) significantly to the acquisition of rights or imposition of restrictive covenants relating to any permanent works which are constructed and retained on the temporary possession plots. The Applicant believes this is likely to be confined to rights and restrictive covenants relating to utility diversions only. This would be consistent with article 30(4) which enables the undertaker to retain on the land, after temporary possession ends, any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development or any apparatus belonging to statutory undertakers or necessary mitigation works. It should be noted that any landowner whose land is taken temporarily will have had sight of the provisions of articles 30 and 31 of the draft DCO [REP5-005]. This includes, in Schedule 7 of the draft DCO, the purposes for which the land is to be possessed which includes providing permanent works (for example, utilities diversions), and under article 30(4) the ability for the undertaker to not remove from the land (b) any permanent works constructed under article 30(1)(d), (d) any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development or (e) any apparatus belonging to statutory undertakers or necessary mitigation works. The proposed amendment to the draft DCO submitted at Deadline 7 reads: (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

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
					restrictive covenants) relating to the retention and protection of any permanent works which are not removed from the land pursuant to paragraph (4)(b) to (e); 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).
12.	33. Apparatus and rights of statutory undertakers in stopped up streets	(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… (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— (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.	(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 **statutory** utility may reasonably determine and have power to place it; or… (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— (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.	To improve precision noting that 'statutory utility' is defined in paragraph (8).	The Applicant has included this change in the draft DCO submitted at Deadline 7.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
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 with the authorised development; or (b) from constituting a danger to persons using the authorised development. (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.	(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 with the authorised development; or (b) from constituting a danger to persons using the authorised development. (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.	To improve precision and drafting.	The Applicant has included this change in the draft DCO submitted at Deadline 7.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
14.	45. Disapplication and modification of legislative provisions	(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— (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.	~~(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—~~ ~~(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.~~	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.	The Applicant has included this change in the draft DCO submitted at Deadline 7.
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).** **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.**	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. 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.	The Applicant has included this change in the draft DCO submitted at Deadline 7. The Applicant has included the ExA's wording within Part 3 of the draft DCO at Article 16 (Access to Works).

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
Schedules					
Schedules 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.	The Applicant has included this change in the draft DCO submitted at Deadline 7.
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 temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;	"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 temporary display of site notices or advertisements~~ **preliminary works**, and "commencement" is to be construed accordingly;	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.	The Applicant has not made this change. The Applicant observes that the definition of 'commence' follows other made orders including the M54 to M6 Link Road Development Consent Order 2022 and the M3 Junction 9 Development Consent Order 2024. Please also see the associated response to the suggested change to requirement 4(1) at point 20 below.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
18.	1. Interpretation		Add the following definitions: **"Design Council" means the UK's national strategic advisor for design who is a Royal Charter charity (registered charity number 279099).** **"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;** **"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;** **"preliminary works" means 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 temporary display of site notices or advertisements;** **"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;**	The recommended additions have been included as part of the ExA's recommendations to other requirements as set out below. 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.	The Applicant has included the new definition of "environmental mitigation areas" in the draft DCO submitted at Deadline 7. The Applicant has not included the other definitions because the associated changes they relate to have not been made, for the reasons given in the relevant responses within this document. In relation to 'substantially in accordance with' the Applicant remains of the view that the words should be given their ordinary meaning. The Applicant is not aware that it has been deemed necessary to provide a definition of this widely recognised and understood term in other made orders.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO

No.	Article / Schedule	Text as set out in the draft DCO [REP5-005]	ExA's Recommended Amendment	Reason and Notes	Applicant's Response
19.	3. 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 general arrangement plans, works plansand the engineering section drawings; and (b) the design principles set out in the design principles report 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. (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 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.	(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 general arrangement plans, works plans 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)** 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. (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 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**	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]. The ExA is of the view that given the visual prominence of these structures, 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). 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. 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. Definitions for "Design Council" and "design review panel" are included in Requirement 1 above.	The Applicant has not made this change. Paragraph 4.34 of the NPSNN encourages applicants to *consider* the use of professional, independent advice, such as the Design Council, on the design aspects of a proposal to ensure good design principles are embedded into infrastructure proposals. The Applicant has positively engaged with this guidance and already worked with the Design Council when developing the preliminary design. The Applicant has also produced the Design Principles Report [REP6-010]. Requirement 3 ensures that these good design principles are embedded into the Scheme proposals and will be carried forward into the detailed design. Given the functionality requirements for the Scheme which the ExA acknowledges, the Applicant considers that the requirements of the NPSNN have been more than satisfied and design has been embedded into the preliminary design and is assured by adherence to the Design Principles Report which were informed by early engagement with the Design Council.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
			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 make the relationship between these works and the first iteration EMP clearer. 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'. A definition for "preliminary works" is included in Requirement 1 above.	The Applicant has not made this change. The proposed definition of 'preliminary works' is only used on one occasion in this requirement. It is an unnecessary change because the definition of 'commence', which has been successfully included in other made orders, already clearly records works which are not to be treated as a material operation for the purposes of the Town and Country Planning Act 1990. Works which do form part of the authorised development but do not constitute a material operation can commence prior to the second iteration EMP. The Applicant has not deleted 'substantially' in recognition that the authorised development will include elements which are to be governed by the second and third iteration EMPs.
21.	4. Environmental Management Plan	(3) The second iteration EMP must be written in accordance with ISO 14001 and must— (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— (xiv) as otherwise agreed by the local authority in advance in writing.	(3) The second iteration EMP must be written in accordance with ISO 14001 and must— (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— (xiv) as otherwise agreed by the ~~local~~ **relevant planning** authority in advance in writing.	For consistency with terminology used throughout the draft order.	The Applicant has included this change in the draft DCO submitted at Deadline 7.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
22.	4. Environmental Management Plan	(3) The second iteration EMP must be written in accordance with ISO 14001 and must— (xiv) (d) include the following management plans— Landscape and Ecology Plan; and Carbon Management Plan;	(3) The second iteration EMP must be written in accordance with ISO 14001 and must— (xiv) (d) include the following management plans— Landscape and Ecology **Management** Plan; ~~and~~ (xv) Carbon Management Plan; **and** **(xvi) Construction lighting plan.**	(d) (xiv): To replicate the full title of the outline document [APP-141]. (d) (xvi): Given the proximity to residential dwellings, the ExA considers it appropriate that details of all lighting required for the construction phase is included as part of the second iteration EMP.	The Applicant has included this change in the draft DCO submitted at Deadline 7.
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.	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. Current sub-paragraphs (2) and (3) should be renumbered (3) and (4) with sub-paragraphs (5) to (8) inclusive remaining as currently numbered.	The Applicant has included this change in the draft DCO submitted at Deadline 7.
24.	4. Environmental Management Plan	(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— (a) the environmental information needed for the future maintenance and operation of the authorised development; the long-term commitments to aftercare, monitoring and (b) 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 (c) a record of the consents,	(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— (a) the environmental information needed for the future maintenance and operation of the authorised development; the long-term commitments to aftercare, monitoring and (b) 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~~	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. 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.	The Applicant has included this change in the draft DCO submitted at Deadline 7 subject to amending the wording to refer to the life of the authorised development to improve precision. **(c) provision for the retention of the environmental mitigation areas for the life of the authorised development ~~in perpetuity~~; and**

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
		commitments and permissions resulting from liaison with statutory bodies.	**(c) provision for the retention of the environmental mitigation areas in perpetuity; and** (e**d**) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.		
25.	6. Previously unidentified contaminated land and groundwater	(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, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.	(2) W here 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 in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.	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. 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 recommended amendment would improve precision and enforceability. It would also replicate similar wording used in requirement 7(2).	The Applicant has included this change in the draft DCO submitted at Deadline 7.
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.	The Applicant has included this change in the draft DCO submitted at Deadline 7, subject to the revised wording shown in red. The revision is to increase precision because pre-construction surveys will be completed to inform the second iteration EMP. (1) In the event that any protected species which were not previously identified in the environmental statement **or pre-construction surveys prepared to inform ~~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.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
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 England will be provided to the local planning authority.	(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 England will be provided to the local planning authority.~~ Add new sub-paragraph (5): **(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—** **(a) the approved written scheme of protection and mitigation measures; and** **(b) any responses provided by Natural England to the consultation undertaken under sub-paragraph (2).**	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.	The Applicant has included this change in the draft DCO submitted at Deadline 7 subject to a minor change to refer to 5 business days rather than 7 days for consistency of reference to days / business days.
28.	New Requirement Noise barriers		**Noise barriers** **(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 consultation with the relevant planning authority.** **(2) The scheme prepared under sub-paragraph (1) must**	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]. 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. 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	The Applicant has not included this additional requirement. The ExA is aware that the Applicant's primary position is that the provision of additional noise barriers is not warranted because the use of a low noise surface with an RSI of at least -6.0dB(A) would eliminate all identified significant adverse effects of the Scheme from road traffic noise, providing significant reductions in road traffic noise for 1,585 residential receptors on Scheme opening. It is the Applicant's position that in accordance with paragraph 5.197 of the NPSNN, additional mitigation measures are not needed for operational noise over and above those which form part of the application. The Applicant

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
			incorporate the noise barriers in the locations identified in the Environmental Statement and must include details of: **(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.** **(3)**) The noise barrier mitigation must be implemented in accordance with the scheme approved under sub-paragraph (1) and must be retained thereafter.	road from residential areas which would help to reduce the perception of the road and peak noise.	observes that the NPSNN only requires applicants to consider further mitigation opportunities and that test in the NPSNN is broken down into two elements. The first element requires the ExA and the Secretary of State to determine that additional mitigation measures are "needed". Unless the 'need' for additional mitigation has been satisfied, the Applicant observes that the second limb of the test in paragraph 5.198 of the NPSNN, relating to proportionality and reasonableness, does not fall to be considered. In this instance the ExA has indicated that it considers the inclusion of additional noise barriers would be proportionate and reasonable but has not determined that such barriers are in fact needed. The Applicant explained in REP5-033 that the provisional noise modelling exercise completed by the Applicant in response to a request from the ExA, was performed in isolation and did not include an assessment of other environmental factors that would be relevant and necessary before the Secretary of State could lawfully grant consent (Regulations 4 and 21 of the Infrastructure Planning (Environmental Impact Assessment) Regulation 2017 refer). The proposed requirement would therefore, in the Applicant's view, leave the Scheme open to challenge and the prohibition on commencing any part of the authorised development without including noise barriers which have not previously been assessed has the potential to jeopardise delivery of the Scheme. Notwithstanding that position, should the ExA remain minded to impose a further requirement, the Applicant contends it must incorporate reference to requirement 3 (detailed design) OR ensure any departures from the preliminary scheme design do not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
					statement. The Applicant would also question the appropriateness of the continuation of noise barrier EB05 to EB07 which, on assessment, did not lead to any significant benefits in the long-term.
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.	(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~~ **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. **(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 section 1 (bank holidays) of the Banking and Financial Dealings Act 1971.**	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. 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.	To avoid duplication in requirements 13 and 14, the Applicant has added "business day" as a defined term in requirement 1 of draft DCO submitted at Deadline 7.

Table 2-1: Applicant's responses to the ExA's commentary on the Draft DCO					
No.	**Article / Schedule**	**Text as set out in the draft DCO [REP5-005]**	**ExA's Recommended Amendment**	**Reason and Notes**	**Applicant's Response**
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.	The Applicant has included this change in the draft DCO submitted at Deadline 7 as new sub-paragraph (5). The original sub-paragraph (5) has been deleted in light of the amendment at point 29 of this table.
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.	The Applicant has included this change in the draft DCO submitted at Deadline 7.