



**Application by Highways England for an Order Granting Development Consent for the A38 Derby Junctions Scheme**

**The Examining Authority's second written questions and requests for information issued on Tuesday 14 January 2020**

**Response on Behalf of Derbyshire County Council**

**Little Eaton Junction Improvements**

**(Located within the Administrative Area of Derbyshire)**

Question No.	Question	DCC Response
<b>Section 1</b>	<b>Part 1 -The Draft DCO and other general matters</b>	
1.4	Article 3 – Disapplication of Legislative Provisions	<p>c) The DCO for the A38 Junctions is the first DCO to have been submitted in Derbyshire so officers have no direct previous experience of dealing with its provisions, particularly relating to the disapplication of legislative provisions. However, officers have researched other DCO cases elsewhere in the country and the disapplication of the Water Resources Act appears to have been applied for other NSIP schemes around the country. However, just for consistency, Derbyshire County Council's Officers have asked its Flood Risk colleagues at Derby City Council what their position would be, if this applies to the other 2 junctions (Kingsway and Markeaton) in their area. Subject to the comments of Derby City Council, on the basis that the disapplication of the Water Resources Act appears to be common practice elsewhere in other DCOs, then Derbyshire County Council would be happy to accept this position</p>
	<b>Part 2 - Principal Powers</b>	
1.6	Article 6 – Maintenance of authorised development	<p>b) From a highways perspective, the County Council is largely in agreement with Highways England, in that many of the issues around maintenance of both existing and future assets are a matter for the detailed design</p>

		<p>process. Discussion with Highways England about this has been positive and the Local Highways Authority is keen to ensure continued engagement with Highways England during the detailed design of the emerging scheme(s) and their construction.</p> <p>From a flood risk perspective, it is considered to be important to clarify maintenance responsibilities both during construction and operation. The maintenance responsibilities for the various assets associated with this development need to be clearly defined, and whom that shall be.</p>
	<b>Part 3 - Streets</b>	
1.8	Streets	<p>Do the Local Highways Authorities have any outstanding concerns with respect to:</p> <ul style="list-style-type: none"> <li>• How Section 4 of the Highways Act would be affected.</li> </ul> <p>No. Derbyshire County Council has no further comments or outstanding concerns.</p>
1.10	Article 14 – Classification of Roads	<p>Derbyshire County Council has no further comments to make on this issue although prior notification from Highways England about when the ‘date to be determined by the undertaker’ is likely to be would be beneficial to the County Council so that it has reasonable notice of when the changes to the classifications of the highway network are likely to take place.</p>

	<b>Part 4 – Supplementary Powers</b>	
1.11	Article 20 – Discharge of Water	<p><i>The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river?</i></p> <p>Derbyshire County Council: Any works on the main river would come under the Environment Agency’s remit.</p> <p><i>This article does not authorise any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010 or nothing in this article overrides the requirement for an environmental permit under Regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016?</i></p> <p>Derbyshire County Council: Again, the County Council believes this would come under the Environment Agency’s remit</p> <p><i>This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (3)?</i></p> <p>Derbyshire County Council: The above provision provides greater clarity under Article 20 with regards the discharge of water and should be included.</p> <p>c) Do the EA or DCC have any outstanding concerns regarding Article 20?</p>

		Derbyshire County Council: See comments above
	<b>Part 5 – Powers of Acquisition</b>	
1.12	<b>Article 27 – Public Rights of Way</b>	<p>Footpath 1 which, as shown on the Right of Way Plans provided by the applicant, is an historical right of way which probably dates back to well before when we had the traffic volumes we now experience along this section of the A61. Like many points along any public highway, it is ultimately down to the road user as to whether or not they formally choose to cross or whether they perhaps choose to cross at an alternative location where they consider it much safer bearing in mind the speed and volume of traffic along this route and due to it being a fairly wide dual carriageway. Looking at the plans and giving consideration to existing usage of the footpaths mentioned in the surveys conducted, and the fact there is an intention to provide a formal signal controlled crossing point where the old section of Croft Lane emerges onto the A61, it would seem sensible to encourage walkers from the diverted section of footpath 3 and footpath 1 to continue further south along the eastern side of the A61 to the proposed toucan crossing point. Indeed, footpath 1 continues to lead south in any case where it then eventually meets with footpaths 4 and 6. At present, it should be noted that there is no hardened surface on the eastern side of the A61 and it is simply a grassed surface so there might be merit, albeit potentially having limited use, in also giving thought to hardening this section should the formalised</p>

		toucan crossing point prove to be a viable solution following the appropriate design process and approvals.
	<b>Part 6 - Operations</b>	
1.14	Article 39 – Felling or lopping of trees and removal of hedgerows	<p>a) There is clearly some value in the existing vegetation planted as part of the A38 corridor in both screening views of the route and integrating the road into the wider landscape. The intrinsic value of these trees in themselves, would not be particularly high but they are of a level of maturity that would take some considerable time to replicate. So in that context there is always value in retaining as much vegetation as possible and integrating this vegetation with landscape proposals as part of the current scheme under consideration. All vegetation to be retained would need to be protected in accordance with the guidelines set out in BS5837:2012 <i>Trees in relation to design, demolition and construction</i>.</p> <p>c) There would be some merit in producing a schedule and plan prior to the removal of any hedgerows subject to protection under the Hedgerow Regulations 1997 and consulting on these with the Local Authorities. This would provide a comprehensive record of the important hedgerows affected by the scheme, the likely programme for their removal and provide Local Authorities with the requisite information should there be queries from the public. Furthermore it would provide the Local Authorities with a baseline and the opportunity to discuss mitigation proposals to limit the likely impacts.</p>

		<p>d) The answer to this question relates partly to the response to (c) above. The production of a schedule and plan with a timed programme would provide a broad basis for dealing with queries from the public as part of the ongoing works. Part of that plan could be the prior notification of when works are due to commence on site so that Local Authorities have a more accurate account of when the works will be undertaken.</p>
	<b>Schedule 2 – Requirements</b>	
1.18	Requirements 1 – 21 – Provisions for consultation and agreement	<p>a) With regard to Requirements 9 and 12, there is no specific mention of the Derwent Valley Mills World Heritage Site Partnership as being a body with which consultation is required to be carried out. This should be set out in the Requirements for the avoidance of doubt.</p> <p>b) Requirements 12 and 13 make reference to the need for consultation with the ‘relevant planning authority and local highway authority’. Derbyshire County Council is the Lead Local Flood Authority, which is a separate entity to the Council’s Planning and Highways Authorities so for the avoidance of doubt, specific reference in Requirements 12 and 13 should be made to the need for consultation with the Lead Local Flood Authority.</p> <p>c) And d) no further comments</p>

1.21	HEMP – Requirement 3 (4)	<p>a) Derbyshire County Council has no significant concerns relating to the HEMP, particularly as Requirement 3(4) includes a requirement that the relevant planning authority and local highways authority should be consulted on the HEMP prior to its submission to the Secretary of State. As with Derbyshire County Council’s comments on 1.18 above, for the avoidance of doubt, reference should also be made to the need for consultation with the relevant Lead Local Flood Authority.</p> <p>b) For the avoidance of doubt and certainty, it would appear to be a sensible approach for the three provisions in part b) to be added to the Requirement.</p>
1.22	The principle of consultation rather than agreement and details of consultation	<p>a) The County Council, as Lead Local Flood Authority, is happy with this principle from a Flood Risk perspective</p> <p>b) For clarity and certainty, it would appropriate if a 28 day consultation period was added to Requirement 4.</p>
124	Preliminary Works – Requirements 5 (1) 11 (1) and 13 (1)	<p>a) Unless there are identified advanced landscaping works identified as part of the scheme that might impact on the CEMP, then the County Council would see no need for a written landscape scheme forming part of that CEMP. The County Council would expect the CEMP to included matters relating to the protection of vegetation to be retained as part of the proposed development but this would probably cross-reference to</p>



		<p>other documents within the scheme without the need for a written landscape scheme.</p> <p>b) From a Flood Risk perspective, the County Council would consider it to be appropriate that, given the scale of the construction compound, for this to be classed as preliminary works and an appropriate CEMP would therefore be required.</p>
	<b>Schedule 3 – Classification of Roads</b>	
1.27	Local Highways Authority review and update on discussions	a) - d) The County Council is largely in agreement with Highways England in that many of the issues around maintenance of both existing and future assets are a matter for the detailed design process. Discussion with Highways England about this issue has been positive and the County Council is keen to ensure continued engagement with HE during the detailed design of the emerging scheme(s) and their construction.
	<b>Schedule 4 – Permanent Stopping Up of Highways</b>	
1.28	Local Highways Authority review	<p>a) Yes a review of Parts 1 – 4 of Schedule 4 has been carried out by Derbyshire County Council as Local Highway Authority.</p> <p>b) Reference is made in Part 1 of Schedule 4 to the stopping up of Ford Lane in association with the Little Eaton Scheme. Derbyshire County Council</p>

		has an outstanding associated concern relating to the weight restriction on Ford Lane Bridge and its potential increased use by HGVs to access adjoining land and premises and future maintenance liabilities for the bridge, which is still the subject of ongoing discussions between the applicant and Derbyshire County Council. (see also answer to question 2.11 below)
	<b>Other General Matters</b>	
1.38	Maintenance and mitigation plans, strategies and written schemes	<p>a) Yes subject to the comments set out in its answer to question 1.18 above regarding the need for specific consultation with the Derwent Valley Mills World Heritage Site Partnership and Lead Local Flood Authority.to be clearly set out in the dDCO and OEM.</p> <p>b) Yes consultation should be undertaken on any material changes to the dDCO and OEMP. DCC has no preference to where this requirement should be set out as long as the requirement is set out in either one or both of the documents.</p>
1.39	Impact Assessment and Mitigation Methodology	No. Derbyshire County Council does not have any further comments on the applicant's impact assessment and mitigation methodology as set out in REP1 – 005, which appears to be thorough and comprehensive in its coverage.
1.40	Statement of Common Ground	At the time of writing, Derbyshire County Council has received no further updates on the Draft Statement of

		Common Ground that was provided to the County Council by Highways England on 4 <sup>th</sup> November 2019.
<b>Section 2</b>	<b>Transport Networks and Traffic</b>	
	<b>Driver Stress Assessment</b>	
2.1	Driver Stress – ES Chapter 12 and Transport Assessment	h) The driver stress (Chapter 12 of the Environmental Statement) considers impacts upon drivers post opening for users of both Derbyshire’s roads and the SRN following i.e. not during its construction, however, the County Council does not believe an assessment of impacts during construction would serve any useful purpose. The County Council considers that the needs of the travelling public would be better served by a ‘live’ Construction Management Plan (CMP) that enabled its ‘owners’ to react to issues as they arise.
2.2	Transport Modelling and Queuing	<p>a) No.</p> <p>b) The County Council accepts that the CMP is an evolving plan although as Highways England has not appointed a contractor to date and the Scheme is still in the preliminary design phase, consequently little discussion has taken place to date regarding the detailed traffic modelling of construction activity although the County Council would welcome further engagement in the future development of the evolving CMP. This could include where appropriate, SATURN modelling of</p>

		<p>the construction impacts of the wider (non SRN) road network.</p> <p>c) &amp; d). No. although see above.</p>
2.3	Impacts on Local Roads	These questions appear to be directed to the applicant to address so DCC has no further comments.
2.5	Traffic Management Plan Update	<p>a) to g) Derbyshire County Council is unable to comment further on this issue until the applicant has updated the details of the Traffic Management Plan in accordance with the ExA's requirements.</p> <p>h) For clarification, if a Park and Ride was set up, Kedleston Hall was suggested just an example by the County Council. The County Council would suggest that this should be repeated around the city in other locations on routes affected by the development of this scheme.</p>
	<b>Operational Traffic and Permanent Road Closures</b>	
2.11	Ford Lane closure and bridge	Discussions have recently taken place with Highways England / Aecom regarding this issue and discussions are ongoing. At the time of writing, agreement has yet to be reached between the County Council and Highways England regarding the weight restriction issue on Ford Lane Bridge and future maintenance liabilities.

		Highways England indicated at the meeting that the detailed assessment / study of the structural integrity of the bridge has yet to be commenced. Discussions explored a number of potential options for future maintenance liability of the bridge, including the possibility of HE paying a commuted sum to Derbyshire County Council, which will be subject to further consideration by HE. An update will be provided at the hearing sessions on 18 <sup>th</sup> and 19 <sup>th</sup> February 2020.
	<b>Public Transport</b>	
2.14	Support to public transport	a) and b) Derbyshire County Council believes, in so far as is reasonable and practical, that the Applicant has done so. The scheme(s) will reduce delays currently experienced by public transport services both into and out of Derby.
<b>Section 5</b>	<b>The Water Environment</b>	
	<b>Flood Risk and Drainage</b>	
5,2	Ownership of flood storage facilities	Derbyshire County Council fully agrees that this should be confirmed including annotated drawings as to whom will be responsible for what
	<b>Water Quality Pollution Control</b>	

5.3	Surface Water Discharges	<p>f) Derbyshire County Council's officers have raised this as a concern in previous responses to the ExA's written questions. Derbyshire County Council's Flood Team Officers have now assessed the Hydraulic Modelling Technical Note include as an Appendix to the applicant's D1 submission. Whilst this note is welcomed Officers remain concerned that the extent of the area that has been modelled does not extend far enough to the east to give Officers sufficient satisfaction and certainty that none of the proposed works to the Dam Brook (watercourse diversion etc.) will increase the flood risk further upstream. There have been previous occurrences of internal flooding to properties in Breadsall, in particular around where the Dam Brook is culverted under Brookside Road and where Boosemoor Brook is culverted under Rectory Lane. In Section 1 of the Technical Note, however, it is noted that:</p> <p><i>'The modelled representation of Dam Brook has an upstream extent at the western boundary of Brookside Road. It does not include the culvert which conveys flows under Brookside Road. The modelled representation of Boosemoor Brook has an upstream extent slightly west of Rectory Lane. The Rectory Lane culvert has not been represented in the Little Eaton model'.</i></p> <p>h) Derbyshire County Council fully agrees with the suggested requirement for the applicant to clarify the maintenance responsibilities for the drainage systems at each of the junctions and to provide an update on the Maintenance and Repair Strategy Statement.</p>
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5.4	Water Quality	Derbyshire County Council has no particular issue to raise on this matter and would question whether it is standard practice to have water quality modelling for a scheme of this size and nature? Maybe the EA would comment further on this one.
	<b>Protected Species and other notable fauna</b>	
6.2	Badger fencing and crossings	Derbyshire County Council has reviewed the applicant's latest submission on badger fencing and crossings set out in REP2 – 020, which specifically addresses Derbyshire County Council's concerns expressed on the CEMP. Based on the evidence provided, particularly the badger territory analysis, it appears that existing badger commuting routes will be retained and will not be severed by the scheme and, therefore, Derbyshire County Council is satisfied that this issue has been satisfactorily addressed by the applicant and that badger crossings will not be required as part of the scheme.
	<b>Land Use Social and Economic Impacts</b>	
8.1	Footpath diversions at Little Eaton	DCC has no further comments to make on this issue as its position is set out in its response to ISH2 (REP3-029).