

M3 Junction 9 Improvement Scheme

Hampshire County Council's Response to the Examining Authority's Questions – 25 May 2025

Responses due by Deadline 2 – 15 June 2023

ExA Q	Question:
Q4.1.8	A number of RRs including that of Hampshire County Council (HCC) refer to impacts on the local highway network, including the operation of the A33/B3047 junction. The Case for the Scheme [APP 154] section 2.10 relates to the 2022 meeting between the Applicant and HCC regarding this 'Cart and Horses Junction'. Please explain the consideration given to the option of including associated improvements to the junction in response to the additional traffic resulting from the scheme within the DCO application and why the parties agreed that it was not possible for the scheme to be amended to incorporate this within the DCO scheme. Please indicate whether any further discussions have been held between the Applicant and HCC on this topic and, if so, what progress has been made.
<p>The County Council has consistently raised its concerns relating to the impact on this junction from the Scheme. As set out in the County Council's Local Impact Report (section 6.5), these concerns were formally raised through the Preliminary Environmental Information Report consultation response, a follow up pre-application response and the County Council's Relevant Representation ahead of the examination. The concerns relate to the impact the Scheme will have on the safe operation of this junction, noting the forecast increases to mainline A33 traffic flows as a result of the scheme. The County Council consider the scheme without mitigation would worsen the safety record of the junction.</p> <p>The County Council remains broadly very supportive of the Scheme and therefore is seeking to work collaboratively with the applicant to identify and deliver a suitable mitigation scheme for this junction. The County Council is pursuing an optioneering exercise with public consultation planned for summer 2023. The design options are for either a signalised junction, or two compact roundabouts.</p> <p>It is noted that the applicant in its Statement of Case, reference a meeting with the County Council on 27 September 2022. For the record, the meeting took place on 3 October 2022. In that meeting it was noted by National Highways that any changes to the redline of the DCO at that stage would lead to a delay in submission owing to the associated updates to the Environmental</p>	

Assessment. The County Council agreed, having already engaged in positive discussions, that subject to an alternative mechanism for delivering mitigation at this junction being agreed it would not raise objections to the junction being excluded. However, as set out in the Relevant Representation, the County Council does request that this issue is considered in the examination in the absence of an alternative delivery mechanism being agreed.

It should also be noted that County Council and the Applicant held a further meeting on 7 March 2023. At this meeting the County Council maintained its position that it considered mitigation was required at the junction as a result of the Scheme, but that it was still willing to work with the Applicant to develop head of terms for a legal agreement that would enable both the County Council and the Applicant to work together to design, fund and deliver the scheme alongside the DCO works. The County Council has subsequently submitted draft heads of terms to the Applicant covering those requirements considered necessary to ensure the timely delivery of the junction works.

Q7.1.43

The Applicant is acquiring land permanently which, following completion, will form part of the local highway network not maintained by the Applicant. Please clarify the future status of such land ownership over which highway will be maintained by the local highway authority and if agreement has been reached on this.

The County Council's position on the transfer of landownership is that, as the local highway authority, it is content to accept the transfer of any landownership that is immediately under the highway extent (the highway subsoil) that it will be responsible for as the local highway authority. The County Council does not expect, and would not accept, the transfer of any land from the Applicant that does not form part of the highway subsoil.

Q9.1.6

Please comment generally on the definitions in Article 2 of the draft DCO [APP-019] and, in particular, whether any amendment to those definitions is sought?

The County Council is in discussion with the Applicant regards the submitted terms of the draft DCO and comments on Articles of the DCO in paragraph 10 of the Local Impact Report.

If the County Council's requests are reflected in the order to be made, we would expect that some additional definitions would need to be added to Article 2 to support the County Council's requested amendments to the draft DCO.

Q9.1.9	Regarding the draft DCO [APP-019] Article 3, please comment generally on the effect of Article 3 and whether relevant protective provisions have been discussed and agreed?
<p>By seeking to disapply section 23 of the Land Drainage Act 1991 Article 3 impacts the County Council's interest as Lead Local Flood Authority. The County Council considers that s.23 of the Land Drainage Act 1991 should not be disapplied, and instead the County Council consent scheme (that currently operates) should remain in place to govern any interference with watercourses required under the DCO. The consent scheme is proven to be well run and allows suitable lead in times, oversight by the Authority and cost recovery. It is not considered that there is any benefit to disapplying this legislation as the process would need to be replicated in further protective provisions. There are a number of drawbacks in terms of preparing a new process, obtaining appropriate authority to approve proposals, differing methodologies and the additional costs placed on the Authority to vary these systems. At present, the DCO offers no cost recovery for any of these elements.</p> <p>It is considered that the design checks undertaken by the County Council to date and during the DCO process provide sufficient certainty that approval will be granted for consent applications (subject to detailed design and culvert sizings) and that there is little risk to the Applicant's project by using the existing methodology. As further comfort to the Applicant the County Council would be prepared to issue a statement to provide an initial review of the consents needed to act as an 'Approval in Principle' with those elements that require further design identified.</p> <p>Given that the County Council consider that section 23 should not be disapplied, no protective provisions have been identified to date.</p>	
Q9.1.14	Regarding the draft DCO [APP-019] Article 8, please indicate whether there are any outstanding concerns in relation to the proposed limits of deviation or whether any drafting amendments are sought in relation to Article 8?
<p>The principle of this is acceptable. It is noted that the limits of deviation from points E to F as shown on Works Plan Sheet 3 only provide for 0.5m vertical deviation. The County Council would request this is kept under review pending agreement on the Cart and Horses junction which would tie-in to this section of the works.</p>	

Q9.1.17	The EM [APP-020] paragraph 4.43 indicates that certain provisions of the 1991 Act listed in that paragraph will not apply. However, these are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus. Please confirm that the Council has no concerns in relation to the disapplication of this aspect of the 1991 Act and that Article 13 does not have any adverse implications for its ability to manage and coordinate activities on the highway.
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Hampshire County Council run the Hampshire County Permit Scheme pursuant to the Traffic Management Act 2004 and the Traffic Management Permit Scheme (England) Regulations 2007 for all street and highway works taking place on its network. The County Council require that all of the works undertaken by the Applicant on the County Council's network pursuant to the DCO are undertaken in accordance with and pursuant to the terms of the Permit Scheme.

To this end the County Council is requesting that the DCO includes at Article 11 provisions that require National Highways to adopt this approach in respect of all project works carried out as street works on the County Council's network.

(3) Subject to article 11 (4) and article 13 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) Any street works carried out on highway that is not special or trunk road shall be carried out in accordance with the permit scheme.

Provided this position is accepted then the Permit Scheme will provide the necessary regulatory powers to the County Council for managing and coordinating activities on the County Council's highway. However, if express incorporation of the Permit Scheme is not accepted, the County Council would be concerned about the exclusion of provisions of the New Roads and Street Works Act 1991 in Article 13

The County Council is also seeking a term in Article 11 of the DCO to clarify and confirm that the exclusion of section 58 and schedule 3A of the New Roads and Street Works Act 1991 will not prevent the County Council placing restrictions on the project works after they have been completed.

(5) Where works executed under the powers of this Order have taken place on highway that is neither special road or a trunk road the exclusions in Article 14(3) of section 58 (restriction on works following substantial road works) and schedule

3A (restriction on works following substantial street works) shall not apply to the local highway authority's power to impose restrictions under s.58 and schedule 3A after the works executed under the powers of this Order have been completed.

Q9.1.18	The draft DCO [APP-019], Part 3, Article 14 sub-paragraph (3) states where a footpath, cycle track or bridleway is constructed, altered or diverted under this Order it must be maintained by and at the expense of the local highway authority from its completion. Please confirm that this includes those which are adjacent to or contiguous with a trunk road and if there are any other exceptions.
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The County Council believe that where there will be new, altered or diverted footpath this will be the future maintenance responsibility of the County Council.

However, the County Council do not agree to take on the responsibility from completion of the relevant works. Instead, the County Council will require the Applicant to enter into a legal agreement for the works in question, which will be on terms that maintenance responsibility will only pass to the County Council after both completion of the works and a 12-month period of maintenance by the Applicant has expired. The County Council's Local Impact Report refers at paragraphs 7.2 and 10.11

The County Council considers that the transfer of responsibility will include footpath, cycle track or bridleway including those adjacent to or contiguous with the trunk road but would not include any footway that formed part of a trunk road.

The cycle track is bounded by fencing along most of its route. Where it is contiguous with the trunk road, as show in General Arrangement Plans sheets 5 and 6, the highway authority would not expect to maintain the fence between the cycle track and the trunk road.

The County Council is still in discussion with National Highways regards whether it would accept responsibility for the bridge structure that will carry the right of way as shown on General Arrangement Plans sheet 5.

As shown on General Arrangement Plan sheet 6, the proposed Toucan crossing on the A33 Link Road on the southern arm of the National Highways depot will not be transferred to the County Council's ownership as this crosses part of the trunk road network. The cycle track either side will be maintained by the County Council.

The County Council does not accept the transfer of responsibility for any subway structure as shown on General Arrangement Plans sheet 5 that carries or accommodates the route of the highway.

The County Council would not accept maintenance responsibility for any bunding, swales, drainage ditches or vegetation in connection with a footpath, cycle track or bridleway.

Q9.1.19

The draft DCO [APP-019], Part 3, Article 14 Sub-paragraph (6) states that in the case of a bridge constructed under this Order to carry a highway over a special road or trunk road, the highway surface above the waterproofing membrane will be maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker unless otherwise agreed in writing with the local highway authority. Please confirm and clarify is ‘surface’ relates only to the carriageway surfacing and that there is a process of agreeing this with the local highway authority, including the relevant commuted sums. Please confirm how any such commuted sums are secured within the DCO.

The County Council confirms that it expects any maintenance responsibility under Article 14 paragraph 6 to be restricted to the surface of the highway and considers that the highway surface will be comprised of the carriageway surfacing only. Any other structures on the bridge including those that maybe physically above the waterproofing (such as vehicle restraint barriers or lighting systems) will be the maintenance responsibility of the Applicant.

The County Council is prepared to accept the maintenance responsibility in Article 14(6) subject to the County Council and the Applicant entering into a legal agreement on terms acceptable to the County Council. [Paragraph 10.11 and 10.16 of the County Council’s Local Impact Report that comments on the terms of the draft DCO also refers] This agreement would identify the area of the carriageway to be the County Council’s responsibility by reference to a description and a plan. The agreement would also include provisions for payment of commuted sums to account for the County Council’s future maintenance responsibility. The County Council has provided draft heads of terms for such an agreement and will be looking to agree the same with the Applicant in due course.

Q9.1.23

Please explain and comment generally upon the implications of and any concerns relating to this article of the draft DCO [APP-019]. (Article 20)

The County Council considers that the powers proposed to be granted to National Highways under Article 20 of the draft DCO should not extend beyond the point that the authorised works are open to the public.

<p>Q9.1.54</p>	<p>Please comment as to whether any additional Requirements would be necessary to secure required matters including any monitoring and mitigation measures? If so, please provide, for the ExA's consideration, draft Requirements for any such topic areas where there is perceived to be a need for them to be imposed giving reasons for their imposition</p>
<p>As the County Council will be the maintaining highway authority for any of the development works permitted by the DCO that either take place on the County Council's existing highway network, on trunk road that is to be de-trunked or are for the construction of new highway to be transferred to the County Council the County Council require the Applicant's submitted detailed design (to be submitted under schedule 2 para 12 of the draft DCO) to be subject to the approval of the County Council (as well as the Secretary of State) where the detailed design relates to any of the above highways. The County Council would seek an addition to the draft requirements set out at schedule 2 paragraph 12 as follows;</p> <p><i>'12(2) In respect of any part of the authorised development that is to take place on either highway that is not trunk road or special road or on highway that will be de-trunked or is for the construction of a bridge that is intended to be the maintenance responsibility of the local highway authority or new highway that is to be transferred to the local highway authority that part of the authorised development is not to commence until the detailed design for that part of the authorised development has been submitted to and approved by the local highway authority such approval not to be unreasonably withheld.'</i></p> <p>The County Council seeks an amendment to paragraph 13 of Schedule 2 concerning mitigation measures to ensure that sufficient technical detail is submitted in the written detail of the surface water drainage system to allow sufficient standard of consideration of the proposal pre commencement. The County Council requires an amendment to paragraph 13 of Schedule 2 as follows;</p> <p><i>13 (1) No part of the authorised development is to commence until written details of the surface water drainage system for that part, in accordance with the flood risk assessment and drainage strategy reflecting the mitigation measures in chapter 13 of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, the lead local flood authority and the Environment Agency.</i></p> <p>(2) (2) Written details of the surface water drainage system will include (a) updated infiltration testing to BRE 365 standard</p>	

(b) updated hydraulic calculations

(c) updated drainage layout plans and exceedance flow route plans.

(3) The drainage system must be constructed and maintained in accordance with the approved details referred to in subparagraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, the lead local flood authority and the Environment Agency.”

The County Council's position on the need for the County Council and the Applicant to enter legal agreements to govern any of the authorised development that is intended to come into the maintenance of the County Council as specified in Article 14(1) - (3) and (5) - (7) is set out in paragraph 10.11 of the County Council's Local Impact Report. The County Council in particular would require an amendment to Article 15(4) that concerns detrunking (as set out in paragraph [] of the County Council's Local Impact Report.

The County Council would also request that some form of security that the authorised works were undertaken only in accordance with the relevant legal agreement was either secured as part of a section 106 planning obligation agreement or (if this cannot be agreed) is included as a requirement in the DCO. Draft requirement in schedule 2 (and associated definitions) to this end;

‘Local Highway Legal Agreement’ means an agreement between the County Council and Undertaker to govern the performance and transfer of maintenance responsibility of the Local Highway Works [of that part of the authorised development referred to in Article 14(1) - (3) and (5) - (7)] to the County Council]

‘Local Highway Works’ means that part of the authorised development referred to in Article 14(1) - (3) and (5) - (7).

No part of Local Highway Works is to commence until a Local Highway Legal Agreement between the local highway authority and the undertaker is completed

The Local Highway Works must be constructed and maintained in accordance with the relevant Local Highway Legal Agreement

<p>Q10.1.2</p>	<p>Section 13.4 of ES Chapter 13 [APP-054] explains that although the findings of the initial ground investigation works undertaken to inform the design of the Proposed Development did not cover the entire application site it is considered that they provide sufficient detail to allow a robust assessment of potential impacts at this stage. Please can the EA and HCC (as Lead Local Flood Authority) confirm whether it considers that the works undertaken are sufficient to identify all of the relevant hydrological receptors that may be affected by the Proposed Development.</p>
<p>The County Council as Lead Local Flood Authority (LLFA) has reviewed the information in relation to surface water drainage provision. In terms of the ground investigation and potential impacts, within our remit this falls within two different areas.</p> <ol style="list-style-type: none"> 1. Whether there are sufficient infiltration rates and offset to the ground water table for the drainage to function appropriately 2. Whether there are sufficient water treatment measures to ensure water is of a suitable quality prior to leaving the site. <p>For the ground investigations, this has been undertaken with a number of trial holes and groundwater monitoring across the site. Although falling head tests were undertaken rather than BRE365 testing, it is understood that additional testing was being undertaken by the Applicant. This information has not yet been reviewed and the LLFA requests it should be provided as soon as possible during the DCO process to verify that the attenuation and pipe sizes are appropriate to achieve the discharge rates previously identified. This is the most critical of the outstanding information as there are some infiltration features that don't meet the required half drain times expected. These are linked to overland flow routes and sufficient information has been provided to allow assessment of flood risk but if infiltration rates are lower than expected, adjustments to basin sizes would be required which could have a wider impact. A factor of safety has been applied to the falling head tests results, to manage this risk however there is always a risk that infiltration rates could be lower than expected and as such, this information should be provided as soon as possible.</p> <p>Extended groundwater monitoring has been undertaken over a 12 month period at locations close to the proposed infiltration basins. This is considered acceptable and sufficient for design purposes.</p>	

In relation to water quality the LLFA follows the methodology within the Ciria SuDS manual to determine whether sufficient measures are proposed to appropriately treat surface water depending on land use. Given the nature of the development, it is considered appropriate to use the HEWRAT assessment which has been provided.

We are not able to provide further narrative assessment of all relevant hydrological receptors but understand that this will be covered by the Environment Agency who have a wider remit in relation to Main Rivers and Groundwater quality.

In summary, the only point we believe is outstanding in relation to this question and under our remit as LLFA is infiltration testing in accordance with BRE365 and we understand that this is already underway. Providing this is no worse than the infiltration rates currently used, we would have no further comments in relation to the above points.

While the proposals are generally considered acceptable, some detail is yet to be provided and as the design progresses it is expected that revisions will be required. On this basis amendments to Requirement 13 have been proposed to the draft DCO to ensure the suitable assessment of proposals. No significant changes are expected for the drainage design but further detail has been requested in relation to:

- Exceedance flow plans to demonstrate safe management of exceedance routes.
- Updated calculations and drawings reflecting the BRE365 infiltration testing

The applicant has stated that this will be submitted at detailed design and that the submitted Requirement 13 would be sufficient to address this point.

Q12.1.2

Whilst it is recognised that given the nature of the development there may be a limit on what can be achieved in terms of the aesthetics of certain aspects of the infrastructure, notwithstanding the details provided in the Design and Access Statement [APP-162] which sets out the high level principles that have driven the design of the scheme, has consideration been given the production of a specific 'design code' or 'design approach document' which would establish the approach to delivering the detailed design specifications such as bridges, and fencing and choice of materials which could be secured by a draft DCO requirement?

The County Council has published a number of Technical Design Standards [Highway construction standard details | Hampshire County Council \(hants.gov.uk\)](https://www.hants.gov.uk/technical-design-standards) and Technical Guidance Notes [Technical guidance notes | Hampshire County Council \(hants.gov.uk\)](https://www.hants.gov.uk/technical-guidance-notes) to govern new works on the local highway. In addition, the County Council's Commuted Sums policy indicates

<p>those materials and design specifications that it will be able to maintain in perpetuity. Commuted sums Hampshire County Council (hants.gov.uk)</p>	
Q14.1.4	<p>Paragraph 1.5 of The Case for the Scheme [APP-154] states the policy context and lists national and local policies that have been used. Please confirm that this list is relevant and complete or highlight potential omissions.</p>
<p>The County Council is content that the list is relevant and complete.</p>	
Q14.1.8	<p>The Case for the Scheme [APP-154] Appendix A ‘Local Policy Assessment’ sets out the Applicant’s assessment of the scheme in relation to local planning policies. Please indicate whether you are content that the scheme would comply with all other relevant local planning policies, including those relating to climate change resilience and adaption, contained within the local plan documents for your authority. If not, please explain why.</p>
<p>The County Council is content that the scheme complies with the emerging Local Transport Plan 4 and the Winchester Movement Strategy.</p>	
Q14.1.9	<p>The Case for the Scheme [APP-154], paragraph 6.5.5, states that the emerging Hampshire Local Transport Plan 4 (LTP4) identifies M3 Junction 9 as an international gateway and part of the SRN which is a strategic transport infrastructure priority for Hampshire. It asserts that the scheme accords with the emerging LTP4 by delivering targeted improvements to the SRN and improving journey time reliability at this key transport interchange which facilitates intensive movements of freight cargo. Please confirm that this is agreed and that the scheme would accord with LTP4 in this way.</p>
<p>This is confirmed and is evidenced in the following document Draft Local Transport Plan 4 (hants.gov.uk) See pages 114 to 116.</p>	

Q16.1.1	Please provide an update on the status of the de-trunking agreement with the local highway authority. Please also confirm that the highway identified as being de-trunked is correct.
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The County Council and the Applicant are in discussion regards the proposed de-trunking of highway. The County Council still has concerns about the proposed de-trunking, including;

- The transfer of a bridge structure as part of the de-trunking order that would become the maintenance responsibility of the County Council. This concerns the Irrigation Stream Bridge (Structure_6120) as shown on General Arrangement Plan sheet 4. To accept the proposed transfer of maintenance of this bridge structure the County Council would require the Applicant to enter into a legal agreement that would include terms for payment commuted sums to the County Council. The County Council would require the commuted sum value to cover the full 120 year lifecycle of the bridge structure. It may be that the Applicant would seek to retain ownership of this structure and the local highway authority would then be responsible for the maintenance of the surface only.
- The precise areas to be de-trunked are not clear and the proposal to de-trunk highway that will then also be the subject of a stopping up order causes concern as this would result in the transfer of land to the County Council where the County Council will not be highway authority. The County Council considers that where the Applicant wish to stop up any of its network they should do so without first transferring the highway to the County Council pursuant to a de-trunking power.

Subject to the above the County Council is in principle accepting of the de-trunking of carriageway provided that;

- the County Council and the Applicant have entered into a legal agreement before the close of the examination on terms acceptable to the County Council. The agreement would include provisions for inspection and repair of the roads to be de-trunked prior to the de-trunking to the County Council's satisfaction, and payment to the County Council of commuted sums for future maintenance. The County Council has provided draft heads of terms for an agreement and will be looking to agree the same with the Applicant in due course; and
- there is an amend to Article 15(4) of the draft DCO to the effect that no de-trunking will take place until the County Council has confirmed in writing that the intended roads for de-trunking that will be the maintenance responsibility of the County Council are in a fit state of repair and condition to the County Council's reasonable satisfaction. The proposed amend to the draft DCO is set out at paragraph 10.18 of County Council's Local Impact Report.

Q16.1.2	Please confirm that in addition to speed limits, only clearways and no overtaking traffic regulations will be required as Traffic Regulation Orders for the scheme. Please also confirm that these proposals, in particular where they affect the Local Highway Authority, have been consulted upon and agreed, explaining any outstanding agreements.
<p>The County Council does not promote clearways as a means of controlling stopping on the highway and currently have few in operation throughout the County. The No Overtaking Order shown cannot be used in conjunction with the shown double white line system. Of the two separate approaches to tackling overtaking double white lines are our preferred option. The County Council are in agreement with the proposed speed limits.</p>	
Q16.1.3	Please confirm that the proposals for classification of highways, in particular where they affect the Local Highway Authority, have been consulted upon and agreed. In addition, please confirm that the boundary between the gyratory and adjacent non-trunk roads is correct and agreed (as shown on Sheet 7 of the plans [APP-012]).
<p>The County Council is able to confirm that they have been consulted upon and agreed the classifications proposed, with the exception of the classification that relates to the boundary between the gyratory and adjacent non-trunk road. The County Council considers that there will need to be amendment of the relevant classification to reflect an amendment of the proposed boundary.</p>	
Q16.1.33	Please confirm that the proposed sections of highway to be stopped up are all necessary and that the land will be returned to the Applicant. Additionally, please confirm that the local highway authority agrees to the process and the proposals for work on highway where they will be the maintaining authority.
<p>The County Council agrees in principle to the proposed stopping up of its highway network.</p> <p>The County Council is in discussion with the Applicant as to the process and proposals for work on highway for which the County Council is or will become the maintaining authority. In principle this can be agreed subject to;</p>	

- the County Council and National Highways entering into a legal agreement before the close of the examination on terms acceptable to the County Council that include provisions for governing the detail and standards of the works and the meeting of standards for the transfer of maintenance responsibility to the County Council after the conclusion of a period of maintenance at National Highways expense. The County Council has submitted required heads of terms for such an agreement to National Highways.
- the County Council being provided with a form of security either under a section 106 agreement or as a requirement under the Order that the relevant part of the authorised development is not commenced until the necessary legal agreement is in place and the authorised development is carried out in accordance with the terms of the relevant legal agreement. The County Council's Local Impact Report refers at para 10.11 and the possible draft requirement is submitted in response to the ExA Q 9.1.54 above.