

Comments by Winchester City Council on Draft Development Consent Order for consideration at the ISH1 on 9 December 2020

Introduction

The current public version of the dDCO is the one submitted by the applicant at deadline 3. The following comments are based on that document and on those submitted by the Council at deadline 4. They have been refined to reflect further consideration of the contents by the Council.

The Council is aware that the applicant may be intending to make a further submission of a revised version of the dDCO at deadline 5. The Council will await the decision of the ExA on which version will form the basis for consideration at ISH1. In the event that a further version of the dDCO is submitted and accepted, then the Council will respond again before the hearing.

Comments on dDCO

It is considered logical to go through the dDCO and comment as the sections arise and highlight proposed changes with an appropriate commentary.

Part 1

General Provisions preliminary

2 Interpretations

“**onshore site preparation works**” means:

- (c) pre-construction archaeological investigations;
- (d) environmental surveys and monitoring;
- (e) site clearance;
- (f) removal of hedgerows, trees and shrubs;
- (g) investigations for the purpose of assessing ground conditions;
- (h) diversion or laying of services;
- (i) remedial work in respect of any contamination or adverse ground conditions;
- (j) receipt and erection of construction plant and equipment;
- (k) creation of site accesses;
- (l) the temporary display of site notices and advertisements; and
- (m) erection of temporary buildings, structures or enclosures,

COMMENTARY: The applicant does appear to have created a much broader range of activities that could be undertaken before details are submitted to the Council. This approach means features could already be lost before details on the merits of their removal or retention are submitted for consideration by the Council. The above

criteria in red have been identified as causing the problem with the definition of commencement in some of the requirements. Their removal would resolve the issue.

working day” in the context of processing of applications submitted to any planning authority or highway authority means Monday to Friday excluding bank holidays and other public holidays.

COMMENTARY: adding the text in red avoids any confusion with the understanding of a typical working day for a contractor employees

Part 2

Principle Powers

9 Defence to proceedings in respect of statutory nuisance

— Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(1) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) and (ga) (noise that is prejudicial to health or a nuisance and is emitted or caused by a vehicle, machinery or equipment on a street) of section 79(1) of that Act no order may be made and no fine may be imposed under section 82(2) of that Act if –

the defendant shows that the nuisance –

relates to premises, vehicles, machinery or equipment used by the undertaker for the purposes of or in connection with the construction, of the authorised development and that the nuisance is attributable to the carrying out or use of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(2); or

is a consequence of the construction of the authorised development and that it cannot reasonably be avoided;

For the purpose of paragraph (1) above, compliance with the controls and measures relating to noise described in an approved construction environmental management plan or noise management plan will be sufficient, to show that an alleged nuisance could not be reasonably avoided.

Where a relevant planning authority is acting in accordance with section 60 (4) and section 61 (4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the local authority must also have regard to the controls and measures relating to noise referred to in a relevant construction environment management plan approved pursuant to requirement 15.

Section 61(9) (consent for work on construction sites) of the Control of Pollution Act 1974 as it relates to proceedings under Section 82 of the Environmental Protection Act 1990 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), will not apply where the consent relates to the use of the premises by the undertaker for purposes of or in connection with the construction, of the authorised development.

In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990(3).

(1) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

(2) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

(3) 1990 c. 43.

COMMENTARY: Having initially taken a view that this Article was not justified at all, the Council has refined its position and is now suggesting that it could be retained if revised. In order to progress discussions, the Council is putting forward the above, which is a revision to the applicant's latest version. The Council does not consider that maintenance and operation should be exempted. Reference to these has been removed. The main change is the removal of original 9(a)(ii) because it was seen as repetition.

Part 3

Streets

Access to works

- 14(2) **COMMENTARY: This clause sets 20 working days as the turnaround time for any request to a relevant planning authority (which is defined as the district councils) for an access not shown on the plans. This is too short a time for WCC to deal with any submission taking into account that WCC would wish to consult HCC and a number of internal consultees as part of the process.**

A period of 40 working days is suggested which harmonises with the processing time to be allocated to requirement submissions as set out in Schedule 3

It is noted that the 20 day period occurs elsewhere (para 16) so a common approach is needed.

Part 7

Miscellaneous and general

41 Felling or lopping of trees and removal of hedgerows

- (1) The undertaker may fell or lop any tree within or overhanging the Order limits landwards of MLWS or cut back its roots, **excluding those trees within hedgerows HR50 and HR48 shown on drawing number EN020022-2.12-HT PO-Sheet 4**, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—
- (a) obstructing or interfering with the **construction**, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
 - (b) **constituting a danger to persons using the authorised development.**
- (2) In carrying out any activity authorised by paragraph (1), the undertaker must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity for that loss or damage.
- (3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (4) The undertaker may, for the purposes of and in so far as it reasonably believes is necessary in connection with the authorised development—
- (a) subject to paragraph (2), remove any hedgerows within the Order limits landwards of MLWS that may be required for the purposes of carrying out the authorised development; and

(b) remove important hedgerows as are within the Order limits landwards of MLWS and identified in Schedule 12.

(5) The power conferred by paragraph (4) removes any obligation upon the undertaker to secure any consent under the Hedgerow Regulations 1997(a).

(6) The undertaking will replace any tree or hedgerow removed under this Article in accordance with details agreed with the relevant planning authority.

(7) Nothing in this article authorises any works to any tree subject to a Tree Preservation Order.

(8) In this article “hedgerow” and “important hedgerow” have the meaning given in the Hedgerow Regulations 1997.

(9)

COMMENTARY: A revision to Article 41 is proposed. The insertion is made into 41(1) because the Council wishes to specifically protect the trees identified from any risk of being lost because of the contribution they make to the landscape character and approach to Denmead village.

If details of any trees to be removed will be part of any requirement submission, why is construction included above in 41(1) (a)? It appears to be giving a backup power to remove trees and circumvent the requirement submission procedure.

What does this mean? How can someone “use” the development as set out in 41 (1)(b). Should this not be removed?

If any tree or hedgerow is removed there is no requirement to replant. This is addressed by a new (6) above.

42 Trees subject to tree preservation orders

2.—The undertaker may fell or lop any tree described in column (1) of Schedule 11, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree from obstructing or interfering with the **construction**, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(1) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must not cause unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and

(b) **the duty contained in section 206(1) of the 1990 Act (replacement of trees) does apply.**

(2) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

COMMENTARY: A revision to Article 42 is proposed. Having indicated that any tree covered by a TPO will be avoided, it seems counter intuitive to then seek a power to be able to remove them. If details of any trees to be removed will be part of any requirement submission, why is construction included in 42(2) above? It appears to be giving a backup power to remove trees and circumvent the requirement submission procedure.

There is no clear reason why the exemption in 42(1)(b) was originally included. The applicant has already indicated they will replace lost trees. The same rule should apply here so the word “not “ has been removed.

Schedule 1

Authorised Development

COMMENTARY: *There are two additional temporary compounds that are located close to the converter station. These are now showing on Work Plan Rev 002 (REP1-014) and annotated as Work No.2 & 3 overlap. They need adding to the list of elements making up the approved scheme*

The merits of the position of the new access off Broadway Lane within Work No2 (the converter Station) as opposed to forming part of Work No. 3 (the Temporary Compound) is questioned. If the first action is to be the establishment of the access off the road and then set up the compound, would it not be sensible for the new access and the first part of the access road up to the compound to be part of Work No. 3? It would make the requirement submission a simpler and a cleaner process.

Schedule 2

Requirements

General comments:

GC1 *The structural problem with the wording of the requirements that resulted from the broad range of activities that are allowed to take place before “commencement” is actually triggered, has been recognised and mostly corrected, but some areas where it is not qualified still exist and need resolution. The Council has put forward a remedy by refining the scope of what activities can take place under the heading of onshore site preparation works.*

On the assumption this matter is resolved, the Council will not identify every single occurrence when the conflict occurs. If not resolved, then the trigger used in the requirements will need separate consideration to determine if it is appropriately phrased.

GC2 *Because the set of Requirements is trying to cover such a broad scheme some lack clarity and focus. Requirements 7 to 9 inclusive have been identified as a particular problem. Two remedies have been considered. Either having distinct sub sections within the requirements or splitting the requirements up reflecting the timeframes that they need to address. These are:*

- *At the pre commencement stage; the identification of the features that are to be lost or retained and how vegetation will be protected.*
- *Before commencement; details of new planting and reinstatement*

- *Before the operational stage; long term management of the vegetation at Lovedean.*

After consideration it is believed that this can more effectively be achieved by separate requirements. This is reflected in the proposed revisions and comments to the requirements set out below.

GC3 Some of the requirements reference back to supporting documents. It is considered beneficial if the referenced document contains a list of the criteria that the requirement submission should address. Ideally the list should then reference back to the section in the document that it is intended to represent.

Interpretations

COMMENTARY:

- (6) (a) *says length measured inside from abutment to abutment...why not outside edge of walls? The measurement point chosen is inconsistent with that nominated in (c) for measuring width. The two (a) & (c) should be the same whatever that is.*
- (b) *When measuring height now says measurement from ground level. This is still too vague. GL before or after earthworks? Why not nominate the specific AOD height.*

Add following to interpretations: "Topping out" means the formal completion of a building by attaching its highest feature.

(this is referred to in a later change to a requirement)

2 Time Limits

Propose new section 3 to R2

(3) The undertaker will provide to each local planning authority in whose area the authorised development is located landwards of MLWS written notice within 14 days of the development being finally commissioned.

COMMENTARY: *The Councils should be informed when the development reaches the state of becoming fully operational.*

Phases sections and identification of trenching/HDD sections of authorised development onshore

3-- No authorised development landwards of MHWS including the onshore site preparation works may commence until a written scheme setting out all the phases of the authorised development together with the intended method of installing the cables (trenching or HDD) together with the length of the relevant section, has been submitted to the relevant planning authority detailing the phases of the onshore works within that planning authorities administrative area. Concurrent with the above, or before any work is commenced, a schedule of the sequence in which the work shall progress, shall be submitted to the relevant local planning authority.

The authorised development landwards of MHWS must be carried out in accordance with the written scheme submitted pursuant to paragraph 1 (as may be updated from time to time following the further approval of the relevant planning authority).

COMMENTARY: *Change to requirement heading above to include identification of those sections of the cable route to be trenched and those to be installed by HDD together with length of sections concerned.*

The request for the sequence that the phases will be undertaken, is a common planning request and allows clarity on how the work will progress.

Micro siting and option confirmation

4 (1) Converter Station

Prior to the commencement of any works within Work No.2 where the converter station is to be located the undertaker will confirm to the relevant planning authority which converter station perimeter option shown on the Converter Station Parameter Plan with reference EN020022-2.6-PARA-Sheet1 listed in Schedule 7 to the Order the converter station will be constructed within.

(2) Denmead Meadows HDD launch site

Prior to the commencement of any works within Work No 4, the undertaker will confirm to the relevant planning authority which location north or south of the Hambledon Road the HDD launch compound will be located.....

COMMENTARY: *At the present time there are two option for the location of the Hambledon Road HDD launch compound and the final choice needs clarifying before work commences.*

5 Converter Station and optical regeneration station parameters

COMMENTARY:

In Table WN2, the Lightning mast height is given as 30m. Understood there are also some on top of the building at 4m tall. It needs to say that the 30m masts are positioned in the yard area.

The maximum overall height of the Converter Station of 111.1m AOD should be in here somewhere.

6 Detailed Design approval

COMMENTARY:

In this requirement it is considered it would add clarity if the Work No. descriptions are added before the relevant sub sections

(k) refers to drainage but does Requirement 12 not covers this?

Should this requirement insofar as it relates to the design of the Converter Station building, not reference back to the agreed principles in the Design and Access Statement by actually naming the source document and the relevant section?

6(1) the following should be added to the list:

(i) details of fencing, lighting and lightning masts

- (ii) details of existing and proposed ground levels
- (iii) foundation details

6(3)(a) should be revised to say:

(a) Proposed layout and cable circuit positions within the DCO limits.

6(7) Not happy about use of word “substantially” they are either in accordance or not.

6(7) The life expectancy of the materials is noted at 20 years. Taking into account the level of consideration given to materials it seems logical for them to be retained and replaced like for like. Please add onto the end of sentence.....and shall be retained in the same materials unless the prior written approval of the local planning authority is first obtained.

The following new requirements (A,B, C, & D) would replace 7, 8 & 9.

(A) Biodiversity: protection during construction

Converter Station Area

No phase of Works No. 2, or 3 may commence until details of those hedgerows, trees, scrub and other features to be removed together with a strategy for the retention and protection during the construction phase of those features or habitats to be retained shall be submitted to and approved in writing by the relevant planning authority. The submitted details shall include a timetable for the installation and removal of any protective barriers prior to the commencement of any work. The excluded area shall not be used for any purpose during the construction phase. The scheme shall be implemented in accordance with the approved details and to the agreed timetable.

(2) Onshore Cable Route (excluding Denmead Meadows)

No phase of Work no. 4 may commence until details of those hedgerows, trees, plants or other features to be removed, cut back or otherwise altered, together with a strategy for the retention and protection of those features or habitats to be retained, shall be submitted to and approved in writing by the relevant planning authority. The submitted details shall include a timetable for the installation and removal of any protective barriers. The scheme shall be implemented in accordance with the approved details and to the agreed timetable.

(3) Onshore Cable Route Denmead Meadows

Before any work in that section of Work no. 4 which lies between Hambeldon Road and Anmore Road may commence, the full details of the construction of the HDD compounds together with details of the sections of hedgerows, trees, plants or other features to be removed, cut back or otherwise altered, together with a strategy for the retention and protection of those features or habitats to be retained, shall be submitted to and approved in writing by the relevant planning authority. The submitted details shall accord with the measures set out in the Denmead Meadows methodology statement.

The submitted details shall include a timetable for the installation and removal of any protective barriers. The scheme shall be implemented in accordance with the approved details and to the agreed timetable.

(B) Biodiversity: New landscaping, enhancement & reinstatement work

Converter Station & ORS

No phase of Works No. 2, or the construction of the optical regeneration stations within Works No. 5 may commence until a detailed landscaping and enhancement scheme (as appropriate) in relation to that phase (which accords with the outline landscape and biodiversity strategy in so far as relevant to it and the design

principles relating to landscaping as set out in the DAS) has been submitted to and approved by the relevant planning authority (and where related to any phase of Works No. 2 in consultation with the South Downs National Park Authority).

A detailed landscaping scheme for any phase must include details of all proposed hard and soft landscaping works, including (in so far as relevant) -

surveys, assessments and method statements as guided by BS 5837;

location, number, species, size, plant protection measures and planting density of any proposed planting;

cultivation, importing of materials and other operations to ensure plant establishment;

hard surfacing materials;

full details of any enhancement works

implementation timetables for all landscaping works;

Onshore Cable Route (excluding)Denmead Meadows

Before a cable is laid in any trench within Work No.4 details of a scheme for the reinstatement of the land used and any replacement planting to replace removed sections of hedgerow or removed trees shall be submitted to and approved in writing by the relevant planning authority. The submitted details will include a timetable for the reinstatement work and planting. The approved scheme shall be implemented in accordance with the approved details.

Onshore Cable Route Denmead Meadows

Before any cable is laid in any trench or feed through any HDD formed connection, in any part of the land between Hambledon Road and Anmore Road, details of a scheme for the reinstatement of the land used as the temporary compounds and any replacement planting for removed sections of hedgerow or removed trees shall be submitted to and approved in writing by the planning authority. The submitted details will include a timetable for the reinstatement work, planting and future management to ensure the re-establishment of the vegetation. The approved scheme shall be implemented in accordance with the approved details.

(C) Implementation and maintenance of landscaping & enhancement work

—All landscaping and enhancement works must be carried out in accordance with any detailed scheme approved under requirement 5 in relation to them and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards.

Any tree or shrub planted or any seeded area as part of an approved landscaping and enhancement scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, or in the case of any seeded area reseeded with the same seed type unless otherwise approved by the relevant planning authority.

(D) Biodiversity: ongoing management plans

(a) Converter Station

Before the Converter Station building is topped out, a written biodiversity management plan that addresses the future management, enhancement and retention of the biodiversity value of the area covered by Works No, 2 and 3 (which accords with the outline landscape and biodiversity strategy in so far as relevant and the relevant recommendations of appropriate British Standards) has been submitted to and approved by the relevant local planning authority in consultation with the relevant statutory nature conservation bodies and (where works have the potential to have an impact on wetland habitats) the Environment Agency. The submitted details shall also address the matter of future reporting of the

biodiversity condition of the area (the level of detail, any proposed changes to management and the time period when the reports shall be presented). The agreed procedure shall be implemented until the Converter Station is de commissioned.

COMMENTARY:

The original structure of R7, R8 and R9 is confused, they try to cover several areas and lacks clarity. The Council proposes that they are changed to reflect the following distinct periods. Firstly, construction, when the priority is establishing what vegetation has to be lost for the development to proceed and how any retained vegetation will be protected.

Secondly, during construction and before operation when new planting and replacement planting will be agreed and undertaken. This includes re-establishment work.

Thirdly, the long term management arrangements for the area at Lovedean.

10 **Temporary Highway Accesses**

COMMENTARY

Suggested stripping out of here the Lovedean permanent access details which would sit better as part of R6(2) and changing heading to “temporary highway accesses”

Question if agreement really should rest with HCC on access arrangements. Does this not contradict clause 14 above where WCC is to agree any additional access points....question what the difference in the two sets of circumstances is?

11 **Fencing**

COMMENTARY

11(3) Need detail of fencing to be installed as it does not show up under No.6 (Detail design approval) unless it is added to 6.

12 **Surface and foul water drainage**

COMMENTARY

So where does this detail sit relative to that required under 6(1) (f) and (h) are they not covering same issues?

15 **Construction Environmental Management Plan (CEMP)**

COMMENTARY

This requirement should be re worded to say “No development of any kind shall be begun”and moved right up the list to position of R4

That the following change is made

Table 5.3 – This is titled “table of dust results per onshore cable corridor section”. There is however no comparable assessment for construction activities of the converter station itself. There needs to be a comparable table/entry for the Converter

station construction which should categorise this activity as high risk (in accordance with paragraph 23.6.2.7 of the Air Quality Chapter 23 (Document 6.1.23)

17 Construction Traffic Management Plan

COMMENTARY

R17 references back to the framework CTMP which is 8.2 in appendix 22.2 but the list of items in that document excludes any monitoring and any remedial action that might be required to correct unforeseen problems. (I have not checked revised submissions so this may have been resolved)

If these plans are prepared by different contractors (section 8.2.1.2 Appendix 22.2) who ensures they all harmonise?

18 Construction Hours

COMMENTARY

Says construction work, but does that excludes preliminary site clearance and preparation activity? They should be governed by same hours. The first section may be trying to hint in a convoluted way at this but suggest apply that restriction here in plain English.....

No reference to exclusions to protect wildlife.

Reference to “no discernible activities” is too vague and subjective.

19 Traffic Management Strategy

COMMENTARY

Why is this limited only to Works No 2 What about 3 and 4?

There are aspects to the strategy that are relevant to WCC such as the timing of the work.

Wish to see absolute commitment that two way traffic flow maintained on the Hambledon Road for all sizes of vehicles (with assistance of traffic lights) plus maintenance of combined pedestrian /cycle path.

21 Travel Plan

COMMENTARY

It seems to exclude Work No 3. There may be fewer workers on that establishment work but it is not clear why they are not to be covered by the Travel Plan

22 Restoration of land used temporarily for construction

COMMENTARY

What is definition of completion of authorised development?

Suggest consider using the following: “no later than first handling or transmission of any power....”

Missing Requirements

Decommissioning and restoration scheme

— In the event of a written request from the relevant planning authority to the operator, seeking details of the electricity imported or exported through the converter station over the previous period of 4 years, then the operator will respond in writing within 21 days. In the event that the Converter Station does not import or export any electricity for a period in excess of 3 years, the applicant will within 3 months, submit full written details for approval by the relevant planning authority of a decommissioning and restoration scheme. The submitted details will identify those parts of the development to be removed, those to remain or to be left in the ground and the intended use of the land occupied by the converter station and access road. The details will also include the methodology to be adopted and the wider environmental implications of the proposed work and a timetable for its completion. Finally, details of the provision for the future maintenance of any retained vegetation will also be included.

The approved scheme will then be implemented in accordance with the approved details.

COMMENTARY: There will need to be a clear trigger point after which the details are submitted to the relevant authority. In essence it needs to review all the considerations that are part of the current examination and reverse engineer them. An outline decommissioning and restoration paper needs to be prepared, otherwise the detail in this requirement will have to be extended.

Employment and skills plan

No phase of the authorised development may commence until for that phase an employment and skills plan in relation to the authorised development (which accords with the outline employment and skills plan) has been submitted to and approved by the relevant planning authority.

(2) The employment and skills plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development, and the means for publicising such opportunities. In addition, it must also identify opportunities to engage with students at educational establishments within the local area to offer information on the range of future career opportunities that the project is reliant upon to be completed.

(3) The employment and skills plans must be implemented as approved.

COMMENTARY: This is a new requirement. The Council is currently engaged in discussions with the applicant and it is hoped that an outline employment and skills plan will be prepared as part of that process.

No start until whole scheme is approved

No part of the development within the UK boundary above MHSW shall commence before the whole of the scheme (including the French side) has approval.

COMMENTARY: This would be a new Grampian style requirement. The UK side is only one-half of the overall project. This new requirement seeks to ensure that the development is completed in its totality and there is no risk of any element being established but then found unusable because the other half of the project cannot for one reason or another not be built.

