

Northampton Gateway RFI: Comments on draft documents

These queries relate solely to matters raised by the draft documents, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration.

General Drafting points

1. The Applicant should ensure that when the draft Development Consent Order (DCO) is finalised all internal references and legal footnotes are checked and that the drafting follows best practice in Advice Note 15 and any guidance on statutory instrument drafting.
2. A number of typos have been found in the draft DCO and Explanatory Memorandum (EM). These will need to be corrected.
3. The EM should state whether the article replicates a model provision or precedent article. Where there has been a change from the precedent or model provision this should ideally be shown in a track change draft DCO. It would also be helpful if the EM clarified whether the change is minor and has been made where in the applicant's view the model provision is unclear, or does not follow standard statutory instrument drafting practice. Where a model provision or precedent article is substantially changed, the EM should clearly explain how that alters the effect. Ideally (and particularly if an article is novel), the power on which each article is based should be identified.
4. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in the draft DCO is appropriate will be a matter for the examination, if the application is accepted, this should therefore be thoroughly justified in the EM. During the examination, the EM will be considered whilst taking account of the facts of the particular application and having regard to any views expressed by the relevant authorities and interested parties. It is therefore important to note that all aspects of the DCO application are subject to examination and therefore quoting a made Order as reason for inclusion is not full justification in itself.

draft Development Consent Order

Q No.	Section	Extract from draft DCO	Question/Comment
1.	2	Definition of 'commencement'	This has not been completed. An Examining Authority (ExA) will need to consider whether the final definition is satisfactory including for example the impact of any exclusion included. Will for example any exclusion(s) render any requirements triggered on commencement ineffective?
2.	2	Definition of 'maintain'	Have the impacts of the various activities listed all been assessed in the Environmental Statement (ES)? Additional wording has been included in the definition, for example 'Decommission'. We note this was included in the East Midlands Gateway made Order and this is explained in the EM. However it is important to note that all aspects of the DCO application are subject to examination and therefore quoting a made Order as reason for inclusion is not full justification in itself.
3.	2	<i>"phase" means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to an approved by the local planning authority under requirement 2 (phases of development);</i>	"...submitted to an approved by..." Should this be "... submitted to <i>and</i> approved by...?"
4.	2	<i>Missing definition</i>	Trunk roads are included in Article 15 and column (3) of Part 1 of Schedule 7, but not defined in the Interpretation.
5.	2	<i>"Highways England" means Highways England Company Limited (company number 9346363),...</i>	Should this be "... company number 09346363...?"
6.	2	<i>(3) All distances, directions and lengths referred to in this Order are approximate and where applicable distances between points on a work comprised in the authorised development are to be measured along that work.</i>	Should this be "...development are <i>taken</i> to be measured...?"

7.	Art 3 (2)	<i>'Nothing in this Order prevents the carrying out of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or erection of any temporary means of enclosure and the temporary display of site notices or advertisement immediately upon this Order coming into force'</i>	There is a potential conflict with the provisions under Sch. 2 art 9 (1)- Construction Environment Management Plan 'Remedial works' is not defined, therefore the nature, extent and impact of the works to be undertaken is uncertain.
8.	Art 4(a)	<i>'4.The authorised development is to be carried out within the parameters shown and described on the parameters plan and in carrying out the authorised development the undertaker may— (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;'</i>	A justification for this provision should be clear. Does the ES consider the impact of possible deviation? Please explain why 'parameters shown' is used rather than 'Order limits'.
9.	Art 9 (1)	Power to alter layout, etc. of streets	Will the streets be set out in a table?
10.	Art 9 (2)	<i>'(2) The powers conferred by paragraph (1) must not be exercised without the consent of the local highway authority but such consent must not be unreasonably withheld and if the local highway authority has received an application for consent to exercise powers under paragraph (1) and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is made, it is deemed to have granted consent.'</i>	Have there been discussions with the highway authority as to their view on this approach, including whether 28 days is in their view sufficient? An ExA is likely to want to know whether the local highway authority is content with these arrangements.
11.	Art 11	Temporary stopping up of streets.	Will the streets be set out in a table? Have there been discussions with the highway authority regarding this approach, including whether the 28 days cited is sufficient in their view to reach a decision on such matters? An ExA will want to know whether the local highway authority is content with these arrangements

12.	Art 11	Use of 'temporary'.	This is not defined. There are no limitations for what constitutes a temporary stopping up of streets other than a 'reasonable time'. An ExA will need to consider whether this is sufficiently precise for the purposes of the Order. The scope of the timescales for stopping up the streets is also not explained or justified in the EM.
13.	Art 12	Public rights of way – creation, diversion and stopping up	It may be a concern for an ExA that leaving the agreement of the detailed alignment to be agreed with the local highway authority is too flexible. An ExA may wish to know the proposed alignment and see it described on a plan to enable a full examination of this issue to take place.
14.	Art 23	<p>Guarantees in respect of payment of compensation</p> <p><i>23.—(1) the undertaker must not exercise a power conferred by articles [] unless a guarantee or alternative form of security in respect of the liabilities of the undertaker to pay compensation under the power being exercised is first in place.</i></p> <p><i>(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the relevant planning authority; but such approval must not be unreasonably withheld.</i></p> <p><i>(3) The undertaker must provide the relevant planning authority with such information as the relevant planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by articles [] for the relevant planning authority to be able to determine the adequacy of the proposed guarantee or security including—</i></p> <p><i>(a) the interests affected; and</i></p> <p><i>(b) the undertaker's assessment, and the basis of the assessment, of the level of</i></p>	<p>This wording differs substantially from the East Midland Rail Interchange DCO, and justification will be needed. An ExA will need to be satisfied that guarantee arrangements are sufficiently robust.</p> <p>It is noted that the guarantee in this DCO is for 15 years while for the East Midlands DCO this was for 20 years. Can the applicant justify this?</p>

		<p>compensation.</p> <p>(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part shall be treated as enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.</p> <p>(5) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years from the date on which the relevant power is exercised.</p>	
15.	Art 25	<p>(3) Subject to section [] (other provisions as to divided land) of the 1965 Act, as substituted by paragraph (5) of Schedule [] (modifications of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.</p>	This appears to be incomplete. The applicant may wish to consider the drafting used in art 24(4) of the recent M20 Junction 10a DCO
16.	Art 33	Temporary use of land	A general power to take temporary possession of land is now set out in s18 of the Neighbourhood Planning Act 2017. This is not yet in force but may become so during the timescales of the examination. Have the effects of the new statutory power been considered, and should this article be redrafted to reflect them?
17.	Art 41	Felling or lopping of trees	Felling or lopping of trees and removal of hedgerows – will the specific trees/hedgerows be identified? See Advice Note 15
18.	Art 44	<p>Disapplication, application and modification of legislative provisions</p> <p>(3) - The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development...</p>	This provision is not fully explained in the EM. What is its purpose?

19.	Art 44	<i>(9) Non-material changes to the development consent granted by this Order may be authorised by the local planning authority and for such purposes section 96A of the 1990 Act (non-material changes to planning permission) shall apply to this Order as if it was a planning permission granted under the 1990 Act and the requirements were conditions attached to such a planning permission and development in accordance with such changes so authorised shall be deemed to be in accordance with this Order.</i>	How does this relate to the provisions of Schedule 6 of the Planning Act 2008, which provide for the modification of DCOs?
20.	Schedule 1	Description of works	We have not been provided with sufficient information to ascertain whether the proposed highway works could be capable of satisfying the threshold tests to be NSIPs in their own right. Please can this be confirmed.
21.	Schedule 1	Description of works	The draft DCO description of works generally appear to be incomplete, with empty brackets remaining.
22.	Schedule 1	Description of works	The DCO descriptions of works include what amount to nested works, where a power is given in one numbered work that is then elaborated upon in more detail in a subsequent numbered work. Preferably, for the avoidance of doubt, the works should be described as individual 'packages', avoiding the nesting of elements of other works.
23.	Schedule 1	Works number 2	Some Works as described in the draft DCO do not match the detail on the Illustrative Masterplan or the Works Plans for instance Works no 2 (1)(e) in the DCO contains drainage and attenuation ponds
24.	Schedule 1	Works number 3	Should Zone A4 as indicated on the Parameters Plan also be included as part of Works no.3(1)?
25.	Schedule 1 works No 2	<i>Rail sidings to load/ unload</i>	Avoid use of '/' .
26.	Schedule 1	'Further works'	It may be useful to have an explanation as to why the location of the further works is not to be specified at this stage.

27.	Schedule 2 req 3	Sustainable transport <i>2. The provisions of the framework travel plan or any variation of such plan agreed by [] must be complied with at all times following the commencement of the authorised development <u>unless otherwise agreed in writing by the local planning authority.</u></i>	Remove tailpiece. See advice note 15.
28.	Schedule 2 req 5	Detailed design approval <i>5.—(1) The details of each phase of the authorised development on the main site must <u>be in general accordance with the design and access statement.</u> The design and access statement can be reviewed and updated by the undertaker in agreement with the relevant planning authority.</i>	'general accordance' is too vague.
29.	Schedule 2 req 7	Provision of landscaping	As drafted, the provision does not require the developer to provide landscaping, only to complete and have approved a written landscaping scheme. This needs to be addressed.
30.	Schedule 2 Req 9	Construction Environmental Management Plan	There is a potential conflict with art 3(2) (preparatory works etc.). In the draft DCO's current form there is potential for some not insubstantial works to commence prior to the CEMP being approved. There is no explanation in the EM as to how the environmental impact of these would be mitigated.
31.	Schedule 6 part 6	Temporary speed limit table	The duration of the restrictions are not specified either in the draft DCO or the EM. There is no description for 'A5 Northbound and Southbound'. Would the temporary speed limit apply to the entire road or part of it?
32.	Schedule 8 part 1	Table part 1 existing orders table, first entry	SI no. missing from column 2
33.	Other	Housing and Planning Act 2016	The Applicant may wish to have regard to provisions found in articles 27-29 and schedule 6 of the M20 Junction 10a DCO.

Explanatory Memorandum

Q No.	Section	Extract from EM	Question/Comment
1.	General	Highways Works	The EM does not currently provide information in relation to consideration of any of the associated highways works being (or not being) NSIPs in their own rights under s22 of PA2008.
2.	General	Entire Document	Generally, the EM tends to explain the <i>effect</i> of the relevant provision in the DCO, rather than explaining <i>why</i> it is necessary. The EM should also provide more detail and justification where a provision departs from the model provisions or a precedent. (See Advice Note 15). This should include reference to the particular circumstances of this development and an explanation as to why this is necessary or desirable.
3.	2.8	Phrases in quotations italics	The source of these quotations should be identified within the EM.
4.	2.9	<i>'The individual works are described in Section 5'</i>	For clarity, you may wish to add 'of this Explanatory Memorandum' or similar wording
5.	7.22	Deadline period	Where a deadline is given for local authorities to consent (to alter layout etc of streets, for example), justification should be given in the EM for the deadline period, eg why is 28 days appropriate?
6.	7.23	<i>'the drafting largely reflects that of article 9 of the model provision...'</i>	It would be helpful if the EM could explain where this departs from the model provisions and why.
7.	Schedule 2	Requirements	The EM should identify where the requirements follow the Model Provisions or precedent. It should also identify and justify any deviation from these.
8.	7.34	Table: 'Private Means of Access' Row 1, 'Reason why no substitute needed' column: 'Hence the private means of access is	Incomplete sentence, missing words at the end. There is no explanation as to why no access is needed. Providing one would

		<p>no longer used and no'</p> <p>Row 2, Reason column: 'There is no need for a private access into the main site from Collingtree Road.'</p> <p>Row 3 Reason column: 'There is no need for private access into the main site from this part of the A508'</p> <p>Row 4 Reason column: 'There is no need for private access into the main site from this part of the A508'</p>	<p>assist understanding.</p> <p>There is no explanation as to why no access is needed</p> <p>There is no explanation for why no access is needed</p> <p>There is no explanation for why private access is not needed</p>
9.	7.84—7.87, and 7.89-7.93	Disapplication, application and modification of legislative provisions	<p>These sections on the whole provide an explanation as to <i>what</i> the relevant sections mean, but do not explain <i>why</i> they are necessary.</p> <p>It is recommended that the application provides extracts from the relevant legislation which is being misapplied or modified, information about the purpose of the cited legislation, an explanation as to the effect of the disapplication/modification and cross reference to the relevant protective provision which would prevent any adverse impact.</p>
10.	7.106	Part 2: Private Means of Access to be Closed for which no Substitute is to be provided	There is no explanation as to why no substitute is to be provided in these instances

Statement of Reasons

Q No.	Paragraph	Extract from Statement of Reasons	Question/Comment
1.	General	Entire document	<p>In general, the document is very high level with no detailed explanation or justification for the plots required and the compelling case in the public interest. Note para 32 of the DCLG Guidance on Compulsory Acquisition which states:</p> <p>'The statement of reasons should seek to justify the compulsory acquisition sought, and explain in particular why in the applicant's opinion there is a compelling case in the public interest for it. This includes reasons for the creation of new rights'.</p> <p>The document merely refers to other application documents and lets the reader therefore piece together the justification. It would therefore be helpful if the statement of reasons could include at least a summary or conclusion of these reasons, as it is noted that repetition between application documents should be avoided, however for such an important document, the evidence and justification must be made obvious.</p>
2.	1.2	<p><i>This draft statement of reasons has been prepared for the purposes of statutory consultation ("the Stage 2 Consultation")...</i></p> <p><i>...It is hoped that at the time the Application is submitted, compulsory acquisition powers will be sought only in respect of unknown interests and the potential to interfere or extinguish third party rights which are inconsistent with the proposed development.</i></p>	<p>This document requires thorough updating following stage 2 consultation, as there are numerous references to the consultation, it is not currently written as a formal application document.</p>
3.	3.4	<p><i>'The extent of compulsory acquisition powers sought in respect of those areas of land is to be confirmed but, it is anticipated that, it will be limited only to the suspension and/or interference with easements and/or other private rights and/or the extinguishment of easements and/or other private rights which are inconsistent with the development'.</i></p>	<p>The use of the term 'anticipated' is not appropriate in this document.</p>

Funding Statement

Q No.	Paragraph	Extract from Funding Statement	Question/Comment
1.	General	N/A	<p>The anticipated costs of compulsory acquisition, and the methodology by which they have been calculated, (or the reasons why they cannot be calculated at this time) do not seem to be addressed in this draft. The applicant may want to make clear whether there are any constraints on how much information can be provided about the resource implications of acquiring the land and implementing the project.</p> <p>It would be helpful to make clear if the wording of this article, and the principle of it, have been discussed with the local planning authority (regarding the draft Article included in the Funding Statement and Order regarding payment of compensation).</p>
2.	2.5	<p><i>'In February 2016, Roxhill Developments Group Limited sold 50% of its effective interest in the Applicant (along with 10 other companies holding development sites) to SEGRO returning the funds realised to its shareholders. This gave the Applicant access to a shareholder with significant financial resources as detailed below.'</i></p>	<p>If the Applicant is seeking to rely on the transitional provisions within the 2017 EIA Regulations, it should explain how these are thought to apply to the 'Applicant' in this case.</p>
3.	4.1	<p><i>'4.1.1 [land 4.1.2 rights over land 4.1.3 temporary possession/use of land]'</i></p>	<p>Remove square brackets.</p>
4.	5.2	N/A	<p>It is noted that figures are currently absent from this draft and that the accounts have not been provided (see 7.1).</p> <p>The necessary detail is lacking in this draft document.</p>

Book of Reference

Q No.	Section	Extract from BoR	Question/Comment
1.	Introduction	N/A	The Introduction describes for Part 1 of the Book of Reference, the purpose of columns 3, 4, 5, 6 and 7 in the table. The Applicant may wish to consider describing columns 1 and 2.
2.	Introduction	N/A	<p>The Introduction as currently drafted does not explain that Part 2 is split into two parts namely, 2a and 2b. We note the following headings in the respective tables:</p> <ul style="list-style-type: none"> • Part 2a Category 3: Section 10 Compulsory Purchase Act 1965 and Section 152(3) Planning Act 2008 • Part 2b Category 3: Land Compensation Act 1973 <p>The Applicant should explain this approach in the Introduction.</p>
3.	Introduction	<i>'Land described in the Book of Reference is noted by a number and is shown on the Land Plans (Document Numbers 2.1A to 2.1G)'</i>	<p>Document numbering of the Land Plans (2.1 and 2.1A – 2.1F) are inconsistent with the Book of Reference Introduction.</p> <p>Please ensure all plans and all references to plans, are consistent throughout the suite of application documents upon submission of the Application.</p>
4.	Introduction	<p><i>'Where it is proposed to create new rights over land those plots are shown shaded blue on the Land Plans.</i></p> <p><i>Where it is proposed to only use land temporarily those plots are shown shaded yellow on the Land Plans.'</i></p>	The Book of Reference Introduction should provide information for all colours as shown in the Legend on the Land Plans.
5.	General	N/A	It would assist the reader if the plots in the Book of Reference were in numerical order starting at Plot 1 running sequentially.
6.	General	N/A	It would assist the reader if the individual sheet of the Land Plan associated with each plot was identified in the relevant parts of the Book of Reference.
7.	General	N/A	The Book of Reference should cross-refer to the relevant Article in the DCO. It may be helpful to include a separate column incorporating this in Part 1.

8.	General	N/A	<p>DCLG Guidance related to procedures for the compulsory acquisition of land Annex C states:</p> <p><i>There should be no discrepancy between the description of the land in the book of reference and the plan, and no room for doubt on anyone's part as to the precise areas of land which are to be compulsorily acquired.</i></p> <p>Currently the description of land in the Book of Reference cannot be checked against the Land Plans as the names of roads and places or local landmarks as described in the Book of Reference are not identified sufficiently on the Land Plans.</p>
9.	Part 1	N/A	<p>An additional row at the top of each page of the table clarifying the purpose of columns 3 to 6 as Category 1 and 2, and for column 7 as Category 2 would be helpful.</p>