

M3 Junction 9 Improvement Scheme
Issue Specific Hearing 2: Draft Development Consent Order (DCO), Traffic and Transportation, Public Rights of Way and NMU Routes, Biodiversity, Air Quality and Noise and other Health Impacts
Tuesday 1 August 2023

Deadline 4

Hampshire County Council post hearing submissions and written summary of oral cases of ISH 2

2. The Draft DCO

Articles

Part 1 Preliminary

(i) Article 3 – Disapplication of legislative provisions

<p>The justification for Article 3(1)(c) of the draft DCO (formerly 3(1)(d)) which seeks to disapply section 23 of the Land Drainage Act 1991.</p>	<p>The County Council confirmed that it does not consent to the disapplication of section 23 as there is an existing consent scheme operating under s.23 of the LDA 1991 that is well run. It is not considered that there is any benefit to disapplying this legislation as the process would need to be replicated in protective provisions.</p> <p>However, following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
<p>The progress of discussions between the Applicant and the Hampshire County Council (HCC) as regards Protective Provisions and</p>	<p>The County Council confirmed that, provided section 23 of the Land Drainage Act 1991 is not excluded, it will have the benefit of its consent scheme and would not consider any protective provisions were necessary.</p>

amendments for the protection of the drainage authority.	
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Part 2 Principal Powers

(i) Article 8 - Limits of deviation

The extent of and justification for the limits of deviation (LoD) set out in the draft DCO, including those in respect of the attenuation ponds. In particular, why is it necessary to have the flexibility that is sought for these aspects of the Proposed Development?	The County Council confirmed that the limits of deviation from points E to F as shown on Works Plan Sheet 3 only provide for 0.5m vertical deviation. Given the County Council's position on the Cart and Horses junction, it 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.
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Part 3 Streets

(i) Article 11 - Street Works

Whether it is necessary for Article 11 to be amended to make it clear that the Hampshire County Permit Scheme would apply to all street works,	The wording of Article 11 enables the permit scheme to apply to all street works, however the County Council would welcome positive wording to that effect within the Article. Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.
The progress of discussions between the Applicant and the HCC as regards the amendments sought to Article 11(3) and the	The County Council confirmed that discussions had not progressed by the date of the hearing. However, following positive discussions with the applicant post hearing, the County

<p>proposed addition of new Articles 11(4) and 11(5).</p>	<p>Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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(ii) Article 12 – Power to alter layout etc of streets

<p>The adequacy of the six weeks period for notification by the street authority on the decision as to whether to consent to proposed street works under Article 12(4) and whether a period of three months would instead allow a reasonable time period for consideration of the requests by the HCC.</p>	<p>The County Council confirmed that the request for the extension of time to three months is to allow the County Council adequate time to consider and respond to requests for consent. Alternatively, resourcing could be discussed with the Applicant to enable County Council to respond within six weeks.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
<p>The amendments proposed by HCC to Articles 12(2) and 12(3)(b).</p>	<p>The County Council confirmed that the request for the extension of time at is to allow the County Council adequate time to consider and respond to requests for consent.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>

(iii) Article 14 – Construction and maintenance of new, altered or diverted streets and other structures

<p>The progress of discussions between the Applicant and HCC in relation to the completion of a legal agreement and the need for the new requirement proposed by HCC in response to ExQ 9.1.54.</p>	<p>The County Council confirmed that discussions had not progressed by the date of the hearing. However, following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
<p>The amendments sought by HCC in relation to Articles 14(5)(b), 14(6) and 14(7)</p>	<p>The County Council confirmed that it is still seeking its amends to Article 14(5)(b), but that it will consider its position regarding the proposed amendments to Article 14(6) and 14(7) in view of the Applicant’s response.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>

(iv) Article 15 – Classification of Roads

<p>The amendments sought by HCC in relation to Article 15(4) and other HCC concerns in relation to Article 15(5).</p>	<p>The County Council confirmed that it had not had any response from the Applicant in respect of its proposed amends to Article 15(4) and 15(5), but hoped that progress could still be made in discussions.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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<p>The progress of discussions between the Applicant and HCC as regards the completion of a legal agreement to support the arrangements for the de-trunking of roads.</p>	<p>The County Council confirmed that it had not had any response from the Applicant in respect of its proposed amends to Article 15(4) and 15(5) and proposed heads of terms for a form of agreement, but hoped that progress could still be made in discussions.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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(v) Article 16 - Temporary Stopping up and restriction of use of streets

<p>Whether the period for a decision set out in Article 16(6) of 28 days from the date of the application is unreasonably short.</p>	<p>County Council confirms that it considers longer period for decision is required to allow the County Council adequate time to consider and respond to requests given resourcing constraints, however is willing to discuss this further with the applicant.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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Part 5 Powers of Acquisition

(i) Article 28 - Public rights of way

<p>The proposed new Article 28(4) sought by HCC to require the undertaker to provide notice of any extinguishment of relevant public rights of way</p>	<p>The County Council confirmed that it is happy with the amended Article except that it would request 42 days (6 weeks) notice rather than the 28 days notice proposed by the Applicant's amendment.</p>
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	<p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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Part 6 Operations

(i) Article 39 - Felling and Lopping of trees

<p>The justification for the inclusion of the powers set out in Article 39.</p>	<p>The County Council has requested further information from the Applicant in respect of highway tree loss and tree replacement program which may help progress discussions.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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Schedule 2 – Requirements

(v) Requirement 12 - Detailed Design

<p>The amendment proposed by HCC by way of the inclusion of an additional subparagraph to Requirement 12 in relation to the approval of the detailed design of any part of the authorised development that is intended to be the maintenance responsibility of the local highway authority.</p>	<p>The County Council confirmed its proposal for additional para 12(2) is to effect that no DCO works will commence on elements of the scheme for which the County Council will be responsible for until the County Council has approved the relevant detailed design.</p> <p>The County Council will have long term maintenance responsibility for those parts of the authorised development that are on highway (other than trunk road or special road) and would</p>
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	<p>therefore seek a right of approval for final design for its future responsibility.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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(vi) Requirement 13 - Surface Water Drainage

<p>Whether it is necessary and reasonable to make the amendments to Requirement 13 proposed by HCC including the addition of a new 13(2).</p>	<p>The County Council confirmed it will review the response from the Applicant and consider whether their amends to the Requirement 13 are still required.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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(vii) Whether any additional Requirements are necessary?

<p>The draft requirement proposed by HCC to secure the provision of a Local Highway Legal Agreement to govern the performance and transfer of maintenance responsibility of the Local Highway Works.</p>	<p>The County Council confirmed it considers that there is a need to secure the completion of necessary legal agreements and also to secure the performance of the relevant works in accordance with the legal agreements. No agreement has been reached on this approach yet, and that this is therefore still in discussion.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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Section 106 Planning Obligations and any other agreements

<p>(i) Whether any planning obligations or other agreements to secure mitigation, enhancement or other matters are required and intended to be completed prior to the close of the Examination.</p>	<p>The County Council confirmed that it has forwarded heads of terms in respect of the legal agreements and section 106 planning obligations that are being sought to the Applicant. It is hoped that progress can be made in discussion with the Applicant.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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3. Traffic and Transportation

(i) Traffic modelling

<p>Whether non-strategic modelling is sufficient and if junction movements assessments have been undertaken with sufficient detail.</p>	<p>The County Council confirmed that it considers that caution should be used in applying strategic model. The County Council is in discussion with the Applicant and is seeking clarity around the outputs from the model particularly around Eastern Lane and the A272.</p> <p>This will be progressed with the Applicant through the written process.</p>
<p>Whether modelling of traffic increase sufficiently takes account of future growth and how this has been factored.</p>	<p>With the exception of the Cart and Horses junction, the County Council confirmed that it is satisfied with the traffic increase modelling submitted.</p>

(ii) Road Safety

<p>How the predicted crash savings have been analysed and whether updating the historic collision data from 2019 should be undertaken and how this may change the analysis.</p>	<p>The County Council highlighted the query set out in its Local Impact Report around the age of the collision data submitted by the Applicant. The Applicant's response confirmed that this was to take into account the impact of the Covid 19 pandemic.</p> <p>Except in so far as it relates to the Cart and Horses junction, the County Council confirmed that it is satisfied with the response and the data submitted.</p>
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(iii) Journey time savings

<p>Whether the predicted journey time savings are considered significant.</p>	<p>The County Council confirmed that it is satisfied with the Applicant's conclusions on journey time savings drawn from the Applicant's strategic modelling.</p>
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(iv) The wider transport network and other highway related issues

<p>Whether improvement measures are required on the highway network outside the application boundary.</p>	<p>The County Council confirmed that it considers that improvement measures are required at the Cart and Horses junction in order to mitigate the impact of the scheme.</p>
<p>The impact of the application on the A33/B3047 (Cart and Horses) junction</p>	<p>The County Council confirmed that it is concerned that the impact of the Scheme on the Cart and Horses junction would be severe, particularly in terms of safety. The junction's accident record identifies six collisions from 2018 to 2022, including a fatality. The County Council has longer records and would be happy to share these if it would be helpful to the Examining Authority.</p>

The junction has been subject to minor improvement works to try and reduce collisions, including speed limit reductions. The accidents largely occur at the southern stagger of the junction (the London Road arm of the B3407). The tables on page 12 of the County Council's Local Impact Report show that, when the Scheme is implemented, there will be an increase in northbound traffic in the morning peak of 91 vehicles and in the evening peak of 171 vehicles.

The County Council considers that the Scheme will therefore negatively impact on the safety of the junction and consequently appropriate mitigation is required to be secured as part of the DCO.

The County Council is currently consulting with the public on two options to alter the junction layout (a roundabout or traffic signals) and has undertaken its own local modelling which indicates that, even with the delivery of either option, the junction would be operating above capacity in 2047 as a consequence of the Scheme. The County Council therefore infers that without appropriate improvement works, the junction would be operating at or very likely above capacity.

The two advanced schemes for improvement of the junction are available for consideration by the Applicant. The County Council consider that the improvement of the junction should be a requirement of the scheme to safely accommodate the increased demand forecast.

The DCO scheme will lead to severe impact on the highway and the improvement/mitigation works at the Cart and Horses junction are necessary to make the proposal acceptable in planning terms.

(v) Temporary Traffic Diversions during Construction

<p>Whether the predicted impact on the wider transport network during construction has been adequately assessed and considered, including how increased traffic on diversion routes could impact on NMUs</p>	<p>The County Council considered that the Outline Traffic Management Plan adequately sets out both the constructions phasing and associated full closures which would necessitate diversion routes, and accept that the OTMP is in effect a live document and further detail will be added regarding local Traffic Management requirements (including Temporary Traffic Regulation Orders) for each diversion route.</p>
<p>Whether the proposed temporary diversions during the construction period are proportionate and the impacts have been mitigated.</p>	<p>The County Council noted that the OTMP outlines all possible diversion routes which might be called upon during the construction phase. The applicant has committed to avoiding diversion routes where possible through maintaining lane running or mitigating the impact through night-time only closures. The County Council is satisfied that the approach is proportionate, but it will need to have advanced consultation on proposed diversion routes as well as advanced notice to co-ordinate road space bookings.</p>
<p>Whether the impact of diverted traffic at Junction 11 has been adequately assessed and mitigated.</p>	<p>This would be a longer term diversion route (understood to be approximately 18 months in duration). The strategic model was used to test the impact of the northbound on-slip closure for which Junction 11 is the official diversion route for strategic traffic as set out in the Combined Modelling Appraisal Report. No specific analysis was provided for Junction 11, although the model seems to indicate no increase at the junction. Mitigation measures would need to be detailed and agreed at the detailed stage of design.</p>

(vi) General Highway Matters

<p>Whether stopping up and de-trunking is being progressed in a way that is acceptable to the local highway authority.</p>	<p>The County Council confirmed that the discussion with the Applicant around stopping up and de-trunking are continuing</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
<p>Whether there is sufficient details of proposed highway boundaries and future maintenance requirements of the non-strategic highway network.</p>	<p>The County Council confirmed that discussions are ongoing with the Applicant for clarity over proposed boundaries for maintenance responsibility.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>

4. Public Rights of Way & NMU Routes

(i) Legal Status of proposed NMU routes and PROWs

<p>Whether there is clarity and agreement between parties of the legal status of new and affected routes.</p>	<p>In response to a question raised regarding the status of 'Long Walk' the County Council welcome this route and anticipate that it will be a bridleway, although would not oppose the route being brought forward as restricted byway.</p> <p>In response to a question regards the new route from Kings Worthy to Junction 9, the County Council confirmed this would be an adopted shared use footway/cycleway for pedestrians and cyclists.</p>
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<p>Whether there is a need to confirm the legal status of other existing routes within the application boundary.</p>	<p>The County Council was asked to comment on the status of NCN23, and specifically whether the bridleway should be extended over the full route rather than stopping part way over the junction as currently.</p> <p>The County Council can confirm that, following the decision of the Planning Inspectorate dated 17 July 2018, the legal status of this bridleway BW520 is that it does not extend over the junction.</p>
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(ii) Design standards

<p>Whether proposed design standards are suitable and applied appropriately.</p>	<p>In relation to the shared use pedestrian and cycle path, the County Council is satisfied with the submitted three metre widths and is not seeking changes to the route.</p>
<p>How usage surveys and assessments have been undertaken and their relevant application.</p>	<p>The County Council is satisfied with the assessments undertaken and is not seeking any additional surveys at this point.</p>

(iii) Future Maintenance

<p>Whether future maintenance responsibility and cost has been sufficiently considered.</p>	<p>The County Council has requested further information from the Applicant in the form of a management plan that would include all necessary information for the County Council to be satisfied on the levels of future maintenance responsibility and cost.</p> <p>Following positive discussions with the applicant post hearing, the County Council is confident that this issue can be resolved with an update provided to the Examining Authority at Deadline 5.</p>
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(iv) Construction Impact

<p>Whether alternative routes during construction have been fully considered and appraised.</p>	<p>The County Council recognise that there are limited options in context of existing infrastructure, and is satisfied that the alternative routes proposed are existing safe routes.</p>
<p>General approach to how diversions during construction will be agreed, approved and managed</p>	<p>The County Council confirm that it will work with the Applicant to protect and enhance the public right of ways, and ensure public safety.</p>