

ashfords

# A12 DCO

Messing and Inworth Action Group  
Limited

Written Representation



## **This submission is made on behalf of the Messing and Inworth Action Group Limited (MIAG).**

### **Introduction**

MIAG has serious concerns with the proposal by National Highways (NH) to alter the existing A12, notably the works at the proposed new junction 24 (J24), work in the village of Inworth and the impacts from the scheme on the villages of Messing and Inworth. MIAG has submitted detail to date through a relevant representation and participated in the Preliminary Meeting & Open Floor Hearing 1.

MIAG is not in principle against the current scheme, however it considers that the J24 proposal is unacceptable in its current form. MIAG advocates an alternative bypass proposal around the village of Inworth (known as the Main Alternative). The Main Alternative has been discounted by NH and does not form part of the DCO application. MIAG considers that NH has discarded the Main Alternative with little justification or evidence to support its decision.

In MIAG's view, the proposed A12 scheme as designed is not supported by the policies of the National Networks National Policy Statement (NNNPS) and is contrary to section 104 of the Planning Act 2008. As such, in MIAG's view, the DCO application should be refused a development consent order.

### **Technical Traffic Report**

MIAG has commissioned Transport Planning Associates (TPA) to review the information submitted by NH in support of the DCO application. The report prepared by TPA is appended to this written representation (please see **Appendix 1**). For the sake of brevity the conclusions of this report are not summarised here as a summary is noted on p.25 of the TPA report to which we direct the Panel's attention.

### **Further Submissions**

MIAG submits as part of this written representation a suite of reports which it had prepared whilst reviewing and considering the potential impacts of the A12 proposal on the villages of Messing and Inworth. These are appended to this report at **Appendix 2**.

**Appendix 3** to this submission includes correspondence from various parties – including the MP for Witham – and a Petition signed in support of MIAG's position on the A12 proposal.

MIAG respectfully requests that all of these documents are taken into account by the Panel as part of its submission.

## Draft Development Consent Order

We have reviewed the draft Development Consent Order (dDCO) (APP-039) and Explanatory Memorandum (EM) (APP-040) submitted in support of the DCO application. MIAG has a number of concerns to raise with the content of the dDCO.

MIAG disagrees with NH that the whole scheme constitutes an alteration proposal under s.22(1)(b) of the Planning Act 2008. This is particularly so when the section to the south of Feering running north to Marks Tey (an approximate distance of between 5 and 6km) demonstrably consists of the construction of a new highway, satisfying the definition of s.22 (1)(a) of the Planning Act. This stretch of new highway contains little, if any, ‘alteration’ to the existing A12 and it does not satisfy s.22(1)(b). The extent of the new highway being created is clear as shown on sheets 13-18 of the De-trunking and Stopping-Up Plans (ref: APP-026) As such, MIAG considers that the section of proposed new road between Feering and Marks Tey is a separate NSIP for which NH has not applied for consent as part of this application.

MIAG has a number of comments to make on the dDCO:

No	Provision in dDCO	Detail	MIAG Comment
1	Article 2	A number of documents to be certified refer to Schedule 12 whereas other documents to be certified do not	Where the documents are to be certified and they are noted in Schedule 12 this should be made clear in Article 2
2	Article 2 – “maintain” Article 6 – Maintenance of authorised development	The inclusion of the term “inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish or replace” in Article 2	No justification for this wording used is provided in the EM. The wording is expansive and too general. MIAG does not consider that improving, landscaping, removing, reconstructing and replacing particularly are maintenance activities. Moreover it should not include activities which have not been assessed in the ES.  The definition is uncertain through the inclusion of the words “are unlikely to”. These words should be substituted with “do not”.  NH should clarify how it intends to exercise this provision, particularly in terms of the works to J24 and in the village of Inworth.
3	Article 2 - “temporary works”	Refers to being shown on the permanent works plans	Should this not be the temporary works plans?

4	Article 3(2)	Hedgerows	MIAG considers that the inclusion of this Article is unreasonable but at the very least it should be subject to a plan for the operational development and maintenance periods to be approved by Natural England and / or the LPA.
5	Article 3(4)(a) and (b)	Reference excluding environmental permit and provisions of byelaws	What activities is NH anticipating to be undertaken here that do not require an environmental permit? Has the EA's consent been sought for the inclusion of this provision?
6	Article 5(2)	Reference to adjacent land	Given that the works subject to the DCO have to be undertaken within the Order limits (Article 10(1)) to what extent does the proposal affect land adjacent to the Order limits subject to other enactments?
7	Article 10(5)	Vertical limits of deviation – consultation requirements	MIAG suggests the addition of the words to ensure the involvement of the LHA:  “and, in respect of the authorised development comprising highways other than a special road or a trunk road, the relevant local highway authority...”
8	Article 14(1) and (2)	New or altered highways (which are not trunk roads) are to be maintained by and at the expense of the Local Highways Authority	What arrangements are in place between NH and ECC to ensure that the maintenance of new or altered highways will continue? We note the NH is resisting the inclusion of any form of post-construction remediation (financial or otherwise) however no justification for this position has been provided to date. MIAG reiterates that where it transpires that the impacts from the scheme as greater than those anticipated at this stage, there should be recourse available to communities and ECC as LHA to request funds or initiate a remediation mechanism. to secure further mitigation or to put in place measures that will alleviate the identified issues.

			<p>Has ECC requested a section 6 Highways Act agreement with NH for the roads that will form part of their network following the delivery of the scheme? If not can this be pursued by ECC.</p> <p>What measures are in place to mitigate unforeseen impacts from the proposal which have not been anticipated or assessed as part of the scheme?</p>
9	Article 15(5)	-	MIAG considers that this provision should be “unless otherwise agreed with LHA, not LPA”.
10	Article 15(6)	De-trunking at the discretion of NH	<p>MIAG does not consider that the date for de-trunking should be solely decided by the undertaker.</p> <p>MIAG suggests the addition of a new Article 15(7) to provide:</p> <p><i>“The undertaker may only make a determination for the purposes of paragraph (8) with the consent of the Secretary of State, following consultation with the relevant local highway authority as to the date and as to whether the highway to be de-trunked is of a reasonably satisfactory standard for use as a local highway.”</i></p>
11	Article 16	Speed limits change when the roads are ‘open for traffic’	How is ‘open for traffic’ determined? Will residents be notified of the change by NH / ECC?
12	Article 17	Power to alter layout etc. of streets and the ability to increase/reduce the width or carriageways by increasing/reducing the widths or footpaths and footways etc.	<p>To what extent is NH proposing to use these powers in respect of the proposed works in Inworth?</p> <p>Given all measurements in the dDCO are approximate, this provision is broad, general and gives no certainty on the extent to which it will be used as part of the proposed development.</p>
13	Articles 52 and 58	Human remains and consecrated land	MIAG notes that the EM provides that Article 58 has been included in

			the dDCO because of the proposed works at Inworth Church. It is not clear to what extent works will encroach on the Church land given the broad nature of the description of Work No. 122 (see below).
14	p.53	-	There is no reference to s.20 of the PA08 in respect of the gas main
15	Schedule 1 – Permanent Works	Work numbers 74 and 122	<p>Works to Inworth Road are noted generally under work no. 122, with the remainder of works in and around Inworth Road relating to flood alleviation and attenuation ponds.</p> <p>NH has provided detail in APP3.3 of its intention to deliver works along Inworth Road which form the basis for a number of assessments that have been undertaken by NH to determine the likely impacts from the scheme on Inworth Road. However, the works listed in the dDCO do not specify the limitations e.g. areas where the road is to be widened, passing places and footway widths.</p> <p>Given the consultations and discussions to date with the local communities and with MIAG, MIAG considers that these works should be more precisely defined to give the local communities certainty on the delivery of these works.</p> <p>Also, the list of associated development items listed on p. 88 of the dDCO makes work item 122 and 74 even less certain. It is not clear to what extent works in each works number require associated development. This gives no certainty to MIAG on the extent to which additional works in Inworth will be delivered as part of the proposal. MIAG requests that NH clarifies what works they expect will take place in Inworth and whether</p>

			items wrapped up in Part 1 of Schedule 1 (paras (a) – (t)) will be used in Inworth (and if they will not be used they should not be included in the dDCO insofar as they relate to the works in Inworth).
16	Work numbers U140 to U150	Utility diversions through Inworth Road	There are a significant number of utility diversions proposed to take place on the Inworth Road. Can NH provide any certainty on the coordination of these works to ensure that disruption to users of the highways in these areas (coupled with the proposed listed works to Inworth Road) will be minimised?
17	Schedule 2, Part 1, Paragraph 1	The term “commence”	<p>The current proposed definition carves out a number of work items (which are very broad). The definition includes ‘mitigation works’, ‘remedial works in respect of contamination’ and ‘erection of construction plant and equipment’. They also include a number surveys and mitigation works.</p> <p>In practice the extent of these works can be extensive and this definition is not currently linked to the environmental assessments undertaken. MIAG considers that the works permitted pre-commencement should be narrowed, defined by NH and limited to what has been assessed in the ES without mitigation to be secured through the Requirements.</p>
18	“First Iteration EMP” and Paragraphs 3 and 4	The provision of the First, Second and Third EMPs	None of these plans is linked to the assessments in the ES. MIAG assumes the intention is that these plans will deliver within the envelope of impacts assessed in the ES.
19	Requirement 10	Design	We would expect to see compliance with the design

			<p>principles put forward in the application with this document included in the list of certified documents in Schedule 12.</p> <p>MIAG does not consider that article 10 is properly drafted and that it should read as below (the yellow highlighted part should – we consider – be included in the draft A12 DCO):</p> <p>Detailed design 12.—(1) The detailed design for the authorised development must accord with—</p> <p>(a) the preliminary scheme design shown on the works plans, the general arrangement plans and the engineering section drawings;</p> <p>(b) the principles set out in the environmental masterplan; and</p> <p>(c) <b>the design principles set out in the scheme design approach and design principles</b>, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant local authority on matters related to their functions, provided that the Secretary of State is satisfied that any amendments would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</p> <p>(2) Where amended details are approved by the Secretary of State under paragraph (1), those details are deemed to be substituted for the corresponding plans or sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.</p>
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			<p>(3) No part of the authorised development is to commence until, for that part, a report has been submitted to, and, following consultation with the relevant local planning authority, approved by the Secretary of State, demonstrating that—</p> <p>(a) the undertaker has engaged with relevant stakeholders on refinements to detailed design for that part of the authorised development;</p> <p>(b) the undertaker has had regard to the relevant stakeholders' comments; and</p> <p>(c) any refinements to the detailed design for that part of the authorised development arising as a result of that engagement accord with the scheme design approach and design principles.</p>
20	Requirement 14	Approvals and amendments	<p>There is no provision currently that requires such amendments to be undertaken in consultation with the local highways or planning authorities nor are the provisions linked to ensure that any further approved details are within the effects assessed in the ES.</p>
21	Requirement 16	Further information	<p>MIAG considers that ECC should be able to request further information from NH (whether directly or indirectly through the SoS) as part of the process of being consulted through the discharge of the Requirements.</p>

## **OCTMP**

Paragraph 3 of the outline Construction Traffic Management Plan (OCTMP) (APP-272) outlines the approach to communication and engagement by NH with the local communities and the ways in which different stakeholder groups will be involved in traffic management on an ongoing basis. The traffic management forums are stated to “seek input into the proposals as they are developed and feedback on the implementation of proposals” and “where appropriate, feedback will be incorporated into proposals going forward in the proposed scheme”.

Table 3.1 of the CTMP lists the stakeholders proposed to be involved, including the parish councils in the Local Area Traffic Management Forum, to meet monthly. MIAG requests that it is included as a member of this forum and added to the list.

## **Plans**

As noted above, a number of residents have raised concerns about the accuracy of the plans submitted by NH and the extent to which redlines on the plans accurately reflect the works to be undertaken on the ground. Residents at Columbyne Cottage and several others have redlines which run through their gardens but as the redline is the thickness of their gardens or encroaches onto their land it is not clear if works will be undertaken on their properties or whether the powers in the final DCO (if granted) will affect their land. This should be confirmed urgently by NH.

## **Purchase of properties**

MIAG has serious concerns about NH’s conduct as it continues to purchase properties affected by the scheme in what is a falling market. MIAG is not clear how this can be seen as a good use of public money. This includes properties known as the Laurels and West Acre. MIAG understands that almost £1m has been spent in the past few weeks for the acquisition of these properties and it is not immediately transparent why this sum has been spent given the current market conditions.

In addition, the property at Westacre has - we understand - been acquired but in excess of NH’s original need identified from plans – can NH please confirm the rationale for using funds at risk before the grant of the DCO?

## **Statement of Common Ground with NH**

NH has issued a first draft of the SoCG to MIAG. MIAG has reviewed this and provided its own statement on the SoCG’s content with supporting appendices (submitted to the Examination in tandem with this document). This position statement has, we understand, been endorsed by the McIPC. At this stage MIAG considers that there are a number of issues in dispute between MIAG and NH and MIAG will continue to seek to narrow these down with NH as the Examination progresses.

## **Rule 8 Letter**

The MIAG would like to respectfully note that it has found it difficult to navigate a number of the requests set out by the Panel in the issued Rule 8 letter (PD-008). As an example, participants of hearings have been asked to register for all hearings set out in the Examination timetable without knowing what topics will be discussed or whether they are actually due to take place (e.g. they have 'if required' next to them) or – as with ISH1 – it covers a broad topic such as 'Environmental Matters'. MIAG respectfully suggests that it would be helpful for participants to be given more detail on topics that will be covered in advance as it could affect their decision to participate.

In addition, the Rule 8 letter notes that all participants will be notified of hearings 21 days prior to them taking place and be given the opportunity to register to participate in those hearings. As such, it is not clear whether registration for all hearings needs to take place now (as noted in the R8 letter) or in accordance with the terms of the later notices. In any event, and from MIAG's perspective, MIAG would like to participate in all hearings relevant to J24 (save for the CAHs). MIAG has – it believes – registered for all of these hearings.

## **Conduct of Hearings (OFH)**

The MIAG also respectfully suggests that it may assist the Examination in the future conduct of the hearings (and this is simply a suggestion following the initial OFHs) for the Panel to set the expectations for hearing participation in advance. As the Parish Councillor for Tiptree (Mr Greenwood) pointed out at OFH1, the Rule 6 letter noted that representations should not simply repeat the relevant representations (which themselves are encouraged by the Panel to be brief / bullet pointed) and that assertions made during the hearings were encouraged to be supported by evidence. Mr Greenwood (Tiptree PC), Mr Harding (McIPC) and Mr Humphreys (MIAG) were all asked to be briefer, cut submissions short and to submit detail in writing, whereas other participants (including NH) were not – being given ample time to finish their statements.

MIAG fully appreciates that the DCO process is a written-led process, however, given the scale of the proposed scheme, its length, and number of impacted communities it may help participants to be given a set timescale in which to make submissions so that enough detail can be given to the Examination and participants feel like they are being given an opportunity to fully contribute to the process.

**END**

**Appendix 1 – Transport Planning Associates – Transport and Highway Infrastructure Review (February 2023)**

**Appendix 2 – MIAG's commissioned reports in respect of the A12 proposal**

**Appendix 3 – Letter of Support for MIAG and Petition of Support**