

M4 Junctions 3 to 12 Smart Motorway

Comments on the Examining Authority's Consultation Draft Development Consent Order

On 17 February 2016, the Examining Authority ("the ExA") published its consultation draft of the Development Consent Order ("DCO"), highlighting amendments to Highways England's proposed draft DCO as submitted on Monday 15 February 2016. The ExA is seeking comments on its draft DCO by Deadline VIII (29 February 2016). In order to assist the ExA, Highways England has set out its initial comments on the substantive amendments in the table below. Where Highways England has not provided a comment on an amendment proposed by the ExA, it can be taken as having agreed with the ExA's proposals.

	Amendment in the Examining Authority's draft DCO	Highways England Comment
1.	<p><u>Article 16 (amendment)</u></p> <p>16.—(1) Subject to Schedule 9 (protection of interests) (10 (protective provisions)), the undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—</p>	<p>1. Highways England notes that there is a typographical error in the word "protection" proposed by the ExA.</p>
2.	<p><u>Article 44 (comment)</u></p> <p>(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of— ...</p> <p>(c) the engineering drawings and sections (Document Reference Nos. 2.5 - 2.9, dated March 2015)</p> <p><i>ExA comment: Have any of these drawings and sections been amended?</i></p>	<p>2. The engineering drawings and sections have not changed since submission of the Application. However, the reference at Article 44(1)(b) should be to the Works Plans dated February 2016, as updated Works Plans were submitted at Deadline VII.</p>
3.	<p><u>Article 44 (comment)</u></p> <p>(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of— ...</p> <p>(f) the outline environmental management plan (Document Reference No. 6.3/4.2, dated March 2015)</p> <p><i>ExA comment: Is this the latest document?</i></p>	<p>3. Highways England can confirm that this is the latest version of that document.</p>
4.	<p><u>Article 44 (comment)</u></p> <p>(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of— ...</p>	<p>4. A revised version of the Outline CEMP was submitted at Deadline VIII. Consequently, the reference should be to the Outline CEMP dated February 2016.</p>

	<p>(g) the outline construction environmental management plan (Document Reference No. 6.3/4.2, dated March 2015)</p> <p><i>ExA comment: Is this the latest document?</i></p>	
5.	<p><u>Article 44 (comment)</u></p> <p>(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of— ...</p> <p>(i) the environmental masterplan, being Annex A to the engineering and design report (Document Reference No. 7.4, dated March 2015)</p> <p><i>ExA comment: Is this the latest document?</i></p>	5. A revised version of the environmental masterplan was submitted at Deadline VIII. Consequently, the reference should be to the environmental masterplan dated February 2016.
6.	<p><u>Article 44 (comment)</u></p> <p>(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of— ...</p> <p>(1) the flood risk assessment (Document Reference No. 5.3, dated January 2016).</p> <p><i>ExA comment: Is this the latest version of the FRA?</i></p>	6. The latest version of the FRA is that submitted at Deadline VII. As such, the date of the document in Article 44 should be amended to state "February 2016".
7.	<p><u>Schedule 2 - Part 1 (Amendment)</u></p> <p>5. — Where any carriageway comprised in Work No. 1a and 1b, or any slip road is to be resurfaced as part of the authorised works, TSCS is to be provided unless otherwise approved by the Secretary of State. Any material approved by the Secretary of State as low noise surfacing shall have similar noise reduction properties as TSCS.</p> <p>(1) The surfacing installed pursuant to sub-paragraph (1) shall be maintained for a period of fifteen years from completion of the works</p>	<p>7. In the version of the draft DCO submitted by Highways England at Deadline VII, Highways England provided a requirement for the low noise surface installed as part of the Scheme to be maintained for a period of 15 years, including a definition of "link", which is necessary to be included if Highways England's drafting is accepted.</p> <p>8. As previously explained, Highways England does not consider it to be appropriate to constrain the M4 in terms of the surfacing to be used by imposing a requirement for the low noise surfacing to be maintained in perpetuity. For example, it may be that in the</p>

	<p>within a link of the M4 motorway.</p> <p>(2) The term 'link' means those sections of the carriageway between any two junctions.</p> <p>(1) Any re-surfacing of the carriageway installed pursuant to sub paragraph (1) must be carried out using low noise surfacing material with similar (or improved) noise reduction properties to the TSCS unless otherwise approved by the Secretary of State, following consultation with the relevant planning authority.</p>	<p>future it is no longer a policy supported by Highways England, the material may not be available, it may no longer be economical, or circumstances may have changed on the Strategic Road Network such that it is no longer necessary or appropriate. Highways England maintains that for these reasons, the requirement proposed by the ExA should not be included in the final DCO.</p>
<p>8.</p>	<p><u>Schedule 2 - Part 1 (Amendment & Comment)</u></p> <p>7.—(1) No part of the authorised development is to commence until an EMP, substantially in accordance with the outline environmental management plan (Application Document Reference No. 6.3, Appendix 4.2, dated March 2015), has been submitted to and approved by the Secretary of State, following in consultation with the relevant planning authority and the Environment Agency.</p> <p><i>ExA comment: Is the outline environmental management plan the most up to date version?</i></p>	<p>9.</p> <p>As explained above, a revised version of the environmental masterplan was submitted at Deadline VIII. However, a date is not required to be provided for the reference to the environmental masterplan as it is a document subject to certification pursuant to Article 44, with the date of the document listed in that Article.</p>
<p>9.</p>	<p><u>Schedule 2 - Part 1 (Amendment & Comment)</u></p> <p>8.—(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the outline CEMP (Application Document Reference No. 6.3, Appendix 4.2A), annexed to the outline EMP (Application Document Reference No. 6.3, Appendix 4.2, dated March 2015) has been submitted to and approved by the Secretary of State, following in consultation with the Environment Agency and the relevant planning authority.</p> <p><i>ExA comment: Is a date required for the reference to the CEMP or is it sufficient to have the date certified under A44?</i></p>	<p>10.</p> <p>A date is not required to be provided for the reference to the Outline CEMP and the Outline EMP as they are both documents subject to certification pursuant to Article 44, with the date of the document listed in that Article. Highways England can confirm that the date provided for the EMP in Article 44 of March 2015 is correct.</p>

	<i>ExA comment: Is the date given for the EMP correct?</i>	
10.	<p><u>Schedule 2 - Part 1 (Amendment & Comment)</u></p> <p>9.—(1) No part of the authorised development is to commence until a landscaping scheme and programme has been submitted to and approved by the Secretary of State following in consultation with the relevant planning authority.</p> <p>(2) The landscaping scheme must reflect the mitigation measures included in the environmental masterplan annexed to the engineering and design report (Application Document Reference No. 7.3) and set out details of all proposed hard and soft landscaping works, including—</p> <p><i>ExA comment: Is a date required for the reference to the environmental masterplan? Is the document reference correct?</i></p>	11. As explained above, a date is not required for the reference to the environmental masterplan. Highways England can confirm that the reference provided in Requirement 9 is correct.
11.	<p><u>Schedule 2 - Part 1 (Amendment & Comment)</u></p> <p>11. Ecological mitigation of the authorised development with respect to protected species, including the provision of any mammal underpasses or tunnels, set out in the environmental masterplan (Application Document Reference No. 7.4, Annex A) and the CEMP, must be provided in accordance with the principles of guidance from Highways England’s Design Manual for Roads and Bridges, Volume 10, Section 4 (Volume 10, October 1994, as amended as at May 2014 or as amended), as supported by additional guidance from the Institute of Ecology and Environmental Management, published ecological literature, and consultation with statutory and non-statutory nature conservation bodies, except where any departures from that guidance are agreed by the Secretary of State, following consultation with Natural England and the relevant planning authority.</p> <p><i>ExA comment: Is a date required for the reference to the environmental</i></p>	12. As explained above, a date is not required for the reference to the environmental masterplan. Highways England can confirm that the reference provided in Requirement 11 is correct.

	<i>masterplan? Is the document reference correct?</i>	
12.	<p>Schedule 2 - Part 1 (Amendment)</p> <p>14.—(1) No part of the authorised development is to commence until a surface and foul water drainage scheme has been submitted to and approved by the Secretary of State, following consultation with the relevant lead local flood authority. The surface and foul water drainage scheme must:</p> <p>(a) include a survey of the existing drainage system in the Order land to identify areas affected by the works where repair or replacement of existing drainage infrastructure is required;</p> <p>(b) reflect the mitigation measures in the drainage strategy report (Application Document Reference No. 7.5, dated January 2016) and include means of pollution control; and</p> <p>(c) include a maintenance plan (including each component part) of the drainage system, setting out methods and timetables for maintenance and identifying those responsible for maintenance.</p> <p>until a survey of the existing drainage system in the Order land has been completed to confirm areas affected by the works where repairs or replacement of existing drainage infrastructure is required.</p> <p>(2) No part of the authorised development is to be carried out until written details of the surface and foul water drainage system, reflecting the mitigation measures in the drainage strategy report (Application Document Reference No. 7.5, dated January 2016), and including means of pollution control and any repairs or replacements identified as required under sub-paragraph (1), have been submitted to and approved by the Secretary of State, in consultation with the relevant lead local flood authority.</p>	<p>13. The updated drafting proposed by the ExA appears to contain similar substantive provisions to those previously included in Requirement 12 and, as such, is agreed by Highways England.</p> <p>14. However, the new drafting expressly provides for the production of a maintenance plan for the drainage system.</p> <p>15. In relation to the additions regarding maintenance, Highways England reiterates that its duties and obligations under its licence, the Highways Act 1980 and the DCO, as well as its ongoing monitoring by the Office of Rail and Road (“ORR”), are sufficient to ensure that it will maintain the surface and foul water drainage systems of the Scheme.</p> <p>16. Highways England’s licence (a product of the Infrastructure Act 2015) came into force on 1 April 2015, and will continue to be in force unless and until it is revoked in accordance with the conditions in the Licence. Paragraph 4.2 of the Licence provides that Highways England must act in a manner which it considers best calculated to:</p> <p>16.1 Ensure the effective operation of the network;</p> <p>16.2 Ensure the maintenance, resilience, renewal, and replacement of the network;</p> <p>16.3 Ensure the improvement, enhancement and long-term development of the network.</p> <p>17. Paragraph 5.10 of the Licence provides that Highways England must "develop, maintain and implement an asset management policy and strategy...setting out how it will apply a best practice approach to managing the lifecycle of its assets...".</p>

<p>(2) The surface and foul water drainage system must be constructed and maintained in accordance with the approved surface and foul water drainage scheme details.</p>	<p>18. Highways England's performance is monitored by the ORR, which set up the Highways Monitor, a directorate of the ORR, to carry out its monitoring functions. The highways monitor role places a significant level of scrutiny on Highways England and independently and transparently monitors how Highways England is delivering against its performance requirements, its required investment plan and its licence requirements. The ORR advises the Secretary of State on Highways England's performance, and advises the UK Government on the levels of funding and performance requirements for future road periods to help frame challenging and deliverable performance and efficiency requirements.</p> <p>19. As part of that monitoring function, the ORR reports to the Secretary of State for Transport on Highways England's performance under its Licence. The first report by the ORR on Highways England, which was published on 3 December 2015, concludes that Highways England has made a good start in its first six months of operation.</p> <p>20. The ORR six month report also sets out how the ORR monitors Key Performance Indicators ("KPIs"), what data is used and how success is measured. The report is aimed at providing a clear statement of Highways England's KPI requirements including those on network safety, noise, air quality, user satisfaction, better environmental outcomes and network condition.</p> <p>21. Given that drainage is critical to the efficient and safe operation of the network, Highways England considers that the legislation and policy referred to above is sufficient to assure the ExA that Highways England is under a statutory duty to ensure the maintenance, resilience, renewal and replacement of the elements of the network such as the surface and foul water drainage systems.</p>
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13.	<p>Schedule 2 - Part 1 (Amendment & Comment)</p> <p>15.—(1) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be investigated and recorded and reported to the Secretary of State by means of a technical report identifying the location for the housing of any finds.</p> <p><i>ExA Comment: Should finding also be reported to Historic England and the relevant planning authority?</i></p> <p>(2) No construction operations are to take place within 10 metres of such remains for a period of 14 days from the date of such notification unless otherwise agreed by the Secretary of State, following in consultation with Historic England and the relevant planning authority.</p> <p>(3) If the Secretary of State is of the view that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details first submitted to, and approved by, the Secretary of State, following in consultation with Historic England and the relevant planning authority.</p>	<p>24. Highways England agrees that the findings should also be reported to Historic England and the relevant planning authority, and therefore recommends that the wording of sub-paragraph (1) is amended as follows:</p> <p><i>"(1) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be investigated and recorded and reported to the Secretary of State, Historic England and the relevant planning authority by means of a technical report identifying the location for the housing of any finds."</i></p>
14.	<p>Schedule 2 - Part 1 (Amendment & Comment)</p>	<p>25. In relation to the additions regarding maintenance, Highways England reiterates that its duties and obligations under its</p>

<p>22.—(1) No part of the authorised development is to commence until details of a scheme to install or replace, and to maintain acoustic barriers in the locations shown on the Environmental Masterplan (dated March 2016) contained within the environmental statement has been submitted to and approved in writing by the Secretary of State, following in consultation with the relevant planning authority.</p> <p><i>ExA comment: Is the March 2016 date correct and is it necessary here if correctly identified for certification in A44?</i></p> <p>(2) The acoustic barriers installed in accordance with the scheme approved in paragraph (1) must—</p> <p>(a) match adjacent retained acoustic barriers so far as possible; and</p> <p>(b) be compliant with any engineering requirements governing the form of acoustic barriers which may be installed.</p> <p>(3) Where the barriers as shown on the Environmental Masterplan are found not to be fit for purpose as acoustic barriers of equivalent standard to the requirements for acoustic barriers set out in the Specification for Highway Works CI.2504 or as amended whether by reason of:</p> <p>(a) their state of repair; or</p> <p>(b) their original design,</p> <p>the scheme referred to in sub-paragraph (1) is to shall provide for their removal and replacement with acoustic barriers consistent with the requirements for acoustic barriers set out in the Specification for Highway Works CI.2504 or as amended.</p> <p>(4) The approved noise management scheme must be implemented before operation of the authorised development and maintained in accordance with the details of the approved scheme.</p>	<p>licence, the Act and the DCO, as well as its on-going monitoring by the ORR, are sufficient to ensure that it will maintain the acoustic barriers that form part of the Scheme, as explained above in relation to the proposed amendments to Requirement 14. As such, Highways England does not consider that it is necessary to impose additional maintenance obligations under the terms of Requirement 12.</p>
<p>15. Schedule 2 - Part 1 (Amendment & Comment)</p> <p>23.—(1) No scheduled works within Flood Zone 3 as shown on annex H to the flood risk assessment are to commence until a detailed scheme of compensation works for the effects of the authorised development upon</p>	<p>26. Highways England can confirm that the drawing reference in sub-paragraph (2)(a) is correct and that the square brackets can be removed.</p>

	<p>flood risk in Flood Zone 3 (“flood compensation scheme”) has been submitted to and approved in writing by the Secretary of State, following in consultation with the Environment Agency and the relevant planning authority authorities.</p> <p>(2) The flood compensation scheme must ensure that compensation works:</p> <p>(a) are carried out in accordance with the outline flood compensation scheme shown on drawing [TR010019-2.3-v-20] sheets 1 to 13;</p> <p><i>ExA Comment: Does this reference need to be checked?</i></p>	
16.	<p>Schedule 2 - Part 1 (Addition)</p> <p>Air quality management scheme</p> <p>25.—(1) No part of the development must commence until the undertaker has prepared a monitoring strategy for NO₂. The monitoring scheme must:</p> <p>(a) be prepared in consultation with the relevant local authorities for the Air Quality Management Areas in which the authorised development is located;</p> <p>(b) set out the location and specification for operation and data provision for any monitors to be installed in line with guidance on air quality monitoring issued by the Department for Environment, Food and Rural Affairs from time to time.</p> <p>(c) provide for the monitors to be installed during the construction period of the authorised development and operated for a period of at least three years from the completion and opening of the authorised development for public use; and</p> <p>(d) remain in place until the monitoring shows a continuous period of 12 months with no exceedances of national air quality objectives or European Union limit values for the NO₂ monitored.</p> <p>(2) The monitoring data must be reviewed by the undertaker in consultation with the relevant local authorities at six-monthly intervals</p>	<p>General Matters</p> <p>27. Highways England has previously explained that the Scheme does not require air quality mitigation informed by or supported by monitoring, as policy only requires mitigation where a scheme has a significant air quality impact or affects the UK’s reported ability to comply with the air quality directive as set out in the National Policy Statement for National Networks (“NPS NN”). Highways England confirms that the assessments it has undertaken and reported in the Environmental Statement provide evidence that the Scheme will not have a significant air quality impact, nor will it affect the UK’s reported ability to comply with the Air Quality Directive. Therefore, as set out in Highways England’s note on the Air Quality Requirements of the NPS, submitted at Deadline VI (REP 6-18), the assessment for the Scheme is consistent with the requirements of the NPS NN and accordingly monitoring and mitigation for the Scheme is not required – to impose it would be unnecessarily to burden the scheme where policy simply does not require such an intervention.</p> <p>28. The assessment for the Scheme was undertaken in accordance with the relevant published guidance and the conclusion based on that guidance and assessment was that neither mitigation nor</p>

<p>during the monitoring period. If any such review indicates that on the balance of probabilities the authorised development has materially worsened air quality such that there are exceedances of national air quality objectives, or European Union limit values for NO₂, the undertaker must:</p> <p>(a) agree a scheme of mitigation with the relevant local authorities within [6] months of the data review, taking into consideration any local air quality action plans adopted by the council as part of its local air quality management duties;</p> <p>(b) submit the scheme of mitigation to the Secretary of State for approval within 1 month of its agreement with the relevant local authorities;</p> <p>(c) implement the scheme of mitigation within 6 months of its approval by the Secretary of State.</p>	<p>monitoring was required. The Examining Authority has acknowledged that the assessments followed relevant best practice and published guidance.</p> <p>29. It is appropriate to compare the Scheme with the A556 (Knutsford to Bowdon Improvement Development Consent Order 2014 ("A556")) in order to understand when air quality mitigation and monitoring may be required in accordance with the NPS NN. For the A556, Highways England and the Examining Authority recommended that air quality monitoring was provided because the assessment indicated that without mitigation the scheme impacts would be significant (unlike the Scheme). Air quality monitoring was required as part of an overall air quality monitoring strategy. This would determine when previously defined mitigation (in the form of a constant, mandatory speed control) could be removed from the scheme. Monitoring was not required to determine whether mitigation was required or not since the effects had already been determined to be significant.</p> <p>30. The mitigation for the A556 was aimed at reducing the number of properties identified as suffering a worsening of air quality above the air quality thresholds. However, even with that mitigation in place, there were still a number of properties with worsening above the air quality threshold, which demonstrates that the objective of mitigation is not to achieve an absence of significant effect. The number of properties with a worsening was still considered to be acceptable by the Examining Authority and Secretary of State for Transport ("Secretary of State") and was 2 to 3 times greater than the number of properties identified as informing the judgement of significance on the M4 Scheme. The approach adopted on the A556 demonstrates that it is acceptable and proportionate for a scheme with significant effects to have residual effects after mitigation and hence it is equally appropriate for a scheme without significant effects not</p>
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		<p>to apply mitigation where the effects never achieve the threshold of significance.</p> <p>31. As the drafting proposed by the Examining Authority for the Scheme seeks (at sub-paragraph 1(d)) no exceedances of national air quality objectives or European Union limit values, its approach is inconsistent with that accepted by the Secretary of State on the A556, which recognised that there may be no significant air quality impact or effect the UK's reported ability to comply with the air quality directive even though there are still a number of properties with worsening above the air quality threshold. To apply the Examining Authority's requirement would be disproportionate.</p> <p>32. The Examining Authority has accepted that Highways England has undertaken its assessment in accordance with published guidance and best practice. Indeed, Highways England's assessment goes beyond, and is more precautionary than, the requirements of the NPS NN in paragraph 5.8, which requires assessments to be consistent with Defra's future national projections of air quality. The assessment is more conservative because Highways England has already made allowance for Euro 6/VI emissions not performing in line with Defra's published Emission Factor Toolkit. In this way, Highways England is acting in a precautionary manner to manage uncertainty in future year modelled predictions. Even so, there is no significant Air Quality effect predicted as a result of the Scheme.</p> <p>33. Given the above, the decision on whether, and the requirements subject to which, consent should be granted can already properly be made in reliance on the outcome of the assessment. It is not necessary for a contingency to be introduced reliant upon the results of future monitoring that could be affected by a wide range of variables. The request for monitoring and possible</p>
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		<p>mitigation in this case is at odds with the requirements of the NPS NN.</p> <p>34. In light of the above, the findings from the Scheme assessment are sufficient to make a finding consistent with the NPS NN and that neither monitoring nor mitigation is required.</p> <p>Specific Drafting Points</p> <p>35. Highways England believes that neither a mitigation nor a monitoring requirement should be included in any form in relation to air quality.</p> <p>36. However, were the Secretary of State to find that such a requirement was necessary, the text in the draft DCO should be amended. For sub-paragraph 1(a), the amendment should read (proposed amendment in Bold):</p> <p><i>25.—(1) No part of the development must commence until the undertaker has prepared a monitoring strategy for NO2. The monitoring scheme must:</i></p> <p><i>(a) be prepared in consultation with the relevant local authorities for the Air Quality Management Areas in which the authorised development is located and where a change in air quality in excess of 0.4µg/m³ is predicted in the Environmental Statement, with annual mean concentrations also above the objective value.</i></p> <p>36.1 Highways England is of the view that the requirement should only relate to those areas where a change in air quality of 0.4 µg/m³ is predicted with annual mean concentrations above the objective value, being the level significance for air quality effects set out in IAN 174/13.</p> <p>36.2 The Examining authority should note that air quality monitoring</p>
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		<p>on its own would not be able to determine the exact contribution of the Scheme to NO2 levels with certainty or reliability, given the inter-year variation in such levels. This variation, which is often much greater than the predicted scheme impacts has been demonstrated to the Examination and is recorded in Highways England's response to the written representation of the London Borough of Hillingdon on the Environment submitted at Deadline V (REP5-005). A wide range of variables will impact on measured concentrations including traffic and developments outside of Highway England's control. All of these contribute to levels recorded by monitoring and it would be impossible to disaggregate the Scheme impacts from the likely baseline pollution levels, which would have occurred in any case, even had the scheme not been granted consent.</p> <p>37. In sub-paragraph 1(b), insert at the end "(but the duplication of existing monitoring will not be required where its data are available)". This is to avoid duplication of monitoring requirements.</p> <p>38. No change to sub-paragraph (c).</p> <p>39. Paragraph 1(d) should be deleted in its entirety. The words "or European Union limit values" should be removed. This is because compliance with European Union Limit values is the responsibility of Defra on behalf of the UK Government. It is not the responsibility of an individual developer / promoter on a scheme specific level to improve air quality such that European Union Limit values are met. That is properly the purview of the competent national authority.</p> <p>39.1 The other reference, to national air quality objectives, is also inappropriate. This is because a scheme can only be expected to mitigate those impacts that arise from it. The assessment has demonstrated that without the Scheme there are likely to be</p>
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		<p>exceedances of the AQS Objectives, which is a matter that has been accepted by all parties in this Examination. Should mitigation be required, the Scheme can only be expected to mitigate impacts resulting from it so as to ensure that the Scheme does not lead to a significant impact. The Scheme should not be required to go above and beyond this to attain concentrations below the air quality thresholds.</p> <p>39.2 In addition, air quality objectives are assessed on an annual basis and not a continuous rolling 12 month average. The air quality objective is an annual objective, not a monthly one, therefore individual months can be have an average of over 40 µg/m³, without that location exceeding the objective value as long as the 12 month average is less than 40 µg/m³. This demonstrates that monitoring on a continuous, less than annual basis is not an appropriate approach.</p> <p>39.3 Further, the wording proposed does not link the monitoring to the impacts of the Scheme, rather it focuses on exceedances in general, which are predicted without the Scheme. As such, this condition would require costly monitoring to continue in circumstances where exceedances may be caused by other development or development that may occur following Scheme opening. This is a highly onerous obligation to place on a Scheme that is not anticipated to have a significant effect on air quality.</p> <p>40. The text of sub-paragraph (2) should be amended to read as follows:</p> <p><i>(2) The monitoring data must be reviewed by accompanied by a review undertaken by a reputable firm of air quality experts appointed by the undertaker in consultation with the relevant local authorities referred to under sub-paragraph (1) submitted at twelve-monthly intervals during the monitoring period. If any</i></p>
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		<p>with the guidance.</p> <p>41. Proposed amendment in Bold for sub-paragraph 2(a):</p> <p><i>(a) consult with the relevant local authorities on a scheme of mitigation (including a programme for its implementation) within [6] months of the data review, taking into consideration any local air quality action plans adopted by each relevant local authority as part of its local air quality management duties;</i></p> <p>41.1 Highways England should not be required to reach agreement on any scheme with the relevant planning authorities, prior to its submission for approval to the Secretary of State. A requirement stipulating agreement is not appropriate since it does not deal with what would occur if agreement could not be reached. Therefore, consultation with the relevant local authorities followed by submission to the Secretary of State as the arbiter of acceptability of any such scheme, with the relevant planning authorities acting as consultees is appropriate. This would be consistent with the other requirements in Schedule 2.</p> <p>41.2 Further, the proposed wording is unclear and imprecise. It does not specify what the scheme of mitigation is to relate to, what matters it should address, or what it is aimed at achieving. The absence of precision conflicts with the Planning Practice Guidance, as well as the test of reasonableness that the Guidance contains. This is because the scope of mitigation is unclear and there remains the possibility that it would require what the guidance terms “disproportionate burdens” since the mitigation is not specifically identified at this stage, unlike for the A556.</p> <p>42. Sub-paragraph 2(b) should be amended to read:</p> <p><i>2 (b) submit the scheme of mitigation to the Secretary of State for approval within 1 month of its concluding its consultation</i></p>
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		<p><i>with the relevant planning authorities.</i></p> <p>42.1 The amendment proposed results from Highways England's submissions in relation to sub-paragraph 2(a) above.</p> <p>43. Sub-paragraph 2(c) should be amended to read:</p> <p><i>2 (c) implement the scheme of mitigation in accordance with the programme contained in the scheme of mitigation following approval by the Secretary of State.</i></p> <p>43.1 An arbitrary period of six months is not appropriate. This amendment allows an implementation period that is bespoke to any measures proposed.</p>
17.	<p>Schedule 9 - Part 1 (Comment)</p> <p>FOR THE PROTECTION OF ELECTRICITY, GAS, OIL, WATER AND SEWERAGE UNDERTAKERS</p> <p><i>ExA Comment: Is any further protection required to safeguard the interests of South East Water and Affinity Water?</i></p>	<p>44. Additional protective provisions for the benefit of South East Water have been agreed and should be included in a new Part 8 of Schedule 9 to the DCO. The wording for these protective provisions is provided at Appendix A to this Document.</p> <p>45. Affinity Water is protected under the terms of Part 1 of Schedule 9 to the DCO, which has general application to all water undertakers.</p>
18.	<p>Schedule 9 - Part 1 (Comment)</p> <p>2. In this Part of this Schedule— ...</p> <p>(e) in the case of the Oil and Pipelines Agency, any oil apparatus, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;</p> <p><i>ExA Comment: Is the British Pipeline Agency covered by this provision?</i></p>	<p>46. The British Pipelines Agency ("BPA") acts as agent for the companies protected under the protective provisions included at Part 5 of Schedule 9 to the DCO. Consequently, no reference to the BPA is required here.</p>
19.	<p>Schedule 9 - Part 6 (Comment)</p>	<p>47. Protective Provisions are still in the process of being agreed between Highways England and the Environment Agency.</p>

	<p>70. (2) In this part of this Schedule— “HL works” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment, outfall or other structure, or any appliance, constructed or used for land drainage or flood defence;</p> <p><i>ExA Comment: Can HL be spelt out.</i></p>	<p>However, Highways England is hopeful that these can be agreed prior to the end of the Examination.</p> <p>48. Highways England has commented on the amendments to the protective provisions requested by the Environment Agency in Highways England's response to the Environment Agency's Deadline VII representation.</p> <p>49. To assist the Examining Authority, Highways England has provided, at Appendix B to this response to the Examining Authority's proposed Draft DCO, a clean version of the protective provisions, which Highways England submits should be included for the benefit of the Environment Agency at Part 6 of Schedule 9 to the DCO.</p>
20.	<p>Schedule 9 - Part 7 (Amendment)</p> <p>79.—(1) Subject to paragraph (2) , the undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent Thames Water's access via Wood Lane to the Slough Sewage Treatment Works.</p>	<p>50. Use of the words "subject to" in sub-paragraph (1) does not achieve the result that Highways England can interfere with Thames Water's access, where it has complied with the terms of sub-paragraph (2). As such, Highways England is of the view that the proposed wording should be replaced with the words "<i>Except where it has complied with sub-paragraph (2)...</i>"</p> <p>51. Were such wording not to be included, as previously explained at the Issue Specific Hearing into Compulsory Acquisition, Highways England strongly disagrees with the removal of the reasonableness requirement as previously provided for in the protective provisions. There will be times, due to the nature of the works proposed, and to protect the health and safety of users, that access will need to be restricted by Highways England. Consequently, whilst Highways England is happy to accept an obligation not to unreasonably prevent access, it cannot accept an obligation not to prevent access at any time.</p> <p>52. In circumstances where it will be necessary to prevent access, Thames Water is afforded protection by the requirement in the</p>

		<p>protective provisions for 56 days' notice to be given to Thames Water of any works that would affect access and the need to comply with Thames Water's reasonable requirements to ensure continued access.</p> <p>53. Ultimately, if Thames Water considers Highways England's proposals to be unreasonable, they can either choose to accept the interference, seek to impose reasonable requirements or take the matter to arbitration. Highways England explained that reasonableness in this regard is a well understood concept and depends on the circumstances of the case.</p>
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Additional Amendments

54. In addition to the amendments discussed above, Highways England is seeking the removal of Schedule 10 'Temporary Prohibition of Traffic' from the DCO, and consequently Article 43. Schedule 10 was originally included in the draft DCO to act as a Temporary Traffic Regulation Order ("TTRO") to prohibit motor vehicles entering into certain areas of the motorway during the prohibited periods specified in that Schedule. However, Highways England is now of the view that it is premature to provide for a TTRO at this stage. As the detailed design progresses, the Contractor is developing the construction planning. At this time, the detailed design is not sufficiently developed to enable the construction planning to determine how many phases of traffic management are required. Also, although the speed limit on the motorway is likely to be 50mph during the construction period, there may be a need to impose a 40mph speed limit at some of the bridge sites to provide sufficient safe working room for the contractor. Highways England is also about to embark on further research regarding speed limits through roadworks in a bid to maximise traffic flow without compromising safety. Given these unknown parameters, it is not considered appropriate to include a TTRO within the DCO as the appropriate level of detail is not available. Furthermore, Highways England considers that Articles 14 and 47 of the draft DCO provide it with the necessary powers to agree, where required, and install traffic management within the Order limits to enable construction of the Scheme.