

A19 / A184 Testos Junction Improvement Scheme: Draft Documents Feedback

Development Consent Order

Reference	Comment / Observation
General	Please ensure that the version to be submitted with the formal application is on the SI template.
General	Suggest reviewing the Order with a view to modernising language as routinely done by Secretary of State for Transport. Examples include: "shall apply" to "applies" "shall have" to "has" "there shall be substituted" to "substitute" "shall" to "must"
Article 2(1)	<ul style="list-style-type: none"> • "environmental report" – in advance of the new EIA regulation, it would be clearer to include two definitions "environmental information" means the environmental statement and any other environmental information received during the course of the examination" and "environmental statement". There are other references to environmental report such as A5(b). • "Secretary of State" – delete definition as the Order should assume a generic Secretary of State to mitigate against any future changes to government machinery. • "Statutory Undertaker" - delete reference to s128(5) and s129(2) as sections repealed by the Growth and Infrastructure Act 2013. • Additional definition "Undertaker" means Highways England Company Limited, company number 946363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ.
A2(2)	Suggest insertion of interpretation for 'restrictive covenants' if relevant.
A2(5)	The Explanatory Memorandum does not appear to limit the relevance to just the rights of way and access plans.
A3, A6, A7 etc	Whilst the Explanatory Memorandum has been updated following the change of the Highways Agency to Highways England, the draft DCO does not appear to have been up-dated and therefore multiple Articles refer to "Secretary of State" instead of "the undertaker". Amendments required at other locations throughout the order including: Article 6, Article 7 etc.
A5(b)	Until such time as the relevant regulations change, suggest replacing "environmental report" with "environmental statement".
A15	Applicants would have been expected to have undertaken pre-application consultation with parties who would ordinarily be consulted for Traffic Regulation Orders but whom are not required to be served notice

	by s56 PA 2008.
A19, A22, A28 and A30	As drafted, the effect of the articles in Part 5 of the DCO could result in wide compulsory acquisition powers over all of the order land. The land and rights to be acquired as well as any restrictive covenants to be imposed should be identified by reference to the plot numbers and described in the book of reference and shown on the land plans. Wording is therefore suggested to be added to A19(1), A22(1) and A30(1)(b) "and as is described in the book of reference and shown on the land plans."
A22(1)	To note the need to fully justify the use of restrictive covenants in the Explanatory Memorandum as in some other highways schemes the Secretary of State has determined that the applicant and application documents have failed to demonstrate the need for the power.
A22(5)	Suggest additional final clause in respect of compensation, for example: "Any person who suffers loss as a result of the acquisition of rights or the imposition of restrictive covenants under this article is entitled to compensation to be determined, in the case of dispute, under Part 1 of the 1961 Act."
A23(5)	Suggest amend "suspension of any private right of way under this article" as the Article applies to all private rights and not just rights of way.
A28(1)(d)	Suggest that explanation of "any other mitigation works" is provided in the Explanatory Memorandum.
A38	Suggestion that this Article could also specifically refer to, e.g. Environmental Statement; environmental mitigation schedule, Environmental Action Plan. The effect of A38(1)(h) should be fully considered.
Schedules	
Schedule 1 - Definition of Authorised Development	The explanatory comments in the Explanatory Memorandum in respect of the distinction (or lack thereof) between principal and associated development are noted. The approach taken in Schedule 1 lists six works that are considered to be associated development. However, on balance this duplication of Works is not considered helpful. If those works are considered to be associated development it would be clearer to identify them as such in the Schedule. If they considered to be integral and therefore part of the principal NSIP then there is no benefit to separating them out. Furthermore, confusion could be created through the text that directly follows the works identified as associated development which states: "In connection with the construction of any of <i>those works</i> , further ...".
Schedule 8 - Protective Provisions	These schedules should be completed before formal submission.
Requirements	
General	Schedule 2 and the Explanatory Memorandum (Section 14 Requirements) refer to the role of the Secretary

	of State in discharging requirements. Given the change in status from Highways Agency to Highways England, the appropriateness of this approach is currently being explored in the A19 Coast Road case. The case is currently in the reporting period but a decision by the Secretary of State on the project is expected by the end of the year.
General	Using the SI template would amend the headings and numbering.
General	The use of tailpieces has routinely been deleted by Secretary of State for Transport to avoid the potential to circumvent PA2008 procedures and the risk of taking the scheme beyond the envelope set in the Environmental Statement. Where tailpieces are included, they should be suffixed by drafting along the lines of "providing any such approval does not permit development which will conflict with the parameters of the scheme or will give rise to likely significant effects that have not been assessed in the Environmental Statement". Explicit justification for each tailpiece (citing case law/special circumstances) should be provided in Explanatory Memorandum. Note in particular Requirement 43.
R46(4)	Consider insertion of "and must notify Natural England of any modifications as far as they relate to protected species or protected sites".
R49(4)(b)	Consider specification of a distance in the interests of precision, for example 'no activities requiring a protected species licence are to continue within 10 metres of the location that the European protected species has been identified until a scheme of protection and mitigation measures for the protected species has been submitted to and approved in writing by the [Secretary of State] after consultation with Natural England and the relevant planning authority.'
Explanatory Memorandum	
Para 3.2	We appreciate the explanation but note the comments in respect of the draft DCO, Schedule 1 where we find the presentation to be confusing.
Para 7.7	Potential inconsistency with draft DCO as Explanatory Memorandum refers to "the plans" but Article 2(5) only refers to the rights of way and access plans.
Para 8.1	The Explanatory Memorandum appears to have been up-dated following the change of Highways Agency to Highways England, however the respective Articles throughout the draft DCO have not – for example Article 3 refers to "the Secretary of State" and not "the undertaker".
Works Plan	
Key Plan	A plot of land (Enterprise Rent-a-Car) is identified as "Area not included with DCO boundary" – presumably this is because the plot effectively represents the hole in a red line doughnut. Perhaps the key should state

	"within"?
Key Plan, Key	There is a Limit of Deviation for permanent works but for Non-Linear Work Boundary this is identified as "(Approx)". Is it not a limit of deviation and therefore outlining the worst case scenario to be assessed in the ES? Work 21 and 25 (Work 9a and b)?
Sheet 1 of 3	Why is the area of "Limit of deviation for permanent work" so wide around the southern part of Work 1 when compared with the linear work centre line (approx)?
Sheet 1 of 3	Plot 1/1a is not identified as part of any Work.
Sheet 2 of 3	Sheet contains Works 25 and 21, both being permanent works but treated differently from the highway/linear works – unclear why there is a difference in approach to permanent works (limit of deviation) and Non-Linear Works (with an Approx boundary). Where is the explanation to accompany this approach?

Consultation Report

PINs have previously reviewed this document (dated February 2015) and responded via email dated 8 May 2015. Those comments remain relevant; they are not duplicated below but rather a summary is provided of the key points to consider in the preparation of any future Consultation Reports.

Compliance table	<ul style="list-style-type: none"> • The Compliance Table could usefully include a 'Location' column or similar for quick cross-referencing to the relevant evidence. • In respect of s46, this could refer to the letter sent to PINS to avoid any confusion with a potentially separate 'Submission to Minister'. • The Table does not identify PA2008 s47(3) and (4), s50 and Regulation 10 of EIA Regulations.
General	CLG Guidance on Pre-Application has been updated (March 2015) and as such it is advisable to review the contents of the up-dated guidance to see whether you may need to amend or up-date elements of the Consultation Report. Certain Planning Inspectorate Advice Notes have also been updated.
General	Provide a complete evidence base including: <ul style="list-style-type: none"> • copies of relevant newspaper notices • copies of specimen letters sent as part of the s42 consultation • copies of correspondence consulting host authorities on the Statement of Community Consultation and setting a deadline for responses.
General	The consultees identified for the purposes of S42 differ in some ways from those identified by the Planning

	Inspectorate on a precautionary basis. It is good practice to explain in the Consultation Report where parties that were identified by PINS for the purposes of scoping have not been identified by the applicant for the purposes of S42.
Chapter 6, Appendix J and Table 1	Consistency and appropriateness of terminology. PA 2008 in Chapter 2 (ss45, 47, 48 and 49) refers to "responses" and "relevant responses" as the information received from parties by virtue of consultation and publicity under ss42, 47 and 48. Within this Consultation Report mention is made to "comments", "feedback" and "responses". The term "response/s" is however primarily used to refer to Highways England's replies to the responses received during consultation. This creates confusion as demonstrated in, for example Table 1 on page 25 where the header states "Responses from s42 consultees", the Table heading refers to "Schedule of Responses to s42 consultees" and the final column relates to "regard had to response".

Book of Reference and Land Plans

- Part 2: is this section complete as Part 2 does not provide any plot numbers. Note paragraph 1.4 states that the Book of Reference lists people/parties with land outside the area of the Order Land who might have a claim for compensation for depreciation in the value of their land due to the construction or use of the development (presumably Part 2, Category 3). Presumably then Part 2 does not currently repeat any Category 1 and 2 parties and only lists those people whose land is outside the Order Limits, in which case they might not necessarily have a plot number? It would be useful to explain how those listed in Part 2 were identified, perhaps included in the Statement of Reasons.
- As part of the change from Highways Agency to Highways England, there was an element of land transfer from the Secretary of State to Highways England as a strategic highways authority. In any future application presumably any such land would no longer be identified as in the ownership of the Secretary of State and therefore would no longer be included within Part 4.
- It may be sensible to consider how applicant owned land (i.e. that transferred from the Secretary of State to Highways England) would be presented on the Land Plans. Presumably the land would not be identified in pink (to be acquired) but rather in a separate category if Highways England were seeking to clear the title (acquire rights and easements over the land). We are aware that A14 may be submitted up-dated Land Plans as part of their on-going Examination.

Statement of Reasons

- Table 1, page 9 – certain plots appear to be missing e.g. 1/1a, 1/1b, 1/1e and 1/4a. Due to the tentative nature of this case, a thorough check was not completed.