

A47/A11 Thickthorn Junction

Scheme Number: TR010037

Volume 9 **9.27 Applicant's Response to the** **ExA's Schedule of Changes to dDCO**

The Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8(1)(c)

Planning Act 2008

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

March 2022

Deadline 8

Infrastructure Planning

Planning Act 2008

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(Applications: Prescribed Forms and
Procedure) Regulations 2009**

A47/A11 Thickthorn Junction
Development Consent Order 202[x]

APPLICANT'S RESPONSE TO EXA'S SCHEDULE OF CHANGES TO dDCO

Regulation Number:	Rule 8(1)(c)
Planning Inspectorate Scheme Reference	TR010037
Application Document Reference	TR010037/EXAM/9.27
BIM Document Reference	HE551492-GTY-LSI-000-RP-ZL-40803
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Version	Date	Status of Version
Rev 0	February 2022	Deadline 8

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1 INTRODUCTION

- 1.1.1 The Development Consent Order (DCO) application for the A47/A11 Thickthorn Junction scheme was submitted on 31 March 2021 and accepted for examination on 28 April 2021.
- 1.1.2 The purpose of this document is to set out Highways England's (the Applicant) response to the ExA's Schedule of changes to the Applicant's draft Development Consent Order (**PD-014**)

2 SCHEDULE OF CHANGES

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Article 2(1)	<p>"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 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;</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>The definition of commence is not the appropriate place to try and control the scope of the works authorised pursuant to the dDCO. The definition should instead be wide ranging to ensure that all works trigger the need for a requirement. To narrow the definition would mean that less works are in fact caught by the requirements and can be done with no controls.</p> <p>As an example, looking at the amended definition the other way around, to include the proposed wording would mean that any operations which do form part of the authorised development and also give rise to any materially new or materially different environmental effects do not qualify as commencement and therefore could be done outside of the controls of the requirements.</p> <p>Because the additional proposed wording may have unintended consequences, the Applicant has not included it within the draft submitted at Deadline 8.</p> <p>Regardless of whether the wording is included, the parameters of the authorised development as defined in Schedule 1 have been properly assessed in the environmental statement.</p>

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<p>Article 2(1) and Article 3(4)</p>	<p><u>Deletion (that the amendments to Article 2 (1) and Article 3(4) of the dDCO made by the Applicant at Deadline 6 are deleted in their entirety).</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>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> <p>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</p>	<p>Article 3(4) has been included to address concerns raised by the landowner over the interaction between an existing section 106 agreement and the Scheme.</p> <p>A slip road was originally proposed to the new Park and Ride extension as a traffic mitigation measure to ensure the development was acceptable in planning terms. Both SNDC and NCC agree that the slip road is not required in the event that the Scheme is delivered, because the new A11/A47 link road will sufficiently reduce traffic volumes at the Thickthorn roundabout to address any impact from the Park and Ride extension.</p> <p>South Norfolk Council also confirmed at Deadline 5 that the obligation in respect of the slip road has been discharged [REP5-027]. However, having undertaken its own review of the section 106 agreement, the Applicant is of the view that there are some associated obligations which it is necessary to disapply, even if the local planning authority considers them to be discharged.</p> <p>The purpose of Article 3(4) is to disapply any contradictory provisions in that s106 to ensure both developments can be delivered and the landowners are not left liable for obligations which can no longer be discharged. Including this provision in the dDCO gives the landowners certainty</p>

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		presented.	<p>and it mitigates their loss (a requirement of the compensation code) by removing the need for a further legal process (ie an application pursuant to s106A of the Town and Country Planning Act 1990) and the associated legal costs.</p> <p>In terms of compensation, the inclusion of the Article has no effect. The Article does not affect land take and therefore any compensation due to the landowners involved must still be paid in accordance with the overriding principle of equivalence as set out in the compensation code.</p> <p>As confirmed at ISH2 the Applicant is seeking further confirmation from the local planning authority that the relevant obligations have been discharged.</p>
Schedule 2, requirement 3(1)	<p>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 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</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</p>	<p>The Applicant is of the view that it has fully complied with the NNNPS paragraphs cited.</p> <p>4.28 Applicants should include design as an integral consideration from the outset of a proposal: The Applicant employed professional independent designers at the outset to develop the design of the Scheme. The preliminary design then undergoes a further independent review by a technical team.</p> <p>4.29 Visual appearance should be a key factor in considering the design of</p>

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	<p>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>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 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>	<p>new infrastructure, as well as functionality, fitness for purpose, sustainability and cost. Applying "good design" to national network projects should therefore produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction, matched by an appearance that demonstrates good aesthetics as far as possible. This policy requirement has been a key factor and has been carefully balanced against environmental impacts, functionality, purpose and costs to produce a preliminary design presented with the DCO application. The Scheme Design Report [APP-127] explains that good design has been incorporated into the preliminary scheme design in Section 3 (Design Principles). Sections 3.2 to 3.11 set out how each of the ten principles in 'The Road to Good Design' (2018) and DMRB 'GG103 Good road design' have been applied to the Scheme.</p> <p>4.32 Scheme design will be a material consideration in decision making. The Secretary of State needs to be satisfied that national networks infrastructure projects are sustainable and as aesthetically sensitive, durable, adaptable and resilient as they can reasonably be (having regard to regulatory and other constraints and including accounting for natural</p>

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			<p>hazards such as flooding): The Applicant is confident that the details presented in the Scheme Design Report [APP-127] are sufficient and are comparable with those details presented for other highways NSIPs which have been granted development consent to satisfy the Secretary of State of this policy requirement.</p> <p>4.33 The applicant should therefore take into account, as far as possible, both functionality (including fitness for purpose and sustainability) and aesthetics (including the scheme's contribution to the quality of the area in which it would be located). Applicants will want to consider the role of technology in delivering new national networks projects. The use of professional, independent advice on the design aspects of a proposal should be considered, to ensure good design principles are embedded into infrastructure proposals: The Applicant has employed independent professionals to develop and prepare the preliminary design to ensure compliance with this paragraph of the NNNPS.</p> <p>4.35 Applicants should be able to demonstrate in their application how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, applicants should set</p>

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			<p>out the reasons why the favoured choice has been selected. The Examining Authority and Secretary of State should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy: As stated above, the Applicant is confident that the details presented in the Scheme Design Report [APP-127] are sufficient and are comparable with those details presented for other highways NSIPs to satisfy the Secretary of State of this policy requirement.</p> <p>The Applicant has not included the amended wording in the dDCO submitted at Deadline 8 because it is not considered appropriate. The drafting does not provide sufficient certainty on the mechanism of the review process being proposed. For example, there is no definition proposed for the "independent Design Review" and the drafting does not address what should happen if the design review panel proposed changes which have an impact on the environmental assessment or land take.</p> <p>However, the Applicant appreciates the concerns expressed by the ExA, and will give further thought to how to capture good design further within the DCO drafting, including consideration of the</p>

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			<p>approach taken by other DCOs.</p> <p>The Applicant also requests that "compatible with" is retained as this is important to permit minor variations such as structural member dimensions without the need to apply to the Secretary of State for consent.</p>
<p>Schedule 2, requirement 3(2)</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 online for inspection by members of the public.</p>	<p>To ensure that access to documentation is available.</p>	<p>The dDCO has been amended and submitted at Deadline 8.</p>
<p>Requirement 1 and requirement 5(3)(f)</p>	<p>Add to R1:-</p> <p><i>"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).</i></p> <p>With respect to R5(3) (f):-</p> <p>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 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</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</p>	<p>The Applicant has included this proposed change in the dDCO submitted at Deadline 8.</p> <p>However, the Landscape and Ecology Management Plan is an appendix to and forms part of the EMP (second iteration), so the definition has been updated accordingly.</p>

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	<p>the agreed Landscape and Ecology Management Plan specifies a longer replacement period.</p>	<p>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>Requirement 5 (1)</p>	<p>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 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 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>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>	<p>The Applicant is of the view that it has fully complied with the NNNPS paragraphs cited for the reasons stated above.</p> <p>The environmental masterplan [AS-032] has been carefully prepared by qualified ecologists to ensure all essential mitigation is secured and delivered. It would not be appropriate to subject this carefully designed masterplan to an independent design review, where it may be conceivable that matters of design will conflict with matters of ecological mitigation in the correct place.</p> <p>In any event, the landscaping scheme must be submitted to and approved in writing by the Secretary of State. If the Secretary of State considers that the relevant paragraphs of the NNNPS have not been met by the landscaping scheme, the Secretary of State would presumably not approve the landscaping scheme on that basis.</p> <p>For that reason, the Applicant has not included the proposed wording in the dDCO submitted at Deadline 8.</p>

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			<p>As discussed at ISH2, the Applicant is proposing the same wording that was included in Requirement 5(5) of the A1 Birtley to Coal House Development Consent Order 2021 to address good design:</p> <p>Requirement 5(3) requires the landscaping scheme to include:</p> <p>"details of how the landscaping scheme addresses the guidance in paragraph 4.29 of the National Policy Statement for National Networks for the appearance of national network projects to demonstrate good aesthetics as far as possible."</p>
Requirement 5 (4)	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.	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.	<p>The proposed additional wording creates unnecessary uncertainty. It is not clear which standards the Applicant will be required to meet, no definitions have been provided and therefore this wording does not meet the necessary standards for legislative drafting. It also raises the potential of the Applicant needing to meet different "codes of good or established best practice" over the course of a NSIP.</p> <p>On that basis, this proposed wording has not been included in the dDCO.</p>
Part 2, requirement 17	No change	The ExA notes the uplift in the consultation period to 20 business days from an initial 15.	The ExA's comments are noted by the Applicant.

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		<p>Although this is short of the 28 days requested by Interested Parties the initial view of the ExA is that the 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.</p>	
<p>New Requirement</p>	<p>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 as soon as practicable following completion of the authorised works.</p>	<p>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.</p> <p>The requirement would protect the amenity of the local area.</p>	<p>Article 34 provides clear and certain legal drafting about temporary use of land for carrying out the authorised development.</p> <p>Article 34(3) sets out the timescales for remaining in possession and Article 34(4) deals with restoration of the land.</p> <p>The Applicant does not believe the use of "as soon as practicable" is appropriate drafting to use in a statutory instrument as it does not provide enough certainty for landowners. Therefore, on the basis the proposed requirement conflicts with the wording of Article 34 and introduces uncertainty into the drafting of the dDCO, the Applicant has not included this in the dDCO submitted at Deadline 8.</p>
<p>Part 7 Article 41(8)(d)</p>	<p>Removal/deletion of words: <i>'Trinity Burial Ground or'</i></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</p>	<p>The dDCO has been amended and submitted at Deadline 8.</p>

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		to for this scheme.	