

**A19 / A184 Testo's Junction Improvement
TR010020
3.4 Document explaining changes made to
the Development Consent Order
submitted at Deadline 2**

Planning Act 2008



Infrastructure Planning

Planning Act 2008

**A19 / A184 TESTO'S JUNCTION
IMPROVEMENT**

**The A19 / A184 (Testo's Junction Improvement)
Development Consent Order 201[]**

**DOCUMENT EXPLAINING THE CHANGES MADE TO THE
DEVELOPMENT CONSENT ORDER SUBMITTED FOR DEADLINE 2**

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A19 / A184 TESTO'S JUNCTION DEVELOPMENT CONSENT ORDER

COMMENTARY ON THE DRAFT DCO SUBMITTED AT DEADLINE 2

This document serves two purposes:

(a) it explains the amendments that have been made to the draft DCO ("dDCO") submitted for Deadline 2. The amendments can be sub-divided into three categories: (i) amendments in response to the ExA's rule 6 questions on the dDCO, which remained under review at Deadline 1; (ii) amendments in response to the ExA's first written questions; and (iii) amendments unrelated to the ExA's questions but which the Applicant considers should be made following a further review of the dDCO.

(b) it provides an update on dDCO drafting matters which remained under review at Deadline 1 but in respect of which no amendment is proposed following that further review.

For ease of reference in respect of the above matters, the commentary has been laid out in tabular format.

DCO provision	Applicant's response to ExA's rule 6 letter questions on the dDCO, as submitted by the Applicant at Deadline 1	ExA's first written question	Deadline 2 – further response to ExA's question(s) and / reasons for amendment to dDCO, where made
Contents; article 2; article 40; Schedule 2, paragraph 1; Schedule 10; explanatory note	Not applicable	Not applicable	The outline CEMP has been added to the list of documents to be certified at Schedule 10. Associated minor drafting changes have been made to the provisions listed in column 1 to accommodate this change.

Schedule 1 – lettered works	Not applicable	Not applicable	Lettered work (j) (“works required for the strengthening, improvement, maintenance, or reconstruction of any streets”) listed in the version of the dDCO submitted at Deadline 1 has been deleted because it erroneously repeats lettered work (b).
Schedule 2 Requirement 3	<p>· <i>“explain how far outside the Order limits it would apply, noting that the term ‘adjacent’ is undefined?”</i></p> <p>22.5 In terms of the geographical scope of Article 3(2), ‘adjacent’ means any land which touches the land inside the order limits but does not fall within the Order limits itself. The Applicant takes the view it is necessary to include such land as there may be statutory provisions which are expressed to relate to land which falls just outside the Order limits but which may also have an effect on land within the Order limits.</p> <p>· <i>“Is there an argument that for certainty, this provision should only apply to land within the Order limits?”</i></p> <p>22.6 For the reasons set out above, the Applicant does not currently consider that this provision should only apply to land within the Order limits. However, the Applicant will consider this point in more detail</p>	<p><u>Question 22</u></p> <p>Art 3(2)</p> <p>Example drafting: <i>(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.</i></p> <p>• Is there an argument that for certainty, this provision should only apply to land within the Order limits?</p>	<p>The Applicant considers that no amendments to this article are required. As previously stated in response to the ExA’s rule 6 letter question 22 on the draft DCO, in terms of the geographical scope of article 3(2), ‘adjacent’ in its ordinary meaning would mean any land which touches the land inside the order limits but does not fall within the Order limits itself. The Applicant takes the view it is necessary to include such land as there may be statutory provisions which are expressed to relate to land which falls just outside the Order limits but which may also have an effect on land within the Order limits.</p> <p>The Applicant notes that this provision is also precedented, and in particular</p>

	and provide a further update if appropriate at Deadline 2.		it has been included in the recently made M20 Junction 10a DCO.
Schedule 2 Requirement 4	<p>62.1 Requirement 4 states that the CEMP is to be “substantially in accordance with the outline CEMP (Application Document TR010020/APP/7.2)”. The outline CEMP is a submitted application document which sets out a range of detailed information such as proposed working hours and topics and mitigation measures to be addressed in the CEMP. The CEMP will be “substantially in accordance with the outline CEMP” and therefore the ExA can have confidence that all of the matters currently listed in the outline CEMP will be appropriately dealt with.</p> <p>62.2 Requirement 4 also links the CEMP to the Register of Environmental Actions and Commitments (REAC) at Schedule 1.2 of the Environmental Statement, also an application document. The CEMP will therefore need to address all of the relevant measures set out in the REAC, and the REAC sets out all the topics that the ExA has requested are explicitly listed under this Requirement. Furthermore the REAC makes clear which specific Requirement delivers each of the mitigation measures it lists out.</p> <p>62.3 As the Environmental Statement, which includes the REAC, is a document to be certified under article 41 and Schedule 10, the Applicant considers that re-listing these things in Requirement 4 would be duplication and is not considered</p>	<p><u>Question 62</u></p> <ul style="list-style-type: none"> • Are there any particular environmental features, performance measures or standards that are of such importance that they should be individually specified in this or another requirement? 	<p>The Applicant has considered this further and although it is of the opinion that this is not strictly required due to Requirement 4 being explicitly linked to the REAC which sets out all of the Scheme’s mitigation measures, as well as the outline CEMP, it has nevertheless brought forward into Requirement 4 key matters in relation to the CEMP.</p>

	<p>necessary. In preparing the dDCO the Applicant considered it somewhat an arbitrary process to attempt to bring forward some matters from the REAC into the Requirements, but not others. However the Applicant is giving further consideration to whether particular features or standards could be brought forward – this remains under review at this stage.</p>		
<p>Schedule 2 Requirement 5</p>	<p>63.1 Appendix 1.2 of the Environmental Statement is the REAC (Register of Environmental Actions and Commitments). Under Article 41 and Schedule 10 of the dDCO the Environmental Statement, and therefore the REAC, is a document which is to be certified. The Applicant therefore considers that re-listing all of the relevant mitigation measures within each Requirement would be duplication and is therefore not considered necessary. Instead, the REAC is a full and detailed list and is considered to fully reflect what should be provided under this requirement. Throughout consultation with statutory bodies, this is not a provision that has been challenged.</p> <p>63.2 The landscaping scheme which, pursuant to Requirement 5, has to be approved by the SoS will reflect the relevant mitigation measures in the REAC. This is made further clear in the REAC by a column</p>	<p><u>Question 63</u></p> <ul style="list-style-type: none"> • Can the relevant REAC provisions relating to landscaping be more precisely identified in this subparagraph? 	<p>The Applicant has considered this further and although it is of the opinion that this is not strictly required due to Requirement 5 being explicitly linked to the REAC which sets out all of the Scheme’s mitigation measures, it has brought forward some of the measures it considers are key to the landscaping scheme. Notably Requirement 5 now provides that the landscaping scheme must be based on the illustrative environmental masterplan annexed to the Environmental Statement (Application Document TR010020/APP/6.3).</p>

	<p>which specifies the Requirement that delivers the specific mitigation commitment.</p> <p>63.3 The Applicant is giving further consideration to whether particular landscaping matters could be brought forward into this Requirement – this remains under review at this stage.</p>		
<p>Schedule 2 Requirement 7</p>	<p>66.3 The potential effect of the ExA’s proposal here remains under review by the Applicant and it anticipates being able to provide an update at deadline 2.</p>	<p>Question 66</p> <p><i>7.—(1) No part of the authorised development is to commence until for that part final preconstruction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected by the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.</i></p> <p>There are a number of issues that arise in relation to this requirement.</p> <ul style="list-style-type: none"> • <i>“...any of the land affected, or likely to be affected, by any part of the relevant works...”</i> as in the A14 Cambridge to Huntingdon Improvement Order 2016? 	<p>The Applicant has considered the ExA’s suggestion and has included this wording in revised requirement 7(1) of the updated dDCO.</p>
<p>Schedule 2 Requirement 7</p>	<p>· <i>“Is the reference to ‘a likely significant effect’ sufficiently clear and precise, or should further clarification be provided?”</i></p> <p>67.1 The Applicant is considering an amendment to this wording but this remains under review – the</p>	<p>Question 67</p> <p><i>(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—</i></p>	<p>The Applicant has considered the ExA’s comments and has made an amendment at requirement 7(2)(b) to provide further clarity. The correct wording is considered to be “a significant effect is likely to occur” as</p>

	<p>Applicant anticipates being able to provide an update at deadline 2.</p>	<p><i>(a) a protected species is shown to be present, or where there is reasonable likelihood of it being present;</i></p> <p><i>(b) a likely significant effect is identified which was not previously identified in the environmental statement; and.....</i></p> <p>Is the reference to 'a likely significant effect' sufficiently clear and precise, or should further clarification be provided?</p>	<p>it should relate to the methodology employed in the environmental statement.</p>
<p>Schedule 2 Requirements 8 and 11</p>	<p>71.1 The Applicant has based this Requirement on precedent. It should be noted that this Requirement is not the mechanism for approval but rather a statement that simply confirms that should any such approval be given, it can be amended by a subsequent approval. However that subsequent approval would still need to accord with the core procedures and parameters of the Requirement to which it relates.</p> <p>71.2 The Applicant anticipates being able to make amendments to this Requirement to clarify this point, and to refer to "approved schemes" as well as "approved details". However, since the Applicant is still reviewing its response to the ExA's query about matters referred to in the Environmental Statement, the Applicant is not yet in a position to take a settled view on specific amendments to this Requirement.</p>	<p>Question 71</p> <p><i>11. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved in writing.</i></p> <p>There are a number of issues that arise in relation to this requirement.</p> <ul style="list-style-type: none"> • <i>"...include any amendments that may subsequently be approved in writing under the terms of the relevant requirement"?</i> • There should be a restriction on amendments to ensure that they do not give rise to matters not considered in the ES. Although there is such a 	<p>The Applicant has provided some additional wording in Requirement 11, and in Requirement 8 of the dDCO to ensure further clarity.</p> <p>Requirement 8(2) now contains the qualification that the Secretary of State must be satisfied that any amendments to the approved details would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement.</p> <p>Requirement 11 now refers to "details or schemes". With the amendment to requirement 8 above, there is no need</p>

	<p>The Applicant expects to be in a position to provide an update at deadline 2 of the examination.</p>	<p>restriction in R3, R11 would also apply to other approved details (e.g. R8)</p> <ul style="list-style-type: none">• The requirement should be extended to include approved schemes as well as approved details?	<p>to include the same text in requirement 11.</p>
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