

Top Ten TWA Order Clauses and Tips for Promoters of Light Rail / Tram Schemes

UKTram Centre of Excellence (December 2020)

1 – Adequate Land / Limits of Deviation

Ensure there is adequate land for construction, operation and maintenance including access to undertake these works, plus for any surveys (for example Clauses 4, 5, 11, 30 and 31 and Schedules 2,6,10).

Ensure the limits of deviation are sufficient as they can sometimes be artificial and set to other criteria such as land boundaries or other parties' interests. This can be very limiting in practice as the limits need to consider, for example, forward visibility (splays) for related highway design principles, and adequate land for substations and feeder cables etc. In some cases more detailed design for some aspects / locations may need to take place ahead of the submission of the application for a TWA Order to ensure that there is adequate provision within it.

Also be mindful of any land that may need to be included within the Order in relation to alteration of streets and affecting third party access / loading / parking as well as sufficient land for access to any structures etc that are to be maintained when the tramway is in operation.

When considering the extent of acquisition of land, note that all land and rights subject to compulsory purchase included within the Order have to be justified (including that it is in the public interest), and all acquisition costs must be included in the cost of the scheme.

2 – Obstructions

Clauses for Powers relating to the removal of obstructions (Clauses 39, 42 and 43, Schedule 11) need to be adequately worded to enable enforcement as otherwise they are useless. It may be appropriate link to obstructions on the highway to being an offence under road traffic acts (in addition to the provisions in Clause 41) in order to be able to enforce removal of them.

In some cases, enforcement can be through other provisions within the Order, for example the use of the term 'Tramroad' rather than 'Tramway' (note that there must be an appropriate definition of 'Tramroad' in Clause 1 'Interpretation') for the use of Traffic Regulation Orders (TROs) (Clause 41 and Schedule 11).

In terms of trees and other such obstructions (Clause 42), it may be helpful to include other flora within this clause.

3 – 'Level Crossings' / Road Junctions

Be careful with the wording used for level crossings (Clause 16). A tramway level crossing is simply a road junction where a segregated tramway crosses over the highway, but turns by other traffic onto the tramway may not be allowed. The junction may be a signalled or be a priority junction where the tramcar normally has priority.

This is distinct from and must not be confused with the meaning of a Railway Level Crossing in the Level Crossings Act of 1983 relating to heavy rail.

4 – Vertical Limits

Vertical limits (Clause 5) also must be adequately considered. Although limits are unrestricted descending, the limits for ascending powers are very restrictive (at 3m) unless they are specified to be higher within the Order. In some locations, 10m may be more appropriate.

Clauses 27 and 28 are only required if tunnelling is envisaged.

5 - Trespass

Any areas where trespass may become an issue (Clause 44) should be clearly defined, documented and made known to all parties.

As areas of trespass are usually determined at the time of construction, suitable assessment and then wording of the clause at this stage is essential, including some of these sections being designated as 'Tramroad' to aid enforcement (as above, note that there must be an appropriate definition of 'Tramroad' in Clause 1 'Interpretation'). Particular attention is required where a tramway is open to an adjacent heavy rail line. For example, see the Tinsley Chord Order.

6 - Omissions

Some of the clauses are very rarely used so may be considered that they not required for inclusion within the Order, for example Clause 15 and Clause 20. Each scheme should use the clauses deemed required and appropriate for that scheme.

In addition, unless there is a requirement for that particular scheme, all the enactments relating to railways should not automatically be included within the Order, as they may import obligations that are onerous, for example, requiring unnecessary fencing and gates etc.

7 – Local Highway and Planning Authorities

A good working relationship with the Local Authority in terms of their role as Highway Authority and Planning Authority is essential for many provisions within the Order. For example, in most cases, the Planning Direction sought as part the Order (Clause 48) is 'outline' rather than 'full' planning consent and therefore would be subject to Local Authority after the Order has been made.

This is also the case in the Local Authority's role as Highway Authority in relation to many of the clauses within the Order, for example, those relating to highways and traffic control / regulation (Clauses 40, 41), TROs and access to works / survey land (Clauses 11 and 21) as well as to the construction and maintenance of streets (Clause 12), bridges and tunnels (Clause 13) and level crossings (Clause 16). (To note in relation to urban traffic control, in some areas is regional, whereas in others it is within local authority boundaries.

This is also a consideration when preparing the schedules relating to limits of deviation and the above clauses (Schedules 3, 4, 5, 6, 7, and 11).

8 – Open Space and Crown Land

If there is any intent to compulsory purchase any public open space (Clause 49) (as defined in Section 4 of the Acquisition of Land Act 1981), make sure this is confirmed and highlighted

early in the development of the scheme, as the Order will be subject to Special Parliamentary Procedure (SPP) if the total area of the land / rights to be acquired permanently are over 200 square metres (total area not individual plots). Early engagement with the owner of such land may enable a private treaty to be agreed so the acquisition of land / rights over that land do not need to be included within the Order (note that Works powers will still be required over the land).

Another way to seek to avoid SPP is to find suitable and appropriate alternative land to 'swap' for the open space land. However, this alternative land must comply with the definition within the 1981 Act, which can be problematic.

If SPP is required, this could cause delay and risk to the making of the TWA Order.

Crown Land cannot be acquired permanently (by (other) statute), nor any rights acquired exclusively for the use of the promoter. As the promoter is required to have confirmation (in writing) that the Department with the interest in the land does not object to the scheme, they should be contacted as soon as possible. This would enable sufficient time for this to be provided, so the making of the Order is not delayed or they lodge an objection to the scheme.

Due to the above, any such open space or crown land should ideally only be included only if it is essential to the scheme and there is no viable alternative and thus it cannot be avoided.

9 – Statutory Undertakers

In relation to Statutory Undertakers (Clause 52 and Schedule 12), this can include Network Rail, utility companies, the Canal and River Trust and also drainage authorities etc. It is important to identify them early in the design of the scheme to be aware how many there are, and then to engage with them as soon as possible to understand how the scheme impacts upon them. I.e., this will feed into the design of the scheme (including avoidance of particularly costly diversions and timescales) and therefore the Order through powers sought, including land requirements. Also note they may have their own governance or duties with their own timescales. Statutory undertakers may also include the military or civil powers, for example if a scheme is close to a flight path.

In relation to utilities and their agents, there may be more than have been initially considered and they will have their own access and objectives. They will also have their own programme of activities (any contemporary or future plans for renewals etc) that need to be considered against the emerging tramway works.

Protective provisions included within the Order should be agreed well in advance of drafting, but beware of making these overly complicated and / or overly beneficial to the statutory undertaker to the detriment of the scheme including its construction, operation and maintenance. This should also assist minimising objections from statutory undertakers when the application for the Order is submitted and if not, will assist at Inquiry if agreement is not reached and they do not withdraw their objection.

10 – Building Attachments

When including building attachments into the Order (Clause 17), to avoid the often lengthy and costly requirement to seek permission from the owner for each fixing, if every fixing can be specified within the Order, this permission can be included within it. To be able to do this, a higher level of design will be required for the scheme in these areas and all appropriate surveys undertaken to confirm the structural integrity of any of the fixing locations.

If you want to look further at the Model Clauses, they can be found via the link below:

<https://www.legislation.gov.uk/uksi/2006/1954/made/data.pdf>

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