

TR010015 - Comments on Consultation Report Contents

1.0 Exec Summary

Section 1.3 – s.47 and s.48 respectively relate to 2 different duties in the Act. S.47 is the duty to consult the local community, whereas s.48 is the duty to publicise the application more generally. Therefore I would advise that you separate out your commentary on these 2 different strands of consultation and be explicit about which responses were made in relation to which strand of consultation. I suspect you have bundled them together because they occurred around the same time. However, I also suspect the consultation material used in respect of these different strands of consultation was different. Given we will be checking for compliance with the SoCC in relation to the s.47 consultation undertaken it is important we are able to clearly identify your reporting on this strand as distinct from the s.48 reporting.

2.0 Background

Section 2.8 “Compliance with Legislative Requirements” should include an explanation of the implications that the change in the NSIP Highways Threshold had on the project and the consequent request for a Direction from the SoS DfT. This should include explicit explanation of the validity of the pre application consultation in terms of the scope and detailed wording of the SoS Direction.

3.0 Previous Consultations Prior to PA2008

Be clear in this section how the options were identified and refined leading up to the start of the PA2008 process. Why was this most logical and appropriate place to start from in terms of the various strands of consultation?

You also need to be clear about the different phases of consultation undertaken, separating statutory and non statutory rounds. A chronological timeline showing this might help. For each of the phases undertaken, a separate summary of responses will help separate the iterations.

4.0 Pre Application Consultation Strategy

In this section you need to be explicit about how you managed to respective roles of NCC – developer and s.42/44 consultee. How did you ensure propriety and objectivity in undertaking these respective

roles? Explain how the SoCC responded to the linear nature of the scheme.

It may be helpful to explain how s42 consultees were identified and justify the confidence which NCC has in the completeness of the consultation.

5.0 Section (47?) and Section 48

See comments above (1.0) re mixing s.47/48 reporting.

6.0 to 8.0 (no comments)

Appendices

Please include the extant SoS Direction as an Appendix

COMMENTS ON DRAFT DEVELOPMENT CONSENT ORDER (DCO) AND EXPLANATORY MEMORANDUM (EM) SUBMITTED ON 10 SEPTEMBER 2013

INTRODUCTION

This note sets out comments on the following main elements of the DCO and related documents . These elements are:-

- general comments on the draft EM
- Comments on DCO provisions
- Requirements
- Other comments

These comments are provided without prejudice to any decision of the Secretary of State or of the Examining authority (if the application is accepted for examination). For the avoidance of doubt, the absence of a comment on a particular provision is not intended to indicate that such a provision is likely to be acceptable to the Secretary of State or the Examining Authority.

The applicant should satisfy itself, that the draft DCO contains all powers it requires in order to undertake the project.

No comments at this stage are made on drafting style or on typographical errors.

GENERAL COMMENTS ON THE DRAFT EM

A fuller explanation of the provisions in the DCO is encouraged. Regulation 5(2)(c) of the APFP Regulations requires the purpose and effect of the provisions to be set out in the EM. This includes the purpose and effect of the provisions in the Schedules which are currently not covered.

Where there is departure from model provisions or a provision has been used in similar legislation, fuller explanation of this is encouraged. As an example, paragraph 35 refers to acquisition of land as a model provision ‘..apart from the addition of the reference to airspace’ but without an explanation as to why.

COMMENTS ON DRAFT DCO PROVISIONS

Article 2 Interpretation -‘relevant planning authorities’ It is suggested that as there are a number of planning authorities whose areas are affected by the proposals which are identifiable, it would be useful to identify them

Article 3 – It is suggested that you distinguish between elements regarded as being integral to an NSIP and any associated development and explain the approach taken in the EM.

In coming to a conclusion as to whether there are ‘ancillary works’, it is recommended to consider whether in practice it is likely that there are any works that do not constitute development

Article 4 - We recommend you reconsider the definition of the word ‘maintain’. In particular, the purpose and effect of each element eg ‘decommission’ ‘demolish’ and ‘replace’

Article 5 - There are no parameters specified, as yet, for the limits of deviation. Unless formulated there is a risk of being unable to demonstrate that the proposal has been fully considered in the light of consultation responses received. We suggest that you explain in the EM the reasons for any vertical and lateral deviations.

Article 7(3) - It is suggested that the word 'undertaker' might be replaced by 'Norfolk County Council'

Article 7(4) and (5) - This is based upon but deviates from the model provision. It is suggested that whilst the EM states that it is included in the interests of clarity, the provision has become unwieldy and would perhaps benefit from further explanation in the EM

Article 8(5) - It is suggested that the relevant authorities should be consulted about the inclusion of deemed consent provisions in relation to any consents which they are required to give (cross refer to Article 15)

Article 11 - We suggest the EM should clearly explain the purpose and effect of this provision. The DCO would normally set out any modification to existing statutory provisions in connection with classification of roads (Schedule 5) with particular reference to s120 PA 2008

Articles 19-33 - Compulsory acquisition –

Generally: We draw your attention to the new guidance on compulsory acquisition and in particular, that negotiation should take place in parallel for acquisition by agreement and to meet objections by statutory undertakers so that by the time of examination, there would be a minimum number of objections

Article 19 – You may wish to explain in the EM the purpose and effect of making this article (compulsory acquisition of land) subject to articles 22 and 28

Article 20 – Article 20(7) makes mention of s106 and s278 Deeds. It is suggested that the purpose and effect of any such proposed mitigation measures be explained in the EM

Article 22 - We note this Article mentions Schedule 9, which currently contains no entries.

Article 23- We suggest that the purpose and effect of the deviation from the model provision (private rights) should be explained in the EM

Article 25 – We suggest that the purpose and effect of the deviation from the model provision in relation to acquisition of airspace, is explained in the EM

Article 30 - In relation to special category land we remind you of the need to explain in the EM the details of whether the necessary certification from the Secretary of State has been granted or applied for

Article 34 (footnote) - We suggest that any article which may be considered necessary for TPO trees would require a corresponding Schedule for such trees

Article 44 - You may wish to consider whether any necessary expertise is required for an arbitrator appointed in this case

REQUIREMENTS (SCHEDULE 2)

General: You may wish to consider the requirements in the Luton M1 10a Separation DCO, recently issued by the secretary of state in respect of two issues 1) consistency in drafting of requirements and 2) the use of 'tailpiece' conditions ;

Requirement 1(1) - The term 'advance works' which is referred to in a number of other requirements but is undefined

Requirement 1(2) - We suggest that there is an inconsistency of this requirement with the statutory code.

Requirement 4 – We suggest that you consider the tailpiece condition as drafted in the light of the recently issued decision by the secretary of state on the M1 Junction 10a Separation DCO

Requirement 5 – Our comment is as for requirement 4, with regard to tailpiece. In addition you may wish to consider the M1 Junction 10a DCO for consistency of drafting requirements. You may also wish to consider the purpose and effect of this requirement, including how this relates to ecological surveys already undertaken and consultation with Natural England

Requirements 7-12 – We suggest that you consider the need for a code of construction practice, to reflect a number of the mitigation measures which are proposed in these conditions

Requirements 16-27 – We note these requirements are to be 'worked up' and draw your attention to the general remarks above as to drafting and consistency

Requirement 28 – We suggest that any proposed amendments to details already approved, would normally be dealt with in accordance with the statutory code

Schedules 13 and 14 - Protective provisions and Speed limits – We note that these Schedules currently have no entries

Procedure for discharge of requirements (Schedule 14)

Paragraphs 1 and 2 – As this provision reduces the statutory period by which the relevant authorities should consider applications for discharge of requirements, we suggest that you consult the relevant authorities who will be responsible for complying with these provisions

Paragraph 3 – As this provision concerns the repayment of statutory fees in certain circumstances, we suggest that you consult the relevant authorities affected by the provisions

Paragraph 4 – As this provision envisages a very specific and 'bespoke' appeal process we suggest that you consult the relevant authorities who will be responsible for complying with these provisions

OTHER COMMENTS

Book of reference (BOR)

BOR has not been considered in any detail. However it is noted that there are a number of gaps; unknown parties, title detail and extent of land plots to be acquired.

All areas described in the BOR are referred to as approximate. It is suggested that if this approximation is because additional land is envisaged (rather than approximation within the limits already identified) then the purpose and effect should be explained in the EM

We note there are currently no entries relating to Crown interests (part 4).

We suggest a renumbering, so that no 'plot' has the same plot number as any other eg plots 1/1 and 2/1 are currently both 'plot 1'