

## CORRECTION NOTICE

### M25 JUNCTION 28 IMPROVEMENTS DEVELOPMENT CONSENT ORDER 2022 (S.I. 2022 No. 573)

#### SCHEDULE 4 TO THE PLANNING ACT 2008 CORRECTION OF ERRORS IN DEVELOPMENT CONSENT DECISIONS

06 February 2024

The Secretary of State received a request dated 27 June 2022 from BDB Pitmans LLP acting on behalf of National Highways (“the Applicant”) for the correction of errors and omissions in the M25 Junction 28 Improvements Development Consent Order 2022 (“the Order”), under paragraph 1(5)(a) of Schedule 4 to the Planning Act 2008.

The Secretary of State has made the following corrections to the Order:

#### **Corrections to articles**

##### **Article 2 – Definition of “CEMP”**

After “requirement 4” for “(construction environmental management plans)” substitute “(construction environmental management plan)”.

Secretary of State’s rationale: To correct a typographical error.

##### **Article 9(1)**

For “Subject to paragraph (4),” substitute “Subject to paragraphs (4) and (5),”.

Secretary of State’s rationale. To correct a typographical error.

##### **Article 10(1)**

After “Part 3” insert “(street works in England and Wales)”.

Secretary of State’s rationale: To reinsert in this instance as it is helpful to provide a parenthetical description.”

##### **Article 11(2)**

After “the altered or diverted part of the highway” omit “must, be” and substitute “must be”.

Secretary of State’s Rationale: To correct a typographical error.

##### **Article 11(3)**

After “to the reasonable satisfaction of the street” delete “authority,” and substitute “authority”.

Secretary of State’s Rationale: To correct a typographical error.

## **Corrections to Schedules**

### **Schedule 2, requirement 1 (interpretation) definition of “Preliminary Environmental Design**

For “certified by the Secretary of State as the Preliminary Environmental Design for the purposes of this Order” substitute “comprised within Figure 2.2 of the Environmental Statement”.

Secretary of State’s rationale: To clarify more precisely the intended definition as the Preliminary Environmental Design forms part of the Environmental Statement at Figure 2.2 within Appendix 6.2.

### **Schedule 2, requirement 3(3) (detailed design)**

After “design of the bridges and” insert “any significant”

Secretary of State’s rationale: The Secretary of State has considered this and has agreed [to amend the word to “following a review of the design of the bridges and any significant structures”][this amendment] to correct an ambiguity.

### **Schedule 9 Part 7, paragraph 71**

Amend definition of “commuted sum” to:

““Commutated Sum” means the sum to be paid by the undertaker to Transport for London for the future maintenance of any highway assets not previously forming part of the TLRN which will be transferred to Transport for London, as calculated in accordance with paragraph 73 of this Part and that calculation must, for the avoidance of doubt, include appropriate provision to reflect any reduction in Transport for London’s future maintenance costs due to the removal (whether replaced or otherwise) of any existing highway assets currently forming part of the TLRN as part, or in consequence, of the authorised development”.

Secretary of State’s rationale: To clarify the definition of “commuted sum”. The Secretary of State notes that both Transport for London and the Applicant are content with the revised wording.

### **Schedule 10 - Outline Landscape and Ecology Management and Monitoring Plan**

In column (2) for “R010029/APP/6.3” substitute “TR010029/APP/6.3”.

Secretary of State’s rationale: To correct a typographical error.

### **Schedule 2 Part 1, paragraph 1 – Definition of “Preliminary Environmental Design”**

Replace “certified by the Secretary of State as the Preliminary Environmental Design for the purposes of this Order” for “comprised within Figure 2.2 of the Environmental Statement”.

### **Schedule 10**

The 15<sup>th</sup> row relating to the document “Preliminary Environmental Design” [delete the entire row][is omitted in its entirety].

Secretary of State's rationale: To correct an erroneous amendment as the Preliminary Environmental Design forms part of the Environmental Statement at Figure 2.2 within Appendix 6.2.

The Secretary of State has been minded not to make the following corrections to the Order:

**Contents, Article 13**

Replace "Temporary stopping up and restriction of use of streets" with "Temporary closure and restriction of use of streets"

**Article 10(4)**

Replace "(temporary stopping up and restriction of use of streets)" with "(temporary closure and restriction of use of streets)"

**Article 13 heading**

Replace "Temporary stopping up and restriction of use of streets" with "Temporary closure and restriction of use of streets"

**Article 13 (1)**

Replace "stop up" with "close"

**Article 13 (2)**

Replace "stopped up" with "closed"

**Article 13 (3)**

Replace "stopping up" with "closure"

**Article 13 (4)**

Replace "stop up" with "close"

**Schedule 9 paragraph 4(2)**

Replace "(temporary stopping up and restriction of use of streets)" with "(temporary closure and restriction of use of streets)"

**Schedule 9, para 40(2)**

Replace "(temporary stopping up and restriction of use of streets)" with "(temporary closure and restriction of use of streets)"

**Schedule 9, para 57(2)**

Replace "(temporary stopping up and restriction of use of streets)" with "(temporary closure and restriction of use of streets)"

Secretary of State's rationale: While there has been slight variation in more recent projects, the Secretary of State is of the view that the term 'temporary stopping up' is not a problem and that changing the term to 'temporary closure' may have unintended consequences. Whilst the term 'stopping up' is permanent, it does not necessarily

follow that 'temporary stopping up' is not legally possible - 'temporary stopping up' is a well-established term with its own well established meaning and is easily distinguished from 'stopping up'. Therefore, the Secretary of State maintains "temporary stopping up" in these particular circumstances.

### **Articles 13(6), 18(11), 19(8) & Schedule 2 Requirement 24**

Replace "42 days" with "28 days"

Secretary of State's rationale: This matter was considered by the ExA which recommended the change from 28 days to 42 days. The Secretary of State agreed with the ExA's recommendation on this matter and is not minded to reinstate a 28-day period.

### **Article 28(1)**

After the words "affecting the Order land," insert "including rights and restrictive covenants for the benefit of a statutory undertaker or any other person,".

Secretary of State's rationale: This is not part of the precedent and no reasons are given as to why this is required in the Explanatory Memorandum. The Secretary of State is therefore not minded to reinstate this wording.

### **Article 34**

Insert a new paragraph-

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts;

(b) the public; and / or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

And renumber subsequent paragraphs and relevant cross-references.

Secretary of State's rationale: This sub-paragraph usually only appears in the article "temporary use of land for maintaining the authorised development". It is otherwise unprecedented in other DCOs. The Secretary of State does not understand why it is required for this development and there is no explanation for inclusion in either the Examining Authority's Report or Explanatory Memorandum. The Secretary of State is therefore minded not to reinstate this wording.

### **Schedule 2 Requirements**

Construction Environmental Management Plan – Requirement 4(1) after "to commence until a CEMP" insert the word "substantially".

Construction Environmental Management Plan – Requirement 4(1) for "be in accordance with" substitute the word "reflect".

Landscaping – Requirement 5(2) for “be in accordance with” substitute the word “reflect”.

Surface and foul water- Requirement 8(1) for “in accordance with” substitute the word “reflecting”.

Archaeological Remains – Requirement 9(2) after the words “must be” add “substantially”.

Traffic Management – Requirement 10(2) after the words “must be” add “substantially”.

Traffic Management – Requirement 10(2) after “Outline Traffic Management Plan” insert “reflect”.

Secretary of State’s rationale: This matter was considered by the ExA and the Secretary of State agreed with the ExA’s recommendation and is not minded to reinstate the wording in these instances.

#### **Schedule 2 Part 2 Further Information**

In paragraph 21(3) after “21” add “business”

Secretary of State’s rationale: This is unnecessary drafting. Paragraph (2) makes it clear that it is 21 business days. Paragraph (3) refers back to that period of time and is therefore business days.

#### **Explanatory Note**

After “the Outline CEMP,” delete “the preliminary environmental design,”.

Secretary of State’s rationale: The Explanatory Note does not form part of the Order and is not therefore, subject to relevant provisions of Schedule 4 of the 2008 Act.

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118(4) of the Planning Act 2008, a decision under paragraph 1 of Schedule 4 to correct an error in an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order making the correction is published. The M25 Junction 28 (Correction) Order 2024 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m25-junction-28-improvements/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Correction Order referred to in this notice is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).**