

A585 Windy Harbour to Skippool Improvement Scheme

TR010035

7.31 Responses to the ExA's proposed schedule of changes to the dDCO

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Infrastructure Planning

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

**A585 Windy Harbour to Skippool
Improvement Scheme
Development Consent Order 20[]**

**RESPONSES TO THE ExA's PROPOSED SCHEDULE OF CHANGES TO
THE dDCO**

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ABBREVIATIONS

Abbreviations contained within this document are listed below with an indication of their meaning in the context of the A585 Windy Harbour to Skippool Improvement Scheme 'the Scheme'.

Abbreviation	Meaning
BoR	Book of Reference
CA	Compulsory Acquisition
DCO	Development Consent Order
dDCO	draft Development Consent Order
DL5	Deadline 5
ExA	Examining Authority

1 RESPONSES TO THE EXA'S PROPOSED SCHEDULE OF CHANGES TO THE DDCO

- 1.1.1 The purpose of this document is to set out Highways England's responses to the Examining Authorities proposed schedule of changes to the dDCO.
- 1.1.2 Highways England's responses are outlined in Table 1-1.

Table 1-1: Responses to the ExA's proposed schedule of changes to the dDCO

No	Reference	Text as set out in draft DCO [REP5-008]	ExA's recommended amendment	Reasons and Notes	Applicant's response
1	2(1) Interpretation – "Maintain"	"maintain" in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct and any derivative of "maintain" is to be construed accordingly;	"maintain" in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct to the extent that is unlikely to give rise to any materially new or materially worse environmental effects from those identified in the environmental statement and any derivative of "maintain" is to be construed accordingly;	The ExA accepts the Applicant's amended wording submitted at Deadline 6.	Noted.
2	2(1) Interpretation – "Commence"	"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, pre-construction ecology surveys, preconstruction ecological mitigation and works under mitigation licences, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements	"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorized development other than operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, and, where capable of being reversed and the land restored to its original condition, operations consisting of any archaeological investigations, non-intrusive pre-construction ecology surveys, preconstruction ecological mitigation and works	The ExA accepts the Applicant's amended wording submitted at Deadline 6.	Noted.

No	Reference	Text as set out in draft DCO [REP5-008]	ExA's recommended amendment	Reasons and Notes	Applicant's response
		and "commencement" is to be construed accordingly;	under mitigation licences, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements and "commencement" is to be construed accordingly;		
3	Article 23 - Compulsory acquisition of rights and restrictive covenants	<p>(1) Subject to paragraphs (2) to (4) and paragraph (4) of article 44 (Crown rights), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.</p> <p>(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive (a) covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.</p> <p>(3) The power to impose restrictive covenants under paragraph (1) is only exercisable in respect of the plots specified in column (1) of Schedule 5 or to the extent</p>	3) The power to impose restrictive covenants under paragraph (1) is only exercisable in respect of the plots specified in column (1) of Schedule 5 or to the extent provided for in article 29(9) (temporary use of land for the carrying out of the authorised development).	As per the ExA's additional written question 3.2.11, the ExA does not consider it permissible for amendments to be made increasing the CA of restrictive covenants sought over the order land without the consent of all persons with an interest in the additional land. The ExA proposes changes to ensure that the CA of restrictive covenants is limited to those described in schedule 5. This reflects the CA of restrictive covenants sought in the original application and accords with the advice in PINS advice note 15 regarding restrictive covenants.	The Applicant confirms that the highlighted amendments will be removed as requested by the ExA in the updated draft dDCO to be submitted at Deadline 8.

No	Reference	Text as set out in draft DCO [REP5-008]	ExA's recommended amendment	Reasons and Notes	Applicant's response
		provided for in article 29(9) (temporary use of land for the carrying out of			
4	Article 29 - Temporary use of land for carrying out the authorised development	(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from— (a) acquiring new rights or impose restrictive covenants over the land listed in schedule 5 any part of that land under article 23 (compulsory acquisition of rights and restrictive covenants) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; or (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only)	(a) acquiring new rights or impose restrictive covenants over the land listed in schedule 5 any part of that land under article 23 (compulsory acquisition of rights and restrictive covenants) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; or	In the event that the ExA does not recommend the authorisation of the CA of new rights and restrictive covenants other than as described in schedule 5 or over land subject to freehold acquisition, the ExA intends to recommend the amendment of article 29(9) to ensure that this is secured in the DCO.	The Applicant notes the ExA's comments and refers to its representations at paragraph 2.2.12 of its response to the ExA's further written questions (document reference TR010035/APP/7.2) as to the need for the compulsory acquisition of new rights and restrictive covenants over the land in Schedule 7. Article 29(9)(a) was included in the first dDCO and follows the precedent created by other made DCOs. At the request of the ExA, the Applicant has contacted all of the landowners affected by this provision to specifically draw it to their attention and invite any comments. A limited response and no objections have been received to date.
5	Temporary use of land for carrying out the authorised development Article 29(4)	(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land or, in the case of Work Nos. 63 and 78 comprising the borrow pits, as may otherwise be set out in the Borrow Pit – Restoration Aftercare Plan as secured by the provisions of Schedule 2 (requirements); but the undertaker is not required to— (a) replace a building removed	(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land or, in the case of Work Nos. 63 and 78 comprising the borrow pits, as may otherwise be set out in the Borrow Pit – Restoration Aftercare Plan as secured by the	The ExA notes that the Applicant amended subsection (4) of this article in their DL5 DCO as set out in red in the adjacent column. The ExA also notes that the landowner has objected to this. Without landowner approval ExA is unlikely to recommend the amended wording which will be removed.	If the borrowpits are used then the land will be restored in accordance with the Engineering Section Drawings (document reference TR010035/APP/2.6). The restoration works will be carried out in accordance with the Borrowpit – Restoration and Aftercare Plan. This plan will be prepared and approved as part of the CEMP, in accordance with Requirement 4. The wording in the dDCO was amended by the Applicant at Deadline 5 for consistency and to recognise the role of this plan. The Applicant is however content to remove the wording from the dDCO in light of the comments from the ExA and the landowner.

No	Reference	Text as set out in draft DCO [REP5-008]	ExA's recommended amendment	Reasons and Notes	Applicant's response
		<p>under this article; (b) restore the land on which any permanent works have been constructed under paragraph (1)(d); (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or (d) remove any measures installed over or around statutory undertakers' apparatus to protect that</p>	<p>provisions of Schedule 2 (requirements); but the undertaker is not required to— (a) replace ...</p>		
6	<p>Additional works:</p> <p>Design change 1 - construction of a dwarf wall and widening of northern footway / cycleway from Skippool Road, including removing length of hedgerow</p> <p>Design change 2 – provision of a link to the main farm land with the plot to the north – east of Culvert 1, construction of a farm access track and provisions of fencing and farm gates.</p>			<p>The change request to include these works has not been accepted by the ExA. The ExA notes that these have resulted in changes to the DCO as well as the works plans, land plans and BoR and the Applicant has not removed these.</p> <p>Consequently works 117 – 123 will be deleted from schedule 1, along with any other reference to them in the DCO.</p> <p>There are also other changes regarding the CA changes. Consequently the ExA will include plot 4/07a and plot 4/14a in schedule 7 because the change request removing them was not accepted.</p> <p>The ExA will remove any other amendments to the DCO which relate to the change request because the change request has not been accepted.</p>	<p>Noted. The Applicant is continuing to seek the appropriate approval from the ExA to the design change request.</p>
7	<p>Mr Buckley's concerns regarding covering of the culvert [REP6a-003]</p>			<p>The ExA requests the Applicant to provide drafting to address Mr Buckley's concerns in the event that the ExA agrees that some covering to the culvert is required.</p>	<p>Part of Horsebridge dyke is within the order limits and part is outside. In preparing the DCO application, the Applicant undertook a Flood Risk Assessment (document ref TR010035/APP/5.2) which considered the impact of the Scheme on the dyke. The Scheme includes all necessary mitigation measures and has been agreed with the Environment Agency. The Environment Agency has not identified the need for further works to be undertaken to the dyke as proposed by Mr Buckley. Any changes to the dyke at this stage would necessitate further Flood Risk Assessment work in order to fully assess the impacts and would require Environment Agency approval. The Applicant does not therefore</p>

No	Reference	Text as set out in draft DCO [REP5-008]	ExA's recommended amendment	Reasons and Notes	Applicant's response
					<p>consider it necessary or appropriate to incorporate further works or wording into the dDCO to address this issue, not least because to do so could require the acquisition of land or rights outside the order limits of the Scheme.</p> <p>Furthermore, the culvert is being replaced as the asset has come to the end of its life cycle. Responsibility for the dyke lies with the Environment Agency and responsibility for the adjoining embankment lies with Lancashire County Council. Culverting the remaining part of the dyke would therefore be outside the Applicant's remit.</p> <p>In response to Mr Buckley's concerns around safety of the dyke, it should be noted that the Applicant has agreed to provide a close boarded fence between the Scheme and access to the dyke which will have the additional benefit of deterring most unauthorised access within the embankment and dyke.</p>

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