

**COMMENTS ON THE APPLICANT'S
DEADLINE 5 SUBMISSIONS**

SUGGESTED DRAFT S.106 AGREEMENT

DEADLINE 6

IP Ref: 20018303

**A63 Castle Street Improvement Scheme
HULL
TR010016**



Contents

1. Comments on the Applicant's responses to ExQ2.	3
2. Comments on the Applicant's response to the ExA's proposed changes to the dDCO	8
3. Comments on the Applicant's revised FRA	10
4. Suggested draft Section 106 Legal Agreement	11

1. COMMENTS ON APPLICANT'S RESPONSES TO ExQ2

2.3.3. Special Category Land

The Applicant references an intention to *'remove the open space plot from the draft DCO'*. HCC query whether this is an accurate reflection of the situation. Whilst the need for compulsory acquisition will be avoided by the Applicant acquiring the Public Open Space by agreement, the parcel of land in question would still fall within, and be lost to development approved under the DCO.

2.5.1. Earl de Grey public house

HCC has advised of what it considers to be the most appropriate course of action to secure the preferential relocation of the Earl de Grey in its Deadline 5 submission. In the Applicant's response it is stated that *'In the event that agreement is reached with the building's owners the then the proposed redevelopment to the Earl de Grey would replace Work No.30 of the DCO.'* This statement would appear to be at odds with the Applicant's assertion in the previous paragraph to that response that *'The applicant supports the proposals to relocate the building to Waterhouse Lane but is unable to include this work as part of the Development Consent Order due to constraints with the scheme's redline boundary.'*

2.7.1. Central Reservation Barrier

As HCC has pointed out previously and referenced within its submission at Deadline 5, concerns held over the CCRB extend to beyond the Old Town Conservation Area, including the settings of listed and locally listed buildings, the city centre streetscape, and the character of the built environment generally.

As a matter of record HCC wish for it to be understood that its officers had no part in formulating the scoring system referred to in the Applicant's response, nor the criteria identified against which such scoring was undertaken, or indeed the range of alternatives considered. Notwithstanding that, HCC agree that the exercise was productive in exploring and understanding the priorities for each party and in discounting some potential alternative solutions on that basis.

The Applicant's response justified the use of the CCRB on the grounds that it:

- represents the safest operational solution
- requires minimal long term maintenance
- has been agreed through the Applicant's internal processes
- has been through a road safety audit.

HCC do not consider that sufficient information of substance has been provided to enable the reasoning for the Applicant's preferred solution of CCRB across the entire scheme to be understood. At the design workshop referred to the Applicant presented an overview of the basis for the selection on road user safety and maintenance grounds in particular, with some focus on the rationale for proposing a CCRB within the underpass in order to provide protection to a central pier. However, HCC have not had sight of the analysis and documentation (in compliance with the Design Manual for Roads and Bridges) which the Applicant has undertaken and produced to evidence the reasoned selection of the CCRB.

In the absence of that information, HCC would point out that:

- Other barrier solutions may be sufficiently safe to be operationally acceptable for highway users and for maintenance operatives. Other barrier types and appropriate maintenance regimes are presumably considered operationally safe in a myriad of locations across the Strategic Road Network. In terms of maintenance safety, in the event of either unplanned or planned temporary highway works/restrictions, HCC understand that such work is required to be undertaken in full accordance with relevant legislation, regulations, and best practice, as befit the characteristics of the highway in question (e.g. Safety at Street Works and Road Works - A Code of Practice, Traffic Signs Manual Ch.8, and Highways Agency Network Management Manual Part 4 – Traffic Management).

HCC also understand that the CCRB does not present the safest operational solution from a pedestrian safety perspective, the most vulnerable of road users.

- The minimisation of long term maintenance is recognised as a desirable objective, but should not be considered the primary driver for the design of infrastructure within the sensitive built environment through which this scheme would pass.
- It has not been demonstrated that other, alternative barrier systems could not be agreed through the Applicant's internal processes.
- It has not been demonstrated that other, alternative barrier systems could not pass through the same safety audit process.

HCC looks forward to receipt of the Applicant's Technical Note on the assessment of the identified alternative barrier solutions.

2.7.2 Myton underpass design

HCC does not recall seeing the latest plans and visuals for the Myton under pass design amongst the documents uploaded following Deadline 5, nor have they been received by HCC directly from the Applicant to date.

2.7.3. Article 35 – Trees

HCC wish to point out that the Article in question refers to *'any tree or shrub within or overhanging land within the Order limits'*, and therefore would not only apply to trees which are identified to be removed or subject to works, but also trees identified to be retained and not currently subject to works.

It is also a fact that not all of the land within or adjacent to the Order Limits is subject to Conservation Area status, and therefore protection associated with the same would not always apply.

It is also possible that trees to be retained or indeed planted which may not currently, or upon planting be subject to Tree Preservation Orders, may become so protected in the future.

2.8.1. Cycle routes

HCC has set out in previous submissions, most latterly in its response to ExQ2, its concerns over the lack of consistency in submission documents and plans with respect to the extent and standard of provision for cyclists. From recently submitted clarifications it is apparent that the Applicant does not propose to provide for any cycle access to the south side of the A63 along the entirety of the scheme, with the sole exception of provision at Blackfriargate to connect with the Myton Bridge/High Street underpass route.

The omission of around 1.2 km of cycling facility from the scheme between Porter Street and Queen Street, following contradictory references in the scheme submission, is a source of both surprise and consternation to HCC, especially in the absence of explanation or discussion over this approach in advance. HCC harbour substantial concerns that such an approach to provision has the potential to compromise the safety, accessibility, legibility, credibility, attractiveness, and coherence of the route for cyclists.

HCC assume that this omission relates to width restrictions arising from the proposed realignment of Castle Street. As highlighted within HCC's equivalent response to ExQ2, width reductions adjacent to Hull Marina, Trinity Burial Ground, and Kingston Retail Park were identified within the submitted Environmental Statement, but with a stated intention still to deliver a shared provision facility. Even so, the rationale for the absence of shared provision between Queen Street and the Marina, and onwards onto Princes Quay Bridge has not been presented.

If the above assumption is correct, such a stance is difficult to understand given that there are identified within the same paragraph of the Environmental Statement the following width restrictions to a minimum of 2 metres:

- *between Castle Buildings and Princes Quay car park on the north side of the A63 for approximately 55m*
- *in front of Warehouse No. 6 (Ask restaurant) on the north side of the A63 for approximately 25m*

This also serves to exacerbate concerns about the lack of provision on the south side of the A63, effectively forcing all east–west/west-east cycle traffic onto one route, and that affected by such width restrictions. It is noted that the revised NMU plans submitted at Deadline 5 now confirm that cyclists travelling east-west/west-east, in addition to those intending to cross Princes Quay Bridge, will be required to travel around the rear of the bridge through what is anticipated to be a heavily patronised area, adjacent to the dock-side and the rear of Warehouse No. 6 (Ask restaurant), and then back onto the A63 via Humber Dock Street. This is considered to be far from optimal from safety, legibility, and convenience perspectives, and the prospect of some cyclists ignoring any restrictions in force alongside the proposed A63 footway and taking the most direct route in a real-life scenario is considered to be high.

HCC, in its Deadline 5 submission, has already raised concerns about potential failure of cycle provision on both sides of the scheme to align with local, central Government, and the Applicant’s own policies all of which, alongside DMRB IAN 195/16, promote expanding and improving upon access infrastructure to enable more journeys by such modes, and the importance of such policy to ensuring the delivery of sustainable development through ongoing regeneration in the Fruit Market area, City Centre Local Plan allocations, and the Waverley Street compound site, alongside further investment the latter is likely to stimulate to the south-west of the Scheme.

Similarly, HCC has drawn attention to the inappropriateness of reliance upon existing highways to the south of the A63, given that they are not considered to meet the objectives of increasing and facilitating journeys by such modes, with shortfalls in directness, coherence, and comfort, involving detours, cobbled surfaces, traffic/access regulations, and physical access and time restrictions at the lock gates to Hull Marina.

2.8.2. Pedestrian crossings at Market Place and Queen Street

HCC look forward to review of the assessment findings to address this issue, the matter first having been raised prior to Deadline 1 as evidenced in the draft SoCG between the Applicant and HCC, submitted at that stage.

2.8.3. Speed limits on the Market Place and Queen Street slip roads

HCC look forward to review of updated information on this issue, the matter first having been raised prior to Deadline 1 as evidenced in the draft SoCG between the Applicant and HCC, submitted at that stage.

2.8.6. Princes Quay Bridge

HCC's acquisition of the necessary additional land to address a pinch-point caused by the proposed re-orientation of the steps is imminent. HCC and the Applicant have worked collaboratively on this improvement, and HCC are now in receipt of an application for a non-material amendment to deliver the same, determination of which is also imminent. The ExA will be advised immediately of that outcome.

2.10.1. Early warning flood signage

HCC has discussed this matter with the Environment Agency, and the latter have confirmed that they have not expressed any view as to the need or otherwise for Early Warning Flood Signage, but, as HCC would expect, that they would defer on such matters to relevant Local Emergency Planning authorities. Hull City Council, as Lead Local Flood Authority, has contacted the Humber Emergency Planning Service, and they have advised that they are in agreement with Hull City Council's view on the matter. The provision of early warning signage for flood risk purposes alongside the A63 is both appropriate and necessary, to ensure that vehicles approaching the city from the west are afforded the opportunity to leave the A63 and enter the city via an alternative route along the A1105, deviate north or south along the A15 or A164, or return whence they came, in the event that the underpass is flooded, rather than have no other option but to progress along the trunk road, putting their own safety and that of others at risk, and hindering further the efforts of emergency planning services to manage affected traffic flows already within the city centre.

The land where HCC propose that the Early Warning Flood Signage should be located is understood to be within the control of the Applicant, and therefore HCC cannot see any impediment to the signage being provided by way of responsible risk alleviation during a flood event impacted upon the underpass.

2. COMMENTS ON THE APPLICANT'S RESPONSES TO THE ExA'S PROPOSED CHANGES TO THE dDCO

A18 – Protective Works to Buildings

The Applicant argues that such works would likely be temporary, and may extend only to barriers around a building, rather than works to a building itself. HCC would point out that the erection of a barrier around but not touching a listed building would not be likely to require listed building consent in any event, and therefore would not be impeded by the ExA's proposed change to the article.

HCC would also point out that this argument is not consistent with the effect of the article itself, which makes reference to entering buildings and carrying out works to buildings, and with A18(11) which specifically refers to '*underpinning, strengtheningand any works the purpose of which is to remedy any damage which has been caused to the building...*'.

The Applicant expresses concern about potential delay associated with applying for listed building consent. HCC would refer the Applicant and the ExA to Section 9(3) of the Planning (Listed Building Consent and Conservation Areas) Act 1990, which affords a defence for justifiable emergency works carried out without the benefit of listed building consent.

A29 – Temporary Use of land for carrying out the authorised development

The Applicant points out that separate listed building consent is not required under the Planning Act 2008. HCC recognises this, in so far as it relates to the works specifically included within an NSIP scheme for which listed building consent would normally be required. As HCC understand it, it does not afford blanket exemption for unspecified works. If, as the Applicant states, the only works for which listed building consent would be required are those specified in the submission and which have been assessed by the Environmental Statement, it is difficult for HCC to understand the Applicant's objection to the ExA's proposed amendment, or why such a broad power should be considered appropriate to apply to an area as extensive as the Order Limits, which includes listed buildings for which only specific works, or otherwise no works whatsoever, have been described in the submission.

A35 – Felling or lopping of trees and removal of hedgerows

HCC understands that powers to carry out works to remove trees obstructed the highway are afforded, subject to due notice, by Section 154 of the Highways Act. HCC questions the need for powers extending to the entirety of the Order Limits, areas of which are in fact distant from the carriageway, and include important collections of trees, such as Trinity Burial Ground and Jubilee Arboretum, with no requirement for notice to be served, and the Applicant as sole arbiter of what constitutes '*unnecessary damage*'.

R4 – Construction and Handover Environmental Management Plan

Provided that the FEP element of the CEMP captures measures to be introduced to manage the flow of flood water into, and on from the scheme during the different phases of construction, then HCC is content for such information to fall under that heading.

R5 – Landscaping

Please refer to comments made under A35 above.

Additional Requirement : Myton Bridge Underpass Improvement Works

Requirement 3 on detailed design secures no formal procedure for, nor necessitates consultation with the relevant local planning authority, nor provides any measure of control over matters of detail by the Secretary of State. The only requirement for the involvement of the aforementioned parties would be if necessitated by a departure from the approved engineering drawings and sections, none of which depict the Myton Bridge underpass.

HCC do not concur that the inclusion of safety measures such as CCTV and environmental enhancements such as Public Art should not fall within the remit of the scheme. The scheme will directly result in the increased usage of the under pass, including by vulnerable users, and at all hours of day and night, through its removal of alternative at grade crossing facilities in the vicinity of Myton Bridge. A stated objective of the scheme is to enhance connectivity between that portion of the city centre to the north of the A63 and the remainder along the city's waterfront, and in light of current perceptions of crime and unwelcoming environment, it is considered appropriate that the scheme should seek to enhance the safety and experience of those users compelled to journey this route. HCC would look forward to the working collaboratively with the Applicant on both fronts to secure optimal solutions.

3. COMMENTS ON THE APPLICANT'S REVISED FRA.

HCC welcomes the submission of the updated Flood Risk Assessment and related Technical Note. It is noted that the revised document makes specific reference to the proposed presence of a Vertical Concrete Barrier along the centre of the Trunk Road, and models the effect of the same under various scenarios. The ExA will be aware of recent and on-going discussions over the design of the central barrier.

HCC recognises the utility of a central reserve barrier, but in general terms would be supportive of minimising the height of any barrier in flood risk terms. This is because the barrier, in certain scenarios, can prevent flood water from being relieved by the full capacity of highway drainage infrastructure.

HCC also consider that the effect of the Vertical Concrete Barrier, whilst of limited material impact relative to predicted depths under the different scenarios modelled, would be less desirable than that of a barrier with solid elements of lower height, given that this would serve to reduce depths to the south of the A63, where impacts are predicted to be more significant.

4. SUGGESTED DRAFT SECTION 106 AGREEMENT.

HCC sets out below a first draft of a Section 106 Agreement to address the implementation of the 'alternative' HCC approved scheme for the re-location of the Earl de Grey public House. The draft has been shared with Castle Buildings LLP, the owners of the alternative land in question, and the principle discussed with Historic England. Feedback from Castle Buildings LLP will be shared with the ExA at the earliest opportunity.

DATED

20

19

KINGSTON UPON HULL CITY COUNCIL

- and -

HIGHWAYS ENGLAND

- and -

CASTLE BUILDINGS LLP

OBLIGATION ENTERED INTO BY AGREEMENT

UNDER S.106 TOWN AND COUNTRY PLANNING ACT 1990

relating to the

A63 CASTLE STREET IMPROVEMENT SCHEME

Kingston upon Hull

KINGSTON UPON HULL

CITY COUNCIL

Legal Services
Guildhall
Alfred Gelder Street
Kingston upon Hull

File No:	79585/323
Application ref:	TRO10016
Area	Riverside
Ward	St Andrews & Docklands
Originator:	CJR/MW

position.

5. Planning permission and Listed Building Consent have been granted by the Council on 5th June 2019 under reference numbers 19/00333/FULL and 19/00334/LBC for the demolition and partial rebuilding of the Earl de Grey at a location adjacent to Castle Buildings on Waterhouse Lane, Kingston upon Hull.
6. The parties enter into this Agreement pursuant to the DCO to permit the implementation of the Permissions as set out in them and to mitigate the harm to the Earl de Grey as a consequence of the DCO.

NOW THIS DEED is made in pursuance of Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972 and all other enabling powers and is a planning obligation for the purposes of that section and WITNESSES as follows:

1. DEFINITIONS

1.1 For the purposes of this Deed the following terms shall have the following meanings:

“Act”	The Town and Country Planning Act 1990, including regulations made under and any successor Act.
“1980 Act”	Highways Act 1980.
“Application”	The application by Highways England to the Secretary of State under reference number TRO10016 Development Consent Order for the Scheme.
“Council”	Kingston upon Hull City Council of The Guildhall, Alfred Gelder Street, Kingston upon Hull, HU1 2AA and includes any successor Authority.
“Council’s Covenants”	The Council’s covenants set out in the Seventh Schedule.

“DCO”	The Development Consent Order applied for in the Application and granted by the Secretary of State on #####.
“DCO Plan”	The plan referred to in the First Schedule
“Earl de Grey”	The elements of the Earl de Grey public house, Castle Street, Kingston upon Hull, HU1 2DA as are listed at Grade II in the list of buildings of special architectural or historic interest under Section 1(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990.
“Heads of Terms”	The Heads of Terms of an agreement between the Owner and Highways England for the Mitigation Works substantially in the form of the draft referred to in the Fourth Schedule and attached to this Deed.
“Highways England”	Highways England of Bridge House, 1 Walnut Tree Close, Guildford, GU1 4LZ and including any successor body.
“Highways England’s Covenants”	Highways England’s covenants set out in the Sixth Schedule.
“Land”	The land within the boundary of the Application against which this Deed is enforceable described in the First Schedule and shown edged in red on the DCO Plan.
“Mitigation Land”	The land adjacent to Castle Buildings on Waterhouse Lane within the Permissions which has consent for the re-erection of the Earl de Grey as part of the Mitigation Works.
“Mitigation Land Plan”	The plan attached to this Deed referred to in the Second Schedule

“Mitigation Works”	The partial demolition of the Earl de Grey and its rebuilding in accordance with the Permissions.
“Owner”	Castle Buildings LLP of Wykeland House, 47 Queen Street, Kingston upon Hull, HU1 1UU and anyone deriving Title therefrom.
“Owner’s Covenants”	The owner’s covenants set out in the Fifth Schedule
“Permissions”	The planning permission reference number 19/00333/FULL and Listed Building Consent reference number 19/00334/LBC granted by the Council on 5 th June 2019 as set out in the Third Schedule.
“Scheme”	The A63 Castle Street Improvement Scheme.
“Secretary of State”	The Secretary of State for Housing, Communities and Local Government.

2. INTERPRETATION

- 2.1 In this Deed where any reference is made to any recital, clause, paragraph or schedule such reference is to a recital, clause, paragraph or schedule of this Deed unless the context requires otherwise.
- 2.2 Word importing one gender shall be construed as importing any other gender.
- 2.3 Words importing the singular shall include the plural and vice versa.
- 2.4 The recital, clause, paragraph or schedule headings in this Deed are for reference only and do not affect the construction of this Deed.
- 2.5 This Deed shall be governed by the Laws of England and should any part of this Deed be deemed unlawful or unenforceable this shall not affect any other part of this Deed.

3. EFFECTIVE PROVISIONS

3.1 The Owner consents to the execution of this Deed and covenants with the Council and Highways England to observe the restrictions and perform the obligations or activities specified in the Fourth Schedule and that the Land shall be bound by this Deed.

3.2 Highways England hereby consents to the execution of this Deed and covenants with the Council and the Owner to perform the obligations set out in the Fifth Schedule and that the Land shall be bound by this Deed.

3.3 It is agreed and declared as follows:-

3.3.1 No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

3.3.2 The covenants contained in this Agreement shall take effect only upon the date specified by the Owner in a written notice served upon the Council as the date upon which the Mitigation Works are to be commenced or if no such notice is served the actual date on which the Mitigation Works begin within the meaning of Section 56 of the Town and Country Planning Act 1990.

3.3.3 If the DCO granted by the Secretary of State shall expire before the Mitigation Works are begun as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.

- 3.3.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the DCO) granted (whether or not on appeal) after the date of this Agreement.
- 3.3.5 This Agreement is a local land charge and shall be registered as such.
- 3.3.6 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the Town and Country Planning Act 1990 or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.
- 3.3.7 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written.

FIRST SCHEDULE

Description of the Land

1. All that land situate at Castle Street, Kingston upon Hull falling within the area edged in red on the plan marked "DCO Plan" annexed hereto.

SECOND SCHEDULE

Description of the Mitigation Land

2. All that land situate adjacent to Castle Buildings, Waterhouse Lane, Kingston upon Hull edged in red on the plan marked "Mitigation Plan" annexed hereto.

THIRD SCHEDULE

The Permissions

1. A copy of the Permissions is annexed hereto

FOURTH SCHEDULE

The Heads of Terms

2. A copy of the Draft Heads of Terms is annexed hereto

FIFTH SCHEDULE

Owner's Covenants

The Owner covenants with the Council and Highways England:

1. That it will, carry out or cause to be carried out the Mitigation Works in accordance with an agreement in writing made between the Owner and Highways England substantially in the form of the Heads of Terms within 12 months from the date of this Deed or later as agreed in writing by all parties within this period.

SIXTH SCHEDULE

Highways England Covenants

Highways England covenants with the Council and the Owner

1. That it will pay a contribution towards the Mitigation Works to the Owner and facilitate the Mitigation Works in accordance with an agreement in writing made between the Owner and Highways England substantially in the form of the Heads of Terms within 12 months from the date of this Deed or later as agreed in writing by all parties within this period.

SEVENTH SCHEDULE

Council's Covenant

The Council covenants with the Owner and Highways England

1. That it will, following written request from the Owner upon completion of the Mitigation Works to the satisfaction of the Council (such satisfaction not to be unreasonably withheld or delayed) remove the entry relating to this Deed from the Local Land Charges register.

THE AFFIXING TO THIS DEED of)

the CORPORATE COMMON SEAL of)

KINGSTON UPON HULL CITY COUNCIL is)
authenticated by:-)

Authorised Signatory

SIGNED AND DELIVERED AS A DEED BY)
CASTLE BUILDINGS LLP)
By an authorised officer of an LLP)
Designated Member)

Authorised Signatory

SIGNED AND DELIVERED as)
a Deed by the said HIGHWAYS ENGLAND)
By an authorised officer)

Authorised Signatory