

M5 Junction 10 Improvements Scheme

dDCO Change Log
TR010063 - APP 9.21

Regulation 5 (2) (b)

Planning Act 2008

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

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Gloucestershire
COUNTY COUNCIL

Infrastructure Planning Planning Act 2008

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

M5 Junction 10 Improvements Scheme Development Consent Order 202[x]

Draft DCO Change Log

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| Author: | M5 Junction 10 Improvements Scheme Project Team |

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| Rev 0 | March 2024 | Section 51 Advice |
| Rev 1 | June 2024 | Deadline 1 |
| Rev 2 | July 2024 | Deadline 3 |
| Rev 3 | September 2024 | Deadline 4 |
| Rev 4 | October 2024 | Deadline 5 |
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| Table of Amendments to the DCO | | |
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| Article/Requirement/ Schedule Number | Amendment | Reason |
| Section 51 Submission – Submitted 22 March 2024 | | |
| Article 47 | <p>Entire article added as a new article 47 to read:</p> <p>Inconsistent planning permissions</p> <p>47—(1) As from the date on which the authorised development is commenced any conditions of a planning permission granted pursuant to Part 3 (control over development) of the 1990 Act, whether express or otherwise, which relate to land within the Order limits or land adjacent to the Order limits shall cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2.</p> <p>(2) As from the date of this Order where planning permission, whether express or otherwise, is granted whether prior to or after the date of this Order pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for—</p> <p>(a) development which is consistent with the authorised development save that its impact has not been assessed in the environmental statement and assessment has been carried out in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(1) or the Town and Country Planning (Environmental Impact Assessment) Regulations 2017(2) prior to the grant of the planning permission; or</p> <p>(b) for development unrelated to the authorised development</p> | <p>Article 47(1) allows the development authorised by the DCO to take precedence over the conditions of any planning permissions granted which are inconsistent with the authorised development. The provision applies from the date on which the Scheme is commenced in order that the Scheme has certainty over the ability to proceed whilst not unnecessarily constraining other consents granted under the Town and Country Planning Act 1990.</p> <p>The Article also provides that where planning permission is granted in respect of land within the Order limits for development which is consistent with the authorised development, but the environmental impacts exceed those assessed in the environmental statement, or it is for development which is unrelated to the authorised development, then the implementation of that consent will not render development pursuant to the Order incapable of further implementation. This wording is deemed necessary and considered prudent following the Supreme Court ruling in Hillside Park v Snowdonia National Park Authority [2020] EWCA Civ 1440 so as to allow for a discrete planning permission to be granted and implemented, whether for part of the Scheme or not, for which a separate environmental impact assessment has been carried out, without the undertaker losing the ability to continue to construct the remainder of the Scheme.</p> <p>The Article also provides that development carried out pursuant to a planning permission following implementation of the Scheme pursuant to the DCO would not result in breach of the Order, therefore removing the risk of criminal liability pursuant to sections 160 and 161 of the 2008 Act in circumstances where development which has been appropriately assessed and consented can be</p> |

(1) S.I. 2017/572

(2) S.I. 2017/571

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| | <p>the carrying out of development pursuant to such planning permission is not to operate to prevent the undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order</p> <p>(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act, whether express or otherwise, following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of section 160 (offences) or 161 (breach of terms of order granting development consent) of the 2008 Act.</p> | <p>carried out on land within the Order limits without impact on the Scheme. This includes any development authorised by a general development order as well as an express planning permission.</p> <p>The Article has its basis on provisions included in the Northampton Gateway Rail Freight Interchange Order 2019 and West Midlands Rail Freight Interchange Order 2020, Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024, and the Slough Multifuel Extension Order 2023 and follows the approach adopted in the application for the Hinckley National Railfreight Interchange Order, Rampion 2 Offshore Wind Farm Order.</p> |
| Schedule 5 | References to Sheet 12, 13, and 16 amended to include references to the reciprocal inset sheets 12A, 13A, and 16A | To provide clarity of reference when reviewing land plans which were amended to include additional insets to aid comprehension. |
| Schedule 7 | References to Sheet 12, 13, and 16 amended to include references to the reciprocal inset sheets 12A, 13A, and 16A | To provide clarity of reference when reviewing land plans which were amended to include additional insets to aid comprehension. |
| Deadline 1 Submission – Submitted 18 June 2024 | | |
| Article 2 | “authorised development” means the development and associated development described in Schedule 1 (authorised development) or any part of it and any other development authorised by this Order which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act | The Applicant has reviewed recent Orders granted by the Secretary of State and considers this wording to be most appropriate. |
| Article 2 | “commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, ecological surveys and pre-construction ecological mitigation works, erection of any temporary means of enclosure, set up works associated with construction compounds such as soil-stripping, stockpiling, and the provision of access points to construction compounds, provision or diversion of service apparatus, and | <p>The Applicant has made two amendments to the definition of commencement.</p> <p>The first amendment is as a result of discussions arising in ISH2, it was suggested by the Examining Authority that the comprehension over the limit to which “provision of access points” could be utilised by an undertaker could be better expressed by the Applicant to aid understanding.</p> <p>The Applicant has also added the wording “provision or diversion of service apparatus”. The ability of the Applicant to carry out diversion of service apparatus works prior to the satisfaction /</p> |

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| | <p>the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;</p> | <p>discharge of a requirement is an important provision to enable the Applicant to have better control over its construction programme and to maximise efficiency. The Applicant does not consider that the works proposed by the Applicant in terms of the service diversions are of such a significance to in their own right be capable of producing environmental effects and therefore is satisfied that it is appropriate to include this additional text in the definition of “commence”.</p> |
| <p>Article 7</p> | <p>Addition of the below text:</p> <p>(2) To the extent any development carried out or used pursuant to a planning permission granted under section 57(c) (requirement of planning permission) of the 1990 Act or compliance with any conditions of that permission is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—</p> <ul style="list-style-type: none"> (a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission is capable of physical implementation; and (b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that planning permission, compliance with any conditions of that permission, whether inside or outside the Order limit. <p>(3) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under sub-paragraph (1) or (2) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.</p> | <p>The Applicant has justified this amendment in Appendix 1 of its written summary of oral submissions for ISH2.</p> |

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| <p>Article 8</p> | <p>Limits of deviation</p> <p>8. In carrying out the authorised development the undertaker may—</p> <p>(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and</p> <p>(b) with the exception of work number 3(e), 4(b), 5(d), 5(n), and 6(d) deviate vertically from the levels of the authorised development shown on the engineering section drawings—</p> <p>(i) to a maximum of 0.5 metres upwards or 1 metre downwards; or</p> <p>(ii) in respect of the excavation of the flood storage area or the flood compensation areas to a maximum of 2 metres downwards but to any distance upwards to ground level,</p> <p>except that these maximum 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 and the strategic highway authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse—adverse different environmental effects in comparison with those reported in the environmental statement.</p> | <p>The Applicant has reviewed its position on Limits of Deviation.</p> <p>Regarding work number 4b and 5d, the Applicant considers that the Limits of Deviation set out a maximum LoD which may be utilised in any given setting but that does not mean it would be appropriate in every instance. Given the design restraints for these elements, which are set out in paragraph 2.5.1 of the ES, Chapter 2, the Applicant considers that these elements would not be capable of using the default vertical limits of deviation. The Applicant considers that in order to aid clarity on this issue and to avoid any inference that the dDCO is proposing to grant powers outside of that assessed in the Environmental Assessment, the Applicant has proposed to apply a specific exception.</p> <p>Regarding work numbers 3(e), 5(n) and 6(d), these relate to the flood compensation areas. Again, the Applicant proposes to remove these work numbers Article 8(b) in order to align with the Environmental Assessment.</p> <p>The Applicant will be producing an additional work number for one element of 5(n) which has been assessed to have the standard vertical limit of deviation, and will add this change to the works plans and dDCO during the next refresh of those documents.</p> <p>Lastly, the Applicant has amended the wording “worse adverse” with “different” to reflect updated common practise, which the Applicant understands is based on the current understanding of purpose of the EIA Regulations.</p> |
| <p>Article 10(5)(f)</p> | <p>(f) National Grid Electricity Distribution (West Midlands) PLC (company number 0922338403600574, whose registered office is at Avonbank, Feeder Road, Bristol, Avon, BS2 0TB) for the purposes of undertaking Work Nos. 19 to 26; or</p> | <p>The Applicant has introduced this change at the request of National Grid Electricity Distribution (West Midlands) PLC.</p> |
| <p>Article 47</p> | <p>Article 47 has been deleted in its entirety.</p> | <p>To align with changes to article 7.</p> |

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| Schedule 2, paragraph 3(2) | <p>Removal of:</p> <p>(e) incorporate the measures referred to in the environmental statement as being incorporated in the EMP (2nd iteration);</p> | <p>The Applicant considers that this sub-paragraph is unnecessary and potentially contradictory.</p> <p>Paragraph 3(2) already ensures that the EMP (2nd Iteration) must incorporate the register of environmental actions and commitments (the REAC). The REAC in and of itself incorporates the measures referred to in the environmental statement and therefore the wording can be removed to simplify comprehension.</p> |
| Schedule 2, paragraph 3(2) | <p>(d) require adherence to working hours of 07:00 to 19:00 on Mondays to Saturdays with no working on Sundays, except for—</p> <p>(viii) any works for which different working hours have been notified at least seven days in advance to those agreed with parties who the undertaker reasonably considers will or may be affected by those works and recorded in the approved EMP (2nd iteration), in which case the EMP (2nd iteration) must require adherence to those working hours; and</p> | <p>The Applicant has added the clarificatory wording in red, at the request of National Highways who wished to ensure that the article has clarity over the normal working hours proposed by the Scheme.</p> <p>The Applicant has also amended this sub-paragraph to clarify that rather than obtaining the consent of any party who will be affected before doing any works with different working hours the Applicant is able to provide a notice to any person who the understand reasonably considers will or may be affected by those works.</p> |
| Schedule 2, paragraph 3(2) | <p>(e) include the following management plans—</p> <ul style="list-style-type: none"> (i) Materials Management Plan; (ii) Soil Handling Management Plan; (iii) Noise and Vibration Management Plan; (iv) Air Quality Management Plan; (v) Landscape and Ecology Management Plan; (vi) Emergency Preparedness and Response Plan including Flood Management Plan and Severe Weather Plan; (vii) Pollution Prevention and Control Management Plan; (viii) Archaeological Management Plan; (ix) Non Native Species Management Plan; (x) Operational Unexploded Ordnance Emergency Response Plan; | <p>The Applicant has made three changes to this paragraph to ensure this sub-paragraph aligns with the EMP (1st Iteration). Firstly reference to “Non-Native Species Management Plan” has been added to reflect Annex B.9 of the EMP (1st iteration). Secondly, the Emergency Vehicle Movement Management Plan has been entered separate to the Traffic Management Plan to reflect Annex B.11 and B.14 of the EMP (1st Iteration). Lastly, the reference to the Nuisance Management Plan has been amended to the Statement of Statutory Nuisance.</p> |

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| | <ul style="list-style-type: none"> (xi) Traffic Management Plan (xii) Including—Emergency Vehicle Movement Management Plan; (xiii) Site Waste Management Plan; (xiv) Public Rights of Way Management Plan; (xv) Community Engagement Plan; (xvi) Carbon Management Plan; (xvii) Nuisance—Management—Plan Statement of Statutory Nuisance | |
| Schedule 2, paragraph 5(3) | (3)The landscaping scheme prepared under sub-paragraph Error! Reference source not found. must be based on in accordance with the environmental masterplan and the results of the surveys undertaken under sub-paragraph Error! Reference source not found. | The Applicant has made amendment to the specific wording employed to ensure that the landscaping scheme used for construction is in accordance with the preliminary drawings. The Applicant has done this to ensure consistency of approach across the requirements. |
| Schedule 2, paragraph 8(4) | (4) Where the undertaker risk assessment determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the county planning authority following consultation with the Environment Agency and the relevant planning authority. | The Applicant has proposed this amendment to clarify that it is not solely able to determine whether remediation is necessary and that remediation will be set out where deemed necessary in the risk assessment which must be agreed with the Environment Agency and relevant planning authority under paragraph 4(2) of the same Schedule. |
| Schedule 2, paragraph 9(1) | (1) No part of the authorised development is to commence until for that part a scheme for the investigation and mitigation of areas of archaeological interest, reflecting the investigation and mitigation measures included in chapter 11 (cultural heritage) of the environmental statement, the EMP (1 st iteration) and the Archaeological Management Plan approved as part of the EMP (2 nd iteration) under paragraph Error! Reference source not found. of this Schedule, with provision for sub-written schemes of investigation for each area and each phase, has been prepared in consultation | The Applicant has included Historic England as consultee to preparation of a scheme for the investigation and mitigation of areas of archaeological interest as the request of Historic England. |

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| | with the relevant planning authority, the strategic highway authority, Historic England and the County Archaeologist and submitted to and approved in writing by the county planning authority. | |
| Schedule 2, paragraph 9(6) | (6) Prior to completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the County Archaeologist. | <p>The Applicant understands that this proposed wording has been used on other Schemes at the behest of or to satisfy the County Archaeologist that there is some requirement on the face of the dDCO to bind an undertaker in securing suitable resources and provisions for long term storage. The precise quantum of financing or solution of the storage cannot be known until the extent and quality of any artifacts are known and therefore the requirement was drafted to be flexible in this regard.</p> <p>The Applicant notes, however, the Examining Authority's comments that should "suitable resources and provisions for the long term storage" not be agreed that the Applicant might have completed substantial parts of their development, but would be unable to open to traffic until the position is resolved thus creating a ransom position with the County Archaeologist.</p> <p>The Applicant does not consider it likely that a ransom position would be imposed in this regard, given that the County Archaeologist would be under duties of a public authority to act reasonably. However, the Applicant does acknowledge that the current drafting may cause issues for interpretation as well as enforcement and as such proposes to remove the entry in the dDCO. The Applicant will engage with the County Archaeologist to ensure that they are satisfied that the Archaeological Management Plan set out in the EMP (1st Iteration) is sufficiently robust to ensure that they are confident in the required constraints being included in the Archaeological Management Plan (2nd Iteration).</p> |
| Schedule 2, paragraph 11 | (1) The authorised development must be designed in detail and carried out so that it is compatible in accordance with the preliminary scheme design shown on the works plans, the general arrangement plans, the environmental masterplan and the engineering section drawings, unless otherwise agreed in writing by the county planning authority | The Applicant has amended the wording "worse adverse" with "different" to reflect updated common practise, which the Applicant understands is based on the current understanding of purpose of the EIA Regulations. |

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| | <p>following consultation with the relevant planning authority and strategic highway authority on matters related to their functions and provided that the county planning authority is satisfied that any amendments to the works plans, the general arrangement plans, the environmental masterplan and the engineering section drawings showing departures from the preliminary design would not give rise to any materially new or materially worse—adverse—different environmental effects in comparison with those reported in the environmental statement.</p> | <p>The Applicant has amended the wording “compatible” with “in accordance” to ensure consistency of approach across the requirements.</p> |
| <p>Schedule 2, paragraph 12</p> | <p>Surface and foul water drainage</p> <p>12—(1) No part of the authorised development is to commence until written details of the surface and foul water drainage system for that part, reflecting the mitigation measures in chapter 8 (road drainage and the water environment) of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the county planning authority following consultation with the relevant planning authority, the strategic highway authority and the Environment Agency.</p> <p>(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph Error! Reference source not found. unless otherwise agreed in writing by the county planning authority following consultation with the relevant planning authority, the strategic highway authority and the Environment Agency.</p> | <p>The Applicant has removed reference to “foul water” as no such drainage is proposed by the Scheme.</p> |
| <p>Schedule 2, paragraph 13</p> | <p>Flood compensatory compensation and flood storage</p> <p>13—(1) No part of the authorised development within the existing floodplain is to commence until a detailed scheme for the flood compensation areas or flood storage area relevant to compensatory storage scheme for that part of the authorised development within the existing floodplain has been submitted to and approved in writing by the county planning authority following consultation with the relevant</p> | <p>The Applicant has made two amendments. The first is to make clear that this requirement only applies to those parts of the Scheme which are in an existing floodplain meaning that where the Scheme is outside of an existing floodplain, that part of the Scheme may commence without the need to discharge this requirement.</p> |

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| | <p>planning authority, the Environment Agency and the strategic highway authority on matters related to their functions.</p> <p>(2) The scheme prepared under sub-paragraph Error! Reference source not found. must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 53% climate change allowance event.</p> <p>(3) The scheme must be fully implemented as approved and subsequently maintained.</p> | <p>The second is to add the Environment Agency as consultee to the detailed flood compensation storage scheme, at their request.</p> |
| <p>Schedule 2, paragraph 14</p> | <p>(a) where the mitigation proposed materially differs from the mitigation identified in the environmental statement and the Noise and Vibration Management Plan, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new or materially worse—adverse different environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it.</p> | <p>The Applicant has made this amendment to ensure consistency throughout the dDCO.</p> |
| <p>Schedule 2, paragraph 15</p> | <p>(2) The standard of the highway lighting to be provided by the scheme referred to in sub-paragraph Error! Reference source not found. must either be in accordance with reflect the standard of the highway lighting included in chapter 9 (landscape and visual) of the environmental statement or, where the standard of the highway lighting proposed materially differs from the standard of the highway lighting identified in the environmental statement, the undertaker must provide evidence with the written scheme submitted for approval that the standard of the highway lighting proposed would not give rise to any materially new or materially worse adverse different environmental effects in comparison with those reported in the environmental statement taking into account the lighting identified in it. The standard of the highway lighting must</p> | <p>The Applicant has made this amendment to ensure consistency throughout the dDCO.</p> |

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| | encompass the specification, level of provision, light spillage, intensity and brightness of the highway lighting. | |
| Schedule 2, paragraph 17(3) | (c) the application is accompanied by a report referred to in paragraph 4 stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially adverse different environmental effects in comparison with those reported in the environmental statement, | The Applicant has made this amendment to ensure consistency throughout the dDCO. |
| Schedule 5, 5/200 | Removal of plot | To align with amendments made to the Land Plans, Book of Reference and Statement of Reasons. |
| Schedule 5, plot 5/33c | Addition of plot | To align with amendments made to the Land Plans, Book of Reference and Statement of Reasons. |
| Schedule 5, plot 15/10e(i) | Required for temporary access for the construction of a new West Cheltenham Link Road and new permanent rights to provide, protect, inspect, and maintain environmental and ecological mitigation. | The Applicant has considered that this wording is unhelpful and misleading as it implies a lesser degree of use than what is anticipated to be utilised through the articles of the Order. The Schedule has been amended accordingly. |
| Schedule 7 | Removal of plots 16/4j, 16/4l, 16/8d | To align with amendments made to the Land Plans, Book of Reference and Statement of Reasons. |
| Schedule 7, plot 5/33d | Addition of plot | To align with amendments made to the Land Plans, Book of Reference and Statement of Reasons. |
| Schedule 7 | Removal from numerous plots the wording “required for temporary access for” | The Applicant has considered that this wording is unhelpful and misleading as it implies a lesser degree of use than what is anticipated to be utilised through the articles of the Order. The Schedule has been amended accordingly. |
| Schedule 7, plot 2/2a | Required for the construction of motorway signage and associated cabling and ducting works and associated works | Plot added to Schedule 7 to align with Statement of Reasons and Book of Reference. |
| Schedule 7, plot 5/2a | Required for the construction of a new southbound exit slip from the M5 to the A4019 Required for the construction of a new northbound entry slip from the A4019 to the M5 | Added work number 1c for existing description, as well as additional work description and corresponding number for work number 1e to align with Statement of Reasons and Book of Reference |
| Schedule 7, plot 5/2b | Required for the construction of a new southbound exit slip from the M5 to the A4019 Required for the extension of the Leigh Brook culvert (also known as the Barn Farm culvert) | Additional descriptions and work numbers added to plot to align with Statement of Reasons and Book of Reference, |

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| | Required for the construction of an environmental barrier adjacent to land housing a traveller site north of Junction 10 and east of the M5 | |
| Schedule 7, plot 5/2h(i) | Required for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting Required for the realignment of the unclassified road known as Stanboro Lane Required for the diversion of telecommunication cable and associated apparatus and equipment | Plot added to Schedule 7 to align with Statement of Reasons and Book of Reference |
| Schedule 7, plot 5/2q | Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5 | Additional description added to align with Statement of Reasons and Book of Reference |
| Schedule 7, plot 5/2s | Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5 | Additional description added to align with Statement of Reasons and Book of Reference |
| Schedule 7, plot 5/2t | Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5 | Additional description added to align with Statement of Reasons and Book of Reference |
| Schedule 7, plot 5/2hh | Required for the construction of a new grade separated roundabout junction and maintenance bays Required for the demolition of the existing A4019 bridge over the M5 | Additional description added to align with Statement of Reasons and Book of Reference |
| Schedule 7, plot 5/2j | Required for the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 with associated footway, cycleway, shared use path, private access points, signage and ducting Required for the realignment of the unclassified road known as Stanboro Lane | Plot added to Schedule 7 to align with Statement of Reasons and Book of Reference. |
| Schedule 7, plot 5/2ii | Required for the demolition of the existing A4019 bridge over the M5. Required for the demolition of the existing M5 southbound exit slip | Additional descriptions added to align with Statement of Reasons and Book of Reference |

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| | <p>Required for the realignment and dualling of the A4019 (Tewkesbury Road) southeast of Junction 10, M5 to east of Gallagher Junction with associated footway, cycleway, shared use paths, private means of access, signage and ducting</p> <p>Required for the construction of an underpass west of Withybridge Lane</p> <p>Required for the diversion and construction of bridleway BR AUC1 under the A4019 (Tewkesbury Road)</p> | |
| Schedule 7, plot 5/5g | Plot removed from Schedule 7 and added to Schedule 5 | To align with Book of Reference and Statement of Reasons. |
| Schedule 7, plot 7/2a(i) and 7/2a(ii) | <p>Addition of work number 1a and description:</p> <p>Required for the construction of motorway signage and associated cabling and ducting works and associated works</p> | To align with Works Plans. |
| Schedule 7, plot 7/2c | <p>Required for access to the M5 Motorway to provide advance signage, cabling, ducting and associated works Required for the construction of motorway signage and associated cabling and ducting works and associated works</p> | Description amended to align with Statement of Reasons and Book of Reference |
| Schedule 7, plot 7/2b | <p>Required for the construction of motorway signage and associated cabling and ducting works and associated works</p> <p>Required for the construction of a new northbound exit slip from the M5 to the A4019</p> <p>Required for access to the M5 Motorway to provide advance signage, cabling, ducting and associated works</p> | Removal of description to align with Statement of Reasons and Book of Reference. |
| Schedule 7, plot 11/1f | <p>Required for the construction of new or altered private means of access</p> <p>Required for access for a temporary construction working space</p> | Removal of work description, included in error, to align with Statement of Reasons and Book of Reference. |
| Schedule 7, plot 12/2m | <p>Required for working space for construction compound no. 5</p> <p>Required for construction compound no. 5 east of Withybridge Lane and west of the West Cheltenham Link Road</p> | Replacement of description for purpose of temporary possession, to align with other plots required for work number 5b. |
| Schedule 7, plot 12/2o | Required for the construction of a serve service road linking properties south of the A4019 (Tewkesbury Road) and Cooks Lane | To correct typological error. |

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| Schedule 7, plot 14/4a | Required for the alteration of the signalised junction serving Gallagher Retail Park and the B4634 to the south of the A4019 (Tewkesbury Road) with maintenance bay Required for the diversion of Severn Trent Water Limited water pipeline | To remove description to align with Statement of Reasons and Book of Reference |
| Deadline 3 Submission – Submitted 30 July 2024 | | |
| Article 3 | Addition of the following text: (d) Regulation 6 of the Hedgerow Regulations 1997(3) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following— “or (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.” | In drafting its dDCO, the Applicant has been mindful to ensure that its dDCO aligns with that of other highways DCOs to ensure consistency of approach. However, the Applicant is aware that in the following DCOs, the Hedgerow Regulations 1997 have been amended to include reference to the Order as granting a “permitted work.” A number of these can be found at Article 6, Mallard Pass Solar Farm Order 2024, Article 6 Sheringham Shoal and Dudgeon Extension Offshore Wind Farm Order 2024, Article 6 Hornsea Four Offshore Wind Farm Order, Article 7 Norfolk Boreas Offshore Wind Farm Order 2021. The purpose of this is to ensure that the works under the dDCO are not subject to regulation 5, Hedgerow Regulations 1997 and rather that the consideration of the acceptability of removing hedgerows within the Order limits is done during examination and doesn’t create a requirement for subsequent hedgerow licences post consent which may delay implementation of the Order. Highways DCOs promoted by National Highways do not, it seems in general, include such a provision. The Applicant suspects that this is due to requirement 6(1)(h) which means that the removal of any hedgerow to which the Regulations apply is permitted if required for the carrying out by the Secretary of State of his functions in relation to a highway for which he is the highway authority. The Applicant would not benefit from requirement 6(1)(h) and therefore proposes measures which have been used by private |

(3) S.I.1997/1160.

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| | | undertakers for energy DCOs. This is entirely appropriate. The Hedgerow Regulations 1997 included at requirement 6(1)(e) the exemption where by removal of a hedgerow was permitted if it is required for the carrying out of development for which planning permission has been granted. The regulations have not been amended to incorporate reference to the Planning Act 2008 meaning that to ensure that that the Hedgerow Regulations 1997 function the same way for consents under the Planning Act 2008 as they do for consents under the Town and Country Planning Act 1990, this amendment needs including. |
| Schedule 1, 5 and 7 | Removal of the word “approximately” on 20 occasions throughout these schedules. | To align with guidance contained in Advice Note 15. |
| Schedule 1 | Addition of a new work number 5(o) that reads: (o) the provision of a flood compensation area at the location shown on sheets 12 and 15 of the works plans. | Addition of new work number to align with changes to works plans. At Deadline 1, the dDCO had been amended to ensure that 5(n) did not benefit from limits of deviation. This change has been made to ensure this area, which had been under work number 5(n) is afforded the limits of deviation set out in Article 8 which the Environmental Assessment has assumed and which is required for construction. |
| Schedule 2, paragraph 3(4) | Paragraph amended to read: (3) Upon completion of construction of the authorised development the EMP (2 nd iteration) must be converted into the EMP (3 rd iteration). The EMP (3 rd iteration) must be prepared in consultation with the relevant planning authority and the strategic highway authority and submitted to the county planning authority for approval within 28 days of the opening of the authorised development for public use. | Change introduced to ensure consultation on the preparation of the EMP (3 rd iteration) is on the same basis as that of the EMP (2 nd iteration). |
| Schedule 2, paragraph 9 | Archaeology 9—(1) No part of the authorised development is to commence until for that part an archaeological management plan a scheme for the investigation and mitigation of areas of archaeological interest , reflecting the investigation and mitigation measures included in chapter 11 (cultural heritage) of the environmental statement and the EMP (1st iteration) and the Archaeological Management Plan | These changes have been introduced following correspondence from Historic England and their requests that terminology of this requirement aligns more fully with that within the archaeological management plan itself. It does not change the function or effect of the article. |

~~approved as part of the EMP (2nd iteration) under paragraph 3 of this Schedule,~~ with provision for site-specific archaeological project designs ~~sub-written schemes of investigation~~ for each area and each phase ~~where necessary,~~ has been prepared in consultation with the relevant planning authority, the strategic highway authority, Historic England and the County Archaeologist and submitted to and approved in writing by the county planning authority.

(2) The authorised development must be carried out in accordance with the ~~archaeological management plan and where relevant the site specific archaeological project designs archaeological investigation and mitigation scheme and sub-written schemes of investigation~~ referred to in sub-paragraph **Error! Reference source not found.** unless otherwise agreed in writing by the county planning authority.

(3) A programme of archaeological reporting, post excavation and publication required as part of the ~~archaeological management plan and where relevant the site specific archaeological project designs archaeological investigation and mitigation scheme and sub-written schemes of investigation~~ referred to in sub-paragraph **Error! Reference source not found.** must be prepared in consultation with the County Archaeologist and implemented within a reasonable timescale and deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be—

- (a) retained in situ and reported to the County Archaeologist as soon as reasonably practicable; and
- (b) subject to appropriate mitigation as set out in the archaeological ~~management plan investigation and~~

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| | <p>mitigation scheme referred to in sub-paragraph Error! Reference source not found.</p> <p>(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph 0 for a period of 14 days from the date the remains are reported to the County Archaeologist under sub-paragraph 0 unless otherwise agreed in writing by the county planning authority.</p> | |
| Schedule 5, plot 5/2q | Required for the demolition of the existing A4019 bridge over the M5 | To address a typographical error. |
| Schedule 5, plot 12/2w | <p>Addition of new work number 5o to align with changes to works plan and associated right:</p> <p>“New right to construct, use, protect, inspect and maintain a flood compensation area”</p> | To align with changes to the works plans, and Statement of Reasons. |
| Schedule 5, plot 15/3d | <p>Addition of new work number 5o to align with changes to works plan and associated right:</p> <p>“New right to construct, use, protect, inspect and maintain a flood compensation area”</p> | To align with changes to the works plans, and Statement of Reasons. |
| Schedule 5, plot 16/5b | Required for working space for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment | Removal of plot to align with amendments to Schedule 7. |
| Schedule 7, plot 16/5b | Required for working space for the diversion of National Grid Electricity Distribution PLC electric cable and associated apparatus and equipment | Plot added to Schedule 7 to align with amendments to Schedule 5. |
| Deadline 4 Submission – Submitted 3rd September 2024 | | |
| Article 2 | <p>Definition of “county planning authority” moved from Schedule 2 to article 2 and expanded to:</p> <p>“means Gloucestershire County Council acting in any capacity, including but not limited to its capacity as county planning authority and mineral planning authority under sections 1(1)(a) and 1(4) (local planning authorities: general) of the 1990 Act, local highway authority within the meaning of the 1980 Act, and lead local flood authority within the</p> | <p>Definition of “county planning authority” moved from Schedule 2 to Article 2 as term now used in main body of the agreement. Term also expanded to confirm some of the main capacities the term encompasses</p> |

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| | meaning of section 6(7) of the Flood and Water Management Act 2010(4) for the county of Gloucestershire” | |
| Article 8 | Addition of: “county planning authority” | To require the consultation with the county planning authority where the undertaker seeks consent from the Secretary of State to go beyond the limits of deviation. |
| Schedule 2, paragraph 1 | Removal of the definition for “county planning authority” | Reciprocal removal due to addition at article 2. |
| Schedule 2, paragraph 1 | Addition of a definition for “design principles report” to mean: “the document listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the design principles report for the purposes of this Order” | Definition added to ensure mechanism to certify the design principles report in accordance with article 44 |
| Schedule 2, paragraphs 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 | Replace “county planning authority” with “Secretary of State” when referring to or determining the arbiter for the discharge of the relevant requirement. Where the “county planning authority” has been replaced with “Secretary of State” it has been added as a consultee with whom the undertaker in discharging their requirement will need to engage. | To respond to requests of National Highways that the arbiter is done through the Department of Transport given the Scheme’s interaction with the SRN. |
| Schedule 2, paragraph 3(2)(e) | Three changes to this sub-paragraph being: 2.ensuring no capital letters are used unnecessarily and against Advice Note 15 3.Non native species management plan amended to refer to “invasive non native species management plan” 4.List of management plans re-ordered, including moving reference to emergency vehicle movement management plan | Capitals have been removed to align with Advice Note 15. Two references to plans have been amended to ensure consistency between the dDCO, REAC, and fiEMP. |
| Schedule 2, paragraph 9(1) | Paragraph amended on the following basis: 9—(1) No part of the authorised development is to commence until for that part an archaeological management plan, In order to be included in the EMP (2nd iteration) pursuant to paragraph 3(2)(e)(viii) of this Schedule, the archaeological management plan, must reflect ing the | Paragraph 3(2)(e) already ensures that no part of the authorised development is to commence until for that part an archaeological management plan is submitted to and approved in writing by the Secretary of State as part of the second iteration EMP. The removed wording of this paragraph 9(1) ensures that there is no repetition in Schedule 2. |

(4) 2010 c. 29.

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| | <p>investigation and mitigation measures included in chapter 11 (cultural heritage) of the environmental statement, the EMP (1st iteration), and must include with provision for site-specific archaeological project designs for each area and each phase where necessary, has and have been prepared in consultation with the relevant planning authority, county planning authority, the strategic highway authority, Historic England and the County Archaeologist and have been submitted to and approved in writing by the county planning authoritySecretary of State.</p> | <p>There is no change in the interpretation or control provided by Schedule 2 as a whole. Article 9 has been amended to ensure the its specific requirements on the content and consultation of the AMP relate back to the AMP referenced in paragraph 3(2)(e)(viii).</p> |
| <p>Schedule 2, paragraph 11</p> | <p>Paragraph amended on the following basis:</p> <p>Detailed design</p> <p>11—(1) The authorised development must be designed in detail and carried out so that it is in accordance with—</p> <p>(a) the preliminary scheme design shown on the works plans, the general arrangement plans, the environmental masterplan and the engineering section drawings; and</p> <p>(b) the design principles set out in the design principles report.</p> <p>-unless otherwise agreed in writing by the county planning authoritySecretary of State following consultation with the relevant planning authority, county planning authority and strategic highway authority on matters related to their functions and provided that the county planning authoritySecretary of State is satisfied that any amendments to the works plans, the general arrangement plans, the environmental masterplan and the engineering section drawings showing departures from the preliminary design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</p> | <p>The requirement now requires that the authorised development be designed in detail and carried out so that it is in accordance with the design principles set out in the design principles report. This ensures the ongoing commitment to the design principles in future development of design.</p> |

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| | <p>(5)(2) Where amended details are approved by the county planning authority <u>Secretary of State</u> under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans, general arrangement plans, environmental masterplan or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.</p> | |
| Schedule 2, paragraph 14(2) | <p>Amendments on the following basis:</p> <p>(2) The written details referred to in sub-paragraph (1) must either—</p> <p>(a) reflect the mitigation measures included in chapter 6 (noise and vibration) of the environmental statement and the nNoise and vvibration mManagement pPlan approved as part of the EMP (2nd iteration) under pursuant to paragraph 49-3 of this Schedule; or</p> <p>(b) where the mitigation proposed materially differs from the mitigation identified in the environmental statement and the nNoise and vvibration mManagement pPlan, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it.</p> | Capitals removed from references to noise and vibration management plan, and reference correction. |
| Schedule 3, Part 7 | <p><u>PR49</u> 320-309 metres of footpath to the north of the River Chelt, rerouting the existing footpath ref. AUC11 under the new River Chelt Bridge, as shown on sheet 15 of the streets, rights of way and access plans</p> | To reflect changes made to the streets, rights of way and access plans which provide a minor realignment to the diverted public right of way. |
| Schedule 4, Part 2, Row 1 | Column (3) | To reflect changes made to the streets, rights of way and access plans which provide a minor realignment to the diverted public right of way |

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| | <p>For a distance of 144<u>103</u> metres, as shown between points 15/1 and 15/2 on sheet 15 of the streets, rights of way and access plans</p> <p>Column (4)</p> <p>Reference PR49</p> <p>320<u>309</u> metres of new footpath to the north of the River Chelt, rerouting the existing footpath ref. AUC11 under the new River Chelt Bridge, as shown on sheet 15 of the streets, rights of way and access plans</p> | |
| Schedule 5, plot 3/2c | Removal of plot 3/2c to be inserted in Schedule 7 | To align with changes to the Book of Reference, Statement of Reasons, Land Plans as a result of further engagement with National Highways. |
| Schedule 5, plot 4/1c | <p>New plot added to schedule which had been permanent acquisition. New rights required for work numbers 1a, 1c, 1e, 1n being:</p> <p><u>New right for the construction of motorway signage and associated cabling and ducting works</u></p> <p><u>New right for the construction of a new southbound exit slip from the M5 to the A4019</u></p> <p><u>New right for the construction of a new northbound entry slip from the A4019 to the M5</u></p> <p><u>New right for the construction of an environmental barrier adjacent to Barn Farm north of Junction 10 and west of the M5</u></p> | To align with changes to the Book of Reference, Statement of Reasons, Land Plans as a result of further engagement with National Highways. |
| Schedule 5, plot 5/2z | <p>New plot added to schedule which had been permanent acquisition. New rights required for work numbers 2, 2d being:</p> <p><u>New right for the construction of a new grade separated roundabout junction and maintenance bays</u></p> <p><u>New right for the demolition of the existing A4019 bridge over the M5</u></p> | To align with changes to the Book of Reference, Statement of Reasons, Land Plans as a result of further engagement with National Highways. |
| Schedule 5, plot 5/6h | <p>New plot added to schedule which had been permanent acquisition. New rights required for work numbers 2, 2d being:</p> <p><u>New right for the construction of a new grade separated roundabout junction and maintenance bays</u></p> | To align with changes to the Book of Reference, Statement of Reasons, Land Plans as a result of further engagement with National Highways. |

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| | <u>New right for the demolition of the existing A4019 bridge over the M5</u> | |
| Schedule 5, plot 15/3c | New right added for work number 5e being: <u>New right for the diversion, construction, use and maintenance of public right of way FP AUC11 to the north of the River Chelt under the new River Chelt Bridge</u> | To reflect changes made to the streets, rights of way and access plans which provide a minor realignment to the diverted public right of way |
| Schedule 7, plot 3/2c | Insertion of plot 3/2c | To align with changes to the Book of Reference, Statement of Reasons, Land Plans as a result of further engagement with National Highways. |
| Schedule 7, plot 4/1c(i) | New plot added to schedule which had been permanent acquisition. New rights required for work numbers 1a being: <u>Required for the construction of motorway signage and associated cabling and ducting works and associated works</u> | To align with changes to the Book of Reference, Statement of Reasons, Land Plans as a result of further engagement with National Highways. |
| Schedule 7, plot 13/3r | Addition of new purpose of temporary possession being for work number 4n which is detailed as being " <u>Required for the construction of a service road running east and west of The Green</u> " | To correct reference, and align with existing works plans. |
| Deadline 5 Submission – Submitted 1 October 2024 | | |
| Article 13 | <p>(7) In any action against the undertaker <u>or the strategic highway authority</u> in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker <u>or the strategic highway authority</u> had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.</p> <p>(8) For the purposes of a defence under paragraph (7), the court must in particular have regard to the following matters—</p> <ul style="list-style-type: none"> (a) the character of the street and the traffic which was reasonably to be expected to use it; (b) the standard of maintenance appropriate for a street of that character and used by such traffic; | This change has been made at the request of National Highways and extends the protections offered by the Order to the strategic highway authority. |

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| | <p>(c) the state of repair in which a reasonable person would have expected to find the street;</p> <p>(d) whether the undertaker <u>or strategic highway authority</u> knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and</p> <p>(e) where the undertaker <u>or the strategic highway authority</u> could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,</p> <p>but for the purposes of such a defence it is not relevant to prove that the undertaker <u>or the strategic highway authority</u> had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker <u>or the strategic highway authority</u> had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.</p> | |
| Schedule 2, Part 1, Requirement 12 | (1) No part of the authorised development is to commence until written details of the surface water drainage system for that part, reflecting in accordance with the mitigation measures in chapter 8 (road drainage and the water environment) of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, county planning authority, the strategic highway authority and the Environment Agency. | To align with the other requirements in Schedule 2, as discussed in the Applicant's response to Q6.0.9 of the ExA's second written questions (ExQ2s) |
| Schedule 5 | Land Plans -Sheets <u>5 and 5A4</u> | To correct a typographic error and reflect addition of Sheet 5A of the Land Plans |
| Schedule 7 | Land Plans -Sheets <u>5 and 5A</u> | To reflect addition of Sheet 5A of the Land Plans |
| Schedule 9 | Paragraph numbers updated to begin from '1'. | To correct a numbering issue. |
| Schedule 9, Part 3 | Entirety of Schedule 9, Part 3 replaced by updated protective provisions for the benefit of National Highways. | To reflect the current proposed protective provisions for the benefit of National Highways. |

AtkinsRéalis

5th Floor, Block 5
Shire Hall
Bearland
Gloucester
GL1 2TH

Tel: +44 (0) 8000 514 514