

**Application by National Highways for an Order Granting Development Consent for the M3, Junction 9 Improvement**

**The Examining Authority’s schedule of proposed changes to the draft Development Consent Order (dDCO)**

**Issued on 6 October 2023**

This document sets out the Examining Authority’s (ExA) proposed changes to the latest version of the Applicant’s dDCO submitted at Deadline 5 of the Examination [REP5-004].

Ref	ExA’s suggested changes	ExA’s comments
<b>General</b>		
Drafting guidance	When the dDCO is finalised, all internal references, statutory citations and references and legal footnotes should be checked and updated as required. Drafting should be reviewed to follow best practice in Planning Inspectorate Advice Notes 13 and 15 and guidance on statutory instrument drafting from the Office of the Parliamentary Counsel (June 2020).	
Drafting	The Final DCO to be submitted in PDF by the Applicant at Deadline 10 must be accompanied by a MS Word copy in the SI template with the SI template validation report confirming that it is in accordance with the format for the official draft SI template and has passed through the draft SI checker. All outstanding format issues must be addressed before submission and the Applicant must submit the checker reports to show that this has been done by Deadline 10.	
Use of “and/or”	Check use of “and/or”: this is not considered to be suitable for statutory instruments.	
Preamble	Where special powers under Pt 7 Chapter 1 of the 2008 Act (specifically ss 131 and 132) need to be invoked, their application is required to be endorsed on the face of the Orders in the preamble. Check that no such powers need to be added to the preamble.	



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Explanatory memorandum	A robust justification should be provided in the Explanatory Memorandum for each Article and Requirement in the dDCO, explaining why the inclusion of the power or requirement is necessary, proportionate to the novelty or controversy relating to the provision. Account should be taken of equivalent provisions in made DCOs, recognising that practice has evolved and the model provisions set out in the infrastructure regulations may no longer be relevant.	
<b>Articles</b>		
Article 28	<p>The amendment of Article 28 (2) as follows:</p> <p>28. (2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 and shown on the rights of way and access plans, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than <u>42</u> days prior to the extinguishment of that right of way and must ensure a copy of this site notice is provided to the local highway authority for their information at the same time</p>	The ExA considers that it is necessary and reasonable to provide for a 42-day notice period to ensure that there is sufficient time for HCC to administer and prepare any related public notices that are required.
<b>Requirements</b>		
1.	<p>The amendment of 1. As follows:</p> <p>1. "outline traffic management plan" means the document certified by the Secretary of State as the outline traffic management plan for the purposes of this Order.</p>	The ExA considers this to be necessary in order to clarify which version of the plan Requirement 11 is referring to.
4. (3)	<p>The amendment of 4. (3) as follows:</p> <p>4. (3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so., <del>taking into account considerations including, but not limited to, cost and engineering practicality.</del></p>	The ExA does not consider that it is necessary to include the words suggested to be deleted or to place any emphasis on those factors and not others.



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		We consider that the preceding words are sufficient to ensure that appropriate regard is taken of consultation responses in the submissions made to the SoS.
5. (3) (g)	The inclusion of a new 5. (3) (g) as follows:  5.3 (g) landscaping works associated with the provision of any fences and walls.	The ExA considers the inclusion of this provision to be necessary given the location of part of the site within the SDNPA.
6. (3)	The amendment of 6. (3) as follows:  6. (3) Any tree <del>or</del> shrub, <u>or other element</u> planted as part of the landscaping scheme that, within a period of <del>5</del> <u>10</u> years after planting, is removed, dies or becomes seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.	The ExA considers that given the location of part of the site within the SDNP it is necessary for the scope of 6. (3) to include all elements planted as part of the scheme and that the reasonable concerns in relation to establishment of various elements justify the extension of the



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		replacement period to 10 years. We do not consider that the extension of this period would place any undue onerous burden upon the undertaker.
7.	<p>The amendment of 7. as follows:</p> <p>7. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual <u>are required pursuant to Requirement 5(3) (g) above and</u> are agreed in writing by the Secretary of State in connection with the authorised development</p>	To ensure compatibility with the amendment of 5. (3)
11. (1)	<p>The amendment of 11. (1) as follows:</p> <p>11. (1) No part of the authorised development is to commence until a traffic management plan for the construction of that part of the authorised development, substantially in accordance with the outline traffic management plan has been submitted to and approved in writing by the Secretary of State following consultation with <u>the South Downs National Park Authority, the Winchester City Council, and the local highway authority.</u></p>	The ExA considers that, for the avoidance of doubt, it is reasonable to specifically provide for consultation on the Traffic Management Plan with the SDNPA and the WCC as well as the local highway authority given the location of the site. As indicated above, the ExA considers that the outline traffic management plan



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		should be defined as the plan certified as such by the SoS.
13. (1)	<p>The amendment of 13. (1) as follows:</p> <p>No part of the authorised development is to commence until written details of the surface water drainage system for that part, <u>in accordance with the flood risk assessment and drainage strategy</u>, 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 on matters related to their functions, the lead local flood authority, the Environment Agency, and the local highway authority where that the surface water drainage system interacts with a highway maintainable at the expense of that local highway authority.</p>	The ExA considers that the inclusion of the requirement to reference the flood risk assessment and drainage strategy is reasonable to secure those assessments adequately within the DCO.
14. (1)	<p>The amendment of 14. (1) as follows:</p> <p>14. (1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with <u>Winchester City Council and South Downs National Park Authority on matters relating to their function and Hampshire County Council as the local highway authority in respect of low noise surfacing.</u></p>	The ExA considers that it is reasonable, for the avoidance of doubt, to specifically provide for consultation on the noise mitigation measures with both the SDNPA and the WCC given the location of the site and with HCC in relation to the low noise surfacing given its function.



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<b>Other Schedules</b>		
	no suggested changes	