



The Planning Inspectorate

A47 – A11 Thickthorn Junction Improvement Scheme

**Examining Authority's
Consultation Draft Development Consent Order (DCO)**

**Schedule of ExA's Recommended Changes to the Applicant's draft
DCO Version Rev 5 [REP6-003]**

A47 – A11 Junction Improvement Scheme – Examining Authority's Draft DCO

Note to Interested Parties:

The Examining Authority (ExA) reminds Interested Parties (IP) that the recommended schedule of changes to the draft DCO [REP6-003] received at Deadline 6 as set out below follows a statutory process. It is made irrespective of the recommendation the ExA will make to the Secretary of State (SoS) and is not an indication that ExA has already made up its mind on the Application. IPs participation and written responses will be treated as being given without prejudice to any position or view they hold on the scheme. IPs are invited to identify any outstanding concerns previously raised that are not addressed below.

No.	Article / Schedule	Text as set out in draft DCO Version Rev 5 [REP6-003]	ExA's recommended amendment	Reasons and Notes
1	<p>Part 1 Preliminary</p> <p>Article 2 (1) Interpretation</p>	<p><i>"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 and mitigation works, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of</i></p>	<p><i>"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 provided that those operations do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement and other than operations consisting of</i></p>	<p>The ExA notes that the Applicant's definition of "commence" is wide ranging in its application.</p> <p>The ExA's initial view is that the recommended inclusion would ensure the Environmental Statement remains applicable.</p>

		<p><i>construction plant, equipment, welfare facilities and temporary buildings, site clearance, and the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;</i></p>	<p><i>archaeological investigations and mitigation works, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant, equipment, welfare facilities and temporary buildings, site clearance, and the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;</i></p>	
2	<p>Part 1 Preliminary Article 2 (1) Interpretation and</p>	<p><i>"section 106 agreement" means the agreement made under section 106 of the 1990 Act dated 20 May 2014</i></p>	<p><u>Deletion (that the amendments to Article 2 (1) and Article 3 (4) of the</u></p>	<p>The ExA's initial view is that this would be novel and require compelling justification which is not presently given.</p>

	<p>Article 3 (4)</p> <p>Disapplication of legislative provisions and modifications to section 106 agreement</p>	<p><i>between South Norfolk District Council (1), Norfolk County Council (2), Lloyds Bank Plc (3), William David Winslow Barr, Kate Alice Paul and David Edward Brown (4), Simon Henry Back (5), Carl Andrew Soames Baker and David John Soames Baker (6), Nicholas Evans-Lombe, Giles Richard Lovell Spackman and James Peter Needham Learmond (7), KB Interests Limited (8), and Charles Jonathan Watt, The Right Honourable John Clive Third Viscount Mackintosh of Halifax, The Honourable Graham Charles Mackintosh and Susan Mary Shenkman (9);</i></p> <p><i>(4) The section 106 agreement is to be amended for the purposes of this Order only as follows— (a) Delete paragraph 2.6 of Part 9 (Highways) of The Schedule, (b) Delete paragraph 3 of Part 15 (Park & Ride Owners Obligations of The Schedule.</i></p>	<p><u>dDCO made by the Applicant at Deadline 6 are deleted in their entirety).</u></p>	<p>Moreover, the ExA notes that if an existing s106 agreement is to be changed, the expectation is that it is to be done by agreement between the parties in line with the provisions TCPA 1990, rather than through the DCO applied for.</p> <p>Even if the ExA were to consider drafting that had the effect of modifying the obligations under the s106 agreement (which is not accepted), the ExA would need to be satisfied that such a novel measure was necessary and proportionate, and that the impact on those parties affected was subject to appropriate compensation.</p> <p>There is some explanation in para 4.15. of the updated explanatory memorandum. However, it does not provide adequate justification including how the loss would be overcome/ compensated for. Nor does there appear to be any reason why the matter cannot be settled outside of the terms of the DCO considered.</p>
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				The ExAs initial view is that the inclusion made by the Applicant would not be appropriate and there is no compelling justification to incorporate such an approach based on the information presented.
3	<p>Schedule 2 Requirement 3 (1)</p> <p>Detailed Design</p>	<p><i>The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</i></p>	<p><i>The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following <u>an independent Design Review and a report on its findings on the design of the bridges, underpasses and structures, the Applicant’s design response and the subsequent inclusion of any appropriate modifications to the engineering drawings and the</u></i></p>	<p>The ExA’s initial view is that in order to fully comply with paragraphs 4.28, 4.29, 4.32, 4.33 and 4.35 of the National Policy Statement on National Networks, the SoS should have evidence that the bridges and overpass/underpass structures proposed within the scheme have been subject to an independent design review process prior to determining their acceptability in design terms.</p> <p>The NPPF is also an important and relevant consideration which refers to national design policy and reaffirms the status of design issues in decision making.</p> <p>For those reasons and to allow flexibility, the ExA proposes to retain the words “compatible with”. Should the ExA not proceed with the recommendation that the bridge and structure designs be subjected to an independent design review, or that the SoS deems it as</p>

			<p><u>final design, and consultation by the undertaker with the relevant planning authority on matters related to its functions</u>, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</p>	<p>unnecessary, then the ExA is likely to recommend that “compatible with” be replaced with “in accordance with”, which the ExA considers represents affirmative wording.</p>
4	<p>Schedule 2, Requirement 3(2)</p> <p>Detailed design</p>	<p>(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available <u>in</u></p>	<p>(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the</p>	<p>To ensure that access to documentation is available.</p>

		<i>electronic form for inspection by members of the public.</i>	<i>undertaker must make those amended details available online for inspection by members of the public.</i>	
5	<p>Requirement 1</p> <p>Interpretation;</p> <p>and</p> <p>Requirement 5 (3) (f)</p> <p>Landscaping</p>	<p>R5 (3) (f) states:-</p> <p><i>Measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged.</i></p>	<p>Add to R1:-</p> <p>“Landscape and Ecology Management Plan” means the document required by the REAC and set out in the Environmental Statement of the authorised development which is to be prepared in accordance with the Environmental Management Plan (Second Iteration).</p> <p><i>With respect to R5(3) (f):-</i></p> <p><i>Measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a</i></p>	<p>It is noted that South Norfolk District Council has sought a 10-year period for landscaping replacement owing to dryer climate conditions experienced in the East Anglia area.</p> <p>The ExA’s initial view is that the recommended change indicated in the table would facilitate a further reasonable further safeguard in dealing with wider environmental/ ecological impacts. Consideration of the application land area subject to proposed works, existing ecological, heritage and geographical features involved relative to other DCO schemes are further factors.</p> <p>It is also highlighted that the interpretation of terms listed contained within R1 would need to be updated to define the Landscape Ecology and Management Plan in conjunction with the change applied to R5 (3) (f), as indicated.</p>

			<p><i>minimum period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged, unless the agreed Landscape and Ecology Management Plan specifies a longer replacement period.</i></p>	
6	<p>Requirement 5 (1)</p> <p>Landscaping</p>	<p><i>The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its functions. (2) The landscaping scheme prepared under sub-paragraph (1) must reflect the mitigation measures set out in the REAC and be</i></p>	<p><i>The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following <u>an independent Design Review and a report on its findings for the landscaping</u></i></p>	<p>The ExA's initial view that in order to fully comply with paragraphs 4.28, 4.29, 4.32, 4.33 and 4.35 of the National Policy Statement on National Networks, the SoS should have evidence that the landscaping provision proposed within the scheme have been subject to an independent Design Review process prior to determining its acceptability in design terms and considered together with the bridges overpass/underpass/ and structures shown in the engineering drawings also recommended to be subject Design Review.</p>

		<p><i>based on the environmental masterplan. (3) The landscaping scheme prepared under sub-paragraph (1) must include details of— (a) location, number, species mix, size and planting density of any proposed planting; (b) cultivation, importing of materials and other operations to ensure plant establishment; (c) existing trees to be retained, with measures for their protection during the construction period; (d) proposed finished ground levels; (e) implementation timetables for all landscaping works; and (f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged. (4) All landscaping works must be carried out to a reasonable</i></p>	<p><u>scheme provision associated to the authorised development, the Applicant’s subsequent design response including any appropriate modifications to the scheme, and consultation by the undertaker with the relevant planning authority on matters related to its functions.</u></p>	<p>The NPPF is an important and relevant consideration which refers to national design policy and reaffirms the importance of assessing design issues in decision making.</p>
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7	Requirement 5(4) Landscaping	<i>All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards.</i>	<i>All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good or established best practice utilised by the relevant Council for the administrative area provided these meet or exceed the appropriate British Standard.</i>	For further clarification and acknowledging any local variation and local climate conditions experienced which may lead to changes in established good or best practice relative to the British Standard (and subsequent revision) in force at the time.
8	Part 2 Procedure for discharge of requirements Requirement 17	<i>In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide</i>	No change	The ExA notes the uplift in the consultation period to 20 business days from an initial 15. Although this is short of the 28 days requested by Interested Parties the initial view of the ExA is that the

	<i>Details of construction</i>	<i>such other party with not less than 20 business days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation</i>		revised wording would strike an appropriate balance considering the total land area involved, the nature of the details to be consulted upon and the delivery commitments of the Applicant.
9	New Requirement Removal of temporary construction welfare and material storage compound facilities		<i>All of the temporary construction welfare and material storage compound area facilities indicated within the Works Plans including any temporary means of enclosure, construction plant, equipment, materials, temporary display of site notices or advertisements shall be completely removed from all relevant plots and the land restored to its former condition</i>	The initial view of the ExA is that this further recommended requirement would be appropriate following the consideration of: temporary possession interests; the representations received on the scheme improvement works. The requirement would protect the amenity of the local area.

			as soon as practicable following completion of the authorised works.	
10	<p>Part 7 Article 41 (8) (d)</p> <p>Removal of Human Remains</p>	<p><i>It is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (9) the undertaker is to remove the remains and cause them to be re-interred in Trinity Burial Ground or such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.</i></p>	<p>Removal/deletion of words: 'Trinity Burial Ground or'</p>	<p>The Article dealing with the removal of human remains is based on the Model Provision and is acknowledged by the ExA.</p> <p>However, there appears to be a drafting error with a non-related location referred to for this scheme.</p>