

Trans-Pennine Upgrade Programme: Comments on Draft Documents

These queries relate solely to matters raised by the drafting of documents, 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.

Environmental Statement ES Chapter 1 - Introduction

<i>Point no.</i>	<i>ES Para</i>	<i>Extract from Document</i>	<i>Question/Comment</i>
1	General	ES electronic file labelling	It would help if the document labelling took the form doc number_doc name_file reference – since the actual document name is hidden if multiple windows are open, reducing ease of navigation.
2	Table 1-1	Appendix 1.1 Competent Expert Evidence	Should the cross reference be to Appendix 6.1.1? All cross references to be checked in table.
3	1.1.6	Following acceptance	Consider rewording as 'subject to acceptance'

ES Chapter 2 – Scheme Description

<i>Point no.</i>	<i>ES Para</i>	<i>Extract from Document</i>	<i>Question/Comment</i>
1	Table 2-1	False cutting	The Applicant may wish to consider defining the term 'false cutting'.
2	Table 2-1	Chainage	The Applicant may wish to consider defining the term 'chainage'.
3	2.5.7	(to be confirmed)	Whilst it is acknowledged that flexibility may be required in the approach to be taken, the use of TBC in this context creates some uncertainty regarding the intent of the statement. Is the local sourcing TBC or is it the stone cladding itself? The different interpretations would have different outcomes for the assessment.
4	2.5.10	Consequently, it has been assumed that 25% of the existing drainage assets effected by the Scheme need to be replaced.	Is this an ES assumption contributing to a worst case assessment or a consultant's assumption relating to the service provided in respect of the assessment?

5	2.5.10	Existing data of drainage data is limited	Grammatical sense
6	2.5.17	It is assumed that the Environment Agency shall indicate that it would like to see discharge rates reduced to those for "greenfield sites"	The Inspectorate would normally expect this detail to be clarified prior to submission and therefore how it influences sizing of drainage attenuation.
7	2.5.18	Hyperlink to NPPF	Hyperlinks to the relevant documents are considered to be a helpful aide to the reader.
8	2.5.19	Departures to maximise efficiency will be incorporated in the design	Should this read 'departures from the design principles'
9	2.5.22	20% allowance	Is the point here that a 20% allowance is made for existing drainage and 40% for new or is it that a reduced 20% allowance has been proposed?
10	Table 2-4	Biodiversity: Where possible, any areas required for temporary works to be reinstated on completion.	Use of terms such as 'where possible' creates uncertainty in the proposed design and the basis for assessment. If areas for temporary works are not to be reinstated, what will be done with them instead?
11	Table 2-4	Biodiversity: Landscape planting would be <u>designed to avoid providing</u> food sources away from the edge of the road	Should this read – <u>designed to provide</u> food sources away from the edge of the road?
12	Table 2-4	Landscape and townscape: A 3m high perimeter fencing	Should this read 'a 3m high perimeter fence'
13	Table 2-4	Geology and soils: Construction design of the embankments is currently unknown; Piling may be required	The lack of detail creates uncertainty regarding the eventual scheme to be built out. It would be helpful to provide more specific detail regarding these elements, since they potentially influence the worst case assessment. Where piling may be required an assessment of the likely significant noise and vibration effects associated with this activity should be provided.
14	Table 2-5	Environmental enhancement measures	In the absence of detail, unable to provide comment on the enhancement measures.
15	Figures 2.2 and 2.3	Permanent vs. temporary land take key	It is slightly confusing having a pink colour for permanent land take in the overarching figure and then for using pink for temporary land take in the detailed figures.

ES Chapter 3 – Consultation

Point no.	ES Para	Extract from Document	Question/Comment
1	3.1.1	Targeted statutory consultation deadlines	See comments in respect of targeted statutory consultation in the Consultation Report section.

ES Chapter 4 – Assessment of Alternatives

Point no.	ES Para	Extract from Document	Question/Comment
1	4.1	n/a	There is no introduction to the chapter. An introduction would help to provide context to the chapter.
2	4.3.4	85kph	It would be helpful to express speeds in mph as well.
3	4.3.8	Options are currently being developed for the cross section, but it is proposed that the 2.5m verges are not provided due to the length of the structure and associated costs of complying with this requirement. This can be justified due to the operational regime that is currently being proposed limiting the possibility of Non- Motorised Users being in the tunnel.	The alternatives discussion within the ES should report on the options developed not on future options still under consideration.
4	4.3	Justification for chosen option	This description lacks reference to Schedule 4 part 2 of the Infrastructure Planning Regulations 2017, which requires “an indication of the main reasons for selecting the chosen option, <u>including a comparison of the environmental effects.</u> ” The Applicant should consider providing additional justification with respect to environmental effects.

ES Chapter 5 – EIA Methodology

Point no.	ES Para	Extract from Document	Question/Comment
1	n/a	n/a	Electronic file incorrectly labelled EAI methodology
2	Table 5-1	Extracts from the EIA Regulations	It is unclear why this chapter references the old version of Schedule 4 of the Regulations, rather than the current version in the IP EIA Regulations 2017, this must be updated and the Applicant must ensure that the assessment meets the requirements of the 2017 regulations.
3	Table 5-2	Items scoped out from assessment	The summary table is prefaced by text suggesting that justification has been provided for scoping out certain effects or is discussed within the Scoping Report. There is limited or no justification or cross references to other justifications supplied for the proposed scope outs. The Applicant is reminded of the provisions within Regulation 14(3) The environmental statement referred to in paragraph "(1) must— (a) where a scoping opinion has been adopted, be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion)". It is not considered that this requirement has been met based on the current draft information supplied and substantially more justification is required.
4	5.3.7	PINS Advice Note 17	Please note that this advice note is due to be updated, within the coming months, although the content is unlikely to be substantially different.
5	Table 5-5	Significance criteria	When considering likely significant air quality effects, the Applicant should take into account recent guidance from Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations, which has now been published at http://publications.naturalengland.org.uk/publication/4720542048845824

6	5.6.1	Duplication of assessment	You may wish to make reference to 'co-ordinated procedures' with respect to Habitats Regulations Assessment.
7	5.6.9	Flood risk assessment	This paragraph describes work that will be undertaken rather than work that should have been completed prior to submission of an ES/application.

Habitats Regulations Assessment (HRA) Screening Report

Point no.	ES Para	Extract from Document	Question/Comment
1	2.1.4 Figure 2-1 2.2.1	PINS advice note 10	Subject to timing, reference should be made to the revised version of the advice note, which is currently being updated to reflect changing practice in light of the Sweetman judgement.
2	2.4.1 4.5.18 5.5.18	This report will be provided.... Consultation with Natural England on the content and the conclusions of this document is currently ongoing...	The HRA report should only report on the outcome of the process.
3	3.2.1	Transport and associated operational assessments for vehicular emissions (including air and noise) are inherently cumulative assessments.	This position should be substantiated, AN17 suggests that assessments 'may' be inherently cumulative where they are comprehensive and worst case. The statement that this is the case is not evidenced.
4	4.1.5	Atmospheric pollution is not identified as a vulnerability of the SPA	This statement must be substantiated or an assessment provided in respect of the SPA.
5	4.1.7	It is not considered likely that transportation requirements for the Scheme will have any impacts on the SPA.	No evidence is provided to substantiate this statement. Eg details of construction transport routing etc. A similar comment applies to 5.1.7.
6	4.1.8	Duration of construction operations is not considered likely to impact on the SPA at this distance	Duration and distance are two distinct concepts – duration would inform the significance of an effect on the designated site. A similar comment applies to 5.1.8.

7	Appendix B footnote a	Militate	Should this be mitigate?
8	Appendix B footnote e	Comprehensive and worst case	As above, there is no supporting justification for this statement.
9	Appendix C	Stage 3 Traffic model	The assessment should be based on the final traffic model, if this is not the Stage 3 model.
10	Appendix D Para beneath table D-1	Nox	NOx
11	Appendix D	Methodology	<p>The methodology should make reference to Natural England’s approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations: http://publications.naturalengland.org.uk/publication/4720542048845824</p> <p>The Applicant should demonstrate how the assessment meets the requirements of the guidance, including specific reference to the Air Pollution Information System (APIS). It should include specific consideration of effects on the Peak District Moors (South Pennine Moors Phase 1) unless otherwise robustly justified.</p> <p>The data used to underpin the assessment in air quality terms should be set out in the appendix.</p>
12	Appendix E Table E-1	Future baseline with or without the scheme	The do-minimum sound levels have been provided for the year 2023 but not 2038. This information should be provided for comparison.

Statement of Reasons

Point no.	Para	Extract from Document	Question/Comment
1	Para 2.5.1	... further development within the limits of land to be acquired or used permanently or temporarily	Is it clear what such further <i>development</i> might be that would not be required for the delivery of the scheme?

Book of Reference

Point no.	Para	Extract from Document	Question/Comment
1	General		The guidance ("Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land", Annex D, in particular paragraphs 9 and 10) suggests that sections of the BoR should cross-refer to the relevant articles in the Draft DCO. This has not been done here. Whilst the Applicant might not consider it feasible to amend the tables themselves, some additional explanatory text might be useful.
2	General	"address as at..."	Please check cross-references prior to submission.
3	General	"Samuel Lawton" et al	Some parties in the book of reference do not have addresses.
4	Plot 1/f	Plot 1/f	Suggest should read Plot 1/1f.

Land Plans

No comments

Works Plans

Point no.	Para	Extract from Document	Question/Comment
1	General	Land to be used temporarily	There are areas of land to be used temporarily that do not seem to be associated with any work. The statement of reasons suggests that this land will be used for 'all works'. If it is rather land for ancillary development, this should be made clear.

2	General	Limits of deviation	No distinction is made between the limits of deviation of linear highways works. Many works, such as work 2A for example, cannot possibly take place within parts of the limits of deviation shown for practical reasons.
3	General	Works Plans show the footprint of the current Scheme design model.	Is the intention that this approach will be adopted for the submitted Work Plans?

Draft Development Consent Order

1. The Applicant should ensure that when the development consent order (DCO) is finalised all internal references and legal footnotes are checked and that the drafting follows best practice in Advice Note s13 and 15 and any guidance on statutory instrument drafting.
2. The Applicant should ensure that all typos and formatting issues are corrected.
3. The Applicant should ensure that all legislative references in the DCO are to the extant provisions
4. The Explanatory Memorandum (EM) should state whether the article replicates a model provision or precedent article. Where there has been a change from the precedent or model provision this should ideally be shown in a track change DCO. It would also be helpful if the EM clarified whether the change is minor and has been made where in the applicant's view the model provision is unclear, or does not follow standard statutory instrument drafting practice. Where a model provision or precedent article is substantially changed, the EM should clearly explain how that alters the effect. Ideally (and particularly if an article is novel), the power on which each article is based should be identified.

<i>Point no.</i>	<i>Section</i>	<i>Extract from document</i>	<i>Question/Comment</i>

1.	2	Definition of 'commencement'	<p>The definition contains a number of 'carve outs' for exempted works such as site clearance, demolition etc. It would be helpful for the applicant to clarify any impacts on these works, so that the ExA can consider whether they are justified and/or need to be controlled by a requirement.</p> <p>The addition of works being permitted subject to a mitigation licence from Natural England is unusual, and we note that a precedent has not been noted in the EM. The ExA is likely to want to have more information regarding the nature and extent of any proposed works under the mitigation licence. Have there been discussions with the LPA in relation to this?</p>
2.	2	Definition of 'maintain'	<p>The Applicant may wish to consider the definition used in the M20 J10a DCO which includes the wording 'to the extent assessed in the environment statement'. While the Explanatory Memorandum at 5.6.2 states that it is considered necessary and appropriate to adopt a broader definition', the EM does not explain why this would be the case.</p>
3.	Art 4 (3)		<p>Please see first comment on the definition of 'commencement.'</p> <p>These exemptions will not be covered by the CEMP, and the ExA may wish to have further details on the extent of these works and how the environment impact will be assessed.</p>
4.	Art.7	Limits of deviation	<p>It may be helpful to the ExA for there to be an explanation as to why there is difference between the limits of deviation for Work No. 1 and the rest of the scheme.</p>

5.	Art10 (3)	section 73A (power to require undertaker to re-surface street); section 73B (power to specify timing etc. of re-surfacing); section 73C (materials, workmanship and standard of re-surfacing); section 78A (contributions to costs of re-surfacing by undertaker)	It would be helpful for there to be further explanation/justification for the for the disapplication of s 73A-C and 78A of the 1991 Act.
6.	Art 16	Use of square brackets	These should be removed.
7.	Art 16	Traffic officer	Should there be a definition of 'traffic officer'? Perhaps with reference to s2 of the Traffic Management Act 2004?
8.	Art 18 (1)	Discharge of water	Should the drafting reflect that these rights are subject to the restrictions in following paragraphs e.g. 'Subject to paragraphs (3) (4) and (5) the undertaker may [...]'? This is the approach taken for example in article 24 of the draft DCO and the drafting approach in this respect should be consistent throughout.
9.	Sch. 1	Works no 9, 10	Remove square brackets.
10.	Sch. 3		Should there be an article relating to Public Rights of Way in the main body of the DCO? See for example art. 25 of the M20 J10a DCO
11.	Sch. 9 para 8(1)	'article 45 (arbitration).	Should this be article 43?

Explanatory Memorandum

Point no.	Section	Extract from document	Question/Comment
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12.	General	Entire Document	Generally, the EM tends to explain the <i>effect</i> of the relevant provision in the DCO, rather than explaining <i>why</i> it is necessary. The EM should also provide more detail and justification where a provision departs from the model provisions or a precedent. (See Advice Notes 13 and 15). This should include reference to the particular circumstances of this development and an explanation as to why this is necessary or desirable.
13.	General	'...'	As noted in your supporting information, reference to specific precedents are to be updated in line with latest DCOs made at the time of submission. See comments in box above.
14.	5. (sch. 2 Requirements)	Requirements	It may be helpful for the EM to identify where the requirements follow the Model Provisions or precedent. It should also identify and justify any deviation from these.
15.	Para 2.1.4	Scheme Components	Descriptions and numbers are inconsistent with similar descriptions in ES Chapter 2 and Statement of Reasons.

Consultation Report

Point no.	Para	Extract from Document	Question/Comment
1	3.3.6	"The reasons for preferring Option A over Option B were..."	Is para 3.3.6 a continuation of the previous paragraph or does it relate to the reasons for preferring Option B over Option A?
2	Figures 4-1 and 4-2		These figures appear to have been omitted.
3	Section 4.4	S46 notification letter	The Inspectorate noted an issue with the information provided with the s46 notification. It would be helpful if this were explained in the text. The Inspectorate also noted errors in the s46 notice (leading to an incorrect website address being redacted) and noting an incorrect email address was provided.

4	Section 4.7	A targeted statutory consultation exercise, carried out <i>between 4 June and 1 July 2018, was conducted due to the ongoing review of land referencing and finalisation of the Book of Reference.</i>	<p>It may be more helpful to include this information in the paragraphs under "Persons with an Interest in the Land".</p> <p>A sample of these letters should also be provided in the appendices as evidence of the date given for responses to be received.</p> <p>It is noted that the information was sent on Friday 1 June. It is plausible that postal information was not received until Monday 4 June. PA2008 s45 requires the period to be not earlier than the end of 28 days beginning with the day after the day on which the person received the consultation documents.</p>
5	Paragraph 4.2.1	Scoping Opinion was requested in accordance with Regulation 8(1) of the <i>PA2008</i>	Should the reference be to Regulation 8(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
6	Table 4-5		The Table includes a number of incorrect references to A,B,C,D. For example it is noted that Stocksbridge Town Council has been incorrectly identified as a relevant 'D' local authority. Town/ parish councils are not included in the Act's definition of a local authority under s43(3). Please see the Inspectorate's interpretation of the relevant local authorities below.
7	Para 4.3.7	PIL consultation letters were issued between 26 and 29 January 2018.	Paragraph 4.3.7 states that the PIL consultation letters were issued between 26 and 29 January 2018. However, it also states these letters were resent between 30 January and 19 February 2018 due to "editorial corrections". A sample of these letters should also be provided in the appendices

8	Table 4-3	Availability of SoCC	Table 4-3 notes that the SoCC was available to view on the Applicant's website - https://highwaysengland.co.uk/projects/a57a628-trans-pennine-programme/ - from 12 February 2018; however no date for when the SoCC was available until has been provided. It may be helpful to include a plan identifying the locations which had the SoCC available for public inspection in relation to the redline boundary to illustrate whether the SoCC was made available for inspection conveniently for people living in the vicinity of the land.
9	Appendix L	Publicity notices	<p>Appendix L includes other publicity notices in addition to the s48 notices, although the title of the Appendix is "S48 newspaper notices with locations and dates". Some of the newspapers provided in Appendix L are not clearly identifiable; please ensure all clippings are clearly identified if there page does not state the publication/ date.</p> <p>One notice appears incomplete: London Gazette – 5 February 2018. There are s48 notices provided in Appendix L that are not identified in Tables 4-8 and 4-9 eg Sheffield Star – 29 January 2018.</p> <p>It would be helpful to include the s48 notice text as a standalone appendix to aid the Inspectorate when checking the notice contains the required information.</p>
10	General		The Applicant may wish to add a paragraph to the Consultation Report (Doc 5.1) setting how it has complied with the requirements of Regulation 13 of the 2017 EIA Regulations.
11	General	Responses to non-statutory consultation	See meeting note summary from a Pre-Application Meeting on 31.05.18: "The Inspectorate noted that consultation material contained a commitment to consider responses to non-statutory consultation alongside responses to statutory consultation. HE confirmed that they would review past responses."

Local authority	Status	Local authority	Status
Tameside MBC	B, D authority	Barnsley MBC	A, D authority
Derbyshire CC	C, A authority	Sheffield CC	A, D authority
High Peak BC	B authority	Derbyshire Dales DC	A authority
Peak District NPA	A, D authority	Derby CC	D authority
Oldham BC	A, D authority	Leicestershire CC	D authority
Manchester CC	A authority	Rotherham MBC	D authority
Stockport MBC	A, D authority	Staffordshire CC	D authority
Kirklees Council	A, D authority	Staffordshire Moorlands Dc	A authority
Nottinghamshire CC	D authority	Stocksbridge Town Council	Not relevant local authority.