

M42 Junction 6 Development Consent Order

Scheme Number TR010027

8.7 Responses to ExA's Questions on Development Consent Order

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Response to ExA's questions on Development Consent Order

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1 Responses to the Development Consent Order Questions

1.1.1 This document has been prepared by the Applicant to set out its responses to the Examining Authority's (**ExA**) questions relating to draft Development Consent Order (**dDCO**). The questions were first raised in Schedule of the Panel's issues and questions relating to the draft Development Consent Order (DCO1) issued on 16 May 2019 and which were, in part, discussed, at the first Issue Specific Hearing on the dDCO on 22 May 2019.

1.1.2 The ExA subsequently issued its Rule 8 letter on 31 May 2019, this letter included the ExA's written questions and requests for information (ExQ1). Question 1.12.1 referred back to the issues and questions for examination at ISH1 as explained in paragraph 1.1.1 above.

1.1.3 This document contains, therefore, the responses to the issues and questions raised by the ExA on the dDCO as referred to above.

1.1.4 These are set out in **Table 1.1** below.

1.1.5 Responses to the questions and issues raised by the ExA on non dDCO related questions on 31 May 2019 can be found in a separate document (**Document 8.6: Responses to ExA's First Written Questions**) and these documents should be considered together for a complete response to all questions raised by the ExA in its first round of written questions.

1.1.6 Finally, the Applicant's written submission of its case put orally at the Open Floor Hearing on 21 May 2019 and the Issue Specific Hearing on the dDCO 22 May 2019 is set out in **Document 8.26**.

Table 1-1 Applicant’s Response to the Examining Authority’s Questions on the Development Consent Order

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
1	General	<p>Question:</p> <p>Even where an article has precedence in other DCOs it will need to be justified in the context of this particular DCO and project.</p> <p>The preamble on page 6 can now be amended in the knowledge that the application is to be examined by a panel.</p> <hr/> <p>Answer:</p> <p>Noted.</p> <p>The Applicant will make this change for the next draft of the dDCO (APP-15/ Volume 3.1).</p>
1.1	General: Order Format and Tracking of Changes	<p>Question:</p> <p>The Applicant is asked to confirm that subsequent versions of the draft Development Consent Order (dDCO) submitted after the application version will be:</p> <ul style="list-style-type: none"> • supplied in both .pdf and Word formats and in two versions, the first forming the latest consolidated draft and the second showing changes from the previous version in tracked changes, with comments outlining the reason for the change; and • the consolidated draft version in Word is to be supported by a report validating that version of the dDCO as being in the SI template, obtained from the publishing section of the legislation.gov.uk website; and • endorsed with updated revision numbers consecutively from the application version.

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Answer:</p> <p>The Applicant confirms that all future iterations of the dDCO (APP-15/ Volume 3.1) will be submitted in Word formats (one showing the latest consolidated draft and one showing changes from the previous version in tracked changes) as well as in PDF and that comments will be included outlining the reason for the change.</p> <p>The Applicant is unclear what the purpose would be of submitting validation reports with the interim dDCOs. The application draft was validated, with the validation report showing only that it had not been dated, numbered or signed, “errors” which by definition cannot be rectified at this stage, as this information can only be added when the DCO is finally made. As further drafts would just involve textual amendments to that validated document, any validation report would simply show that the DCO still had not been dated, numbered or signed. It is unclear how this would assist the examination. As an alternative, the Applicant proposes that it will prepare a validation report with the final version of the dDCO which is submitted as part of the examination process. This should give the ExA confidence that the final form of the dDCO is in a fit state to be made as a statutory instrument.</p> <p>The Applicant confirms that all future iterations of the dDCO will be endorsed with updated revision numbers consecutively from the application version.</p>
1.2	General: List of Plans or Documents to be Certified	<p>Question:</p> <p>The Applicant is asked to confirm that Schedule 11 (Documents to be Certified) will be updated in each subsequent version of the dDCO provided during the examination. This should accompany a table recording the latest version of each plan and documents required to support the examination and the dDCO (the ‘plan of plans’).</p> <p>Answer:</p> <p>The Applicant confirms that future iterations of the dDCO will include updates to Schedule 11 to reflect any updates to the documents listed in that Schedule.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>The Applicant would refer the ExA to the Guide to the Application (REP1-003/Volume 8.4) which was submitted to the Planning Inspectorate at Deadline 1. This document will also be updated and submitted for each deadline to provide a ready reckoner of the latest version of each document confirming which documents have been superseded, the date and the number of the new revision.</p>
1.3	General: Plan or Document Changes and Revision Numbers	<p>Question:</p> <p>The Applicant is asked to ensure that all application or subsequent plans and documents referred to in the dDCO are identified by Drawing or Document and Revision Numbers in subsequent versions of the dDCO. Revisions to plans and documents, should be reflected in the latest version of the dDCO. The Applicant should undertake a final audit of plans and documents referred to in the dDCO prior to submitting its final preferred dDCO to the Examination. It should ensure that the results of this audit are reflected in all references, in Schedule 11 and in the final ‘plan of plans’ (see Q1.2). It should take all reasonable steps thereafter to ensure that changes to plans and documents are not required.</p> <p>Answer:</p> <p>The Applicant confirms that all application or subsequent plans and documents referred to in the dDCO (APP-15/ Volume 3.1) will be identified by drawing or document and revision numbers in subsequent versions of the dDCO.</p> <p>The Guide to the Application referred to in the response to Question 1.2 above, will be updated to reflect the up to date revision numbers.</p> <p>The Applicant will take all reasonable steps to ensure that changes to plans and documents are not required following submission of the final preferred dDCO, subject of course to the formal change procedures included within the dDCO itself.</p>

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1.4	General: 'guillotine' provisions	<p>Question:</p> <p>Several individual articles (eg Art 16, Art 20, Art 21, Art 23) make provision for deemed consent to be granted if a consultee does not respond within a certain period – a 'guillotine' provision. There are precedents, however, they have tended to be justified with reference to the characteristics of particular dDCOs. This type of provision is not automatically appropriate to all NSIP development and has to be justified on a project-specific basis.</p> <p>The Applicant is therefore asked to justify why the proposed 'guillotine' provisions are necessary and appropriate for this dDCO.</p> <p>If 'guillotine' provisions are to be recommended, should any notice provided associated with an application for consent under the relevant article draw attention to the existence and effect of the 'guillotine' period?</p> <p>Could any other provisions than 'guillotine' provisions suffice?</p> <p>How would the operation of the 'guillotine provisions' interact with the arbitration provision under Art 47?</p> <p>Answer:</p> <p>The Road Investment Strategy (RIS) sets out a programme of road works across the country. The Applicant's resources need to be used in such a way as to ensure best value for money and therefore it is essential that the proposed works will be carried out expeditiously; any delay to the Scheme would have a detrimental effect on the Applicant's ability to do this.</p> <p>The Applicant considers that the provisions are necessary and the inclusion of a longstop deemed consent provision appropriate on the basis that the Scheme is a Nationally Significant Infrastructure Project (NSIP) and needs to be delivered without any undue delay.</p>

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		<p>This approach is also considered to be proportionate in that, the application documents, including the dDCO (APP-15/ Volume 3.1) have been provided in a number of rounds of consultation and engagement with bodies with an interest in the Scheme with such engagement continuing.</p> <p>This has included discussions with the relevant local planning, highway and traffic authority, Solihull Metropolitan Borough Council (SMBC), and the Applicant understands it to be content with such an approach. In addition, the proposed Scheme will be considered thoroughly during the examination, and the Applicant is of the view that the delivery of this nationally important Scheme should not be unduly held up, if it has been approved by the Secretary of State (SoS).</p> <p>The Applicant notes that Warwickshire County Council has also been asked to comment on this issue. However, as the only part of the Scheme within the County is a small stretch of the existing M42 Motorway, for which the Applicant itself is the highway and traffic authority, the County Council’s functions will not be directly affected by the deemed consent provisions.</p> <p>The deemed consent provisions adopted by the Applicant in the dDCO have been adopted from precedents contained and endorsed by the SoS in many other DCO schemes (both highway and non-highway) and the Applicant is satisfied that the inclusion of such provisions is justified and proportionate for the reasons given above.</p> <p>The obligation on the determining authority is to make a decision within the specified date and the drafting is intended to prevent a determining authority from simply ‘sitting’ on a request and making no effort to process the request resulting in unnecessary, and unjustified, delay.</p> <p>If the determining authority is not able to reach a decision in that time it is open to that body to request additional information from the Applicant or to notify the Applicant that consent is not given, thereby allowing the Applicant to instigate the arbitration provisions set out in article 47.</p> <p>The inclusion of deemed consent provisions is clearly set out in the dDCO and has been applied to those articles where the inclusion of such deemed consent is considered appropriate. Any notice given by the Applicant, or its contractor, will reflect the provision of the application documents (including the dDCO) and so</p>

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		<p>will stipulate that if a decision is not given within the specified deadline that consent is deemed to have been given.</p> <p>As such, the Applicant is of the opinion that any notice provided associated with an application for consent under the relevant article will draw the attention of the determining authority to the existence and effect of the ‘guillotine’ period.</p> <p>The Applicant does not consider that there are any other provisions that could address the objective of the deemed consent provisions for the reasons set out above.</p> <p>Article 47 (Arbitration) applies “<i>Except where otherwise expressly provided for in this Order</i>”. There is nothing in any of the deemed consent provisions which expressly dislodges this and so the relevant arbitration provisions in Article 47 would apply.</p> <p>The Applicant also refers the ExA to the response to Question 25.</p>
1.5	General: determinations and discharge of requirements	<p>Question:</p> <p>In contrast with many made Orders for non-highways NSIPs (and Orders for the A14 or the A19/A1058 Coast Road) this dDCO appears to lack provision in terms for ‘appeals’ or associated dispute resolutions arising from the determinations under provisions and the discharge of requirements.</p> <p>The Applicant is asked to confirm whether this is the case.</p> <p>If there are provisions intended to provide what amounts to an appeal function, the Applicant is asked to identify and explain these.</p> <p>Similarly, instead of obligations placed on the ‘relevant planning authority’, this dDCO places obligations for the discharge of requirements on the SoS, in consultation with the LA eg R9 - archaeology. Are the Applicant and LPAs clear that the SoS is the appropriate body for such determinations in this dDCO?</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Answer:</p> <p>It is correct – there is no specific ‘appeals procedure’ relating to the discharge decisions and related determinations on requirements. Any disputes are to be resolved under Article 47 (Arbitration) of the dDCO (APP-15/Volume 3.1).</p> <p>The Applicant refers the ExA to the A19/A184 Testo’s Junction Alteration DCO 2018, M20 Junction 10a DCO 2017, the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO 2016, and the A14 Cambridge to Huntingdon Improvement Scheme DCO 2016.</p> <p>These made DCOs contain no appeal provisions in relation to the discharge of, or written determinations under, the requirements, where the SoS is the discharging authority. In each case, the application for any consent, agreement or approval required by a requirement must be made to the SoS, with any resultant dispute to be dealt with by general arbitration. In the Applicant’s view, this approach is correct, because it would not be appropriate for the DCO to make provision for an appeal to the SoS in respect of discharge decisions and related determinations made by him in the first instance.</p> <p>While the A14 DCO referred to by the ExA and the M4 Smart Motorway DCO do contain appeal provisions, these do not apply to requirements discharged by the SoS, but only to</p> <ul style="list-style-type: none"> • appeals in relation to section 60 or 61 of the Control of Pollution Act 1974 (in the case of the A14), or • requirements where the discharging authority is anyone other than the SoS (in the case of the M4). <p>In both cases, where the SoS is the discharging authority for the purposes of the requirements, the relevant DCO contains no appeal provisions in relation to a discharge decision or other determination made by them. Any resultant dispute would therefore be amenable to general arbitration in those instances.</p> <p>Each of these DCOs, relating to the RIS Programme, therefore provides very clear precedent for the Applicant’s approach to this DCO application. Where the SoS is the discharging authority for the purposes of</p>

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		<p>the requirements, the precedented approach is for any disputes arising from the SoS's determination to be amenable to arbitration.</p> <p>The Applicant considers that this article is clearly drafted, follows standard wording, and is fit for purpose and that, in the unlikely event that any appeal or arbitration is needed, the Applicant considers that this can properly be dealt with under Article 47 (Arbitration).</p> <p>The Applicant is clear that the SoS is the appropriate body to determine the discharge of requirements for DCO schemes concerning the strategic road network.</p> <p>In June 2016, the Department for Transport (DfT) agreed to be the competent authority signing off compliance with requirements for DCO schemes concerning the strategic road network. This process was established through the A14, M4 and A19 Testo's DCO promotions and that model is now available for, and utilised on, other DCO schemes promoted by the Applicant.</p> <p>A bespoke team has been set up in the DfT which deals with the discharge of requirements, and protocols have been agreed between the Applicant and the DfT as to how the discharge of requirements will be handled. Please see the letter from DfT dated 9 June 2016 (Appendix A).</p> <p>The Applicant is not aware of any concerns having been raised to date on the efficacy of this approach, either in terms of the timely processing of applications, or in terms of consultation with affected parties. In particular, in none of the M4, A14 or A19 Testo's Junction DCOs has the DfT caused any delays in discharging applications under requirements, with decisions being made well within the 8 week deemed consent limit.</p> <p>The project website for each of those DCOs has included a requirements register. This sets out the status of the requirements, in terms of whether any approval has been applied for or given, and including links to the relevant approved details. The Applicant confirms that a similar register will be made available online in respect of the Scheme, in accordance with Requirement 15.</p> <p>In addition, the Applicant must consult with local authorities (and other bodies where provided for in the requirements) and provide evidence of the relevant third party consultation, as well as evidenced submissions relating to the SoS discharging relevant requirements. (The details of this consultation, including consultees'</p>

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		<p>responses, will also be available on the requirements register.) Where a consultee considers that an application for discharge could give rise to a materially new or materially different environmental impact from those reported in the Environmental Statement, then as discussed at the first ISH on the dDCO on 22 May, paragraph 13(3) (Schedule 2, Part 2 of the dDCO, procedure for discharge of requirements) would apply, and the application for discharge would be deemed to be refused if not determined within the 8 week period.</p> <p>The Applicant has made copies of the dDCO available to SMBC through pre-application consultation and engagement, and understands SMBC to be content with the arrangements for the SoS to discharge requirements.</p> <p>The Applicant is continuing to engage with SMBC and their position will be reflected in the Statement of Common Ground (SoCG) submitted for Deadline 2.</p> <p>For the reasons given above the Applicant is content that the drafting of Schedule 2 and the discharge of requirements is appropriate.</p>
1.6	Preamble	<p>Question:</p> <p>The Applicant is asked to draft the Preamble to the next version of the dDCO to confirm that the Examination is being carried out by a panel, by removing the square brackets from the second paragraph.</p> <p>Answer:</p> <p>The Applicant confirms that this amendment will be included in the next iteration of the dDCO (APP-15/ Volume 3.1).</p>
2.1	2 - Interpretation	<p><i>Drafting example:</i></p> <p><i>Commencement - other than operations consisting of archaeological investigations, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any</i></p>

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		<p><i>temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or advertisements</i></p> <p>Question:</p> <p>The Applicant and LPAs are asked whether all these works are ‘de minimis’ and whether some might need to be subject to mitigation measures secured through the requirements?</p> <p>For example, “diversion and laying of underground apparatus and site clearance” has the potential to conflict with a requirements relating to archaeology and biodiversity and possibly statutory undertakers too.</p> <hr/> <p>Answer:</p> <p>In accordance with PINS Advice Note 15, the Applicant has excluded ‘de minimis’ works from the definition of ‘commencement’, as well as those that have minimal potential for adverse impacts. Some of the works excluded may have to be carried out in order to comply with pre-commencement requirements, for example, to inform assessments and proposals that need to be submitted for approval.</p> <p>The matters within the definition of commencement (i) do not require mitigation or (ii) are mitigation or (iii) are investigations required to obtain information in support of the discharge of requirements.</p> <p>The potential impact of these works is directly controlled by the provisions of the Outline Environmental Management Plan (OEMP) which is secured by Requirement 4 of the dDCO (APP-15/ Volume 3.1). The OEMP will, in turn, inform the Construction Environmental Management Plan (CEMP) and the detailed site plans. These are written in a way to enable the impacts of the works to be controlled.</p> <p>The Applicant has given careful consideration to these works. Due to their nature it is not considered that any of these activities will have significant impacts on residents, businesses or visitors. This will also help to minimise the construction timetable. This approach is reflected in other made DCOs such as M20 Junction 10a DCO 2017, Silvertown Tunnel Order 2018 and Richborough Connection Project DCO 2017.</p>

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		The Applicant considers that it has struck a reasonable balance in this case in terms of the works that it is seeking to exclude.
2.2		<p><i>Drafting example:</i></p> <p><i>Maintain - to inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.</i></p> <p>Question:</p> <p>The Applicant and LA is asked whether the scope of this power is justified (together with article 4) within the context of this particular dDCO?</p> <p>‘Adjust’ and ‘alter’ are vague and potentially wide reaching. Should they fall within the definition of ‘maintain’?</p> <p>The caveat relating to materially new or materially different environmental effects is also vague and could exclude other reasons for requiring control not specifically addressed in the ES.</p> <p>The Applicant is asked to confirm that the determination of whether ‘maintenance’ might entail materially new or materially different environmental effects may be LPAs or other public bodies.</p> <hr/> <p>Answer:</p> <p>The Applicant considers that the scope of this power is justified.</p> <p>The maintenance provisions included in the dDCO (APP-15/ Volume 3.1) are consistent with the Applicant’s duties under sections 41 and 329 of the Highways Act 1980 and power under Part 9 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).</p>

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		<p>The inclusion of the words ‘adjust’ and ‘alter’ cover matters that are considered to be integral elements of the Applicant’s existing maintenance powers. Article 4 supplements the maintenance powers under the Highways Act 1980 and ensures that the Applicant has the necessary powers to maintain the authorised development.</p> <p>The Applicant must have the ability to respond to maintenance issues associated with the strategic highway quickly, to ensure it operates safely and efficiently.</p> <p>The Applicant notes that this formulation of "maintain" has been approved by the Secretary of State in respect of the following highway DCOs:</p> <ul style="list-style-type: none"> • M1 Junction 10a (Grade Separation) Order 2013; • the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road) Order 2013; • the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014; • the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015; • the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016; and • the A19/A184 Testo's Junction Alteration Development Consent Order 2018. <p>Notwithstanding these important generalities, in practical terms it is foreseeable that over the circa 120 year design life of the Scheme it would become necessary for some elements to be removed or reconstructed as part of the Scheme's maintenance, for example the surfaces of carriageways.</p> <p>It should also be noted that the power to "maintain", contained in Article 4 (maintenance of the authorised development) of the dDCO, is a power to "maintain the authorised development" and so any such works of maintenance must be within the bounds of what is authorised to be constructed under the Order, and within the scope of Article 6 (limits of deviation).</p> <p>The position regarding ‘materially new or materially worse’ and ‘materially new or materially different’ and possible inconsistencies has been addressed by the SoS in connection with the recent Correction Order for</p>

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		<p>the Testo’s DCO. The Applicant’s preference is for the formulation “materially new or materially worse”, as this would enable maintenance activities that give rise to a materially better environmental effect to be carried out without the need for further consent. The formulation “materially new or materially different” could for that reason have the unintended consequence of making it less likely that the Applicant’s contractors will carry out beneficial activities, because they would need to seek additional approvals for them. Having said that, the SoS gave a clear indication in his decision on the Testo’s Correction Order that “materially new or materially different” is required to comply with the EIA Directive. The Applicant confirms that this wording will be updated in the next iteration of the dDCO to be submitted to the Examination.</p> <p>The Applicant considers that it is appropriate to constrain the flexibility of this definition by reference to the environmental impacts that have been identified in the environmental statement to avoid the possibility of the DCO giving consent for an environmental impact that has not been assessed.</p> <p>It would be for the Applicant in the first instance to determine whether a particular act of maintenance would result in a materially new or materially different effect.</p> <p>Questions about whether the Applicant was in breach of the DCO would be for the relevant LPA to enforce under Part 8 of the PA 2008. Accordingly, if the LPA considered that the Applicant had carried out a “maintenance” activity that actually entailed materially new or materially different environmental effects, then the LPA could bring enforcement action as appropriate.</p>

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2.3		<p>Question:</p> <p>The Applicant is asked to confirm why it is necessary to identify the Secretary of State given common practice that a DCO should assume a general Secretary of State to allow for any future changes to government machinery or responsibilities beyond the DfT. Is this a DfT preference?</p> <hr/> <p>Answer:</p> <p>The Applicant has considered the definition and would not strongly object to the deletion of this definition by the ExA to allow for future changes to government departments in line with paragraph 6.1 of Advice Note 15, should that be the ExA's preference.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
3	3(2) – development consent etc., granted by the Order	<p><i>Drafting example:</i></p> <p><i>Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order</i></p> <p>Question:</p> <p>With reference to Schedule 1</p> <p>The Applicant is asked to:</p> <ul style="list-style-type: none"> • provide further explanation as to why this general, vague and extensive provision is necessary and justified for this particular project; • provide examples of particular enactments that the Applicant considers may otherwise interfere with the operation of the dDCO; • explain in particular why it should apply to land outside the Order limits; and • explain how far outside the Order limits it would apply, noting that the term ‘adjacent’ is undefined? <p>Is there an argument that for certainty, this provision should only apply to land within the Order limits?</p> <hr/> <p>Answer:</p> <p>Section 120 of the 2008 Act provides that:</p> <p><i>“...(5) An order granting development consent may –</i></p> <p><i>(a) Apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;</i></p>

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		<p><i>(b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State] to be necessary or expedient in consequence of a provision of the order or in connection with the order;</i></p> <p><i>(c) include any provision that appears to the [Secretary of State] to be necessary or expedient for giving full effect to any other provision of the order...</i></p> <p>Article 3(2) in the dDCO (APP-15/ Volume 3.1) has been included and is necessary in order to ensure that there are no acts of a local or other nature that would hinder the construction and operation of an NSIP. The Applicant carried out a proportionate search of local legislation within a reasonably close proximity to land within the Order Limits, but no search can be completely conclusive and there remains the possibility that conclusive a local act or provision may have been over looked. Accordingly, there is a chance that there may be some statutory provisions which would fall within (a) or (b) above.</p> <p>As such the Applicant has therefore taken a cautious approach in including this Article (which, as noted in the Explanatory Memorandum (EM) (APP-16/ Volume 3.2), has been accepted on other consented schemes such as the Testo’s Junction DCO 2018). Including this Article ensures that the construction and operation of the Scheme are not jeopardised by any incompatible statutory provisions which might exist i.e. a provision which would be an absolute restriction that could not be dealt with unless by the DCO.</p> <p>The Applicant also notes the SoS’s general power in s.120(5)(c) to include within the order any provision that appears to be necessary or expedient for giving full effect to any other provision of the order. The Applicant considers that this power should be exercised here on the basis that there is still a risk that relevant provisions have not been identified, despite the Applicant’s search of statutory provisions that may affect the Scheme.</p> <p>In terms of the geographical scope of Article 3(2), ‘adjacent’ means any land which is next to the land inside the Order limits but does not fall within the Order limits itself. Quite how far this extends to is a matter of fact and degree to be considered on a case-by-case basis. The Applicant takes the view it is necessary to include such land as there may be statutory provisions that are expressed to relate to land which falls just outside the Order limits, but may also have an effect on land within the Order limits. An example might be railway legislation which prevents particular activities from taking place on land adjacent to the railway. In that case, if</p>

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		<p>the land within the Order limits were adjacent to the railway for the purposes of the railway legislation, then the railway would be “adjacent” to the Order limits for the purposes of the dDCO.</p> <p>The Applicant does not consider that this provision should only apply to land within the Order limits, for the reasons set out above.</p> <p>Please also see the response to Question 27 below.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
4	6 – Limits of deviation	<p><i>Drafting example</i></p> <p><i>(a) deviate laterally ... to the extent of the limits of deviation shown on those plans; (b) deviate vertically ... for a new Solihull Road Overbridge Work No. 3, to a max of 1.5m up or down; and for other work to a max of 0.5m up or down limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement.</i></p> <p>Question:</p> <p>The Applicant is asked to justify this level of flexibility in the context of this dDCO.</p> <p>The vertical limits of deviation of of Solihull Road Overbridge might necessitate greater banking and engineering operations to the bridge itself and approaches with consequential effects to the ancient woodland and the results of the LVIA.</p> <p>The reference to materially new or materially worse adverse environmental effects within the ES must be demonstrated here. Could the Applicant please explain why 'maintain' references different environmental effects. The Applicant is also asked to justify and clarify (see Q 29) the implications, in terms of the flexibility allowed, of the different formulations.</p> <p>Answer:</p> <p>It is standard practice to include Limits of Deviation within linear schemes to allow for unknown or unforeseeable constraints which may arise during construction requiring a proportionate and reasonable adjustment to the alignment of the work in question. The Limits of Deviation are necessary and provide a required proportionate degree of flexibility in the delivery of an NSIP.</p> <p>Whilst the Limits of Deviation may appear wide in certain areas in practice, the locations of the works and extent of the deviation will be limited in practice by the need to tie in with the existing road network.</p>

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		<p>The Applicant has included within the dDCO (APP-15/ Volume 3.1) increased vertical Limits of Deviation in regards to Work No.3, the construction of the proposed Solihull Road Overbridge. The provision of increased vertical Limits of Deviation for this work item is to allow the Applicant flexibility to determine whether an online or offline construction phasing would minimise the impact on road users and nearby residents.</p> <p>The online construction phasing would necessitate the construction of the new Junction 5A overbridge, Work No.6, first. Solihull Road would then be diverted onto the Junction 5A overbridge via a temporary road construction completed, Work No.70, to maintain continuity of traffic along Solihull Road and over the M42 motorway during the demolition and construction works of the proposed Solihull Road Overbridge, Work No.3.</p> <p>If an offline construction methodology was implemented by the Applicant, the proposed Solihull Road and Junction 5A would instead be constructed at the same time, with traffic maintained on the existing Solihull Road Overbridge.</p> <p>However, to deliver an offline construction method, the proposed Solihull Road Overbridge would need to be constructed north of the existing Solihull Road Overbridge. This would necessitate a change in the horizontal and vertical geometry of the structure, with the vertical alignment being raised to accommodate sufficient headroom over the rising slip roads running beneath, to and from the new Junction 5A, Work No's 4 and 5.</p> <p>An offline construction of Solihull Road would avoid any significant impact on the Scheduled Ancient Woodland from the realigned Solihull Road embankment footprint.</p> <p>The Environmental Impact Assessment has taken into account the lateral and vertical Limits of Deviation defined on the Works Plans [APP-007/Volume 2.3] in order to establish a realistic worst case assessment scenario.</p> <p>It is considered changes within the Limits of Deviation would not give rise to materially new significant environmental effects and the measures described in the applicable assessment chapters will still be deliverable within the Limits of Deviation and will still fulfil their intended function.</p> <p>To select the optimal construction methodology, the Applicant will work with the appointed Contractor to undertake a full assessment during detailed design, taking cognisance of the allocated Limits of Deviation to</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>ensure the least adverse impact on road users and nearby residents in terms of social, economic and safety aspects.</p> <p>The position regarding ‘materially new or materially worse’ and ‘materially new or materially different’ and possible inconsistencies has been addressed by the SoS in connection with the recent Correction Order for the Testo’s DCO. The Applicant confirms that the drafting on this point is being considered and will be updated in the next iteration of the dDCO.</p>
5	8 – Consent to transfer benefit of the order	<p><i>Drafting example:</i> <i>SMBC, Cadent Gas Ltd, Severn Trent Water Ltd, Wester Power Distribution PLC, Esso Petroleum Co Ltd</i></p> <p>Question: The Applicant is asked whether it is appropriate for the Secretary of State’s consent not to be required for the transfer of benefit to the companies specified in paragraph 4 (a) to (e)?</p> <p>Answer: Article 8(4) of the dDCO (APP-15/ Volume 3.1) would only remove the requirements for Ministerial consent in relation to a transfer or grant in relation to certain specific works. These works have all been included in the dDCO to enable the local highway authority and specific undertakers to mitigate the impacts on their own networks.</p> <p>It may be appropriate in due course for those parties, rather than the Applicant, to carry out the works concerned, in which case the benefit of the development consent would be transferred to them. As the affected parties are already known and are either:</p> <ul style="list-style-type: none"> • the local highway authority, • statutory undertakers, or

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<ul style="list-style-type: none"> Esso Petroleum Limited, who are operating a pipeline that has statutory authorisation under the Pipelines Act 1962, <p>the Applicant considers that it would be unnecessary for the SoS to be required to consent to the transfer of the benefit of the DCO at a later stage as the decision can be made when the SoS decides whether to make the DCO.</p> <p>Should the Applicant wish to transfer the benefit of the DCO to any other party, or to transfer to any of the named parties the benefit of the DCO in relation to any works that are not already identified in article 8(4), then the SoS's consent would be required.</p>
6	9 – Application of the 1990 Act	<p>Question:</p> <p>Section 57 (2) provides that:</p> <p>(2) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.</p> <p>The Applicant is asked to justify (having regard to the views of the LPAs) whether or not it is appropriate, at the end of potentially a long period, for land to revert to the purpose for which it was used before the development consent was granted.</p> <hr/> <p>Answer:</p> <p>The Applicant considers it appropriate for land to revert to the purpose for which it was used before the DCO was granted. This provision puts the landowner, and existing user, in the same position as if the temporary construction works (which are defined in article 2(1) of the dDCO (APP-15/ Volume 3.1) and which all constitute associated development, rather than the NSIP itself) had been consented under the TCPA, rather than by way of DCO.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>The Applicant is only possessing the land for these works temporarily, after which occupation will revert to the owners of the land. Article 9 complements Article 33(4), which requires land used temporarily to be restored to the satisfaction of the land owner, by removing the need to apply for planning permission to enable the land to revert to its previous use once temporary possession ceases.</p> <p>Article 9 thereby also minimises the Applicant’s interference with landowners’ rights.</p>
7	10 – Application of CIL Regulations	<p>Question:</p> <p>The Applicant is asked to justify (having regard to the views of the LPAs) whether or not it is appropriate, given the length of time during which the temporary works may be in place, to modify the CIL Regulations in this way in order to exclude CIL liability.</p> <hr/> <p>Answer:</p> <p>The Applicant considers it appropriate for the temporary works to be excluded from Community Infrastructure Levy (CIL) liability. As with article 9, article 10 of the dDCO (APP-15/ Volume 3.1) applies to specified works only which although may be in place for a considerable period of time, are ultimately temporary in nature.</p> <p>As CIL is not chargeable in respect of temporary planning permissions, it is appropriate for the dDCO to treat the temporary works as a temporary planning permission for the purposes of CIL, and accordingly exclude the temporary works from CIL liability.</p>
8	11 – Planning permission	<p><i>Drafting example:</i></p> <p><i>If planning permission is issued pursuant to the 1990 Act ...</i></p> <p>Question:</p> <p>The Applicant is asked to justify (having regard to the views of the LPAs) whether or not this power might be necessary and in what circumstances it might be applied.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Why would the Applicant need planning permission in relation to the project to enable it to “facilitate its completion, construction, use or operation” when such matters would be governed by the DCO and its requirements and any changes to which may need to be authorised under section 153 of PA2008?</p> <p>Answer:</p> <p>The Applicant believes it is necessary to include this provision to ensure it is clear that where it needs to obtain any other planning permission relating to the proposed development, the implementation of that planning permission will not constitute a breach of the terms of this Order. This article has become standard for recently consented DCOs.</p> <p>The DCO process provides for two types of development to be consented: the NSIP itself, which can only be consented by way of a DCO, and associated development required to support the construction or operation of the principal development, or to mitigate its impacts. It is possible for works of associated development to be consented through alternative regimes such as the Town and Country Planning Act 1990. If planning permission for the development is obtained then compliance with that planning permission is not taken to be a breach of the terms of the DCO if all the rest of the terms are complied with.</p> <p>It also means that works of associated development – which could have been promoted by way of planning permission – can be varied through planning permission, if required, without being in breach of the Planning Act 2008.</p> <p>By way of example, the Applicant refers to its discussions with the Warwickshire Gaelic Athletic Association (WGAA) about the reconfiguration of its facilities at Pairc na hEireann. As discussed at the OFH on 22 May, the Applicant has included provision for this configuration in the dDCO (Work No. 68), but is aware that the WGAA has different aspirations. If those go ahead, they may involve a planning application.</p> <p>In the event planning permission is granted, article 11 of the dDCO (APP-15/ Volume 3.1) enables the Applicant and the WGAA to rely on it, without breaching the DCO.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
9	12 – Street Works	<p>Question:</p> <p>This is a wide power – authorising interference with any street within the Order limits. The Applicant is asked whether this is necessary? If not, should it be limited to identified streets, as in article 8 in the Model Provisions?</p> <hr/> <p>Answer:</p> <p>This article is based on the model provisions and the consented M4 Development Consent Order.</p> <p>The article extends to all streets in the Order Limits as it is a highway scheme and the Applicant proposes to carry out at least some works in relation to almost every street within the Order limits. It would be an unnecessary duplication to list in a schedule all streets within the Order Limits where street works may be required. The Applicant does not believe it is necessary, therefore, for the streets to be identified.</p> <p>Notwithstanding the answer given above, following a request from the ExA, the Applicant has prepared a table identifying the relevant streets (including those constructed as part of the Scheme) to which this article applies. Please see Appendix B.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
10	13 – Application of the 1991 Act	<p><i>Drafting example:</i> <i>section 58 (restrictions on works following substantial road works) (e); section 58A (restriction on works following substantial street works) (f); section 73A (power to require undertaker to re-surface street) (g);</i></p> <p>Question: The Applicant is asked to justify (having regard to the views of the LPAs) why this power might be necessary. Is it reasonable or necessary to remove the powers (available to the street works authority) listed in paragraph (3)?</p> <hr/> <p>Answer: The provisions of the New Roads and Street Works Act 1991 that have been disapplied are primarily designed to regulate street works carried out by utility companies in respect of their apparatus, particularly provisions restricting the timing or location of when street works may be carried out. The Applicant considers that the disapplication of these provisions of is appropriate given the national significance of the RIS programme, the scale of works proposed, the specific authorisation given for the location of these work and the provisions in the dDCO, including the requirements that would regulate the works. For instance, given the national significance of the Scheme, the Applicant should not be directed under the NRSWA to refrain from implementing in a timely fashion because a statutory undertaker had recently carried out its own works. These modifications are common in non-highway and Highway DCOs and reflect those made in other consented Highways DCOs, for example the M4 DCO 2016 and the Testo’s Junction DCO 2018.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
11	15 – Classification of roads etc	<p><i>Drafting example:</i></p> <p><i>(8) The application of paragraphs (1) to (7) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act</i></p> <p><i>((5) An order granting development consent may —</i></p> <p><i>(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;</i></p> <p><i>(b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State] to be necessary or expedient in consequence of a provision of the order or in connection with the order;</i></p> <p><i>(c) include any provision that appears to the [Secretary of State] to be necessary or expedient for giving full effect to any other provision of the order;</i></p> <p><i>(d) include incidental, consequential, supplementary, transitional or transitory provisions and savings)</i></p> <p>Question:</p> <p>Paragraph 7 provides for construction of public rights of way. Is the highway authority content that “unless otherwise agreed” is sufficiently clear to enable the authority to prevent the right of way opening for use in the event that it has not been created to a specified standard? Does this article (read with Schedule 3) have the effect of giving the rights of way the status of public rights of way? Is it acceptable for rights of way only to be open for use from the date on which the authorised development is open for traffic? Could it be earlier?</p> <p>Also, in terms of good drafting practice, is it appropriate for paragraph 7 (which authorises construction of public rights of way) to be included within article 7 which is principally dealing with the classification of roads?</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Does paragraph 8 have the effect of disapplying section 153 of the PA 2008, which provides a procedure for changing a DCO?</p> <p>Under which part of section 120 of the PA2008 is this article made?</p> <p>Please could the Applicant provide further justification as to why it is necessary or expedient to give full effect to any other provision of the DCO.</p> <hr/> <p>Answer:</p> <p>(a) Paragraph (7) does not authorise, but regulates the construction of public rights of way (PROW). Construction of the PROW is authorised by article 3 of the dDCO (APP-15/ Volume 3.1), which grants development consent for the authorised development, including the PROW. The Local Highways Authority’s (LHA) control over the standard of construction of PROWs, and streets other than special roads or trunk roads, is provided by article 14(2).</p> <p>(b) Yes, the rights of way constructed under the Order and specified in Schedule 3 will be PROW.</p> <p>(c) The Applicant considers it appropriate for the new PROWs to be open for use from the date on which the authorised development is open for traffic, so interfering with or severing the existing PROWs.</p> <p>The new PROWs could be open earlier by agreement between the Applicant and the LHA.</p> <p>(d) As noted above, paragraph (7) does not authorise the construction of the PROWs, but regulates it.</p> <p>(e) Paragraph (8) operates to place all of the highways constructed under the DCO in the same position so far as reclassification is concerned as if they had been constructed using existing powers. This means that traffic on the whole of the LHA’s and the Applicant’s respective networks can be regulated in the same way, irrespective of how individual highways were constructed. In the Applicant’s view this is more appropriate than requiring SMBC or the Applicant to apply to vary the DCO under section 153 of the PA 2008, particularly where no changes are proposed to the works themselves, only changes to traffic regulation.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		(f) In the Applicant’s view, the power to classify highways falls within s.120(5)(c), as it gives full effect to the construction of the highways, and the power to allow amendments to classification in the normal way falls within s.120(5)(d), as incidental and consequential on their classification.
12	16 – Temporary stopping up and restriction of use of streets	<p>Drafting example: <i>may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time ... may use any street temporarily stopped up, ... and which is within the Order limits, as a temporary working site</i></p> <p>Question: This article authorises the Applicant to use temporarily stopped up streets as temporary working sites. The Applicant is asked whether this article is appropriate on the facts of this particular DCO (including the impacts of authorising temporary working sites in such circumstances) and taking account of any views expressed by the highway authority? Although other DCOs are cited as precedents, this DCO applies to a rather more densely developed area than many.</p> <p>Answer: The use of a street that is temporarily stopped up to traffic as a temporary working site is often less disruptive, and has less of an environmental impact, than taking possession of a private individual’s land to lay out a work site. This is particularly the case for minor activities, such as the storage of plant, apparatus and vehicles. If these are not stored on streets, then additional land would have to be occupied instead. Such temporary work sites would, with the exception of the part of B4102 Solihull Road shown between points A16 and A17 on the Streets, Right of Way and Access Plans [APP-009/Volume 2.5], require the consent of the street authority under article 16(5)(b) and be regulated through requirements, for example the CEMP and have been assessed in the Environmental Statement.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>So far as precedents are concerned, this power also appears in a number of Transport and Works Act Orders, including for tramway and other urban transit systems in significantly more densely developed areas than this DCO, for instance the Midland Metro (Wolverhampton City Centre Extension) Order 2016, and the Nottingham Express Transit System Order 2009.</p>
13	17 – Permanent stopping up and restriction of use of streets, public rights of way and private means of access	<p>Question:</p> <p>This article authorises the stopping up of certain streets and public rights of way with no substitute means of access being provided, subject to the condition in paragraph (4) which includes the requirement that there “is reasonably convenient access to the land”.</p> <p>The Applicant is asked to confirm, where relevant, that the Secretary of State can be satisfied that the requirements of section 136 of PA2008 will be met in relation to any stopping up, as set out in Schedule 5 parts 4, 5 and 6.</p> <p>136 Public rights of way</p> <p>(1) An order granting development consent may extinguish a public right of way over land only if the [Secretary of State] is satisfied that—</p> <p>(a) an alternative right of way has been or will be provided, or</p> <p>(b) the provision of an alternative right of way is not required.</p> <hr/> <p>Answer:</p> <p>The Applicant confirms that the requirements of section 136 of PA2008 will be met in relation to any permanent stopping up.</p> <p>Where no substitute means of access is being provided, the access cannot be stopped up unless one of the conditions set out in Article 17(4) is met, and as such there must be reasonably convenient access to the land.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>The Applicant has included within the dDCO the stopping up of a number of streets and public rights of way in order to accommodate the Scheme improvements.</p> <p>The following streets are identified as being stopped up in Schedule 5 Part 2 of the dDCO (APP-15/ Volume 3.1):</p> <p>B4438 Catherine-de-Barnes Lane to Clock Interchange</p> <p>The existing B4438 Catherine-de-Barnes Lane between the intersection with Clock Lane and the connection to Clock Interchange, Work No. 20 will be stopped up to enable the new dual carriageway mainline link road, Work No.7, to connect to Clock Interchange, Work No. 20. The existing B4438 Catherine-de-Barnes Lane will be retained south of the intersection with Clock Lane, with access to the residents of Bickenhill and Clock Lane maintained by the realigned Catherine-de-Barnes Lane, Work No’s 11 to 16.</p> <p>The interaction between the new dual carriageway mainline link road, Work No.7, and the existing Catherine-de-Barnes Lane demonstrates the extents to which the existing road has been stopped up and relocated to accommodate the new dual carriageway link road.</p> <p>The stopping up of the existing local road network to accommodate the new dual carriageway mainline link road is proposed to separate the Applicant’s road infrastructure from the local authority infrastructure and prevent excess traffic using the existing local road network to connect with the Applicant’s infrastructure in a way that may have an adverse social and environmental impact on the local residents.</p> <p>M42 Junction 6 slip to Middle Bickenhill Lane</p> <p>The existing access to Middle Bickenhill Lane from the A45 Eastbound merge slip road originating at Junction 6 will be stopped up to allow the construction of the M42 Southbound to A45 Eastbound free flow link road, Work No.27.</p> <p>Access to Middle Bickenhill Lane will be provided via the M42 southbound diverge to the realigned East Way Roundabout, Work No.30(b), and the improvements to Middle Bickenhill to enable two way access, Work No.31.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>In Schedule 5 Part 4 the following PROW are identified as being stopped up:</p> <p>Public Right of Way west and north west of M42 Junction 6</p> <p>The existing PROW shown on Sheet 5 of the Streets, Rights of Way and Access plans (APP-09/Volume 2.5) is to be stopped up due to the construction of the proposed A45 Eastbound to M42 Northbound free flow link road, Work No.26.</p> <p>The existing PROW currently terminates adjacent to South Way, however this PROW does not arrive at any destination point and subsequently the stopping up of this PROW will avoid unsafe pedestrian crossings at the NEC access and egress to the Junction 6 gyratory and across the Junction 6 Interchange</p> <p>Public Right of Way east of M42 Junction 6</p> <p>The existing PROW connecting Junction 6 to Middle Bickenhill Lane will be stopped up beyond the entrance from the A45 Westbound diverge slip road to accommodate the M42 Southbound to A45 Eastbound free flow link road, Work No.27.</p> <p>Access to Middle Bickenhill Lane for pedestrians shall be maintained via the improved footway / cycleway on the A45 Westbound diverge slip road to Junction 6 connected to the existing PROW on East Way.</p>
14	19 – Clearways, prohibitions and restrictions	<p><i>Drafting example:</i></p> <p>(5) <i>An order granting development consent may—</i></p> <p>(a) <i>apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;</i></p> <p>(b) <i>make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State] to be necessary or expedient in consequence of a provision of the order or in connection with the order;</i></p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>(c) <i>include any provision that appears to the [Secretary of State] to be necessary or expedient for giving full effect to any other provision of the order;</i></p> <p>(d) <i>include incidental, consequential, supplementary, transitional or transitory provisions and savings</i></p> <p>Question:</p> <p>Does paragraph (5) have the effect of disapplying section 153 which provides a procedure for changing a DCO? Please could the Applicant clarify under which section 120 power of the PA2008 this article is made and if necessary, provide further justification as to why it is necessary or expedient to give full effect to any other provision of the DCO?</p> <hr/> <p>Answer:</p> <p>Paragraph (5) clarifies that the restrictions made in relation to the clearway are to be treated as if they were made by Traffic Regulation Orders under the Road Traffic Regulation Act 1984.</p> <p>This provision is made under section 120(5)(a) and (d), as it applies the Road Traffic Regulation Act 1984 procedures to the various traffic regulation measures set out in paragraphs 19(1) to (4), as a measure that is incidental on the imposition of those measures.</p> <p>This will enable the relevant traffic authority to deal with all of the traffic restrictions – for instance by changing the length or timing of a waiting restriction - on its network in the same fashion.</p> <p>It is appropriate for future changes to traffic restrictions that do not entail any infrastructure development to be dealt as traffic regulation measures, rather than as infrastructure proposals under section 153 of the PA2008.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
15	21 – Discharge of water	<p>Question: Please could the Applicant alter the references to the Homes and Communities Agency by referring to Homes England?</p> <hr/> <p>Answer: While the Homes and Communities Agency uses “Homes England” as a trading name, it is still formally known as the Homes and Communities Agency under section 1 of the Housing and Regeneration Act 2008. The Applicant would prefer to retain the official name but is happy to consider amending the drafting in this article to clarify the position so that the article will instead read “<i>Homes and Communities Agency (known as Homes England)</i>”.</p>
16	22 – Protective work to buildings	<p>Question: The Applicant is questioned whether these provisions are necessary or expedient for this particular dDCO and to give some examples</p> <hr/> <p>Answer: Article 22 of the dDCO (APP-15/ Volume 3.1) is based on article 15 of the Model Provisions and the drafting has been used in numerous made orders since including A19/A1058 Coast Road (Junction Improvement) Order 2016, A14 Cambridge to Huntingdon Improvement Order 2016 and Testo’s Junction Alteration Order 2018. It is included as a precautionary power, and the Applicant does not anticipate that it would be exercised. Its inclusion is necessary to ensure that should the circumstances arise where protective works are required to protect third party interests, the Applicant would be able to carry out those necessary works.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>It is considered necessary, and in the interests of both the Applicant and third party building owners, to empower the Applicant to protect buildings from harm in the unlikely circumstances that the need to do so arises. The power is deliberately framed to allow the Applicant to carry out works before that harm arises, therefore avoiding the greater harm and disruption that would arise if action could only be taken after damage occurred. It is accompanied by both a right to compensation and a notice procedure for owners and occupiers that can result in a dispute being taken to arbitration in accordance with Article 47.</p> <p>Without this power the Applicant could not carry out protective works. This would likely lead to greater compensation claims being made against it, increasing the cost to the public purse, and greater disruption and distress to the affected owners and occupiers</p> <p>As stated above – the Applicant considers it highly unlikely that it will be necessary to exercise this power. It is possible that buildings in, or adjacent to, the Scheme boundary may be affected but it is not possible to provide a definitive list.</p> <p>The Applicant remains of the view that protective works will not be required but considers it prudent to ensure that should the need arise, it is empowered to take protective action.</p>
17	23 – Authority to survey and investigate the land	<p><i>Drafting example:</i> <i>including, where reasonably necessary, any land which is adjacent to, but outside the Order limits</i></p> <p>Question:</p> <p>The Applicant is questioned whether these provisions are necessary or expedient for this particular dDCO?</p> <p>Please could the Applicant illustrate the circumstances where the power to carry out surveys on land outside but adjacent to the Order limits would be required.</p> <p>When might this be ‘reasonably necessary’?</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Answer:</p> <p>The Applicant has included all land within the Order limits that it considers necessary to deliver the Scheme. However, the Applicant can envisage situations where it would be necessary to carry out surveys outside the Order limits to facilitate the delivery of the Scheme.</p> <p>An example of this would be where an area, or feature, falls within the Zone of Influence which has the potential to be a suitable habitat for a protected or notable species.</p> <p>While the assumptions and approach within the DCO biodiversity assessment (Chapter 9, Biodiversity (APP-54/Volume 6.1)) have allowed for this uncertainty to be adequately incorporated within the relevant assessment, Natural England may require further information to be acquired (by means of surveys outside the Order limits but within a Zone of Influence) to support the relevant Protected Species Licence.</p> <p>At this time, the Applicant is unable to exhaustively identify all land adjacent to, but outside the Order limits where surveys or investigations may be required under this article.</p> <p>By the nature of its drafting, the power to survey on land adjacent to the Order limits may only be carried out where it is “reasonably necessary”. The article is time limited in that it relates to surveys in relation to the authorised development, predominately construction of the Scheme with only minor maintenance implications.</p> <p>If the purpose of a survey could be achieved within the Order limits, it would plainly not be “reasonably necessary” to conduct it on land adjacent to but outside Order limits. Similarly, while wider than the Order limits, it is clearly constrained to land adjacent to the Order limits.</p> <p>In terms of proportionality, the power could only be exercised, whether within or without the Order limits, on 14 days' notice to the owner and occupier of the land. The Applicant is obliged to compensate the owners and</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		occupiers for any loss suffered. There is, therefore, an incentive for the Applicant to ensure that the survey works are carried out as quickly as possible.
18	26 – Time limit for authority to acquire land compulsorily	<p><i>Drafting example:</i></p> <p><i>ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period</i></p> <p>Question:</p> <p>The Applicant is asked whether the 5-year time limit for remaining in temporary possession of land appropriate for this particular dDCO?</p> <p>Please could the Applicant illustrate on what basis possession might be retained?</p> <hr/> <p>Answer:</p> <p>Article 26 of the dDCO (APP-15/ Volume 3.1) does not impose a 5 year time limit for remaining in temporary possession.</p> <p>Rather, article 26(1) ensures that after the expiry of five years from the date the DCO comes into force, the powers of compulsory acquisition and temporary possession for the purposes for construction may not be exercised. This gives certainty to affected persons so they can be sure that, if prior to that date land has not been acquired or possessed temporarily for the purposes of construction, their land will not be acquired or possessed temporarily for those purposes.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Article 26(2) clarifies that, if temporary possession is taken within the first five years following the date the Order comes into force, the authorisation of that temporary possession does not cease prematurely on that date. Article 26(2) does not therefore set the limit of the duration of temporary possession.</p> <p>The limits on the duration of temporary possession for the purposes of construction of the authorised development are set out in Article 33(3) which provides that the Applicant must return the land possessed temporarily to the owner within one year of the completion of the work(s) for which possession was taken, unless agreement to the contrary is reached with the owner. The one year period is required in order to ensure that the land is restored appropriately when it is returned to the landowner or occupier.</p> <p>Article 33 allows the Applicant to occupy land temporarily identified in Schedule 9 to the dDCO, which is not required permanently, and includes land which will be occupied temporarily and then subject to permanent rights (such as diverted apparatus of utility companies) as well as allowing temporary possession of land that is subject to powers of permanent acquisition, but where no process for acquisition has commenced.</p> <p>Thus Article 26, along with Article 33, makes it possible for the Applicant to occupy land temporarily to construct the scheme and to only acquire permanently that part of the land which is necessary for the Scheme as constructed. The remainder of the land would be returned to its owner.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
19	27 – Compulsory acquisition of rights and restrictive covenants	<p><i>Drafting example:</i></p> <p><i>27.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence</i></p> <p>Question:</p> <p>The Applicant is asked whether this power is justified for this particular dDCO?</p> <p>The Applicant’s attention is drawn to the Secretary of State DfT’s decision (paragraph 62 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO) “to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used”.</p> <p>The EM indicates that a public benefit would be a limitation on the compulsory acquisition of Order lands by using restrictive covenants instead. Please could the Applicant give examples.</p> <hr/> <p>Answer:</p> <p>The Applicant proposes a general power to acquire rights or impose restrictive covenants over the Order land in Article 27(1) of the dDCO (APP-15/ Volume 3.1).</p> <p>This general power is subject to paragraph (2) which limits the power of acquisition to only acquire rights and impose restrictive covenants over the land listed in Schedule 7 for the purposes stated in that Schedule.</p> <p>The Applicant’s justification for acquisition of land is set out in the Statement of Reasons (APP-018/Volume 4.1).</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>The Applicant considers that the general power is justified as the flexibility to achieve its aim through the exercise of a lesser power to acquire rights or impose restrictive covenants, rather than acquiring the whole of the land outright, would allow the Applicant to take a proportionate approach should the opportunity arise. Without the inclusion of this article, the Applicant would have no alternative but to acquire the land outright if an alternative agreement could not be reached by private treaty.</p> <p>The Applicant’s approach in this respect mirrors that taken by the Secretary of State in the High Speed Rail (West Midlands - Crewe) Bill, which post-dates the Secretary of State’s decision on the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO.</p> <p>By way of examples, the Applicant considers that the use of this power would be appropriate in cases where, for instance, utilities have been diverted and land can be returned to its owner, subject to rights of access and maintenance and a restriction on carrying out activities that would be harmful to the apparatus. Alternatively, where compensation habitat has been planted, it may be more appropriate for the Applicant to return the land subject to restrictions on activities that are harmful to that habitat, rather than retaining the freehold title itself.</p>
20	35 – statutory undertakes, & 36 – apparatus and rights of statutory undertakers in	<p><i>Drafting example:</i></p> <p><i>127 3(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking</i></p> <p><i>138 4(b) only if SoS is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates</i></p> <p>Question:</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
	stopped up streets	<p>The Applicant will be aware that where a representation is made by a statutory undertaker under s127 of the PA2008 and has not been withdrawn, the Secretary of State will be unable to authorise Article 35 unless satisfied of specified matters set out in s127.</p> <p>If there are objections (eg from Network Rail) would a section 106 Agreement provide an appropriate solution or should there be continued negotiation over protective provisions to be made in the dDCO?</p> <p>The Secretary of State will also be unable to authorise removal or repositioning of apparatus unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with s138 of the PA2008.</p> <p>Hence, before making a recommendation to the SoS in relation to these particular articles the Panel will need to be satisfied that the statutory tests are met.</p> <p>Answer:</p> <p>The Applicant does not anticipate there being any outstanding objections within section 127 PA2008 by the close of examination. Should that position change, the Applicant would supply the ExA with the evidence required to demonstrate that the statutory tests are met at an appropriate time to enable their full examination. Please also see response to Question 36.</p>
21	37 – Crown rights	<p><i>Drafting example:</i></p> <p><i>the transfer of land formerly owned by the SoS for Transport to Highways England, Part 4 of the BoR lists 22 plots where the SoS is still registered as the freehold owner at the Land Registry; plots also shown on the Crown Land Plans. Plots considered within the ownership of the Applicant pursuant to the Transfer Scheme, they have been included as Crown Land as a precautionary measure, pending completion of the formal registration process for the transfer</i></p> <p>Question:</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>It isn't clear from the Statement of Reasons whether or not there are plots of land owned by the Department for Transport the title of which will not actually transfer to the Applicant in due course. If that is the case, then consent must be granted by the appropriate Crown authority in respect of compulsory acquisition of land in which an interest is held other than by or on behalf of the Crown before an article authorising CA can be included in the DCO.</p> <p>The Applicant is asked to confirm and update the progress relating to the transfer of ownership from the Department for Transport to the Applicant under the transfer scheme as it will not be appropriate to retain this article 'on a precautionary basis'. The Applicant should also obtain and submit to the Panel the Department's views as Crown authority.</p> <hr/> <p>Answer:</p> <p>The Applicant has progressed this matter with the Land Registry. All of the land affected should have been transferred from Crown ownership either to the Applicant or, where the highway in question has been detrunked, to the local highway authority. However, the Land Registry records are not yet up to date, and continue to show the SoS as owner of this land. The Applicant has contacted the Land Registry to inquire regarding progress and has been told that there has been a delay with HMLR in processing registrations. The Applicant understands that it is HMLR intention to have amended the titles by the middle of July.</p> <p>An application is due to be submitted shortly in relation to land within the detrunking boundary (subject to getting the consent of the relevant local authority) to transfer those plots or partial plots into their name at the Land Registry. This typically only takes a few days following submission.</p> <p>To the extent that parcels are outside the detrunking boundary but in the name of the SoS, the Applicant will make an application to transfer them into its name having regard to the Transfer Order to the Applicant.</p> <p>The Applicant understands this to be relatively straightforward where the plots align with a former highway boundary even if outside the highway. Where the parcels are more removed such as plot 2/42 the Applicant's Property and Acquisition team is researching the background to see if it was held as a depot/compound.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>The Applicant will keep the ExA informed of progress.</p> <p>The Applicant does not anticipate there being any outstanding issues with regards to Crown Land by the close of the examination. The Applicant recognises that, in the event that there are parcels of land that cannot be regularised, consent will be sought from the Crown.</p>
22	39 – Felling or lopping of trees and removal of hedgerows	<p>Question:</p> <p>This is a general power (which effectively disapplies the provision of the Hedgerow Regulations because it allows any hedgerow to be removed whether or not it is ‘important’).</p> <p>Advice Note 15 suggests that that articles such as these should include a Schedule and a plan to specifically identify the hedgerows to be removed (whether in whole or in part). This will allow the question of their removal to be examined in detail. The same applies to protected trees either subject to a TPO or within a Conservation Area. Alternatively, the Article within the DCO could be drafted to include powers for general removal of hedgerows or trees (if they cannot be specifically identified) but this must be subject to the later consent of the local authority.</p> <p>The Applicant is asked to justify the form of Article 39 in the light of the guidance in Advice Note 15, with regard to the views of LPAs.</p> <p>The Applicant is also asked to cross-reference any Schedule or plan prepared in accordance with that guidance with information to be prepared for Requirement 5 – Landscaping, which entails the preparation of a schedule of trees to remain and trees to be removed.</p> <p>Answer:</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Article 39 of the dDCO (APP-15/ Volume 3.1), puts works carried out to hedgerows under the DCO in the same position as they would be if they had been authorised by way of planning permission, or were being carried out by the Applicant in its capacity as highway authority.</p> <p>In those circumstances, regulation 6(1)(e) and (h) of the Hedgerows Regulations respectively, would authorise the removal of hedgerows. Given these existing powers, the Applicant does not believe that the recommendations in Advice Note 15 apply, as they do not seem to take account of this situation.</p> <p>Nevertheless, the location of hedgerows within the boundaries of the Order limits (with a Scheme overlaid) are presented visually within Appendix 9.3 Hedgerow Report Drawing 9.3 (APP-131/Volume 6.3). The calculated hedgerow loss is presented within Chapter 9. Biodiversity para. 9.9.65 to 9.9.66 and Table 9.9: Hedgerow Loss (APP-054/Volume 6.1).</p> <p>Additional information on the existing tree and hedgerow cover within the Order limits can be found within Appendix 8.2 Arboricultural Survey, Table 1: Tree Survey Results and presented on Tree Constraints Plan Sheets 1-10 (APP-128/Volume 6.3).</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
23	40 – application of landlord and tenant law	<p>Question: This article requires the Applicant’s justification in the circumstances of this particular dDCO and NSIP.</p> <hr/> <p>Answer: The drafting of Article 40 of the dDCO (APP-15/ Volume 3.1) follows Article 36 of the Model Provisions and has been included in the majority of DCOs made to date.</p> <p>The article has been included to provide for landlord and tenant law to be overridden in respect of any agreement entered into under Article 8 (Consent to transfer benefit of Order).</p> <p>This article is principally intended to avoid the position that would ordinarily apply under landlord and tenant law, which allows tenants to hold over on a lease in particular circumstances but that would not necessarily be appropriate if, for example, it was a concession agreement that had come to an end and the Applicant wanted to take back control of the SRN – this could be compromised if the tenant was holding over on the terms of the original concession.</p> <p>The Applicant considers the inclusion of this article to be necessary to ensure the safe operation of NSIPs, enabling the Applicant to re-assume its role without being delayed or prevented from doing so by constraints of common law and the Landlord and Tenant Act 1954.</p>
24	41 – Operational land for the purposes of the Town and	<p>Question: This article requires the Applicant’s justification in the circumstances of this particular dDCO and NSIP.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
	Country Act 1990	<p>Answer:</p> <p>The drafting of Article 41 of the dDCO (APP-15/ Volume 3.1) follows Article 36 of the Model Provisions and has been included in numerous made Orders.</p> <p>The Applicant considers this article to be necessary to ensure that land that has the benefit of development consent under the DCO is treated in the same way as if it had had the benefit of planning permission, for the purposes of deciding whether it is “operational land”.</p> <p>This is necessary to ensure that any statutory undertakers whose equipment is relocated under the DCO have the same ability to rely on permitted development rights in relation to that equipment as they would if they had relocated it themselves.</p>
25	47 – Arbitration	<p><i>Drafting example:</i></p> <p><i>...to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.</i></p> <p>Question:</p> <p>No process in terms of ‘appeals’ relating to the discharge or determinations on requirements is apparent.</p> <p>It has now become well established practice in dDCOs for the appointment of arbitrators to be by the SoS and not by the President of a professional body. This is because arbitration under a DCO is a public law and public interest function that falls within the remit of and accountability to the SoS responsible for the DCO, rather than within the sectoral interest of a professional body.</p> <p>Hence, should reference to the appointing function of the President of the Institution of Civil Engineers be substituted for reference to the SoS?</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Answer:</p> <p>It is correct that any dispute under the dDCO (including those relating to the Schedules) is to be resolved under Article 47 of the dDCO (APP-15/ Volume 3.1).</p> <p>The Applicant considers that it is clearly drafted and considers no amendments necessary. The form of wording used here is standard wording for DCOs promoted by the Applicant, where the SoS already has a role as the discharging authority.</p> <p>Article 47 (arbitration) is concerned with disputes or differences between parties under provisions of the DCO which will predominately relate to matters of construction and engineering, rather than disputes over public law functions.</p> <p>The Applicant considers the President of the Institution of Civil Engineers to be an appropriate, impartial person to appoint an arbitrator to resolve a dispute under this article. The President is requested routinely to appoint arbitrators and is better placed to select an appropriate person to deal with the dispute efficiently and effectively. The Applicant does not consider that the SoS would be appropriate to carry out this role, particularly given that the SoS's decision-making role under the DCO means that the SoS is likely to be a party to any disputes.</p>
26	48 – Removal of human rights	<p>Question:</p> <p>This article requires the Applicant's justification in the circumstances of this particular dDCO and NSIP.</p> <p>Why is it that the Applicant considers human remains may be found?</p> <p>Although the scheme includes significant cutting, it is not necessarily comparable to Crossrail, cited as a precedent.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Answer:</p> <p>There are no previously recorded burial grounds within the Order limits. Nevertheless, the Applicant is not able to definitively rule out that human remains may be recovered, given the history of human settlement in some of the areas covered by the Scheme.</p> <p>This article provides a single clear set of procedures that would be followed in such cases.</p> <p>Without this article the Applicant would be required to obtain a faculty from an ecclesiastical court before removing human remains (see section 25 Burial Act 1857). As Mr Evans, on behalf of the Applicant, explained at the first ISH on the dDCO on 22 May, while the Burial Act 1857 was no doubt suitable for its time, it was not drafted with major infrastructure development in mind. The proposed article sets out a more appropriate regime for dealing with any human remains that may be encountered during the development.</p> <p>The power to remove human remains is proportionate in that it is sensitive to the wishes of those related to the deceased in cases where the remains are reasonably believed to have been interred within 100 years. It prohibits the removal of remains until the procedures set out in the article are complied with.</p> <p>In exercising these powers, the Applicant would remain bound by the Requirements of the DCO, in particular Requirement 9 in relation to archaeological remains. The Applicant does not see a conflict between these provisions: should human remains be discovered, the Applicant would have to comply with both the notice provisions under article 48 and the requirements relating to notification of the relevant planning authority under Requirement 9(4).</p> <p>The Applicant is referring to Crossrail as a precedent only in relation to the removal of the requirement to give notice before removing remains where the undertaker is satisfied they were more than 100 years old and there are not likely to be any objections raised.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
27	50 – Amendment of local legislation	<p><i>Drafting example:</i></p> <p><i>Eg, Birmingham and Gloucester Railway Act 1836 (c. xiv) section III; (b) Shrewsbury and Birmingham Railway Act 1846 (c. cccvii) sections XXV, XXXI, XLV, XLVI, XLVIII, L, LIV and LXIV; (c) London and Birmingham Railway Act 1846 (c. ccclix) sections xix, xx, xxi, xxii, xxiii and xxvi; (d) Birmingham and Oxford Junction Railway Act 1846 (c. cccxxxvii) sections XXIV and XXV; etc</i></p> <p>Question:</p> <p>The Applicant is asked to provide extracts from the relevant local legislation which is being disapplied, together with information about the purpose of the legislation and the persons or bodies vested with the relevant power. An explanation of the effects of that disapplication is asked for and whether any protective provisions or requirements would be necessary to prevent any adverse impact arising as a result of disapplying the local legislative control.</p> <hr/> <p>Answer:</p> <p>The Applicant has reviewed further the extent of local legislation it is seeking to disapply. As a result, the Applicant confirms that it only intends to seek powers to disapply the following local legislation:</p> <ul style="list-style-type: none"> • Birmingham and Oxford Junction Railway Act 1846 (c. cccxxxvii) sections xxiv and xxv – These sections provide works powers which are currently vested in Network Rail and have the potential to affect the delivery of the Scheme. • London and North Western Railway (Additional Powers) Act 1879 (c. cxlii) sections 9, 14, 32 and 35 – These sections provide various works, stopping up and compulsory purchase powers in relation to land in the vicinity of the proposed Scheme which are currently vested in Network Rail and have the potential to affect the delivery of the Scheme. • London and North Western Railway Act 1880 (c. cxlv) section 18 – This section provides various powers to alter the road network in the vicinity of the project which are currently vested in Network Rail and have the potential to affect delivery of the Scheme.

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<ul style="list-style-type: none"> • London and North Western Railway Act 1893 (c. clxvi) section 25 – This section provides compulsory purchase powers in relation to land in the vicinity of the proposed Scheme which are currently vested in Network Rail and have the potential to affect delivery of the Scheme. • West Midlands County Council Act 1980 (c. xi) sections 6, 11 and 12 – These provisions may otherwise affect the works that can be carried out by allowing the council to prohibit access to land, restrict the use of floodlighting on the exterior of premises, and recover the costs of making good any damage to footways, verges etc. from any person carrying out building operations in the county. It is believed that these powers are currently vested in Solihull Metropolitan Borough Council. • Midland Metro Act 1992 (c. vii) sections 3, 4, 5, 6, 7, 8, and 9 – these provisions allow Solihull Metropolitan Borough Council to make, alter and maintain works within the geographical scope of the DCO works which may affect the Scheme. • Midland Metro (No 2) Act 1993 (c. vi) sections 3, 6 and 12 – these provisions allow Solihull Metropolitan Borough Council to make and maintain works for the Midland Metro within the geographical scope of the DCO works which may affect the Scheme. <p>The Applicant does not believe that protective provisions are needed in respect of any of these powers, which are not needed for the operation of existing works, but give the relevant body powers that they could exercise to hinder the implementation of the DCO scheme.</p> <p>Please see also the response to Question 3 above.</p> <p>The Applicant proposes to amend article 50 in the next draft of the dDCO, so that it is limited to these enactments.</p>
28	Schedule 1 – authorised development – further	<p><i>Drafting example:</i></p> <p><i>Works 1-76 and further development a-o</i></p> <p><i>(d) embankments, cuttings, viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, drainage works, drainage treatment areas, ponds, lagoons, outfalls, ditches, pollution control devices, pumping stations,</i></p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
	development within the Order limits	<p><i>wing walls, firefighting system water tanks and associated plant and equipment, highway lighting, fencing and culverts;</i></p> <p><i>(k) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling); (l) the felling of trees and hedgerows;</i></p> <p>Question:</p> <p>The works listed in paragraphs (a) to (o) are extensive and need to be justified by the Applicant in the context of this dDCO.</p> <p>The Applicant is asked to clarify whether any of the development listed in (a) to (o) is also identified as part of one of the works (please give some examples).</p> <hr/> <p>Answer:</p> <p>The Applicant believes that the approach taken in terms of the description of the works, and the level of detail provided, is consistent with a long line of DCOs (and TWAOs) which have had to strike an appropriate balance between scheme detail and scheme flexibility, and it is appropriate for a scheme of this size and scale, and its location.</p> <p>The level of detail provided is consistent with the public interest in ensuring that a DCO provides a comprehensive suite of powers, with sufficient flexibility in how the powers are described, to enable a major infrastructure scheme to be delivered expeditiously and (in the case of public works) at best value to the public purse.</p> <p>In terms of definition and scope, the ‘lettered works’ of further development works are listed in Schedule 1 and support, and are ancillary to, the carrying out of the numbered works and are not to give rise to any materially</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>new or materially worse adverse environmental effects than those assessed in the Environmental Statement. They must relate to the numbered works, since they must be:</p> <p><i>“For the purposes of or in connection with the construction of any of the works and other development mentioned above”, as set out in the paragraph preceding the list of ancillary works in Schedule 1.</i></p> <p>In terms of location, article 6 (Limits of Deviation) confirms that the authorised development must be constructed within the Order limits. Any further development work would also be expected to be in the same general location as the numbered work to which it relates.</p> <p>The lettered works are set out separately to the numbered works so as to avoid the need to repeat them within the description of each of the numbered works. This approach aids the clarity and legibility of the description of the numbered works.</p> <p>In light of the ExA’s request at the first ISH on 22 May on the dDCO the Applicant has set out at in a table showing how each of the number Works relates to each of the lettered items of development (Appendix C).</p>
29	Schedule 2 part 1 – requirement 3 – Detailed Design	<p><i>Drafting example:</i></p> <p><i>The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering section drawings any amendments ... would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement</i></p> <p>Question:</p> <p>The Applicant is asked to justify whether it is appropriate to allow the flexibility inherent in a scheme that is to be only ‘carried out so that it is compatible with the preliminary scheme design’.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>The Applicant is asked to confirm that the ‘preliminary scheme design’ can be clearly identified on the works plans and engineering section drawings.</p> <p>The Applicant is asked to indicate how the demonstration of no materially new or materially worse adverse environmental effects might be made. (See also Q 4)</p> <hr/> <p>Answer:</p> <p>The Scheme presented in the Works Plans (APP-007/Volume 2.3) and Engineering Section Drawings (APP-013/Volume 2.8) represents a reference design that must be developed into a detailed design following the grant of development consent.</p> <p>This Requirement requires that the Applicant delivers a scheme that is compatible with those plans, against a limit of deviation that permissively sets the scope of what may or may not be delivered.</p> <p>The Applicant considers “compatible” to be the appropriate term and notes the SoS has endorsed this drafting in other DCOs such as the A14 Cambridge to Huntingdon Improvement Scheme DCO 2016. The same need for flexibility is present in this Scheme.</p> <p>The wording here does not override the Limits of Deviation set by Article 6. Should the Applicant construct any part of the Scheme outside of the Limits of Deviation, it would be an enforceable breach of the Order, irrespective of “compatible” being used in the requirement.</p> <p>The Applicant is not able, at this stage, to provide extensive detail because the Scheme reflects a reference design, sufficient for the purposes of carrying out the environmental assessment that will be developed into a detailed design once a contractor has been appointed. If the Applicant were to fix those details now it would unduly constrain its ability to deliver the Scheme.</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>Flexibility in the detailed design is essential to enable the design to respond to ground conditions which will only be discovered when works begin, to enable design to deliver greater value for money through the value engineering process, and to allow for more refined designs that deliver better environmental outcomes.</p> <p>The Applicant has also provided a set of General Arrangement Drawings (APP-008/Volume 2.4) which show indicatively the reference design for the Scheme. What is shown is deliverable but is subject to further development during detailed design for the reasons set out above.</p> <p>The Applicant believes that the ‘preliminary scheme design’ can be ascertained from the information provided as part of the application. However, as was acknowledged during the first ISH on the dDCO on 22 May, the Applicant is minded to modify the drafting of Requirement 3 to include a reference to the General Arrangement Drawings (as well as the works drawings and engineering sections) to further clarify this position.</p> <p>Please see the response to Question 4 above regarding the question asking the Applicant to indicate how the demonstration of no materially new or materially worse adverse environmental effects might be made.</p>
30	Requirement 5 - landscaping	<p><i>Drafting example: All landscaping works must be carried out to a reasonable standard in accordance with ..</i></p> <p>Question:</p> <p>What does reasonable mean here? Please could the Applicant give examples?</p> <p>Would it not be stronger and simpler just to ‘accord with [relevant] British Standard’?</p> <hr/> <p>Answer:</p> <p>The Applicant has considered this provision further and wishes to amend the applicable text within the dDCO. The Applicant proposes the following:</p> <p><i>“All landscaping works must be carried out in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.”</i></p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		The revised text will be included in the next iteration of the dDCO.
31	Requirement 6 - Contaminated land and groundwater	<p><i>Drafting example:</i></p> <p><i>unexpected contamination ... it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency</i></p> <p><i>Where the undertaker determines that remediation of the contaminated land is necessary</i></p> <p>Question:</p> <p>The Applicant and LPAs are asked whether there should be a requirement for work to stop if contamination is found?</p> <p>The Applicant is asked to explain why it might be reasonable or appropriate for the undertaker or the Applicant to be the sole body for the determination of whether or not remediation might be necessary, even though consultation has to take place?</p> <hr/> <p>Answer:</p> <p>The effect of unexpected contamination may be different in each scenario, which makes it difficult to state uniformly what action should be taken in the event such contamination is discovered.</p> <p>It is for this reason that the Applicant has included a provision stating that any such find must be reported as soon as reasonably practicable to the SoS, the Environment Agency and to the relevant planning authority, with a risk assessment to determine the action needed, to be carried out as soon as possible after that.</p>
32	Requirement 7 - Protected species	<p><i>Drafting example:</i></p> <p><i>Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.</i></p> <p>Question:</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>The Applicant is asked to justify why a ‘buffer’ zone of 10m around a nest is likely to be sufficient in all circumstances and for all species. Have the views of Natural England been taken into account?</p> <p>Answer:</p> <p>The reference to the 10m ‘buffer zone’ has been included within Schedule 2 of the dDCO (APP-15/ Volume 3.1) in error during the drafting of the Order.</p> <p>The requirement will be re-drafted and included in the next iteration of the dDCO to reflect the position as presented within item J. para. 9.8.41. Chapter 9. Biodiversity (APP-54/ Volume 6.1):</p> <p><i>J. “avoiding disturbance to breeding birds by not undertaking vegetation clearance and structure demolitions during the bird breeding season (March to August inclusive). Where this is not possible measures necessary to avoid harm to birds and their nests will be implemented, as appropriate, under the supervision of the ECoW, with checks regularly carried prior to and during construction to identify any active nests of Schedule 1 bird species that may be at risk of disturbance”.</i></p>
33	Requirement 8 – Surface and foul water drainage	<p><i>Drafting requirements:</i></p> <p><i>any amendments ... would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement</i></p> <p>Question:</p> <p>The Applicant is asked to indicate how the demonstration of no materially new or materially worse adverse environmental effects might be made. (See also Q 4)</p> <hr/> <p>Answer:</p>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		Please see the response to Question 4 above.
34	Requirement 9 – Archaeological remains	<p><i>Drafting example:</i> <i>Sub-paragraphs (4)-(6) – Unidentified remains to remain in situ, no construction within 10m for 14 days</i></p> <p>Question: The usual approach would be to halt works in the area affected until provision has been made for the retention or recording in accordance with details that have been submitted and approved. Please could the Applicant explain why the process should be different here? It is doubtful whether 10m would always be a sufficient buffer and whether 14 days would be sufficient time for a LA to determine the importance of previously unidentified remains. Please could the Applicant explain why such provision is considered sufficient in this case. Should there be a right of appeal?</p> <p>Answer: In the event that any archaeological remains, not previously identified, are revealed during construction the proposed procedure of retaining the remains in situ and reporting the find to the relevant planning authority (e.g. the County Archaeologist) is appropriate (DCO Requirement 9 - Archaeological remains) (APP-15/ Volume 3.1)..</p> <p>The buffer of 10m should be considered as an absolute minimum to allow for appropriate recording to be undertaken. However, a larger buffer may be considered more appropriate in some situations. This larger buffer would be determined based on the location and the nature of the archaeological remains identified.</p> <p>Please see response to question 1.5 above regarding right of appeal in relation to discharge of requirements.</p>
35		<i>Drafting example:</i>

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
	Schedule 2 part 2 – procedure for discharge of requirements	<p><i>application has been made to a discharging authority for any consent</i></p> <p><i>the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks</i></p> <p><i>not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification at the end of that period)</i></p> <p>Question:</p> <p>Why do these articles differ from those dealing with discharge of requirements in Advice Note 15. The Applicant is asked to explain why its wording should be preferred.</p> <p>The undertaker may appeal in the event that- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to condition.</p> <p>Is this ‘guillotine measure’ imposed on the SoS appropriate?</p> <hr/> <p>Answer:</p> <p>Mr Evans, on behalf of the Applicant, confirmed at the first ISH on the dDCO on 22 May that the Applicant has a standard form of provisions for the discharge of requirements for all of its DCOs for RIS projects across the highway network.</p> <p>An appeal mechanism would not be appropriate because the SoS is the body from whom the Applicant is seeking consent and it would not be appropriate to appeal to the SoS, the normal appeal mechanism recommended in Advice Note 15.</p> <p>Please see also the response to Questions 1.4 and 1.5 above.</p>
36		Question:

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>The Relevant Representations indicate that National Grid, Cadent Gas, Esso, Network Rail, Western Power (‘WPD’) and HS2 all seek appropriate protective provisions within the dDCO and that this isn’t achieved in the current draft.</p> <p>Please could the parties indicate what progress is being made?</p> <p>Answer:</p> <p>The dDCO contains protective provisions (‘PPs’) for National Grid, Cadent Gas, WPD and Severn-Trent Water, as the statutory utilities affected, as well as affected electronic communications code operators. In both the cases of the statutory utilities and the electronic communications code operators, the Applicant considers that the PPs are appropriate. However, the Applicant acknowledges that some utilities have their own preferred forms of PPs, including those mentioned. In this case:</p> <ul style="list-style-type: none"> (a) The Applicant has reviewed National Grid’s and Cadent’s preferred PPs and commented. Discussions continue and will either result in a side agreement or a request to change the PPs. (b) WPD has indicated that its concerns mirror those on the Applicant’s A30 Chiverton to Carland Cross DCO scheme. As the A30 proposals are slightly further advanced than the M42 Scheme, negotiations on the PPs for the M42 Scheme have been put on hold so that they can be informed by, and where appropriate consistent with, those agreed for the A30 scheme. (c) Although it is not a statutory utility, Esso has infrastructure affected by the scheme, and has sent through a draft PP agreement, which is under negotiation between Esso and the Applicant. (d) The Applicant does not consider that Network Rail’s infrastructure will be affected in the way Network Rail apparently believes, and is seeking to understand its concerns better. It is not yet clear whether PPs will be appropriate. It may be that a separate agreement is more appropriate.

Number	DCO Article – No. and Title	Question or comments (and drafting example (where relevant))
		<p>(e) The Applicant has been in discussions with HS2 about how best to co-ordinate their respective works, and whether PPs are appropriate at this stage. It may be that a separate agreement is more appropriate.</p> <p>Please see also the response to Question 20 above.</p>

Appendix A: Letter from DfT to HE on Discharge of Requirements



Department
for Transport

Department for Transport
Zone 3/27
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: 020 7944 6344

Web Site: www.gov.uk/dft

9th June 2016

Dear Tim Reardan, Highways England General Counsel

Development Consent Order (DCO) Requirements Sign-Off Process

I am writing to confirm the agreed arrangements for how the Planning Act 2008 DCO Requirements sign-off will be handled between the Department for Transport and Highways England.

Under the Planning Act 2008 the Planning Inspectorate covers certain matters of detailed design within a project's DCO by setting out individual "requirements". There is a statutory need for discharge of these requirements by the promoter (Highways England) to be approved, or "signed off" by a competent authority. Subject to the rigorous, evidenced governance in the attached, DfT (Road Investment Strategy Client Division, Strategic Roads, Economics & Statistics) will provide the requirements sign-off function for Strategic Road Network DCO projects. I am writing on the issue of how Ministers assure themselves of compliance now as this has been recently raised by the Planning Inspectorate.

The process is designed to provide clear evidence and assurance, with third party corroboration, of discharge of requirements. Evidence of discharge will be set out in a succinct document, listing all relevant 3rd party consultation correspondence and documentation, together with copies or links to those documents.

Requirements are on matters RIS Client Division sponsors are fully familiar with in their current roles. As such, based on our discussions, the level of work for RIS

Client is expected to be low, in the order of 5 working days/project, and without the need for additional specialist skills. However, independent specialist technical consultants will be funded by Highways England in exceptional circumstances.

Two projects (A14 Cambridge to Huntingdon and M4 J 3-12) with requirements in need of sign-off are planned to proceed to made DCO in 2016, with none currently scheduled for 2017. As discussed, once the agreed process is underway, we will jointly review its working to ensure our approach is efficient and effective, and, taking forward programme into account, revise accordingly.

Paul Williams will act as the DfT key contact, providing oversight and co-ordination, the Highways England key contact is Mima Garland. The key contacts will be jointly responsible for ensuring that propriety guidance is adhered to, to avoid any allegations of bias in the decision making process.

Yours faithfully



DfT: Paul O'Sullivan (Director Strategic Roads)

CC:

Highways England:

Jim O'Sullivan
Peter Adams
David Brewer
Anna Daroy
Mike Wilson
Mark Bottomley
Martin Fellowes
Martin Clarke
Sally Keith
Mima Garland

DfT:

Jon Griffiths
Mike Boon
Andrew Brunning
Paul Williams

Attachments:

Propriety guidance
Process flowchart

Appendix B: Streets within Order Limits

List of Streets Within the Order Limits		
No.	Existing streets	Street Works Required
1	A45 Coventry Road (Eastbound)	Y
2	A45 Coventry Road (Westbound)	Y
3	B4102 Solihull Road	Y
4	B4438 Catherine-de-Barnes Lane	Y
5	Friday Lane	Y
6	B4102 Hampton Lane	Y
7	Unnamed Road (Access for Four Winds / Birmingham Dogs Home / Solihull Music School)	Y
8	Shadowbrook Lane	Y
9	St Peters Lane	Y
10	Clock Lane	Y
11	Clock Interchange	Y
12	B4438 Bickenhill Lane	Y
13	Airport Way connector road	Y
14	Unnamed Road (A45 Eastbound to Bickenhill Lane free flow link)	Y
15	Entrance to Arden Hotel off the A45 Eastbound	Y
16	Entrance to Esso Fuel Station off the A45 Eastbound	N
17	M42 Junction 6 Interchange / Bickenhill Interchange	Y
18	East Way	Y
19	South Way	Y
20	Pendigo Way	N
21	South Car Park Road	N
22	Middle Bickenhill Lane	Y
23	East Way Loop	N
24	A452 / A446 Interchange adjacent to Birmingham Business Park	N
Proposed new streets		
25	Proposed new M42 Junction 5A Northbound off slip	Y
26	Proposed new M42 Junction 5A Southbound on slip	Y
27	Proposed new Junction 5A eastern roundabout	Y
28	Proposed new Junction 5A Overbridge	Y
29	Proposed new Junction 5A western roundabout	Y
30	Proposed new Mainline Link Road	Y
31	Realigned B4438 Catherine-de-Barnes Lane	Y
32	Realigned Catherine-de-Barnes Lane	Y
33	Proposed new Barber's Coppice roundabout	Y
34	Proposed on slip to Mainline Link Road from Barber's Coppice Roundabout	Y
35	Proposed new Bickenhill roundabout	Y
36	Proposed off slip from Mainline Link Road to Bickenhill roundabout	Y
37	Proposed new road from Mainline Link Road to Airport Way connector road	Y
38	Proposed new free flow link from Mainline Link Road to A45 Westbound	Y
39	Proposed new free flow link from A45 Eastbound to M42 Northbound	Y
40	Proposed new free flow link from M42 Southbound to A45 Eastbound	Y

41	Proposed new off slip from M42 Southbound to new East Way roundabout	Y
42	Proposed new East Way roundabout	Y
43	Proposed new local access road from Barber's Coppice roundabout	Y

Appendix C: Lettered and Numbered Works

M42 JUNCTION 6 – DETAILED SCHEDULE 1 MATRIX

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
1. As shown on Sheet Nos. 1, 2, 3, 5, 6 and 7 of the Works Plans and being the improvement of the northbound and southbound carriageways of the M42 Motorway between Junctions 5 and 7 (approximately 8.35 kilometres in length), such works including:															
a. the alteration of 5 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 1 on Sheet Nos. 1, 5 and 6 of the Works Plans, including the installation of new signs, signals, sign illumination, control cabinets, power and communication cable connections;		✓			✓	✓				✓	✓			✓	✓
b. the construction of 6 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 3 on Sheet Nos. 1, 2 and 5 of the Works Plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections;	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓
c. the construction of 8 no. cantilever gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 4 on Sheet Nos. 1, 2 and 6 of the Works Plans, including the installation of new gantry foundations, gantry structures, earthwork retaining structures,	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
signs, signals, sign illumination, control cabinets, power and communication cable connections;															
d. the demolition of 6 no. portal gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 5 on Sheet Nos. 1, 2, 5 and 6 of the Works Plans, including the removal of the gantry foundations, gantry structures, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections;	✓	✓	✓	✓	✓	✓			✓	✓	✓			✓	✓
e. the demolition of 6 no. cantilever gantries above the M42 Motorway within the gantry siting locations shown as Gantry Type 6 on Sheet Nos. 1, 2 and 6 of the Works Plans, including the removal of the gantry foundations, gantry structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections;	✓	✓	✓	✓	✓	✓			✓	✓	✓			✓	✓
f. the construction of 1 no. emergency refuge area on the northbound carriageway at the locations shown on Sheet No. 2 of the Works Plans;	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓
g. the demolition of 3 no. emergency refuge areas on the northbound carriageway at the locations shown on Sheet Nos. 2 and 6 of the Works Plans; and	✓	✓	✓	✓	✓	✓			✓	✓	✓			✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
h. the demolition of 3 no. emergency refuge areas on the southbound carriageway at the locations shown on Sheet Nos. 2 and 6 of the Works Plans.	✓	✓		✓	✓	✓			✓	✓	✓			✓	✓
2. As shown on Sheet Nos. 4 and 5 of the Works Plans and being the improvement of the eastbound and westbound carriageway of the A45 from a point approximately 650 metres west of Clock Interchange to a point approximately 715 metres east of the M42 Junction 6 (approximately 2.4 kilometres in length), such works including:															
a. the alteration of 1 no. cantilever gantry above the westbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 2 on Sheet No. 4 of the Works Plans, including the installation of new signs, signals, sign illumination, control cabinets, power and communication cable connections;		✓			✓	✓				✓	✓			✓	✓
b. the construction of 2 no. cantilever gantries above the eastbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 4 on Sheet No. 4 of the Works Plans, including the installation of new gantry foundations, gantry structure, earthwork retaining structures, signs, signals, sign illumination, control cabinets, power and communication cable connections; and	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
c. the demolition of 1 no. portal gantry above the eastbound carriageway of the A45 within the gantry siting locations shown as Gantry Type 5 on Sheet No. 4 of the Works Plans, including the removal of gantry foundations, gantry structures, signs, signals, sign illumination, control cabinets, power and communication cable disconnections.	✓	✓	✓	✓	✓	✓			✓	✓	✓			✓	✓
3. As shown on Sheet No. 2 of the Works Plans and being the demolition of the existing Solihull Road Overbridge (approximately 65 metres in length) and the construction of a new Solihull Road Overbridge, a two lane single carriageway with a widened southern verge for future footway provision (approximately 110 metres in length). New overbridge required to facilitate slip roads to Junction 5A (Works Nos. 4 and 5). New overbridge will require Solihull Road to be raised on embankment to the east and west of the new overbridge structure for a distance of approximately 225 metres (east) and 325 metres (west) respectively.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
4. As shown on Sheet No. 2 of the Works Plans and being the construction of a new M42 off-slip road (approximately 850 metres in length) both in cutting and on embankment that diverges from the M42 and connects to the new Junction 5A of the M42 (Work No. 6), including the demolition of approximately 125 metres of existing sheet pile wall to accommodate the new off slip road.	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
5. As shown on Sheet No. 2 of the Works Plans and being the construction of a new M42 on-slip road (approximately 750 metres in length) both in cutting and on embankment that merges onto the M42 from the new Junction 5A of the M42 (Work No. 6).	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
6. As shown on Sheet No. 2 of the Works Plans and being the construction of a new Junction 5A of the M42, approximately 120 metres north of the proposed Solihull Road Overbridge (Work No. 3). Junction 5A to consist of a two lane eastern roundabout and a two lane western roundabout, both constructed on embankment. Roundabouts to be connected via a new Junction 5A overbridge (approximately 45m in length), featuring a two lane eastbound carriageway and a single lane plus hard shoulder on the western carriageway.	✓			✓		✓		✓	✓	✓	✓	✓	✓	✓	✓
7. As shown on Sheet Nos. 2, 3 and 4 of the Works Plans and being the construction of a new 2.4 kilometre dual carriageway mainline link on both embankment and in cutting connecting Junction 5A (Work No. 6) to Clock Interchange (Work No. 20). The new mainline link to include the construction of earthwork retaining structures and to necessitate the demolition of the residential property known as "Heath End House".	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
8. As shown on Sheet Nos. 2 and 3 of the Works Plans and being the construction of a new single lane on-slip road in cutting (approximately 690 metres in length) commencing at Barber's Coppice Roundabout (Work No. 12) and connecting to the	✓	✓		✓		✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
northbound carriageway of the proposed mainline link road (Work No. 7).															
9. As shown on Sheet No. 3 of the Works Plans and being the construction of a new two lane off-slip road (approximately 510 metres in length) in cutting commencing at the southbound carriageway of the new mainline link road (Work No. 7) and connecting to the proposed Bickenhill Roundabout (Work No. 14).	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
10. As shown on Sheet Nos. 3 and 4 of the Works Plans and being the construction of:															
a. a new single lane plus hard-shoulder northbound diverge (approximately 640 metres in length) in both cutting and on embankment from the mainline link road (Work No. 7) and joining the Airport Way connector road from the A45 Westbound (Work No. 19); and	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
b. a new field access to land severed by the construction of Work Nos. 7 and 10 identified as point 4/23 on Sheet 4 of the Streets, Rights of Way and Access Plans.	✓	✓	✓	✓		✓		✓		✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
11. As shown on Sheet No. 2 of the Works Plans and being the construction of the realigned two lane single carriageway B4438 Catherine-de-Barnes Lane (approximately 240 metres in length) in both cutting and on embankment, south of Barber's Coppice Roundabout (Work No. 12).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
12. As shown on Sheet No. 2 of the Works Plans and being the construction of a new two lane roundabout on embankment, to be known as Barber's Coppice Roundabout. Roundabout positioned to the east of the Birmingham Dog's Home facility, providing connections to the realigned B4438 Catherine-de-Barnes Lane (Works Nos. 11 and 13), the new single lane northbound on-slip road to the new mainline link road at Work No. 7 (Work No. 8) and existing properties on the western arm.	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓
13. As shown on Sheet Nos. 2 and 3 of the Works Plans and being the construction of the realigned two lane single carriageway B4438 Catherine-de-Barnes Lane (approximately 760 metres in length) in both cutting and embankment, connecting Barber's Coppice Roundabout (Work No. 12) with Bickenhill Roundabout (Work No. 14). New carriageway to include the construction of a new overbridge (approximately 82 metres in length) to be known as Catherine-de-Barnes South Overbridge, to provide a crossing of the new mainline link road (Work No. 7), south of the proposed realigned Shadowbrook Lane (Work No. 17). Construction of a new field access to land severed	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
by Work No. 7 as shown at point 3/38 on Sheet 3 of the Streets, Rights of Way and Access Plans.															
14. As shown on Sheet No. 3 of the Works Plans and being the construction of a new two lane roundabout in both cutting and on embankment, to be known as Bickenhill Roundabout. Roundabout positioned to the west of Bickenhill, providing connections to the realigned B4438 Catherine-de-Barnes Lane (Work No.13), the realigned Catherine-de-Barnes Lane (Work No. 15), the new two lane southbound off-slip road from the mainline link road (Work No. 9) and the realigned St Peters Lane (Work No. 18).	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓
15. As shown on Sheet No. 3 of the Work Plans and being the construction of the realigned two lane single carriageway Catherine-de-Barnes Lane (approximately 490 metres in length) in both cutting and on embankment, connecting Bickenhill Roundabout (Work No. 14) with the T Junction of Catherine-de-Barnes Lane and St Peters Lane (Work No. 16). Construction of a new field access to land severed by Work No. 7 as shown at point 3/49 on Sheet 3 of the Streets, Rights of Way and Access Plans.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
16. As shown on Sheet No. 3 of the Works Plans and being the construction of realigned new two lane single carriageway realigned Catherine-de-Barnes Lane (approximately 290 metres in length) and associated footway to the junction with Clock Lane. To include the construction of a new	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
overbridge, to be known as Catherine-de-Barnes North Overbridge, to provide a crossing of the new mainline link road (Work No. 7). Works to also include tie in works to the existing St Peters Lane access to the village of Bickenhill.															
17. As shown on Sheet No. 3 of the Works Plans and being the realignment of approximately 125 metres of Shadowbrook Lane to connect with the realigned B4438 Catherine-de-Barnes Lane (Work No. 13).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
18. As shown on Sheet No. 3 of the Works Plans and being the construction and realignment of approximately 50 metres of the southern section of St Peters Lane, including revised access points in order to connect to Bickenhill Roundabout (Work No. 14).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
19. As shown on Sheet No. 4 of the Works Plans and being the alteration of the existing Airport Way connector road linking the A45 Westbound to Airport Way, to accommodate the connection with the mainline link road at Work No. 10 and the closure of the dedicated free flow link from M42 Junction 6 to the Airport (Work No. 29).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
20. As shown on Sheet No. 4 of the Works Plans and being improvements to the existing Clock Interchange, including the upgrade of the junction from a two to a three lane interchange, the installation of traffic signals and alterations to the on-slip and off-slip roads to accommodate the new three lane junction arrangement. Works to also include the removal of the existing	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
footway (both approximately 85 metres in length) on the eastern and western structures of Clock Interchange.															
21. As shown on Sheet No. 4 of the Works Plans and being the construction of a new free flow link (approximately 762 metres in length) from the mainline link road (Work No. 7) on both embankment and in cutting to connect to the A45 Westbound carriageway, approximately 600 metres to the west of Clock Interchange. Free flow link road to diverge from the mainline link road approximately 150 metres to the south of Clock Interchange.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
22. As shown on Sheet No. 4 of the Works Plans and being the realignment of the existing single carriageway A45 Eastbound to Bickenhill Lane free flow link road (the realigned section of road to be approximately 390 metres in length, constructed on embankment and in cutting) to accommodate the realignment works to Bickenhill Lane North and South (Work Nos. 23 and 24).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
23. As shown on Sheet No. 4 of the Works Plans and being the alteration of the existing Bickenhill Lane carriageway from two lanes to three lanes northbound from Clock Interchange and associated tie in works to Bickenhill Lane Roundabout.	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
24. As shown on Sheet No. 4 of the Works Plans and being the alteration of the existing Bickenhill Lane carriageway from three lanes to four lanes southbound from Bickenhill Lane Roundabout to connect to Clock Interchange, including tie in works at Bickenhill Lane Roundabout and the removal of the existing segregated left turn lane onto the A45 Eastbound, with all four lanes to converge to a stop line at Clock Interchange.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
25. As shown on Sheet No. 5 of the Works Plans and being improvements to M42 Junction 6 Interchange and its associated on-slips and off-slips roads, including the upgrade of the M42 Northbound off-slip to four lanes from three lanes.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
26. As shown on Sheet Nos. 4, 5 and 6 of the Works Plans and being the construction of a new free flow single carriageway with hard shoulder link road (approximately 1610 metres in length) on both embankment and in cutting, connecting the A45 Eastbound and M42 Northbound.	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
27. As shown on Sheet No. 5 of the Works Plans and being the construction of a new free flow link road (approximately 750 metres in length) with single carriageway and hard shoulder on both embankment and in cutting, connecting the M42 Southbound to the A45 Eastbound.	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
28. As shown on Sheet Nos. 5 and 6 of the Works Plans and being the construction of a new two lane diverge slip road (approximately 635 metres in length) on embankment and in cutting from the M42 Southbound, connecting to the relocated East Way Roundabout (Work No. 30).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
29. As shown on Sheet No. 5 of the Works Plans and being the closure of the dedicated single lane free flow link from M42 Junction 6 Northbound to Airport Way.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
30. As shown on Sheet No. 5 of the Works Plans and being the construction of the new East Way Roundabout, such works to include:															
a. the removal of the existing East Way Roundabout and its associated connection from the M42 Southbound Diverge; and	✓	✓	✓	✓	✓	✓		✓		✓	✓			✓	✓
b. the construction of a new East Way Roundabout on embankment to accommodate the new southbound diverge arrangement (Work No. 28). Works to include the realignment of, and associated tie in works for, each spur of the East Way carriageway and the private means of access to land south of East Way. East Way Roundabout to be relocated approximately 115 metres north west of the existing East Way Roundabout and 80 metres to the east of the existing East Way Overbridge.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
31. As shown on Sheet No. 5 of the Works Plans and being the alteration of Middle Bickenhill single lane one way egress to a single lane two way access and egress arrangement to maintain connectivity to Middle Bickenhill.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
32. As shown on Sheet No. 2 of the Works Plans and being the installation of drainage attenuation and treatment systems to the south east of the new Junction 5A (Work No. 6) to accommodate the undertaker's assets. Works to include the removal of an existing underground storage tank, the installation of a new underground storage tank with filter media, a pump station, swales and a reed bed system to provide attenuation and treatment. A new access track will be constructed off Solihull Road to the east of the existing properties to enable access to the proposed attenuation and treatment facilities for maintenance purposes between points 2/1 and 2/2 on Sheet 2 of the Streets, Rights of Way and Access Plans.		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
33. As shown on Sheet No. 2 of the Works Plans and being the installation of drainage attenuation and treatment systems to the north west of the new Junction 5A (Work No. 6) to accommodate the undertaker's assets. Works to include the installation of an underground storage tank, pump station, reed bed and swale to provide attenuation and treatment. Access for maintenance to be constructed off the Public Right of Way M123 by approximately 385 metres between points 2/7 and 2/3		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
as shown on Sheet 2 of the Streets, Rights of Way and Access Plans.															
34. As shown on Sheet No. 2 of the Works Plans and being the installation of an attenuation system adjacent to Barber's Coppice Roundabout (Work No. 12) to accommodate Solihull Metropolitan Borough Council assets. Works to include the installation of an underground storage tank to provide attenuation and treatment.		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
35. As shown on Sheet No. 3 of the Works Plans and being the installation of drainage attenuation and treatment systems south of Clock Interchange and adjacent to Catherine-de-Barnes North Overbridge to accommodate Solihull Metropolitan Borough Council assets. Works to include the installation of an underground storage tank and swales to provide attenuation and treatment. Access for maintenance to be provided off the T-junction of St Peters Lane and the realigned Catherine-de-Barnes Lane (Work No. 16).		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
36. As shown on Sheet No. 4 of the Works Plans and being the installation of drainage attenuation and treatment systems to the South West of Clock Interchange (Work No. 20) to accommodate the undertaker's assets. Works to include the installation of an underground storage tank with filter media, pump station and swales to provide attenuation and treatment.		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
37. As shown on Sheet No. 5 of the Works Plans and being the installation of drainage attenuation and treatment systems to the North East of Junction 6 to accommodate the undertaker's assets. Works to include the installation of a reed bed and swales to provide attenuation and treatment. Access for maintenance to be provided to the east of the proposed East Way Roundabout (Work No. 30(b)).		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
38. As shown on Sheet No. 2 of the Works Plans and being the construction of an accommodation bridge (approximately 30 metres in length) across the new mainline link road for the redirected public right of way (Work No. 46).	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
39. As shown on Sheet No. 4 of the Works Plans and being the construction of a Pedestrian Overbridge (approximately 60 metres in length) across the A45.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
40. As shown on Sheet No. 4 of the Works Plans and being the construction of a pedestrian underpass (approximately 20 metres in length) and an associated footway/cycleway ramp (approximately 230 metres in length in total) to the east of the pedestrian underpass, to maintain connectivity on the Airport Way connector road.	✓		✓	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
41. As shown on Sheet No. 2 of the Works Plans and being the construction of a pedestrian footpath (approximately 440 metres in length) commencing at Barber's Coppice Roundabout (Work No. 12) and connecting to Public Rights of Way M122 and M123, approximately 75 metres east of the proposed Accommodation Bridge (Work No. 38).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
42. As shown on Sheet No. 2 of the Works Plans and being the construction of a pedestrian footpath (approximately 25 metres in length) on the west of Barber's Coppice Roundabout (Work No. 12) in order to connect the pedestrian footpath at Work No. 41 with the existing Catherine-de-Barnes footway adjacent to Birmingham Dogs Home.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
43. As shown on Sheet No. 3 of the Works Plans and being the construction of a new footway/cycleway (approximately 500 metres in length) on the northbound carriageway of the realigned B4438 Catherine-de-Barnes Lane (Work No. 13).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
44. As shown on Sheet No. 4 of the Work Plans and being the construction of a footway/cycleway (approximately 350 metres in length) to provide a connection between the existing footway/cycleway at Clock Lane and Catherine-de-Barnes Lane and the proposed Pedestrian Underpass (Work No. 40) and Airport Way connector road (Work No. 19).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
45. As shown on Sheet No. 4 of the Works Plans and being the construction of a footway/cycleway (approximately 400 metres in length) adjacent to the proposed A45 Westbound carriageway free flow link road (Work No. 21) and connecting to the footway/cycleway routes at the Pedestrian Underpass (Work No. 40) and the Airport Way connector road (Work No. 19).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
46. As shown on Sheet No. 2 of the Works Plans and being works to stop up the existing section of Public Right of Way M123 (approximately 120 metres in length) and redirected across the proposed Accommodation Bridge (Work No. 38).			✓					✓		✓	✓				✓
47. As shown on Sheet No. 2 of the Works Plans and being works to stop up the existing section of Public Right of Way M122 (approximately 370 metres in length). East to west connectivity to be maintained via proposed footway to Barber's Coppice Roundabout (Work No. 41).			✓							✓	✓				✓
48. As shown on Sheet No. 3 of the Works Plans and being works to stop up the existing section of Public Right of Way M113 (approximately 130 metres in length). Public Right of Way M113 to be reconnected to the realigned B4438 Catherine-de-Barnes Lane (Work No. 13) via the new Private Means of Access to the west of the new mainline link road (Work No. 54).			✓							✓	✓				✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
49. As shown on Sheet No. 3 of the Works Plans and being works to stop up the existing Public Right of Way M113a (approximately 600 metres in length). Access to the B4438 Catherine-de-Barnes Lane to be maintained via Public Right of Way M113 and the new Private Means of Access to the west of the new mainline link road (Work No. 54).			✓							✓	✓				✓
50. As shown on Sheet No. 3 of the Works Plans and being works to stop up the existing section of Public Right of Way M112 (approximately 190 metres in length). Public Right of Way M112 to be reconnected to the realigned Catherine-de-Barnes Lane (Work No. 16) via the new Private Means of Access to the west of the new mainline link road (Work No. 54).			✓							✓	✓				✓
51. As shown on Sheet No. 3 of the Works Plans and being works to stop up the existing section of Public Right of Way M109 (approximately 100 metres in length). Public Right of Way M109 to be reconnected to the realigned Catherine-de-Barnes Lane (Work No. 16) via the new Private Means of Access to the west of the new mainline link road (Work No. 54).	✓	✓	✓							✓	✓				✓
52. As shown on Sheet No. 3 of the Works Plans and being works to stop up the existing footway/cycleway situated on Catherine-de-Barnes Lane (approximately 560 metres in length).	✓	✓	✓	✓		✓				✓	✓				✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
53. As shown on Sheet No. 4 of the Works Plans and being works to realign the existing Public Right of Way M106 (approximately 386 metres in length) due to the construction of the new mainline link road (Work No. 7) and to connect to the existing Airport Way connector road (Work No. 19).	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓		✓
54. As shown on Sheet Nos. 2 and 3 of the Works Plans and being the construction of:															
a. a new classified road off Barber's Coppice Roundabout (Work No. 12) to maintain local access; and	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
b. a new Private Means of Access and Public Right of Way running to the west of the new mainline link road (Work No. 7) to provide access to the Warwickshire Gaelic Athletic Association facilities (Work No. 75) and adjacent land. The Private Means of Access will be split at a point just north of the existing Warwickshire Gaelic Athletic Association facilities. The Public Right of Way will be continuous in order to mitigate any severance of Public Rights of Way M109, M112 and M113.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
55. As shown on Sheet No. 2 of the Works Plans and being the diversion of a local high pressure gas main due to the construction of the slip roads to the new Junction 5A of the M42 (Works Nos. 4 and 5).		✓	✓		✓	✓		✓	✓	✓	✓	✓	✓		✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
56. As shown on Sheet Nos. 2 and 3 of the Works Plans and being the diversion of a local high pressure gas main (approximately 885 metres in length) due to the construction of the new mainline link road (Work No. 7) and on-slip from Barber's Coppice Roundabout (Work No. 8).			✓		✓	✓		✓	✓		✓	✓	✓		✓
57. As shown on Sheet Nos. 4 and 5 of the Works Plans and being the diversion of a local high pressure gas main due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
58. As shown on Sheet Nos. 4 and 5 of the Works Plans and being the removal or relocation of a Gas Governor situated off the North West Quadrant of Junction 6 of the M42 due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
59. As shown on Sheet No. 4 of the Works Plans and being the diversion of a medium pressure gas main due to the construction of the new free flow link road from the new mainline link road at Work No. 7 to the A45 Westbound carriageway (Work No. 21).	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
60. As shown on Sheet No. 4 of the Works Plans and being the diversion of a medium pressure gas main due to the construction of the A45 Pedestrian Overbridge and its associated ramps (Work No. 39).	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
61. As shown on Sheet No. 4 of the Works Plans and being the diversion of a medium pressure gas main due to the construction of the A45 Eastbound to M42 Northbound free flow link (Work No. 26).	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
62. As shown on Sheet No. 2 of the Works Plans and being the diversion of an aqueduct pipeline running east/west to the south of the A45 corridor, due to the construction of the new mainline link road (Work No. 7), the proposed pedestrian underpass (Work No. 40) and the new single lane plus hard-shoulder northbound diverge from the new mainline link road (Work No. 10), connecting to the Airport Way connector road from the A45 Westbound to Airport Way (Work No. 19).			✓	✓	✓	✓		✓	✓		✓	✓	✓		✓
63. As shown on Sheet No. 4 of the Works Plans and being the diversion of an aqueduct pipeline running east/west to the south of the A45 corridor, due to the construction of the new mainline link road (Work No. 7), the proposed pedestrian underpass (Work No. 40) and the new single lane plus hard-shoulder Northbound diverge from the new mainline link road (Work No. 10), connecting to the Airport Way connector road from the A45 Westbound to Airport Way (Work No. 19).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
64. As shown on Sheet Nos. 4 and 5 of the Works Plans and being the diversion of 132kV underground electricity cables and associated infrastructure due to the construction of the proposed A45 Eastbound to M42 Northbound free flow link road (Work No. 26).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
65. As shown on Sheet No. 4 of the Works Plans and being the diversion of 132kV underground electricity cables and associated infrastructure due to the construction of the proposed A45 Eastbound to M42 Northbound free flow link road (Work No. 26).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
66. As shown on Sheet No. 2 of the Works Plans and being the construction of a reinforced cover slab for the existing fuel line due to the realignment of the B4438 Catherine-de-Barnes Lane (Work No. 11).	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓
67. As shown on Sheet No. 5 of the Works Plans and being works to extend the existing culvert for the Hollywell Brook running underneath the M42 corridor north of Junction 6 to be extended approximately 8 metres to the west and 33 metres to the east respectively due to the works associated with the A45 Eastbound and the M42 Northbound free flow link road (Work No. 26) and the M42 Southbound to A45 Eastbound free flow link road (Work No. 27) and the two lane diverge to the proposed East Way Roundabout (Work No. 28).	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
68. As shown on Sheet Nos. 2 and 3 of the Works Plans and being alterations to the existing Warwickshire Gaelic Athletic Association facilities known as Páirc na hÉireann, including the provision of reconfigured sports pitches.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
69. As shown on Sheet Nos. 3 and 4 of the Works Plans and being the construction of a site compound situated on land to the south of the A45 corridor between Clock Interchange and the M42 Junction 6.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
70. As shown on Sheet No. 2 of the Works Plans and being the construction of a temporary two lane single carriageway connecting Solihull Road to the new Junction 5A of the M42 (Work No. 6), to retain connectivity during demolition works to the existing Solihull Road Overbridge (Work No. 3).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
71. As shown on Sheet No. 3 of the Works Plans and being the construction of a temporary two lane single carriageway to the east of the existing B4438 Catherine-de-Barnes Lane to retain connectivity during the construction of the realigned B4438 Catherine-de-Barnes Lane and associated structures (Work No. 13). Works shall also require a temporary realignment of access to Shadowbrook Lane.	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
72. As shown on Sheet No. 3 of the Works Plans and being the construction of a temporary two lane single carriageway to the north of the proposed Catherine-de-Barnes North Overbridge (Work No. 16) to retain connectivity during the construction of the realigned Catherine-de-Barnes Lane and associated structures (Work No. 13).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
73. As shown on Sheet Nos. 3 and 4 of the Works Plans and being the construction of a temporary two lane single carriageway to the east of the existing B4438 Catherine-de-Barnes Lane to enable the construction of the new mainline line road (Work No. 7) and maintain connectivity during the construction of the realigned Catherine-de-Barnes Lane and associated structures (Work No. 13).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
74. As shown on Sheet No. 5 of the Works Plans and being the construction of a temporary realignment of the access to the National Exhibition Centre along South Way during the construction of the A45 Eastbound to M42 Northbound free flow link underpass (Work No. 26).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
75. As shown on Sheet No. 5 of the Works Plans and being the construction of a temporary realignment of the egress from the National Exhibition Centre on South Way during the construction of the A45 Eastbound to M42 Northbound free flow link underpass (Work No. 26).	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓

Work No	Additional elements in connection with the construction of any of those works														
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o
76. As shown on Sheet No. 3 of the Works Plans and being the installation of a pumped system to mitigate for the loss of surface water catchment area to the Bickenhill Meadows SSSI – Shadowbrook Meadows unit. Works to feature collection drains and chambers, a pump station and a pressured pipeline to feed replacement water to an appropriate water feature in the vicinity of the SSSI.	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓