

Planning Act 2008 – section 91

Application by Highways England for an Order Granting Development Consent for the A303 Amesbury to Berwick Down

Agenda for Issue Specific Hearing 1 dealing with matters relating to the draft Development Consent Order

The Examining Authority (ExA) notified Interested Parties (IPs) in its letter dated 7 May 2019 of the decision to hold an Issue Specific Hearing (ISH) into the draft Development Consent Order (dDCO) on the following date:

Hearing	Date and time	Location
Issue Specific Hearing 1 Draft Development Consent Order	4 June 2019 10.00am (seating available from 9.30am)	City Hall, Malthouse Lane, Salisbury, SP2 7TU

About the dDCO hearing

The hearing will concentrate on the specific issue of the dDCO and any agreements needed to secure mitigation. This is the Order which the Secretary of State would make if he decided to grant consent for the application. The hearing will principally be informed by the dDCO submitted by the Applicant to Deadline 3 in the Examination Timetable [REF-TBC].

Discussion at this hearing is 'without prejudice'; this means that parties may make contributions to improve the quality of the dDCO without invalidating their own positions of support or opposition to the Proposed Development as a whole.

Irrespective of its recommendation, the ExA is required to present a dDCO to the Secretary of State. Discussion about the specifics of the dDCO does not indicate that the ExA has made up its mind about the application.

The hearing into the dDCO is likely to be of a technical nature and will be based on the specific wording of the Order.

Participation, conduct and management of hearing

Oral submissions on other subject matters or from persons who are not IPs may only be heard at the discretion of the ExA.

The following IPs are invited, in particular, to attend and participate in this hearing:

- The Applicant;
- Wilshire Council;
- The Environment Agency;
- English Heritage;



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- Historic England;
- The National Trust; and
- Natural England.

The named persons have been invited for the following reasons:

- As public bodies and other parties which are named in the draft provisions within the dDCO; and/ or
- as local authorities for the affected area.

Participation in the hearing is subject to the ExA's power to control the hearing. IPs may be invited to make oral representations at the hearing¹ (subject to the ExA's power to control the hearing). Oral representations should be based on the Relevant Representations or Written Representations made by the person by whom (or on whose behalf) the oral representations are made².

However, representations made at the hearing should not simply repeat matters previously covered in a written submission. Rather, they should draw attention to those submissions in summary form and provide further detail, explanation and evidential corroboration to help inform the ExA.

The ExA may ask questions about representations or ask the Applicant or other party to comment or respond. The ExA will probe, test and assess the evidence through direct questioning of persons making oral representations. Questioning at the hearing will therefore be led by a member of the Panel, supported by other Panel members.

This agenda is for guidance only. It is not designed to be exclusive or exhaustive. The ExA may add other issues for consideration, may alter the order in which issues are considered and will seek to allocate sufficient time to each issue to allow proper consideration of them.

Any lack of discussion of a particular issue at a hearing does not preclude further examination of that issue, including through the inclusion of questions in the ExA's Second Written Questions (if issued).

Should the consideration of the issues take less time than anticipated, the ExA may conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to. Some of the issues identified in the agenda are by their nature overlapping. It may be the case therefore that certain questions later on in the agenda are answered by earlier questions. If this is the case the ExA will acknowledge this at the time.

If there are additional matters to be dealt with or there are submissions that take a considerable amount of time there may be a need to continue the session for longer on the day or continue the hearing at a subsequent sitting.

Breaks will be taken during the hearing as directed by the ExA.

All parties should note that the agenda given below is to provide a framework for this hearing and offer discussion points; it does not constrain the ExA to specific

¹ s91 Planning Act 2008

² s91 Planning Act 2008



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topics. The ExA may wish to raise other matters arising from submissions and pursue lines of inquiry in the course of the discussions which are not included in this agenda.

References in square brackets [] are to the unique document identification number in the Examination Library. This document is found on the National Infrastructure Planning website at:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010025/TR010025-000484-Stonehenge%20-%20Examination%20Library%20Template.pdf>



AGENDA

1. **OPENING REMARKS BY THE EXAMINING AUTHORITY**
2. **INTRODUCTIONS**
3. **DRAFT DCO ARTICLES**

3.1 Consideration of the definitions and descriptions as currently drafted and whether they encompass all necessary matters and work in a form that allows all parties to understand the fundamental parameters, structure, approach and limitations of the consent sought.

3.2 Extent of the works, provisions and powers sought, and the implications or proportionality of rights sought over any land on a temporary or permanent basis.

Part 1 - Preliminary

3.3 Article 2 - Interpretation

- i. The extent of definitions, including the definitions of "*authorised development*", "*commence*" and "*maintain*".
- ii. The justification for the degree of flexibility that reliance upon 'illustrative' plans would allow?
- iii. Whether the scope of the 'ancillary' works should be further defined, for example, in relation to the Order limits?
- iv. Whether the construction compounds should be listed as specific numbered works and shown on the works plans, rather than including them as 'ancillary works'?
- v. Whether 'associated development' should be separately described in Schedule 1?
- vi. Whether any other definitions should be included within Article 2?

Part 2 - Works Provisions

3.4 Article 3 – Disapplication of legislative provisions

- i. Whether there would be sufficient regulation of the activities that fall within Article 3(1) (a) to (f) of the revised dDCO?
- ii. The progress of discussions between the Applicant and the Environment Agency and Wiltshire Council as regards Protective Provisions and amendments for the protection of drainage authorities.



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3.5 Article 7 – Limits of deviation

- i. The extent of and justification for the limits of deviation (LoD) set out in the dDCO, including those in respect of the bored tunnel, the cut and cover section of the tunnel and the green bridges.
- ii. Whether provision should be made for consultation with stakeholders before the proposed LoD for the tunnel could be invoked?
- iii. Whether the deviations from the specified limits permitted by Article 7(6) should include provision for public consultation?

3.6 Article 12 – Access to works

- i. The scope of and necessity for the general power sought by Article 12.
- ii. Whether the drafting of this provision should make the exercise of the power subject to third party approval?

Supplemental powers

3.7 Article 13 – Discharge of water

- i. The progress of discussions between the Applicant and the Environment Agency.
- ii. Whether any amendments to Article 13 are necessary to ensure adequate protection?

3.8 Article 14 – Protective works to buildings

The scope of, necessity for and reasonableness of the powers sought including in relation to buildings outside the Order limits.

3.9 Article 15 – Authority to survey and investigate land

The need for and intended operation of this provision.

3.10 Article 16 – Removal of human remains

The necessity for and the reasonableness of this provision.

3.11 Article 18 – Maintenance of drainage works

- i. Clarification of the intended purpose of Article 18.
- ii. Whether it is anticipated that the effect of Article 18 would be to maintain the *status quo* as regards maintenance responsibilities of riparian owners for drainage?

Part 3 – Powers of acquisition and possession of land

3.12 Article 22 – Compulsory acquisition of rights

- i. The scope of and justification for this provision.



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- ii. Whether it is intended that there would be restrictions on access to and excavation of land over the tunnel that would prevent archaeological investigation in this location from taking place in the future?

3.13 Article 24 – Power to override rights and other easements

The necessity for and reasonableness of this provision.

Temporary possession of land

3.14 Article 29 – Temporary use of land for constructing the development

The justification for and reasonableness of the scope of the powers sought.

Supplementary

3.15 Article 31 – Statutory undertakers

The scope of Article 31 and the agreement of Protective Provisions with relevant statutory undertakers.

3.16 Article 34 – Special category land

Whether the proposed mechanism for providing the replacement land, including provision for consultation with the planning authority, would be satisfactory?

3.17 Article 38 – Crown land

Whether the necessary consents from the Secretary of State for Defence and the Secretary of State for Digital, Culture, Media and Sport have been obtained?

Please note that in relation to Compulsory Acquisition these matters will principally be dealt with in the Compulsory Acquisition Hearing. However, if IPs have particular drafting matters that they wish to draw attention to in relation to the acquisition and possession of land we will hear such matters under Part 3 of this agenda.

Part 4 – Operational provisions

3.18 Article 51 – Consent to transfer the benefit of the order

The scope of the powers sought as drafted in the revised dDCO.

4. SCHEDULE 2 – REQUIREMENTS

Interpretation

4.1 Requirement 1(1) – Interpretation

- i. The scope of the definition of “*preliminary works*”.
- ii. Whether the items listed within that definition are themselves adequately defined?



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Preparation of detailed design etc

4.2 Requirement 3(1) and (2) – Preparation of detailed design etc

- i. The justification for and reasonableness of the degree of flexibility sought by this requirement?
- ii. Whether key stakeholders could be confident that the detailed design of the scheme would be carried out appropriately including the need for consultation with statutory stakeholders on key aspects of the detailed scheme design that relate to their functions and the means whereby this could be satisfactorily secured by the dDCO?
- iii. The progress of discussions with heritage stakeholders as regards a mechanism to achieve that aim including provision for consultation, the setting out of design principles and committing to additional key aspects of design?
- iv. Whether the Authorised Development should be required to be carried out in accordance with certain dDCO plans, as stated in the Explanatory Memorandum, rather than simply requiring the detailed design to be 'compatible' with those plans?

Outline Environmental Management Plan

4.3 Requirement 4 – Outline Environmental Management Plan (OEMP)

- i. Whether the proposed means of securing implementation, adherence to and enforceability of the preliminary works Construction Environmental Management Plans (preliminary works CEMPs), the Construction Environmental Management Plans (CEMPs), the management plans included within the CEMPs and the Handover Environmental Management Plans (HEMPs) ultimately by way of compliance with the OEMP [APP-187] and Requirement 4, subject to enforcement by Wiltshire Council, would be satisfactory?
- ii. Whether the definition of and requirement for the CEMPs and HEMPs should be more clearly set out in the dDCO itself?
- iii. Whether the need for and means of consultation with Wiltshire Council and the Environment Agency in the development of the preliminary works CEMPs, the CEMPs, the HEMPs and changes to the REAC tables would be satisfactorily secured by this Requirement in the light of the amended OEMP submitted at Deadline 3?
- iv. The proposed methodology of consultation with relevant stakeholders and whether this has been agreed?



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- v. Whether there should be provision in the dDCO for a process of approval of details of surfacing materials and fencing including from heritage consultees in line with an agreed and approved set of design and construction principles?
- vi. Whether the circumstances in which the different types of working hours might apply should be set out in the OEMP?
- vii. Whether there is a need for a proactive requirement for the Environmental Manager or Community Relations Manager (as detailed in the OEMP) to report all or any transgressions of working hours to the Wiltshire Council and local community?

Archaeology

4.4 Requirement 5 – Archaeology

- i. The need and justification for Requirement 5(2)?
- ii. Whether any additional provisions within the dDCO are necessary to secure the required level of archaeological mitigation?

Protected Species

4.5 Requirement 6 – Protected Species

The scope of this Requirement and whether it should include both the permanent and temporary works?

Contaminated land

4.6 Requirement 7 – Contaminated land

- i. Whether this Requirement is appropriately drafted to ensure the submission of the completed risk assessment and the approval of an agreed timetable for approval and implementation of remedial measures?
- ii. Whether any additional requirements are necessary in relation to the risk from contaminated land and, if so, what form could they take?

Landscaping

4.7 Requirement 8 – Landscaping

- i. Whether the proposed landscaping scheme should include a timetable for carrying out the agreed scheme?
- ii. Whether Requirement 8(2)(b) should include reference not only to “*noise fences and walls*” but also to fences and walls erected for other purposes, particularly those to be provided within the World Heritage Site (WHS)?



Drainage

4.8 Requirement 10 – Drainage

- i. The revised dDCO has re-worded this Requirement to ensure that the Environment Agency are consulted in addition to the local planning authority prior to approval by the Secretary of State. Has the revised wording been agreed by those parties?
- ii. Whether any further changes are necessary to this Requirement, as currently drafted, including reference to an approved timetable?
- iii. Whether the 'preliminary works' should be exempt from this Requirement in the light of the flood risk that site clearance could introduce?

Whether any additional Requirements are necessary?

4.9 The consolidated list of suggested Requirements with reasons proposed by Wiltshire Council as set out in Appendix B of the Local Impact Report (LIR) [REP1-057] relating to: (i) Archaeology and WHS considerations; (ii) local transport; (iii) Public Rights of Way (PROW); (iv) ecology and landscape; (v) built heritage; (vi) public health and protection; and (vii) flood risk and drainage.

4.10 Whether any additional Requirements are necessary to ensure mitigation would be put in place to minimise any impact on the surface and groundwater water quality, quantity (levels and flow) and environment, including pollution prevention measures, at both the construction and operation stages?

4.11 Whether the scheme should contribute to improvements to waterbodies and, if so, whether any such improvements and/or enhancements should be addressed as part of the dDCO?

4.12 Whether this could be achieved by including a Requirement for an environmental enhancement plan to be produced as part of the dDCO, as suggested by the Environment Agency?

4.13 Whether there is a need for Requirements to control the activities excluded from the definition of 'commence' such as 'site clearance'?

4.14 Whether any additional Requirements setting specific noise limits during construction or operation are necessary?

5. SCHEDULE 11 – PROTECTIVE PROVISIONS

Including an update on any current negotiations and agreements with individual Statutory Undertakers.

6. PLANNING OBLIGATIONS AND ANY OTHER AGREEMENTS

6.1 Whether any planning obligations or agreements to secure mitigation measures are intended to be completed?



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6.2 The list of suggested Development Consent Obligations set out at Appendix C to the Wiltshire Council's LIR [REP1-057] relating to: (i) Archaeology and WHS considerations; (ii) impact of the A303 Amesbury to Berwick Down road scheme on local transport; and (iii) flood risk and drainage.

6.3 Any other measures sought?

7. ANY OTHER MATTERS

8. CLOSE OF HEARING