

M25 junction 28 improvement scheme

TR010029

9.109 Applicant's comments on the ExA's proposed schedule of changes to the draft DCO

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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M25 junction 28 scheme

Development Consent Order 202[x]

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1. Introduction

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to the Examining Authority's (ExA) schedule of recommended amendments to the Applicant's draft DCO, revision 6 (PD-021)

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
1.	<p>Part 3, Article 13(1) and (2)</p> <p>Temporary closure, alteration, diversion and restriction of use of streets</p>	<p><i>"The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street and may for any reasonable time-"</i></p> <p><i>(1) "Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits as a temporary working site."</i></p>	No changes proposed.	While the ExA acknowledges the term "use of any street" is a broad one, the ExA is satisfied that such power is constrained by paragraph (4) in which the consent of the street authority is required. Little evidence is before the ExA to suggest that in practice, the Applicant would utilise the power on more roads than it needed. On that basis, the ExA does not propose to change the paragraphs as recommended by IPs.	No comment.
2.	<p>Part 3, Article 13(6)</p> <p>Temporary closure, alteration, diversion and restriction of use of streets</p>	<p><i>(6) "If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is made, it is deemed to have granted consent".</i></p>	<p><i>(6) "If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days 42 days beginning with the date on which the application is made, it is deemed to have granted consent".</i></p>	The ExA accepts that previous Orders cited by the Applicant have made similar provisions for 28-day notice periods. However, the ExA is mindful that the Covid-19 pandemic has placed additional pressures on all organisations including local authorities. While the ExA considers 56-days to be overly long, the ExA is recommending an additional two weeks be added as a goodwill and reasonable gesture during these times. Little evidence is before the ExA to suggest that the recommended additional period would cause any serious bearing on the timely delivery of the Proposed Development.	Highways England would maintain its position that a 28-day determination period is sufficient and is standard practice for a DCO. While Highways England appreciate that the Covid-19 pandemic has placed pressures on organisations, most organisations are returning to normal and have adapted to new ways of working. An additional 14 days to this period could cause unnecessary delay to the programme and result in significant additional expense being incurred.
3.	<p>Part 3, Article 18(2)(c)</p> <p>Traffic regulation</p>	<p><i>(c) "Authorise the use as a parking place of any road".</i></p>	[DELETE]	The ExA notes the Applicant's response to Action Point 2 [REP4-026] to Issue Specific Hearing 2 [EV-010]. However, the ExA remains provisionally unconvinced that this power is necessary given that it is intended that operative parking would take place on site. The ExA recommends the power is deleted.	Highways England accepts this change.

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
4.	Part 3, Article 18(11) Traffic regulation	<i>(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.</i>	<i>(11) If the traffic authority fails to notify the undertaker of its decision within 28 days 42 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.</i>	See response to Point 2.	Please see response to point 2.
5.	Part 4, Article 19(9) Discharge of water	<i>(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.</i>	<i>(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days 42 days of receiving an application that person will be deemed to have granted consent or given approval, as the case maybe.</i>	See response to Point 2.	Please see response to point 2.
6.	Part 4, Article 22(2) Authority to survey and investigate the land	<i>(2) "No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land".</i>	No change proposed.	The ExA is not persuaded that 14 days' notice would be insufficient to notify persons with an interest in the land.	No comment.
7.	Part 5, Article 35(2) Temporary use of land for the carrying out the authorised development	<i>(2) "Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for entry in respect of land specified under paragraph (1)(a)(ii)".</i>	No changes proposed.	See response to Point 6.	No comment.
8.	Schedule 2, Requirement 3(1) Detailed design	<i>(2) "The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following</i>	<i>(2) "The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by</i>	The ExA has expressed in written questions [PD-008] and further written questions [PD-015] as well as at ISH1 [EV-009] and ISH3 [EV-038] its concerns with the design aspect of the scheme, particularly the bridges and structures. The	Highways England has explained its position on this matter, most recently at some length in REP7-028 explaining why, in its opinion, an independent design review is not necessary in this case.

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
		<p><i>consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function..."</i></p>	<p><i>the Secretary of State, following <u>an independent design review and a report on its findings on the design of the bridges and structures and</u> consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function..."</i></p>	<p>ExA has noted the applicant's response. In particular the ExA notes the Applicant's Design Process Summary document submitted at Deadline 7 [REP7-028]. This document sets out the Applicant's reasoning for the design approach taken during the early design stages.</p> <p>The Applicant does not give any further explanation in this document of the design process undertaken to secure the best possible aesthetic appearance but does reiterate points made in previous submissions to support the design decisions that they have made. The additional information submitted by the Applicant at Deadline 7 does not provide additional information sufficient to alter the ExA's initial view that in order to fully comply with paragraphs 4.28, 4.29, 4.32, 4.33 and 4.35 of the National Policy Statement on National Networks, the SoS should have evidence that the bridges and structures have been subjected to an independent design review process prior to determining their acceptability in design terms.</p> <p>For this reason and to allow flexibility, the ExA proposes to retain the words "compatible with". Should the ExA not proceed with the recommendation that the bridge and structure designs be subjected to an independent design review, or that the SoS deems it as unnecessary, then the ExA will recommend that "compatible with" be replaced with "in accordance with", which the</p>	<p>Accordingly, Highways England does not consider that this proposed change is necessary.</p> <p>In regards to the point about what design processes have been undertaken to secure the best possible aesthetic appearance for the structures, the design team has worked closely and collaboratively with the environment team to ensure the best structural appearance consistent with the location and other relevant constraints has been developed. This has ensured that they are fit for purpose and sustainable and that they represent a balance between structural integrity, ensuring they are functional and cost efficient while taking account of their environmental impacts.</p> <p>Highways England's design standards were used to develop the aesthetic appearance of the structures. The design process followed is described in detail in these documents. The standards used were BA 41/98 'The Design and Appearance of Bridges' and the Highways Agency publication 'The Appearance of Bridges and Other Highway Structures'. These standards were superseded in 2020 by CD 351 'The design and appearance of highway structures' after the preliminary design had been prepared. However, the guiding principles remain true and validate the design approach taken.</p> <p>As described in section 5 of REP7-028, the design has been subjected to numerous reviews from stakeholders, landscape experts and independent technical reviewers and as the Scheme is not located in a</p>

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
				ExA considers represents affirmative wording.	sensitive area, Highways England does not think an independent design review of the structures is necessary.
9.	Schedule 2, Requirement3(2) Detailed design	<i>(2) "Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by member so of the public".</i>	<i>(2) "Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form online for inspection by member so of the public".</i>	In written question DCO 1.30 [PD-008] the ExA requested that Requirement 17 be amended so the "electronic form" was replaced with "online" as the former did not necessarily mean the latter. The Applicant duly obliged. The recommended change here follows the same reasoning.	Highways England accepts this change.
10.	Schedule 2, Requirement4(1) Construction Environmental Management Plan	<i>(1) "No part of the authorised development is to commence until a CEMP, substantially in accordance with the Outline CEMP..."</i>	<i>(1) "No part of the authorised development is to commence until a CEMP, substantially in accordance with the Outline CEMP..."</i>	The ExA is concerned with the term "substantially in accordance" as expressed in WQ1 DCO 1.26 [PD-008]. The ExA considers the term is imprecise because "substantial" is not defined and is subjective and could mean anything from, for example, 99% to 51% accordant. There is a possibility that the CEMP could resemble a different document to its outline counterpart, with the potential for measures to have been previously unassessed or examined. The recommended change would provide this certainty to all parties concerned.	Highways England maintains the position set out in paragraph DCO 1.26 of the Response to ExA Written Questions (REP2-011) in that the use of the term "substantially in accordance with" in requirement 4 of the draft DCO is both proportionate and precedented. The use of the term 'substantially' provides Highways England with a proportionate level of flexibility, which is necessary and appropriate in the delivery of complex major infrastructure projects. It is also in the public interest that Highways England is provided with a degree of flexibility, within the envelope of the environmental statement, to construct the Scheme in the most appropriate manner. The wording at Schedule 2, requirement 4 of the draft DCO has become standard for recently consented Highways England development consent Orders (see, for example, Schedule 2, requirement 4(4) of the M42 Junction 6 Development Consent Order 2020, Schedule 2, requirement 4(1) of the A63 (Castle Street

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
					<p>Improvement, Hull) Development Consent Order 2020, and Schedule 2, requirement 4(6) of the A303 (Amesbury to Berwick Down) Development Consent Order 2020) and requirement 3(2) (A303 Sparkford to Ilchester Dualling Development Consent Order 2021).</p> <p>The ExA will recall that this matter has arisen previously and Highways England set out in position at some length including by reference to the Secretary of State's decision letter following the examination into The A1 Birtley to Coal House DCO 2021, which included his view on the use of the "substantially". Document REP5-042 refers at paragraph REP4-029-04.</p>
11.	<p>Schedule 2, Requirement 4(2)</p> <p>Construction Environmental Management Plan</p>	<p>(2) "The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must reflect the mitigation measures set out in the REAC..."</p>	<p>"The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must reflect is in accordance with the mitigation measures set out in the REAC..."</p>	<p>See response 10, which is considered to equally apply to the term "must reflect/reflecting".</p>	<p>Highways England believe that the term "reflect" is appropriate and that the term 'in accordance with' is not appropriate in this instance given that the details of the mitigation measures outlined within the REAC are still to be determined through the detailed design stage.</p>
12.	<p>Schedule 2, Requirement 5(2)</p> <p>Landscaping</p>	<p>(2) "The landscaping scheme and LEMP must reflect the mitigation measures set out in the REAC and be substantially in accordance with the Preliminary Environmental Design and the Outline LEMP".</p>	<p>(2) "The landscaping scheme and LEMP must reflect be in accordance with the mitigation measures set out in the REAC and be substantially in accordance with the Preliminary Environmental Design and the Outline LEMP".</p>	<p>See response to Point 11</p>	<p>See response to points 10 and 11 above.</p>
13.	<p>Schedule 2, Requirement 5(3)(g)</p> <p>Landscaping</p>	<p>(g) "; and a permanent visual screening fence to be installed and planting to be undertaken in the interests of the visual amenity of the residents of Grove Farm".</p>	<p>[DELETE]</p>	<p>See response to Point 21</p>	<p>See response to point 21 below.</p>

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
14.	Schedule 2, Requirement5(4) Landscaping	<p>(4) "All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice".</p>	<p>(4) "All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice <u>which must first be agreed by the Secretary of State</u>".</p>	<p>The Applicant has not advanced the "other recognised codes of good practice" in evidence in this Examination. The ExA considers that unchecked, these other codes could well be inferior to the British Standards. The ExA recommends that if the Applicant intends on using other codes, they must first be agreed by the SoS to ensure that such other codes are appropriate.</p>	<p>Highways England maintains that the wording of requirement 5(4) (Landscaping) does not require amendment. The purpose of the wording is not to enable inferior codes to be followed but is to ensure all the appropriate codes/standards are adhered to. Alongside the British Standards it might also be necessary to work in accordance with guidance provided by industry associations. This guidance would not replace the use of British Standards but would be in addition to them where required.</p> <p>Moreover, as set out in Highways England's response to written question DCO1.29, the wording of requirement 5(4) of the draft DCO is well precedented, having been accepted by the Secretary of State previously and now being standard wording in numerous recently made DCOs.</p>
15.	Schedule 2, Requirement8(1) Surface and foulwater drainage	<p>(1) "No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC..."</p>	<p>(1) "No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the <u>in accordance with the</u> mitigation measures set out in the REAC..."</p>	<p>See response to Point 11</p>	<p>See response to point 11 above.</p>
16.	Schedule 2, Requirement9(2) Archaeological remains	<p>(2) "The Archaeological Management Plan must be substantially in accordance with..."</p>	<p>(2) "The Archaeological Management Plan must be substantially in accordance with..."</p>	<p>See response to Point 10.</p>	<p>See response to point 10 above.</p>
17.	Schedule 2, Requirement10(2) Traffic management	<p>(1) "No part of the authorised development comprising the construction, alteration or improvement of the M25 or</p>	<p>(1) "No part of the authorised development comprising the construction, alteration or improvement of the M25 or</p>	<p>Capital letters replacing the lowercase to be consistent with other Requirements where plans are mentioned.</p>	<p>As a traffic management plan is yet to be produced, the use of lower case in this instance is correct. However, it is the case that some references to future plans in the</p>

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
		<i>A12 is to commence until a traffic management plan for that part..."</i>	<i>A12 is to commence until a traffic management plan Traffic Management Plan for that part..."</i>		requirements use capital letters wrongly and this has been corrected in the draft of the DCO submitted at deadline 8
18.	Schedule 2, Requirement 10(2) Traffic management	<i>(2) "The traffic management plan prepared under sub- paragraph (1) must be substantially in accordance with the Outline Traffic Management Plan and reflect the relevant mitigation measures set out in the REAC".</i>	<i>(2) "The traffic management plan Traffic Management Plan prepared under sub- paragraph (1) must be substantially in accordance with the Outline Traffic Management Plan and reflect the relevant mitigation measures set out in the REAC".</i>	See responses to Points 11 and 16.	See response to points 11 and 16 above.
19.	Schedule 2, Requirement 11(2) Trees	<i>(2) "The Arboricultural Method Statement must be substantially in accordance with the Outline Arboricultural Method Statement and reflect the relevant mitigation measures set out in the REAC".</i>	<i>(2) "The Arboricultural Method Statement must be substantially in accordance with the Outline Arboricultural Method Statement and reflect the relevant mitigation measures set out in the REAC".</i>	See response to Point 11.	See response to point 11 above.
20.	Schedule 2, Requirement 19 Details of consultation	<i>"In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days for any response..."</i>	<i>"In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days 42 days for any response..."</i>	See response to Point 2. The ExA does not consider that any change made to this Requirement would have any bearing on Schedule 2, Requirement 15(1). However, the ExA would welcome the Applicant's opinion on this should the ExA decide to recommend this change to the SoS.	Please see response to point 2 above. Highways England agree that this change would not have any bearing on requirement 15(1)
21.	Schedule 2, NEW REQUIREMENT Grove Farm	N/A	<i><u>"No part of the authorised development is to commence until a site specific plan for Grove Farm, which sets out mitigation measures including bespoke planting and a visual screen, and a scheme for post-construction noise monitoring to determine whether an acoustic screen would be required, has been submitted to and approved in writing by the Secretary of</u></i>	The Applicant will be aware that the ExA remains concerned regarding the potential visual and noise effects the proposed development would have on the occupiers of Grove Farm. In respect of visual effects, the Application [APP-072 and REP5-007] current proposes planting along the boundary between Grove Farm and Work No.2 Change Request 8, submitted at Deadline 7 [REP7-002, REP7-	Highways England 's view is that a requirement to have approved a site-specific plan for Grove Farm would not be appropriate. Highways England has already put forward specific arrangements for Grove Farm in proposed change 8 and they will therefore be subject to scrutiny in the examination assuming the change is accepted.

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
			<p><u>State in consultation with Transport for London and the London Borough of Havering. The authorised development must be carried out in accordance with the approved site-specific plan for Grove Farm”.</u></p>	<p>028 and REP7-029] also proposes realigning the current egress road from Grove Farm as well as the provision of a visual fence.</p> <p>However, even if Change Request 8 were to be accepted into the Examination, nothing in the draft DCO compels the Applicant to undertake these works. The changes made to the draft DCO Requirement 5(3)(g) submitted at Deadline 7 does not alter our concerns in respect to guaranteed delivery of such measures.</p> <p>The ExA also remains concerned regarding peak noise levels and their potential effects. The ExA is provisionally not persuaded that it has sufficient evidence to suggest the provision of a noise barrier is unjustified because it has no evidence on what peak noise levels would be from future traffic using Work No.2, and their potential effects to the occupiers of Grove Farm.</p> <p>The ExA is of the view that an additional Requirement is necessary. This would require a bespoke plan of action for Grove Farm including additional noise monitoring to determine whether an acoustic fence would be required to mitigate peak noise levels.</p>	<p>Further the ExA has already scrutinised the position as regards Grove Farm and Highways England has endeavoured to provide the ExA with full answers to all of its questions both in writing and at the hearings. This evidence has included information about peak noise levels from traffic using the new A12 eastbound off slip (Work No.2) and why an acoustic barrier would not be effective or an appropriate use of public funds. See Highways England's summary of its case at ISH3 in REP7- 018 in particular as regards Agenda Item 3.2 (paragraphs 4.1.8 to 4.1.15).</p> <p>It is not therefore necessary for this process to in effect be repeated at a later stage under the requirements and nor would it be appropriate for there to be an obligation to carry out post construction noise monitoring in view of the detailed technical assessment work already carried out. There will however be noise monitoring at Grove Farm throughout the construction phase as explained in Highways England's summary of its case at ISH3 (REP7- 018) and as will be set out in an updated version of the outline DNNMP.</p> <p>There is security that the relevant measures proposed by Highways England for the benefit of Grove Farm will be delivered.</p> <p>The revised egress onto the A12 off slip is shown on the revised works plans, the revised scheme layout plans and in the revised engineering drawings and sections – see REP7-030, Appendices B, C and D. It will therefore be carried through into the detailed design. The revised planting</p>

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
					and the visual screen are both shown on the revised version of the preliminary environmental design (REP7-030, Appendix E). These elements will thereby be carried through into the landscaping scheme and Landscaping and Ecology Management and Monitoring Plan (LEMP) under requirement 5.
22.	Schedule 2, NEW REQUIREMENT Maylands GolfCourse	N/A	<p><u>“No part of the new loop road forming Work No 6 shall be used until Work No. 32 has been completed to the satisfaction of the Secretary of State”.</u></p>	<p>As it currently stands, there is nothing in the draft DCO which compels the Applicant to carry out the realignment works to Work No. 32 Maylands Golf Course as shown in Change Request 7 [REP6-002, REP6-022 and REP6-023]. The recommended change would rectify issue.</p> <p>The ExA notes the Applicant's Deadline 7 response to Action Point 9 [REP7-019] to ISH3 [EV-038] in which it is hoped that this matter would be dealt with by a private agreement. However, should such an agreement not be in place by the close of the Examination, the ExA considers such a Requirement should be inserted for the reasons given above, on a proviso that the ExA could remove it in our recommended DCO to the SoS if the agreement were signed before the close of the Examination, or that the SoS remove it prior to them making their decision.</p>	<p>Highways England accepts the inclusion of a requirement regarding Work No. 32 and proposed the following wording at Deadline 7 (REP7-019).</p> <p><i>Accommodation works to provide replacement facilities for Maylands Golf Course forming Work No. 32 must be undertaken prior to the opening to traffic of the new loop road forming Work No. 6.</i></p> <p>Highways England suggests a refinement of these words to state that:</p> <p><i>Accommodation works to provide replacement facilities for Maylands Golf Course forming Work No. 32 must be undertaken and available for use prior to the opening to traffic of the new loop road forming Work No. 6.</i></p> <p>Highways England does not believe it is appropriate or practicable for the Secretary of State to give his approval under the requirement.</p>
23.	Schedule 2, NEW REQUIREMENT Code of ConstructionPractice	N/A	<p><u>“No part of the authorised developments shall commence until a Code of Construction Practice has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London and relevant planning authorities. The</u></p>	<p>The ExA considers that notwithstanding the responses provided by the Applicant to Written Question GQ 1.6 [REP2-011] and the discussion at ISH 3 [EV-038], the ExA is of the view that the scheme would benefit from a single document to deal with construction</p>	<p>Highways England maintain its position that a CoCP is not necessary as the requisite information is provided within the Outline CEMP (REP5-027) and, REAC (REP5-028).</p>

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			<u>development shall be carried out in accordance with those approved details”.</u>	practices, both environmental and practical, in the form of a Code of Construction Practice (CoCP). The ExA is not proposing the Applicant provide an outline document for the Examination as we accept that much of the information is contained in a number of documents, albeit needing a signposting document to inform where the information can be found [REP5-052]. However, the ExA considers at the detailed design stage, a single document in the form of a CoCP would be more helpful for the SoS and local authorities in their knowledge of construction practices the Applicant would adhere to.	
24.	Schedule 2, NEW REQUIREMENT Noise and vibration (s61 of the Control of Pollution Act 1974)	N/A	No changes proposed	The ExA has considered the request made by the London Borough of Havering for an additional Requirement to deal with the dust, noise and nuisance management plan at Deadline 7 [REP7-034]. However, the ExA does not consider the reasons given for this change are sufficient to suggest that the method proposed by the Applicant in dealing with such matters under Requirement 5 would not be adequate.	No comment.
25.	Schedule 9 Protective Provisions (Cadent Gas Ltd)	N/A	INSERT NEW PART 2 – FOR THE PROTECTION OF CADENT GAS LIMITED	The Applicant is requested to comment and amend the draft Protective Provisions for Cadent Gas as per version submitted by the Applicant at Deadline 6 [REP6-017] and subject to the following changes to Paragraphs 3 and 10 and 11 as requested by Cadent Gas in its submissions at Deadline 7 [REP7-037]. It is noted that the additional wording to Paragraph 11(3)(c) as requested by Cadent Gas are	See Highways England's comments on Cadent's Deadline 7 submission (TR010029/EXAM/9.113). Highways England has inserted Protective Provisions for Cadent Gas as Schedule 9 Part 6 of the draft DCO submitted at Deadline 8 (TR010029/APP/3.1(7)).

No.	Article/ Schedule	Text as set out in draft DCO Version 6 [REP7-003]	ExA's recommended amendment	Reason and Notes	Highways England's response
				<p>already included by the Applicant at Deadline6 [REP6-017].</p> <p>The Applicant is requested to insert these changes into the next iteration of the draft DCO at Deadline 8, Wednesday 8 June 2021.</p> <p>SEE ANNEX A (below)</p>	
26.	<p>Schedule 9</p> <p>ProtectiveProvisions</p> <p>Part 6 (Transportfor London)</p>	N/A	<p>INSERT NEW PART 6 -</p> <p>FOR THE PROTECTION OF TRANSPORT FOR LONDON</p>	<p>As stated at ISH3 [EV-038] and acknowledged by the Applicant in its Deadline 7 submissions [REP7-019] and [REP7-027] in lieu of a private agreement between the Applicant andTransport for London being signed the ExA requires Protective Provisionsfor Transport for London. The ExA notes, however, that matters between the parties on the appropriate wording is ongoing and notes that the Applicant's suggested tracked changes to Transport for London's draft version.</p> <p>The ExA is content to allow the parties further time to agree a final version of wording to be inserted intothe recommended DCO to the SoS, and as such does not recommended such wording here. However, if by</p> <p>Deadline 9 agreement is not reached, the ExA will expect an up-to-date tracked changed version of the Protective Provisions with an explanation of the parties position. The ExA will then determine which change/non-change should occur inits recommended DCO to the SoS.</p> <p>The Protected Provisions are</p>	<p>The wording of the Protective Provisions with TfL are agreed in part. There remain some outstanding issues as set out in the Statement of Common Ground between Highways England and TfL (REP7-007).</p>

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				inserted on the proviso that should a private agreement be signed between the Applicant and Transport for London before the close of the Examination, it would for no part of the recommended DCO to the SoS, or that the SoS delete it when they make their decision.	

ANNEX A

2. PART 2 – FOR THE PROTECTION OF CADENT GAS LIMITED

On Street apparatus

3.3.—

(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

(a) paragraphs 4, 9, 10 and 11; and

(b) where sub-paragraph (2) applies, paragraphs 7 and 8.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Paragraph 10 does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and Cadent in such proportions as may be prescribed by any such regulations.

Expenses¹⁰.—

(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3) if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;

(g) any watching brief pursuant to sub-paragraph 9(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule— (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the

~~placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.~~

~~(4) For the purposes of sub-paragraph (3) — (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and (b)~~

~~(5) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.~~

(5)(2) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit

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