

## A19/A184 (Testos Junction Improvement) Project

### PINS queries on draft DCO – April 2017

These queries relate solely to matters raised by the drafting of the DCO, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration.

#### Abbreviations used

<b>2008 Act</b>	<i>The Planning Act 2008</i>	<b>MP</b>	<i>Model Provision (in the MP Order)</i>
<b>A</b>	<i>Article</i>	<b>MP Order</b>	<i>the former Infrastructure Planning (Model Provisions)(England and Wales) Order 2009</i>
<b>DCO</b>	<i>Draft DCO</i>	<b>R</b>	<i>Requirement</i>
<b>EM</b>	<i>Explanatory Memorandum</i>	<b>SI</b>	<i>Statutory Instrument</i>
<b>ES</b>	<i>Environmental Statement</i>	<b>SoR</b>	<i>Statement of reasons</i>
<b>IPMPPR</b>	<i>The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015</i>	<b>SoS</b>	<i>Secretary of State</i>

<b>Q No.</b>	<b>Article (A)/ Requirement (R)</b>	<b>Extract from DCO (for ease of reference)</b>	<b>Question</b>
1.	General (EM)		The introduction to the EM would helpfully identify, perhaps by a table, each of the highways affected by the project, their classification (if any), and the responsible highway authority. If there are any streets affected by the project that are not highways, it would be helpful to identify them as well, together with the responsible street authority.
2.	General (EM)		The draft EM is equivocal about the qualifying characteristics of the project that make it an NSIP. Does the project contain elements of improvement and alteration – In principle there seems to be no reason why a scheme could not qualify as a NSIP under a combination of categories in s22 PA2008? See further notes under “General” header, bullet point 1 below.

Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Question
3.	General (DCO)		The applicant will be asked to maintain a list of all plans and other documents that will require SoS certification (including plan/document references), updated throughout the examination process, and supplied to the Examining authority before the close of the examination
4.	General (DCO)		The DCO is proposed to be a SI and so should follow the statutory drafting conventions. The DCO (and any subsequent revisions) should be in the form required by the statutory instrument template (see Planning Inspectorate Advice Note 13) and validated as such using the current SI template, including detailed footnotes to all statutory references.
5.	General (DCO)		The application DCO and any subsequent versions of the submitted to the examination: <ul style="list-style-type: none"> <li>• should be supplied in both .pdf and Word formats, the latter showing any changes from the previous version by way of tracked changes, with Word comments briefly outlining the reason for the change?</li> <li>• The examination timetable will usually provide a deadline for receipt of the applicant's final or preferred version of the DCO. That version should be supported by a report of the outcome of validating it through the Publishing section of the <a href="http://legislation.gov.uk">legislation.gov.uk</a> website</li> </ul>
6.	General (DCO)		It is noted that there are a number of discrepancies in cross-references, plan titles etc in this draft, which it is assumed will be corrected in the application version.
7.	General (DCO): references to Part 1 of the 1961 Act		A number of articles make provision for " <i>compensation to be determined, in case of dispute, under Part 1 of the 1961 Act</i> ". It is acknowledged that a provision in this form is in the various MPs and is commonplace in DCOs and other Orders. However, Part 1 of the 1961 Act only relates to compensation for compulsory acquisition. In order for there to be certainty that it would apply in other situations (e.g. the temporary use of land under <b>A28</b> ), should a modification be included as with the other compensation provisions in <b>Schedule 6</b> ? If not, why not?
8.	A2		Can the various plans referred to in A2 each be identified by Drawing and Revision Numbers in the next version of the draft DCO? As an alternative, the plans could be listed in a new schedule that is then referred to in A39.

Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Question
9.	A2(1)	<i>"Order land" means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference</i>	The definition of 'Order land' is relevant to the compulsory acquisition articles. The land plans show the outer envelope of the development by a red line, described in the Key as the 'Limits of land to be acquired or used permanently or temporarily. The effect of this is that the whole of the land within the red line is susceptible to compulsory acquisition under A19. The SoR will need to justify the wide scope of this provision.
10.	A2(1)	<i>"the Order limits" means the limits of deviation shown on the works plans within which the authorised development may be carried out</i>	The works plans refer to 'Highway Work Limit of Deviation (indicative)': <ul style="list-style-type: none"> <li>• The titles used in the DCO and works plans should be consistent to avoid confusion;</li> <li>• Precise, not indicative, limits should be used in the application documents for certainty</li> </ul>
11.	A3(2)	<i>(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.</i>	The EM should explain why this general and extensive provision is necessary and justified for this particular project.
12.	A6(2)	<i>(2) Paragraph (1) does not apply to <u>the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.</u></i>	The EM should identify which of the works in Schedule 1 are " <u>works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development</u> " to which paragraph 1 does not apply?
13.	A9(1)	<i>9.—(1) Any <u>highway</u> (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.</i>	The EM should explain the change from the MP reference to 'street'.
14.	A9(4)	<i>from any failure by it to maintain a <u>street</u> under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.</i>	This paragraph refers to 'street' not 'highway' as in previous paragraphs. Why? Likewise paragraph (5)
15.	A10(2)	<i>(2) The application of paragraphs (1) to (3) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.</i>	There is no paragraph (3)?

<b>Q No.</b>	<b>Article (A)/ Requirement (R)</b>	<b>Extract from DCO (for ease of reference)</b>	<b>Question</b>
16.	A12(3)	<i>(3) No street or private means of access specified in column (1) of Part 3 of Schedule 4 is to be wholly or partly stopped up under this article unless the condition specified in <u>paragraph (3)</u> is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.</i>	“paragraph (4)”?
17.	A12(6)	<i>(6) Any person who suffers loss by the suspension or extinguishment of any <u>private right of way</u> under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</i>	“private right of way or private means of access”?
18.	A14		(a) This article imposes waiting restrictions which would otherwise require an order under the Road Traffic Regulation Act. There are specific consultation and publicity requirements for such orders. The EM should explain and signpost how the consultation and publicity given to this project in the pre-application stages conforms to or differs from those requirements in respect of the imposition of the clearway proposals in the DCO  (b) The EM should explain and signpost any differences between the restrictions in the DCO and those that would apply to a clearway established under the Road Traffic Regulation Act 1984
19.	A14(1)	<i>14.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, save as provided in paragraph (2), no person may cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.</i>	Should there be some provision for signage so that persons affected may be aware of this restriction?
20.	A15(8)	<i>(8) Before exercising the powers of paragraph (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.</i>	This gives wide discretion to the undertaker. Should the article specify particular persons as well as “such persons as it considers necessary and appropriate to consult”?
21.	A16(6)	<i>(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, <u>sail</u> or other solid substance, oil or matter in suspension.</i>	“soil”?
22.	A16(7)	<i>(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010</i>	The 2010 Regulations have been replaced by 2016 Regulations

Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Question
23.	A17(1)(b)	<i>(b) after the completion of that part of the authorised development in the vicinity of the building <u>at any time up to the end of the period of 5 years</u> beginning with the day on which that part of the authorised development is first opened for use.</i>	This provision would allow entry into buildings as of right (albeit on notice) under A17(4) up to 5 years after the road is open for use. The EM should justify why such a period is necessary.
24.	A19(1)	<i>19.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.</i>	See previous comment about the definition of ‘Order land’.
25.	A23(7)(b) &(8)(a)	<i>(b) any agreement made at any time between the Secretary of State <u>and the person in or to whom the right or restrictive covenant in question is vested or belongs.</u></i>  <i>(a) is made with a <u>person in or to whom the right or the benefit of the restrictive covenant is vested or belongs;</u> and</i>	The restrictive covenant itself would not belong to the person entering into the agreement with the SoS – rather the person entering into the agreement would be the owner of the land over which the covenant is imposed?  Similarly the agreement would not be made with the owner of the benefit of the covenant but the owner of its burden?
26.	A26(10)	<i>(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner <u>compensation</u> for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.</i>	This paragraph (or the EM) should identify the mechanism by which compensation will be assessed.
27.	A28(1)(d)	<i>(d) construct any permanent works specified in relation to that land in column (2) of Schedule 7, or <u>any other mitigation works.</u></i>	The EM explains that “any other mitigation works” is intended to cover “permanent works necessary and appropriate to mitigate the effect of the works (e.g. landscaping and ground strengthening)”. As these are also to be permanent works, the reference to “any other mitigation works” seems to be unnecessary and confusing.
28.	A28(2)	<i>(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 <del>and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).</del></i>	Why have the words been deleted? In the absence of a statement in the notice under A28(2) of the purpose for which temporary possession was taken, how is an affected landowner to ascertain when the one year period referred to in paragraph (3) will end?
29.	A31(8)	<i>“statutory utility” means a <u>statutory undertaker for the purposes of the 1980 Act</u> or a public communications provider as defined in section 151(1) of the Communications Act 2003</i>	The definition in the 1980 Act excludes some undertakers that one would expect to be protected by this provision, e.g. electricity and gas undertakers. The EM should explain why this limited definition is appropriate.
30.	A36		Section 65 of the CoPA 1974, referred to in this article, has been repealed

<b>Q No.</b>	<b>Article (A)/ Requirement (R)</b>	<b>Extract from DCO (for ease of reference)</b>	<b>Question</b>
31.	A38	<i>[Crown rights]</i>	The EM should explain whether this article has been agreed by the Crown estate
32.			
33.	Schedule 1	<i>[Authorised development]</i>	The Examining authority is likely to prefer the elements of the project that are associated development to be separately identified in this Schedule
34.	Schedule 1	<i>[Authorised development]</i>	Reference to the “Streets, Rights of Way and Access Plans” is inconsistent with the definition in A2(1)
35.	Schedule 1	<i>[Authorised development]</i>	Work No 13 refers to Work No 12 as an upgraded bridleway, whereas Work No 12 is described as an upgrade of a footpath? Work No 14 refers to a new ‘bridleway facility’. Why? I also refers to a new footpath, whereas other works are described as footways. If there is any intentional distinction, this should be explained in the EM or otherwise a consistent descriptor should be used in the DCO
36.	Schedule 1	<i>[Authorised development]</i>	Works 23-25 refer to specific undertakers, but these are undefined. Suitable definitions should be included in A2
37.	Schedule 1	<i>[Authorised development]</i>	In addition to the numbered works, the Schedule contains a variety of unspecified yet potentially substantial developments and works in items (a) – (l), many of which may impinge on the functions of other authorities; for example (a) enables substantial alterations to streets that would otherwise be controlled by the street authority. There appears to be no requirement for prior consultation with or consent by such authorities. The EM should explain and justify why this extensive list of categories of additional works is required, as it may imply uncertainty as to the extent of what is being permitted by the DCO? Why can they not be included in the relevant numbered works?
38.	Requirements (general)		Several requirements refer to consultation with the relevant planning authority “on matters relevant to its function” or similar wording. The EM should explain why this is considered necessary and indicate how in practical terms it is intended to restrict the consultation.

Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Question
39.	R3	<i>3. The authorised development must be carried out in accordance with the scheme design shown on the engineering drawings and sections <u>unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the development so altered falls within the limits of deviation and any alterations are minor or immaterial.</u></i>	<p>a) This requirement should be linked to compliance with the ES – see for example R3 of the A14 Improvement DCO</p> <p>b) Are all elements of the authorised development – including the unnumbered works at the end of Schedule 1 – shown on the engineering drawings? If not there appears to be no provision for approval of their design. See for comparison R3 of the A14 Improvement DCO</p>
40.	R5(1)		The EM should explain why it is considered appropriate to limit consultation with the planning authority on the CEMP to matters relating to nuisance and pollution control
41.	R5(2)	<i>(2) The CEMP must reflect the mitigation measures set out in the environmental statement.</i>	Can the requirement specify the particular elements of the ES that the CEMP should reflect?
42.	R5(3)	<i>(3) The construction of the authorised development must be carried out in accordance with the CEMP.</i>	This paragraph assumes there is a single CEMP but paragraph (1) provides for there to be a CEMP for each stage; the paragraph should be amended to reflect this.
43.	R6(2)	<i>(2) The landscaping scheme must reflect the mitigation measures set out in the environmental statement.</i>	Can the requirement specify the particular elements of the ES that the scheme should reflect?
44.	R7	<i>[Contaminated land and groundwater]</i>	‘Environment Agency’ should be defined in either A1 or R1?
45.	R7(2)	<i>(2) Where the <u>undertaker determines</u> 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, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.</i>	<p>a) The EM will need to justify why the need for remediation is at the sole discretion of the undertaker.</p> <p>b) Where unexpected contamination is found, should there be a moratorium on continuing with that part of the development until a remediation scheme has been agreed and implemented?</p>
46.	R8	<i>[Protected species]</i>	<p>a) ‘Natural England’ should be defined in either A1 or R1?</p> <p>b) European and national protected species should be defined – see e.g. the A14 Improvement DCO</p> <p>c) Has this requirement been agreed with Natural England?</p>

Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Question
47.	R8(2)	<i>(2) Where a protected species is shown to be present, or where there is a reasonable likelihood of it being present, the relevant parts of the relevant works must not begin until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State after consultation with Natural England.</i>	The relevant works should also not begin until a protected species licence has been obtained (as drafted, the requirement appears to negate the need for such a licence, which is a prescribed consent under the IPMPFR).
48.	R9(1)	<i>9.—(1) No stage of the authorised development is to commence until for that stage written details of the surface and foul water drainage system, reflecting the mitigation measures in the environmental statement and including means of <u>pollutions</u> control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.</i>	a) Can the requirement specify the particular elements of the ES that the details should reflect? b) “pollution control”
49.	R9(2)	<i>(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.</i>	Consultation with the relevant planning authority should also be required before the SoS agrees a variation?
50.	R11(2)	<i>(2) The authorised development must be constructed in accordance with the <u>approved details</u> referred to in subparagraph (1).</i>	For “approved details” substitute “traffic management plan”
51.	R12	<i>12. 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>	There should be a restriction on amendments to ensure that they do not give rise to matters not considered in the ES
52.	Schedule 2 Part 2	<i>[Procedure for the discharge of requirements]</i>	This procedure appears to use that in the A14 Improvement DCO as a precedent. If so, that should be stated in the EM and any differences from that approved procedure identified.
53.	R14(1)		Item (b) duplicates item (a)?
54.	Schedule 5		a) The title to the Schedule should reflect that it also relates to the imposition of restrictive covenants b) The EM should explain and justify the various modifications proposed
55.	Sch 5 para 1	<i>2.—(1) Without <u>limitations</u> on the scope of paragraph 1, the Land Compensation Act 1973 has effect subject to the modifications set out in subparagraphs (2) and (3).</i>	“limitation”



Q No.	Article (A)/ Requirement (R)	Extract from DCO (for ease of reference)	Question
56.		<p>4. For section 7 (measure of compensation) of the 1965 Act substitute—</p> <p><i>"7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."</i></p>	<p>a) The modification should also cover depreciation caused by the imposition of a covenant?</p> <p>b) The Schedule generally should consistently refer to both creation of rights and imposition of covenants throughout</p>
57.	Schedule 7	[Protective provisions]	The EM should explain what precedent has been followed for these protective provisions and what consultation has taken place with relevant statutory undertakers with a view to seeking agreement to them in the circumstances of this project.

Statement of Reasons (SoR)	
Para 1.1.1	<p>Potential inconsistency against the suite of draft application documents e.g. BoR, para 1.1.1:</p> <p><i>"This Book of Reference (BoR) is submitted in relation to the application for an Order granting development consent for a proposed Nationally Significant Infrastructure Project (NSIP) by Highways England ("the Applicant") to the Planning Inspectorate, on behalf of the Secretary of State, under section 37 of the Planning Act 2008."</i></p> <p>Consider following text by way of example:  <i>This xxx ("the xxx") relates to an application ("the Application") made by Highways England ("the Applicant") to the Planning Inspectorate acting on behalf of the Secretary of State for Transport, under Section 37 of the Planning Act 2008 ("the Act").</i></p>
Para 1.1.2	Where references are provided to other Application documents it would be beneficial to provide the full title thereof "A description of the Scheme is contained in the Introduction to the <b>Application document</b> (document reference TR010020/APP/1.1)."
Para 1.1.3	<p><b>Typo</b> - "The Scheme is a Nationally Significant Infrastructure Scheme [Project] ("NSIP")"</p> <p>The paragraph makes it explicit what is being applied for under the PA2008, which is slightly inconsistent to the description provided within the EM para 2.7 and 2.8. HE will need to be explicit throughout documents as to what is being applied for under the PA2008 and also ensure a consistent approach. See further notes under "General" header, bullet point 1 below.</p>
Para 1.1.7	"The land to which this Statement relates, being land within the limits..." is this in reference to "Order Limits" as defined in

	the dDCO (means limits of deviation) or is the intention for it to be interpreted as the "Order Land" which will be CA.
Para 2.1.1	Where direct quotes are taken from the PA2008 it is recommended that italic font be used
Para 2.1.4	<p><b>Principal Powers</b> - The language used in the SoR is not consistent with the headings in the draft DCO. Below we have added 'in red' the headings used in the draft DCO where it is different from that described in the SoR.</p> <p>(a) compulsory acquisition of estates in land (Article [19] of the draft DCO); <b>Compulsory acquisition of land</b>  (b) compulsory acquisition of rights (Article [22] of the draft DCO); <b>Compulsory acquisition of rights and restrictive covenants</b>  (c) extinguishment of private rights over land (Article [23] of the draft DCO); <b>Private rights over land</b>  (d) compulsory acquisition of subsoil or airspace only (Article [25] of the draft DCO); <b>Acquisition of subsoil or airspace only</b>  (e) compulsory acquisition of rights under or over streets (Article [27] of the draft DCO); <b>Rights under or over streets</b></p>
Para 3.1.1	States: "This section describes the Order Land (as defined above) and the areas around it." Neither section 1 or 2 of the SoR provides a paragraph giving a clear description of the Order Land. May be useful to insert exact paragraph number HE are referring too.
Para 3.1.2 [and 3.1.21]	<p><i>"The Scheme boundary containing the Land encloses 65.7 hectares. The Scheme requires the freehold acquisition of 30.4 hectares of land, the temporary possession alone of 21.2 hectares and the temporary possession of 14.1 hectares of land over which permanent rights will also be acquired. It should be noted that 18.3 hectares of the required freehold acquisition of land is land contained within the existing highway boundary."</i></p> <p>Upon review of draft application documents there doesn't seem to be an explanation as to why this land is required for CA. It may be useful to include a table within the SoR/dDCO giving a full account of plots as identified on the Land Plan that will be associated to "freehold acquisition of land"; "temporary possession" and "temporary possession of land over which permanent rights required" or sign-post to relevant application documents where this is described.</p> <p>The para further states: "The area of temporary possession and permanent rights <u>includes contingency</u> to ensure the deliverability of service utility diversion works where require (see paragraph 3.1.21 for further details on services affected by the Scheme)."</p> <p>Para 3.1.21 doesn't provide any further explanation as to what "contingency" are in place to secure these rights. Is the expectation that the SoR will be updated accordingly prior to submission and if not, it is likely that this will be matter requiring additional work during examination. The ExA would need to be confident that land being CA is justified and the "need" case fully explained.</p> <p>This para (and others in the SoR) is highlighted yellow, PINS assumes these paragraphs/sections are possibly subject to amendment?</p> <p>We would remind the applicant to review <a href="#">DCLG: Guidance related to procedures for the compulsory acquisition of land</a>, specifically paragraphs relating to the SoR, we draw your attention to para 32, which reads as follow:  32. <i>The statement of reasons should seek to justify the compulsory acquisition sought, and explain in particular why in the applicant's opinion there is a compelling case in the public interest for it. This includes reasons for the creation of new rights.</i></p>
3.1.22 to 3.1.24	We assume this will be updated prior to submission; however given the level of completion of plans submitted we would have expected some level of detail to be provided here. Also ensure consistency with the dDCO

Table 1, 2 and 3	It is difficult to confirm which land plots described in the table are associated to the works identified via a review of the Works and Land Plan. Due to the tentative nature of this case, a thorough check was not completed, however examples (in green below) are provided on PINS initial review of these Tables.
<b>Table 1</b>	
	<p>Some of the works described in Column 1 are not consistent with Schedule 1 of the dDCO or language/context are not similar in description e.g.</p> <p><u>Work No.2</u>  <b>Column 1:</b> the construction of a new <i>grade-separated</i> A19 dual-carriageway running from Downhill Lane junction and tying into the existing A19 north of Testos roundabout.  <b>Schedule 1:</b> the construction of a new <i>section</i> of the A19 dual carriageway approximately 2,300m in length over the Testos roundabout, including associated embankments and structures, and tying into the existing A19 approximately 35m south of Downhill Lane junction and tying into the existing A19 approximately 1050m north of Testos roundabout.</p> <p><u>Work No. 12</u>  <b>Column 1:</b> the construction and upgrade of the eastern element of the B27 footpath to a bridleway, originating at the existing B46 bridleway and tying into new bridleway facility (Work No.13) to the southeast of Testos roundabout.  <b>Schedule 1:</b> the upgrade of the B27 footpath east of the A19 and south of West Bolon substation to a bridleway, commencing at the existing B46 bridleway and tying into new bridleway facility (Work No.13) to the southeast of Testos roundabout.</p> <p><u>Work No. 15</u>  <b>Column 1:</b> the construction of 2 no. bridges to form the southern and northern crossings of the new A19 dual carriageway (Work No.2) over the realigned Testos roundabout (Work No.21).  <b>Schedule 1:</b> the construction of embankments and structures to form the southern and northern crossings of the new A19 dual carriageway (Work No.2) over the realigned Testos roundabout (Work No.21).</p>
Table 1:Works 2	<p>Column 2 identifies plots associated to <b>Works No.2</b> as 1/1c, 1/1k, 1/1l, 1/1o, 1/1p, 1/1q, 2/3a, 2/3b, 2/3c, 2/3d, 2/3e, 2/3f, 2/5b, 2/2o, 3/1a, 3/2a.</p> <p>Are the land plots highlighted yellow inclusive of Works No.2? These plots of lands seem to be associated to Works No.7.</p> <p>These plots could be associated to Works No.2, however it is not clear following a comparison check between the Works and Lands Plan. It may be necessary for HE to undertake a full review of the relevant plans to ensure Column 2 is accurate.</p>
Table 1:Works 3	<p>Column 2 identifies plots associated to <b>Works No.3</b> as 1/1c, 1/1k, 1/1l, 1/1o, 1/1p, 2/3b, 2/3c, 2/5b.</p> <p>Should works No.3 not also include plot 2/6a? It may be necessary for HE to undertake a full review of the relevant plans to ensure Column 2 is accurate.</p>

Table 1: Works 5	<p>Column 2 identifies plots associated to <b>Works No.5</b> as 1/1c, 1/1i, 1/1j, 1/1l, 1/3a, 1/7e, 1/5c, 1/6c, 2/1e, 2/2k, 2/3f, 2/3g.</p> <p>Is the land plot highlighted yellow inclusive of Works No.5? This plot of land appears to be associated to either Works No.2 and/or 28.</p> <p>This plot could be associated to Works No.5, however it is not clear following a comparison check between the Works and Lands Plan.</p> <p>Should works No.5 not also include plot 1/7a? It may be necessary for HE to undertake a full review of the relevant plans to ensure Column 2 is accurate.</p>
Table 1: Works 8	<p>This Works seems to be associated to temporary Use and Rights. Table 1 identifies <b>Permanent Acquisition of Land</b>. This Works is duplicated in Table 1 and Table 2.</p>
<b>Table 2</b>	
	<p>Should Table 2 not reflect <b>Works No.11</b>?</p>
Table 2: Works 1	<p>Column 2 identifies plots associated to <b>Works No.1</b> as 1/2b, 1/3a, 1/3c</p> <ul style="list-style-type: none"> <li>• Plot 1/2b appears to be associated to Works No.9a. This plot could be associated to Works No.1, however it is not clear following a comparison check between the Works and Lands Plan.</li> <li>• Plot 1/3a appears to be associated to permanent acquisition of land. Table 2 identifies <b>Temporary Acquisition of Land with Rights to be Created</b></li> <li>• Plot 1/3c can't be identified on the relevant Land Plan, should this be plot 1/4c?</li> </ul> <p>It may be necessary for HE to undertake a full review of the relevant plans to ensure Column 2 is accurate.</p>
Table 2: Works 8	<p>Column 2 identifies plots associated to <b>Works No.8</b> as 1/2e, 1/3e, 1/4d, 1/6b, 1/7b, 1/7f, 2/1d, 2/2a, 2/2l, 2/2q, 2/4f, 2/5a, 2/6b</p> <ul style="list-style-type: none"> <li>• Plots 1/2e, 1/3e and 1/4d can't be identified on the relevant Land Plan</li> <li>• Plot 2/5a appears to be associated to Works No.10. This plot could be associated to Works No.8, however it is not clear following a comparison check between the Works and Lands Plan.</li> <li>• Should works No.5 not also include plot 1/5a, 1/5b, 1/7g?</li> </ul> <p>It may be necessary for HE to undertake a full review of the relevant plans to ensure Column 2 is accurate.</p>
<b>Table 3</b>	
	<p>Due to the discrepancies identified in Table 1 and 2, a thorough check of Table 3 was not completed and we would therefore advice HE to undertake a full review of the relevant plans to ensure Column 2 is accurate.</p>

## Book of Reference (BoR)

1. It may be useful for HE to review previous DCO submissions of the BoR made by HE/Highways Agency, especially pertaining to the detail provided within the "Introduction" of the document. Consider reviewing the M20 junction 10a, specifically the wording used for each PART relating to the BoR.

## Land Plan and Works Plan

1. There appears to be a discrepancy between Land Plan (Sheet 2 of 3) and Works Plan (Sheet 2 of 3), specifically relating to plot identified as 2/5a and Works No.10. The Red line boundary does not appear to be accurate.
2. PINS comments above relating to Tables 1-3 has reference. Upon an initial review of the Works described within these tables and a comparison with the Works and Lands Plan, there appears to be some discrepancies which could be resolved by providing a more descriptive/illustrative plan or an overlay of some aspects from the Land Plan onto the Works Plan such as the black lines identifying roads, building structures, rivers etc, to make clear which plots of land are associated to the relevant Works.
3. Upon review of plots identified within the SoR, dDCO and Land plans, the plots identified below are marked pink on the land plans. The key identifies this land as "*Land to be Acquired or Used permanently for construction, operation and maintenance works*"

Plot	SoR	DCO
1/1a	Included	Not included
1/1b	Not included	Not included
1/1c	Included	Not included
1/1e	Not included	Not included
1/1f	Not included	Not included

- We assume land to be used permanently means land already in HE ownership.
  - Should land subject to CA and land already in HE ownership not be defined separately, either on Lands Plan or within SoR?
  - The key on Land Plan refers to "*Land to be Acquired or Used **permanently** for construction, operation and maintenance works.*" Confusion in terms of rights being seek for "permanent construction", previous DCO applications e.g. M20 Land Plan key refers to '*Land to be permanently acquired*'.
  - Should all land plots subject to some level of CA not be included either in the SoR and/or DCO?
- As noted above, it may be useful to include a table either within the SoR/dDCO giving a full account of plots as identified on the Land Plan that will be associated to "freehold acquisition of land"; "temporary possession" and "temporary possession of land over which permanent rights required" or sign-post to relevant application documents where this is described.
  4. May be necessary to use an alternative outline boundary (other than red) to identify plots of land e.g. 1/1a, 1/1c etc and keeping the Red line boundary to identify the Order Land only.

## General

### 1. Consideration against dDCO, dEM and dSoR:

- The description of the development in the dDCO should make explicit the subsection(s) of s22 of the PA2008 that apply to the proposed development ie whether the proposed development comprises the construction of a new road, or the alteration or improvement of an existing road (or any combination of these). The draft Explanatory Memorandum (dEM) should draw distinction between all works within a dDCO and explain in detail how those works relate to the tests set out in s22 of the PA2008<sup>[1]</sup>. Clear and consistent evidence should be provided setting out how a proposed work(s) qualifies as an NSIP and whether or not the proposed works may comprise more than one NSIP. It is the Inspectorate's view that more than one NSIP may be included in a single application for development consent, where appropriate in the circumstances.
- Where s22(2)(c) or s22(3)(c) of the PA2008 is relied upon to demonstrate NSIP status, the dEM should make explicit the extent of works and how that extent relates to the associated threshold set out in s22(4) of the PA2008. Supporting plans will usefully be provided to demonstrate assertions relating to the extent of works and associated thresholds.
- Section 22(9) of the PA2008 provides the definition for 'area of development'. The Inspectorate understands this to mean that if any part of the existing highway (ie any land within the existing highway boundary) is expected to be used in connection with any relevant construction or alteration under s22 of the PA2008, then it should be included in the calculation of the total 'area of development'.
- Where any works comprising part of a proposed development could consist of 'improvement' of a highway under s22(5) and s235(1) of the PA2008, and where those works are not considered by an applicant to be an NSIP in their own right, applicants should signpost where within the ES it is evidenced that those works are not 'likely to have a significant effect on the environment'.
- The definition of 'alteration' in s235(1) of the PA2008 includes 'improving'. If any works comprising part of a proposed development are 'improvement to highway', but are not in themselves 'likely to have a significant effect on the environment', applicants should consider carefully how the improvement works should be described in the dDCO (ie as integral to a construction/ alteration NSIP, or as 'associated development').
- Advice in respect of defining the proposed development with sufficient precision is issued in consideration of the provisions of s160 of the PA2008 which deals with offences and convictions.

2. Where references are provided to other Application documents it would be beneficial to provide the full title thereof inclusive of document number. Should further draft documents be provided for review, HE may wish to consider providing a full list of known application documents (for purpose of sign-posting) as well as their respective reference number.
3. Use consistent abbreviation and language across suite of documents e.g. Development Consent Order (DCO) or ("the Order"); National Policy Statement for National Networks (NPSNN) or National Networks for National Policy Statement (NNNPS). These are only a few of the inconsistencies identified and HE may wish to undertake a thorough check of ALL application documents to ensure consistent approach.
4. In some documents reference is made to the "Development Consent Order 2017", good practice suggest either using reference to Title of documents as "Development Consent Order 20[]" and within the content of the document referencing as the "Development Consent Order".

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<sup>[1]</sup> As amended by The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013

5. [DCLG: Application form Guidance](#), paragraph 3 states: *The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.*
- It should be noted that the APFP Regulation 5(2)(n) states that an application must be accompanied "*where applicable, a plan with any accompanying information identifying any Crown Land.*" It is acceptable to submit plans representing various features including Land to be Acquired, Temporary Possession and/or Crown Land, however this should be consistent with the suite of application documents submitted. Draft Land and Crown Land Plans (Sheet 1 of 3) depicts the Crown Land, however this is not identified within inset B, furthermore the Ddco PART 1, provides an interpretation to "the Crown land plans" to mean the plans certified as the Crown land plans by the Secretary of State for the purposes of this Order. Highways England would therefore either need to submit as part of their application documents a separate Crown Land plan identifying crown land or amend the dDCO accordingly.