

Application by Highways England for A63 Castle Street Improvement-Hull

The Examining Authority's Schedule of Proposed Changes to the draft Development Consent Order

Published 11 July 2019

Please note that these proposed changes are made with regard to the Applicant's most recent draft DCO, which is the version submitted on 17 June at Deadline 3 [REP3-003]. Thus, the schedule must be read in conjunction with that document and not with any earlier version. Please also note that this schedule deals with primary changes only, and the Applicant is asked to check all consequential changes and cross-referencing within the Order.

Some of the changes proposed have been the subject of extensive written submissions and discussion and appear to have broad agreement. Others have arisen from recent written submissions and may lead to further dialogue.

The ExA will have regard to all representations made in relation to this schedule of changes, which must be received by Deadline 5 (5 August). The Applicant has the opportunity to submit a final dDCO (by Deadline 6 - 27 August) and there will be an opportunity to comment on that (Deadline 7 - 10 September).

Article or Schedule	Proposed Text	Reason/Comment
A2 - Interpretation	<p>“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than operations consisting of archaeological investigations, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions or, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements or installation of a site compound or any other temporary building or structure and “commences”, “commenced” and “commencement” is to be construed accordingly;</p>	To ensure that potentially environmentally intrusive works cannot be carried out without being subject to the controls built into the DCO.
A18 - Protective work to buildings	<p>Between 18(6) and 18(7) insert a new paragraph as follows and renumber the remainder of the Article accordingly:</p> <p><u>(7) Where the proposed protective works would, but for the provisions of this Order, require consent under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (other than in respect of the buildings identified in Work No 30 of Schedule 1), the undertaker may not serve a notice under paragraph 5(a) until the proposed protective works have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and, if required by the Arrangements for Handling Heritage Applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015, Historic England.</u></p>	In order to ensure that works which might affect the special interest of listed buildings are subject to appropriate control.

Article or Schedule	Proposed Text	Reason/Comment
<p>A29 Temporary use of land for carrying out the authorised development</p>	<p>29.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to paragraph (2A) and article 22(2) (time limit for exercise of authority to acquire land compulsorily)—</p> <p>(a) enter on and take temporary possession of—</p> <p>(i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and</p> <p>(ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;</p> <p>(b) remove any buildings and vegetation from that land;</p> <p>(c) construct temporary works (including the provision of means of access) and buildings on that land; and</p> <p>(d) construct any works on that land as are mentioned in Schedule 1 (authorised development).</p> <p>(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph 1(a)(ii).</p>	<p>To ensure appropriate protection for heritage assets.</p> <p>NB: Although the additional paragraph has been numbered (2A) for convenience, the final draft DCO will need to use normal numbering conventions.</p>

Article or Schedule	Proposed Text	Reason/Comment
	<p><u>(2A) Where the proposed removal of any buildings under paragraph (1)(b), the proposed construction of temporary works (including the provision of means of access) and buildings under paragraph (1)(c) or the proposed works as are mentioned in Schedule 1 under paragraph (1)(d) would, but for the provisions of this Order, require consent under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (other than in respect of the buildings identified in Work No 30 of Schedule 1) the undertaker may not exercise any power granted under paragraph (1)(b), (1)(c) or (1)(d) until details of the proposed works have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority and, if required by the Arrangements for Handling Heritage Applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015, Historic England.</u></p> <p>(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—</p> <p>(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7, or</p> <p>(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.</p>	

Article or Schedule	Proposed Text	Reason/Comment
	<p>(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—</p> <p>(a) replace a building removed under this article;</p> <p>(b) restore the land on which any permanent works have been constructed under paragraph (1)(d);</p> <p>(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or</p> <p>(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.</p> <p>(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.</p> <p>(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.</p> <p>(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.</p> <p>(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no</p>	

Article or Schedule	Proposed Text	Reason/Comment
	<p>right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).</p> <p>(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—</p> <p>(a) acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights and restrictive covenants); or</p> <p>(b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only).</p> <p>(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.</p> <p>(11) Section 13 (refusal to give possession to acquiring authority)(a) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).</p>	
A35 - Felling or lopping of trees and removal of hedgerows	<p>35.—(1) The undertaker <u>may lop any tree, or fell, lop or cut back the roots of any may fell or lop any tree or</u> shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—</p>	To ensure that there is clarity regarding trees to be retained.

Article or Schedule	Proposed Text	Reason/Comment
	<p>(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or</p> <p>(b) from constituting a danger to persons using the authorised development.</p> <p>(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.</p> <p>(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 of the 1961 Act.</p> <p>(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.</p> <p>(5) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997(a) and includes important hedgerows.</p> <p>(6) In this article, “tree” has the same meaning as in Chapter 1 of Part VIII of the 1990 Act but subject to the exceptions set out within regulations 14 and 15 to the Town and Country Planning (Tree Preservation)(England) Regulations 2012.</p>	
A41 Deemed marine licence	Delete this article.	See Schedule 9
Schedule 1	Work No.30 — Work to listed buildings – Castle buildings and Earl de Grey; partial demolition of <u>the</u> Earl de Grey and partially rebuilding approximately 3 metres to the north of existing position; erection of scaffolding around Castle buildings and installation of vibration monitoring equipment.	To clarify the proposal. NB This wording is based on the information currently available and further re-drafting may be necessary if and when the Applicant

Article or Schedule	Proposed Text	Reason/Comment
		provides further details of the proposals.
Schedule 2 - Requirements		
R4 Construction and handover environmental management plan	Add the following to the list of management plans at 4(2)(d) <u>(xviii) Flood Water Management Plan (FWMP).</u>	In order to ensure the management of flood water flows from all sources during construction.
R5 Landscaping	<p>5.—(1) No part of the authorised development is to commence until a landscaping scheme which sets out details of all proposed hard and soft landscaping works has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</p> <p>(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement.</p> <p>(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—</p> <p>(a) location, number, species mix, size and planting density of any proposed planting;</p> <p>(b) cultivation, importing of materials and other operations to ensure plant establishment;</p> <p>(c) existing trees to be retained, with measures for their protection during the construction period (subject to necessary works that may be required under article 35 (felling or lopping of trees and removal of hedgerows));</p> <p>(d) proposed finished ground levels; and</p> <p>(e) implementation timetables for all landscaping works.</p> <p>(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.</p>	To ensure that there is clarity regarding trees to be retained.

Article or Schedule	Proposed Text	Reason/Comment
	<p>(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 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, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.</p>	
R6 Contaminated land and groundwater	<p>6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination which includes consideration of whether construction, <u>either in whole or in part</u>, should be halted and appropriate timescales for remediation in consultation with the relevant planning authority and the Environment Agency.</p> <p>(2) Where the undertaker determines that remediation of the contaminated land 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 submitted to and approved in writing by the Secretary of State <u>for approval, and the Secretary of State shall consult, following consultation</u> with the relevant planning authority on matters related to its function and the Environment Agency <u>on matters relating to their functions before giving such approval.</u></p> <p><u>(3) Where it has been determined under paragraph 1 that development, either in whole or in part, should be halted, development shall not re-commence until:</u></p>	<p>In order to ensure that work is halted and does not recommence until appropriate measures to address contamination issues have been carried out.</p>

Article or Schedule	Proposed Text	Reason/Comment
	<p><u>(i) the written scheme and programme for remedial measures in paragraph (2) has been approved by the Secretary of State; and</u> <u>(ii) any works identified in the approved scheme as necessary before recommencement have been carried out.</u></p> <p>(43) Remediation must be carried out in accordance with the approved scheme.</p>	
R7 Protected species	<p>7.—(1) No part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.</p> <p>(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—</p> <p>(a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;</p> <p>(b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and</p> <p>(c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph, the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.</p> <p>(3) <u>If the relevant works require a protected species licence</u> the undertaker must consult with Natural England on the scheme referred to in subparagraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and</p>	To improve clarity

Article or Schedule	Proposed Text	Reason/Comment
	<p>experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.</p> <p>(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation with Natural England, and under any necessary licences.</p>	
R8 Surface and foul water drainage	<p>8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority and the Environment Agency on matters related to their <u>its</u> functions and the Environment Agency.</p> <p>(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and the Environment Agency on matters related to their <u>its</u> functions and the Environment Agency, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement.</p>	To improve clarity.
R9 Archaeological remains	<p>9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</p> <p>(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).</p>	To clarify the approval process.

Article or Schedule	Proposed Text	Reason/Comment
	<p>(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).</p> <p>(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and notice served on the relevant planning authority as soon as reasonably practicable from the date they are identified.</p> <p>(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority.</p> <p>(6) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be<u>which have been</u> submitted in writing to, and approved in writing by, the relevant planning authority.</p>	
R10 Traffic management	<p>Traffic management</p> <p>10.—(1) No part of the authorised development is to commence until a traffic <u>and transport</u> management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</p> <p>(2) The authorised development must be constructed in accordance with the traffic <u>and transport</u> management plan referred to in sub-paragraph (1).</p>	To ensure clarity and consistency with the OEMP and the REAC, which refer to a traffic and transport management plan.

Article or Schedule	Proposed Text	Reason/Comment
R12 Fencing and barriers	<p>Replace R12 with the following:</p> <p><u>Fencing and vehicle restraint systems</u></p> <p><u>12-(1). Any permanent or temporary fencing, barriers or other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.</u></p> <p><u>(2) No part of Work number 5 is to commence until details and specifications for the scale, design and materials of the central reserve vehicle restraint system, including any associated fence, barrier, wall or other means of enclosure, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.</u></p> <p><u>(3) The central reserve vehicle restraint system, including any associated fence or barrier, must be constructed in accordance with the approved details, unless the secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to any variation.</u></p>	To improve clarity and to ensure that the central reservation barrier is of a satisfactory appearance
R13 Applications made under requirements	<p>Applications made under requirements</p> <p>13.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval requirement by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—</p> <p>(a) the day immediately following that on which the application is received by the Secretary of State; or</p> <p>(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 14; or</p>	To improve clarity.

Article or Schedule	Proposed Text	Reason/Comment
	<p>(e) or such longer period as may be agreed between the parties.</p> <p>(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period).</p> <p>(3) Where—</p> <p>(a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;</p> <p>(b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and</p> <p>(c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement, the application is taken to have been refused by the Secretary of State at the end of that period.</p>	
<p>Additional requirement: Myton Bridge Underpass Improvement Works.</p>	<p><u>(1) Work No. 41 is not to commence until the following details have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function:</u></p> <p><u>(a) design;</u></p> <p><u>(b) materials;</u></p> <p><u>(c) hard and soft landscaping;</u></p> <p><u>(d) means of enclosure;</u></p> <p><u>(e) lighting;</u></p> <p><u>(f) wayfinding and interpretation;</u></p> <p><u>(g) public art;</u></p> <p><u>(h) CCTV.</u></p>	<p>To ensure that the scheme will include appropriate means of crossing the A63 for all users and to ensure that disruption to non-motorised users during the construction phase is minimised.</p>

Article or Schedule	Proposed Text	Reason/Comment
	<p><u>(2) The underpass improvement works must be undertaken before the commencement of any of Works 35, 36, 37, 38, 39, or 40 as set out within Schedule 1 hereto, and in accordance with the approved details, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to any variation.</u></p>	
<p>Additional requirement: Pumping station.</p>	<p><u>(1) No part of the authorised development is to commence until the following details for the pumping station forming part of Work No. 24 have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Environment Agency on matters related to their functions:</u></p> <ul style="list-style-type: none"> <u>(a) siting;</u> <u>(b) scale;</u> <u>(c) design;</u> <u>(d) materials;</u> <u>(e) landscaping;</u> <u>(f) means of enclosure;</u> <u>(g) flood risk resistance measures;</u> <u>(h) flood risk resilience measures.</u> <p><u>(2) The pumping station must be constructed in accordance with the approved details, unless the Secretary of State, following consultation with the relevant planning authority and the Environment Agency on matters related to their functions, gives consent to any variation.</u></p>	<p>To ensure that the design of the pumping station is satisfactory in terms of its appearance and flood resilience.</p>
<p>Additional requirement: Earl de Grey public house</p>	<p><u>(1) None of the works to the Earl de Grey public house set out in Schedule 1, Work No 30 are to commence until:</u></p> <ul style="list-style-type: none"> <u>(a) details of the reconstruction or partial reconstruction of the building, including the proposed new location and orientation of the building; and</u> <u>(b) a method statement describing full details of how the Earl de Grey public house is to be:</u> 	<p>To ensure that any harm to the special interest and significance of this listed building is minimised.</p>

Article or Schedule	Proposed Text	Reason/Comment
	<p><u>(i) structurally assessed;</u> <u>(ii) recorded in situ to level 4 building recording in accordance with Historic England guidance;</u> <u>(iii) dismantled, including compiling an inventory of all building materials to be re-used, and justification for excluding any historic fabric;</u> <u>(iv) stored; and</u> <u>(v) reconstructed; and</u> <u>(c) a timetable for the completion of the work listed above</u></p> <p><u>have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Historic England on matters related to their functions.</u></p> <p><u>(2) The works to the Earl de Grey public house must be carried out in accordance with the approved details, unless the Secretary of State, following consultation with the relevant planning authority and Historic England on matters related to their functions, gives consent to a variation.</u></p>	
Schedule 2, Paragraph 13	<p>Add the following to paragraph 13: <u>(4) Where any requirement in this Order requires the undertaker to consult with the relevant planning authority, the undertaker must</u> <u>(a) not less than 21 days before making the application referred to in paragraph (1)(a) provide all information to the relevant planning authority subsequently to be submitted to the Secretary of State as constituting the undertaker's proposed application;</u> <u>(b) give due consideration to any representations made by the relevant planning authority about the proposed application; and</u> <u>(c) include with its application to the Secretary of State copies of any representations made by the relevant planning authority about the</u></p>	To ensure that the process for consultation with the planning authority is clear.

Article or Schedule	Proposed Text	Reason/Comment
	<p><u>proposed application, and a written account of how any such representations have been taken into account in the submitted application.</u></p>	
Schedule 3, Part 3/Part 4	Amend to ensure that the reference point numbers tie in with the points identified on the revised Traffic Regulation Plans.	Some of the numbering on the plans has changed but the Schedule has not been updated to reflect that.
Schedule 9 – Deemed marine License	Delete this schedule.	The schedule appears to have been retained in error in view of the Applicant’s stated intention of removing it because it is no longer necessary or relevant.