

A303 Amesbury to Berwick Down

TR010025

Deadline 2

8.15 Explanation of Amendments to the Draft DCO

APFP Regulation 5(2)(q)

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

May 2019



Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

A303 Amesbury to Berwick Down

Development Consent Order 2019

8.15 Explanation of Amendments to the Draft DCO

Regulation Number:	Regulation 5(2)(q)
Planning Inspectorate Scheme Reference	TR010025
Application Document Reference	8.15
Author:	A303 Amesbury to Berwick Down Project Team, Highways England

Version	Date	Status of Version
Rev 0	03.05.2019	Deadline 2 Issue

THE A303 (AMESBURY TO BERWICK DOWN) DEVELOPMENT CONSENT ORDER

EXPLANATION OF CHANGES MADE TO THE DRAFT DCO (REV 1) AT DEADLINE 2

1. INTRODUCTION

- 1.1 This document provides a commentary on changes made to the draft Development Consent Order in the version submitted at Deadline 2 (3 May 2019) (DCO Revision 1), compared with the version of the draft DCO submitted with the application [APP-020]. The Applicant's revised draft DCO (Revision 1) is document 3.1 (Revision 1), and an electronic .pdf comparison between the two versions has also been submitted.
- 1.2 In broad terms the changes made in the latest draft DCO have been made for the following reasons:
- 1.2.1 changes arising from the Applicant's consideration of relevant representations;
 - 1.2.2 changes arising from the Applicant's consideration of the Examining Authority's First Written Questions; and
 - 1.2.3 changes arising from discussions with affected persons and statutory undertakers and to reflect developments in drafting practice.

2. TABLE OF CHANGES TO THE DRAFT DCO REVISION 1

Provision in revised draft DCO and/or issue	Brief description and explanation
General	Minor typographical errors have been corrected and the Order has been revalidated, leading to purely typographical changes to the formatting of some tables appearing on the track changes version. These changes are imperceptible in the untracked version and are as result of the functioning of the statutory instrument template.
Article 3 (disapplication of legislative provisions)	The disapplication of section 24 (restrictions on abstraction) of the Water Resources Act 1991 has been removed, following discussions with the Environment Agency who has indicated that it is unwilling to grant consent under section 150 Planning Act 2008 to its disapplication. Negotiations with the Environment Agency

Provision in revised draft DCO and/or issue	Brief description and explanation
	<p>on its requested protective provisions are ongoing following the Environment Agency's 2019 update to its standard form protective provisions. The Applicant intends to update Schedule 11 to include the Environment Agency's protective provisions as a standalone Part in the Applicant's next updated draft DCO at Deadline 3. This update will also require amendments to Part 3 (for the protection of drainage authorities) so as to remove drafting relevant to the functions of the Environment Agency from that Part, which the Applicant will progress in negotiations with Wiltshire Council.</p>
Article 7 (limits of deviation)	<p>Paragraph (3) has been amended so as to refer to the "works plans" as requested by Examining Authority in its First Written Questions, reference DCO.1.20.</p>
Article 13 (discharge of water)	<p>The words "(known as Homes England)" has been added to paragraph (7), after the reference to the "Homes and Communities Agency" in accordance with the Applicant's response to the Examining Authority's First Written Questions, reference DCO.1.33.</p>
Article 15 (authority to survey and investigate land)	<p>Deletions have been made to paragraphs (4) and (7) in respect of the consent required of the highway or street authority to the undertaker locating trial or boreholes within a highway boundary or street respectively. The deleted drafting is unnecessary as its subject matter is addressed in article 59 (consents, agreements and approvals) which applies a unified process to consents required under the operative provisions of the DCO.</p>
Article 22 (compulsory acquisition of rights)	<p>This article has been amended in response to the themes arising from the relevant representations, the Examining Authority's First Written Questions and in response to discussions with affected persons and statutory undertakers.</p> <p>Paragraph (1), which provides a general power to acquire rights and impose restrictions over land that the Applicant seeks authorisation to acquire compulsorily (i.e. the land shown in pink on the land plans), has been amended to make it clear that rights and restrictive covenants can be acquired for the benefit of statutory undertakers and other persons. This clarifies the effect of the existing drafting. The justification for the reference to the acquisition of</p>

Provision in revised draft DCO and/or issue	Brief description and explanation
	<p>rights "for the benefit of any other person" is discussed below.</p> <p>New paragraph (2) permits the general power in paragraph (1) to be exercised by a statutory undertaker, subject to the Applicant's consent.</p> <p>New paragraph (3) ensures that the statutory undertaker exercising the power is to be treated for all purposes, save for those related to the payment of compensation, as though it was the Applicant. This ensures that all of the relevant controls on the exercise of this power by the undertaker are effective. It is appropriate for statutory undertakers, with existing compulsory acquisition powers and the operational knowledge of their own requirements, to be permitted to exercise those powers to serve their undertaking.</p> <p>Paragraph (4) has been amended to remove reference to the land described in Schedule 6 (land in which only subsoil or new rights in and above subsoil and surface may be acquired). The necessary authorisation and restrictions on the outright acquisition of this land are contained in Article 27 and do not need to be duplicated. The reference to article 19 has been removed as it is redundant: article 19(2) already confirms that the exercise of the power of outright acquisition is subject to article 22.</p> <p>The Applicant considers it to be desirable to separate (i) the provisions authorising the acquisition of rights and imposition of restrictive covenants over the land shown in pink on the Land Plans (denoting full acquisition) and the land shown in blue on the Land Plans and described in schedule 4 (denoting the acquisition of rights) from (ii) the power to acquire subsoil or new rights in and above subsoil and surface (shown hatched pink on the Land Plans) under article 27. This separation provides clarity by specifically stating the scope of the power sought over each of the different categories of land shown on the Land Plans.</p> <p>New paragraph (5) regulates the acquisition of rights for the benefit of statutory undertakers and other persons to ensure that they do not preclude one another.</p> <p>In the context of the Scheme these amendments are important. Firstly, the amendments regulate the</p>

Provision in revised draft DCO and/or issue	Brief description and explanation
	<p>acquisition of rights for the benefit of statutory undertakers for the benefit of their undertakings. Secondly, the amendments clarify the position with respect to rights that are required for "any other person". This is essential in order to ensure that the necessary vehicular rights of access over restricted byways (without which taking such access would be a criminal offence) can be provided and can be granted to benefit the land to which such access relates. Without this provision the Applicant could not be certain that the replacement private means of access to land, and the legal right of vehicular access over restricted byways, would endure for the benefit of the land affected by the stopping up of existing private means of accesses.</p>
Article 50 (Benefit of the Order)	A minor amendment has been made to paragraph (1) to reflect current drafting practice and paragraph (2) has been amended to ensure that development consent granted for accommodation works can be enjoyed by those for whom those works are undertaken.
Article 51 (Consent to transfer benefit of Order)	This article has been re-drafted in order to reflect the fact that the authorised development will no longer proceed by way of a private finance structure.
Paragraph 8 (dangerous goods) of Schedule 8 (Byelaws)	The Applicant has amended byelaw 8 (dangerous goods) to clarify its proposals regarding the conditions applying to drivers of vehicles transporting dangerous goods through the tunnels comprised in the Scheme.
Schedule 2 (Requirements) Paragraph 10 (drainage)	The Applicant has amended requirement 10 so as to require the Environment Agency to be consulted on the drainage scheme and clarified the matters on which the planning authority is to be consulted.

© Crown copyright 2018.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence: visit www.nationalarchives.gov.uk/doc/open-government-licence/ write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email psi@nationalarchives.gsi.gov.uk.

This document is also available on our website at www.gov.uk/highways

If you have any enquiries about this publication email info@highwaysengland.co.uk or call **0300 123 5000***

*Calls to 03 numbers cost no more than a national rate call to an 01 or 02 number and must count towards any inclusive minutes in the same way as 01 and 02 calls. These rules apply to calls from any type of line including mobile, BT, other fixed line on payphone. Calls may be recorded or monitored