



# Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

## The Applicant's Response to National Highways' Deadline 3 Submission

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May 2023  
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## **1 The Applicant's Response to National Highways' Deadline 3 Submissions**

1. This document presents the Applicant's response to National Highway's Deadline 3 submission [REP3-139]. The Applicant's comments on National Highway's responses to second written questions are provided in **The Applicant's Comments on Responses to the Examining Authority's Second Written Questions** [document reference 18.2].

**Table 1 The Applicant's Response to National Highways Deadline 3 Submission [REP3-139]**

ID	Stakeholder Comment	Applicant Response
<b>1. Introduction</b>		
1.1	This is a further Written Representation which National Highways respectfully asks the ExA to consider concerning the application by Equinor New Energy Limited (Applicant) for an order granting development consent for the Sheringham Shoal Offshore Wind Farm Extension Project and Dudgeon Offshore Wind Farm Extension Project (DCO). This follows Issue Specific Hearing 3 held on 22nd March 2023 and the Compulsory Acquisition Hearing held on 29th March 2023. The Applicant seeks development consent for the authorised development described in Schedule 1 of the DCO (Authorised Development).	Noted. No response required.
1.2	The Authorised Development will comprise significant engineering works to underground onshore cabling beneath operational land forming the strategic road network (SRN) and land that is subject to the A47 North Tuddenham to Easton Development Consent Order 2022 (A47 Tuddenham Scheme). The latter is for the benefit of National Highways to improve the A47. The Applicant is seeking powers to temporarily possess the carriageway and land and to permanently acquire rights to construct, install, operate, maintain and decommission the Authorised Development.	Noted. The Applicant would like to clarify that the cables will be installed using trenchless crossing techniques under the SRN. The Applicant would not be seeking to temporarily possess the carriageway but acknowledges that some ground monitoring equipment may need to be placed on apparatus within the carriageway which would be agreed with National Highways following established approval processes for the placing of such equipment.
1.3	The SRN affected by the Authorised Development includes the A47 and A11, both of which are key transport links undergoing significant regeneration by National Highways. The A47 has four made development consent orders along its route between Thickthorn Junction, Blofield to North Burlingham, North Tuddenham to Easton and Wansford to Sutton which have yet to be implemented.	Noted. No response required.
1.4	It is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public money and resources that the Authorised Development proceeds in consultation and agreement with National Highways and with the appropriate protections for National Highways in place.	Noted. No response required.

ID	Stakeholder Comment	Applicant Response
1.5	The Applicant's draft DCO submitted as part of the DCO application includes rights to construct the Authorised Development and to interfere with the highway, to temporarily stop up the highway and to impose traffic regulation orders.	The Applicant would like to clarify that the <b>draft DCO (Revision G)</b> [document reference 3.1] does not include a specific provision which gives it powers to impose traffic regulation orders.
1.6	The draft DCO does not include any protective provisions for the benefit of National Highways and National Highways is concerned with the management of any works on, or within close proximity to the SRN and any land included in the A47 Tuddenham Scheme.	As set out in <b>The Applicant's Statutory Undertakers Position Statement (Rev B)</b> [REP3-083], the Applicant did not initially include protective provisions for National Highways at submission in August 2022 of the Application because National Highways initial proposed draft protective provisions were received too close to the submission of the application to include them in the draft DCO at that time. The Applicant included within the <b>draft DCO</b> [document reference 3.1] at Deadline 3 a set of protective provisions for National Highways which are based on the protective provisions it had been actively negotiating with National Highways over five months up until February 2023.
<b>2. Objection</b>		
2.1	National Highways does not object to the principle of the Authorised Development subject to the objections at 2.2 being resolved. This written representation will detail National Highways' key objections which are summarised below.	Noted. No response required.
2.2	<p>In order for National Highways to be able to withdraw its objection, National Highways requires:</p> <p>(a) the inclusion of protective provisions in the DCO for its benefit;</p> <p>(b) agreements with the Applicant that regulate</p> <p>(i) the manner in which rights needed by the Applicant are acquired and the relevant works are carried out, including terms which protect National Highways' statutory undertaking, and agreement that compulsory acquisition powers will not be exercised in relation to that land; and</p> <p>(ii) the carrying out of works in the vicinity of the SRN to safeguard National Highways' statutory undertaking.</p>	<p>With regards to (a) and the inclusion of protective provisions for National Highways, the Applicant notes that it has included a set of protective provisions for National Highways in its draft DCO at Deadline 3. These are included in Part 14 of Schedule 14 of the <b>draft DCO (Revision G)</b> [document reference 3.1]. It is acknowledged in <b>The Applicant's Statutory Undertakers Position Statement (Revision B)</b> [REP3-083], that these protective provisions are subject to negotiation. This is particularly so in light of the latest set of draft protective provisions that National Highways has submitted to the Examination as part of its further written representation [REP3-139].</p> <p>With regards to point (b), the Applicant confirms that it will enter into a co-operation agreement with National Highways and is engaging with National Highways to move negotiations on an appropriate co-operation</p>

ID	Stakeholder Comment	Applicant Response
		<p>agreement forwards urgently. The Applicant will provide a further update on the progress of those negotiations at Deadline 5 in line with its commitment to do so in response to Q2.8.1.2(d) in <b>The Applicant's Response to the Examining Authorities Second Written Questions</b> [REP3-101].</p>
<p><b>3 Protective Provisions</b></p>		
<p>3.1</p>	<p>The draft DCO does not include any protective provisions for the benefit of National Highways and the latest copy of National Highways' protective provisions is included at Appendix 1. National Highways has specific requirements where works are proposed to the highway (including street furniture) and on land owned, controlled or temporarily acquired by National Highways under the A47 Tuddenham Scheme.</p> <p>These include securing:</p> <ul style="list-style-type: none"> <li>- Bonds, cash deposits and commuted sums to ensure that National Highways is not exposed financially as a result of the Applicant's works;</li> <li>- Road space booking procedures to ensure that network occupancy requirements are managed effectively for the safety of the public and contractors;</li> <li>- Detailed design information to appropriately consider and approve the specification of works in accordance with technical standards;</li> <li>- Appropriate maintenance obligations and defects liability periods;</li> <li>- Collateral warranties from contractors and designers in respect of works undertaken on behalf of the Applicant;</li> <li>- Restrictions on the commencement of works and the use of powers until detailed design specifications are agreed and safety implications have been satisfactorily addressed;</li> <li>- Handover of maintenance responsibilities;</li> </ul>	<p>As noted above, the <b>draft DCO</b> (Revision G) [document 3.1] includes protective provisions for the benefit of National Highways at Part 14 of Schedule 14. The Applicant will continue to negotiate the draft protective provisions with National Highways and will provide a more detailed update on progress at Deadline 5.</p>

ID	Stakeholder Comment	Applicant Response
	<ul style="list-style-type: none"> <li>- Payment of all reasonable fees incurred by National Highways in respect of the Authorised Development;</li> <li>- Indemnities for any loss incurred by National Highways in respect of the Authorised Development;</li> <li>- Dispute resolution provisions.</li> </ul>	
3.2	<p>While negotiations with the Applicant on protective provisions are in progress, in the absence of an agreement that safeguards its interests, National Highways requests the Examining Authority (ExA) to recommend that the protective provisions at Appendix 1 are included in the draft DCO.</p>	<p>The Applicant does not agree that the protective provisions for National Highways in the form included at Appendix 1 of its further written representation [REP3-139] should be included in the Applicant's <b>draft DCO</b> [document reference 3.1]. The Applicant has noted that the original protective provisions provided to the Applicant in August 2022 were less onerous than either of the two more recent versions of protective provisions provided by National Highways. The Applicant is continuing to negotiate with National Highways in order to reach agreement on the form of protective provisions that should be included in the <b>draft DCO</b> [document reference 3.1] for the benefit of National Highways.</p>
3.3	<p>Without these protective provisions in the form required by National Highways being secured in the draft DCO, National Highways believes that the Authorised Development will have a serious detrimental impact on the operation of the SRN and could prevent National Highways from discharging its statutory duties and licence obligations or complying with the A47 Tuddenham DCO.</p>	<p>National Highways comments are noted and the Applicant reiterates that it is continuing to engage with National Highways to agree appropriate protective provisions with them. Please also see the Applicant's response at ID4.2 below with regards to 'serious detriment'.</p>
<b>4 Compulsory Acquisition</b>		
4.1	<p>The Book of Reference ("BoR") identifies plots ("Plots") of land owned, occupied or to be temporarily acquired by National Highways in respect of which compulsory acquisition powers to acquire new rights are sought.</p>	<p>Noted. No response required.</p>
4.2	<p>To safeguard National Highways' interests and the safety and integrity of the SRN, National Highways objects to the inclusion of the Plots in the Order and to Compulsory Powers being granted in respect of them and to any other powers affecting National Highways in the Order. The Plots constitute land acquired or to be acquired by National Highways for the purpose of its statutory undertaking. It is National Highways' view there is</p>	<p>National Highways objection is noted. The Applicant has set out clearly in its <b>Statement of Reasons (Revision D)</b> [REP3-019] why it considers that there is a compelling case in the public interest to compulsorily acquire land or create rights and impose restrictive covenants in, on, over or under land in all the plots included in the <b>Book of Reference (Revision E)</b> [REP3-015]. The Applicant notes for clarity that it is not</p>



ID	Stakeholder Comment	Applicant Response
	<p>no compelling case in the public interest for the Compulsory Powers and that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that the permanent acquisition of land forming the SRN and the creation of new rights and restrictions over all of the Plots can be created without serious detriment to National Highways' undertaking. No other land is available to National Highways to remedy the detriment. National Highways is under a duty to carry out its statutory duties, protect its legal position and preserve and maintain the integrity of the SRN. National Highways also objects to all other compulsory powers in the draft DCO that affect, and may be exercised in relation to, National Highways' property and interests.</p>	<p>seeking to acquire permanently under Article 19 any land forming part of the existing SRN or land that is proposed to become part of the SRN pursuant to The A47 North Tuddenham to Easton Development Consent Order 2022 (the 'A47 Tuddenham Order') (which is currently subject to judicial review). The Applicant does not consider that the inclusion of the plots where National Highways has an interest in the relevant land or where the land is included within the A47 Tuddenham Order presents a serious detriment to National Highways carrying out its statutory duties. Interactions with the existing A47 and A11 will be appropriately managed through the protective provisions for National Highways (including, as appropriate, compliance with established National Highways' certification and approval processes for the use of HDD under the SRN). In the event National Highways A47 Tuddenham scheme is constructed, the potential interactions between the A47 scheme can and will be appropriately managed through protective provisions and/or a co-operation agreement to be entered into by the parties.</p> <p>To succeed in an argument under section 127, National Highways must provide convincing argument and evidence of the detriment that it asserts, which it has not done to date. It is clear from previous considerations of section 127 that serious detriment is a high bar. Just because there is any adverse impact or detriment will not mean that serious detriment exists. In particular, the Applicant would highlight the decision on the Lake Lothing DCO where the Secretary of State did not accept the argument from ABP (the port authority) that the detriment it would suffer met the 'serious' element of the test. A copy of the Lake Lothing DCO Recommendation Report and the Secretary of State's Decision Letter can be found at Appendix A below. See in particular paragraphs 5.8.148 - 5.8.156 of the DCO Recommendation Report and paragraphs 25 and 35 of the Secretary of State's Decision Letter.</p>

ID	Stakeholder Comment	Applicant Response
4.3	<p>National Highways is also of the view that the installation of the cabling under the highway could be achieved via the New Roads and Street Works Act 1991(NRSWA) therefore negating the need for compulsory acquisition. NRSWA specifically refers to tunnelling/boring under the highway. National Highway contends that parliament intended for street works to be undertaken pursuant to this Act. Its provisions are comprehensive and well established and seek to protect both the undertaker and the street works authority. It is also supported by a code of practice. National Highways notes the draft DCO does not appear to include the SRN in its provisions concerning the exercise of street works but rather seeks compulsory acquisition of rights to undertake and maintain the works. The draft DCO also doesn't appear to include the provision in NRSWA which provides the benefit of an indemnity to the street works authority. As NRSWA contains the provisions referred to above, National Highways contends that the Applicant has not made out the case for compulsory acquisition concerning these works.</p>	<p>The Applicant notes National Highways comments regarding the use of the NRSWA as an alternative. However, the works proposed as part of SEP and DEP which include using HDD to install cabling under the SRN are an integral part of delivering two Nationally Significant Infrastructure Projects and it is entirely appropriate that those works are included within the development consent order, as associated development, in the way intended by Parliament under the Planning Act 2008. Indeed, the Applicant notes that when promoting its own DCOs National Highways routinely includes the same or substantially similar provisions as the Applicant in its own DCOs relating to streets and the application of NRSWA. The Applicant refers to, amongst many recent examples, the A47 North Tuddenham to Easton Development Consent Order 2022 article 14, the A47 Wansford to Sutton Development Consent Order 2023, article 11, A417 Missing Link Development Consent Order 2022 article 12, and A428 Black Cat to Caxton Gibbet Development Consent Order 2022 article 11. National Highways also often seek compulsory powers to acquire subsoil interests despite the surface of affected land having highway status and street works being applicable including for example in the A47 North Tuddenham to Easton Development Consent Order 2022. The Applicant does not accept NH's position on this point which is inconsistent with its own actions. For reference, the Applicant has appended a copy of the A47 North Tuddenham to Easton Development Consent Order 2022 at Appendix B.</p> <p>In addition, the Applicant notes that the NRSWA is only applicable where works are undertaken 'in' a street and there is a wealth of established case law (including being considered most recently in Southwark LBC v TfL [2018] UKSC 63) which confirms that the depth of a street (as a public highway) has a limit in law (including being considered most recently in Southwark LBC v TfL [2018] UKSC 63). Street status does not allow the street authority to interfere with the rights of the owner of the subsoil just because works are under a street, even where the owner of the subsoil is the same as the street authority. The precise depth of the installation of the SEP and DEP cables under the SRN will be determined post consent and it may be the case that the cables will be installed at a depth that falls within the remit of the subsoil owner and not within the</p>

ID	Stakeholder Comment	Applicant Response
		<p>street itself, in which case the NRSWA would not be applicable and it is therefore entirely necessary and appropriate for the relevant compulsory acquisition powers to be sought within the draft DCO.</p> <p>With regards to concerns raised about indemnities, the Applicant notes that National Highways protective provisions include an appropriate indemnity for the benefit of National Highways within paragraph (9) of Part 14 of Schedule 14.</p>
4.5	<p>Compulsory acquisition is intended to be a measure of last resort once all efforts to negotiate have failed. National Highways would welcome the opportunity to discuss the Applicant's requirements rather than it simply relying on compulsory acquisition. It is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper efficient use of public money and resources that the Authorised Development proceeds in consultation and agreement with National Highways and with the appropriate protections in place</p>	<p>The Applicant welcomes the opportunity to continue to negotiate with National Highways. National Highways legal department was contacted (in the same way as all other statutory undertakers potentially affected by SEP and DEP) early in 2022 to commence formal discussion regarding the protections it would require as a consequence of land in which it has an interest being identified within the book of reference. Through this contact the Applicant considers that it has sought to engage with National Highways in order to put in place mechanisms to avoid having to rely on compulsory acquisition of any of National Highways' interests. The Applicant remains committed to pursuing the ongoing discussions and negotiations with National Highways for the benefit of both parties.</p>
<p><b>5 A47 Tuddenham Scheme</b></p>		
5.1	<p>The potential for the draft DCO to undermine, fetter and hinder National Highways' ability to undertake the works authorised by the A47 Tuddenham Scheme is a concern to National Highways with regard to its ability to meet its legal commitments under the Planning Act 2008. The details are set out in National Highways' response to Q2.23.6.1 so are not repeated here.</p>	<p>The Applicant has provided its response within <a href="#">The Applicant's Comments on Responses to the Examining Authority's Second Written Questions</a> [document reference 18.2] submitted at Deadline 4.</p>
5.2	<p>To protect its undertaking National Highways has included actions for the Applicant in National Highways' protective provisions at Appendix 1. To establish processes to manage these, National Highways wishes to enter into a legal agreement with the Applicant to ensure co-operation between the competing interests. It is National Highways' view that failure to enter into a legal agreement will undermine National Highways' ability to meet</p>	<p>The Applicant notes that National Highways has now included a further revised set of protective provisions within Appendix 1 of its further written representation [REP3- 139]. As noted above, the Applicant is committed to continuing negotiations of the protective provisions and will enter into a co-operation agreement with National Highways in order to co-ordinate, as appropriate, the construction of SEP and DEP and National Highways' A47 Tuddenham Scheme.</p>

ID	Stakeholder Comment	Applicant Response
	its statutory obligations, its licence obligations with the Secretary of State and will result in considerable cost to the public purse.	

**Appendix A Copy of the Lake Lothing DCO Recommendation Report and the Secretary of State's Decision Letter**



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**Lake Lothing Third Crossing**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Transport

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Examining Authority

**David Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC** – Lead Member

**Stephen Roscoe BEng MSc CEng MICE** – Panel Member

**5 September 2019**

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# OVERVIEW

File Ref: TR010023

The application for the Lake Lothing Third Crossing (the Proposed Development), dated 3 July 2018, was made under section 37 of the Planning Act 2008 and received in full by the Planning Inspectorate on 13 July 2018.

The Applicant is Suffolk County Council.

The application was accepted for examination on 9 August 2018.

The examination of the application began on 5 December 2018 and was completed on 5 June 2019.

The Proposed Development comprises a new multi-span single carriageway opening bascule bridge highway crossing which, via associated approach roads and new roundabout junctions connecting into the existing road network, would link the areas north and south of Lake Lothing, Lowestoft. The opening bascule bridge design, facilitated by a bridge control tower on the south quay, would enable large vessels to continue to use the Port of Lowestoft. The Proposed Development also includes new mooring within the inner harbour for recreational vessels. The Proposed Development would accommodate all types of vehicular traffic as well as non-motorised users, such as cyclists and pedestrians. It would also include a new access road linking Waveney Drive to Riverside Road on the south side of Lake Lothing.

## **Summary of recommendation:**

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.



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**Examining Authority’s Report of Findings and Conclusions and  
Recommendation to the Secretary of State for Transport, dated 5  
September 2019**

**Corrections agreed by the Examining Authority prior to a decision  
being made**

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
1	1.1.2	“mooring”	“moorings”
50	5.7.1	“matter”	“matters”
54	5.8.14	Delete “liabilities” in 2 <sup>nd</sup> bullet point	Replace with “responsibilities”
127	8.5.183	Delete “recommended” as abbreviation previously used	Replace with “r”
Under list of Abbreviations – add:  NRA – Navigation Risk assessment  SCI – Sites of Community Importance			

# 1. INTRODUCTION

## 1.1. INTRODUCTION TO THE APPLICATION AND THE EXAMINATION

- 1.1.1. The application for the Lake Lothing Third Crossing (the Proposed Development) was submitted to the Planning Inspectorate by Suffolk County Council (the Applicant) on 13 July 2018 under section (s)31 of the Planning Act 2008 (the PA2008). It was accepted for examination under s55 of the PA2008 on 9 August 2018 [[PD-002](#)<sup>1</sup>].
- 1.1.2. The Proposed Development comprises a new multi-span single carriageway opening bascule bridge highway crossing which, via associated approach roads and new roundabout junctions connecting into the existing road network, would link the areas north and south of Lake Lothing, Lowestoft. The opening bascule bridge design, facilitated by a bridge control tower on the south quay, would enable large vessels to continue to use the Port of Lowestoft. The Proposed Development also includes new mooring within the inner harbour for recreational vessels. The Proposed Development would accommodate all types of vehicular traffic as well as non-motorised users, such as cyclists and pedestrians. It would also include a new access road linking Waveney Drive to Riverside Road on the south side of Lake Lothing [[APP-003](#)].
- 1.1.3. The location of the Proposed Development is shown on the Location Plan [[APP-012](#)] and Land Plans, final updated versions of which were received at Deadline 10 in the Examination Timetable [[REP10-014](#), [REP10-015](#), [REP10-016](#), [REP10-17](#), [REP10-18](#)]. At the time that the application was made, the site lay within the administrative boundaries of Waveney District Council and Suffolk County Council [[REP10-009](#)]. However, in the course of the Examination, on 1 April 2019 East Suffolk Council was created, consolidating and replacing Suffolk Coastal District Council and Waveney District Council. The Proposed Development is wholly within England.
- 1.1.4. The stated objectives of the Proposed Development are:
- to open-up opportunities for regeneration and development in Lowestoft;
  - to provide the capacity needed to accommodate planned growth;
  - to reduce community severance between north and south Lowestoft;
  - to reduce congestion and delay on the existing bridges over Lake Lothing;
  - to reduce congestion in the town centre and improve accessibility;
  - to encourage more people to walk and cycle, and reduce conflict between cycles, pedestrians and other traffic;
  - to improve bus journey times and reliability; and

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<sup>1</sup> References in square brackets are to documents in the Examination Library, available here: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010023/TR010023-000447-Examination%20Library%20-%20PDF%20Version.pdf>

- to reduce accidents [[APP-091](#)].

1.1.5. Other benefits of the Proposed Development include:

- an iconic bridge design developed with a 'marine tech' concept which references both Lowestoft's past as well as its growing role in the energy sector;
- a high-quality public realm, additional public space and landscaping; and
- benefits to the Port of Lowestoft and its customers and supply chain as a result of a reduction in congestion, improved journey times and journey time reliability [[APP-091](#)].

1.1.6. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for the Ministry of Housing, Communities and Local Government (SoSMHCLG) in its decision to accept the application for examination in accordance with s55 of the PA2008 [[PD-002](#)].

1.1.7. In respect of these tests the Application Form [[APP-003](#)] states:

*"In a direction dated 22 March 2016 under section 35 of the Planning Act 2008, the Secretary of State [for Transport] determined that the Lake Lothing Third Crossing is of national significance and is to be treated as development for which development consent is required."*

1.1.8. A copy of the s35 Direction is attached at Appendix B of the Applicant's Case for the Scheme [[APP-092](#)]. It confirms the Secretary of State for Transport's (SoST) decision that the Proposed Development, and any associated matters, should be treated as development for which development consent is required under the PA2008 and also sets out reasons why the Direction has been given.

1.1.9. Noting the s35 Direction, the Planning Inspectorate is satisfied that the Proposed Development and associated matters described in the Application Form [[APP-003](#)] and set out in Schedule 1 of the draft Development Consent Order (dCO) [[AS-030](#)] includes development for which development consent is required.

1.1.10. The benefits of the Proposed Development are corroborated in the appendix to the SoST's s35 Direction which states:

*"a connection to/from Trans European Network-Transport (TEN-T) and the Strategic Road Network [SRN] [and] would act as a tactical diversion route for the strategic road network, the A12/A47 when the Bascule Bridge, a nationally recognised pinch point, is closed thereby reducing delays and congestion on the SRN."*

1.1.11. Further, the appendix to the Direction states that the Proposed Development will provide:

- the economic benefits of the Proposed Development associated with the support of 'national growth potential';

- the connectivity to and from the Great Yarmouth and Lowestoft Enterprise Zone; and
- the delivery of the Port of Lowestoft's role in being the hub for the offshore wind farms that are part of the East Anglia Array, a major energy supplier for the UK [[APP-091](#)].

## **1.2. THE EXAMINING AUTHORITY**

- 1.2.1. On 15 October 2018 David Morgan and Dr Peter Widd were appointed as the Examining Authority (ExA) for the application under s61 and s65 of the PA2008 [[PD-001](#)].
- 1.2.2. In January 2019 Dr Peter Widd passed away unexpectedly. In this sad and unprecedented circumstance, the SoSMHCLG concluded that under s68(3) of the PA2008 a replacement Panel member was to be appointed with immediate effect.
- 1.2.3. On 23 January 2019 Stephen Roscoe was appointed under s65(1) of the PA2008 to restore the Panel to two persons [[PD-010](#)]. All of the work undertaken by Dr Widd has been incorporated in to the Examination under s73(2).

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

- 1.3.1. The persons involved in the Examination were:
- Persons who were Interested Parties (IPs) because they had made a Relevant Representation (RR); were a Statutory Party who requested to become an IP; or had been identified by the Applicant as persons who might be entitled to make a relevant claim for compensation if the dDCO were to be made and fully implemented.
  - Affected Persons (APs) who are affected by the Compulsory Acquisition (CA) and/ or Temporary Possession (TP) powers included in the application.
  - Other Persons who were invited to participate in the Examination by the ExA because they were either affected by it in some other relevant way or because they had particular expertise or evidence that the ExA considered to be necessary to inform the Examination.

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.4.1. The Examination began on 5 December 2018 and concluded on 5 June 2019.
- 1.4.2. The principal components of and events in the Examination are summarised below. A fuller description including timescales and dates can be found in Appendix A of this report.

### **The Preliminary Meeting**

- 1.4.3. On 6 November 2018 the ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of The Infrastructure Planning (Examination Procedure) Rules 2010 (the EPR), inviting them to the Preliminary Meeting (PM) (the 'Rule 6 letter') [[PD-005](#)]. The Rule 6 letter included:

- the arrangements and agenda for the PM;
- notification of an Open Floor Hearing (OFH) to be held following the PM;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- information about the availability of RRs and application documents; and
- other Procedural Decisions made by the ExA.

1.4.4. The PM took place on 5 December 2018 at Ivy House Country Lodge, Ivy Lane, Oulton Broad, Lowestoft, NR33 8HY. An audio recording [[EV-001](#)] and a note of the meeting [[EV-002](#)] were published on the National Infrastructure Planning website<sup>2</sup>.

1.4.5. The ExA's Procedural Decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the ExA's letter issued under Rule 8 of the EPR (the 'Rule 8 letter') [[PD-006](#)], dated 17 December 2018.

### **Key Procedural Decisions**

1.4.6. The Procedural Decisions set out in the Rule 8 letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. The decisions can be obtained from the Rule 8 letter [[PD-006](#)] and so there is no need to repeat them here.

### **Site inspections**

1.4.7. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.

1.4.8. Where the matters for inspection can be viewed from publicly accessible land and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and/ or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

1.4.9. The ExA carried out one USI on 30 October 2018 in order to establish a broad familiarity with the site and its surroundings prior to the commencement of the Examination [[EV-003](#)].

1.4.10. The ExA held the following ASIs:

- ASI1, 12 February 2019 [[EV-005](#)];
- ASI1a, 6 March 2019 [[EV-017](#)]; and

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<sup>2</sup> Available at:  
<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/lake-lothing-third-crossing/>



- AS2, 13 May 2019 [[EV-018](#)].

1.4.11. The itinerary for each of the ASIs can be found in the Examination Library under the above references.

1.4.12. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant sections of this report.

### **Hearing processes**

1.4.13. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
  - where persons affected by proposed CA and/ or TP powers (Affected Persons) object and request to be heard at a Compulsory Acquisition Hearing (CAH); and/ or
  - where IPs request to be heard at an OFH.
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement or the application of relevant law or policy is not clear.

1.4.14. The ExA held a number of hearings to ensure the thorough examination of the issues raised by the application. All hearings were held at Ivy House Country Lodge, Ivy Lane, Oulton Broad, Lowestoft, NR33 8HY; a location in the vicinity of the Proposed Development.

1.4.15. Issue Specific Hearings (ISHs) were held under s91 of the PA2008. Two ISHs were held on the subject matter of the dDCO:

- ISH1, 12 February 2019 [[EV-009](#)]; and
- ISH3, 14 May 2019 [[EV-021](#), [EV-022](#)].

1.4.16. An ISH was also held on the subject matter of the environment:

- ISH2, 7 March 2019 [[EV-011](#), [EV-012](#), [EV-015](#) and [EV-016](#)].

1.4.17. By the end of the day on 7 March 2019 the agenda for ISH2 had not been completed. ISH2 was therefore adjourned and resumed on 1 April 2019.

1.4.18. ISH2 addressed the following subject matters:

- Noise, air quality, water, traffic and transport, archaeology, ecology and design.
- Port operations (including navigation and berth utilisation).

1.4.19. Two CAHs were held under s92 of the PA2008:

- CAH1, 13 February 2019 [[EV-010](#)]; and
- CAH2, 14 May 2019 [[EV-023](#)].

- 1.4.20. All Affected Persons were provided with an opportunity to be heard. We also used these hearings to examine the Applicant's case for CA and TP in the round.
- 1.4.21. Two OFHs were held under s93 of the PA2008:
- OFH1, 5 December 2018 [[EV-004](#)]; and
  - OFH2, 8 March 2019 [[EV-013](#)].
- 1.4.22. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

### **Written processes**

- 1.4.23. Examination under the PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix B of this report) and published on the National Infrastructure Planning website. Individual document references to the Examination Library in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.
- 1.4.24. Key written sources are set out further below.

### **Relevant Representations**

- 1.4.25. 37 Relevant Representations (RRs) were received by the Planning Inspectorate [[RR-001 to RR-037](#)]. All makers of RRs received the Rule 6 letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapter 4 of this report.

### **Written Representations and other Examination Documents**

- 1.4.26. The Applicant and IPs were provided with opportunities to:
- make Written Representations (WRs) (Deadline (D)3);
  - comment on WRs made by the Applicant and other IPs (D4);
  - summarise their oral submissions made at hearings in writing (D1, D5, D7 and D10);
  - make other written submissions requested or accepted by the ExA; and
  - comment on documents issued for consultation by the ExA including:
    - the ExA's Report on Implications for European Sites (RIES) [[PD-014](#)] published on 3 May 2019 (by D11); and
    - the ExA's commentary on the dDCO [[PD-016](#)] published on 29 May 2019 (by D11).

1.4.27. All WRs and other Examination Documents have been fully considered by the ExA. The issues that they raise are considered in Chapter 4 of this report.

### **Local Impact Reports**

1.4.28. A Local Impact Report (LIR) is a report made by a relevant Local Authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited by and submitted to the ExA under s60 of the PA2008.

1.4.29. LIRs have been received from the following relevant Local Authorities:

- Waveney District Council and Suffolk County Council (Joint LIR) [[REP3-016](#)]; and
- Great Yarmouth Borough Council [[REP3-010](#)].

1.4.30. The LIRs have been taken fully into account by the ExA in all relevant chapters of this report.

### **Statements of Common Ground**

1.4.31. A Statement of Common Ground (SoCG) is a statement agreed between an applicant and one or more IPs, recording matters that are agreed between them.

1.4.32. By the end of the Examination the following bodies had concluded SoCGs with the Applicant:

- Associated British Ports (ABP).
- The Broads Authority.
- The Environment Agency.
- Highways England.
- Historic England.
- The Marine Management Organisation (MMO).
- Natural England.
- Suffolk County Council and Waveney District Council.

1.4.33. The above SoCGs are contained within the Applicant's 'Statements of Common Ground Report' [[REP10-076](#)].

1.4.34. All signed SoCGs have been taken fully into account by the ExA in all relevant chapters of this report. At the close of the Examination at 23:59 on 5 June 2019 all of the SoCGs comprising the Applicant's Statements of Common Ground Report were signed, save for the SoCG between the Applicant and ABP which has the status of "approved but not signed" [[REP10-076](#), Appendix 1]. We have considered this distinction in taking account of the content of the SoCG between the Applicant and ABP.

### **Written questions**

1.4.35. The ExA asked two rounds of Written Questions.

- First Written Questions (ExQ1) [[PD-007](#)] were published with the Rule 8 letter [[PD-006](#)] on 17 December 2018.

- Second Written Questions (ExQ2) [[PD-012](#)] were published on 22 March 2019.

1.4.36. All responses to the ExA's written questions have been fully considered and taken into account in all relevant chapters of this report.

### **Requests to join and leave the Examination**

1.4.37. One person who was not already an IP requested that the ExA should enable them to join the Examination before the PM. John Pawsey for Waveney Gymnastics Club (WGC) made a written submission purporting to be a late Relevant Representation on 26 September 2018. The ExA exercised its discretion to accept the submission from WGC as an Additional Submission [[AS-015](#)]. Subsequently WGC was given Other Person status in the Examination.

1.4.38. There were no other requests to join the Examination by any other persons who were not already IPs.

1.4.39. During the Examination, as a consequence of discussion at hearings and between relevant IPs and the Applicant, the following persons wrote to the ExA to inform it that their representations were withdrawn:

- Brookhouse (Lowestoft) Nominees VI Ltd [[AS-022](#)].
- Northumbrian Water Limited [[AS-026](#)].
- Anglian Water Services Limited [[AS-024](#)].
- Cadent Gas Limited [[AS-023](#)].

1.4.40. Any consequences arising from the withdrawal of representations by the above listed persons are considered in Chapter 4 of this report.

## **1.5. ENVIRONMENTAL IMPACT ASSESSMENT**

1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

1.5.2. On 28 February 2017 the Applicant submitted a Scoping Report to the then Secretary of State for Communities and Local Government under Regulation 8 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion) [[APP-164](#)]. It follows that the Applicant is deemed to have notified the Secretary of State under Regulation 6(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Proposed Development.

1.5.3. On 7 April 2017 the Planning Inspectorate provided a Scoping Opinion [[APP-165](#)]. Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES [[APP-136 to APP-205](#)]. The application was eligible to be considered under the EIA Regulations 2009 by virtue of the EIA Regulations 2017 transitional provisions.

1.5.4. On 8 October 2018 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of the PA2008 and Regulation 13 of the EIA Regulations had been complied with [[OD-002](#)].

1.5.5. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4 of this report.

## **1.6. HABITATS REGULATIONS ASSESSMENT**

1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided [[AS-003](#) and [REP10-062](#)].

1.6.2. A Report on the Implications for European Sites (RIES) was published on 3 March 2019 [[PD-014](#)]. IPs were invited to comment on the RIES at D11 in the Examination Timetable, 4 June 2019.

1.6.3. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this report.

## **1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

1.7.1. By the end of the Examination there were no matters subject to any separate undertakings, obligations and/ or agreements. All relevant considerations are addressed in this report as bearing on the DCO.

## **1.8. OTHER CONSENTS**

1.8.1. Other consents may be required to implement the Proposed Development. These are identified in the Applicant's Statement of Reasons [[REP10-009](#)]. A Consents and Agreements Position Statement is also provided with the application [[APP-134](#)]. The Applicant identifies a number of consents that may be required in addition to development consent, including:

- Environmental Permits under The Environmental Permitting (England and Wales) Regulations 2016.
- Protected Species Licences under the Wildlife and Countryside Act 1981, The Conservation of Habitats and Species Regulations 2017 and other legislation.
- Consents required under the Highways Act 1980 in respect of construction works (eg crane oversailing licences, hoarding licences etc).

1.8.2. In relation to these other consents, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the Proposed Development should the SoST decide to grant development consent.

## **1.9. CHANGES TO THE APPLICATION**

- 1.9.1. The Applicant submitted a request to the ExA on 29 January 2019 asking that a series of eight changes to the application be accepted on the basis of their 'non-material' status [[REP4-013](#)]. The series of changes was amended in respect of 'Non-Material Change 2' (NMC2) in a subsequent letter from the Applicant dated 12 April 2019 [[AS-020](#)].
- 1.9.2. For the reasons set out in its letter dated 9 May 2019 [[PD-015](#)], the ExA is satisfied that the eight changes proposed by the Applicant do not constitute a material change to the application. Consequently, the application was updated in a series of documents provided by the Applicant at D10 [[REP10-001 to REP10-062](#)].
- 1.9.3. In the course of the Examination the ExA requested a number of other supplementary documents to clarify matters arising from the representations received and to reflect ongoing negotiations with IPs.
- 1.9.4. The ExA has considered all changes to the application and is satisfied that they do not, either alone or in combination, constitute a material change to the application.

## **1.10. STRUCTURE OF THIS REPORT**

1.10.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the application and the processes used to carry out the Examination and make this report.
- **Chapter 2** describes the site and its surroundings, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoST's decision.
- **Chapter 4** sets out the planning issues that arose from the application and during the Examination.
- **Chapter 5** considers the effects of the Proposed Development on the environment
- **Chapter 6** considers effects on European Sites and Habitats Regulations Assessment (HRA).
- **Chapter 7** sets out the balance of planning considerations arising from chapters 4 and 5, in the light of the factual, legal and policy information in chapters 1 to 3.
- **Chapter 8** sets out the ExA's examination of Compulsory Acquisition and Temporary Possession proposals.
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the draft Development Consent Order.
- **Chapter 10** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.10.2. This report is supported by the following Appendices:

- **Appendix A** – Events in the Examination
- **Appendix B** – The Examination Library
- **Appendix C** – List of abbreviations used in the Examination
- **Appendix D** – The recommended dDCO

## **2. THE PROPOSED DEVELOPMENT**

### **2.1. THE PROPOSED DEVELOPMENT**

2.1.1. The Proposed Development would provide a new single-carriageway road crossing of Lake Lothing consisting of a multi-span bridge with associated approach roads. The principal components include:

- an opening bascule bridge over the Port of Lowestoft, in Lake Lothing;
- on the north side of Lake Lothing, a bridge over Network Rail's East Suffolk Line and a reinforced earth embankment joining that bridge, via a new roundabout junction, to the C970 Peto Way between Rotterdam Road and Barnards Way; and
- on the south side of Lake Lothing, a bridge over the northern end of Riverside Road including the existing access to a commercial property (Nexen Lift Trucks) and a reinforced earth embankment (following the alignment of Riverside Road) joining this bridge to a new roundabout junction with the B1531 Waveney Drive [[APP-002](#)].

2.1.2. The Proposed Development would be able to accommodate all types of vehicular traffic as well as non-motorised users (NMUs) and the opening bascule bridge design would allow large vessels to continue to use the Port of Lowestoft [[APP-002](#)].

2.1.3. The Proposed Development would also include:

- a control tower immediately to the south of Lake Lothing to facilitate the operation of the opening section of the bridge;
- the provision of a pontoon for use by recreational vessels, located to the east of the new highway crossing, within the inner harbour of Lake Lothing; and
- works to facilitate the construction, operation and maintenance of the Proposed Development, including the installation of road drainage systems; landscaping and lighting; accommodation works for accesses to premises; the diversion and installation of utility services; and temporary construction sites and access routes [[APP-002](#)].

2.1.4. The following changes to the existing highway network are also included in the Proposed Development:

- the closure of Durban Road to vehicular traffic at its junction with Waveney Drive;
- the closure of Canning Road at its junction with Riverside Road and the construction of a replacement road between Riverside Road and Canning Road to the west of the Registry Office;
- a new access road from Waveney Drive, west of Riverside Road, to provide access to property at Riverside Business Park;
- improvements to Kimberley Road at its junction with Kirkley Run; and
- part-signalisation of the junction of the B1531 Victoria Road/ B1531 Waveney Drive with Kirkley Run [[APP-002](#)].

2.1.5. A full description of the works required to deliver the Proposed Development are set out in Chapter 5 of the Environmental Statement



(ES) [[APP-136](#)], in Schedule 1 to the draft Development Consent Order (dDCO) [[AS-030](#)] and on the Works Plans [[APP-023](#), [REP10-019](#), [REP10-020](#)].

- 2.1.6. The recommended dDCO (rdDCO) (Appendix D of this report) includes principal powers that relate to the Compulsory Acquisition (CA) of land, the creation of new rights in land and the interference with or extinguishment of existing rights in land. Temporary Possession of land is also proposed. The Statement of Reasons (SoR) [[REP10-009](#)] and the Compulsory Acquisition Negotiations and Objection Tracker [[REP10-073](#)] explain the need for the Proposed Development, with the former offering a public interest case for the land to be acquired compulsorily.
- 2.1.7. The Order land includes land in which Statutory Undertakers have rights or other interests. These include electricity, gas, water and sewerage undertakers; operators of electronic communications code networks; railways interests (Network Rail); the harbour authority (Associated British Ports); and the Environment Agency [[REP10-009](#)]. Powers within the rdDCO make provision for CA powers associated with these, subject to Schedule 13 Parts 1 to 7 which deal with the protection of their interests.

## **2.2. THE SITE**

- 2.2.1. The site is contained by the Order Limits and is illustrated in the Land Plans [[APP-016](#), [APP-017](#), [APP-018](#) and [REP10-016](#), [REP10-017](#), [REP10-018](#)]. The site is also described in detail in the SoR [[REP10-009](#)] and in Chapter 5 of the ES [[APP-136](#)].
- 2.2.2. Lake Lothing is a saltwater waterbody linking the North Sea to The Broads National Park on an east-west axis and therefore dividing Lowestoft north to south by a water feature of up to 180m wide. Currently there are two road crossings of Lake Lothing: Mutford Bridge (a lifting bridge on the A1117) to the west, and the A47 Bascule Bridge (a lifting bridge on the A47) to the east. The bridges are separated by a distance of approximately 3km [[APP-091](#)].
- 2.2.3. The Port of Lowestoft (the Port), owned and operated by ABP in its capacity as the Statutory Harbour Authority, is divided into two sections:
- The outer harbour lies to the east of the existing A47 Bascule Bridge, is constructed from breakwaters, and consists of the Hamilton Dock, Waveney Dock, Trawl Dock and a yacht marina.
  - The inner harbour comprises the entirety of Lake Lothing to the west of the A47 Bascule Bridge and east of Mutford Bridge and consists of Town Quay, South Quay, Silo Quay, North Quay, Shell Quay and the Lowestoft Haven Marina [[REP10-009](#)].
- 2.2.4. Within and adjacent to the Order Limits to the north of Lake Lothing, to the east of the Lowestoft North Quay Retail Park, the Proposed Development would connect by way of a new roundabout junction into Peto Way. The land on which the new roundabout would be located is currently vacant hardstanding, lying immediately to the south of Peto



Way. Heading in a southerly direction towards Lake Lothing, the Proposed Development would cross the East Suffolk railway line which is owned by Network Rail Infrastructure Limited. The East Suffolk line runs almost in parallel with the northern edge of Lake Lothing and Denmark Road, and connects Lowestoft railway station to Ipswich and Norwich [[REP10-009](#)].

- 2.2.5. Inevitably the Proposed Development would traverse Lake Lothing, requiring land within the operational port area and in the lake itself [[REP10-009](#)].
- 2.2.6. Within and adjacent to the Order Limits to the south of Lake Lothing are a number of commercial and municipal buildings. Nexen, a manufacturer of fork-lift trucks, operates from a building to the east of the site. A small area of the Nexen site is proposed to be acquired and/ or subject to new rights and the access to the site would need to be re-provided by way of an underpass beneath the improved Riverside Road, which would be at an elevated level, rising on an embankment and then passing the Nexen site on piers [[REP10-009](#)].
- 2.2.7. Motorlings, a car sales business, owns and occupies land between Nexen's site and the current alignment of Waveney Drive (to the west of Kirkley Ham and the Asda superstore). A small area of the Motorlings site is proposed to be acquired and/ or subject to new rights, and the access to the site would need to be re-provided by way of new private means of access on the north side of Waveney Drive, to the west of Kirkley Ham. Motorlings' existing access off Riverside Road would not be retained [[REP10-009](#)].
- 2.2.8. Further south a small number of residential dwellings and a small privately-run beauty salon business, Bellablue, lie within or partially within the Order Limits; mainly around the southern side of the existing junctions of Riverside Road and Durban Road with Waveney Drive [[REP10-009](#)].
- 2.2.9. On the south side of Lake Lothing, the Proposed Development would be located within the Riverside Enterprise Zone [[APP-092](#), Appendix D].
- 2.2.10. On both the northern and southern sides of the site, the Order Limits include some existing highway for the purposes of incorporating it into the Proposed Development [[REP10-009](#)].
- 2.2.11. Several Public Rights of Way (PRoW) would be affected by the Proposed Development, including existing highways. Private means of access would also be affected. These effects are explained in Annex C to the SoR [[REP10-009](#)]. The Rights of Way and Access Plans formalise the proposed changes to existing highways and means of access [[REP10-021](#), [REP10-022](#), [REP10-023](#)].
- 2.2.12. The site includes a small area of Crown land held on behalf the Crown by the Secretary of State for Transport [[APP-051.2](#)]. The site does not include any special category land [[REP10-009](#)].

## **2.3. THE SURROUNDINGS**

- 2.3.1. In the areas adjacent to and beyond the Order Limits the existing land uses are primarily urban; that is they comprise transport, residential, commercial and industrial uses, but being broadly characterised by a mixture of commercial and residential properties which flank both the north and south sides of Lake Lothing [[REP10-009](#)].
- 2.3.2. The main transport links in the area include the A146 which links Lowestoft to Norwich; the A47 which runs towards Great Yarmouth to the north; and the A12 which runs southwards towards Ipswich and Felixstowe. Running almost in parallel to the northern edge of the lake and Denmark Road, the East Suffolk Railway Line serves Lowestoft Railway Station. The railway crosses Lake Lothing at its western end, adjacent to the A1177 at Mutford Bridge [[REP10-009](#)].
- 2.3.3. On the north side of Lake Lothing lies Normanston Park which provides facilities for football and cricket. Leathes Ham, a Local Nature Reserve, lies to the north-west [[REP10-009](#)].
- 2.3.4. Outside the Order Limits and to the north of the proposed new northern roundabout and the existing roundabout at the junction of Peto Way/ Rotterdam Road/ Denmark Road there are residential, industrial and commercial properties and an outdoor play area [[REP10-009](#)].
- 2.3.5. The port operations of ABP are predominant on the north side of Lake Lothing, occupying an area of approximately 40 hectares (much of which lies outside the Order Limits), alongside the operational port area within the lake itself. An existing grain silo is located to the east of the Order Limits [[REP10-009](#)].
- 2.3.6. A range of activities take place at the Port, including the handling of dry bulks (including grain and cement) and the handling of general cargo (eg forest products, steel and general cargo). The Port is also understood to be the operation and maintenance base for the Greater Gabbard offshore windfarm and the East Anglia ONE windfarm [[REP10-009](#)].
- 2.3.7. On the south side of Lake Lothing, lying to the north of Waveney Drive, there are areas of vacant, disused industrial land. There is also a County Wildlife Site (CWS) known as the Jeld-Wen Mosaic CWS. Further west on the south side of Lake Lothing is the Lowestoft Haven Marina which provides berthing facilities and a boat hoist. North of Lake Lothing in this location are other marinas including Lowestoft Yacht Services [[REP10-009](#)].
- 2.3.8. To the west of the Order Limits the land is owned and occupied by East Suffolk Council, housing administrative buildings (including the Lowestoft Register Office) and buildings occupied by the Applicant [[REP10-009](#)].
- 2.3.9. West of the existing Riverside Road alignment, and to the north of Waveney Drive, there are commercial buildings owned and occupied by Northumbrian Water Limited (trading locally as Essex and Suffolk Water); NWES Property Services Limited; and Arrow Group. There is also an area

of land managed for the purposes of biodiversity, also owned by Northumbrian Water Limited [[REP10-009](#)].

- 2.3.10. West of Mutford Bridge lies Oulton Broad which provides a gateway to the River Waveney and The Norfolk Broads National Park (approximately 1.5km to the west of the Order Limits) [[REP10-009](#)].

## **2.4. RELEVANT PLANNING HISTORY**

- 2.4.1. A detailed planning history of the sites within and adjacent to the Order Limits is provided in the Applicant's Case for the Scheme [[APP-091](#), para 3.7.6 and 3.7.7]. Any relevant matters arising have been considered at the appropriate section of this report.

## **3. LEGAL AND POLICY CONTEXT**

### **3.1. INTRODUCTION**

- 3.1.1. This chapter sets out the legal and policy context in which the application was prepared and examined.

### **3.2. THE PLANNING ACT 2008 AND NATIONAL POLICY STATEMENTS**

- 3.2.1. The Proposed Development does not satisfy all of the thresholds and requirements in relation to highway-related development set out in s22 of the PA2008. However, on 22 March 2016, in a Direction under s35 of the PA2008, the Secretary of State for Transport (SoST) determined that the Lake Lothing Third Crossing is of national significance and that the Proposed Development and any associated matters are to be treated as development for which development consent is required [APP-003]. A copy of the s35 Direction is attached at Appendix B of the Applicant's Case for the Scheme [APP-092]. This includes a statement of the reasons why the Direction has been given in terms of the Trans-European Transport Network, reducing delays on the strategic road network (SRN) and contributing to the Port of Lowestoft. These are all matters which may be considered important and relevant.
- 3.2.2. Paragraph 1.3 of the National Policy Statement for National Networks<sup>3</sup> (NPSNN) explains that where a development does not meet the requirements for a Nationally Significant Infrastructure Project (NSIP) set out in s22 of the PA2008, but by Direction the SoST determines that the development is development for which development consent is required, the application needs to be considered in accordance with the NPSNN. Section 104 of the PA2008 therefore has effect in this case.
- 3.2.3. In deciding the application, s104(2) of the PA2008 requires the Secretary of State (SoS) to have regard to:
- (a) any national policy statement which has effect in relation to development of the description to which the application relates (a 'relevant national policy statement');
  - (aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;
  - (b) any local impact report (within the meaning given by section 60(3) submitted to the SoS before the deadline specified in a notice under section 60(2);
  - (c) any matters prescribed in relation to development of the description to which the application relates; and

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<sup>3</sup> Available at: <https://www.gov.uk/government/publications/national-policy-statement-for-national-networks>

(d) any other matters which the Secretary of State thinks are both important and relevant to the SoS's decision.

3.2.4. While the SoS must take the above into account, he or she must be satisfied that the decision made on the application would not:

- lead to the United Kingdom being in breach of any of its international obligations; or
- lead to the SoS being in breach of any duty imposed on him by or under any enactment; or
- be unlawful by virtue of any enactment.

3.2.5. The SoS must also consider whether the adverse impacts of the Proposed Development outweigh its benefits, and whether any condition prescribed for deciding an application otherwise than in accordance with a National Policy Statement is met.

### **National Policy Statement for National Networks**

3.2.6. Section 2 of the NPSNN sets out the need for development of the national networks and includes the Government's vision and strategic objectives for the national road and rail networks. These are to deliver:

- networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs;
- networks which support and improve journey quality, reliability and safety;
- networks which support the delivery of environmental goals and the move to a low carbon economy; and
- networks which join up our communities and link effectively to each other.

3.2.7. A critical need is identified to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity, and to provide a transport network that is capable of stimulating and supporting economic growth (NPSNN paragraphs 2.1 to 2.11).

3.2.8. There is a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy (NPSNN paragraph 2.6).

3.2.9. In order to meet the need set out in paragraphs 2.1 to 2.11 of the NPSNN, in some cases it will not be sufficient to simply expand capacity on the existing network identified in the NPSNN. In those circumstances new road alignments and corresponding links, including alignments which cross a river or estuary, may be needed to support increased capacity and connectivity (NPSNN paragraph 2.27).

- 3.2.10. The NPSNN goes on to set out the principles by which proposed development of the SRN should be assessed in Section 4 and identifies the generic impacts to be considered in Section 5. The Applicant sets out the conformity of the Proposed Development with Section 4 and 5 of the NPSNN in Appendix A to its Case for the Scheme [[APP-091](#)].
- 3.2.11. We address the detailed criteria against which the impacts of the Proposed Development fall to be considered as we report on each of those impacts in Chapter 5 of this report.

### **National Policy Statement for Ports**

- 3.2.12. The National Policy Statement for Ports (NPSP) sets out the framework for making decisions on proposals for new port development, recognising the essential role they play in the UK economy and the wider economic benefits that they can bring. In addition, it sets out the vital role that UK ports play in the energy sector, in terms of import and export of energy supplies, in the construction and servicing of offshore energy installations and in supporting oil and gas pipelines. It is also noted that port handling needs for energy may change as renewables play an increasingly important part as an energy source.
- 3.2.13. The draft Development Consent Order (dDCO) does not propose new port development, but the Proposed Development does cross Lake Lothing and interfaces with the Port of Lowestoft. On this basis we consider that relevant content within the NPSP is an important consideration in the assessment of this application. The Applicant assesses the Proposed Development against relevant paragraphs within the NPSP in Appendix A to its Case for the Scheme [[APP-091](#)].

## **3.3. MARINE AND COASTAL ACCESS ACT 2009 AND UK MARINE POLICY STATEMENT**

- 3.3.1. The Marine and Coastal Access Act 2009 (MCAA) introduced the production of marine plans and designation of Marine Conservation Zones in UK waters, as well as establishing the Marine Management Organisation (MMO).

### **UK Marine Policy Statement**

- 3.3.2. Under s104(2)(aa) of the PA2008 the SoS must have regard to "*the appropriate marine policy documents.*" The appropriate marine policy documents in this case are the UK Marine Policy Statement (MPS) and the East Inshore and East Offshore Marine Plans (EIEOMP) [[APP-091](#)].
- 3.3.3. The MPS was prepared and adopted for the purposes of s44 of the MCAA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.
- 3.3.4. The MPS provides the high-level policy context, within which national and sub-national marine plans will be developed, implemented, monitored, and amended and will ensure appropriate consistency in marine planning

across the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf<sup>4</sup>.

3.3.5. Chapter 3 of the MPS sets out the policy objectives for the key activities that take place in the marine environment in relation to:

- Marine protected areas.
- Defence and national security.
- Energy production and infrastructure development.
- Ports and shipping.
- Marine aggregates.
- Marine dredging and disposal.
- Telecommunications cabling.
- Fisheries.
- Aquaculture.
- Surface water management and waste water treatment and disposal.
- Tourism and recreation.

3.3.6. The Proposed Development does not fit comfortably within any of the above categories, but because the application site is located within a Marine Plan Area [[APP-091](#), Figure 7-1] the objectives of the MPS are relevant to the Proposed Development.

### **East Inshore Marine Plan**

3.3.7. The relevant marine plan is the East Inshore Marine Plan (EIMP) [[APP-091](#)]. It should be noted that whilst the EIMP was published simultaneously with the East Offshore Marine Plan (EOMP) as a single document, they are separate marine plans.

3.3.8. The EIMP area covers an area of 6,000 square kilometres and includes the area of sea stretching from Flamborough Head to Felixstowe and extends out to the seaward limit of the territorial sea (approximately 12 nautical miles), as well as inland areas such as The Broads and other waters subject to tidal influence. It includes 22% of ports (by number) in England and 11% by area of England's Special Areas of Conservation, as well as 29% of Special Protection Areas. The EOMP, which is not a relevant marine plan in this case, covers the marine area from 12 nautical miles out to the maritime borders with Netherlands, Belgium and France [[APP-091](#)].

3.3.9. The EIMP establishes ten objectives to deliver the marine plan's vision and support sustainable development. The policies comprising the plans elaborate these, covering economic growth and employment benefits; renewable energy; support for communities; conservation of heritage assets and seascape; conservation of the marine ecosystem; protection of and recovery of biodiversity; support for marine protected areas;

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<sup>4</sup> See MCAA s42(3) and (4)

support for climate change adaptation and mitigation; and integration with other plans.

- 3.3.10. The Applicant's assessment of the Proposed Development against the policies in the EIMP is set out in paragraphs 7.6.9 to 7.6.41 of its Case for the Scheme [[APP-091](#)]. Our findings and conclusions in this respect are set out in Chapter 5 of this report.

### **Marine licencing**

- 3.3.11. Works in Schedule 1 of the dDCO would be located in "*waters in or adjacent to England up to the seaward limits of the territorial sea*". A marine licence would ordinarily therefore be required to deliver the Proposed Development [[APP-091](#)].
- 3.3.12. Because of this the dDCO includes at Schedule 12 provision for a Deemed Marine Licence (DML). There is a statutory duty on applicants to consult the MMO on NSIPs which would affect, or would be likely to affect, any relevant areas defined in s42(2) PA2008; including "*waters in or adjacent to England up to the seaward limits of the territorial sea*".
- 3.3.13. The terms of this DML have been determined through consultation and engagement with the MMO [[APP-091](#)]. Our findings and conclusions in respect of the dDCO, which includes the DML, are set out in Chapter 9 of this report.

## **3.4. EUROPEAN LAW AND RELATED UK REGULATIONS**

### **Habitats Directive (Council Directive 92/43/EEC) and Birds Directive (Council 2009/147/EC)**

- 3.4.1. The provisions of the Habitats Directive and the Birds Directive are addressed in this application.
- 3.4.2. The Applicant's screening exercise in respect of whether a Habitats Regulations Assessment (HRA) is required is summarised within the HRA Report [[AS-003](#), [REP10-062](#)]. We deal with the need for a HRA in Chapter 6, and other matters relating to biodiversity and ecological conservation in Chapter 5.

### **Water Framework Directive (Council Directive 2000/60/EC)**

- 3.4.3. On 23 October 2000, Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, or in short the EU Water Framework Directive (WFD), was adopted. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. Representations from the Environment Agency in respect of the Applicant's assessment against the WFD status and objectives [[RR-009](#), [REP3-015](#), [REP10-076](#)] are considered in Chapter 5 of this report.



## **Air Quality Directive (Council Directive 2008/50/EC)**

- 3.4.4. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (EU Air Quality Directive (AQD)) entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values (LV) are exceeded for ambient air quality with respect to sulphur dioxide (SO<sub>2</sub>); nitrogen dioxide (NO<sub>2</sub>) and mono-nitrogen oxides and nitrogen dioxide (NO<sub>x</sub>); particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>); lead; benzene; and carbon monoxide. In England the Air Quality Standards Regulations 2010 give effect to the AQD.
- 3.4.5. The Air Quality Strategy (AQS) establishes the UK framework for air quality improvements<sup>5</sup>. The AQS establishes a long-term vision for improving air quality in the UK and offers options for further consideration to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by Local Authorities.
- 3.4.6. The air quality plan for nitrogen dioxide (NO<sub>2</sub>) in the UK (2017)<sup>6</sup> was published on 26 July 2017. It has been the subject of various proceedings brought against the UK Government by the environmental non-governmental organisation ClientEarth for breaching the AQD. Successive Supreme Court judgments in favour of ClientEarth have culminated in the publication of the Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations (October 2018)<sup>7</sup>.
- 3.4.7. The Clean Air Strategy (Defra, 2019) sets out the comprehensive action required from the UK Government, and society, to meet air quality objectives.
- 3.4.8. We consider the Proposed Development against air quality objectives in Chapter 5 of this report.

## **3.5. OTHER LEGAL AND POLICY PROVISIONS**

### **Climate Change**

- 3.5.1. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating a National

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<sup>5</sup> Available at: <https://www.gov.uk/government/publications/the-air-quality-strategy-for-england-scotland-wales-and-northern-ireland-volume-1>

<sup>6</sup> Available at: <https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>

<sup>7</sup> Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746100/air-quality-no2-plan-supplement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746100/air-quality-no2-plan-supplement.pdf)

Policy Statement. This duty has been addressed throughout Chapter 5 of this report.

- 3.5.2. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets, and these have also been taken into account, as relevant, in Chapter 5 of this report.
- 3.5.3. After the close of the examination the Climate Change Act was amended by Statutory Instrument 1056 (2019)<sup>8</sup> to a 100% net zero target by 2050. The recommendations in this report have not taken account of this change due to the timing and it will be a matter for the Secretary of State to consider in their final decision.

### **The National Planning Policy Framework and Planning Practice Guidance**

- 3.5.4. The National Planning Policy Framework (NPPF) does not contain specific policies relating to NSIPs. However, pursuant to paragraph 1.18 of the NPSNN, insofar as provisions in the NPPF are relevant to the application, we have taken them into account in our assessment of the issues in this case. Planning Practice Guidance is also taken into account where appropriate; in particular in the advice on the imposition of planning conditions<sup>9</sup> has applied to our consideration of the appropriateness of Requirements in Schedule 2 of the dDCO.

### **National Infrastructure Delivery Plan 2016 – 2021**

- 3.5.5. The Applicant states that the objectives of the NPSNN are aligned with those contained in the National Infrastructure Delivery Plan 2016 – 2021 (the NIDP)<sup>10</sup>.
- 3.5.6. The NIDP states at paragraph 3.2 that the SRN is “*vital to businesses and the successful functioning of the economy*”. Paragraph 5.16 recognises that “*with two thirds of all freight being carried on the Strategic Road Network, effective road links to ports are vital to allow goods and services to be moved into and around the country efficiently and reliably*”. The Proposed Development, in improving connectivity to and from the Port of Lowestoft, is supported by the NIDP, which lists the Proposed Development in Table ES.1 as development for which, together with a new river crossing in Ipswich, the Government will provide £151 million of funding [APP-091]. It is further supported by the Department for Transport’s port connectivity study<sup>11</sup> which recognises that if ports are

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<sup>8</sup> Available at:

[http://www.legislation.gov.uk/ukxi/2019/1056/pdfs/ukxi\\_20191056\\_en.pdf](http://www.legislation.gov.uk/ukxi/2019/1056/pdfs/ukxi_20191056_en.pdf)

<sup>9</sup> Available at: <https://www.gov.uk/guidance/use-of-planning-conditions>

<sup>10</sup> Available at: <https://www.gov.uk/government/publications/national-infrastructure-delivery-plan-2016-to-2021>

<sup>11</sup> Available at: <https://www.gov.uk/government/publications/transport-connectivity-to-ports-review-of-the-current-status-and-future-infrastructure-recommendations>

to continue thriving, then the infrastructure supporting them has to be effective and efficient [[APP-092](#)].

### **The Public Sector Equality Duty**

- 3.5.7. The Equalities Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making.

### **The National Parks and Access to the Countryside Act 1949**

- 3.5.8. The National Parks and Access to the Countryside Act 1949 (NPACA) provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONB). It also established powers to declare National Nature Reserves, to notify Sites of Special Scientific Interest (SSSI) and for Local Authorities to establish Local Nature Reserves (LNR).

- 3.5.9. The NPACA has relevance to the consideration of any impacts on SSSIs, as discussed in chapter. There are no AONBs that would be affected by the Proposed Development.

### **The Wildlife and Countryside Act 1981**

- 3.5.10. The Wildlife and Countryside Act 1981 (WCA) is the primary legislation which protects animals, plants, and certain habitats in the UK. The WCA provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England). The WCA also contains measures for the protection and management of SSSIs.

- 3.5.11. The WCA has relevance to the consideration of impacts on SSSIs and on protected species and habitats which are discussed in Chapter 5 and Chapter 6.

### **The Countryside and Rights of Way Act 2000**

- 3.5.12. The Countryside and Rights of Way Act 2000 (CRWA) brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The CRWA also brought in improved provisions for the protection and management of SSSIs, strengthened wildlife enforcement legislation and made provisions in relation to public rights of way.

- 3.5.13. Consideration of impacts on SSSIs and the effects on rights of way and the ease of movement for non-motorised users (NMUs) are considered in

Chapter 5 of this report. There are no AoNBs that would be affected by the Proposed Development.

**The Natural Environment and Rural Communities Act 2006 and the United Nations Environment Programme Convention on Biological Diversity 1992**

- 3.5.14. The Natural Environment and Rural Communities Act 2006 (NERCA) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 3.5.15. The UK Government ratified the United Nations Environment Programme Convention (UNEPC) in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.16. The effects on biodiversity, the biological environment and ecology and landscape matters are considered in Chapter 5 of this report. As required by Regulation 7 of The Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the UNEPC in its consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation.

**3.6. MADE DEVELOPMENT CONSENT ORDERS**

- 3.6.1. In the application and in the course of the Examination the Applicant referred to a number of precedents in made DCOs and related approvals. References to precedents were made in the Updated Explanatory Memorandum [[REP11-011](#)] and in the various responses to our written and oral questions.
- 3.6.2. The following made DCOs were specifically referred to:
- A160/A180 (Port of Immingham Improvement) Development Consent Order 2015.
  - A19 / A1058 Coast Road (Junction Improvement) Order 2016.
  - Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))).
  - M1 Junction 10a (Grade Separation) Order 2013.
  - Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013.
  - Silvertown Tunnel Order 2018.
  - A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.
  - A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.
  - Network Rail (North Doncaster Chord) Order 2012.

- Northumberland County Council (A1-South East Northumberland Link Road (Morpeth Northern Bypass) Development Consent Order 2015.
- Burbo Bank Extension Offshore Wind Farm Order 2014.
- Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- National Grid (Richborough Connection Project) Development Consent Order 2017.
- Rookery South (Resource Recovery Facility) Order 2011.
- M20 Junction 10a Development Consent Order 2017.
- River Humber Gas Pipeline Replacement Order 2016.
- North London Heat and Power Generating Station Order 2017.
- Millbrook Gas Fired Generating Station Order 2019.
- Hinkley Point C (Nuclear Generating Station) Order 2013.

3.6.3. The following precedent development approvals outwith the PA2008 were also cited to the ExA by the Applicant:

- Nottingham Express Transit System Order 2009.
- Borough of Poole (Poole Harbour Opening Bridges) Order 2006.
- The River Mersey (Mersey Gateway Bridge) Order 2011.
- High Speed Rail (London – West Midlands) Act 2017.
- London Underground (Northern Line Extension) Order 2014.
- Midland Metro (Wolverhampton City Centre Extension) Order 2016.

3.6.4. We consider the relevance, importance and applicability of the precedents referred to by the Applicant in Chapter 9 of this report.

## **3.7. TRANSBOUNDARY EFFECTS**

3.7.1. Under Regulation 24 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations) the Planning Inspectorate on behalf of the SoS has concluded that the Proposed Development is not likely to have significant effects on the environments in another European Economic Area (EEA) State.

3.7.2. In reaching this view the Planning Inspectorate has applied the precautionary approach<sup>12</sup>. The conclusions have been published in the Transboundary Screening matrices produced on behalf of the SoS dated 18 July 2017 and 26 October 2018 [OD-001]. These screening reports each concluded that the Proposed Development was not likely to have significant effects on the environment in another EEA State. Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary in relation to this application.

3.7.3. Having regard to these reports and having kept the matter under review throughout the Examination, we are satisfied with regard to Regulation 7 of The Infrastructure Planning (Decisions) Regulations 2010 that there

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<sup>12</sup> As explained in the Planning Inspectorate's Advice Note Twelve: Transboundary Impacts and Process, available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-12v2.pdf>

are no outstanding transboundary issues that would prevent the dDCO from being made.

### **3.8. THE DEVELOPMENT PLAN**

3.8.1. The Applicant identified the relevant development plan and other local strategy documents relevant to the Proposed Development in its Case for the Scheme [[APP-091](#)], as follows:

- Waveney Development Plan including:
  - Core Strategy Development Plan Document, adopted January 2009.
  - Development Management Policies Development Plan Document, adopted January 2011.
  - Site Specific Allocations Development Plan Document, adopted January 2011.
  - Lowestoft Lake Lothing and Outer Harbour Area Action Plan Development Plan Document, adopted January 2012.
- Supplementary guidance:
  - Sustainable Urban Neighbourhood and Kirkley Waterfront Development Brief Supplementary Planning Document, adopted May 2013.
- Waveney District Council Local Plan Final Draft, published March 2018.
- Suffolk Local Transport Plan 2011 – 2031 Part 1 Transport Strategy and Part 2 – Implementation Plan and Suffolk Rights of Way Improvement Plan 2006 – 2016.
- Suffolk Waste Core Strategy, adopted March 2011, Suffolk Minerals Core Strategy, adopted September 2008 and Suffolk Minerals and Waste Local Plan, submission draft June 2018.
- Suffolk Flood Risk Management Strategy, published 2016.
- Suffolk Nature Strategy 2015, published 2015.
- Suffolk Growth Strategy, published 2013.
- East Suffolk Economic Growth Plan, published 2018.

3.8.2. In the course of the Examination the Waveney Local Plan was adopted on 20 March 2019. Anticipating adoption at this time, and in consideration of the NPPF insofar as it affords decision-takers the ability to give weight to relevant policies in emerging plans, the Applicant assessed the Proposed Development against the then draft policies in the Final Draft Local Plan (March 2018) [[APP-091](#)].

3.8.3. The Waveney Local Plan (which within the administrative area of the new East Suffolk Council applies only to the part of East Suffolk Council formerly covered by the former Waveney District Council) supersedes the Development Plan Documents listed in paragraph 3.8.1, above. Supplementary Planning Documents are retained.

- 3.8.4. The development plan is a relevant and important consideration and we take account of it throughout this report and in reaching our recommendations to the SoST.



## **4. THE PLANNING ISSUES**

### **4.1. MAIN ISSUES IN THE EXAMINATION**

- 4.1.1. The Examining Authority (ExA)'s Initial Assessment of Principal Issues (IAPI) was published on 6 November 2018 as Annex B to the Rule 6 letter which announced the Preliminary Meeting (PM) [[PD-005](#)]. This forms an initial assessment of the issues based on the application documents and submitted Relevant Representations (RRs). The list of issues relates to both the construction and operation phases of the Proposed Development.
- 4.1.2. It includes matters relating to policy as set out in the National Policy Statement for National Networks (NPSNN), National Policy Statement for Ports (NPSP) and the extent to which the Proposed Development would comply with the policies of local development plans.
- 4.1.3. In the IAPI, issues are identified in relation to the environment, which include the design of the Proposed Development and its effect on local townscape and the visual impact on the north and south shores of the harbour; its effect on designated and non-designated heritage assets, including their settings and sub-marine remains; whether there would be an increase in the risk of flooding as a result of the Proposed Development; whether there was sufficient information presented to assure that there would be no risk to the water environment in the immediate and wider environs of the Proposed Development; whether or not the Proposed Development would cause disruption or permanent harm to habitats and plants, invertebrates and marine species and whether it would adversely impact on air quality, specifically in relation to local residents living environment.
- 4.1.4. Matters relating to maritime and port operational matters include the effect of the Proposed Development on the safe navigation of the harbour for its users, vessels and environment, its effect on existing berth space within the inner harbour and its effect on the closure of the western harbour on vessel movements over the closure period.
- 4.1.5. Matters relating to the impact of the Proposed Development on road users include the impact on traffic flows on the southern approach roads and the surrounding area and the effect on the safety local highway users.
- 4.1.6. Matters covering the Compulsory Acquisition (CA) of land and other land matters include whether or not all the land and rights proposed to be compulsorily acquired satisfy the conditions set out in sections 122(2) and 122(3) of the Planning Act 2008 (PA2008). Consideration is also given to whether or not the Temporary Possession powers proposed are justified and proportionate, whether or not alternative designs for the Proposed Development, including the extent of land acquisition (both CA and TP) necessary to facilitate it, have been taken into account, if and when, in respect of the interest in Crown land sought be acquired, the Applicant expects to receive the consent of the appropriate Crown



authority and the likely availability of funds to implement the Proposed Development.

4.1.7. Socio-economic matters include the extent to which the Proposed Development would result in any benefits in terms of the national, regional or local economy and the extent to which it would result in any adverse effects in terms of the national or local economy, including local maritime, port and other enterprises.

4.1.8. The issues identified in the Rule 6 letter have informed the matters considered by the ExA throughout the Examination. Further issues have been raised as the Examination has progressed as a result of submissions from Interested Persons (IP). We consider all the issues raised throughout the Report to the Secretary of State for Transport (SoST) Lake Lothing Third Crossing Examination and deal with them where relevant and appropriate in this report.

## **4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS**

4.2.1. Issues raised in submissions informed our First Written Questions (ExQ1) [[PD-007](#)]. In ExQ1 issued on 17 December 2018, we examined the Applicant's approaches to a range of general cross-topic questions. These included:

- The parameters of the Proposed Development (the Limits of Deviation);
- the relationship of reference design used for initial ES and the specific design set out in the submitted drawings;
- the location of construction compounds;
- the need for specific elements of infrastructure; and
- detailed phasing and detailed pollution mitigation measures.

4.2.2. Specific matters relating to chapters in the Environmental Statement (ES) [[APP-136 to APP-209](#)], including:

- Townscape and Visual Impact;
- Traffic and Transport;
- Road Drainage and Water Environment;
- Nature Conversation;
- Compulsory Acquisition;
- Temporary Possession and other land considerations;
- Funding; and
- the Draft Development Consent Order [[APP-005](#)];

were all raised by the Applicant and a range of IPs and were also examined at this stage.

4.2.3. The ExA's Second Written Questions (ExQ2) [[PD-012](#)] were issued on the 22 March 2019. In ExQ2 we examined the Applicant's approaches to a range of general cross-topic questions. These included:

- The need for a further suite of revised documents to fully address the Applicant's proposed changes to the application [[REP4-013](#)], including a revised Book of Reference; and
- clarification on specific matters relating to CA.

4.2.4. Further questions were raised in respect of IPs representations in relation to detailed matters relating to plots and to the provision of technical reports to support objections made in respect of noise.

4.2.5. The Applicant submitted a range of amendments to the application during the course of the Examination in response to negotiations with IPs on land acquisition matters [[REP4-013](#)]. These minor changes comprised the reconfiguration of access points to affected businesses and minor realignments to the local road network on the southern approach. These proposed changes were presented and formally accepted by the ExA [[PD-015](#)]. Following further negotiation with affected IPs a final amended package of amendments was submitted to the ExA at Deadline (D)10 [[REP10-003](#)].

### **4.3. ISSUES ARISING IN LOCAL IMPACT REPORTS**

4.3.1. Local Impact Reports (LIR) were submitted by Waveney District Council (WDC) and Suffolk County Council (SCC) [[REP3-016](#)] with a supporting letter from Great Yarmouth Borough Council (GYBC) [[REP3-010](#)]; the Applicant and ABP duly responded [[REP4-010](#) and [REP4-030](#)].

4.3.2. The councils had regard to the purpose of LIRs as set out in s60(3) of the PA2008, DCLG's Guidance for the examination of applications for development consent and the Planning Inspectorate's Advice Note One, Local Impact Reports, in preparing their LIRs. Both LIRs cover the following matters:

- Local area characteristics – this covers a brief description of the area and identifies the parameters of any statutory designations, all beyond one kilometre in distance from the site.
- The statutory Development Plan context, comprising the Waveney District Council Local Plan (2009, 2011 and 2012, the Suffolk Minerals and Waste Development Framework (2008, 2009 and 2011). Other relevant policy identified includes the Suffolk Local Transport Plan (2011-2031) and the New Anglia Norfolk and Suffolk Economic Strategy 2017.
- Socio-economic matters.
- Flood risk.
- Air quality.
- Cultural heritage.
- Townscape and visual impact.
- Contamination.
- Noise and vibration.
- Transport.
- Design.
- Adequacy of the dDCO.

4.3.3. The Local Authorities consider that the dDCO (including its detailed provisions in respect of the above matters) in combination with the proper implementation of ancillary documents provided for, or that the Applicant has agreed to be bound by, specifically the:

- Design Report;
- Design Guidance Manual;
- Code of Construction Practice (CoCP);
- Transport Assessment; and
- Landscaping Plans;

will ensure that the impacts of the Proposed Development are acceptable and thus it accords with local policy.

## **4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS**

### **Conformity with the NPSNN**

4.4.1. The Proposed Development would form part of the Strategic Road Network (SRN). The NPSNN paragraph 2.13 recognises the importance of the SRN setting out that it *"provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals"* and that *"it provides a vital role in people's journeys and drives prosperity by supporting new and existing development, encouraging trade and attracting investment"*. It further states that *"a well-functioning Strategic Road Network is critical in enabling safe and reliable journeys and the movements of goods in support of the national and regional economies"*.

4.4.2. Paragraph 2.22 of the NPSNN states that *"without improving the road network, including its performance, it will be difficult to support further economic growth, employment and housing and this will impede economic growth and reduce people's quality of life. The Government has therefore concluded that at a strategic level there is a compelling need for development of the national road network"*.

4.4.3. Paragraph 2.27 of the NPSNN recognises that capacity improvements on the existing network may not be sufficient to all needs and *"in those circumstances new road alignments and corresponding links, including alignments which cross a river or estuary, may be needed to support increased capacity and connectivity"*.

4.4.4. We are satisfied that the Proposed Development conforms with the NPSNN in all these regards.

### **Conformity with the NPSP**

4.4.5. The NPSP sets the framework for decision-making on proposals for new port development and recognises the essential role ports play in the UK economy and the wider economic benefits that they can bring. In addition, it sets out the role UK ports play in the energy sector, in terms of import and export of energy supplies, the construction and servicing of offshore installations and in supporting oil and gas pipelines. It also

anticipates that port handling needs for energy may change as renewables become an increasingly important energy resource.

- 4.4.6. Although the dDCO does not propose new port development, the proposal does cross Lake Lothing and inter-connects with the Port of Lowestoft itself. It is appropriate therefore, that an assessment of the Proposed Development is undertaken against the relevant paragraphs within the NPSP. Paragraphs which are relevant to Environmental Impact Assessment are broadly consistent with those of the NPSNN and are considered in Chapter 5.
- 4.4.7. In relation to the consideration of options for the Proposed Development the NPSP states that "*this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option*". However, it goes on to state that applicants are obliged to include in their Environmental Statement (ES) necessary information about the alternatives studied, including an indication of the reasons for the applicant's choice. Again, these matters are set out by the Applicant in detail in the supporting documents.
- 4.4.8. The NPSP contains assessment principles related to good design, which again reflect those set out in the NPSNN. Indeed, in respect of a range of further environmental and related matters, including pollution control, climate change mitigation, nuisance management, security considerations and public health the NPSP maps the areas covered in the NPSNN. These specific issues are assessed against the relevant policy requirements in Chapter 5.
- 4.4.9. Again, we are satisfied that the Proposed Development conforms with the NPSP in all these regards.
- 4.4.10. The conformity of the Proposed Development with the specific elements of both NPSs is set out in more detail in respect of the main planning issues in Chapter 5.

## **4.5. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS**

- 4.5.1. The UK Marine Policy Statement (MPS) is the framework for preparing Marine Plans and taking decisions affecting the marine environment. Marine Plans set out how the MPS will be implemented in specific areas. In paragraph 1.3.1 of the MPS it sets out that the MPS and marine planning systems will sit alongside and interact with existing planning regimes across the UK. Chapter 2 of the MPS sets out the vision for the marine environment and how this is to be achieved through marine planning. It contains the detailed considerations that will require consideration within individual Marine Plans, include marine ecology and biodiversity, Air quality, noise, ecological and chemical water quality and resources, seascape, historic environment, climate change adaptation and mitigation and coastal change and flooding.

4.5.2. All these topics are addressed and appropriately referenced in the Applicant's Case for the Scheme [[APP-091](#)], the substance of which is not the subject of objection at the close of the examination. We conclude therefore that the Proposed Development accords with the MPS and supporting Marine Plans.

## **4.6. CONFORMITY WITH DEVELOPMENT PLANS**

4.6.1. As is evident from the submitted LIRs, the evidence presented by the Applicant in their Case for the Scheme [[APP-091](#)] the proposals have been demonstrated to be in conformity with the policies of the development plans of the respective local planning authorities. There have been no other IP representations that suggest otherwise. Accordingly, we agree the Proposed Development accords with the policies of local development plans.

## **4.7. THE PRINCIPLE OF THE DEVELOPMENT**

4.7.1. The Applicant makes the case for the Proposed Development in the Outline Business Case [[APP-107](#)]. The Applicant articulates the need for the Proposed Development in terms of significant road traffic congestion because of Lowestoft's inadequate road network and the deleterious impact this has on the local economy. Provision of an extra crossing will reduce severance, and allow the road network to operate efficiently, providing vital extra capacity, thus making an important contribution to the enhancement of the SRN. It will reduce congestion, helping Lowestoft to attract investment and achieve its full potential as a place in which to live and work.

4.7.2. The Applicant also makes the case in terms of the economic case, and the policy context. For the economic case, the Applicant considers the benefits and dis-benefits associated with the Proposed Development's overall value for money, concluding it would offer 'very high' value for money. The Applicant states that the monetary benefits will be predominantly derived from journey time savings to commuters and business, as well as savings to vehicle operating costs. Lowestoft will benefit from reduced congestion, faster journeys and improved journey time reliability, supporting local development and regenerating Lowestoft's economy. There will also be accident and casualty savings, and savings associated with the increased use of active modes (walking and cycling) as a result of the Proposed Development. For the policy context, the Applicant considers the strategic alignment of the of the Proposed Development with national planning and policy, local development plans, and minerals and waste plans regional plans and policies, including regional economic plans, local transport plans, Assisted Area Designation and Local Enterprise Zone status.

4.7.3. In the Outline Business Case, supported by their Case for the Scheme [[APP-091](#)] the Applicant summarises the approach to the selection of the Proposed Development, initiated by the identification of 15 options for the crossing, after sifting this being reduced to a short list of three.

### **The Local Authorities' position**

- 4.7.4. In their joint LIR, WDC, SCC and GYBC in theirs confirm that, in their view, the Proposed Development would be a good fit with local plans and would make a significant contribution to their economic and development plans. There is broad consensus among IPs that the economic and social benefits of the proposed crossing (though not its specific location) have been convincingly made.

## **4.8. ENVIRONMENTAL IMPACT ASSESSMENT**

- 4.8.1. As stated in NPSNN section 4.15 and NPSP section 4, all proposals for projects that are subject to the European Union's Environmental Impact Assessment Directive and are likely to have significant effects on the environment, must be accompanied by an ES describing the aspects of the environment likely to be significantly affected by the project.
- 4.8.2. The ES submitted in support of the dDCO application includes an assessment of the effects of the construction and operation of the Proposed Development on air quality, cultural heritage, townscape and visual impact, climate, the landscape, material assets and cultural heritage, nature conservation, geology, soils and contamination, noise and vibration, materials, private assets, socio-economic and recreational/community assets, road drainage and the water environment, flooding, traffic and transport and cumulative impacts. The mitigation measures proposed as part of the design and operation of the Proposed Development together are set out in the Applicant's Mitigation Route Map [[APP-135](#)] and subsequently revised [[REP3-041](#)].
- 4.8.3. We are satisfied that the ES, together with the other information submitted by the Applicant during the Examination, is adequate and that it meets the requirements under The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. We have taken full account of the environmental information in the assessment of the application and in making our recommendation to the SoST.

### **Environmental management documents**

- 4.8.4. Environmental management of the project would be secured through Requirement (R)4 in the dDCO. R4 provides for no part of the Authorised Development to commence until a Code of Construction Practice (CoCP) for that part of the development is submitted to the county planning authority by the undertaker following consultation with the Environment Agency, the harbour authority and the local planning authority and approved by the county planning authority. The submitted CoCP must accord with the Interim CoCP (ICoCP) [[APP-163](#)].
- 4.8.5. This ICoCP (refined and amended during the course of the Examination) [[REP4-017](#) and [REP10-079](#)] includes:
- The context and underlying principles of environment management for the Proposed Development that the contractor will be required to develop appropriate to the works, into any relevant CoCP;

- the principal obligations upon the appointed contractor for the construction of the Proposed Development;
- the guidelines to be used during construction and how they will be mandated and applied; and
- the details of, or references to, the construction phase mitigation measures for each relevant environmental topic assessed in the ES, and for which the CoCP will be the principal delivery mechanism.

4.8.6. The ICoCP is comprehensive, and covers areas of general construction information (including the programme, activities, hours of construction, construction compounds, works in Lake Lothing, access, vehicle movements, emergency planning and personnel); air quality (including mitigation and monitoring); nature conservation (covering marine and terrestrial ecology and appropriate mitigation); geology, soils and contamination (including piling methodology and mitigation); noise and vibration (including mitigation); materials, water environment and flood risk.

4.8.7. During the construction phase, measures for the control of pollution and mitigation of noise and vibration, dust, visual impact and general disturbance to residents and travellers would be secured through Requirements in the dDCO, through the CoCP [[REP10-078](#)] and through various tables and sections of the ES. The dDCO would not suspend the operation of s61 of the Control of Pollution Act 1974 which would provide additional control in respect of noise and vibration.

4.8.8. More detail on mitigation measures is in the consolidated table of environmental mitigation measures, which includes details of the significance of residual effects after implementation of the mitigation measures and how each measure is secured through the dDCO.

4.8.9. We assess the adequacy of the mitigation proposed through the mechanisms for environmental management which would be secured through the Requirements in the dDCO in our consideration of the impacts of the Proposed Development.

## **4.9. CONCLUSIONS ON CHAPTER 4**

4.9.1. The principle of the Proposed Development is in accordance with the NPSNN, the NPSP, development plan policy and Local Authority strategies, and alternatives have been satisfactorily covered, so no further consideration of these points is needed.

4.9.2. We have had regard to all the submissions made in the course of the Examination and have identified in this chapter the various issues which arose in submissions from Local Authorities and IPs from the outset of the Examination. We deal with the principal issues relating to the effects of the Proposed Development on the environment in Chapter 5.

4.9.3. Summarising the issues identified above in this chapter, the main issues are:

- Noise (during construction and during operation).

- Air quality (during construction and during operation).
- Water quality and flood risk.
- Traffic and transportation (general network matters and north/south shore specific matters.
- Other environmental matters (historic environment, biodiversity and design).
- Navigation (recreation and leisure related navigation and commercial port-related navigation).

4.9.4. In assessing those issues, we have regard to the tests set out in the NPSNN, the NPSP and other relevant policy and statutory requirements.

## **4.10. HABITATS REGULATIONS ASSESMENT**

4.10.1. We consider the Habitats Regulation Assessment in Chapter 6.



## **5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES**

### **5.1. INTRODUCTION**

5.1.1. This chapter considers the effect of the Proposed Development on the local and wider environment, its effect on the operation of the port for commercial and recreational use and its socio-economic impact. Each sub-section dealing with environmental effects has a common framework:

- policy background;
- Applicant's approach;
- issues arising; and
- summary and conclusions.

5.1.2. Matters relating to the effect of the Proposed Development on the port, because of their scope and extent of detail, are treated differently. Here the relevant Interested Party's (IP) objections are set out, then the Applicant's response and these are followed by the Examining Authority's (ExA) considerations.

5.1.3. Matters relating to the overarching legal and policy context and our findings in relation to these matters are considered in chapters 3 and 4 respectively and will not be repeated in this chapter.

### **5.2. NOISE**

5.2.1. Concerns over noise and vibration during construction and as a result of operation have been raised by a number of IPs, principally Nwes and Northumbria Water in relation to their property interests on the southern shore of the harbour adjacent to the new approach access road (presently Riverside Road) and Waveney Drive. Although Northumbria Water's objections have been wholly withdrawn through the completion of a Side Agreement with the Applicant, Nwes's objections remain. These are principally that as a result of the cumulative effect of the Proposed Development, principally as a result of noise, and as a consequence of its means of construction, the effects on the Riverside Business Centre will be severe. Because of these adverse effects, and the flexible nature of the tenure of the units within the centre, the likely outcome will be a significant reduction in the occupancy of units, threatening the longer-term financial viability of the centre [[REP3-009](#), [REP7-012](#) and [REP8-033](#)].

#### **Policy background**

5.2.2. Paragraph 5.189 of the National Policy Statement for National Networks (NPSNN) states that where a development is subject to Environmental Impact Assessment (EIA) and significant noise impacts are likely to arise from the Proposed Development, the Applicant should include the following in the noise assessment, which should form part of the Environmental Statement (ES):

- A description of the noise sources including likely usage in terms of number of movements, fleet mix and diurnal pattern. For any associated fixed structures information about the noise sources including the identification of any distinctive tonal, impulsive or low frequency characteristics of the noise.
- Identification of noise sensitive premises and noise sensitive areas that may be affected.
- The characteristics of the existing noise environment.
- A prediction on how the noise environment will change with the Proposed Development:
  - in the shorter term such as during the construction period;
  - in the longer term during the operating life of the infrastructure; and
  - at particular times of the day, evening and night as appropriate.
- An assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas.
- Measures to be employed in mitigating the effects of noise. Applicants should consider using best available techniques to reduce noise impacts.
- The nature and extent of the noise assessment should be proportionate to the likely noise impact.

5.2.3. Paragraph 5.10.4 of the National Policy Statement for Ports (NPSP) includes an identical set of requirements.

5.2.4. Paragraph 5.190 of the NPSNN further advises that the potential noise impact elsewhere that is directly associated with the development, such as changes in road and rail traffic movements elsewhere on the national networks, should be considered as appropriate.

5.2.5. Paragraphs 5.191 of the NPSNN and 5.10 of the NPSP go on to state that operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance. The prediction of road traffic noise should be based on the method described in Calculation of Road Traffic Noise (CRTN). For the prediction, assessment and management of construction noise, reference should be made to any relevant British Standards and other guidance which also give examples of mitigation strategies. Paragraph 5.10.6 of the NPSP identifies similar but less detailed requirements.

5.2.6. Paragraph 5.198 of the NPSNN states that mitigation measures for the project should be proportionate and reasonable and may include one or more of the following:

- Engineering: containment of noise generated.
- Materials: use of materials that reduce noise, (for example low noise road surfacing).
- Lay-out: adequate distance between source and noise-sensitive receptors; incorporating good design to minimise noise transmission through screening by natural or purpose-built barriers.

- Administration: specifying acceptable noise limits or times of use. Paragraph 5.10.12 of the NPSP identifies similar requirements, but does not include materials.

5.2.7. Paragraph 5.199 of the NPSNN states that for most national network projects, the relevant Noise Insulation Regulations 1975 (updated 1988) will apply.

### **Applicant's approach**

5.2.8. The Applicant has sought, through the framework of the ES and through specific provisions in the draft Development Consent Order (dDCO), to anticipate, identify and mitigate sources and effects in relation to noise and vibration both during and after construction. Chapter 13, Noise and Vibration, of the ES [[APP-136](#)] considers the significance of effects which may arise due to the Proposed Development. To address the specific points raised:

- A description of the noise sources is set out in Section 13.4 of the ES.
- Paragraph 13.3.18 of the ES sets out that noise sensitive receptors are primarily residential dwellings but also include other receptors such as schools and community facilities as well as areas of interest to nature conservation and cultural heritage.
- The characteristics of the existing noise environment are set out in Section 13.4 of the ES which considers the baseline environment.
- An assessment of how the noise environment will change is set out at Section 13.5 of the ES.
- An assessment of the effect of predicted changes is set out at Section 13.5 of the ES.
- Mitigation is set out in Section 13.5 of the ES.

5.2.9. Potential cumulative effects potentially arising in conjunction with other planned or proposed development are described in section 20 of the ES. Several developments have been identified and section 20.6 of the ES concludes that significant adverse cumulative effects between the Proposed Development and other projects are not predicted. section 13.2 of the ES describes the standards adhered to when undertaking the assessment of construction and operational noise impacts, this includes reference to the relevant British Standard, and calculation of road traffic noise. Mitigation measures relating to noise are set out in paragraphs 13.5.60 to 13.5.65 of the ES.

5.2.10. The ES sets out that a number of mitigation measures have been explored such as a low noise surface on the road and an acoustic barrier to protect noise sensitive receptors, but neither is considered practicable. Reference to Noise Insulation Regulations is set out in paragraphs 13.5.68 to 13.5.71 of the ES. This sets out that there are 559 residential dwellings which are predicted to satisfy condition 1, having a predicted noise level above 67.5dB LA10,18hr within the first fifteen years of use of the Proposed Development. Of these, 117 properties are within 300m of the Proposed Development and are predicted to have an increase of at least 1dB as a result of the Proposed Development (ie the Relevant Noise Level in the design year is greater than the Prevailing Noise Level in the

year of opening by 1dB or more). At detailed design stage, further analysis will need to be undertaken to determine whether the noise from traffic on the road to which the Regulations apply contributes at least 1dB LA<sub>10,18hr</sub> to the Relevant Noise Level.

- 5.2.11. Requirement 4 of Schedule 2 of the dDCO requires the submission of a Code of Construction Practice (CoCP) to be approved by the county planning authority prior to the commencement of any part of the development. The approved CoCP must be in accordance with the Interim CoCP (ICoCP) [[APP-163](#)] which has been formulated by reference to the assessment of significant effects in relation to noise and vibration set out in Chapter 13 of the ES.
- 5.2.12. The Applicant has also stated a commitment to work with Nwes to understand the attenuating properties of its building and from this develop a proposal for dealing with its noise concerns related to the results of monitoring that is carried out. The Applicant is aware of the tight financial constraints within which Nwes operates and has indicated it will shape its proposal in light of that context. In light of the above, the Applicant has also sought to agree a Land and Works Agreement with Nwes, with a draft Heads of Terms agreed and a draft Legal Agreement under discussion at the time of the closure of the Examination.

### **Issues examined**

- 5.2.13. The Riverside Business Centre (RBC) will lie in close proximity to the new southern approach road of the bridge and is certainly likely to be affected by any increased noise levels. Concerns over such matters are therefore legitimate. However, although Nwes refer to technical data prepared for Northumbrian Water they provide no detailed technical evidence of likely noise effects on the RBC, nor are any detailed arguments presented on future economic viability of the enterprise. In the absence of such evidence the weight given to these concerns must necessarily be limited. Moreover, as the Applicant identifies above, there are extensive provisions within the recommended dDCO (rdDCO) that have the capability to mitigate noise impacts both during and after construction of the bridge.
- 5.2.14. With the Side Agreement signed between the Applicant and Northumbrian Water, all concerns set out by this party in relation to noise and vibration have been met [[AS-025](#) and [AS-026](#)]. With the detailed assessment of effects identified in the ES, the mitigation measures subsequently identified therein, the ICoCP appropriately secured through Requirement 4 and the Heads of Terms agreed with on-going discussions on a Legal Agreement with Nwes, residual effects in relation to noise, although not eliminated, fall below a magnitude that can be considered material harm.

### **Summary and conclusions**

- 5.2.15. We conclude the effects of noise as a result of the Proposed Development both during and after construction have been appropriately identified and addressed through the relevant sections of the ES and its mitigatory

provisions. Moreover, the interim CoCP (capable of further refinement in final submission) will be secured through Requirement 4. Heads of Terms have been agreed with the IP concerned and a draft Agreement under discussion. There is every assurance therefore that these matters will be similarly resolved. Whilst the objection to noise effects has not been withdrawn by Nwes, these we feel fall well below a magnitude that can be considered material harm.

- 5.2.16. On this basis the Proposed Development, in respect of noise, in terms of its likely magnitude, effects and effective mitigation have been comprehensively addressed by the Applicant. As such we conclude it accords with the policy expectations set out in paragraphs 5.186 to 5.200 of the NPSNN and paragraphs 5.10.1 to 5.10.13 of NPSP.

### **5.3. AIR QUALITY**

- 5.3.1. This topic relates to matters of air quality both during the construction phase, including the control of dust and after construction in terms of vehicular emissions.

#### **Policy background**

- 5.3.2. The NPSNN (section 5) and NPSP (section 5.7) acknowledge that where the impacts of a project are likely to have significant air quality effects, the Applicant should undertake an assessment of the impacts of the proposed project as part of an ES. Both NPSs set out the requirements for Applicants to assess air quality effects in relation to the EIA process, each requiring a staged approach to the assessment of air quality effects.
- 5.3.3. Paragraph 5.9 of the NPSNN requires the Applicant to provide judgements on the risk as to whether the project would affect the UK's ability to comply with the Air Quality Directive (AQD), further setting out that the Proposed Development should not result in a zone/agglomeration currently compliant with the AQD becoming noncompliant or the ability of a non-compliant area seeking compliance. Paragraph 5.7.11 of the NPSNN also states that a construction management plan may help to codify mitigation.

#### **Applicant's approach**

- 5.3.4. The Applicant's assessment of air quality effects is considered within Chapter 8 of the ES in accordance with the NPSNN and NPSP. Section 8.4 of the ES indicates that baseline air quality levels have been established through consideration of existing data, and also a 12-month programme of monitoring running to December 2017. At paragraph 8.7.15, the assessment concludes that the Proposed Development would not affect the UK's ability to comply with the AQD. Furthermore, in paragraph 8.5.52, it states that the Proposed Development will not result in a zone/agglomeration becoming non-compliant with the AQD or affect the ability to achieve regional compliance. The air quality assessment demonstrates that the operational phase of the Proposed Development will not result in any new exceedances of the air quality objectives at any sensitive receptor locations included in the study area. Furthermore, no

significant adverse impact is predicted for statutory designated ecological sites during the operational phase of the Proposed Development. No operational air quality mitigation is proposed within the ES. The Proposed Development will not result in a zone becoming non-compliant or affect the ability of the region to achieve compliance with the AQD.

- 5.3.5. Section 8.6 of the ES explains that during construction, mitigation measures will focus on controlling fugitive releases of dust. The ICoCP, which acts as an environmental management system framework, under which the construction of the Proposed Development must be undertaken to reduce impacts on the environment, has been prepared and is set out in Appendix 5A of the ES.

### **Issues examined**

- 5.3.6. Nevertheless, representations have been made by IPs, (British Steel Pension Fund Trustees Limited and Lings Motor Group) specifically in relation to the management of dust during construction [[REP3-017](#)]. These are legitimate concerns, specifically in respect of the automotive sales and hire facilities on the south shore in the environs of the site. However, the ICoCP at paragraph 3.2.2 specifies that the mitigation measures focus on controlling fugitive releases of construction phase dust and must be implemented by the contractor through the final CoCP. Such measures must include, but are not limited to:

- Dust generating activities (eg cutting, grinding and sawing) to be minimised and weather conditions considered prior to conducting potentially dust emitting activities.
- Fine material to not be stockpiled to an excessive height in order to prevent exposure to wind and/or dust nuisance.
- Roads and accesses to be kept clean.
- Where possible, plant to be located away from site boundaries that are close to residential areas.
- Water to be used as a dust suppressant, where applicable;
- Drop heights from excavators to crushing plant to be kept to a minimum.
- Distances from crushing plant to stockpiles to be kept to the minimum practicable to control dust generation associated with the fall of materials.
- Skips to be securely covered.
- Soiling, seeding, planting or sealing of completed earthworks to be completed as soon as reasonably practicable following completion of earthworks.
- Dust suppression and the maintenance of the surface of access routes to be appropriate to avoid dust as far as practicable, taking into account the intended level of trafficking.
- Wheel wash facilities to minimise trackout of dust.
- Material to not be burnt on site.
- Engines to be switched off when not in operation.

- 5.3.7. Moreover, the CoCP is capable of further refinement through final submission in accordance with Requirement 4 of the dDCO, with the added assurance of monitoring of provisions during construction.

### **Summary and conclusions**

- 5.3.8. The Applicant has from the outset recognised the potential impacts of the Proposed Development on air quality from the outset. Such impacts have been identified in the ES and detailed mitigation provisions put in place to minimise any effects on air quality either during construction or after. Whilst objections to air quality have not been withdrawn by IPs, these are not supported with technical arguments that rebut the measures proposed by the Applicant, not do they acknowledge the scope of mitigation measures that will maintain air quality. Whilst the objection to effects on air quality have not been withdrawn, these we feel fall well below a magnitude that can be considered material harm. On this basis the Proposed Development, in respect of air quality, in terms of its likely magnitude, effects and effective mitigation have been comprehensively addressed by the Applicant. As such we conclude it accords with the policy expectations set out in section 5 of the NPSNN and sections 5.7 and 5.8 of the NPSP and does not weigh in the planning balance.

## **5.4. WATER QUALITY**

There are no outstanding objections to the Proposed Development with respect of these matters as they are comprehensively addressed in the ES in Chapter 8 and clarified in respect of the hydraulic connectivity of both Oulton Broad and Leathes Ham, raised in written questions by the ExA [[PD-007](#)] and subsequently answered by the Applicant in their response [[REP3-029](#)]. The ES specifically addresses the key bullet points set out in paragraph 5.6.4 of the NPSP in respect of environmental assessment, mitigation is addressed in the ES and dDCO Requirements are in place to safeguard water quality during and after construction. On this basis therefore the proposals are again in accordance with section 5 of the NPSNN and sections 5.6 of the NPSP.

### **Summary and conclusions**

- 5.4.1. We conclude the Applicant has demonstrated, through the relevant content of the ES and subsequent clarifications, that the Proposed Development, on this basis, accords with section 5 of the NPSNN and sections 5.6 of the NPSP and other relevant policies and that all identified adverse effects can be properly mitigated through the appropriate mechanisms of the dDCO.

## **5.5. TRAFFIC AND TRANSPORTATION**

- 5.5.1. This section of the chapter examines traffic and transport matters relating to the Proposed Development, specifically in relation to concerns of IPs, relating to the configuration of junctions with Riverside Way, parking provision on the new southerly access road, private access to specific properties. These relate both to the initial application and subsequent changes to the application proposed by the Applicant [[REP4-013](#)].

## **Policy background**

- 5.5.2. Paragraph 5.204 of the NPSNN advises that applicants should consult relevant highway authorities, and local planning authorities, as appropriate, on the assessment of transport impacts, whilst paragraph 5.205 states they should consider reasonable opportunities to support other transport modes in developing infrastructure. As part of this, the Applicant should provide evidence that as part of the project they have used reasonable endeavours to address existing severance issues that act as barriers to non-motorised users. It goes on in paragraph 5.206 to state that for road and rail developments, if a development is subject to EIA and is likely to have significant environmental impacts arising from impacts on transport networks, the Applicant's ES should describe such impacts and mitigating commitments. In all other cases, the Applicant's assessment should include a proportionate assessment of the transport impacts on other networks as part of the application.
- 5.5.3. Paragraph 5.209 refers to schemes that impact on the Strategic Road Network (SRN). It goes on to state that applicants should have regard to DfT Circular 02/2013 'The Strategic Road Network and the delivery of sustainable development' which sets out the way highway authorities for the SRN will engage with communities and the development sector to deliver sustainable development and so economic growth, whilst safeguarding the primary function and purpose of the SRN. whilst paragraph 5.217 refers to mitigation measures for road developments stating that this may relate to design, lay-out or operation of the Proposed Development.

## **Applicant's approach**

- 5.5.4. The Applicant (who is also the local highway authority), when preparing the Transport Assessment (TA), has considered both national and local policy. This includes the NPSNN and NPPF as well as the local planning documents of Waveney District Council, Suffolk Local Transport Plan and the Lowestoft Transport Strategy. The comprehensive policy review in the TA demonstrates that the Proposed Development aligns closely to national, regional and local transport plans and policies. Most importantly, this demonstrates that the Proposed Development aligns with policies at all levels, showing that it can achieve the aims and objectives of various local and national authorities.
- 5.5.5. Appendix A of the TA also demonstrates that the Applicant has undertaken due consultation with the relevant highway authority.
- 5.5.6. The Applicant has made clear that one of the key aims of the Proposed Development is to reduce community severance between north and south Lowestoft. The Proposed Development meets this objective through providing pedestrian and cycle routes that better link the northern and southern communities of the central area, bringing a larger proportion of the Lowestoft population within walking/cycling distance of local amenities. In addition, the provision of a third crossing would provide an additional crossing of Lake Lothing and improve journey times for vehicles.



- 5.5.7. An assessment of traffic and transport is set out within Chapter 19 of the ES, concluding that the Proposed Development has a positive effect on transport and the traffic operation of Lowestoft and the wider strategic highway network, improving operational performance (queuing, congestion, and journey times). Existing junction capacity in the vicinity of the Proposed Development has been assessed, assuring that they can accommodate the increase in traffic associated with traffic rerouting to the Proposed Development. Amendments to layouts are proposed in the TA and included in the ES (and secured through the dDCO), where required, to mitigate the impact of the Proposed Development.
- 5.5.8. In addition, the northern and southern roundabouts connecting the Proposed Development to the surrounding highway network are designed to allow them to operate efficiently within acceptable design standards. Following the transport assessment of the Proposed Development the overall impact on severance (including new pedestrian severance from community facilities and relief from severance for pedestrians), driver stress and delay, pedestrian and cyclist amenity, journey times and delay, collisions and safety will, the Applicant demonstrates, be beneficial and permanent.
- 5.5.9. The TA assesses the impact of the Proposed Development on Lowestoft's highway network and proposes mitigation measures where necessary to ensure that the residual impact is not severe. Mitigation measures are required at a small number of junctions, as detailed in the TA, to ensure that there is sufficient capacity to accommodate the planned growth and the reassignment of traffic for the Proposed Development. During the course of the Examination some of these junction arrangements have been amended in response to CA-related negotiations and in response to representations from individual IPs.
- 5.5.10. The Applicant also makes reference to the reasons the SoS gave for the initial section 35 Direction, which advises that the Proposed Development would *"a connection to/from Trans European Network-Transport (TEN-T) and the Strategic Road Network. The TEN-T link is to the A12/A47, one of only a limited number of routes in the East of England which is recognised as such"* and that it would *"would act as a tactical diversion route for the strategic road network, the A12/A47 when the Bascule Bridge, a nationally recognised pinch point, is closed thereby reducing delays and congestion on the SRN"*.

### **Issues examined**

- 5.5.11. Late representations were made on behalf of Statuslist in respect of elements of the changes to the application proposed by the Applicant [[REP4-013](#)] and subsequently accepted by the ExA [[PD-015](#)]. These relate to the provision of additional on-street parking (NMC2<sup>13</sup>) and the provision of a turning head adjacent to the Statuslist site (NMC8). The Applicant has responded with amendments removing the on-street

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<sup>13</sup> The Applicant referenced its suite of eight proposed changes to the application NMC1, NMC2 etc

parking identified (approximately four spaces) and providing the turning head sought; amendments have been submitted to and accepted in this regard by the ExA. The Applicant also advises in closing that Heads of Terms are at an advanced stage and agreement with the IP is anticipated though at the close of the examination not secured.

- 5.5.12. It is noted that the on-street parking provision proposed in NMC2 (as amended) would still be greater than that which was included in the Applicant's original proposals as submitted in July 2018. The effect of the proposed amendment to NMC2 is articulated in the correction to the text of paragraph 4.2.3 in [REP4-013]. The Applicant is content for NMC2 to be amended as proposed above.
- 5.5.13. Concerns by certain IPs in respect of the TA have also been overcome through the terms of a signed agreement [AS-022].
- 5.5.14. British Steel Pension Fund Ltd (BSPFL) have made representations [REP3-017] suggesting the Proposed Development has the potential to adversely affect the access to one of their tenant's units on the north shore, the ability of deliveries to serve it and the general amenity of its users. This is not supported by any technical evidence to substantiate the assertions and no objections have been received from the current occupants in respect of any of these matters.

### **Summary and conclusions**

- 5.5.15. The BSPFL objections have not been withdrawn. However, their concerns are not supported by technical evidence of the harm asserted, nor are they duplicated by the present tenants of the site in question. Moreover, no other objections by Statutory Undertakers (SU) or the highway authority have been made that would support them. These concerns, though not withdrawn, remain unsupported by technical evidence and, we conclude, fall well below a magnitude that can be considered material harm. We conclude that the transport and network matters in respect of the Proposed Development are comprehensively addressed in the Applicant's Case for the Scheme [APP-091], the TA [APP-093] and ES [APP-136]. Detailed concerns over elements of highway design, including those arising from the submitted NMCs have been substantively addressed in amendments to these areas.
- 5.5.16. Paragraph 2.2 of the NPSNN is emphatic in stating "*there is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth*". It goes on in section 2.6 to state that "*there is also a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy*".

- 5.5.17. It is not disputed by any IP that the Proposed Development will deliver significant benefits in meeting these national policy objectives. Whilst minor non-material objections remain in respect of local highway matters, we are very clear in our conclusions that the Proposed Development would meet and deliver key objectives of the NPSNN. For the same reasons, insofar as they would have, we conclude, a similar impact on the economy of the port, they accord with the economic objectives of the NPSP.
- 5.5.18. It follows, in the absence of any highway related objection from SUs or other local highway authorities, that the Proposed Development also accords with local and regional transport policy. Insofar as the Proposed Development would form a link in the Trans-European Network – Transport and act as a tactical diversion route for the SRN, as cited in the SoS’s section 35 Direction, this too weighs significantly in favour of the Proposed Development.

## **5.6. OTHER ENVIRONMENTAL MATTERS (FLOOD RISK, HISTORIC ENVIRONMENT, BIODIVERSITY AND DESIGN)**

- 5.6.1. Policies relating to the flood risk, historic environment, ecological conservation and biodiversity are all set out in both the NPSNN and the NPSP.

### **Flood risk**

- 5.6.2. A comprehensive Flood Risk Assessment (FRA) is incorporated in Volume 3 of the ES, prepared in accordance with the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG) and in consultation with the Environment Agency. As the Proposed Development has been designated an Nationally Significant Infrastructure Project the FRA has been undertaken in accordance with the requirements of the NPSNN in terms of flood risk. Guidance within the Design Manual for Roads and Bridges (DMRB) and the CIRIA SuDS Manual has also informed the FRA.
- 5.6.3. The Proposed Development is located within Flood Zone 3 (3a), which means there is a 0.5% AEP of flooding from the sea or a 1% AEP chance of flooding from fluvial sources in any given year. The Proposed Development is classified as essential infrastructure and therefore the Exception Test is required for the Proposed Development. This FRA has addressed part two of the Exception Test (part one is addressed in the Case for the Scheme [[APP-091](#)]).
- 5.6.4. The modelling undertaken shows that the Proposed Development has a negligible impact on predicted flood levels for events up to and including the 0.5% AEP climate change event. A moderate impact in terms of flood risk is predicted for the 0.1% AEP climate change event and each of the H++ scenarios modelled. The increase in predicted water levels within Lake Lothing as a result of the Proposed Development can be attributed to afflux at the proposed bascule bridge rather than the displacement of water by the bascule bridge piers in the channel as there is a reduction in

water levels predicted for most events to the west of the proposed bascule bridge. Based on the results of the hydraulic modelling undertaken for this FRA, mitigation is not required for the Proposed Development as the impact on tidal flooding is negligible up to and including the 0.5% AEP climate change event.

- 5.6.5. The FRA concludes on the basis of the above that no mitigation is necessary for the Proposed Development and such conclusions are accepted by the Environment Agency. On the basis of the evidence presented, and in the absence of any outstanding objection on grounds of flood risk, we conclude the Proposed Development accords with NPPF and PPG policy objectives in this regard. Insofar as the FRA satisfactorily addresses consideration of the possible impacts of flooding the Proposed Development is also consistent with section 5.2 of the NPSP. This advises that *“the aims of planning policy on development and flood risk are to ensure that flood risk from all sources of flooding is taken into account at all stages in the planning process, to avoid inappropriate development in areas at risk of flooding and to direct development away from areas at highest risk”*.

#### **Historic environment**

- 5.6.6. Historic England initially raised concerns about the direct impact of the development upon non-designated heritage assets within the area of the development footprint, including palaeo-environmental deposits dating to the Holocene and possible earlier. However, these have subsequently been addressed by the Applicant through the Cultural Heritage Desk Based Assessment (ES Vol 3 Appendix 9A) and Deposit Model (ES Vol 3 Appendix 9B) The application also includes a WSI for future mitigation (ES Vol 3 Appendix 9F) which sets out how the proposed project might mitigate against impact to the historic environment. We will therefore require the dDCO to include provision for delivery of the project-specific Written Scheme of Investigation (WSI).
- 5.6.7. Concerns were also raised in relation to the impact of the Proposed Development upon on the South Lowestoft and Oulton Broad Conservation Areas and on the significance of a number of designated heritages through development within their setting. In particular the Royal Norfolk and Suffolk Yacht Club which is listed at Grade II\* and a group of Grade II listed buildings such as Port House. However, the specific Cultural Heritage and Townscape and Visual Impact Chapters (ES Volume 1 Chapters 9 and 10) confirm that there are only limited views from the designated heritage assets previously mentioned.
- 5.6.8. Chapter 9 of the ES (specifically including those sections referred to above) addresses the historic environment in detail. These offer sufficient assurance to Historic England, and to us, that significant adverse effects on heritage assets have been avoided and appropriately mitigated. We conclude therefore that the Proposed Development accords with paragraphs 5.12.1 to 5.12.20 of the NPSP and paragraphs 5.120 to 5.142 of the NPSNN.

## Biodiversity

- 5.6.9. Chapter 11 of the ES addresses biodiversity and nature conservation in considerable detail, covering the scope of the assessment, Directives, Statute and Policy, the methods of assessment employed, a baseline assessment of the environment, designated sites, predicted impacts prior to mitigation and mitigation itself. Refinements were sought by the ExA in ExQ1 and clarifications submitted by the Applicant and accepted by the ExA as addressing the points raised. Natural England have been consulted at successive stages prior to the preparation of the ES and their responses incorporated into the final document. There are no outstanding objections from Statutory Undertakers or other IPs and we are satisfied that the ES and the provisions of the rdDCO, including relevant Requirements and mechanisms such as the ICoCP, secure the necessary controls and mitigation to safeguard biodiversity and nature conservation matters, including all matters also covered in relation to Habitats Regulations Assessment in Chapter 6.
- 5.6.10. The NPSNN at paragraph advises decision makers that *"As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Where significant harm cannot be avoided, then appropriate compensation measures should be sought"*. Paragraph 5.1.19 goes on to require appropriate mitigation both during and after construction. Relevant paragraphs of section 5 of NPSP also echo and support these policy objectives.
- 5.6.11. We conclude that the scope and coverage of the ES and the comprehensive provisions of the rdDCO ensure the Proposed Development is fully in accordance with the aforementioned requirements of both the NPSNN and NPSP.
- 5.6.12. Section 5.1 of the NPSP sets out in paragraph 5.1.1 on biodiversity is the variety of life in all its forms and encompasses all species of plants and animals and the complex ecosystems of which they are a part. Geological conservation relates to the sites that are designated for their geology and/or their geomorphological importance.
- 5.6.13. Sea ports are necessarily located on coasts and estuaries. These areas are often of fundamental importance to biodiversity, particularly to bird and fish life, acting as the prime nursery grounds for a range of commercial species and as critical migration pathways for other species.
- 5.6.14. Construction and operation of port infrastructure can have an adverse impact on biodiversity and/or geodiversity.
- 5.6.15. Chapter 11 of the ES examines biodiversity matters whilst section 11.5 of the ES specifically sets out mitigation measures in respect of biodiversity.

## Design

- 5.6.16. The aesthetics of the design of the Proposed Development are addressed in both the Design Report [[APP-123](#)] and the Draft Design Guidance Manual [[REP3-036](#)]. Further points of detail were addressed satisfactorily in response to ExA questions.
- 5.6.17. The Design Report makes repeated reference to the desire of the Proposed Development to produce an “*iconic architectural solution that contributes positively to the identity of the town*”. We agree, and whilst the detailed design of the bridge is yet to be submitted, we are assured by the evidence presented by the Applicant, and the absence of any outstanding objection to the design on aesthetic grounds, that the Proposed Development will fully fulfil this objective. In this regard therefore this significant contribution to the built cultural capital of the town weighs significantly in favour of the proposals in the planning balance.
- 5.6.18. The NPSNN at paragraph 4.28 anticipates that design be considered an integral element of a scheme from the outset. Paragraph 4.35 goes on to state that “*Applicants should be able to demonstrate in their application how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, applicants should set out the reasons why the favoured choice has been selected. The Examining Authority and Secretary of State should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy*”. The relevant sections of the NPSP under sections 4.10 (good design) and 5.11 (visual impacts) support such policy expectations. Consequently, the Proposed Development accords with NPSNN and NPSP in respect of these matters and, moreover, as the Proposed Development offers the opportunity to make a significant positive contribution to the architectural capital of the town, this too weighs significantly in favour of the proposals.

## 5.7. NAVIGATION (RECREATION AND LEISURE RELATED NAVIGATION AND COMMERCIAL PORT-RELATED NAVIGATION)

- 5.7.1. Both port-related commercial and recreational navigation matter are addressed through the draft Scheme of Operation (dSoO) [[REP3-033](#)] and the Preliminary Navigation Risk Assessment (PNRA) [[APP-208](#)]. Both are in turn secured in their final form through provisions in the rdDCO. A note to the Proposed Development advises that it should be read in conjunction with the provisions of the Order, and the Lowestoft Harbour Byelaws 1993 (as amended by the Order), which make provisions for navigation, mooring and anchorage proximate to and under the Lake Lothing Third Crossing New Bridge.
- 5.7.2. The effects on recreational and leisure navigation relate principally to:
- concerns over the closure of the port during construction;

- the provision of a waiting pontoon for leisure craft; and
- the mechanisms for consultation with leisure craft groups during and after the construction of the crossing.

5.7.3. The Lowestoft Cruising Club have expressed concern from the outset over the closure of the western harbour to access to the sea for a three-week period during the construction process. Particular concern has been expressed that this will be within the summer cruising season and therefore disruptive to the approximately 400 berth users of the western harbour. Concerns have also been expressed that should small craft be required to wait between the closure of the existing bridge and the opening of the new one, provision is made for a waiting pontoon to allow crews to safely manage their vessels during this time. IPs also ask that their engagement in the construction process and management of the crossing is secured through membership of an appropriate consultative body, their preferred option being the Navigation Working Group (NVG).

#### **Applicant's approach**

5.7.4. The Applicant has sought to address the concerns of IPs. Although the closure of the harbour for a three-week period cannot be avoided, Article 20 of the rdDCO now makes provision for a three-month period of prior notification of the closure. This affords IPs and leisure craft users sufficient time to anticipate the closure and plan accordingly to minimise disruption to cruising plans. The dSoO also makes provision for a waiting pontoon in the harbour area between the existing and proposed bridges. Although the exact location is yet to be determined, this will provide the assurance to craft users in the event they are delayed through the opening and closing sequences of the two bridges. Article 41 of the dDCO also provides, within the dSoO, for a robust consultation process with either the PMCS Stakeholder Group in the event that modifications to the SoO are sought or if it were to be replaced.

#### **Issues examined**

5.7.5. A measure of uncertainty remains over the exact location of the waiting pontoon, the precise date of harbour closure and the definitive consultative body chosen. However, we feel the Articles of the dDCO and the provisions of the dSoO offer sufficient assurance to leisure craft users both during and after the construction of the new crossing.

#### **Summary and conclusions**

5.7.6. With the provisions of the PNRA and dSoO further refined post-recommendation, the concerns of IPs in respect of recreational navigation have been met, and this accords with their closing submissions on the matter [[REP10-089](#)]. Insofar as these provisions safeguard the recreational activities of the harbour, the Proposed Development avoids conflict with paragraph 4.6.2 of the NPSP.

## **5.8. THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE OPERATION OF THE PORT**



5.8.1. Associated British Ports (ABP), in its capacity as the Statutory Harbour Authority (SHA) has set out its final position in respect of all matters, both planning and land acquisition-related, in its Closing Submission [[REP11-014](#)]. The SHA role includes responsibility for vessel traffic management, safe navigation and channel depth maintenance [[REP3-024](#), paras 2.6 to 2.56 and Annex 1A and 1B]. As such it is also the Competent Harbour Authority (CHA) with respect to pilotage, which includes all the navigable waters within the port and the seaward approaches. As statutory port undertaker, ABP is able to undertake certain defined port related development within the statutory port estate [[REP3-024](#), Annex 3].

5.8.2. ABP submitted some 65 documents during the course of the Examination. Its representations are generally summarised in its Comment on the Applicant's Response to ABP's DL5 and Oral Submissions at 7 and 8 March 2019 Hearings [[REP8-012](#)], closing submissions [[REP11-014](#)] and letter to SoST dated 31 May 2019 [[REP11-015](#)].

***ABP's case***

5.8.3. This matter covers the loss of: berthing and quayside; land side areas; and the bed of the lake. This loss generally comprises: the permanent Compulsory Acquisition of some 3,000m<sup>2</sup> of land side and bed of the lake under the bridge piers; some 2,500m<sup>2</sup> of airspace and rights under bridge decks; and some 4,500m<sup>2</sup> of rights over the only access to the port. The Temporary Possession of some 40,500m<sup>2</sup> of land and water within the port estate is also sought for construction purposes.

5.8.4. There would be a direct loss of some 165m of berthing, measured in whole berths, as a result of the Proposed Development [[REP8-012](#), pages 13 and 14 and [REP8-013 to REP8-018](#)]. The sum of this loss, ABP argue, would have a materially deleterious effect on the functions of the port and thus to the performance of the area, thus harming the local economy, in conflict with the aims of national policy.

5.8.5. The Applicant asserts that ABP has taken a worst-case approach when assuming the rights acquisition strip is a complete loss to the operation of the port. ABP argue that as they believe the Applicant can decide that ABP cannot use any of this land for port operations. ABP therefore must undertake a worst-case assessment of impact. There are therefore mooring line positions and vessel manoeuvrability issues to consider [[REP3-024](#), Section 10 Table 2, [REP4-029](#), Annex 1, [REP5-023](#), paras 3.9 to 3.17 and 6.10 to 6.45, [REP5-026](#), Annex 1, [REP5-027](#), [REP5-030](#) and [REP8-011](#) and [REP9-014](#)]. There would also be an impact on the functionality of berths beyond the Order limits in terms of vessel manoeuvrability and berth accessibility. This impact would include accessibility restrictions on berths to the west of the proposed bridge due to its operation and opening times.

5.8.6. ABP argue that each length of quay within the inner harbour also has its own distinct characteristics. These characteristics are a factor in the assignment of vessels to berths and cover matters such as their length,



draught, nature of cargo, operational requirements and duration of stay. The loss of the berths would therefore also have a restrictive impact on vessel assignment.

- 5.8.7. They assert that the land side areas which would be lost could not be replaced due to the topography and other land uses around the port. The currently vacant areas are required for future demand, which can occur at short notice.
- 5.8.8. The bridge would cross the port's navigable channel at a safety clearance height of 11m, using a likely safety margin of 1m, at the highest astronomical tide (HAT) [[REP5-023](#), paras 3.66 to 3.71, [REP5-028](#) and [REP8-021](#)]. Any vessels of a height greater than 11m would therefore not be able to traverse Lake Lothing without a bridge lift. ABP assert on this basis that the Ports inner harbour would effectively have been cut in half by the Proposed Development, as such having a seriously harmful effect on the operation of the port.

#### **Disruption from the presence and operation of the proposed bridge**

- 5.8.9. ABP assert that the disruption caused by the 11m safety clearance restriction of the low-level bridge would be compounded by the 32m clearance between the fenders for the bridge piers. Furthermore, over time, global climate change sea level rises could amount to between 0.41 to 0.58m over 60 years, which would reduce the safety clearance. The heart of the inner harbour would be cut in half by the proposed bridge.
- 5.8.10. In the Port of Lowestoft, the existing A47 bascule bridge must be passed to enter the inner harbour [[REP3-024](#), Section 4, [REP5-023](#), Sections 4 and 5 and [REP7-006](#), paras 1.7 and 1.8]. The purpose of that bridge was to maintain the coastal land route as the port was developed. It was therefore an existing circumstance around which the port was developed and is operated by ABP as a SU and the SHA. They state that the introduction of the proposed bridge would be a new, inflexible and more restrictive imposition having an in-combination negative effect with the existing bridge [[REP4-032](#), ExQ1 2.24 and [REP5-023](#), paras 2.8 to 2.13 and Appendix 6]. It would also introduce the risk of the trapping of vessels between the two bridges. Moreover, the control of the proposed bridge would lie with a third party, compromising the functions of the SHA as the relevant Statutory Undertaker (SU).
- 5.8.11. As the detailed design of the proposed bridge is not complete, there are a number of critical factors which remain unresolved. These compound the harm to ABP as a SU and are exacerbated by questions as to the suitability of and qualifications held by the advisors appointed by the Applicant. Furthermore, the Applicant's specific timeframe vessel movement survey, whilst agreed, cannot be representative of movement numbers after the survey timeframe due to continual changes within the port.
- 5.8.12. The fact that vessels exceeding the safety clearance would not be able to pass the bridge without it lifting would be a serious constraint on

the operation of the inner harbour. This would materially affect the movement of offshore Crew Transfer Vessels (CTVs), both now and in the future, where trends are showing the use of larger vessels [[REP5-023](#) paras 3.66 to 3.76, [REP5-028](#), [REP8-021](#), [REP8-027](#) and [REP8-028](#)].

5.8.13. ABP therefore assert that the proposed bridge, with its low level and single leaf, would therefore represent a dangerous safety hazard, in relation to which ABP as SHA seeks an indemnity. This is on the basis that the protections offered in the dDCO are extremely limited. The indemnity sought would cover any direct and indirect loss or damage, without limitation, from circumstances which would not have occurred without the Proposed Development. It would also cover any claims whatsoever made against ABP and any ABP liability, without limitation, to SCC or third parties from the same circumstances. The indemnity provided should include the risks being covered by insurance. If this indemnity is not provided, then ABP would be corporately liable for the actions of others over which it had no control.

5.8.14. ABP also assert that the proposed bridge would also obstruct them in carrying out their statutory duties. These include:

- to keep the harbour open for use;
- wide ranging liabilities for health and safety; and
- port security.

5.8.15. ABP include the role of the SHA, where they state that the incoherent state of the design of the proposed bridge means that ABP cannot discharge its function in approving a Navigation Risk Assessment (NRA) at this consenting stage. This is particularly relevant in the context of the existing challenges to vessels and their masters and the introduction of new structures and changes to wind movement and differential shear forces [[REP3-024](#), Sections 12 and 13, [REP5-023](#) and [REP8-011](#) and [REP8-034](#)]. Furthermore, future port security issues and compliance with the International Ship and Port Facility Security Code are difficult to address at this stage [[REP3-024](#), Section 19 and [REP5-023](#), paras 8.1 and 8.2]. A reduction in the port's ability to accommodate such vessels would be detrimental.

5.8.16. ABP believe that in relation to disruption from the presence and operation of the proposed bridge therefore, the Proposed Development would have a seriously harmful effect on the operation of the port.

### **Impact on the overall business of the port**

5.8.17. ABPs submission on this matter includes:

- serious compromise to the operational viability of the port;
- negative customer perception and market reputational damage from the presence of the two bridges and associated delays;
- constraint on the retention of existing and the attraction of new business in a competitive market;
- difficulty in funding statutory duty investment following a loss of trade;

- damage to the strategic significance and the economic contribution of the port; and
  - damage to the contribution of the port to the renewable energy needs of the UK.
- 5.8.18. ABP argues that location, height and operational restrictions, as already described, would be seriously harmful to the viability of the port [[REP5-023](#), paras 3.19 to 3.24]. It believes that the negative customer perception of the two bridges across the access to part of the inner harbour would also severely limit the port's ability to satisfy customer demand. Furthermore, ABP states that it is the case that the Applicant wrongly rejected the western option for the Lake Lothing Crossing [[REP5-024](#) and [REP5-032](#)]. The Applicant's reliance on the analysis in its Economics Report [[APP-106](#)] is also questioned.
- 5.8.19. ABP notes that the port serves busy North Sea shipping routes, amongst competing continental ports. The port supports some 500 local jobs and contributes approximately £30m Gross Value Added (GVA) to the local economy. This commerce now includes operation and maintenance support for the off-shore wind and oil industry, which is an important feature of this part of the North Sea. ABP believes that the proposed bridge would put the retention of this business at risk.
- 5.8.20. The importance of the port is recognised in the SoST's s35 Direction [[APP-092](#), Appendix B] where it describes "*the Port of Lowestoft's role in being the hub for the offshore wind farms that are part of the East Anglia Array, a major energy supplier for the UK*". Moreover, the Energy and Clean Growth Minister, Claire Perry, launched the Offshore Wind Sector Deal at the port including a £250 million investment in the offshore wind energy market.
- 5.8.21. ABP assert that the bridge would also put at risk the attraction of future business in the 2020s. This would be because there is little space in the outer harbour for further offshore wind tenants, and the bridge would be a deterrent to the use of berths to the west of it, which are currently vacant [[REP3-024](#), [REP5-023](#), paras 3.29 to 3.53 and 3.72 to 3.76, [REP5-026](#), [REP5-027](#) and [REP8-020](#) and [REP8-021](#)]. The berths to the west of the bridge include Shell Quay, which has been identified as a future energy park. The wind sector would require up to 4.9 ha of land at the port, could create up to 1,100 direct and indirect jobs and could contribute some £90m to £150m to the local economy. ABP asserts that this general area to the west of the bridge would be the only future expansion land available to the port.
- 5.8.22. ABP states that demand from existing, under construction and in-development wind farms is just over 30 overnight CTV berths, but this could reach 50 berths with future projects [[REP5-027](#)]. 26 berths are available in the outer harbour but, in the inner harbour, 18 CTV berths at Shell Quay and 26 at North Quay would be affected by the Proposed Development. The Applicant's lower peak demand of 36 CTV vessels has not been justified.

- 5.8.23. ABP note that the port is well placed to support the projected growth of the off-shore wind energy market over the next 25 years. It lies in close proximity to the East Anglia windfarm zone and has berth and quayside space which is ready to go. Even using conservative assessments, this growth would be significant. These conservative assessments include that:
- ABP would only win 44 and 66% of the Round 3 and 4 opportunities;
  - not all wind farms would adopt a CTV operating model;
  - it is assumed that CTV operators would favour the locations where they have existing operations, such as the Galloper operator at Harwich; and
  - for wind farms that are assumed to use CTVs from Lowestoft, in all but one case Lowestoft is the nearest port with the only exception being Greater Gabbard, which uses Lowestoft currently and is likely to continue to do so if the wind farm is repowered for continuity.
- 5.8.24. They believe that their concerns over berthing access delays from the new bridge are real. Over a 25 to 30-year lifespan, a 5-minute delay to a vessel carrying 12 to 24 technicians would be a financially significant disadvantage. The frequency of bridge lifts would also be likely to increase to accommodate increased vessel movements within the port [[REP5-023](#), paras 3.25 to 3.27 and 3.86 to 3.88]. Bridge failure is also a concern, particularly as these concerns are difficult to answer because the bridge design has not been done. Concerns also include incidents on the bridge such as road traffic accidents, vehicle breakdowns and distressed persons.
- 5.8.25. ABP states that all of the above would represent a material constraint on the ability of the port to be competitive in carrying on its business. Such a constraint would then have an adverse effect on the port in making it difficult to find the necessary investment funding to secure its future. The effect of these constraints would also be felt outside the port, as the significance of its economic contribution to the local area would be seriously damaged. Furthermore, the contribution of the port to the renewable energy market generally would also be severely impeded.
- 5.8.26. In relation to impact on the overall business of the port therefore, ABP believe that the Proposed Development would have a seriously detrimental effect on the operation of the port.

### **Mitigation**

- 5.8.27. ABP state that the effects of the Proposed Development would be materially adverse and harmful to the carrying on of the statutory undertaking at the port. Berthing, which is essential to the operational utility and flexibility of the port, would be lost in terms of current and future operations. This must be considered in terms of the operation of the port as a whole, and this requires a holistic approach to its consideration.
- 5.8.28. They state that the height restriction from the proposed bridge would be the only such operational port constraint in the UK. This would be a

deterrent to existing and future commercial operations. The failure to mitigate these impacts or to indemnify ABP against the impact of them results in serious material harm which would touch on the future viability of the port and the local and regional economy.

5.8.29. ABP has however considered the potential for mitigation throughout the Examination. In this regard it has considered the following matters as a mechanism to maintain equivalence in respect of the port in terms of the before and after situations. These mitigation matters are:

- the provision of an emergency berth, which would be located between the two bridges for any trapped vessels [[REP3-024](#), Section 18, [REP4-032](#), page 12 ExQ1 2.36 and [REP5-023](#), paras 7.19 to 7.26];
- replacement berthing in the outer harbour, which would be outside of the bridges; and
- an indemnity, as has been described.

5.8.30. ABP states that the tests that should be applied under s127 of PA2008 relate to the carrying on of the statutory undertaking. Here they relate to ABP carrying out its statutory obligations as operator of the port and its statutory obligations and duties as SHA. The Proposed Development would seriously impact on the ability of ABP to comply with these duties.

5.8.31. The tests also suggest that replacement land could be made available to the statutory undertaking to avoid such harm. Here, the port's estate is physically and geographically constrained, and the port's expansion land to the west of the Proposed Development is required for the East of England Energy Park, amongst other things. Land replacement is therefore not an option in this Examination.

5.8.32. The Proposed Development would therefore result in serious material harm to the carrying on of ABP's statutory undertaking as operator of the Port of Lowestoft and SHA. Recent Nationally Significant Infrastructure Project (NSIP) Examinations for the Hinckley Point C Connection<sup>14</sup> and the Richborough Connection<sup>15</sup> are relevant to this Examination. At Hinckley, a small area of the Port of Bristol would be affected, but this particular location was an important part of the resources of the port and material harm was found.

### **ABP 31 May 2019 letter to the Secretary of State for Transport**

5.8.33. ABP has written to the SoST, in some length and with appendices, expressing concern about the extent of harm caused, and has drawn attention to a number of impacts set out previously in this chapter [[REP11-015 to REP11-021](#)]. Of particular note are:

- the effective severance of the inner harbour by the proposed bridge;
- the sensibility of other bridge location options;
- serious detriment to existing port operations; and

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<sup>14</sup> Hinckley Point C Connection (2016)

<sup>15</sup> Richborough Connection Project (2017)

- escalating and cumulative impact in terms of future commercial operations, operator perception, proposed port expansion and the Port's consequential inability to meet the needs of an off-shore energy market which Government has recognised as being of critical importance to the UK economy.

5.8.34. ABP had expected the Applicant to either withdraw the application and pursue a more sensible option or offer measures to mitigate the harm identified. The Applicant has failed to do either. ABP suggests that it has demonstrated that, if the Proposed Development is allowed to proceed, the SoST should not approve the Order.

5.8.35. The letter then proceeds to explain the following aspect of ABP's case, which has already been set out in this report. Its coverage of harm is split into the following elements:

- CA of the statutory port estate;
- loss of berthing and berthing utility and flexibility;
- obstruction and impediment;
- impact on existing operations;
- impact on future flexibility;
- impact on commercial perception of the port and its ability to secure future business;
- failure to mitigate;
- lack of an indemnity;
- s35 Direction; and
- conclusions and a "*minded to*" determination.

5.8.36. On the final point, ABP suggests that the SoST indicates to all parties that he is "*minded to*" refuse to approve the Order. That would provide the Applicant with the opportunity to approach ABP with a meaningful package of mitigation measures, including an acceptably termed indemnity.

### **ABP's conclusion**

5.8.37. From the evidence submitted, ABP says that it is clear that the Proposed Development, comprising the introduction of a new bascule bridge in an operational port, would have serious consequences for the port.

5.8.38. ABP states that it does not oppose the principle of a third crossing of Lake Lothing. ABP's original objection was to the location of the bridge through the middle of the operational port. If the Applicant had approached the formulation of its application in a properly considered way, that would have readily demonstrated that the selected location for the crossing now being promoted is operationally indefensible.

5.8.39. ABP, as the SHA, cannot, for the reasons detailed above, accept the location of the bridge as currently proposed if the serious harm that would be caused by the Proposed Development is not mitigated. To date, the Applicant has refused to acknowledge the extent of this harm that its Proposed Development would cause and has refused to discuss any

meaningful mitigation measures with ABP. The application, as proposed, should therefore not be confirmed.

- 5.8.40. That is clearly regrettable, given the large amount of public money that has already been expended. However, in a spirit of pragmatism, ABP has indicated to the SoST that it may still be prepared to withdraw its objections to the application, if the Applicant would be prepared to provide a genuine package of measures to mitigate the harm that would otherwise be caused.
- 5.8.41. In the current circumstances therefore, and for the purposes of the Examination, ABP's position remains one of regretful opposition and it invites the ExA to recommend that the dDCO not be made.

### ***Applicant's response***

- 5.8.42. The Applicant's response is set out in Closing Submissions (ABP) [[REP11-009](#)]. Whilst these submissions address both the broader planning matters and those specifically concerning in relation to the CA, it is the former that are considered here. The Applicant has secured the relevant technical expert advice and has used this throughout the development of the application and during the course of the Examination [[REP10-080](#), Appendix A]. The Case for the Scheme provides a comprehensive narrative on the need for the Proposed Development and its evolution [[APP-091](#)]. The Statement of Reasons (SoR) concludes that there is a compelling case in the public interest for the Proposed Development and for the carrying on of ABP's undertaking as SHA [[REP10-009](#)]. This is considered further in Chapter 8 of this report.

### **Benefit to the Port of Lowestoft**

- 5.8.43. The expansion of the port, as anticipated by ABP, would result in more intense use of the surrounding highway network. Without the Proposed Development, such journeys would be susceptible to weaknesses in the existing network, particularly existing bridge openings which would increase [[REP4-016](#), Section 2]. The port relies on its land-based connections, and the Proposed Development would benefit all highway users due to savings in time and vehicle operating costs [[APP-106](#), [REP7-005](#) and [REP8-008](#), Section 3.3]. The SoST also recognised that the Proposed Development has a key role to play in the growth of the Port of Lowestoft in the s35 Direction [[APP-092](#), Appendix B]. Indeed, ABP recognises the reliance of a port's success on adequate terrestrial infrastructure serving it [[REP3-024](#), Annex 7].

### **Vessel survey**

- 5.8.44. The Applicant undertook a nine-month vessel movement survey, in three phases, spanning just over a year for seasonal variation, and it was updated with a third tranche of survey data [[APP-208](#), [REP3-060](#), [REP7-005](#), pages 9 to 11 and [REP8-008](#)]. The accuracy of the survey has been corroborated by ABP data, and the data is agreed between the parties. The cyclical nature of vessel movements is visible in comparing the three individual survey periods and, had the survey covered a longer



period, it would have reflected lower berth utilisation [[REP8-008](#), paras 23.2.7 to 3.2.10 and [REP8-018](#)].

- 5.8.45. The Applicant also considered the additional vessel movements that could arise with the future growth of the port [[REP8-008](#), Section 5.3]. Under these circumstances, the existing bridge would also need to lift more frequently or for longer than it does currently [[REP4-016](#)]. To present a robust Benefit Cost Ratio (BCR) in the application Economics Report, it was assumed that, in the future, the proposed bridge would lift at the same frequency as the existing bridge [[APP-106](#) and [REP4-016](#), Section 4.1]. However, based on the vessel survey data, the proposed bridge is, on average, predicted to lift five times per day, compared to 14 times for the existing bridge [[REP3-056](#), Table 4-1].
- 5.8.46. In the application Economics Report, the proposed and existing bridges are modelled to lift ten times per day [[APP-106](#) and [REP4-016](#)]. The modelling understates the current impact of the 14 existing bridge openings on vehicular traffic in the Do-Minimum scenario. The modelling also understates the benefit to vehicular traffic of the proposed bridge in the ten-lift Do-Something scenario. This is because it is predicted to only require five lifts and would therefore be available to vehicular traffic more frequently than modelled. Collectively, therefore, the Applicant has reported on the basis of a conservative estimate of the benefit of the Proposed Development.
- 5.8.47. The Applicant has also undertaken a sensitivity test on the BCR, doubling the number of lifts for the two bridges, thereby reducing further the highway benefit of the Proposed Development [[REP4-016](#)]. The effect of the future growth scenario and the doubling of bridge lifts had a very limited effect on the BCR and did not alter the Proposed Development from being High Value for Money. The Applicant is therefore satisfied that its BCR output remains robust under port growth scenarios that could reduce the highway benefit of the Proposed Development.

### **Vessel simulation**

- 5.8.48. The Applicant's vessel simulation was a three-stage process which involved ABP's Harbour Master and its Marine Manager in the simulation runs [[APP-198](#)]. The Applicant commissioned an independent report of the second and third simulations [[REP10-080](#)]. Following criticism from ABP for the lack of quality in its independent expert advice, the Applicant has provided CVs of those involved [[REP10-080](#), Appendix A].
- 5.8.49. The preliminary NRA confirms that refinements to the design have been incorporated following the simulations to effectively reduce the risks created by the Proposed Development [[APP-208](#), para 7.1.1].
- 5.8.50. The Applicant considers that issues raised by ABP as outstanding and rendering the simulation of limited value, including wind shear effects and bridge cycle times, are of limited impact to the concept of the Proposed Development or the navigational safety of the port.



- 5.8.51. In respect of wind shear, the independent report concludes that the effect of wind shear is short-acting, given the transit time of the vessel through the structure [[APP-208](#), Appendix B Section 4.2]. The width of the navigation channel under the proposed bridge would be 10m wider than the entrance to the inner harbour, where wind shear would be experienced in association with the existing bridge. The independent report also concludes that this would provide greater space to counteract any different effects of wind shear, if experienced.
- 5.8.52. The independent report also identifies that, in adverse weather conditions where no suitable waiting berths were available, a pilot or master could request the second bridge to open before he transited the first. This is relevant to the emergency berth sought by ABP.
- 5.8.53. The Applicant's considers that the vessel simulation is robust and has appropriately informed both the design and preliminary NRA. In response to ABP's concerns, the Applicant has included Requirement 11 (R11) in the rdDCO. This requires the final NRA to be submitted to ABP for approval, and for that NRA to be informed by further vessel simulation [[REP7-005](#), page 17].

#### **Future prospects for the port**

- 5.8.54. The Edge Economics Report, commissioned by ABP, translates the current economic significance of the port to future economic performance [[REP3-024](#), annexes 4A and 4B]. It then considers the effect of the Proposed Development against that future performance, arguing the potential for job creation and annual GVA would be approximately halved.
- 5.8.55. The Applicant does not agree with the central assumptions applied by Edge Economics [[REP8-008](#), para 3.3.41]. These are that:
- CTV operators would be unwilling to berth west of the proposed bridge;
  - Shell Quay is no longer seen as being an acceptable facility; and
  - the proposed bridge would sterilise up to 200m of quay which could potentially be used for CTV berthing.
- 5.8.56. ABP commissioned BVG to assess the opportunities for the port, including potential CTV demand and how the ability to meet that demand could be compromised by the Proposed Development [[REP5-027](#), Annex 2]. The Applicant does not agree with the BVG conclusions in this regard.
- 5.8.57. ABP commissioned ABPmer to assess the usage of berths between 2015 and 2017, the effect of the Proposed Development on this use in current terms and in the future based on the CTV demand set out in the BVG report and elsewhere [[REP5-026](#), Annex 1 and [REP8-018](#), Annex 3]. The Applicant has fundamental concerns with the methodology used in this report.
- 5.8.58. The BVG demand up to the mid-2020s is for between 20 to 30 vessels, relatively consistent with the existing 26 berths in the outer harbour.

Any overflow to Shell Quay would only be required from the mid-2020s, by which time the operational regime and reliability of the proposed bridge would have been established. The masterplan for the port also indicates that Shell Quay would come into play around 2025 [REP9-012, Annex 1 Figure 15].

- 5.8.59. The BVG peak demand is for up to 50 CTV berths in the 2030s [REP5-027, Annex 2 Figure 3]. BVG assumes that, apart from two, all other projects in the East Anglia sector of the southern North Sea would create a demand for port space at Lowestoft [REP5-027, Annex 2 tables 1 and 2 and Section 4.1]. BVG considers that this future demand would be met from locations to the west of the proposed bridge. With the bridge in place however, berth supply would be limited to the outer harbour, as no operator would be willing to locate to the west of the proposed bridge [REP5-027, Annex 2 Section 6 and figures 7 and 8]. BVG therefore predicts a shortage of berths.
- 5.8.60. The Applicant considers that 36 CTVs is a more realistic maximum future demand, based on the nearest windfarms and the BVG calculated CTV demand per turbine [REP9-010, page 5]. This is however based on the original size of the East Anglia ONE windfarm which, as BVG note [REP5-027, Annex 2 Table 2], is now smaller, and this would reduce the Applicant's requirement to 30 CTVs [REP9-010].
- 5.8.61. The use of such a proximity as a tool to assign CTVs to a port is a "*rough and ready*" approach because are other factors for operators. These other factors do not work against any particular port, so Lowestoft is assumed to capture demand from all windfarms for which it is the closest port, even if other factors might mean that in practice an operator would favour a different port. This is not a fundamental error as claimed by ABP, but is the consequence of applying the methodology consistently in all cases.
- 5.8.62. In terms of any increased transit time, a vessel large enough to require a proposed bridge lift to complete a Shell Quay transit would be required to give advance notice. It would thus be capable of timing its arrival to coincide with the bridge lift and generally avoid delay.
- 5.8.63. In terms of transit restrictions, the draft Scheme of Operation only restricts lifts during peak road traffic hours, and the Applicant accepts that this could affect some vessel movements. An analysis of the vessel survey however indicates that operators are able to adjust movement schedules to take account of known restrictions. They therefore could accommodate proposed bridge restrictions through minor variations to sailing times.
- 5.8.64. In terms of increased risk of disruption, it has been suggested that the need to pass two lifting bridges to access a berth would be too great a risk due to bridge failure or other situations that would prevent lifting. The proposed bridge is targeting 99.9% reliability and thus may be unavailable for only 8 hours per year. The bridge would also have a

visual control tower and there are byelaws in the dDCO application governing conduct on the bridge.

- 5.8.65. The existing bridge suffers periodic failures and, on average, is closed 20 times per year [[APP-091](#), para 4.6.13 and [REP7-005](#), page 6]. ABP does not see the existing bridge as a deterrent to business related to the inner harbour. It is therefore difficult to see why the proposed bridge, designed and operated to modern standards of performance, would be a 'game changer' when making locational decisions.
- 5.8.66. The BGV conclusion, while not explicit, is that the port would be unable to attract CTV operators beyond what can be accommodated in the outer harbour. The ABPmer report suggests that, for a demand for 50 CTV berths, 14 vessels could not be accommodated in the port, and therefore this is the scale of lost CTV business [[REP8-018](#), page 21].
- 5.8.67. Prospective operators may indeed have concerns associated with the Proposed Development, particularly in advance of its construction. The BVG conclusions are however based on a presumption that these operators would be in a more advantageous position in locating in another port. Moreover, that that decision is precipitated wholly on the basis of the three matters above.
- 5.8.68. The Applicant does not believe that any, or in fact any combination, of these factors would prove a critical driver for an operator choosing not to locate in Lowestoft. This would particularly be the case when factoring in the options available for a vessel operator to make small modifications to the craft, or to vessel transit times that would ameliorate the potential negative effects that could, in extreme circumstances, occur.
- 5.8.69. The Applicant agrees that the port is well-positioned to attract business associated with the growing offshore energy sector. PD rights would also be able to be returned if the bridge was ever dismantled [[REP8-007](#), [REP9-009](#) and [REP10-080](#)]. However, the Applicant considers that the impact of the Proposed Development should not be based the certainty of future growth in the port. The BVG report and the port masterplan frame demand as being between 30 and 50 CTVs. The ABPmer report however only uses 50 CTVs in its analysis. This gives insufficient regard to the uncertainties of growth.
- 5.8.70. Furthermore, the impact on locating at Shell Quay should be interpreted on the basis that for 22 hours per day there would be no impediment from the proposed bridge, rising to 24 hours per day if the vessel does not require a bridge lift. Even for the two hours where lift restrictions would be in place, the practical consequence would be a minor adjustment to vessel transit times. The Applicant therefore does not consider that the proposed bridge would prove the critical driver for an operation choosing not to locate in Lowestoft.

### **Impact on berthing**

- 5.8.71. The Applicant states that the direct loss of berthing associated with the Proposed Development would be the 62m within the land subject to the

Order The adjacent 'rights strips' of 5m would not be not a direct loss, as they would remain available for the tying of ropes across [REP7-005, page 32 and REP8-008, para 6.1.5]. Moreover, a further 10m to either side of the rights strips should not be added as a direct loss, as space for mooring lines would be required with or without the Order [REP8-008, para 6.1.6]. ABP adds this 30m to the direct loss, totalling 92m. ABP then adds a 60m loss of North Quay 2 in respect of its original utility and 45m of North Quay 4E because there is no agreement regarding any accommodation works that would retain its utility. ABP therefore implies the total loss is 165m.

- 5.8.72. The Applicant considers that berth loss should not be measured in whole berths. This position, supported by the empirical evidence provided by the Harbour Master at the ISH on 7 March 2019, is that berth numbering simply has a referencing function. The mooring positions of vessels varies with their size and are dictated by bollard positions, with decisions made dynamically according to berth availability [REP7-005, page 35]. The land acquisition within the Order would remove access to up to four bollards, over a length of quay of 60.95m, which is consistent with the direct loss of 62m [REP8-005].
- 5.8.73. The Applicant is of the view that North Quay 4 East, immediately to the west of the proposed bridge would not be lost. Some 34.5m, including the 5m rights strip, would remain of use, although it may require fendering, due to the quay being suspended at this location [REP8-008, para 6.1.8 onwards]. Alternatively, the security fence at the western boundary of North Quay 4 East could be relocated, such that North Quay 4 East could be amalgamated with North Quay 4 West [REP8-005, para 3.1.8]. Such works could be required of the Applicant under the rdDCO Protective Provisions afforded to the SHA, or they could be carried out by ABP with the cost claimed back under the compensation code.
- 5.8.74. With respect to North Quay 2, to the east of the proposed bridge, ABP has described it as effectively lost, but has also dedicated it for an aggregates operation in assessing berth utilisation [REP8-005]. There would remain some 120m of usable quay, comprising North Quay 1 and North Quay 2. This could accommodate a range of berthing scenarios, including 100m Length Overall (LOA) vessels that may be required for an aggregates operation [REP9-010, page 2]. There would therefore be no material difference to the situation today in what could be accommodated exclusively on these berths, apart from a loss of flexibility due to a smaller North Quay 2 and no North Quay 3. [REP8-005]. The Applicant therefore does not agree with the assertion in ABPmer's report that "*The only available option would be to combine its North Quay 2 operation with North Quay 1 so that larger vessels would extend across both North Quay 1 and 2 berths. This would restrict the combined berth area of North Quays 1 and 2 for use by one large vessel only*" [REP10-080].
- 5.8.75. The Applicant estimates that berth utilisation in the inner harbour is around 35% with a peak of around 80% [REP8-008, para 3.2.12]. This is

based on observations from the vessel survey, data obtained from the marine automatic identification system and sight of North Quays 1 to 5.

- 5.8.76. ABPmer has reported on berth utilisation and then updated this report [[REP5-026](#) and [REP8-018](#)]. The Applicant has concerns with the assumptions and methodology applied in the report and does not accept its conclusions. In respect of the assumptions, the principal inputs relate to the extent of berthing loss and the potential growth within the port, as already described [[REP8-005](#) and [REP9-010](#), page 6].
- 5.8.77. In terms of potential growth, ABPmer incorrectly assumes opportunities are certain and overstates the effect of dedicated berths in the statistical analysis, but in the narrative acknowledges that they may not prevail [[REP8-005](#), page 10, [REP8-018](#), Table 6 and [REP10-088](#)]. ABPmer also overstates the berths dedicated to the vessel operator Petersons, which should be either North Quay or Town Quay but not both [[REP10-088](#)].
- 5.8.78. The Applicant also has concerns with the ABPmer methodology [[REP8-005](#)]. A fundamental factor relates to the dedicated berths, to which ABPmer gives a 100% utilisation rate. This has a significant bearing on future berth utilisation. The Applicant does not dispute the principle of dedicating berths, where this is based on the past situations, but rather how that dedication is used in the calculations for future forecasts of port utilisation.
- 5.8.79. The Applicant does not consider that ABPmer's approach is justifiable whereby six berths are dedicated, given a 100% utilisation rate and the 100% is then included in the berth utilisation rate for the inner harbour. Including 100% as a dedicated berth utilisation figure has the effect of elevating the average figures. Furthermore, an actual utilisation of 100% would be very unlikely. This is because it would be significantly in excess of the 75% threshold, set out in the ABPmer report, beyond which a berth is considered to be too busy, leading to declining efficiencies. Those dedicated berths should either be excluded from the analysis, or afforded a more realistic utilisation rate.
- 5.8.80. In the ABPmer report, without the various individual 100% entries for the six dedicated berths and the significant re-assignment of vessels to Talismans berths, the average utilisation across the inner harbour berths would not reach 75% [[REP8-018](#), Table 6]. This would be the case, even with all the growth assumed in the ABPmer assessment.
- 5.8.81. Moreover, the following factors would reduce the utilisation rate even further:
- One or more of these berths may not be dedicated, and therefore 100% would be replaced by a lower actual berth utilisation figure;
  - North Quay 4E remains usable;
  - the full opportunities identified by BVG, and the Port Masterplan, and included by ABPmer, may not materialise; and
  - the proposed bridge should not dissuade operators from being located to the west of it to the extent assumed by ABPmer.

- 5.8.82. The Applicant has calculated berth utilisation with a more realistic assessment of assumptions in which:
- Dedicated berths were removed from the calculations;
  - North Quay 4E was afforded a utilisation of 35%; and
  - the proposed bridge reduced further growth to the west of it by 50%.
- 5.8.83. This brings the Inner Harbour berth utilisation average to 58%, indicating a busy, but efficient port [[REP8-005](#), Table 5].
- 5.8.84. ABPmer has disputed the Applicant's berth utilisation calculations [[REP10-088](#)]. The Applicant produced Table 5 on the basis of the limited data included in the ABPmer report. The Applicant only has access to the average figures, berthing provision in the port and numbers of CTV currently using, and predicted to use the port. ABP has not provided any further data, or explained how the Applicant's methodology is incorrect.
- 5.8.85. In summary, the direct loss of quay would be 62m, compared with 2,100m of quay in the inner harbour. Whilst the functionality of North Quay 1 and 2 would be materially affected, they could continue to accommodate vessels up to a combined, or individual, LOA of 100m. North Quay 4 East should not be written off, as minor accommodation works could retain the residual length as a functioning quay.
- 5.8.86. The effect of the Proposed Development on berth utilisation should be approached on that basis, and then berth occupancy remains less than 60% in the inner harbour. It is only when a series of assumptions are layered into the assessment that berth utilisation exceeds desirable levels. These assumptions relate to future business, a particular berth dedication and reassignment process, and pessimistic forecasts on the effect of the Proposed Development.
- 5.8.87. The Applicant therefore suggests that given the significant uncertainty in future forecasts, proportionate weight should be given to such assertions of impact based on this analysis.

### **Air draft**

- 5.8.88. The Applicant chose an air draft of 11.5m at highest astronomical tide (HAT) to provide a working safety margin below the structure of the proposed bridge for vessels transiting without a bridge lift. The Applicant accepts that a future NRA may require a safety margin of 1m, which would give an air draft of 11m at HAT [[REP7-005](#), page 5 and [REP8-008](#), para 5.2.16]. Tidal water levels within the lake are however more than 0.5m lower than HAT for the vast majority of the time. Indeed, the Lowest Astronomical Tide is 2.8m lower than HAT and spring tides have a range of 1.9m. The 11.5m air draft was simply used as a cut-off in the vessel survey to establish an anticipated bridge lifting frequency [[REP7-005](#), page 5 and [REP8-008](#), para 5.2.16].
- 5.8.89. There would only be restrictions on commercial vessels requiring bridge lifts during peak road traffic hours [[REP7-005](#) and [REP8-005](#)]. The vast majority of the time, peak road traffic hours would not coincide with high



tide, and the clearance would be greater 11.5m [REP8-005]. The Applicant accepts that the proposed bridge could have to open more often in the future due to climate change [REP7-005]. This would occur on a very gradual basis over an extended period of time, so that vessels would be able to take account of such small-scale changes.

- 5.8.90. The Applicant has taken into account PIANC<sup>16</sup> air draft guidance [REP7-005, page 5, REP9-010, page 8 and REP11-007]. It has included the 1m clearance in the Scheme of Operation, as requested by ABP [REP11-007]. The SHA could seek to have air draft monitors installed at the proposed bridge, and this would be secured under R11 and the Protective Provisions for the SHA in the dDCO [REP9-010, page 8].
- 5.8.91. The operators of CTVs are split on whether masts can be lowered or not to reduce their required air draft [REP8-021]. This demonstrates that masts can be made retractable, to allow transit without a bridge lift if required and if CTV operating schedules were likely to coincide with the proposed peak road traffic hours lifting restrictions.
- 5.8.92. The report also shows that 50% of the CTVs identified by ABP have air drafts less than the minimum 11.5m clearance and would not require a bridge lift at any state of the tide below HAT [REP5-027, Section 2.2, REP7-005, page 6, REP8-008, para 3.3.37 and onwards, REP8-021 and REP9-010, page 9]. It also identified a further 35% of vessels with air drafts between 11.5m and 14m which could pass under the proposed bridge at certain tidal levels without requiring an opening. Moreover, 70% of CTV movements recorded in the vessel survey arose from vessels requiring less than an 11.5m air draft [REP7-005, page 6].
- 5.8.93. A large range of factors influence the type of CTV selected by an operator. The clearance afforded by it, for the two hours per day when the proposed bridge would not open on demand, would be one of these factors but this may not be a major factor [REP8-008, para 3.3.37 and onwards]. Larger vessels with less clearance are also not certain in future owing to the running costs of such vessels and inefficient journey times when transferring crew [REP5-027, Section 2.2]. Furthermore, future windfarm locations in the southern North Sea are constrained by the limits of territorial waters and will not be more remote from the coast than they are at present [REP9-010, page 9].
- 5.8.94. From all of the above, the Applicant does not consider that the proposed bridge in terms of air draft would lead to a degree of harm that would be serious in terms of the operation of the port.

### **Proposed bridge Scheme of Operation**

- 5.8.95. The draft Scheme of Operation includes a prohibition on bridge lifts during peak road traffic hours of 08:00 to 09:00 and 17:00 to 18:00 [REP4-016 and REP11-007]. Outside of these periods, commercial operators can request a bridge lift at any time. The Applicant justifies the

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<sup>16</sup> The World Association for Waterborne Transport Infrastructure

restriction during peak hours by highway traffic benefits, particularly in terms of journey time reliability [[REP4-016](#)]. ABP has indicated that there are both practical and commercial consequences of such restrictions. In response to ABP concerns, the draft Scheme of Operation permits vessel movements in the restricted periods for those which are tidally restricted and in cases of emergency.

- 5.8.96. The existing bascule bridge separates the inner and outer harbours and has a clearance above HAT of 2.16m [[REP8-008](#), Section 5.1 and 5.2]. It has periods during the day when the movements of commercial vessels are discouraged. During the 175-day vessel survey, ABP lifted the existing bridge ten times in the discouraged periods, and these lifts related to tidally restricted vessels or emergencies [[REP8-008](#), Section 5.2].
- 5.8.97. A marked increase in vessel movements seen either side of those periods is indicative of vessels managing their transit times to avoid the discouraged periods and delay [[REP8-005](#), para 2.1.4 and [REP8-008](#), Section 5.2]. The Harbour Master has also observed CTV operators corraling in advance of a lifting of the existing bridge [[REP7-005](#), page 2].
- 5.8.98. The Applicant considers that effect of the proposed bridge restrictions should be described in terms of journey time adjustment and not delay [[REP7-005](#), page 2, [REP8-005](#), para 2.1.4 and [REP8-008](#), Section 5.2]. An adjustment could be to advance a journey time as well as to delay it. There is no evidence that non-tidally restricted vessels would be unable to advance their journey times if that would avoid a restricted period. The restricted periods would be well known to vessel operators and transit times could be planned accordingly. It is inconceivable, having regard to how vessels currently operate from the inner harbour, that they would not adjust their transit times, as they seem to do at present.
- 5.8.99. Even though the restricted periods would be extended over the existing situation, they would still represent a small proportion of time within a 24-hour period [[REP9-010](#)]. Furthermore, only limited adjustments would be required to avoid the restricted periods altogether. For vessels based at Shell Quay, the worst-case effects of the restrictions would be a 9-minute AM adjustment for outbound vessels and an 11-minute PM adjustment for inbound vessels [[REP9-010](#)].
- 5.8.100. The Applicant does not accept that the proposed peak road traffic hour restrictions would have a material, let alone a significant, effect on operations located to the west of the proposed bridge. The Applicant therefore has not accepted the ABP suggestions [[REP10-084](#) and [REP11-007](#)] which seek to match the restriction times on the proposed with the existing bridge, as:
- They do not correlate with peak road traffic hours;
  - there is no evidence that the proposed restrictions would delay vessels in the manner ABP has suggested; and



- they do not take in to account the transit time between the two bridges and so matching the restricted periods has a misplaced logic.

5.8.101. The Applicant also has not extended the exception for tidally restricted vessels or emergencies, as lifting on commercial demand nullify the restrictions. ABP's further suggestions on the Scheme of Operation have however been generally accepted [[REP10-084](#) and [REP11-007](#)]. The Applicant thus does not consider that navigation restrictions as a result of the proposed bridge scheme of operation would lead to a detriment that would be serious in terms of the operation of the port.

### **Navigational risk**

5.8.102. The submission of a preliminary NRA within an application for development consent has precedents such as on the Silvertown<sup>17</sup> and Thames Tideway<sup>18</sup> tunnels [[APP-208](#), [REP5-007](#), page 12 and [REP8-008](#), Section 7]. In responding to ABP criticisms, the Applicant considers that the NRA has been prepared in accordance with the most appropriate guidance and allowed wide stakeholder engagement [[REP10-080](#)]. It also took account of all of the data sources that were available at the time.

5.8.103. Requirement 11 of the rdDCO provides for submission of a final NRA to the SHA for its approval, and the NRA would become part of ABP's own port risk assessments, which it is required to keep up to date. The Applicant has also accepted ABP's recommendation that the SHA would be responsible for any consultation, pursuant to the Port Marine Safety Code.

5.8.104. The Applicant therefore considers that navigational safety has been appropriately considered as part of the application and the rdDCO adequately safeguards the concerns of the SHA [[APP-208](#), [REP5-007](#), page 12 and [REP8-008](#), Section 7]. These provisions would ensure that navigational safety would not be compromised [[REP8-008](#), [REP3-029](#), ExQ1 2.36 and [REP11-007](#)].

5.8.105. The Applicant has considered the risk of a large commercial vessel becoming trapped between the existing and proposed bridges. It does not consider that an emergency berth, as sought by ABP, would be necessary. This is because alternative methods of risk mitigation could be made available, such as the opening of the proposed bridge to allow the vessel to pass and berth before it entered the inner harbour. This mitigation has been included in the draft Scheme of Operation, as it would reduce risk to a level so as to be acceptable under ALARP<sup>19</sup> protocols [[REP8-008](#), [REP3-029](#), ExQ1 2.36 and [REP11-007](#)]. Moreover, any removal of this provision would be subject to the agreement of the SHA under A41 of the rdDCO.

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<sup>17</sup> Silvertown Tunnel (2018)

<sup>18</sup> Thames Tideway Tunnel (2014)

<sup>19</sup> As Low As Reasonably Possible

- 5.8.106. The Applicant therefore does not consider that navigational risk from the proposed bridge would lead to a degree of harm that would be serious in terms of the operation of the port.

### **Port security**

- 5.8.107. The Applicant considers that the physical separation of vessels from the proposed bridge, enforced by the fenders, and close circuit television would significantly mitigate the effect of the bridge on port security [REP8-008, Section 8]. The Head of Ports Security Policy in the Maritime Directorate at the DfT is of the view that the Applicant's consideration of this matter was proportionate [REP10-080]. The directorate concludes that the limitations to the setting up of Temporary Restricted Areas (TRAs) caused by the proposed bridge would accord with the positions of the bridge fenders, or the 62m of quay which would be lost. The Applicant therefore does not agree with ABP that 223m of TRA potential would be lost [REP3-024]. The Applicant accepts that the port security plan would need to be updated to reflect the presence of the bridge, but it would not have a significant impact on the port's ability to create secure areas.
- 5.8.108. The Applicant has also engaged with the Centre for the Protection of National Infrastructure, particularly in the context of vehicle borne threats. Agreement was reached that the threat would be low and mitigation measures would not be required [APP-091, para 7.3.65 and onwards and APP-092, Appendix F].

### **Applicant's conclusion**

- 5.8.109. The Applicant does not deny that the imposition of the Proposed Development over the port would cause some adverse impacts to the operation of the port. The Applicant considers however that nothing has been put forward by ABP to demonstrate that the degree of harm identified would be serious, and that the Applicant has put forward sufficient evidence to show that this would indeed not be the case.

### **Examining Authority's consideration**

- 5.8.110. ABP's case in objection during the Examination was summarised in closings [REP11-014].
- 5.8.111. We agree with ABP that the carrying on of port operations encompasses existing and future port operations together with the ability of ABP to comply with its statutory obligations and duties as SHA and CHA. We also agree with ABP that planning harm is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach. In this case, we conclude the impact on the port as a whole should be assessed. We have considered the objection generally under the headings in the ABP closings and have considered construction disruption in Chapter 8 of this report in terms of the Temporary Possession powers sought.

## **Land and rights loss**

- 5.8.112. In this section we consider the impact of the Proposed Development on berthing and the land side of the port's estate; we consider its effect on navigation and the more general operation of the port later in this chapter.
- 5.8.113. Whilst ABP claims that the loss of berthing would be 165m, the direct loss of berthing within the area for the proposed bridge would be 62m. There is however no evidence to indicate that this berthing has any particular characteristic that is not repeated elsewhere on North Quay. It therefore cannot be said to be particularly special or important compared to other areas, and this 62m of direct loss is out of a total berth length within the inner harbour of the port of some 1,500m, as quoted by ABPmer.
- 5.8.114. The 62m is related to the powers sought within the dDCO. The proposed bridge would however be constructed within this potential bridge width, and rdDCO powers would only be exercised for the width of the structure itself plus a maintenance allowance. The actual direct loss could therefore be less than the 62m. Furthermore, berth numbering appears to us to be for referencing purposes only, and vessels occupy positions based on other factors. We therefore do not accept that the final direct loss should be extended to the next whole berth length.
- 5.8.115. To either side of this direct loss would be a berth length of 5m where rights in the lake would be sought to allow maintenance of the proposed bridge. The power to acquire these rights could however only be exercised with the reasonable consent of the SHA, which could be given subject to conditions. It would therefore be possible for the SHA, for the vast majority of the time, to secure the use of these 5m lengths for mooring line purposes.
- 5.8.116. ABP has suggested that a quay length of 10m could be required beyond the length of a vessel to accommodate necessary mooring lines. Where vessels are moored near one another, the lines could cross, meaning that such a dedicated quay length for lines beyond a vessel would not be necessary. Here though, the lines could foul the bridge fenders, and a quay length of 10m could be said to have lost its previous utility. It is however the case that not all vessels would require 10m for mooring line purposes, although a 100m vessel could require more.
- 5.8.117. To the east of the proposed bridge, North Quays 1 and 2 have a combined length of 120m. There is also a length of 4m of North Quay 3 outside of the 5m for the CA of rights. These two lengths, of 4m and 5m, would give 9m for mooring lines outside of Quays 1 and 2.
- 5.8.118. Quay 2 would be affected to some degree by the bridge structure in terms of vessel manoeuvrability. We agree however that a vessel of 100m LOA would still be able to berth on Quays 1 and 2 and we also consider that the effect on the available length and accessibility of Quay 2 for smaller vessels would be very limited. Figure 2 of the ABP Berth Utilisation Assessment and the berthing scenarios show this area in

detail and a range of angles between mooring lines and the quay edge [[REP8-013 to REP8-018](#)].

- 5.8.119. To the west of the proposed bridge, North Quays 4E and 4W are separated by a security fence. It has been said by ABP that the port is a dynamic environment, and we have taken this into account in our consideration of the operation of the port. On this basis, we do not consider the fence to be a permanent feature, and Quays 4E and 4W could be used alongside each other as is the case elsewhere on North Quay.
- 5.8.120. From what ABP has explained about mooring lines, it currently would appear to be difficult to moor a vessel directly adjacent to either side of the security fence. The removal of this fence, the cost of which would be recoverable under the rdDCO, would allow more mooring flexibility between Quays 4E and 4W. This would outweigh the limiting effect of the presence of the proposed bridge structure beyond its physical extent. It therefore follows that the loss of fully useable quay to the west of the bridge structure would be the 5m which would be subject to rights to maintain the bridge. This 5m would however be available for mooring purposes for the majority of the time.
- 5.8.121. From all of the above, the maximum absolute loss of quay would therefore be 62m, with a further 14m would be subject to the mooring arrangements of vessels in the area of the proposed bridge and the frequency and rights required for bridge maintenance. There would also be some loss of manoeuvrability in the area of the proposed bridge structure. The harm in respect of berth loss that would be likely to be caused to the operation of the port should be considered in terms of these losses. The 62m figure has however to be seen in the context that it could be reduced when the detailed design of the bridge is complete or if mooring line lengths are less than anticipated.
- 5.8.122. Land side, the Proposed Development would cross the port's land at one of its narrow points.
- 5.8.123. It is of note that the presence of this Shed 3 currently severs the land side area of the port to some extent. It generally leaves only the quayside and Commercial Road for passage to the areas of the port to the west of the shed. The single pillar of the elevated structure would generally leave a greater width for passage on the quay and Commercial Road sides of it.
- 5.8.124. The eastern door of this shed would face the single pillar. The shed could however be reconfigured, again with recoverable costs, to maintain its utility. These matters would be the main elements of harm to the land side operation of the port.
- 5.8.125. As a result of all of the above points, we consider that the Proposed Development would result in moderate, but not serious, harm to the operation of the port in terms of loss of berthing and the availability of space within the port. In coming to this view, we have taken into account

the provisions in the rdDCO and the protection that these would give to the interests of ABP.

### **Disruption from the presence and operation of the proposed bridge**

- 5.8.126. We agree with ABP that harm to the operation of the port should be assessed in a holistic manner, and we have therefore considered including navigation as a subject here under planning impacts as well as in the chapter dealing with CA matters. The proposed bridge would also place restrictions on dredging operations in the area around the proposed bridge. We have not however seen any sufficiently reasoned evidence to put such restrictions beyond having limited deleterious effect.
- 5.8.127. The proposed bridge would bisect the inner harbour, which itself is accessed from the North Sea through an existing lifting bridge. Commercial vessels are discouraged from passing through the existing bridge for 45mins after 08:15 and again after 17:00 and for 30mins after 12:30. The proposed bridge would be lifted on request, except for 1hr after 08:00 and again after 17:00.
- 5.8.128. The proposed bridge would be likely to need to be lifted for vessels having an air draft, or height above the water line, of greater than 11m at the time of HAT. For the vast majority of the time however, and the lowest astronomical high tides are 2.8m lower than HAT, some vessels with an air draft of greater than 11.5m would be able to pass without the need to lift the bridge. Indeed, spring tides are generally 0.45m lower than HAT, and they would allow a vessel with an air draft of 11.45m to pass without a bridge lift. Furthermore, in cases of emergency or for a tidally restricted vessel, the proposed bridge would be lifted on request at any time.
- 5.8.129. By comparison, the existing bridge has a clearance of 2.16m above HAT and, during the Applicant's 175-day vessel survey, it was lifted 10 times during the period where passage of the existing bridge is discouraged. Moreover, the clearance between the fenders of the proposed bridge would be 32m, which would be greater than the clearance at the existing bridge. We consider that the effect of the proposed bridge on the accessibility of the western part of the inner harbour should be assessed in the context of the existing bridge, notwithstanding ABP's contrary view. This is because the existing bridge is part of the impact baseline and there is no evidence that it would be removed in the future.
- 5.8.130. ABP has suggested that the effect of climate change, which would be to reduce the air draft available under the proposed bridge, would exacerbate any harm caused. ABP suggests that sea level rises could be 0.58m over 60 years. We consider that any such changes would be of the longer term and gradual. We have not seen evidence to convince us that such changes would be significant in the context of other changes that could take place over a 60-year period, and this factor does not cause us to change our view on air draft. In conclusion, in respect of the effects of climate change on anticipated sea levels, we agree that such an incremental increase will arise. This will in turn may result in a potential

increase in the need for the opening of the bridge, thus delaying harbour traffic and reducing the congestion benefits the structure offers. However, these effects will be both modest and incremental and we accord them only limited weight in the planning balance against the Proposed Development.

- 5.8.131. ABP has drawn particular attention to the accommodation of CTVs within the port which represent a significant part of its current and projected operations. ABP suggests that 50% of the current CTVs have an air draft of less than 11.5m, which could pass under the proposed bridge at a spring tide. 35% lie between 11.5 and 14m, which would be passable at other states of the tide. A significant proportion of current CTVs would therefore be able to pass without a proposed bridge lift, and indeed more so if masts on CTVs could be lowered, which has been said to be possible for some CTVs.
- 5.8.132. Both parties have described the corralling of CTVs prior to the opening of the existing bridge. This, to us, shows that there is some flexibility in terms of access times for such vessels. The presence of the proposed bridge should therefore be seen as a factor that would need to be taken into account in the planning of CTV access in terms of the variation of its air draft over time and the availability of lifts.
- 5.8.133. As an example, ABP sees Shell Quay, in the western part of the inner harbour and upstream of the location of the proposed bridge, as an integral part of its future planned expansion of CTV berths. We have been told that CTVs usually leave the port at the start of the normal working day and return at the end of the day. For vessels from Shell Quay, the adjustment to their departure time, at a spring tide and for vessels with an air draft of more than 11.5m, would be 9min. This has to be seen in the context that:
- A spring tide is a specific high point in the tidal cycle which would need to specifically occur around departure time to represent such a restriction;
  - air drafts of less than 11.5m would not need a bridge lift; and
  - departure times would need to be planned to avoid the restrictions on passing the existing bridge in any event.
- 5.8.134. For a return trip at the end of the day, the adjustment, under the same circumstances, would be 11min. From all of the above, the proposed bridge would have a limited detrimental impact on CTV access. We are therefore of the view that the availability of air draft under the proposed bridge, at the limited times when it could not be lifted, would not be seriously detrimental to the operation of the port.

#### **Future prospects for the port**

- 5.8.135. We accept the evidence put forward to show the importance of the port to the local and regional economy. In terms of growth within the port however, there is a difference between the parties as to the extent of such growth in the area of CTVs. ABP is of the view that 20 to

30 CTVs could use the port by the mid-2020s, leading to 50 by the mid-2030s. The Applicant however forecasts 36 by the mid-2030s.

- 5.8.136. The likely difference seems to us to be the proximity tests used, in other words, from which wind farm distance would the port attract CTV business. This is very difficult to judge, as such decisions would be based on many individual operator factors unknown to us. The figures could also vary over time. For example, the East Anglia array is to be smaller now than when assessed, and this could reduce CTV numbers by six. We have therefore considered the implications of each position in order to come to a view on their relationship with the serious detriment test.
- 5.8.137. Taking the Applicant's position of 36 CTVs, 26 of these would be likely to berth in the outer harbour, being the most easily accessible. This would leave 10 to be berthed in the inner harbour, and ABP has suggested that the second choice for berthing, albeit without the proposed bridge, would be Shell Quay, which would have 18 berths. Shell Quay would also be a focus for new development within the port as the proposed East of England Energy Park, and the new development is anticipated to take place from 2025 onwards.
- 5.8.138. This would mean that ten CTVs would have to pass the proposed bridge. Using current figures, five of these could pass at any time, three more at any time under certain states of the tide and two may require a bridge lift and have to adjust their arrival and departure by between 9 and 11min. Furthermore, by the 2030s, the proposed bridge would have been in operation for a number of years and would be an understood part of the infrastructure within the port.
- 5.8.139. Taking ABP's position of 50 CTVs, the outer harbour and Shell Quay could accommodate 44 berths, and therefore a further 6 would be required. Using Shell Quay as an example, each berth on the quay would occupy 19m on average. The further 6 berths would thus require 114m of quay. North Quay 1 and 2 have a length of 120m, into which these 6 berths would appear to be able to be accommodated. There is of course the length of North Quay 3 which could accommodate mooring lines.
- 5.8.140. This would mean that 18 CTVs would have to pass the proposed bridge. Using current figures, nine of these could pass at any time, five more at any time under certain states of the tide and four may require a bridge lift and have to adjust their arrival and departure by between 9 and 11min.
- 5.8.141. We consider 50 CTVs to be very much a worst case, as even current projections are reducing this figure by six. Moreover, the 62m berthing loss that we have previously identified would equate to some 4 berths, which is less than 10% of the ABP 50 CTVs position. With so many variables at play here, we cannot say that this loss is critical to the operation of the port.
- 5.8.142. Our view therefore is that the range of CTV berths required would be likely to lie between 36 and 50 berths. It is also our view that 50 berths

would be likely to be able to be accommodated following the completion of the Proposed Development as facilitated by the rdDCO.

- 5.8.143. We acknowledge that these assessments are theoretical. They are however based on the evidence provided to us during the Examination. It allows us to consider a potential scenario in the most realistic manner available to us. The future may be different, but it would be wrong to apportion a substantial degree of planning harm or otherwise on the basis of general statements made by either party.
- 5.8.144. The party's positions on berth utilisation rates have been formulated on very different bases, and direct comparisons are therefore difficult. We do however agree with the Applicant that dedicated berths should not be assessed as having a 100% occupation when considering the efficiency of the operation of the port. This is because these berths would be extremely unlikely to be occupied at a level of 100%, or on a one out one in basis. The use of 100% therefore hides the theoretical expansion opportunity for the dedicated user of these berths within the berths themselves. They should thus either be taken out of the assessment, or given a realistic occupancy rate.
- 5.8.145. It is also of note that the direct berth loss would be 62m out of an inner harbour berth length of 1,500m. Moreover, there is no evidence of specific characteristics of the berths that would be lost that are not available elsewhere in the inner harbour. We therefore favour the Applicant's position on this matter.
- 5.8.146. We accept that there would be a perception of disruption to the efficient operation of the port by the presence of the proposed bridge, but our view is that this would be limited. This is because the actual level of disruption would be seen quickly after completion of the bridge and before the anticipated off-shore business expansion in the late 2020s and 2030s. The presence of the bridge would also be unlikely to be a major deterrent in terms of new business due to the many other factors that would influence decisions on business location.
- 5.8.147. In view of all of the above therefore, we consider that the Proposed Development would result in material harm to the future operations of the statutory undertaking. However, this harm would be limited and therefore of moderate weight when considered in the planning balance.

### **Mitigation**

- 5.8.148. In anticipation of undertaking the planning balance, we must include consideration of the benefit of the Proposed Development to the operation of the port. Indeed, the SoST's s35 Direction identifies the importance of the port and recognises the key role that the Proposed Development could have on its growth. It is in the context of this direction that we have carried out our detailed Examination.
- 5.8.149. The port relies on its land-based connections. These are primarily highway connections, and indeed ABP has drawn attention to the grain HGVs arriving at the port at relatively short notice. We consider that the



Applicant's stated benefits, which include highways matters, are realistic and have been based on conservative assumptions and subject to sensitivity testing. We consider that the emergency berth mitigation, suggested by ABP, would be unjustified as previously explained. The risk of trapping would be minimal and not at a level that would represent serious material harm. The outer harbour replacement berthing mitigation would also be unjustified as, under ABPs CTV test, there would be sufficient space available in the port, as previously explained. This suggestion also implies that there are further expansion opportunities within the outer harbour that do not feature in our growth assessment, and this would reduce the effect of the proposed bridge in this regard still further.

- 5.8.150. ABP has also suggested the provision of an indemnity, covered by an insurance policy. The Protective Provisions in the rdDCO do however provide wide ranging protection to ABP including all liabilities from the operation of the proposed bridge and the need for ABP consent, which could be conditioned, before any occupation of port land.
- 5.8.151. A wider cover to include actions by third parties and losses to third parties would place the Applicant responsible for circumstances far from any degree of its control. As an example, if a vehicle left the public highway and damaged third-party property, it would be difficult to see how the Highway Authority could be responsible if it had carried out its duties satisfactorily. Here, a similar situation should exist in relation to the elevated highway, although losses incurred by ABP would be covered under the Protective Provisions in the rdDCO. Furthermore, we have not seen any evidence of other insurance policies to secure the cover provided by rdDCO Protective Provisions. We therefore cannot see any justification for additional indemnity or an insurance policy.

### **Conclusion**

- 5.8.152. We have considered the multiple elements of the Proposed Development that will impact of the port as a whole and on the ability of the SHA to properly carry out its statutory undertakings.
- 5.8.153. In so doing we have identified a number of deleterious impacts on the operation of the port and it follows these impacts should be apportioned weight against the Proposed Development when considered in the planning balance. We have concluded there would be a loss of berth space and land within the port area. We accept that the presence and operation of the proposed third crossing would have a materially harmful effect on the operation of the port and therefore the future of the statutory undertaking.
- 5.8.154. The assessment of these impacts is with the mitigation measures put in place by the Applicant and which will be secured through provisions in the rdDCO. They have however been assessed without reference to the benefit to the port of improved highway conditions in the local area. If this is taken into account, the quantum of harm would undoubtedly be reduced.

- 5.8.155. However, it is to be noted that the positions taken by ABP are, by its own evidence, worst case scenarios. The probability of the worst case occurring in each of the areas identified by ABP at the same time must however be less than that of a single worst case occurring in one of the areas identified. The holistic extent of the harm presented by ABP is therefore, in our view, much less likely to occur than where it to be consolidated in one specific and significant area. We conclude that this interpretation of probability corroborated the degree of harm we attribute to the identified effects.
- 5.8.156. We are clear that the Proposed Development would cause material harm to the operational port. However, the extent of this harm, when considered in the context of the port operation as a whole, may be characterised as no more than moderate.

## **6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

### **6.1. INTRODUCTION**

- 6.1.1. This chapter of the Report sets out our analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) for Transport, as the competent authority, in performing their duties under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 6.1.2. Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European Site designated under the Habitats Regulations<sup>20</sup> (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment (AA) of the implications for that site in view of its conservation objectives. Consent can only be granted if the AA concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).
- 6.1.3. Evidence has been sought throughout the Examination from the Applicant and the relevant Interested Parties (IP) through written questions and Issue Specific Hearings, with the aim of ensuring that the SoS has such information as may reasonably be required to carry out their duties as the competent authority.
- 6.1.4. The Panel prepared a Report on the Implications for European Sites (RIES) [[PD-014](#)] during the Examination, with support from the Planning Inspectorate's Environmental Services Team. The purpose of the RIES was to compile, document and signpost information provided in the application and submitted by the Applicant and IPs during the Examination (up to and including Deadline (D)9 of the Examination (26 April 2019)) in relation to potential effects on European sites. The RIES was published on the Planning Inspectorate's website on 3 May 2019 and IPs, including Natural England, were notified. Consultation on the RIES was undertaken between 3 May 2019 and 4 June 2019.
- 6.1.5. The RIES was issued to ensure that IPs, including Natural England as the statutory nature conservation body, had been consulted formally on Habitats Regulations matters. This process may be relied upon by the

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<sup>20</sup> Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, Special Protection Areas (SPAs); and under UK policy, potential SPAs and listed Ramsar sites.

SoS for the purposes of Regulation 63(3) of the Habitats Regulations. No comments on the RIES were received.

## **6.2. PROJECT LOCATION**

- 6.2.1. As described in Chapter 2 above, the Proposed Development comprises a new multi-span single carriageway opening bascule bridge highway crossing, which, via associated approach roads and new roundabout junctions connecting into the existing road network, would link the areas north and south of Lake Lothing, Lowestoft.
- 6.2.2. The Order Limits of the Proposed Development do not overlap with any European site. The nearest European site (the Outer Thames Estuary Special Protection Area (SPA)) is located approximately 1.3km to the east of the Order Limits, along the coast of Norfolk and Suffolk, and extends into the Southern North Sea.
- 6.2.3. The Applicant identified European sites within 30km of the application site boundary. The Alde-Ore Estuary SPA is located over 30km away, but this site was also included in the assessment at the request of Natural England (prior to the submission of the application) and the SoS (in its Environmental Impact Assessment Scoping Opinion [[APP-165](#)]). No other European sites or features were identified by Natural England or any other IP. The Applicant did not identify any potential impacts on European sites in any other EEA States.
- 6.2.4. Accordingly, the Applicant identified seven European sites for inclusion within the HRA, as follows:
- The Broads Special Area of Conservation (SAC).
  - Broadland SPA.
  - Broadland Ramsar.
  - Southern North Sea Site of Community Importance (SCI)/candidate SAC (cSAC).
  - Outer Thames Estuary SPA.
  - Benacre to Easton Bavents SPA.
  - Alde-Ore Estuary SPA.
- 6.2.5. The Panel is satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

## **6.3. HRA IMPLICATIONS OF THE PROJECT**

- 6.3.1. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.
- 6.3.2. The Applicant provided a Habitats Regulations Assessment report (HRAR) entitled 'Lake Lothing Third Crossing Habitats Regulations Assessment Report, June 2018' (application HRAR) [[APP-206](#)] with the DCO application, together with screening matrices. The application HRAR included an assessment of the effects of the Proposed Development on

the integrity of three of the European sites considered in the report but did not include integrity matrices.

- 6.3.3. In response to s51 advice [[PD-004](#)] issued by the Planning Inspectorate (the Inspectorate) following acceptance of the application on 9 August 2018 and in order to address other points (noted below) the Applicant submitted an updated HRA report, entitled 'Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report, November 2018' (Updated HRAR) [[AS-003](#)], to the ExA on 20 November 2018, prior to the start of the Examination. The Updated HRAR replaced and superseded the application HRAR [[APP-206](#)].
- 6.3.4. The Updated HRAR contained an updated assessment of the predicted effects on the Outer Thames Estuary Special Protection Area (SPA) to correctly reflect an extension to the SPA which was formally designated in 2017 (the application HRAR treated the extension as a potential SPA (pSPA)); the inclusion of integrity matrices for the designated sites that were taken forward for further assessment; and minor additional edits.
- 6.3.5. The Applicant confirmed that both the Updated HRA and the application HRAR took into account the European Union Court of Justice (CJEU) People over Wind, Peter Sweetman v Coillte Teoranta judgement (C-323/17) issued on 12 April 2018. Mitigation has accordingly been considered at the integrity assessment stage, described in Section 8 of the application HRAR and the Updated HRAR, in respect of four of the seven European sites that were considered at screening stage.
- 6.3.6. It was stated in the Updated HRAR that the effect of the CJEU Holohan judgement (C-461/17), issued on 7 November 2018, regarding the potential need to consider impacts on other species than those for which a European site is designated and on protected species outside the protected area, was under consideration by the Applicant [[AS-003](#)]. The Applicant's response to Q2.64 of the ExA's First Written Questions (ExQ1) [[PD-007](#)] indicated that it would be considered further with Natural England in the updated Statement of Common Ground (SoCG) to be submitted at D4. No explicit reference was made in the D4 SoCG [[REP4-011](#)] or the D5 SoCG [[REP5-005](#)] to the Holohan judgement, however all matters were stated to be agreed between Natural England and the Applicant in the D5 SoCG.
- 6.3.7. In response to a number of questions that we raised on HRA matters as set out in in ExQ1 [[PD-007](#)] the Applicant revised the Updated HRAR and a subsequent and final version was submitted at D3 entitled 'Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report Revision 2' (HRAR R2) [[REP3-038](#)]. The revisions included an integrity matrix for the Broadland Ramsar site, which had not previously been taken forward to the integrity assessment stage.
- 6.3.8. The HRAR R2 is the report which has been used to inform this chapter, and all subsequent references to the HRAR are to this version unless otherwise stated.

## **6.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)**

- 6.4.1. The Applicant described how they determined what would constitute a 'significant effect' within Section 3.3 of their HRAR R2. This followed EC guidance on habitats assessment (EC Guidance document: 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (2000)' and EC Guidance document: 'Assessment of plans and projects significantly affecting Natura 2000 sites (2001)').
- 6.4.2. The Applicant addressed potential in-combination effects within Section 6.11 of the HRAR R2. The Applicant considered the categories of development set out in Planning Inspectorate Advice Note 10 and the conclusions of Chapter 20 of the ES (Cumulative Effects) [[APP-136](#)] in addition to the results of engagement with Natural England. The scope of the in-combination assessment was not disputed by Natural England.
- 6.4.3. The following projects were included in the in-combination assessment carried out by the Applicant:
- Former Sanyo Site, School Road, Lowestoft (DC/15/2004/RG3);
  - Brooke Peninsula and Jeld Wen mixed use development (DC/13/3482/OUT);
  - Lowestoft Tidal Barrier;
  - East Anglia Array Windfarm (East Anglia ONE and East Anglia THREE);
  - Great Yarmouth Third River Crossing; and
  - Sizewell C nuclear power station.
- 6.4.4. The Applicant's screening assessment (HRAR R2 Section 6) [[REP3-038](#)] concluded that the Proposed Development would have no likely significant effect, either alone or in-combination with other projects or plans, on the qualifying features of the three European sites listed below:
- Broadland SPA.
  - Benacre to Easton Bavents SPA.
  - Alde-Ore Estuary SPA.
- 6.4.5. The screening assessment concluded that, in the absence of control measures during construction, operation and decommissioning, the Proposed Development is likely to give rise to significant effects, alone or in-combination with other projects or plans, on the qualifying features of the following European sites, as described in Sections 6 and 7 of the HRAR R2:
- The Broads SAC – otters.
  - Broadland Ramsar site – otters.
  - Southern North Sea SCI/cSAC - harbour porpoise.
  - Outer Thames Estuary SPA - wintering red-throated diver.
- 6.4.6. The Applicant considered that the significant effects to site features could arise from impacts to water quality. This included consequential displacement, as a result of polluted waters, of individual otters on passage outside The Broads SAC and the Broadland Ramsar site.

- 6.4.7. In relation to the Southern North Sea SCI/cSAC the conservation objectives include a need to ensure that, subject to natural change, the supporting habitats and processes relevant to harbour porpoises and their prey are maintained or restored in the long term. Equally, the conservation objectives for the Outer Thames Estuary SPA include a need to ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring the structure and function of the habitats of the qualifying features and the supporting processes on which those habitats rely.
- 6.4.8. The Applicant's screening conclusions in relation to each of the seven European sites and their features considered in the assessment were not disputed by any IPs during the Examination. The Panel is satisfied that the screening conclusions are appropriate.
- 6.4.9. The assessment of potential effects in the HRAR R2 is presented in the form of screening and integrity matrices. Table 6-1 of the HRAR R2 summarises the effects considered within the screening matrices for each European site. These matrices are set out in Sections 6.4 to 6.10 of HRAR R2.
- 6.4.10. The Applicant stated within Section 3.4 of the HRAR R2 that discussions with NE were taking place, during the Examination, to ascertain whether NE considered that the HRA R2 had appropriately addressed all ecological resources relevant to the conservation objectives and integrity of the European sites [[REP3-038](#), para 3.4.2] concerned.
- 6.4.11. Natural England did not submit any representations during the Examination. It was reflected in the SoCG contained in Appendix 7 of the Applicant's first SoCG Report [[AS-007](#)] that Natural England agreed that the application HRAR [[APP-206](#)] adequately assessed the risk to European sites and agreed its conclusions. The SoCG indicated that all matters were agreed. The SoCG contained in Appendix 7 of the updated SoCG Report submitted at D4 (REP4-011) repeated Natural England's agreement to the approach and conclusions of the application HRAR [[APP-206](#)] but made no reference to the Updated HRAR [[AS-003](#)] submitted prior to D1. It indicated that the HRAR R2 [[REP3-038](#)] subsequently submitted for D3 was under discussion between the Applicant and Natural England. The SoCG contained in Appendix 7 of the updated SoCG Report (February 2019) [[REP5-005](#)] submitted at D5 referenced the HRAR R2 and confirmed that all HRA matters were agreed between the Applicant and Natural England.
- 6.4.12. The SoCG between Suffolk County Council/Waveney District Council and the Applicant contained in Appendix 3 of the first SoCG Report [[AS-007](#)] confirmed that it was agreed that the HRA has been appropriately undertaken and that the conclusions contained in the application HRAR [[APP-206](#)] were agreed. This statement remained in the two subsequent versions of the SoCG and no further statements were made in relation to either the updated HRAR or the HRAR R2.



- 6.4.13. In the Environment Agency's response [[REP3-015](#)] to ExQ1 [[PD-007](#)] they stated that they deferred to Natural England for HRA matters, and also that they considered that there were no overriding factors that suggested they should deviate from that position. HRA was not referenced in any of the versions of the Environment Agency's SoCG with the Applicant.
- 6.4.14. ExQ1 contained a number of questions in relation to HRA matters (Q2.2.48 to Q2.76), to which the Applicant responded in their 'Response to the Examining Authority's First Written Questions' [[REP3-029](#)] and by providing the HRAR R2 [[REP3-038](#)].
- 6.4.15. In Appendix A of their D3 submission [[REP3-014](#)] the Marine Management Organisation (MMO) responded to ExQ1 Q2.50 and Q2.76 about the potential impacts of the Proposed Development on the European sites identified by the Applicant, and their agreement to the approach and findings of the Updated HRAR [[AS-003](#)], respectively. In respect of Q2.50 they stated that they deferred to the opinion of Natural England in relation to impacts on European sites. In their response to Q2.76 they commented that no discussions had yet taken place with the Applicant about the Updated HRAR [[AS-003](#)] so no formal agreement had yet been reached.
- 6.4.16. In Appendix A of the MMO's D4 submission [[REP4-028](#)] the MMO set out a further response to ExQ1 Q2.76. They stated that they were seeking engagement with NE about the scope and content of the Updated HRAR [[AS-003](#)], and while they would expect the Applicant to identify all sensitive receptors associated with existing European sites and consider the likely impact pathways, they deferred to the opinion of Natural England in respect of the conclusions of the HRA. They commented that where mitigation measures were required to avoid or reduce any adverse effects on site integrity, the MMO would require such measures to be attached as Deemed Marine Licence (DML) conditions or included within an approved method statement.
- 6.4.17. In Section 11.1 of the 'Applicant's Responses to Written Representations and Interested Parties Responses to Written Questions' [[REP4-014](#)] the Applicant responded to the MMO's answer to ExQ1 Q2.76 and cross-referenced to the content of the SoCG agreed between the Applicant and the MMO [[REP4-011](#)]. It was agreed therein that the MMO would defer to NE's conclusions on the HRA, and that where mitigation was necessary to control the likely impact to interest features such measures should be captured as discrete conditions within the DML as necessary. Although no reference was made to it in the MMO SoCG in relation to HRA, Appendix A to the SoCG, 'Consideration of Disposal At Sea In The Application', notes that disposal at sea was assessed in the HRAR R2 [[REP3-038](#)]. The MMO stated within the SoCG that they broadly agreed with its content, which indicated that the potential impacts associated with disposal at sea were likely to be within acceptable limits.



## **6.5. CONSERVATION OBJECTIVES**

- 6.5.1. The conservation objectives for the seven European sites considered in the HRA were provided by the Applicant in Section 5.6 of the HRAR.

## **6.6. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)**

- 6.6.1. Section 8.3 of the HRAR R2 summarised the potential effects on integrity considered for The Broads SAC, the Broadland Ramsar site, the Southern North Sea SCI/SAC and the Outer Thames Estuary SPA. The integrity matrices are provided in Sections 8.5 to 8.8 of the HRAR R2. The evidence notes to the integrity matrices describe the proposed mitigation and cross-reference to information contained in the ES and other application documents as appropriate, including the draft Development Consent Order (dDCO).
- 6.6.2. The HRAR R2 described that the principal aim of the proposed mitigation during construction is to avoid the contamination of Lake Lothing. It would comprise measures, designed in line with best practice Pollution Prevention Guidance, which would be agreed with the Environment Agency prior to commencement of construction activities. These would include the surface water drainage strategy, which would be designed to ensure that site drainage would be controlled, and no contaminated runoff would be allowed to enter the water, and the storage of all fuels, oils and chemicals on an impermeable bunded and secured base. The measures are contained in the Interim Code of Construction Practice (CoCP) (ES Appendix 5A Revision 2) [[REP4-017](#)], which forms the framework for the full CoCP that would be prepared by the Contractor, as secured by dDCO Requirement 4 [[REP5-003](#)].
- 6.6.3. The proposed operational mitigation measures comprise the pollution control measures incorporated into the design of the Proposed Development as part of the Drainage Strategy (ES Appendix 18B Revision 2) [[REP5-014](#)], secured by dDCO Requirement 6 [[REP5-003](#)]. It is confirmed within the HRAR R2 that the proposed mitigation follows the measures, and provides the recommended level of protection, contained in Highways England's Design Manual for Roads and Bridges (DMRB) and the Environment Agency's current advice on good practice, and is designed to protect all potential receptors, particularly Lake Lothing, from the effects of pollution from road runoff. It is concluded in the HRAR R2 that these measures would also provide appropriate protection against pollution arising from spillage of materials onto the road carriageway, such as, for example, as a result of road traffic incidents. The SoCG between the Applicant and the EA [[REP9-007](#)] records that the Environment Agency agreed that the proposed Drainage Strategy would not pose a risk to the water environment and is appropriate for the purposes of the Proposed Development.
- 6.6.4. It is stated in the HRAR R2 that in the event that the Proposed Development was decommissioned, the mitigation would be broadly the same as that proposed for the construction period, but would follow

standard good practice, including those measures recommended by the EA.

6.6.5. The Applicant concluded in the HRAR R2 that with the implementation of the proposed mitigation the Proposed Development would not adversely affect the integrity of the European sites and features listed below alone or in combination with any other plan or project:

- The Broads SAC – otter.
- Broadland Ramsar – otter.
- Southern North Sea SCI/cSAC - harbour porpoise.
- Outer Thames Estuary SPA - over-wintering red-throated diver.

6.6.6. The Applicant's conclusions in relation to the sites and features listed above were not disputed by any IPs.

## **6.7. HRA CONCLUSIONS**

6.7.1. Drawing from the information provided in the application, with reference to the HRAR R2 and the ES, and taking full account of the responses to relevant questions that we raised, we summarised our understanding of HRA matters in the RIES [[PD-014](#)]. Consultation on the RIES raised no new relevant or important issues or concerns.

6.7.2. The Panel advises the SoS that on the basis of the information before us we consider that the Proposed Development would have no adverse effect, either alone or in-combination with other plans or projects, on any European site. We have reached this conclusion having applied the precautionary principle and being of the view that there is no remaining reasonable scientific doubt.

6.7.3. We are also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an AA, should he consider it necessary, and discharge their obligations under the Habitats Regulations.

## **7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

- 7.1.1. The designated National Policy Statement for National Networks (NPSNN) and the National Policy Statement for Ports (NPSP) both provide the primary basis for making decisions on development consent applications for national networks Nationally Significant Infrastructure Projects (NSIP) in England by the Secretary of State (SoS). Our conclusions on the case for development consent set out in the application before us are therefore reached within the context of the policies contained therein.

### **7.2. MATTERS IN FAVOUR OF THE DEVELOPMENT**

- 7.2.1. The proposed Lake Lothing Third Crossing (LLTC) will form an important component of the local road network and supplement the existing A12 - A47 route, part of the Strategic Road Network (SRN) and provides a connection to and from the SRN to the TEN-T. As part of this network, the vision and strategic objectives identified in the NPSNN apply to the proposal. The Proposed Development is therefore of the sort identified in the NPSNN that would provide additional capacity to help reduce traffic congestion, improve journey times and support social and economic activity in accordance with the Government's vision and strategic objectives.

- 7.2.2. The LLTC would meet the critical need identified in the NPSNN to address road congestion to provide safe, expeditious and resilient networks that better support social and economic activity; and contribute to a transport network that is capable of stimulating and supporting economic growth. The Proposed Development would provide the enhancement to this element of the SRN required to release an identified constraint to the economy and relieve the negative impacts on the quality of life which result from traffic congestion. The Proposed Development has had an aspirational aesthetic component to its design from the outset. In delivering an iconic new work of architectural engineering to the heart of the town, the Proposed Development also achieves a key aim of NPS policy.

7.2.3. We are satisfied that the Proposed Development would be in accordance with the strategic aims of the NPSNN. It would be an enhancement of the existing local and regional road network that would provide increased capacity in Lowestoft and the surrounding area for which there is an identified need. The social, economic and cultural benefits of such provision are clearly identified in the NPSNN. Indeed, Paragraph 4.3.5 of the NPSP makes very clear that the decision-maker should give substantial weight to the positive impacts associated with economic development, in line with the policy set out in the NPS.

- 7.2.4. The compelling need for the development of the SRN, reflected in the reasons set out by the SoS in the section 35 Direction in relation to the SRN and TEN-T, to which the LLTC would specifically contribute, falls to

be considered against the generic impacts of the Proposed Development in the terms set out in the NPSNN.

- 7.2.5. For all the foregoing reasons we also conclude the Proposed Development would accord with the relevant policies of the NPSP (thus also satisfying its aims) insofar as they would demonstrably support greater access to the port and its existing and indeed future commercial activities by means of the improved national network and encourage and stimulate commercial activity in its vicinity.
- 7.2.6. The purposes of the project, pursuant to NPSNN and NPSP policies are clearly set out and evidenced in the Applicant's case for the proposals. These aims and objective, of improving the national, regional and local road network in support of economic growth, have wide support. Such support includes the host and adjacent local planning authorities as set out in their LIRs and wider community support is also evidenced in the Applicant's submitted documents [[APP-091](#)]. Indeed, whilst objections from IPs in respect of Compulsory Acquisition remain (see below in Chapter 8), the benefits of a third crossing of the harbour, or the evidence presented to support the case, are not challenged in principle, its precise location and its local effects being the outstanding issue.

### **7.3. THE IMPACTS OF THE PROPOSED DEVELOPMENT**

- 7.3.1. The topics in this section are addressed in more detail in the relevant sections of Chapter 5.

#### **Noise, air quality, flood risk, biodiversity, water quality and the historic environment**

- 7.3.2. These matters were either raised by IPs through representations during examination or by the ExA in written questions. As outlined in Chapter 5, these have all been satisfactorily addressed by the Applicant, principally through the Interim Code of Construction Practice, with the final document remaining capable of further refinement to address any minor outstanding matters. In respect of the historic environment, biodiversity, flood risk and water quality, no outstanding objections remain, and we are satisfied that the Applicant has fully met the policy expectations of both the NPSNN and NPSP. Where objections are sustained, for example in relation to noise and air quality, we conclude the mitigation proposed and limited substantive of the objections characterise these matters as non-material effects which do not weigh against the making of the Order.

#### **Traffic and transport**

- 7.3.3. Local impacts on the highway network have been identified in the Proposed Development as submitted and as modified during the examination. All the specifically identified issues have been addressed and mitigated through the provisions of the Environmental Statement and the draft Development Consent Order (dDCO). These identified improvements, modified and mitigated, may also be afforded moderate weight in favour of the Proposed Development.

## **Impact on the operation of the port and its navigation**

- 7.3.4. We have agreed that the loss of berth spaces within the port and the economic harm associated with the land and rights loss resulting from the Proposed Development would materially harm the operation of the port. More critically we also agree that the presence and operation of the bridge would have a materially harmful effect on the carrying out of that operation and that both adversely affect the future of the Statutory Harbour Authority's (SHA) statutory operation.

## **Recreational navigation matters**

- 7.3.5. The specific concerns of Interested Parties (IP) in respect of recreational navigation matters cover, consultation and representation, waiting pontoon provision and the closure of the western harbour during the construction process. The Applicant has sought to address these both in specific Articles in the dDCO and the key management tools of the draft Scheme of Operation and the draft Navigational Risk Assessment. These provisions are accepted by the IPs in closing submissions [[REP11-022](#)]. Accordingly these matters may be considered neutral in the planning balance.

## **7.4. THE PLANNING BALANCE**

- 7.4.1. With regard to the effect of the Proposed Development, both during the construction period and operation, we have taken note of the concerns of IPs in relation to the impact noise, air and water quality, historic environment, flood risk, biodiversity and recreational navigation. We conclude these have either been effectively neutralised through the provisions of the recommended dDCO or are capable of being effectively mitigated through the provisions of the same. We conclude therefore that these matters may be judged as neutral in the planning balance.
- 7.4.2. We have been clear that the Proposed Development would cause harm to the carrying out the SHA's statutory undertaking. The loss of berth space, economic harm and the presence and operation of the proposed new bridge have each, in the context of their effect on the operation of the port as a whole, been apportioned a moderate measure of weight as factors to be considered against the Proposed Development. Even when taken together however, again in the context of the operation of the port as a whole, the totality of the harm identified in respect of the operation of the port amounts to no more than a moderate measure of weight against the proposals.
- 7.4.3. With regard to the operation of the proposed crossing, the additional capacity provided by the Proposed Development would mean that this component of the SRN and TEN-T, the local and regional network overall, and thereby the community of Lowestoft and its hinterland beyond would be likely to benefit significantly from the implementation of the Proposed Development. These benefits include the increased efficiency and functionality of the network, enhanced social cohesion, greater opportunities for non-car-based transport modes and significant stimulus

to the local economy. In achieving these outcomes the proposals ensure compliance with the central objectives of both the NPSNN and the NPSP and justify the reasons set out by the SoS in the section 35 Direction. As such they merit very significant weight in favour of the Proposed Development.

- 7.4.4. Moreover, in respect of the effect of the Proposed Development in relation to the Habitats Regulations Assessment we are able to advise the SoS that that the Proposed Development would have no adverse effect, either alone or in-combination with other plans or projects, on any European site. We have reached this conclusion having applied the precautionary principle and being of the view that there is no remaining reasonable scientific doubt. We are also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment, should they consider it necessary, and discharge their obligations under the Habitats Regulations.
- 7.4.5. Drawing all these planning considerations together therefore, we conclude that whilst we acknowledge a modest measure of harm to the operation of the port, this is clearly and demonstrably outweighed by the significant benefits the Proposed Development would bring. Such a conclusion serves to justify our recommendation to the SoS that the Order be granted.

## **8. COMPULSORY ACQUISITION AND RELATED MATTERS**

### **8.1. INTRODUCTION**

8.1.1. This chapter of the report describes the request by the Applicant for Compulsory Acquisition (CA) and Temporary Possession (TP) powers, explains the purposes for which land would be required, sets out the legislative requirements, describes the examination of the CA and TP case and gives our conclusions and recommendations.

### **8.2. THE REQUEST FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS**

8.2.1. The application for the Development Consent Order (DCO) seeks powers for CA within the Order land and rights over, under and above areas of the Order land for the construction, operation and maintenance of the Proposed Development. The application also seeks powers for the TP of areas of the Order land for construction purposes and to allow the Applicant to extinguish and impose restrictions on private rights within the Order land.

8.2.2. The Order limits of the recommended draft DCO (rdDCO) establish the extent of the land affected by the CA and TP powers sought. The land permanently required for the Proposed Development comprises:

- Land at ground level, which may include the subsoil below and the airspace above;
- airspace above the ground; and
- subsoil, which may include the land beneath the bed of the lake.

8.2.3. The rdDCO also seeks powers to acquire rights over land, subsoil and/or airspace. This includes the right to impose restrictive covenants for the protection of the Proposed Development.

8.2.4. The nature of the Proposed Development is such that some elements of it, such as the roundabout junctions and highway improvements on the northern and southern banks of Lake Lothing, would require the acquisition of surface land. Other elements, such as the bridge piers and bridge deck, would require the acquisition of, and the acquisition of rights over, subsoil and airspace respectively, in addition to surface land.

8.2.5. A full description of the extent and existing nature of the land required by the Applicant for the construction, operation and maintenance of the Proposed Development is set out within the Environmental Statement (ES) [[APP-136](#), chapters 5 and 15].

- 8.2.6. At the commencement of the Examination, the application was accompanied by:
- A Statement of Reasons (SoR) [[APP-007](#)];
  - a Funding Statement [[APP-008](#)];
  - a Book of Reference (BoR) [[APP-009](#)];
  - a Negotiation Tracker [[APP-010](#)];
  - Land Plans, Key and Sheets 1 to 5 [[APP-016 to APP-021](#)];
  - Crown Land Plan [[APP-051.2](#)]; and
  - Rights of Way and Access, and Rights of Navigation Plans [[APP-025](#), [APP-026](#), [APP-027](#) and [APP-051.8](#)].
- 8.2.7. The Funding Statement and Crown Land Plan were not updated during the Examination, and these are not secured in the rdDCO. The Key Plan and Sheets 1 and 2 of the Land Plans were also not updated during the Examination, and these are secured in the rdDCO.
- 8.2.8. The following documents and plans accompanying the application have been revised during the course of the Examination, and the latest versions are:
- The SoR [[REP10-009](#)];
  - the BoR [[REP10-067](#)];
  - the Negotiation Tracker [[REP10-073](#)];
  - Land Plans, Sheets 3, 4 and 5 [[REP10-016](#), [REP10-017](#) and [REP10-018](#)]; and
  - Rights of Way and Access, and Rights of Navigation Plans [[REP10-021](#), [REP10-022](#), [REP10-023](#) and [REP10-047](#)]
- 8.2.9. The BoR, Sheets 3, 4 and 5 of the Land Plans and the Rights of Way and Access Plans are secured in the rdDCO. In addition to these updated documents and plans, a BoR Schedule of Changes [[REP10-069](#)] was submitted towards the end of the Examination.
- 8.2.10. The details of the powers sought in order to implement the required CA, including interference with third party rights, together with the TP of land and other compulsory powers sought are set out in Parts 3, 4 and 5 of the rdDCO. Article 22 authorises the CA of the Order land, as described in the BoR, where such land is required for the Authorised Development. Article 23 allows the CA of third party interests in Crown land, where the interests are identified in the BoR and Crown consent for the CA has been obtained.
- 8.2.11. Article 26 allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land. Article 27 allows the undertaker to CA land and/or new rights below the surface or in the airspace, as required for the proposed bridge and its protection from subsequent development and other conflicting events. This would be instead of acquiring all the land up to and including the surface and airspace.
- 8.2.12. Article 28 applies to extinguish private rights generally and not just rights of way. This would enable the undertaker to take land with a clear and



unencumbered title, thereby minimising impediments to the delivery of the Proposed Development. It also provides for the extinguishment of private rights over such parts of the Order land as are already owned by the undertaker, when any activity authorised by the Order interferes with those rights. Article 30 allows the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it.

- 8.2.13. Article 57 prevents entry, interference or use of Crown land under the rdDCO without the consent of the Crown Estate Commissioners or the relevant government department.
- 8.2.14. The powers sought in relation to the TP of land do not constitute CA and are provided for in separate articles in the rdDCO, albeit within the powers of acquisition section. Article 33 allows the land set out in Schedule 9 to be occupied and used temporarily while the works are carried out. This is land which is required during construction of the authorised development but not required permanently. Article 33 also allows for the temporary occupation of any of the land intended for permanent acquisition, or for the acquisition of new rights, but which has not yet been acquired.
- 8.2.15. Article 34 provides that the undertaker may take TP of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose.
- 8.2.16. The SoR sets out in more detail the above rdDCO articles together with those that relate to other compulsory powers sought [[REP10-009](#), Section 4]. The SoR also describes the land over which all these powers are sought [[REP10-009](#), Appendix A].

### **8.3. THE PURPOSES FOR WHICH LAND IS REQUIRED**

- 8.3.1. The SoR indicates that the Applicant's purpose for seeking CA is to secure the rights required to construct, operate and maintain the Proposed Development [[REP10-009](#)]. The powers sought relate to the CA of interests in land and rights over land together with the TP of land. The BoR sets out in detail four classes under which rights may be acquired permanently or land possessed temporarily [[REP10-067](#)]. These are identified by the colour of the plot on the Land Plans and by the wording used in the BoR plot description. They are as follows:

- Pink – “*All interests and rights in...*” - The CA of all interests and rights in land (including as required, subsoil, surface land or airspace) under A22.
- Blue - “*Acquisition of rights over...*” - The creation and CA of new rights (including, where necessary, a right to impose restrictive covenants to protect the new bridge structure) under A26.
- Hatched pink and blue - “*Acquisition of airspace above and acquisition of rights over...*” – The CA of airspace together with the creation and CA of new rights (including, where necessary, a right to impose

restrictive covenants to protect the new bridge structure) below that airspace under A26.

- Green - "*Temporary possession and use of...*" The TP and use of land under A33.

8.3.2. The SoR describes the proposals for the use and development of the land and the purposes for which the powers are sought in [[REP10-009](#), Sections 2 and 11]. The SoR also lists the plots within the Order Land and gives details of the purpose for which CA and TP powers are sought for each plot [[REP10-009](#), Appendix A].

### **Crown land**

8.3.3. The SoR explains that part of the land which is required for the Proposed Development comes within the definition of Crown land under the Planning Act 2008 (PA2008) and identifies the relevant plots [[REP10-009](#), Section 8.2]. The Applicant's request for Crown land consent has been passed to the Secretary of State for Transport (SoST) as the relevant government department. Matters relating to this request are addressed later in this chapter.

### **Statutory Undertakers**

8.3.4. If a Statutory Undertaker (SU) has made a representation about the CA of land or right over land which has been acquired for the purpose of their undertaking, and this is not withdrawn, s127 of PA2008 applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land. Section 138 applies where a SU has a relevant right or relevant apparatus in land over which CA is sought. In those circumstances, the DCO can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.

8.3.5. In terms of SUs, land interests of Associated British Ports (ABP), Network Rail Infrastructure Limited (NRIL), Anglian Water Services Limited (AW), the Homes and Communities Agency (HCA), Northumbrian Water Limited (NWL) and The Royal Mail Group Limited are sought by the rdDCO [[REP10-009](#), Section 6]. Relevant Representations (RRs) have been made by ABP, NRIL and The Royal Mail Group Limited which have not been withdrawn [[RR-022](#), [RR-021](#) and [RR-034](#)], and s127 of PA2008 is therefore engaged in respect of these SUs. The representations made by NWL and AW [[RR-017](#) and [RR-013](#)], and their further representations, were withdrawn towards the end of the Examination [[AS-026](#) and [AS-024](#)]. No representations were received from the HCA. It did however communicate with the Applicant in respect of a change to the application, which included the seeking of further land from the HCA, which is dealt with elsewhere in this chapter. The communication with the Applicant did not suggest any objection to the change or land interests sought.

8.3.6. The Applicant has made representations regarding s138 of PA2008 in respect of the following SUs and communications code network operators [[REP10-009](#), Appendix B]:

- Anglian Water Services Limited.
- Associated British Ports.
- British Gas Services Limited.
- Cadent Gas Limited.
- Northumbrian Water Limited (which owns Essex and Suffolk Water Limited).
- FirstGroup Plc.
- The Homes and Communities Agency.
- Mobile Broadband Network Limited.
- National Grid Gas Plc.
- Network Rail Infrastructure Limited.
- Openreach (British Telecommunications).
- The Royal Mail Group Limited.
- UK Power Networks Limited.
- Virgin Media Limited.

8.3.7. RRs in relation to s138, together with further representations in some cases, were submitted by ABP, NRIL and the Royal Mail Group Limited [[RR-022](#), [RR-021](#) and [RR-034](#)]. Anglian Water, Cadent Gas Limited and NWL also submitted RRs [[RR-013](#), [RR-014](#) and [RR-017](#)] which were subsequently withdrawn [[AS-024](#), [AS-023](#) and [AS-026](#)]. No representations were received from the other SUs identified by the Applicant in respect of s138 of the PA2008. The Applicant has considered the utility diversions required to allow the Proposed Development to take place in the SoR, and considers that they are a necessary aspect of the dDCO [[REP10-009](#), Sections 6.7 and 6.8]

## **8.4. LEGISLATIVE REQUIREMENTS**

8.4.1. CA powers can only be granted if the conditions set out in s122 and s123 of PA2008 are met.

8.4.2. Section 122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate<sup>21</sup>. A conclusion on this matter is reached later in this chapter.

8.4.3. Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land would be affected. In balancing public interest against private loss, CA must be justified in its own right. This does not mean however that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the

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<sup>21</sup> Guidance on Compulsory Purchase and the Crichel Down Rules (DCLG, 2015)

project to be carried out and there must be consistency and coherency in the decision-making process. A conclusion on this matter is reached later in this report.

- 8.4.4. Section 123 requires that one of three conditions must be met by the proposal<sup>22</sup>. The ExA is satisfied that the condition in s123(2) is met because the application for the DCO includes a request for CA of the land to be authorised.
- 8.4.5. Several general considerations also have to be addressed, either as a result of following applicable guidance or in accordance with legal duties on decision-makers. These are that:
- All reasonable alternatives to CA must be explored;
  - the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
  - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 8.4.6. Details of the changes made to the CA powers sought by the Applicant were tracked prior to and during the Examination process. This was done in Schedules of Changes [[REP4-005](#) and [REP10-069](#)] and track changed versions of the BoR. All these changes were incorporated in the main body of the final Examination BoR submitted at Deadline (DL) 10 [[REP10-067](#)].

## **8.5. EXAMINATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSSESSION CASE**

- 8.5.1. The ExA raised First Written Questions (ExQ1) [[PD-007](#)] in relation to CA, TP and other land or rights considerations. The questions covered a range of issues to the Applicant, Affected Persons (APs) and Interested Parties (IPs). The Applicant was also requested to reconcile a CA Objections Schedule provided by the ExA with an updated version of the Negotiation Tracker [[APP-010](#)] provided with the application.
- 8.5.2. The Applicant provided responses to these questions at DL3 [[REP3-029](#)]. These responses included the updated Negotiation Tracker [[REP3-034](#)], which was subsequently updated as the Examination progressed. Responses were also provided from APs and IPs at DL2. These responses are examined in more detail when the cases of those who responded are considered later in this chapter.

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<sup>22</sup> (1) An order granting development consent may include provision authorising the CA of land only if the SoS is satisfied that one of the conditions in subsections (2) to (4) is met. (2) The condition is that the application for the order included a request for CA of the land to be authorised. (3) The condition is that all persons with an interest in the land consent to the inclusion of the provision. (4) The condition is that the prescribed procedure has been followed in relation to the land

- 8.5.3. In the light of the responses to ExQ1, other written submissions and matters raised at Hearings, the ExA asked a number of Second Written Questions (ExQ2) [[PD-012](#)]. These questions included requests for explanations of various matters within the submitted written representations (WRs) and other submissions. The Applicant provided responses to ExQ2 at DL8 [[REP8-004](#)]. APs and IPs also responded, as identified later in this chapter.
- 8.5.4. Two Compulsory Acquisition Hearings (CAHs) were held at the Ivy House Hotel, Ivy Lane, Oulton Broad, Lowestoft on 13 February and 14 May 2019. The first CAH was adjourned at 5.20pm on 13 February and resumed at 11am on 8 March 2019. At the CAHs, representations were made by a number of APs.
- 8.5.5. At the CAHs, the ExA pursued a number of matters with the Applicant and APs as set out on the agendas [[EV-007](#) and [EV-020](#)]. Written summaries of the oral cases presented at the CAHs were submitted by the Applicant at DL5, DL7, and DL10 [[REP5-010](#), [REP7-005](#) and [REP10-080](#)]. The Applicant also provided an updated Negotiation Tracker at DL3, DL5, DL8, DL9 and DL10 [[REP3-034](#), [REP5-008](#), [REP8-003](#), [REP9-006](#) and [REP10-073](#)]. The ExA also pursued a number of other matters with APs, some of whom also submitted oral case summaries, and these are addressed later in this chapter.

## **APPLICANT'S GENERAL CASE**

### **Introduction**

- 8.5.6. The Applicant's case for the grant of CA powers is set out in the final Examination SoR [[REP10-009](#)] together with the Funding Statement [[APP-008](#)] and the final Examination BoR [[REP10-067](#)].
- 8.5.7. The SoR explains that it forms part of a suite of documents accompanying the application and should be read alongside those documents [[REP10-009](#)]. These include:
- The final Examination Land Plans [[APP-016 to APP-018](#) and [REP10-016 to APP-018](#)];
  - the final Examination BoR [[REP10-067](#)];
  - the Funding Statement [[APP-008](#)]; and
  - the consideration of need and alternatives in the Case for the Scheme [[APP-091](#), Sections 4 and 5].
- 8.5.8. Additional information in relation to Crown land and SUs' land was submitted in response to the ExA's questions and in further representations submitted by the Applicant as previously described.

## **The requirement for the Compulsory Acquisition of the Order land (Section 122(2) and (3))**

- 8.5.9. The Applicant explains that the Proposed Development comprises the construction of a new multi-span lifting bridge to provide a new highway crossing of Lake Lothing in Lowestoft. This would connect Riverside Road to the south of the lake with Peto Way to the north of the lake. It would include associated connections into the existing highway network and the provision of new local access roads in the vicinity. The Proposed Development is needed to complete the connection of the regional highway network between the north and south of the town. This would effectively bypass the older parts of the town and would solve various issues of congestion and severance within the town.
- 8.5.10. Lake Lothing, as it is called, is effectively an estuarial waterway connection between the Norfolk Broads and the North Sea. It is wide and protected from the North Sea by a narrow bascule bridged entrance. It has historically been, and is currently, used as an inner harbour area for the port of Lowestoft with quays to its north and south sides. Quays to the north side are generally in the ownership of ABP, and those to the south are in a variety of ownerships.
- 8.5.11. The powers sought for the purposes of the Proposed Development are to:
- Acquire land compulsorily;
  - create and acquire compulsorily new rights over land;
  - extinguish or override existing rights over land; and
  - possess and use land temporarily.
- 8.5.12. The Applicant explains, in the SoR, its proposals for the use of the CA and TP land, the scope of the powers required for the Proposed Development and purpose for which the powers are sought [[REP10-009](#), Sections 2, 4 and 11]. The Applicant asserts that all of the CA and TP land, shown on the Land Plans and described in the BoR, is required either for the purposes of the project, to facilitate it or for purposes incidental thereto.

### **General justification for the extent of the Order land**

- 8.5.13. The Applicant requires powers to acquire land and new rights, as set out in the final BoR and on the final Land Plans. Changes to these documents were required because, during the Examination, the Applicant requested various, what it termed, non-material changes (NMCs) to the application [[REP4-013](#)]. The ExA accepted these changes into the Examination [[PD-015](#)].
- 8.5.14. NMC1 includes the additional permanent CA of a small area of land for a new turning head on Canning Road. Within the application, this land was included within the Order limits as land on which new rights were sought. The Applicant contacted all those with an interest in the additional land and the parties involved have provided written confirmation of their



consent to the inclusion in the application of the additional land [[REP7-003](#) and [REP9-001](#)].

- 8.5.15. The Applicant considers that, at this stage, all the land included in the Order land is necessary to enable the delivery of the Proposed Development. However, parts of the Order land may not eventually be required. This could be as a result of the detailed design process in due course or because a parcel of land has been acquired by agreement as a result of successful negotiations. In such cases, CA powers would not be exercised in respect of that land because such exercise would not be necessary or justified.

### **Alternatives to Compulsory Acquisition**

- 8.5.16. The Applicant explains that, order to operate and maintain the Proposed Development, land and rights in the ownership of parties other than the Applicant would need to be acquired [[REP10-009](#), Section 12.4]. Any practicable alternative location for the Proposed Development would similarly require the acquisition and/or use of third party land. Acquisition in relation to third party land therefore cannot be avoided. The Applicant has also sought to use powers of TP rather than CA of rights as a more proportionate measure where the permanent acquisition of rights would not be required.
- 8.5.17. The Applicant has made progress in acquiring some interests in land and will continue to seek to acquire all the interests it needs by voluntary agreement, subject to the dDCO being made [[REP10-073](#)]. It has undergone extensive consultation with all persons with an interest in the relevant land in order to try to avoid the need for CA in accordance with the CA Guidance (DCLG, 2015)<sup>23</sup> [[APP-052](#)].
- 8.5.18. Notwithstanding completing voluntary agreements, the Applicant still seeks to compulsorily acquire land and rights through the dDCO. This is because the CA powers would enable it to deliver its statutory and contractual duties without potential delay, if for any reason the voluntary acquisition of land or rights is ultimately unsuccessful. The Applicant considers that, without the powers of acquisition being compulsory, the urgent national need for the Proposed Development could not be met. This is because the land and rights required within the Order land might not be assembled, uncertainty could then exist as to construction and the Applicant's objectives may not be achieved.

### **Alternatives to the Proposed Development**

- 8.5.19. Prior to the Applicant's selection of a solution comprising a lifting bridge crossing located centrally within Lake Lothing, an options assessment process was carried out. This considered a broad range of crossing options, and these options are set out in the Case for the Scheme,

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<sup>23</sup> Guidance on Compulsory Purchase and the Criche Down Rules (DCLG, 2015)

ES and Design Report [[APP-091](#) Section 5, [APP-136](#) Chapter 3 and [APP-123](#) Section 7.2].

8.5.20. In outline, they included:

- Various bridge types (floating and fixed span with lifting or opening options) and tunnels;
- eastern, central and western locations within the lake; and
- non-crossing alternatives such as junction improvements and smarter choices such as reducing reliance on private car travel, encouraging modal shift and road-pricing options.

8.5.21. In addition to the options assessment, a detailed assessment process was undertaken to identify the land and rights needed to deliver the Proposed Development. A range of engineering and design alternatives were considered, in the context of the constraints affecting those alternatives. Engagement with landowners and occupiers was ongoing and influenced the selection process, and a synopsis of that engagement is included in the CA Negotiations Tracker [[REP10-073](#)].

8.5.22. From the options assessment process, the Applicant ascertained that none of the potential solutions could be delivered without the need for land currently outside the Applicant's control. The Applicant has made efforts to acquire the necessary land through negotiated private treaty and agreement. It has however accepted that the application for development consent needed to include a request for the authorisation of CA powers. This is to ensure delivery, within a reasonable timescale, of the Proposed Development and of the public benefits which would flow from it.

8.5.23. In terms of land-take, the need for a reasonable degree of flexibility for implementation was taken into account by the Applicant, along with the need to reduce the amount of land required as far as possible. This was in order to minimise its impact on surrounding land uses. The Order limits have therefore been drawn as tightly as possible to avoid any unnecessary interference with or extinguishment of third party rights. The Applicant has sought to balance these two objectives in a manner that is proportionate and justifiable.

8.5.24. The Applicant adds that, order to build further consideration of CA alternatives into the implementation process, the dDCO includes terms which would enable it to exercise a lesser power. This would be where such lesser power, such as the acquisition of rights or TP, was deemed sufficient.

### **Availability and adequacy of funds**

8.5.25. The Applicant's current cost estimate for the Proposed Development is £91.7 million [[APP-008](#) and [APP-107](#)]. This cost estimate includes construction costs, preparation costs since 2015/16, supervision costs and land acquisition costs. This is an estimate of the anticipated outturn cost and therefore includes an allowance for inflation. The capital costs



would be jointly funded by the Department for Transport (DfT) and the Applicant.

- 8.5.26. The Applicant has been awarded £75.39m provisional funding from DfT through The Local Growth Fund. The final grant is subject to the satisfactory completion of all remaining statutory processes and the approval of a Full Business Case (FBC). Suffolk County Council's (SCC's) cabinet has agreed to underwrite the shortfall of £18.3m, which comprises the additional £16.3m required to meet the estimated scheme cost of £91.7m and a further £2m funding towards outline business case costs.
- 8.5.27. £10m of the £18.3m has been earmarked from SCC's capital programme, with the remaining £8.3m anticipated to come from local contributions [[APP-008](#), Appendix B]. This is on the basis that the Applicant and the New Anglia Local Enterprise Partnership have committed to funding 20% of the total cost of the Proposed Development [[APP-107](#), Appendix M]. If such monies cannot be drawn down from other sources, SCC would seek to borrow the monies or draw on its reserves if required to do so.
- 8.5.28. The Applicant adds that, in June 2018, SCC's cabinet acknowledged that a recent cost projection suggested that there is an upward pressure of up to £8m on the original estimate for property costs [[APP-008](#), Appendix C]. It agreed that further funding of £8m would be made available if it is needed, but deferred any final decision on any additional funding until Autumn 2019. By this time, the Applicant expected to have awarded a Stage 2 construction contract and be able to make a more accurate cost projection, as part of its final business case to be submitted to the DfT.
- 8.5.29. This further £8m is included in SCC's capital budget, as is the underwriting of the £8.3m local contribution [[REP4-014](#), Appendix E]. The estimate for property costs includes an allowance for material detriment claims. This is formulated on the basis of quantified risk and material detriment ordinarily falling within the standard heads of claim applied for CA.
- 8.5.30. Further detail of the Applicant's position is included within the Applicant's Written Summaries of Oral Submissions at the first CAH [[REP5-010](#), pages 40 to 41 and Appendices 1 and 2]. The Applicant therefore considers that it has evidenced that it has access to sufficient funds to implement the Proposed Development. Furthermore, it has made appropriate allowances for liabilities associated with claims under the compensation code.

### **Whether there is a compelling case in the public interest for Compulsory Acquisition (Section 122(3))**

- 8.5.31. The Applicant considers that there is a real need for the Proposed Development to be delivered [[APP-091](#), Sections 4 and 5] and that it is in the public interest for it to be delivered. In terms of public interest, a number of public benefits would arise from the Proposed Development.

These public benefits are closely aligned to the objectives of the Proposed Development [[APP-091](#), Section 4.8 and [APP-107](#)] and to the reasons for which the SoST granted a s35 Direction [[APP-092](#), Appendix B].

8.5.32. In parallel with considering the public benefits to which the Proposed Development would give rise, the Applicant has also considered the private loss that those affected by powers of CA would or might suffer, in terms of:

- The loss of land through CA;
- the extinguishment of rights through CA;
- potential restrictions through restrictive covenants; and
- the loss of land through temporary (though possibly long-term) possession.

8.5.33. The Applicant considers that such private losses may be fairly compensated through the payment of statutory compensation under the Compensation Code. Section 125 of PA2008 applies the Compulsory Purchase Act 1965 to the dDCO, which makes provision for the payment of such compensation. The Applicant is therefore of the view that the public benefits would outweigh the private losses, and that there is a compelling case in the public interest which would justify the use of CA to deliver the Proposed Development in a timely manner.

8.5.34. In light of all of the above, the Applicant considers that there is a compelling case in the public interest for the construction, operation and maintenance of the Proposed Development, which would justify the CA of land identified in the dDCO and that, as a result, the condition in s122(3) is met.

## **Human Rights**

8.5.35. The Applicant advises that the Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) into domestic law. The DCO would enable the Applicant to infringe the human rights of persons with an interest in the land that would be affected by the Proposed Development [[REP10-009](#)]. Such infringement is authorised by law provided that:

- The statutory procedures for obtaining the DCO are followed and there is a compelling case in the public interest for its CA powers; and
- any interference with a Convention right is proportionate to the legitimate aim served.

8.5.36. In compliance with Article 6 of the ECHR, the DCO process is lawful and provides opportunities for the public to make representations. In determining whether interference with ECHR (in Article 8 and in Article 1 to the First Protocol) is proportionate, a fair balance must be struck between the public benefit sought and the interference with private rights.

8.5.37. In striking to seek that balance, the Applicant has had regard to:

- The need for the Proposed Development and the public benefits it would bring [[APP-091](#) and [REP10-009](#), Section 2]; and
- the nature of any interference with private rights [[REP10-009](#), Section 12].

8.5.38. The Applicant does not consider that any single affected interest is of such importance as to outweigh the important public benefits which the Proposed Development is forecast to deliver [[REP10-009](#), Section 10.2]. Furthermore, the Applicant does not consider that the cumulative private loss would be of such magnitude or severity as to outweigh the importance of the public benefits which have been identified.

8.5.39. For these reasons, the Applicant considers that the inclusion of powers of CA would not breach the Convention rights of those who are affected.

### **Equality Act 2010**

8.5.40. The Applicant has carried out a screening assessment to ascertain whether a full equalities impact assessment was required to discharge its duties under the Equality Act 2010 [[APP-209](#) and [REP10-009](#), Section 10.3]. SCC has confirmed that the assessment was sufficient to demonstrate that the potential impacts of the Proposed Development on the protected characteristics had been considered. It has also confirmed that there was no evidence of the need for a full assessment.

### **Applicant's conclusion on the general case for the grant of Compulsory Acquisition powers and related matters**

8.5.41. For the above reasons, the Applicant considers that the inclusion of powers of CA and related matters within the dDCO, as set out in the BoR [[REP10-067](#)] and shown on the Land Plans [[APP-016 to APP-018](#) and [REP10-016 to REP-018](#)], is justified.

### **APPLICANT'S CASE IN RELATION TO CROWN LAND (SECTION 135)**

8.5.42. The Applicant advises that the Order limits include an area of land which is understood to be Crown land [[REP10-009](#), Section 8.2 and [APP-051.2](#)]. As Crown land is protected from CA, the Applicant has sought the consent of the appropriate Crown authority, the SoST. The land is Crown land because there is an interest in the land belonging to the DfT (s227(2)(b) of PA2008). The appropriate Crown authority (s227(5)(b)) is the government department having the management of the land. In this case, the land is managed on behalf of the SoST by Highways England Historical Railways Estate (HEHRE) and was previously owned by the British Railways Board (Residuary) Limited (BRBR). BRBR formerly owned residual railway land arising from rail privatisation.

8.5.43. The Applicant wrote to HEHRE on 25 June 2018, prior to the submission of the application, and then to the Estates team at the DfT [[REP8-004](#), ExQ2 1.6]. HEHRE had referred the matter directly to the DfT's Estates

team, advising the Applicant that the DfT is the appropriate body to issue the consent. This advice has subsequently been confirmed by the DfT's Transport and Works Act Orders Unit.

- 8.5.44. The Applicant has yet to receive the consent sought, despite having made repeated requests by email and telephone during the period between June 2018 and May 2019. On 29 May 2019 the Applicant received an email from the DfT's Estates team advising that it had requested valuation advice from its professional advisers and that the advice sought was expected to be received "at the end of July". The Crown land consent sought by the Applicant was therefore not granted prior to the close of the Examination.
- 8.5.45. The ExA's dDCO [[PD-016](#)] included two new articles: A23, Crown land; and A57, Crown rights. The Applicant acknowledges the need for these articles, given that it has not been possible to secure Crown land consent. Accordingly, the Applicant has accepted the ExA's proposed drafting in its final dDCO, subject to the addition of some proposed minor drafting amendments aimed at clarifying the position in the context of s135 and s227 of PA2008 [[REP11-003](#)]. The key point of the amendments is a distinction between "interests in Crown land" and "non-Crown interests in Crown land". The CA of the latter is permitted when Crown land consent is granted by the appropriate Crown authority. The Applicant has therefore proposed that A23 be re-titled "Acquisition of non-Crown interests in Crown land".
- 8.5.46. If the dDCO to be made includes the Crown land on the Crown Land Plan [[APP-051.2](#)], then the necessary Crown land consent will still need to be secured, irrespective of the addition of A57, Crown rights. The Applicant will therefore continue to pursue the Crown land consent originally applied for in June 2018 and requested repeatedly thereafter.
- 8.5.47. As the DfT's Estates team's advice is due to be received "at the end of July", the Applicant will endeavour to secure the necessary consent by the close of the ExA's reporting period [[REP11-010](#)]. The aim is to provide the SoST, at the start of his decision-making period, with confirmation that the requirements of s135 of the PA2008 are satisfied and that the DCO can therefore be made in the form applied for.

## **OBJECTIONS RECEIVED TO THE COMPULSORY ACQUISITION, RELATED MATTERS AND PROPOSALS, THE APPLICANT'S RESPONSE AND THE EXAMINING AUTHORITY'S CONSIDERATION OF OBJECTIONS**

### **Introduction**

- 8.5.48. In this part of the report, we consider representations made by SUs under s127 and s138 of PA2008 and from Affected Persons. We have also only identified the points we consider to be material when reporting on the representations and the Applicant's responses. The SU numbering is

taken from the Applicant's CA Negotiations & Objections Tracker [[REP10-073](#)]. Our considerations on each of these objections then go forward to inform our finding on the general case in respect of the relevant plots.

## **Statutory Undertakers' (Sections 127 and 138)**

### **Associated British Ports (Tracker Reference 20)**

#### ***Representations***

##### *Introduction*

- 8.5.49. ABP has set out its final position in its Closing Submission [[REP11-014](#)]. ABP is the owner and operator of the Port of Lowestoft. It is also the Statutory Harbour Authority (SHA) for the harbour area, which includes responsibility for vessel traffic management, safe navigation and channel depth maintenance [[REP3-024](#), paras 2.6 to 2.56 and Annex 1A and 1B]. It is also the Competent Harbour Authority (CHA) with respect to pilotage, which includes all the navigable waters within the port and the seaward approaches. As statutory port undertaker, ABP is able to undertake certain defined port related development within the statutory port estate [[REP3-024](#), Annex 3].
- 8.5.50. ABP submitted some 65 documents during the course of the Examination. Its representations are generally summarised in its Comment on the Applicant's Response to ABP's DL5 and Oral Submissions at 7 and 8 March 2019 Hearings [[REP8-012](#)], closing submissions [[REP11-014](#)] and letter to SoST dated 31 May 2019 [[REP11-015](#)]. The gist of ABP's representations relating to CA is set out below, and further detail is set out in Chapter 5 of this report.

##### *Land and rights loss*

- 8.5.51. This matter covers the loss of: berthing and quayside; land side areas; and the bed of the lake. This loss generally comprises: the permanent acquisition of some 3,000m<sup>2</sup> of land side and bed of the lake under the bridge piers; some 2,500m<sup>2</sup> of airspace and rights under bridge decks; and some 4,500m<sup>2</sup> of rights over the only access to the port. The TP of some 40,500 m<sup>2</sup> of land and water within the port estate is also sought for construction purposes.
- 8.5.52. ABP claims that there would be a direct loss of some 165m of berthing, measured in whole berths, as a result of the Proposed Development [[REP8-012](#), pages 13 and 14 and [REP8-013 to REP-018](#)]. The representations consider this in some detail [[REP3-024](#), Section 10 Table 2, [REP4-029](#), Annex 1, [REP5-023](#), paras 3.9 to 3.17 and 6.10 to 6.45, [REP5-026](#), Annex 1, [REP5-027](#), [REP5-030](#) and [REP8-011](#) and [REP8-014](#)]. Each length of quay within the inner harbour also has its own distinct characteristics. The loss of the berths would therefore also have a restrictive impact on vessel assignment.
- 8.5.53. In terms of the bed of the lake, the CA powers would allow the construction of the proposed bridge, located in the middle of the Port of

Lowestoft's operational inner harbour. The Port of Lowestoft's inner harbour would effectively be cut in half by the CA powers. In relation to land loss therefore, the CA powers sought would have a seriously detrimental effect on the carrying on of the statutory undertaking in the port.

*Disruption from construction*

- 8.5.54. ABP considers that disruption from construction within land that would be temporarily possessed would similarly affect berthing and quayside, land side areas and the lake [[REP5-023](#), paras 9.6 to 9.19 and [REP5-024](#), paras 9, 13 to 15, 17 and 26]. An additional factor however would be the effect of the closure of Commercial Road, which provides the only vehicular access to the quays and port to the west of the proposed bridge [[REP5-023](#), paras 9.3 to 9.5, [REP5-024](#), paras 16 to 21 and [REP11-014](#), page 93]. The Applicant has underestimated the impact of any closure of the road, and the suggested diversion during construction is over operational quays, which is no legal remedy.
- 8.5.55. Furthermore, grain vessels can arrive with as little as 12 hrs notice. The arrival of grain laden HGVs, which currently use an area that would be subject to TP, is not under the control of the Harbour Master. In relation to construction disruption therefore, impacts of the TP powers would underline the significance of the serious detriment that would be experienced by the port.

*Disruption from the presence and operation of the proposed bridge*

- 8.5.56. ABP is of the view that the disruption caused by the 11m safety clearance restriction of the low-level bridge would be compounded by the 32m clearance between the fenders for the bridge piers. Furthermore, over time, global climate change sea level rises could amount to between 0.41 to 0.58m over 60 years, which would reduce the safety clearance.
- 8.5.57. The heart of the inner harbour split by the proposed bridge. This would be a novel aspect of the development apart from its similarities with the Welsh Government's M4 Relief Road proposals in South Wales and the impact of its bridge section on the Port of Newport [[REP7-007](#)]. In that case, the Welsh Government agreed that the serious detriment to ABP, as a SU, required mitigation for equivalence together with an indemnity to ABP for all losses and liabilities falling to them. The mitigation included some re-design, accommodation works, collision prevention engineering measures and the ongoing review of monitoring and management measures. The mitigation was secured by agreement letters between the parties.
- 8.5.58. In the Port of Lowestoft, the existing A47 bascule bridge must be passed to enter the inner harbour [[REP3-024](#), Section 4, [REP5-023](#), Sections 4 and 5 and [REP7-006](#), paras 1.7 and 1.8]. ABP considers that the presence of this bridge does not serve to reduce the impact of the proposed bridge, and the representations consider this in some detail [[REP4-032](#), ExQ1 2.24 and [REP5-023](#), paras 2.8 to 2.13 and Appendix 6].



- 8.5.59. As the design of the proposed bridge is not complete, there are a number of critical factors which remain unresolved. These are said to compound the serious detriment to ABP as a SU and are exacerbated by questions as to the suitability of and qualifications held by the advisors appointed by the Applicant. Moreover, the control of the proposed bridge would lie with a third party, to the serious detriment of ABP as the relevant SU.
- 8.5.60. The fact that vessels exceeding the safety clearance would not be able to pass the bridge without it lifting would be a serious constraint on the operation of the inner harbour. The representations consider this in some detail [[REP5-023](#) paras 3.66 to 3.76, [REP5-028](#) and [REP8-021](#), [REP8-027](#) and [REP8-028](#)].
- 8.5.61. The proposed bridge, with its low level and single leaf, would therefore represent a dangerous safety hazard, in relation to which ABP seeks an indemnity. This is on the basis that the protections offered in the dDCO are extremely limited. The indemnity sought would cover any direct and indirect loss or damage, without limitation, from circumstances which would not have occurred without the Proposed Development. It would also cover any claims whatsoever made against ABP and any ABP liability, without limitation, to SCC or third parties from the same circumstances. The indemnity provided should include the risks being covered by insurance. If this indemnity is not provided, then ABP would be corporately liable for the actions of others over which it had no control.
- 8.5.62. It is also said that the proposed bridge would obstruct ABP in carrying out its statutory duties. The representations consider this in some detail [[REP3-024](#), Sections 12 and 13, [REP5-023](#) and [REP8-011](#) and [REP8-034](#)]. Furthermore, future port security issues and compliance with the International Ship and Port Facility Security Code are difficult to address at this stage [[REP3-024](#), Section 19 and [REP5-023](#), paras 8.1 and 8.2]. A reduction in the port's ability to accommodate such vessels would be detrimental.
- 8.5.63. In relation to disruption from the presence and operation of the proposed bridge therefore, ABP considers that the CA powers sought would have a seriously detrimental effect on the carrying on of the statutory undertaking in the port.

*Impact on the overall business of the port*

- 8.5.64. ABP's position is that the location, height and operational restrictions, as already described, would be seriously detrimental to the viability of the port [[REP5-023](#), paras 3.19 to 3.24]. The representations consider this in some detail [[REP3-024](#), [REP5-023](#), paras 3.29 to 3.53 and 3.72 to 3.76, [REP5-026](#), [REP5-027](#) and [REP8-020](#) and [REP8-021](#)]. The importance of the port is also recognised in the SoST's s35 Direction [[APP-092](#), Appendix B]. Furthermore, ABP states that the Applicant wrongly rejected the western option for the Lake Lothing Crossing [[REP5-024](#) and [REP5-032](#)]. The Applicant's reliance on the analysis in its Economics Report [[APP-106](#)] is also questioned.

- 8.5.65. The concerns over berthing access delays from the new bridge are real to ABP. The representations consider this in some detail [[REP5-023](#), paras 3.25 to 3.27 and 3.86 to 3.88]. Furthermore, the land loss, both permanent and temporary, would affect the permitted development (PD) rights which the port has the benefit of and can use to attract new business [[REP5-023](#), paras 2.21 to 2.27, [REP7-007](#) and [REP8-012](#), page 11].
- 8.5.66. ABP argues that all of the above would represent a material constraint on the ability of the port to be competitive in carrying on its business. Such a constraint would then have an adverse effect on the port in making it difficult to find the necessary investment funding to secure its future. The effect of these constraints would also be felt outside the port, as the significance of its economic contribution to the local area would be seriously damaged. Furthermore, the contribution of the port to the renewable energy market generally would also be severely impeded.
- 8.5.67. In relation to impact on the overall business of the port therefore, ABP considers that the CA powers sought would have a seriously detrimental effect on the carrying on of the statutory undertaking in the port.

*Mitigation to offset serious detriment*

- 8.5.68. ABP is of the opinion that the effects of the CA would be materially adverse and of serious detriment to the carrying on of the statutory undertaking at the port. Berthing, which is essential to the operational utility and flexibility of the port would be lost in terms of current and future operations. This must be considered in terms of the operation of the port as a whole, and this requires a holistic approach to its consideration.
- 8.5.69. The height restriction from the proposed bridge would be the only such operational port constraint in the UK. The CA of land and the bed of the lake would impact on the operation of the port. Both of these matters would be a deterrent to existing and future commercial operations. The failure to mitigate these impacts or to indemnify ABP against the impact of them results in serious detriment which would touch on the future viability of the port and the local and regional economy.
- 8.5.70. ABP has however considered the potential for mitigation throughout the Examination. In this regard it has considered the following matters as a mechanism to maintain equivalence in respect of the port in terms of the before and after situations. These mitigation matters are:
- The provision of an emergency berth, which would be located between the two bridges for any trapped vessels [[REP3-024](#), Section 18, [REP4-032](#), page 12 ExQ1 2.36 and [REP5-023](#), paras 7.19 to 7.26];
  - replacement berthing in the outer harbour, which would be outside of the bridges; and
  - an indemnity, as has been described.
- 8.5.71. Moreover, it is said that the Applicant has also failed to satisfactorily account for additional land acquisition, mitigation and compensation



costs [[REP3-024](#), paras 23.11 to 23.15 and Section 23 and [REP5-025](#)]. This is in part because there is significant uncertainty over the additional property costs, bearing in mind the large number of affected parties, and the capital programme contribution from SCC. Even if the funding was to be found, it would represent a waste of public money on an infeasible option.

- 8.5.72. The tests that should be applied under s127 of PA2008 relate to the carrying on of the statutory undertaking. Here they relate to ABP carrying out its statutory obligations as operator of the port and its statutory obligations and duties as SHA. ABP believes that the CA would seriously impact on the ability of ABP to comply with these duties.
- 8.5.73. The tests also suggest that replacement land could be made available to the statutory undertaking to avoid serious detriment. Here, the port's estate is physically and geographically constrained, and the port's expansion land to the west of the Proposed Development is required for the East of England Energy Park, amongst other things. Land replacement is therefore not an option in this Examination.
- 8.5.74. ABP considers that the CA required for the Proposed Development would therefore be of serious detriment to the carrying on of ABP's statutory undertaking as operator of the Port of Lowestoft and SHA. Recent Nationally Significant Infrastructure Project (NSIP) Examinations for the Hinckley Point C Connection<sup>24</sup> and the Richborough Connection<sup>25</sup> are relevant to this Examination. At Hinckley, a small area of the Port of Bristol would be affected, but this particular location was an important part of the resources of the port and serious detriment was found. At Hinckley and Richborough, current and future operations were deemed to be within the scope of the serious detriment test and evidence was presented by those who were properly qualified and technically competent. Serious detriment was also found to be greater than just detrimental and needed to be important or significant in the carrying on of the undertaking.

*ABP 31 May 2019 letter to the Secretary of State for Transport*

- 8.5.75. ABP has written to the SoST, in some length and with appendices, expressing concern about serious detriment and has drawn attention to a number of impacts set out previously in this chapter [[REP11-015 to REP-021](#)]. Of particular note are:
- The effective severance of the inner harbour by the proposed bridge;
  - the sensibility of other bridge location options;
  - serious detriment to existing port operations; and
  - escalating and cumulative impact in terms of future commercial operations, operator perception, proposed port expansion and the port's consequential inability to meet the needs of an off-shore energy

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<sup>24</sup> Hinckley Point C Connection (2016)

<sup>25</sup> Richborough Connection Project (2017)

market which Government has recognised as being of critical importance to the UK economy.

8.5.76. ABP had expected the Applicant to either withdraw the application and pursue a more sensible option or offer measures to mitigate the serious detriment. The Applicant has failed to do either. ABP suggests that it has demonstrated that, if the Proposed Development is allowed to proceed, the SoST should not approve the CA of land and rights within the port estate.

8.5.77. The letter then proceeds to explain the following aspect of ABP's case, which has already been set out in this report. Its coverage of serious detriment is split into the following elements:

- CA of the statutory port estate;
- loss of berthing and berthing utility and flexibility;
- obstruction and impediment;
- impact on existing operations;
- impact on future flexibility;
- impact on commercial perception of the port and its ability to secure future business;
- failure to mitigate;
- lack of an indemnity;
- s35 Direction; and
- conclusions and a "*minded to*" determination.

8.5.78. On the final point, ABP suggests that the SoST indicates to all parties that he is "*minded to*" refuse to approve the CA of ABP's land. This would provide the Applicant with the opportunity to approach ABP with a meaningful package of mitigation measures, including an acceptably termed indemnity.

*ABP conclusion*

8.5.79. From the evidence submitted, ABP says that it is clear that the CA of land and rights leading to the introduction of a new bascule bridge in an operational port, would have serious consequences for the port. This would be of a sufficient magnitude to engage and surpass the test of serious detriment set out in s127 of PA2008.

8.5.80. ABP does not oppose the principle of a third crossing of Lake Lothing. ABP's original objection was to the location of the bridge through the middle of the operational port. If the applicant had approached the formulation of its application in a properly considered way, that would have readily demonstrated that the selected location for the crossing now being promoted is operationally indefensible.

8.5.81. ABP, as the owner and operator of the port and the SHA, cannot, for the reasons detailed above, accept the location of the bridge as currently proposed if the serious detriment that would be caused by the Proposed Development is not mitigated. To date, the applicant has refused to acknowledge the serious detriment that its Proposed Development would cause and has refused to discuss any meaningful mitigation measures

with ABP. The application, as proposed, should therefore not be confirmed.

- 8.5.82. That is clearly regrettable, given the large amount of public money that has already been expended. However, in a spirit of pragmatism, ABP has indicated to the SoST that it may still be prepared to withdraw its objections to the application, if the applicant would be prepared to provide a genuine package of measures to mitigate the serious detriment that would otherwise be caused. ABP has suggested to the SoS that if he were to indicate that he would be minded to refuse the CA of ABP's land, that would provide the applicant with the opportunity to approach ABP with a meaningful package of mitigation measures, including an acceptably termed indemnity.
- 8.5.83. That constructive considered approach has not been advanced lightly by ABP. Nonetheless, for the purposes of the Examination, ABP's position remains one of regretful opposition and it invites the ExA to recommend that the dDCO not be made.

### ***Applicant's Response***

#### *Introduction*

- 8.5.84. The Applicant's response is set out in its Closing Submission (ABP) [[REP11-009](#)]. The Applicant has benefited from relevant technical expert advice and has used this advice throughout the development of the application and during the course of the Examination [[REP10-080](#), Appendix A]. The Case for the Scheme provides a comprehensive narrative on the need for the Proposed Development and its evolution [[APP-091](#)]. The SoR concludes that there is a compelling case in the public interest for the acquisition of the port land sought and that this can be acquired without serious detriment to carrying on of ABP's undertaking [[REP10-009](#)]. The gist of the Applicant's response relating to CA and ABP is set out below, and further detail is set out in Chapter 5 of this report.

#### *Benefit to the Port of Lowestoft*

- 8.5.85. The Applicant considers that the expansion of the port, as anticipated by ABP, would result in more intense use of the surrounding highway network. Without the Proposed Development, such journeys would be susceptible to weaknesses in the existing network, particularly existing bridge openings which would increase [[REP4-016](#), Section 2]. The port relies on its land-based connections, and the Proposed Development would benefit all highway users due to savings in time and vehicle operating costs [[APP-106](#), [REP7-005](#) and [REP8-008](#), Section 3.3]. The SoST also recognised that the Proposed Development has a key role to play in the growth of the Port of Lowestoft in the s35 Direction [[APP-092](#), Appendix B]. Indeed, ABP recognises the reliance of a port's success on adequate terrestrial infrastructure serving it [[REP3-024](#), Annex 7].

#### *A Western Alternative*

8.5.86. The Applicant has undertaken a full options appraisal process [[APP-136](#), Chapter 3]. The Applicant has also reported on the relative performance of the western option against the central option during the Examination and whether the earlier conclusions remained valid [[REP4-014](#), page 5 and Appendix B]. The Applicant also reviewed the transport assessment and the relevant WebTag guidance [[REP5-007](#), Appendix B and [REP7-005](#), page 30]. The western option remained less satisfactory in a number of important respects, including that:

- It would be up to 17% more expensive than the Proposed Development;
- it would provide less relief to the A47 bascule bridge;
- its southern landing point was not well related to Tom Crisp Way, increasing traffic on unsuitable residential roads;
- it would have a lower Benefit Cost Ratio (BCR); and
- it would require a greater land take from ABP due to the width of its landholding, and this would include land at Shell Quay.

8.5.87. The Applicant therefore remains satisfied that the central option remains the optimal choice.

*Vessel survey and highway benefit*

8.5.88. The Applicant undertook a nine-month vessel movement survey, in three phases, spanning just over a year for seasonal variation, and it was updated with a third tranche of survey data [[APP-208](#), [REP3-060](#), [REP7-005](#), pages 9 to 11 and [REP8-008](#)]. The representations consider this and bridge lifts in some detail [[APP-106](#), [REP3-056](#), Table 4-1, [REP4-016](#)]. Collectively, the Applicant has reported on the basis of a conservative estimate of the benefit of the Proposed Development.

8.5.89. The Applicant has also undertaken a sensitivity test on the BCR, doubling the number of lifts for the two bridges, thereby reducing further the highway benefit of the Proposed Development [[REP4-016](#)]. The effect of the future growth scenario and the doubling of bridge lifts had a very limited effect on the BCR and did not alter the Proposed Development from being High Value for Money. The Applicant is therefore satisfied that its BCR output remains robust under port growth scenarios that could reduce the highway benefit of the Proposed Development.

*Vessel simulation*

8.5.90. The Applicant's vessel simulation was a three-stage process which involved ABP's Harbour Master and its Marine Manager in the simulation runs [[APP-198](#)]. The representations consider this in some detail [[REP10-080](#)]. The preliminary NRA confirms that refinements to the design have been incorporated following the simulations to effectively reduce the risks created by the Proposed Development [[APP-208](#), para 7.1.1 and Appendix B Section 4.2].

8.5.91. The Applicant's considers that the vessel simulation is robust and has appropriately informed both the design and preliminary NRA. In response to ABP's concerns, the Applicant has included Requirement 11 (R11)

in the dDCO. This requires the final NRA to be submitted to ABP for approval, and for that NRA to be informed by further vessel simulation [[REP7-005](#), Page 17].

*Future prospects for the port*

- 8.5.92. ABP has commissioned a number of reports on this subject, and further detail on the Applicant's positions in relation to these reports is set out in Chapter 5 of this report. The Edge Economics Report, commissioned by ABP, translates the current economic significance of the port to future economic performance [[REP3-024](#) annexes 4A and 4B]. The Applicant does not agree with the central assumptions applied by Edge Economics [[REP8-008](#), para 3.3.41].
- 8.5.93. ABP commissioned BVG to assess the opportunities for the port [[REP5-027](#), Annex 2]. The Applicant does not agree with the BVG conclusions in this regard [[APP-091](#), para 4.6.13, [REP7-005](#), page 6, [REP9-010](#), page 5, [REP8-018](#), page 21 and [REP9-012](#), Annex 1 Figure 15]. ABP also commissioned ABPmer to assess the usage of berths between 2015 and 2017, the effect of the Proposed Development on this use in current terms and in the future [[REP5-026](#), Annex 1 and [REP8-018](#), Annex 3]. The Applicant has fundamental concerns with the methodology used in this report.
- 8.5.94. The Applicant agrees that the port is well-positioned to capture business associated with the growing offshore energy sector. PD rights would also be able to be returned if the bridge was ever dismantled [[REP8-007](#), [REP9-009](#) and [REP10-080](#)]. However, the Applicant considers that the impact of the Proposed Development should not be based on the certainty of future growth in the port. The BVG report and the port masterplan frame demand as being between 30 and 50 Crew Transfer Vessels (CTVs). The ABPmer report however only uses 50 CTVs in its analysis. This gives insufficient regard to the uncertainties of growth.
- 8.5.95. Furthermore, the Applicant believes that the impact on locating at Shell Quay should be interpreted on the basis that for 22 hours per day there would be no impediment from the proposed bridge, rising to 24 hours per day if the vessel does not require a bridge lift. Even for the two hours where lift restrictions would be in place, the practical consequence would be a minor adjustment to vessel transit times. The Applicant therefore does not consider that the CA sought would prove the critical driver for an operation choosing not to locate in Lowestoft.

*Impact on berthing*

- 8.5.96. The Applicant states that the direct loss of berthing associated with the Proposed Development would be the 62m within the land subject to CA [[REP7-005](#), pages 32 and 35, [REP8-005](#), [REP8-008](#), para 6.1.5, 6 and 8 onwards, [REP9-010](#), page 2 and [REP10-080](#)]. The Applicant's detailed position on this matter is set out in Chapter 5 of this report.
- 8.5.97. In summary, the direct loss of quay would be 62m, compared with 2,100m of quay in the inner harbour. Whilst the functionality of

North Quay 1 and 2 would be materially affected, they could continue to accommodate vessels up to a combined, or individual, LOA of 100m. North Quay 4 East should not be written off, as minor accommodation works could retain the residual length as a functioning quay.

- 8.5.98. The Applicant considers that the effect of the Proposed Development on berth utilisation should be approached on that basis, and then berth occupancy remains less than 60% in the inner harbour. It is only when a series of assumptions are layered into the assessment by ABPmer that berth utilisation exceeds desirable levels. The Applicant disagrees with ABPmer's higher figure [[REP5-026](#), [REP8-005](#), [REP8-018](#) and [REP9-010](#), page 6]. ABPmer's assumptions relate to: the certainty of future business opportunities; a particular berth dedication and reassignment process; and pessimistic forecasts on the effect of the Proposed Development in terms of berthing loss [[REP8-005](#), [REP8-018](#), Table 6 and [REP10-088](#)].
- 8.5.99. The Applicant therefore suggests that, given the significant uncertainty in future forecasts, proportionate weight should be given to such assertions of impact based on this analysis.

#### *Air draft*

- 8.5.100. The Applicant chose an air draft of 11.5m at HAT to provide a working safety margin below the structure of the proposed bridge for vessels transiting without a bridge lift. The Applicant accepts that a future NRA may require a safety margin of 1m, which would give an air draft of 11m at HAT [[REP7-005](#), page 5 and [REP8-008](#), para 5.2.16]. The Applicant has taken into account PIANC<sup>26</sup> air draft guidance [[REP7-005](#), page 5, [REP9-010](#), page 8 and [REP11-007](#)].
- 8.5.101. There would only be restrictions on commercial vessels requiring bridge lifts during peak road traffic hours [[REP7-005](#) and [REP8-005](#)]. Moreover, a large proportion of the CTVs identified by ABP would not require a bridge lift at any state of the tide below HAT, and this is still likely to be the case in the future [[REP5-027](#), Section 2.2, , page 6, [REP8-008](#), para 3.3.37 and onwards, REP8-021 and [REP9-010](#), page 9].
- 8.5.102. From all of the above, the Applicant does not consider that the CA of airspace sought in terms of air draft would lead to a detriment that would be serious in terms of the operation of the port.

#### *Proposed bridge Scheme of Operation*

- 8.5.103. The draft Scheme of Operation includes a prohibition on lifts of the proposed bridge during peak road traffic hours of 08:00 to 09:00 and 17:00 to 18:00 [[REP4-016](#) and [REP11-007](#)]. The existing bascule bridge separates the inner and outer harbours and has a clearance above HAT of 2.16m [[REP8-008](#), Section 5.1 and 5.2]. It has periods during the day when the movements of commercial vessels are discouraged.

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<sup>26</sup> The World Association for Waterborne Transport Infrastructure



8.5.104. Even though the restricted periods would be extended over the existing situation, they would still represent a small proportion of time within a 24-hour period [[REP9-010](#)]. Moreover, the Applicant considers that effect of the proposed bridge restrictions should be described in terms of journey time adjustment and not delay [[REP7-005](#), page 2 [REP8-005](#), para 2.1.4 and [REP8-008](#), Section 5.2]. The Applicant therefore has not accepted the ABP suggestions on the Scheme of Operation [[REP10-084](#) and [REP11-007](#)].

8.5.105. The Applicant thus does not consider that the CA of airspace sought in terms of the proposed bridge scheme of operation would lead to a detriment that would be serious in terms of the operation of the port.

*Navigational risk*

8.5.106. The Applicant considers that navigational safety has been appropriately considered as part of the application and the dDCO adequately safeguards the concerns of the SHA [[APP-208](#), [REP5-007](#), page 12 and [REP8-008](#), Section 7]. Provisions would ensure that navigational safety would not be compromised [[REP8-008](#), [REP3-029](#), ExQ2 2.36 and [REP11-007](#)].

8.5.107. The Applicant therefore does not consider that the CA sought in terms of the proposed bridge and navigational risk would lead to a detriment that would be serious in terms of the operation of the port.

*Port security*

8.5.108. The Applicant considers that the physical separation of vessels from the proposed bridge, enforced by the fenders, and close circuit television would significantly mitigate the effect of the bridge on port security [[REP8-008](#), Section 8].

8.5.109. The Applicant therefore does not consider that the CA sought in terms of the port security would lead to a detriment that would be serious in terms of the operation of the port.

*Construction*

8.5.110. Although detailed design is yet to take place, construction of the Proposed Development is anticipated to take approximately two years to complete [[APP-136](#) plate 5-2]. Land beyond the footprint of the development is required to support its construction, and the extent of this land has been determined in conjunction with the Applicant's contractor [[REP7-005](#), Appendix A and [REP10-009](#), Section 4.4 and Appendix A]. The Applicant however advises that it is unlikely that all of the TP would be required for the duration of construction.

8.5.111. The extent of water-based TP plots reflects those on the land side [[REP9-010](#), page 2]. Suspension of navigation is also subject to dDCO A20 which requires the consent of the SHA and the Applicant to limit such closures. TP would also be subject to compensation and the consent of the SHA [[REP9-010](#), page 2 and A32(6) [REP11-003](#), Schedule 13 para 54].

- 8.5.112. The Interim Code of Construction Practice (CoCP) provides that the layout of the construction compounds must ensure that access is maintained for port operations at all times along Commercial Road [[REP7-005](#), Appendix A and [REP10-078](#), para 2.4.7]. The Applicant therefore cannot implement a closure of Commercial Road, required to accommodate the positioning of the span over Commercial Road, without the agreement of the SHA to a diversion route.
- 8.5.113. The approaches for this route could be outside of the Order limits and flexible to accommodate prevailing construction and port requirements, as envisaged under dDCO A11 [[REP11-003](#)]. The Applicant sought ABP's permission to engage with its tenants directly, but this was declined. A potential route has however been identified by ABP, although traffic management would be required to avoid a suspended quay [[REP3-024](#), Annex 5 and [REP5-023](#), para 9.5].
- 8.5.114. The Applicant maintains that the diversion of Commercial Road is practicable. It agrees to ABP's requests for pre- and post-condition surveys, health and safety risk assessments, the provision of traffic management and a formal agreement for the occupation of this land. All these matters could be dealt under dDCO A11 and the Protective Provisions for the SHA.
- 8.5.115. Traffic management on Commercial Road would be required for movements around the Dudman grain site, which may include vehicle marshalling and temporary traffic regulation measures under dDCO A52 [[REP8-007](#) and [REP9-010](#), page 16]. Additionally, the Applicant considers that vehicles could be corralled elsewhere in the port, if it is safer and more efficient to do so. These are all reasonable conditions that could be imposed under the SHA's Protective Provisions. Such mitigation measures would vary according to the prevailing requirements of both the Applicant and Dudman in relation to the land proposed to be used for construction purposes.
- 8.5.116. Access to Shed 3 through its eastern door, which would lie in close proximity to the proposed bridge, would be impeded during construction. The costs of works to permit the continued use of the building would however be recoverable from the Applicant. If works are required to secure continued use after construction, they would again be recoverable from the Applicant [[REP8-008](#), Section 9.4].
- 8.5.117. The Applicant recognises that ABP has outstanding concerns in relation to the construction activities. The Applicant has however sought to address these points through the drafting of the Order and outlining potential mitigation measures. It also sought to provide additional clarity and comfort to ABP in a Side Agreement which has not been completed. The Applicant does not consider that ABP has identified any issues which cannot be overcome through further liaison in the development of the construction programme, and appropriate mitigation measures or compensation. The Applicant therefore considers that the TP powers sought in terms of construction would not lead to a detriment that would be serious in terms of the operation of the port.



### *Mitigation*

- 8.5.118. ABP has suggested the following mitigation measures that it believed would be necessary to mitigate the impact of the Proposed Development [[REP3-024](#), Sections 15 to 19]. The Applicant has already found an emergency berth between the existing and proposed bridges to be unnecessary. Similarly, using the Applicant's projections, replacement berthing in the outer harbour has also been found to be unnecessary. The Applicant has also agreed to cover new or additional costs relating to a number of other mitigation measures [[REP10-076](#)].
- 8.5.119. The Applicant advises that a side agreement with ABP has not yet been completed. Matters relating to the other mitigation measures noted above would however require an ABP approval or would have costs covered under the dDCO Protective Provisions [[REP11-003](#), Schedule 3].

### *Compulsory Acquisition and Serious Detriment*

- 8.5.120. In terms of CA, the Applicant considers that it has demonstrated that each plot is required for a specific part of the Proposed Development, taking account of the current stage of design [[REP7-005](#), page 24 onwards and [REP10-009](#)]. This justification has also extended to plots where the CA of rights is required, or where only the CA of airspace is required. The compelling case in the public interest flows directly from the benefits of the Proposed Development previously identified. When the benefits are weighed against the inevitable interferences with the rights of ABP, the Applicant maintains that the public interest strongly outweighs those interferences. Such interferences would also be eligible for compensation in accordance with the Compensation Code.
- 8.5.121. The Applicant has sought to leave CA as a matter of last resort by pursuing a side agreement with ABP where attempts have been made to negotiate first [[REP8-007](#)]. Moreover, whilst a long lease is an acceptable option to the Applicant, provided there is a clear commitment by ABP to dedication of the relevant land as highway, CA powers would still be necessary in case a lease is not agreed in time to facilitate the implementation.
- 8.5.122. The dDCO Protective Provisions also provide a lock on the exercise of CA powers over port land, where ABP consent would be required, subject to any reasonable ABP conditions [[REP11-003](#), Schedule 3 para 54]. This would give ABP a considerable degree of control over CA which could affect its statutory undertaking. The Applicant considers that there would therefore be no reason why the CA should cause undue interference with the continued successful operation of the port.
- 8.5.123. There is also a lock within the drafting of dDCO A22, which gives the Applicant the power to CA land only as is required for the authorised development. This means that, once the Proposed Development is refined through the detailed design process, the dDCO would not authorise the CA of land that is not so required. Furthermore, sufficient funding is in place [[APP-008](#), [REP3-029](#), ExQ1 3.7 to 3.10, [REP4-014](#), [REP5-010](#), Appendix 1 and [REP7-005](#), page 37].

- 8.5.124. The Applicant believes that the lock therefore needs to be seen in the context that, by the time the Applicant would come to ABP for consent under their Protective Provisions, the SoST would already have determined that the CA powers are justified. The focus of that consent would therefore relate to how the CA powers should be used [[REP8-007](#), page 9]. The Applicant therefore considers that the lock would be a practical, and very well established, way to manage the fully justified powers to ensure that impacts to ABP could be minimised.
- 8.5.125. In terms of serious detriment, the s127 test can prevent schemes where a compelling case has otherwise been proven. This underscores the need to demonstrate that the adverse effects would be seriously detrimental to the carrying on of the undertaking rather than merely disadvantageous. The Applicant considers that the test of serious detriment should not be applied to parties with whom the undertaker has entered into contracts, such as ABP's port tenants. This is because ABP's undertaking does not extend as far as the success or failure of its tenant's businesses.
- 8.5.126. The Applicant accepts that future business prospects do not have to be certain to be included within the test. The less certain the prospects are however, the less likely their loss would have seriously detrimental consequences for the undertaking. This matter requires a realistic view.
- 8.5.127. The Applicant states that TP powers are not subject to the s122 and 127 tests as they are not CA powers [[REP8-007](#)]. Even if this is not accepted, the Applicant considers that no serious detriment would be caused [[REP10-080](#)]. In view of all of the above, the ExA and the SoST should apply the tests in a holistic and objective manner.
- 8.5.128. ABP has sought to claim serious detriment under five broad issues:
- Loss of berth space and impact on current and future operations;
  - physical presence of the proposed bridge in terms of navigational risk and safety together with loss of permitted development rights;
  - operation of the bridge in terms of the timing of lift restrictions, the delay this would cause, and the consequential effect on the attractiveness of the port to future operators;
  - inability of ABP to comply with its statutory duties as a result of the provisions of the dDCO; and
  - costs and losses that could be caused by the presence of the bridge that therefore need to be indemnified.
- 8.5.129. The Applicant agrees that these factors are all inter-related and need to be considered holistically together in determining whether a serious detriment to the carrying on of ABP's undertaking is caused. The Applicant considers that no individual element of these factors, or if they are taken together in any form of combination, would lead to a detriment that would be serious because:
- In the context of the port as a whole, the berth loss caused by the Proposed Development would be small both now, and in the future;
  - navigational risk would be able to be mitigated through the full NRA, approved by ABP, security concerns would be able to be dealt with,

- and PD rights would be able to be returned if the bridge is ever dismantled;
- vessel operators would be able to modify their timings to meet the timings of the existing and new bridges and the Harbour Master could prevent vessels getting trapped between the bridges, thus reducing any potential unattractiveness;
- ABP has not identified any specific statutory duty that it would be unable to discharge if the Proposed Development was in place, and ABP's duty to provide an open port is not compromised by the existing bridge; and
- an appropriate indemnity is in place within the provisions of the dDCO.

*ABP 31 May 2019 letter to the Secretary of State for Transport*

- 8.5.130. ABP has sought to persuade the SoST that serious detriment to its statutory undertaking is caused by the Proposed Development [[REP11-015](#)]. The vast majority of it is a repeat of what ABP has set out in its Examination submissions.
- 8.5.131. This letter has been sent directly to the SoST on the basis of ABP's view that the SoST is required to issue a certificate under the provisions of s127 of PA2008 that the CA of its land would not lead to serious detriment. This however is not required following the Growth and Infrastructure Act 2013
- 8.5.132. The Applicant therefore considers that it is entirely inappropriate for the letter to have been sent to the Secretary of State outside of the Examination process. It is also disappointing to learn that ABP has been proceeding on a patently incorrect legal basis in putting forward that letter.
- 8.5.133. There are however the following specific points to which the Applicant feels it is necessary to additionally respond:
- The Applicant has consistently recognised that the test of serious detriment is a wide and holistic one, including ABP's statutory and commercial operations [[REP11-015](#), para 7.5]. The Applicant does not however agree that the commercial performance of ABP's tenants should be included in the test.
  - Paragraph 17.3 of the letter suggests that the Applicant is "*not prepared to offer any form of indemnity to ABP during the bridge's operation*". The Applicant has been clear throughout the Examination that it is not prepared to indemnify ABP for all risks arising from the fact that the Proposed Development would exist in the chosen location [[REP11-015](#), para 17.3]. The risks of costs and losses arising from its operation as a lifting bridge would however be indemnified by the Protective Provisions in the dDCO.
  - The approach of equivalence, adopted by ABP and which would leave the port neither better nor worse off as a result of mitigation works, is fundamentally incorrect [[REP11-015](#), para 16.3]. The s127 test is whether serious detriment is caused, and any mitigation must seek to

avoid that level of detriment. The test is not to leave the port in a “no better nor worse” position.

- 8.5.134. The Applicant is disappointed that the letter has been put forward by ABP at all. It believes however that it has demonstrated that the SoST can be satisfied that sufficient provisions are included within the dDCO to authorise the CA of ABP's land. This is because they would not cause serious detriment to the carrying on of ABP's undertaking.
- 8.5.135. The Applicant does not deny that the imposition of the Proposed Development over the port would cause some adverse impacts to the statutory undertaking. The Applicant considers however that nothing has been put forward by ABP to demonstrate that the detriment would be serious, and that the Applicant has put forward sufficient evidence to show that this would indeed not be the case. The Applicant therefore considers that the SoST is able to include a provision in the DCO authorising the CA of ABP's land.

### ***Examining Authority's consideration***

- 8.5.136. The ABP representations about the application have not been withdrawn, and we have therefore considered them under s127 of PA2008. ABP's case in objection during the Examination was summarised in closings [[REP11-014](#)] and in the letter to the SoST [[REP11-015](#)]. We are satisfied that ABP is a SU and that the land which would be the subject of the proposed CA has been acquired by ABP for the purposes of its undertaking, in accordance with s127(1)(a).
- 8.5.137. There has been no suggestion that replacement land could be provided. Also, there has been no suggestion that, if there was serious detriment from the CA of rights, this could be made good by the use of other land belonging to, or available for acquisition by, the Applicant. We have therefore considered the matter of serious detriment to the carrying on of the undertaking in this context.
- 8.5.138. We agree with ABP that the carrying on of port operations encompasses existing and future port operations together with the ability of ABP to comply with its statutory obligations and duties as SHA and CHA. We also agree with ABP that serious detriment is a matter of judgement on the scale of impact on the undertaking and that the decision maker should take a holistic approach. In this case, the impact on the port as a whole should be assessed. We also agree with ABP that, for serious detriment to occur, the impact would have to be serious, but not necessarily severe. We have considered the objection generally under the headings in the ABP closings.

### ***Land and rights loss***

- 8.5.139. In this section we consider the impact of the CA sought on berthing and the land side of the port's estate. We consider the impact of CA on navigation and the more general operation of the port later in this chapter.

- 8.5.140. We have already found, in Chapter 5, that the maximum absolute loss of quay would be 62m. A further 14m would be subject to the mooring arrangements of vessels in the area of the proposed bridge and the frequency and rights required for bridge maintenance. There would also be some loss of manoeuvrability in the area of the proposed bridge structure. The detriment in respect of berth loss that would be likely to be caused to ABP's undertaking should be considered in terms of these losses. The 62m figure has however to be seen in the context that it could be reduced when the detailed design of the bridge is complete or if mooring line lengths are less than anticipated.
- 8.5.141. Land side, the Proposed Development would cross the port's land at one of its narrow points. This again is with a maximum land and airspace CA width of some 65m along the route of the elevated structure and maintenance rights widths of some 5m to either side. This area of CA would lie in close proximity to Shed 3 within the port.
- 8.5.142. It is of note that the presence of this Shed 3 currently severs the land side area of the port to some extent. It generally leaves only the quayside and Commercial Road for passage to the areas of the port to the west of the shed. The single area of permanent CA, for a pillar of the elevated structure, would generally leave a greater width for passage on the quay and Commercial Road sides of it.
- 8.5.143. The eastern door of this shed would face the single area of permanent CA. The shed could however be reconfigured, again with recoverable costs, to maintain its utility. These matters would be the main elements of detriment to the land side operation of the port. We do not consider that the CA of rights over Commercial Road would have any material impact on ABP's undertaking.
- 8.5.144. As a result of all of the above points, we consider that the CA sought would result in moderate, but not serious, detriment to ABP's statutory undertaking in terms of loss of berthing and land within the port. In coming to this view, we have taken into account the provisions in the rdDCO and the protection that these would give to the interests of ABP. In terms of the land and rights sought in the lake, we have considered these under the presence and operation of the proposed bridge.

*Disruption from construction and Temporary Possession*

- 8.5.145. Construction would require the TP of significant areas within the port to either side of the areas of permanent CA and rights sought. Although not subject to the tests in s127 of PA2008 we have considered the impacts of TP on ABP's undertaking. The extent of these areas for TP is generally a consequence of the fact that the Proposed Development would be threaded through this locality and would have to cross several obstacles. Examples of these are the lake itself, the operational port including Commercial Road and a timetabled rail line.

- 8.5.146. Construction would take place in phases, and the phases would be very different in the nature of the work being undertaken and the type of plant required. We accept that the detail of this complex construction cannot be fully addressed until detail design is undertaken by the appointed contractor. Each of the competing contractors would also have their own approach to address these complexities.
- 8.5.147. It would not be in the public interest to stymie the innovation which could be offered by contractors by being overly prescriptive at this stage. Such prescription includes the time limiting of areas for TP, as well as the extent of these areas. The Applicant has however used a contractor to advise on what the likely methods of construction could be, to arrive at the areas and locations put forward for TP. We consider this to be a correct, realistic and reasonable approach.
- 8.5.148. Construction would take some two years, within which different phases of construction would take place. It is therefore reasonable to presume that the whole areas for TP would not be required for the entire two years, although a specific and shorter time should not be prescribed at this stage.
- 8.5.149. The temporary possession is subject to a demonstrable need. The occupation of land within the port is however also subject to the prior consent of the SHA, and any such consent could be given subject to reasonable conditions. Such conditions could relate to part plot and time limited occupation, or indeed co-existent operations.
- 8.5.150. All of this is however impractical to predict at this stage of the consent process, as it would be based on the successful contractor's detailed approach. Examples of the effect a detailed approach are:
- The water areas required for the type of water-based plant and pontoons to be used;
  - the lengths of bridge deck to be assembled on-shore; and
  - whether rotational construction is the most effective means of crossing obstacles.
- 8.5.151. These matters have been considered in some detail by the Applicant and, at our request, submitted to the Examination. As a result, we consider that the Applicant's suggested mechanism for and extent of TP would be likely to be the least detrimental for ABP's statutory undertaking whilst allowing the Proposed Development to proceed.
- 8.5.152. Commercial Road is an imperative in accessing the western part of the inner harbour. We are satisfied however that it would require temporary closure at some stage during construction. During any closure, a diversion would be required, and the Applicant has provided an example of such a diversion to the Examination. The appointed contractor may though choose to put forward a different solution, or indeed the dynamic port environment may require a different solution at that time. In this regard, it is of note that the nearby live rail line would also have to be crossed.

- 8.5.153. Part of the Applicant's example diversion would lie outside of the Order land. We are however satisfied that the Proposed Development could be constructed, and the continued use of Commercial Road accommodated, within the land and powers sought in the rdDCO. We believe though that this could cause unnecessary detriment, although not serious due to its limited duration, to ABP's undertaking and would not minimise disruption to ABP and the appointed contractor.
- 8.5.154. We consider that this unnecessary detriment could be avoided by the use of the Applicant's example diversion, following agreement with ABP. Another different and better solution could however be possible at the time of construction. Details of a solution to the closure of Commercial Road and the corresponding consent from the SHA would therefore be better left until the appointed contractor is in place to make the appropriate arrangements.
- 8.5.155. We consider that a limit to the Order land which encompassed all the reasonable options for a diversion could not be justified because of the unknowns in term of construction and future port requirements. We therefore consider that the TP and rights sought in association with the use of Commercial Road are a balance which is sufficient and justified, in that they would facilitate construction of the Proposed Development.
- 8.5.156. The TP powers sought also include an area behind North Quay which is currently used for the marshalling of heavy goods vehicles (HGVs) before their discharge of grain, and this area can be occupied by 30 HGVs. The Applicant has considered such a situation in terms of vehicle tracking. We are satisfied that, with appropriate conditions from the SHA prior to possession, the marshalling of HGVs could continue either within or outside of the area identified for TP powers. Any detriment would therefore not be serious. Again, the nature of the solution would be very much dependent on the appointed contractor's methodology and the needs of port operations at that time.
- 8.5.157. From all of the above, we are satisfied that the TP powers included with the rdDCO are justified. In the specific areas of the port where there would be detriment to ABP from construction activities, this would be of limited to moderate magnitude. Although TP is not subject to the s127 tests under PA2008, its impact would not be sufficiently important or significant to cause serious detriment to the carrying on of the undertaking of ABP at the Post of Lowestoft.

*Disruption from the presence and operation of the proposed bridge*

- 8.5.158. Over the bed of the lake, the CA sought would follow a similar pattern in terms of permanent land and airspace with rights below CA, all of which would be surrounded by a maintenance rights strip. ABP suggests that these elements of the CA sought, particularly where they would facilitate the presence and operation of the lifting element of the proposed bridge, would result in restrictions to navigation. ABP believe that these



restrictions would be seriously detrimental to the current operation of the port.

- 8.5.159. We agree with ABP that serious detriment to the carrying on of its undertaking should be assessed in a holistic manner, including navigation even though it could be seen as a subject under planning impacts. The CA sought would also place restrictions on dredging operations in the area around the proposed bridge. We have not however seen any sufficiently reasoned evidence to put such restrictions beyond having limited detrimental effect.
- 8.5.160. ABP has suggested that the effect of climate change, which would be to reduce the air draft available under the proposed bridge, would exacerbate any serious detriment caused. We have already found, in Chapter 5, that such changes do not cause us to change our view on air draft.
- 8.5.161. We have already found that the proposed bridge would have a limited detrimental impact on general vessel, and particularly CTV, access. We are therefore of the view that the availability of air draft under the proposed bridge, at the limited times when it could not be lifted, would not be seriously detrimental to the operation of the port.
- 8.5.162. ABP has suggested the following factors which it considers would exacerbate any serious detriment caused by the proposed bridge.
- 8.5.163. ABP suggests that the future use of larger, and taller, CTVs would exacerbate any serious detriment caused. Decisions on the types of CTVs to be used in the future would however be subject to many competing factors, and we are therefore not convinced that this prediction has sufficient certainty to be a material factor in this case.
- 8.5.164. The specified target for proposed bridge maintenance or failure time is 8hrs/yr whereas, on average, the existing bridge is closed 20 times every year. We accept that the new bridge's unavailability would be in addition to the downtime for the existing bridge. It would however not be for a significant length of time, would only affect part of the port and, once steadily operational, would be more related to planned maintenance rather than unplanned failure of the new equipment.
- 8.5.165. ABP suggests that the imposition of the proposed bridge over an operational harbour is only replicated by the previously proposed M4 Relief Road crossing of the port of Newport. In that case, the promoter accepted that there was serious detriment to the operation of the port, but that mitigation could be put in place to maintain equivalence in respect of that operation and avoid serious detriment. Much of the detail of that mitigation appears to us to be included within a side agreement between ABP and the promoter. A copy of this agreement, or indeed related evidence to the Inquiry into that proposal, has not been provided to the Examination. It is therefore difficult for us to compare the proposals and their effects, and we do not consider that the Newport case supports ABP's position here.

- 8.5.166. The Applicant has taken into account the advice of PIANC in developing the proposal. A preliminary NRA was submitted with the application, as has been the case in other DCO Examinations, on the basis that further refinement of the NRA can only be carried out in tandem with detailed design. The Applicant has undertaken vessel simulation, and we accept that this is sufficiently robust to inform the preliminary NRA.
- 8.5.167. The final NRA would be subject to the approval of the SHA, as would the final Scheme of Operation for the proposed bridge. The SHA would also be responsible for consultation prior to the finalisation of the NRA. The NRA would then effectively become an ABP document as part of the port's documentation, and any necessary changes would then be made by ABP.
- 8.5.168. In terms of the Scheme of Operation, the proposed bridge may be under the daily control of a third party. This control could however only be exercised under the approved Scheme of Operation, and the SHA's consent would be required for any variation to that scheme. In terms of port security, the Applicant has sought and followed guidance from appropriate sources. There is no evidence that there would be any significant impact in this regard.
- 8.5.169. ABP is concerned about the risk of vessels becoming trapped between the two bridges and then not having any mooring facility. ABP considers that an emergency berth should be provided to cover this eventuality. It would be the case however that, in the case of an emergency, the proposed bridge would be lifted to allow a vessel to pass to safety in the western part of the inner harbour. Furthermore, the Scheme of Operation, prior to its approval by the SHA, could require the proposed bridge to be in the lifted position until such a risk had reduced to an acceptable level. We can thus see no need for the provision of an emergency berth at the present time. Should circumstances change during detailed design though, we believe that risk reduction mechanisms could be introduced as safety mitigation, in the same way as an air draft monitoring system.
- 8.5.170. ABP, as the SHA, has a duty to keep the harbour open, has health and safety liabilities and is responsible for security. Having considered the evidence relating to these matters, we are satisfied that there is nothing in the application that would obstruct ABP in the carrying out of these duties.
- 8.5.171. We are therefore of the view that these factors, suggested by ABP, would not lead to serious detriment in terms of the operation of the port. As a result of all of the above, we consider that the presence and operation of the proposed bridge which would result from the CA powers sought would have a disruptive and detrimental effect on the operation of the port. We are however satisfied that this would be limited in extent in terms of its impact and duration and not seriously detrimental to the operation of the port.

*Future prospects for the port*

- 8.5.172. We accept the evidence put forward to show the importance of the port to the local and regional economy. We have already found, in Chapter 5, that the range of CTV berths required in the foreseeable future would be likely to lie between 36 and 50 berths. It is also our view that 50 berths would be likely to be able to be accommodated following the exercise of the CA powers in the rdDCO.
- 8.5.173. We acknowledge that these assessments are theoretical. They are however based on the evidence provided to us during the Examination. It allows us to consider a potential scenario in the most realistic manner available to us. The future may, and indeed possibly will, be different, but it would not be right to consider the serious detriment test on the basis of general statements made by either party.
- 8.5.174. The party's positions on berth utilisation rates have been formulated on very different bases, and direct comparisons are therefore difficult. We have already, in Chapter 5, agreed with the Applicant that dedicated berths should not be assessed as having a 100% occupation when considering the efficiency of the operation of the port.
- 8.5.175. It is also of note that the direct berth loss would be 62m out of an inner harbour berth length of 1,500m. Moreover, there is no evidence of specific characteristics of the berths that would be lost that are not available elsewhere in the inner harbour. We therefore favour the Applicant's position on this matter.
- 8.5.176. We accept that there would be a perception of disruption to the efficient operation of the port by the presence of the proposed bridge, but we have already found, in Chapter 5, that this would be limited. The presence of the bridge would also be unlikely to be a major deterrent in terms of new business due to the many other factors that would influence decisions on business location.
- 8.5.177. In view of all of the above points, we consider that the CA powers sought would have a detrimental but limited effect on the future of the statutory undertaking.

#### *Mitigation*

- 8.5.178. In the context of serious detriment, we must include the benefit of the Proposed Development to the operation of the port. Indeed, the SoST's s35 Direction identifies the importance of the port and recognises the key role that the Proposed Development could have on its growth. It is in the context of this direction that we have carried out our detailed Examination.
- 8.5.179. The port relies on its land-based connections. These are primarily highway connections, and indeed ABP has drawn attention to the grain HGVs arriving at the port at relatively short notice. We consider that the Applicant's stated benefits, which include highways matters, are realistic and have been based on conservative assumptions and subject to sensitivity testing.

- 8.5.180. There has been a lack of agreement between the parties on many issues during the Examination. ABP has however suggested mitigation that it considers would avoid serious detriment and maintain equivalency for the port in terms of the before and after situations. We do not think that the principle of equivalence is relevant to making a judgment on "*serious detriment*" in the context of s127 and securing "*equivalency*" is not necessary. The SoST could agree that there was some detriment to ABP's undertaking as a result of the CA but could still lawfully authorise the CA so long as the detriment was not serious.
- 8.5.181. We consider that the emergency berth mitigation, suggested by ABP, would be unjustified as previously explained. The risk of trapping would be minimal and not at a level that would represent serious detriment.
- 8.5.182. The outer harbour replacement berthing mitigation would also be unjustified as, under ABPs CTV test, there would be sufficient space available in the port, as previously explained. This suggestion also implies that there are further expansion opportunities within the outer harbour that do not feature in our growth assessment, and this would reduce the effect of the proposed bridge in this regard still further.
- 8.5.183. ABP has also suggested the provision of an indemnity, covered by an insurance policy. The Protective Provisions in the recommended dDCO do however provide wide ranging protection to ABP including all liabilities from the operation of the proposed bridge and the need for ABP consent, which could be conditioned, before any occupation of port land.
- 8.5.184. A wider cover to include actions by third parties and losses to third parties would place the Applicant responsible for circumstances far from any degree of its control. As an example, if a vehicle left the public highway and damaged third-party property, it would be difficult to see how the Highway Authority could be responsible if it had carried out its duties satisfactorily. Here, a similar situation should exist in relation to the elevated highway, although losses incurred by ABP would be covered under the Protective Provisions in the dDCO. Furthermore, we have not seen any evidence of other insurance policies to secure the cover provided by DCO Protective Provisions. We therefore cannot see any justification for additional indemnity or an insurance policy.
- 8.5.185. ABP has also questioned the availability of funding for compensation. We are however content that the required funding is sufficiently secure bearing in mind the consent stage that the Proposed Development is at.
- 8.5.186. Our attention has been drawn to the Hinckley and Richborough DCOs and the circumstances around them. We accept that serious detriment should be considered in relation to the undertaking as a whole. Each case should however be considered on its own circumstances, and comparisons between schemes can be somewhat contrived or anecdotal and therefore difficult to judge on a representative basis.
- 8.5.187. We agree that for serious detriment to occur, the impact should be important and significant. This does not however say that important and

significant impacts always lead to serious detriment, it may just be detriment. Furthermore, the requirement for replacement land would only come into play if serious detriment was found.

- 8.5.188. The importance of the location of the impact could also be a factor, as was the case at Hinckley. Here, the impacts may be, in places, important and significant in terms of the integration of the operation of the proposed bridge into the operation of the port. It is however the consequences in the round to the carrying on of the undertaking which need to be judged in terms of serious detriment.

*Conclusion on Examining Authority's consideration*

- 8.5.189. Having identified various areas of detriment, it is now necessary to combine these impacts and consider their detriment against the operation of the port as a whole. In carrying out this task, for the sake of completeness, we have included the effect of TP, even though this does not come within the scope of the s127 test in PA2008.
- 8.5.190. We have found that the CA and TP powers sought would result in moderate detriment to ABP's statutory undertaking in terms of loss of berthing and land within the port. We consider that the presence and operation of the proposed bridge that would result from the CA and TP powers sought would have a detrimental but limited effect on the operation of the port and the future of the statutory undertaking.
- 8.5.191. The assessment of these impacts is with the mitigation measures put in place by the Applicant. They have however been assessed without reference to the benefit to the port of improved highway conditions in the local area. If this is taken into account, the detriment would undoubtedly be reduced.
- 8.5.192. Furthermore, it is of note that the positions taken by ABP are, by its own evidence, worst case scenarios. The probability of the worst case occurring in each of the areas identified by ABP at the same time must however be less than that of a single worst case occurring in one of the areas identified. The holistic extent of detriment put forward by ABP is therefore, in our view, much less likely to occur than detriment in one specific area. We consider that this interpretation of probability adds weight to our views on the levels of detriment.
- 8.5.193. There is no doubt in our minds at all that the CA would be detrimental to the carrying out of ABP's statutory undertaking and that the mitigation measures would not restore equivalence. This detriment would not however be serious. We therefore, in the context of s127 of PA2008, do not consider that the CA and TP powers sought would result in serious detriment to the carrying on of the statutory undertaking at the Port of Lowestoft.
- 8.5.194. We have already considered the extent of land and rights to be taken, and we are satisfied that these are necessary for the Proposed Development. We also consider, in the context of s138 of PA2008, that work to the apparatus of ABP, within the scope of the rdDCO and

Protective Provisions, within the Order land would be necessary for the purpose of carrying out the Proposed Development.

8.5.195. The letter to the SoST from ABP dated 31 May 2019 does not add anything further to the case made by ABP during the Examination and has already been considered, apart from the "*minded to*" suggestion. For ease of reference however we now relate the material points made in the letter to our considerations above:

- CA of the statutory port estate – moderate detriment;
- loss of berthing and berthing utility and flexibility – moderate detriment;
- obstruction and impediment - limited detriment;
- impact on existing operations - limited detriment;
- impact on future flexibility - limited detriment;
- impact on commercial perception of the port and its ability to secure future business - limited detriment;
- failure to mitigate – not accepted and therefore no material detriment;
- lack of an indemnity - not accepted and therefore no material detriment;
- s35 Direction – provides the context for the need for the Examination; and
- conclusions and a "*minded to*" determination – this is considered below.

8.5.196. ABP's "*minded to*" suggestion did not form a major part of the Examination. The Applicant has however had the opportunity to respond to it. When considered in the light of our conclusions of no serious detriment above, there would seem little need to adopt the suggestion. Furthermore, there would appear to be no evidence that parties would engage with each other any more during such a period of time than they had done during the Examination. We also doubt that any such period of time would result in an agreement.

8.5.197. From all of the above, the ABP letter of 31 May 2019 does not alter our conclusion that the CA and TP powers sought would not result in serious detriment to the carrying on of the statutory undertaking.

## **Network Rail Infrastructure Limited (Tracker Reference 19)**

### ***Representations***

8.5.198. Network Rail Infrastructure Limited (NRIL) made representations to the Examination [[RR-021](#), [REP3-020](#) and [REP3-021](#) and [REP11-024](#)]. Matters have been agreed with the Applicant, including what both parties consider to be the final amendment to the dDCO Protective Provisions. The NRIL representations however have not been withdrawn.

### ***Applicant's response***

8.5.199. At D10, the Applicant understood that all dDCO drafting points, including Protective Provisions, were agreed with NRIL [[REP10-080](#)]. NRIL has however subsequently sought a further change to the Protective

Provisions, which has now been agreed and included in the dDCO [[REP11-003](#)]. NRIL has indicated that it cannot formally withdraw its representations until the requisite legal agreements are completed, and this will be after the close of the Examination.

### ***Examining Authority's consideration***

- 8.5.200. On the basis that the NRIL representations have not yet been withdrawn, we must consider them against s127 of PA2008. Our consideration does however take into account that all of matters within NRIL's representations have been incorporated in the rdDCO to the satisfaction of NRIL. We therefore, in the context of s127 of PA2008, do not consider that the CA or TP powers sought would result in serious detriment to the carrying on of the statutory undertaking of NRIL. We also consider, in the context of s138 of PA2008, that work to the apparatus of NRIL, within the scope of the rdDCO and Protective Provisions, would be necessary for the purpose of carrying out the Proposed Development.

### **Royal Mail Group Limited (Tracker Reference 24)**

#### ***Representation***

- 8.5.201. The Royal Mail Group Limited is concerned about disruption to the highway network and its services [[RR-034](#)].

#### ***Applicant's response***

- 8.5.202. The Royal Mail Group Limited's land interest is limited to a Category 2 interest in respect of a post-box situated on Waveney Drive. Royal Mail's RR focussed particularly on impacts during construction. The Applicant does not consider there are outstanding matters with respect to the negotiation of Royal Mail's interest in land affected by the CA or TP [[AS-013](#) and [REP10-073](#)].

### ***Examining Authority's consideration***

- 8.5.203. The BoR shows Royal Mail having a Category 1 interest in respect of the post box. We are satisfied that the removal of the post-box would be necessary for the purpose of carrying out the Proposed Development. We are also satisfied that its removal would not cause serious detriment to the carrying on of the undertaking. We therefore, in the context of s127 and s138 of PA2008, cannot see anything in this objection that would prevent the grant of the CA or TP powers sought.

## **Affected Persons and persons with an interest in land**

### **Introduction**

- 8.5.204. We now turn to consider individual objections made in relation to specific plots and the rights and powers sought. Our considerations on each of these objections then go forward to inform our finding on the general case in respect of the relevant plots.



- 8.5.205. The ExA has considered all the objections received. Many of the issues raised by objectors have also been considered in earlier parts of this report when considering the planning issues arising in relation to the Proposed Development. The objections are considered here in the context of the application for the grant of CA powers and for the grant of powers of TP.
- 8.5.206. In relation to the CA objections, the ExA has examined them against the tests set out in s122 and s123 of PA2008, having regard to the CA guidance<sup>27</sup> and with regard to the provisions of the Human Rights Act 1998. We have also considered objections to the application for powers of TP under A33 and A34 of the rdDCO and by those who may be able to make a claim under s10 of the Compulsory Purchase Act 1965 or Part I of the Land Compensation Act 1973. Similarly, we have had regard to the Human Rights Act in considering the application for the grant of powers of TP and also the need and justification for such powers.
- 8.5.207. In considering these objections, we have taken into account the CA Negotiation and Objections Tracker provided by the Applicant at the end of the Examination. This identifies the objection, where made, and the plots concerned [[REP10-073](#)]. We have only reported on the objections made and not withdrawn before the end of the Examination, and we have considered the situation of the other affected persons under our general assessment of CA. We have also only identified the points we consider to be material when reporting on the representations and the Applicant's responses.

### **Cara Jane Robinson (Tracker Reference 3)**

#### ***Representations***

- 8.5.208. Ms Robinson runs a beauty business from her property, which would be subject to CA [[RR-015](#) and [REP3-022](#)]. Ms Robinson lives with her family in their house, which they own, immediately adjacent to the business property. The CA would affect her business property, business and established way of working in the business premises close to her home, whilst providing support for her family.

#### ***Applicant's response***

- 8.5.209. The Applicant has agreed to acquire Ms Robinson's house and compensation for business disturbance would be made [[REP5-010](#)]. Heads of Terms (HoT) are now agreed as set out in the Compulsory Acquisition Negotiation and Objections Tracker [[REP11-010](#)].

#### ***Examining Authority's consideration***

- 8.5.210. Compensation for business disruption can be settled in the manner set out in the rdDCO. We consider that the acquisition of Ms Robinson's house in an agreed manner would satisfactorily mitigate any harm to her

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<sup>27</sup> Guidance on Compulsory Purchase and the Cichel Down Rules (DCLG, 2015)

family circumstances. Moreover, the public benefit from the Proposed Development would outweigh any private loss in terms of human rights.

- 8.5.211. There are references to Ms Robinson's house and valuations in emails between the parties, and these appear in the Applicant's Tracker, before and after the second CAH. Relevant statements were also made before Ms Robinson at the first CAH. The agreement of HoT has been reported to the Examination, and no contrary evidence has been provided. We are therefore satisfied that this acquisition has been sufficiently secured.
- 8.5.212. In view of these points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

### **PFK Ling Limited (Tracker Reference 7)**

#### ***Representations***

- 8.5.213. PFK Ling Limited (Lings) operates a car and motorcycle retailing business on a site which would adjoin the Proposed Development. Part of the frontage of the site would be subject to CA. Parts of the site would also be subject to the CA of rights for construction and maintenance purposes and others subject to TP for construction purposes.
- 8.5.214. Lings believe that the CA sought would have the following impacts on its business at the site [[RR-012](#), [AS-019](#), [REP3-023](#), [REP5-018](#) and [REP-019](#), [REP10-064](#) and [REP11-026](#)]:
- Substantial areas of external display would be lost;
  - the CA to accommodate a revised site access would result in the loss of further display and storage land and operational space to rear of workshop, would prevent a planned workshop extension, could affect the integrity of a nearby quay wall outside of the Order land and would obstruct the retail use of land and parts of the main showroom building;
  - the Enterprise car rental franchise on the site would be likely to be lost, including the cross-selling, servicing and repair opportunities for Lings itself;
  - site servicing difficulties would arise and would be particularly hazardous for articulated car transporters;
  - increased vehicle queuing would occur at the revised access;
  - there would be a significantly increased risk of accidents at the revised access; and
  - there would be severe business disruption during construction and lasting harm to trade thereafter.
- 8.5.215. As a result of all of the above, Lings is of the view that it would have to relocate. It does however also have the following concerns about the CA sought:

- The CA of certain plots and rights over land within the Lings site would not be necessary to deliver the Proposed Development. Indeed, Lings has proposed an alternative which would avoid CA.
- With the exception of a single site, in the Applicant's ownership, there are no relocation sites available.
- The DCO application is unviable. The Applicant's compensation liability to Lings alone would exceed its total land acquisition budget as set out in its Outline Business Case [[APP-107](#)]. Indeed, the Applicant's reluctance to consider alternative arrangements to avoid CA supports Lings' view on viability [[REP11-026](#)]. As a result, the application does not meet the two conditions in s122 of PA2008.
- The CA sought from Lings is not the least intrusive in terms of business and financial impact. The CA is therefore not an appropriate use of public funds.
- There has been no proper: traffic assessment of the revised access and servicing arrangements; assessment of the extent of lost retail space within the site; or assessment of the impact of the CA on Lings. As a result, the Applicant has failed to properly consult with Lings and failed to engage in meaningful negotiations contrary to Government guidance<sup>28</sup>.

8.5.216. For the above reasons, Lings considers that the adverse impact on its operations outweighs the public interest in favour of the CA and urges the SoST not to approve the application.

***Applicant's response***

8.5.217. Following the Relevant Representation by Lings, the Applicant procured an expert witness report into the effect of the Proposed Development on the Lings' site, including vehicle tracking for car transporters [[AS-013](#), [REP4-022](#) and [REP11-010](#)]. This found that the proposed revised access would not generally be more circuitous than the present situation and would avoid passing through a signalised junction. Moreover, there are also other points on the site where vehicle clearances are currently tight. The Applicant has also amended the revised access during the Examination to improve vehicle tracking [[REP4-013](#), NMC7 and [PD-015](#)]. The access onto the public highway has also performed satisfactorily under a Stage 1 Road Safety Audit [[APP-131](#), Appendix 8].

8.5.218. The Applicant acknowledges that, whilst there would be a loss of display and forecourt space, opportunities would remain to mitigate that loss by use of a vacant and prominent area of the frontage of the Lings site. This area is near to the existing Waveney Drive roundabout. Moreover, the maximum proportion of the site, excluding the Enterprise area, which would be permanently lost would be some 8.5% and not so significant [[AS-013](#)]. This could also be reduced following detailed design, as would also be the case where rights only are sought. Moreover, the Applicant has considered the general impact of CA on the Lings' site in some detail [[AS-027](#) and [REP4-014](#)]. Furthermore, the

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<sup>28</sup> Guidance on Compulsory Purchase and the Cichel Down Rules (DCLG, 2015)

Proposed Development would substantially increase traffic past the site, which would increase the profile of the site to potential customers.

- 8.5.219. Plots 3-58 and 5-37 are owned by Lings, but occupied by Enterprise. The description of the land interest to be subject to CA in the BoR clearly excludes any interests or rights held by Lings, and the CA therefore relates to the leasehold interest owned by Enterprise [[REP10-006](#)]. The dDCO would return the land currently occupied by Enterprise to Lings. Provisions would then facilitate accommodation works to alter the internal circulation of the site to reflect the new access point and include the land currently occupied by Enterprise [[REP4-014](#)].
- 8.5.220. The dDCO would also secure, through the CoCP, traffic management measures and continuous access to the Lings' site. The Applicant therefore considers that the impacts of the CA could be adequately mitigated. The Applicant is in discussion with Lings about the accommodation and reconfiguration works, and the principle of them is agreed.
- 8.5.221. Furthermore, the Applicant has sought the TP of adjacent land to the north of the Lings' site to provide additional space for Lings' operations during construction. This would mitigate the effect of land take during construction. The Applicant has responded in detail to Lings' plot-related representations [[REP4-014](#), page 25, [REP5-010](#), page 22 and [REP8-006](#), page 12].
- 8.5.222. The Applicant considers it has appropriately justified all the land included within the Order limits as being required either directly for, or incidental to, the Proposed Development. The rights sought by the Applicant would be necessary to inspect and maintain the Proposed Development and for the diversion of SUs' apparatus. The Applicant does not consider that Lings needs to be relocated.
- 8.5.223. Lings has made a number of representations relating to funding, as have other parties. The Applicant considers its Funding Statement to be clear, accurate and robust [[APP-008](#) and [REP3-029](#), ExQ1 3.7 to 3.10].
- 8.5.224. The additional £8m, identified in June 2018, which may be required to fund the Proposed Development, has been accounted for in SCC's capital budget. That sum includes the cost of land acquisition and compensation, and this was confirmed by SCC [[REP4-014](#), Appendix E]. The £8.3m local contribution, identified in the Outline Business Case, has also been underwritten by the SCC in advance of contributions being confirmed from other local sources. The Applicant's property cost estimate includes for material detriment claims. This has been calculated on the basis of quantified risk and the standard heads of claim applied in CA. This was explained at CAH1 [[REP5-010](#), pages 40 to 41 and Appendices 1 and 2].
- 8.5.225. In view of all of the above, the Applicant has shown that it has access to sufficient funds to implement the Proposed Development. It has also made appropriate allowances for liabilities associated with claims under the compensation code.

8.5.226. The Applicant continues to negotiate with Lings, to resolve its concerns by way of a side agreement. The Applicant however considers that the dDCO and associated documents would address the representations made by Lings. Furthermore, outstanding issues could be dealt with by reference to the compensation code.

***Examining Authority's consideration***

8.5.227. The Applicant has considered the general impact of CA on the Lings site in some detail and, from this, we do not consider that substantial areas of external display would be lost. Indeed, the proportion of site lost would be quite small and the site would generally retain the frontage length that it has at the present time. Furthermore, the prominence of the site would increase from the growth in passing traffic and it does not appear to us that Lings use all of their available frontage at the present time.

8.5.228. The CA of new rights to the rear of the Lings building would be in respect of SUs' apparatus. The operational space to the rear of the workshop would not be lost, although there could be some disruption to its use, which could be the subject of compensation. We cannot see how this would affect the integrity of the quay wall in this area due to the extent of land outside of the Order limits which would be undisturbed. This area is currently used for access within the Lings site, and we cannot see how new rights for services in this access would prevent a workshop extension.

8.5.229. We accept that the Enterprise franchise would probably leave the Lings' site following the CA of its lease. Both Enterprise and Lings would however have access to compensation for loss as a result. Should either of these parties arrive at a solution which would allow Enterprise to remain, we are content that this could be secured within any agreement between the parties and the Applicant. It is also of note that TP of the north of the Lings' site would have been secured, partly for the use of Lings to mitigate disturbance during construction.

8.5.230. In our view, particularly with internal site amendments that could be funded by compensation where appropriate, site servicing following the CA and mitigation would be different. It would not however be necessarily more difficult than at present. We also do not see that it would be particularly hazardous for car transporters, on the basis of the vehicle tracking exercises that have been undertaken and the changes made during the Examination. Furthermore, in view of the safety audit work carried out at the revised access, we do not consider that there would be any excessive queuing or significantly increased risk of accidents at the revised access.

8.5.231. There would be business disruption due to the CA and TP powers sought. We do not however believe that it would be severe or any reason to justify the relocation of the Lings business. Moreover, the need for each of the plots within the Order limits has been justified to our satisfaction, and we cannot see any reasoned evidence of a less intrusive arrangement.

During construction, the CoCP would ensure that continuous and appropriate access is maintained to the Lings site.

- 8.5.232. Lings has questioned the viability of the DCO application in terms of the availability of funding. We have addressed the matters raised later in this chapter of our report.
- 8.5.233. In view of all of the above points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

### **The Nexen Group (Tracker Reference 9)**

#### ***Representations***

- 8.5.234. The Nexen Group comprises: Overseas Interests Inc; Waveney Fork Trucks Limited; Lift Truck Rentals Limited; Nexen Lift Trucks Limited; Oakes Recruitment Limited; Team Oakes Limited; and Hitech Grand Prix Limited. All of these affected persons have submitted separate representations prior to the start of the Examination, but have made combined representations during the Examination. The individual representations have generally been made in respect of the same plots. We report on these representations in the same combined manner that they have been presented during the Examination.
- 8.5.235. The Nexen Group undertakes various business activities on land in close proximity to the Proposed Development. The access to this land would be compulsorily acquired and part of the land would be subject to the CA of rights for construction and maintenance access. Part of the land having development potential would also be subject to TP for construction purposes. The Group has concerns about the following matters [[RR-023](#), [RR-037](#), [RR-027](#), [RR-029](#), [RR-031](#), [RR-036](#) and [RR-026](#), [REP5-020](#), [REP8-030](#) and [REP8-031](#), [REP9-016](#), [REP10-090](#) and [REP11-025](#)].
- 8.5.236. The CA sought would sever the Group's land from the local highway network and an alternative access would be provided. The Group however believes that access to its retained land, both within and outside of the Order limits, may be interrupted during the construction or maintenance, including for emergencies, of the Proposed Development. This disruption would result from the rights being sought. The exercise of these rights could interrupt the operation of the existing businesses on the Group's land which rely on critical delivery times. The impact could be severe and irreparable, and the Group does not consider that the CA of its land or rights over its land is, or has been justified as, necessary to allow the Proposed Development to proceed.
- 8.5.237. The proposed access to the Group's land, following the CA of its existing access, would include a restrictive underpass and the relocation of utilities. The Group is disappointed that an access has not been provided through the site to the south of its land, owned by PFK Ling Limited,



and to the east of the current Motorlings showroom. Such an access would avoid these restrictions.

- 8.5.238. The CA of its existing access would limit the Group's ability to service an area identified for future development within its land. The Group has suggested a non-HGV access to this land. This area for future development would also be subject to TP, where the extent and the timing and condition on return are unknown. These circumstances would limit the use of this area to mitigate construction impact on the existing businesses and could also restrict future development on this area. The permanent CA of land for the proposed pontoon mooring for vessels awaiting the proposed bridge opening, Work No. 7 on Plots 3-52 and 3-53, would also restrict the use of the Group's mooring quay.
- 8.5.239. As a result of all of the above points, the Group is of the view that the impact of the CA and related powers would be severe and permanent. Against this background and that of public interest, their necessity has not been justified and alternatives to this CA have not been sufficiently explored.

***Applicant's response***

- 8.5.240. Access to the Nexen Group's land during construction would be secured under the CoCP [[REP10-078](#)]. Following representations by the Group, the Applicant has brought forward a non-material change, NMC6, to provide a second Private Means of Access (PMA) to the Group's land [[REP4-013](#)]. This would be in addition to the revised access arrangement originally proposed, which would essentially maintain the Group's existing site access with a standard headroom of 5.3m. The NMC6 PMA (NMC6) would have a headroom of 6.5m for oversize vehicles [[REP10-041](#), note 7]. Compliance with these clearances is secured by rdDCO A5 under the mainline long section Limits of Deviation. It is of note that a telecoms cable on Riverside Road imposes an existing height restriction of 6.1m [[AS-013](#)].
- 8.5.241. Furthermore, this second access would facilitate the separation of existing operation HGV traffic from that for the Group's development land [[REP7-003](#), Appendix K]. The acceptability of both accesses has been supported by vehicular tracking information [[REP7-003](#), Appendix L and [REP9-009](#), page 3].
- 8.5.242. The Applicant has considered and ruled out the access alternatives suggested by the Group. A more northerly second access point would require additional CA of land, accommodation work to a quay wall [[REP7-003](#), para K.13]. Access through the Lings' site would represent a disproportionate use of CA powers and would have an adverse effect on their land [[REP7-003](#), para K.19 and [REP9-009](#), page 27].
- 8.5.243. The TP of the site for future development would be for the short term, and its possession and return would be subject to compensation provisions. The retained existing access would be capable of servicing future development [[REP5-005](#), item 53 and [REP9-009](#), page 27]. The Applicant has justified the nature of, and purpose for, the rights sought

[[REP4-014](#), page 52]. It also considers that the ongoing impact of these would be negligible considering the infrequency of their related use for maintenance.

- 8.5.244. The bed of the lake at the Group's quay wall dries at low water and it has a berth length of some 60m behind the proposed pontoon. There is however no evidence of bollards along its length. A similar berth length to the west of that which would be lost would still be available with better land side space considering the HGVs which use this area. This matter, along with others, would be a subject for consideration under compensation provisions.
- 8.5.245. The Applicant continues to negotiate with the Group to resolve its outstanding concerns through a side agreement [[REP11-010](#)]. If agreement cannot be reached however, the Applicant is content that adequate mitigation to ensure that the Group can continue to operate during construction and thereafter would be secured within the dDCO. This would also apply to development land.

#### ***Examining Authority's consideration***

- 8.5.246. The CA of all interests and rights in land at the existing entrance to the Nexen Group's site would sever the site from the public highway. This access would however be relocated a short distance into the site from where it currently exists and a further access would be provided to the site. The relocated access would have a standard headroom restriction on its approach, due to the proposed bridge. The corresponding but higher headroom restriction relating to the further access would however exceed a restriction on the approach to the existing access to the Group's site.
- 8.5.247. It also has been suggested that the further access would cause conflict with a door to the Group's building on the site. Vehicles travelling to the yard at the rear of the site, where we saw HGVs at our visit, currently have to pass this door in close proximity, and we cannot see any additional conflict that would occur. Vehicles using the relocated access could continue to use the weighbridge in its existing location. Oversize vehicles needing to use the weighbridge would have to reverse within the site. The need to reverse would therefore be limited to the number of oversize vehicles needing to use the weighbridge. From all of these points, we consider that the impact of the CA at the existing access has been adequately mitigated.
- 8.5.248. The CA also seeks new rights within the Group's site between its western boundary and the building on the site. Whilst there would be no access around the building on its western side outside of the area over which rights would be sought, the rights sought would be for construction, maintenance and emergencies. Any construction disruption would be minimised and mitigated through the CoCP. The future use of rights would be infrequent and likely to maintain access around the building in some form and could be a subject for compensation. Whilst the access to and on the Group's site could be interrupted, we do not consider that the



extent of interruption would be significant in terms of duration or frequency.

- 8.5.249. It has been suggested that the further access should be relocated towards the north and quayside. The quayside has a value to the local economy and environment in terms of its comprehensive development. To route an access to the Group's site through this area would be significantly detrimental to its development potential. We can see no reason why such an option should be investigated in any more detail than has already been done.
- 8.5.250. The CA and TP powers would be sought on a part of the Group's site which has been identified for future development. We are satisfied this part of the Group's site should lie entirely within the Order limits for the purposes set out in the application. In terms of the TP powers sought, this would be the only sizeable area to the east of the southern approach. It is therefore reasonable that it could be required for construction purposes or by the users of nearby sites to mitigate the effects of construction disruption.
- 8.5.251. We recognise that the powers within the rdDCO would limit the extent and delay the timing of future development on this part of the Group's site. Notwithstanding that this part of the site would seem to be appropriate for development, it would not appear to be imminent and the period of any delay would reduce as construction took place. This part of the site could be accessed from a private road to the south of it. The private road would however lose its private means of access to the public highway under the Permitted Development. Although this part of the Group's site could be accessed from the relocated access to the Group's site, this access could well be less efficient in terms of future development. Such matters could have an effect on the value of the site and be reflected in compensation.
- 8.5.252. It has been suggested that the future development site could be accessed through the Lings site to the south of the private road. Lings has objected to the suggestion and it would require CA to implement. Firstly, the Lings site is already quite intensively used, and any such access would have a significant impact on the use of the Lings site. Secondly, the use of CA powers to maintain the potential development efficiency of the future development site would be difficult to justify.
- 8.5.253. The CA of land for the construction, operation and maintenance of a new mooring within some 5m of part of a quay in the group's site would effectively prevent the use of this part of the quay. There are however other lengths of quay that would not be so affected. The length of quay which would be affected has elements of the building on the site within 20m of the quayside whereas the lengths which would be unaffected have far greater land side space.
- 8.5.254. In view of all of the above points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required

and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

## **Nwes Property Services Limited (Tracker Reference 10)**

### ***Representations***

- 8.5.255. Nwes is a not-for-profit enterprise agency providing business support across the East of England, London and the East Midlands [[REP3-009](#), [REP7-012](#) and [REP8-033](#)]. It owns the Riverside Business Centre which is situated in close proximity to the Proposed Development and provides office space for start-up and established businesses. The current average occupancy rate is 81% since May 2009 and 77% at January 2019. The CA and TP sought would include outdoor areas around the business centre building but not the building itself. There are 62 car parking spaces on-site, and some 8 of them would be within the area subject to the CA of all interests.
- 8.5.256. Nwes raised a number of objections to the Proposed Development during the Examination. These were supported by their occupiers who, in a survey, had the following views:
- 58% said that traffic resulting from the development would have a highly negative impact;
  - 50% said that the development, increased noise from it and the access proposals would have a highly negative impact on the site and their business; and
  - 42% said that reduced visibility would have a highly negative effect.
- 8.5.257. There were also concerns raised regarding parking and fumes. Should the Proposed Development proceed, 42% of occupiers said that they would consider relocation and 55% said that they would not be willing to pay the same level of rent.
- 8.5.258. If all the occupiers who indicated that they would consider relocation did so, the occupancy rate would drop to 62%, which would be below the break-even point of 73%. The continued operation of the business centre would no longer be viable. Closure of the centre would be hugely disruptive to Nwes, the business community of the centre and the wider Lowestoft economy.

### ***Applicant's response***

- 8.5.259. The Applicant is aware of the tight financial constraints within which Nwes operates [[REP7-004](#)]. The CoCP includes provisions for engagement with local businesses whereby affected parties can liaise with and provide feedback to the Applicant's contractor [[REP4-014](#)]. Heads of terms are now agreed [[REP11-010](#)].

### ***Examining Authority's consideration***

- 8.5.260. A number of concerns raised by Nwes relate to matters not directly associated with CA and, in this chapter of our report, we have therefore

only considered impacts relating to CA and TP. The material points are the potential loss of some parking, internal access road/hardstanding and boundary landscaping areas.

- 8.5.261. We consider that replacement parking spaces could be provided elsewhere on the Nwes site. Whilst some disruption would occur, the necessary accommodation works and other rights sought would not be seriously disruptive to the occupiers. We also note that HoT appear to have been agreed in respect of the voluntary acquisition of the required land, rights and TP from Nwes. The agreement of HoT has been reported to the Examination, and no contrary evidence has been provided.
- 8.5.262. In terms of boundary landscaping, it is not continuous along the eastern boundary in any event, and the loss of boundary landscaping would not be unusual for the site. The business centre would also be more prominent in the locality due to the visibility of a significant corner elevation of the building from a proposed roundabout on a new route through the area.
- 8.5.263. In view of all of these points, we cannot see anything in this objection that would prevent the grant of CA or TP powers. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

#### **Statuslist Limited (Tracker Reference 14)**

##### ***Representations***

- 8.5.264. Statuslist is the registered proprietor of freehold land which would be subject to CA for a new access road under the rdDCO [[RR-018](#) and [REP8-035](#)]. The land is currently vacant but was formally used for industrial and warehousing purposes and is intended to be subject to future commercial and residential development. Statuslist is concerned that the Applicant has failed to demonstrate that the use of the land is in fact required for the road. There is no evidence that the Applicant has considered alternative options that would not impact on the land owned by Statuslist. The road would bisect the land, would impact on the current and future use of the land and is not considered optimal [[APP-123](#), page 107].
- 8.5.265. The industrial and commercial use of land located to the west of the Statuslist land requires access for a car transporter. This would significantly increase the road geometry requirements, over and above what would normally be required for emergency or servicing vehicles with a negative effect on the Statuslist land. Statuslist is also concerned that the road would bring increased through traffic, most significantly HGVs and other commercial traffic, through the land. This would limit the options for the use and development of those areas of the land fronting onto the road. Furthermore, Statuslist is concerned that the temporary acquisition of part of its land would have a detrimental impact on the use of those parts of the land in terms of its own use and the wider development of the land.

8.5.266. Statuslist however accept that good progress has been made on an agreement between the parties [[REP5-017](#)].

***Applicant's response***

8.5.267. Alternatives to the new access road were presented in the Preliminary Environmental Information Report and are also included in the ES [[AS-013](#) and [APP-136](#), paras 3.7.18 to 3.7.23].

8.5.268. Prior to making the application, the Applicant repositioned the road to accommodate the Statuslist request to some extent. Further repositioning would require the CA of neighbouring land for visibility splays, which was not considered proportionate. Moreover, the nature and scale of the road that is being proposed would be comparable to that which the landowner would otherwise need to provide themselves. It is also not envisaged that access to a nearby car showroom would use the new road and the relevant authorities have confirmed that the design of the road is appropriate.

8.5.269. HoT are now at an advanced stage [[REP11-010](#)]. Statuslist confirmed that it would not be attending CAH1 or ISH1, and noted that positive discussions were ongoing with the Applicant [[REP5-017](#)]. Statuslist has not attended any subsequent Hearings, which is indicative of the progress made in negotiations between the parties.

***Examining Authority's consideration***

8.5.270. Land owned by Statuslist would be subject to CA for a new access road, to replace existing accesses which would be stopped up by the approach to the new bridge, and TP for construction purposes. There would also be CA of new rights to provide highway visibility. We are satisfied that the road is required to replace the accesses and that, in crossing undeveloped land, the road would have least impact. We are also satisfied that the specific location of the road is constrained by visibility splays required at its junction with Waveney Drive. In our opinion therefore, the need for the CA is justified.

8.5.271. We do not consider that the future use of the road has led to an excessive land take. Indeed, the suggested use by car transporters by Lings would not take place, as their access would be elsewhere. The extent of the CA is therefore justified. It is also of note that the new access road could reduce the need to provide highway access infrastructure within the Statuslist land holding.

8.5.272. The proposed bridge could require significant launch areas, and those available at the northern approach to the bridge would be restricted by the port and railway operations. It is therefore reasonable that land at the southern approach to the proposed bridge, which is not in a current use, should be made available for construction purposes. We consider that the land owned by Statuslist, behind the quayside and in the vicinity of the new access road, lies within this category.

8.5.273. In view of all of these points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

### **B. S. Pension Fund Limited (Tracker Reference 18)**

#### ***Representations***

8.5.274. The B. S. Pension Fund Limited owns land which would be subject to the CA of all interests [[RR-011](#), [AS-001](#) and [REP3-017](#)]. This land, and that in its immediate vicinity, is let to Wickes Building Supplies Limited. The CA of this land would have the potential to adversely affect access to the unit let to Wickes by customers on foot and in vehicles. It would also have the potential to adversely affect delivery and other service access to the unit by small and large vehicles.

8.5.275. The Fund does not consider that the Applicant has taken sufficient steps to acquire the land by agreement and that there is no compelling case for CA. The Fund would be prepared to enter into a voluntary agreement to enable the land to be acquired, subject to the agreement of appropriate terms. Limited progress has however been made in this regard.

#### ***Applicant's response***

8.5.276. The CA sought would not materially affect or change the access to Wickes or any other part of the Fund's interest [[AS-013](#) and [REP4-014](#)]. Progress has been made on voluntary acquisition [[REP10-073](#)]. Heads of terms have been agreed and a draft legal agreement has been issued.

#### ***Examining Authority's consideration***

8.5.277. The CA of land owned by the B. S. Pension Fund Limited would comprise part of a grassed area alongside Peto Way, which lies outside of the compounds to the rear of the Wickes building. We therefore consider that the impact of the CA on the operation of the site would be negligible. The Fund also has rights within the area of the public highway that would be subject to CA, although no representations have been made in this specific regard. Traffic levels on Peto Way would increase as a result of the Proposed Development, but this impact is considered elsewhere in our report.

8.5.278. In view of all of these points, we cannot see anything in this objection that would prevent the grant of the CA powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

### **SMS (Lowestoft) Limited (Tracker Reference 22)**

#### ***Representation***

- 8.5.279. SMS Group Lowestoft Shipyard would like to determine the effect the Proposed Development would have on its business [[RR-006](#)].

***Applicant's response***

- 8.5.280. SMS operates from a dry dock to the east of the proposed bridge and outside the Order limits [[AS-013](#) and [REP10-073](#)]. Its interest is limited to a Category 2 interest in respect of a right of access, which will not be removed. The Applicant has met with SMS and provided responses to a number of points of clarification that SMS sought. It is understood there are no outstanding matters to be resolved with this party.

***Examining Authority's consideration***

- 8.5.281. The CA sought would include rights over Commercial Road alongside those held by others, including SMS. Matters relating to Commercial Road have been the subject of detailed discussions during the Examination as a result of the representations made by ABP. As a result of these representations and the responses from the Appellant, we consider that this CA is justified. We also consider that the use of Commercial Road by those who have a right to do so would not be unreasonably restricted. We have also taken a similar view in relation to the TP sought in respect of sections of Commercial Road.
- 8.5.282. In view of all of these points, we cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and that there is a compelling case for the CA powers sought and that the TP powers are justified.

**Broadland Housing Association Limited (Tracker Reference 23)**

***Representation***

- 8.5.283. Broadland Housing Association Limited's (BHAL's) interest is the subsoil up to the half width in respect of unregistered highway land, and BHAL is identified as a Category 3 person. BHAL would also welcome the opportunity for a specific resident community group to be implemented to engage with the process [[RR-023](#)].

***Applicant's response***

- 8.5.284. BHAL's representation focussed on impacts during construction. The Applicant does not consider there are outstanding matters with respect to BHAL's interest in land affected by CA [[AS-013](#) and [REP10-073](#)].

***Examining Authority's consideration***

- 8.5.285. In view of all of these points, we agree with the Applicant and cannot see anything in this objection that would prevent the grant of the CA or TP powers sought. We are therefore satisfied that land within the Order limits is required and proportionate for the Proposed Development and

that there is a compelling case for the CA powers sought and that the TP powers are justified.

## **8.6. EXAMINING AUTHORITY'S CONSIDERATIONS**

### **General case**

#### **Examining Authority's approach**

- 8.6.1. The ExA's approach to the question of whether and what CA powers it should recommend to the SoST to grant has been to seek to apply: the relevant sections of PA2008, notably s122 and s123; the Guidance<sup>29</sup>; and the Human Rights Act 1998. The ExA's approach has also been, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 8.6.2. There are representations from SUs which have not been withdrawn and, therefore, s127 of PA2008 is engaged in the consideration of the application. There are also relevant SU rights and apparatus on land that is the subject of CA of new rights under the dDCO. Section 138 of PA2008 is, therefore, also engaged, and we have considered the application, and representations, accordingly.
- 8.6.3. The ExA also understands that the rdDCO deals with the Proposed Development, itself and CA powers. The case for CA powers cannot properly be considered unless, and until, the ExA has formed a view on the case for the Proposed Development overall, and the consideration of the CA issues must be consistent with that view.
- 8.6.4. The ExA has shown in the conclusions to the preceding chapter that it has reached the view that development consent should be granted. The question therefore that we address here is the extent to which, in the light of the factors set out above, the case is made for the CA and TP powers necessary to enable the development to proceed.
- 8.6.5. In these conclusions, we shall first consider a number of general matters relating to the Applicant's case for CA and TP which are also pertinent to points raised by a number of objectors. We have already considered the cases for objectors and have found that none of them would give any reason to override a general conclusion on the Applicant's case for CA and TP. We have also concluded on SUs' land and found that, where representations have not been withdrawn, there would be no serious detriment to the carrying on of the undertaking. We then consider SUs' apparatus, Crown land, the tests set out in s122(2) and s122(3) and human rights issues. Apart from Crown land, there is no special category land that would be affected by the application.
- 8.6.6. Although we have specifically referred to objections raised by APs, we appreciate that this represents only a proportion of the 145 or so parcels

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<sup>29</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (DCLG, 2013)



of land that would be affected [[REP10-006](#)]. Even though a specific objection may not have been raised in relation to a particular plot of land, we have nevertheless applied the relevant tests to the whole of the land that would be subject to powers of CA or TP in reaching our overall conclusions.

### **Associated Development**

- 8.6.7. Section 122(2) of PA2008 sets out the purposes for which CA may be authorised. The DCLG Guidance<sup>30</sup> explains that, in the light of s122, applicants must be prepared to justify their proposals for the CA of any land to the satisfaction of the Secretary of State.
- 8.6.8. Section 115 of PA2008 provides that, in addition to the development for which development consent is required under Part 3 of PA2008 (the principal development), consent may also be granted for Associated Development. PA2008 defines Associated Development as development which is associated with the principal development.
- 8.6.9. We are of the view that the Associated Development in Schedule 1 of the rdDCO comprises development for which development consent is sought in accordance with DCLG Guidance<sup>31</sup>. The land required for this Associated Development can therefore, in principle, be compulsorily acquired pursuant to s122(2)(a) of PA2008. We shall consider later in this chapter whether all of the land in respect of which CA and TP powers are sought is, in fact, required for the development.

### **Public benefit**

- 8.6.10. The need for new nationally significant road infrastructure projects is recognised by the National Policy Statement for National Networks (NPSNN) [[APP-091](#)]. The NPPF acknowledges the pre-eminence of NPSs in policy terms when considering NSIPs. It is clear from the relevant NPS that there is a national need for new road infrastructure of the type that is the subject of the application. The s35 direction also draws attention to the potential benefits of the Proposed Development on the wider network.
- 8.6.11. The application sets out the need case for the Proposed Development [[REP10-009](#), Section 5]. We have already concluded in this report that there is an urgent need for the Proposed Development. We have also concluded that the benefits, including this need, outweigh any harm to such an extent that development consent should be granted. In terms of CA, we rely on this conclusion that development consent should be granted. From what we have found in relation to the Proposed Development, we also consider that there is sufficient certainty regarding the identified need and that now is the right time to request the CA powers that are sought. All of these matters lead us to the view that

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<sup>30</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (DCLG, 2013)

<sup>31</sup> Planning Act 2008 Guidance on associated development applications for major infrastructure projects (DCLG, 2013)

there is significant public benefit to be weighed in the balance concerning the compelling case for CA.

### **Private loss**

- 8.6.12. The Applicant has not assessed in detail the effect upon individual APs and their private loss that would result from the exercise of CA powers in each case. Any private loss suffered by an individual AP may become the subject matter of a claim for compensation, with any claim determined by the Upper Tribunal of the Lands Chamber [[REP10-009](#)].
- 8.6.13. The Applicant has also taken a number of steps to limit the exercise of compulsory powers in respect of each plot and each individual AP [[REP10-009](#), Sections 11 and 12]. These steps include:
- keeping the areas of land affected to a minimum;
  - seeking wherever possible to rely on TP of land rather than CA; and
  - engaging with all persons with an interest in land affected with a view to reaching a voluntary agreement.
- 8.6.14. The Applicant carried out an options assessment process together with a detailed assessment of the land and rights needed to deliver the Proposed Development [[APP-091](#) and 123]. Landowners and occupiers were involved throughout the process [[REP9-006](#)].
- 8.6.15. We recognise that the Proposed Development has been designed so that the Order limits have been brought in as far as possible to minimise interference with private rights as set out above. Furthermore, the Applicant has sought to use powers of TP wherever possible. The extent of any private loss has therefore been mitigated through the use of CA powers only after the detailed design has been completed. All of these factors would inherently reduce the extent of the private loss experienced by those affected by CA.

### **Alternatives**

- 8.6.16. Three suitable corridors for the crossing of Lake Lothing were considered [[APP-107](#)]. These were situated in three distinct locations at western, central and eastern crossings. The eastern crossing was close to the existing bridge.
- 8.6.17. The different option corridors were costed and BCRs calculated to provide a comparison. The preferred central option generated the highest BCR, was feasible and offered value for money and was preferred [[APP-107](#), Appendix A]. We consider that the assessment was robust and can see no reason to disagree with it.
- 8.6.18. The consideration of alternative arrangements within the central corridor were constrained by a number of parameters including the existence of a service tunnel, minimum clearance requirements for a rail line, minimum clearance requirements for vessels, existing ground levels, carriageway gradient and bend radius and keeping land take to a minimum. These constraints resulted in a very narrow horizontal and vertical

corridor in which the Proposed Development could be constructed [[APP-136](#)]. We agree that this demonstrates that there are no viable main alternatives to the location of the Proposed Development.

### **Temporary Possession**

- 8.6.19. In some instances, TP has been sought as an alternative to CA. The rdDCO contains powers for TP which we consider would be appropriate for inclusion to support the delivery of the Proposed Development in respect of all plots noted for TP in the final Land Plans and BoR.
- 8.6.20. These powers are not CA powers, and accordingly the tests under s122 and s123 of PA2008 are not applicable. However, the request for the powers in order to enable the Proposed Development to be implemented and maintained must be justified. The inevitable interference with human rights must be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 8.6.21. We have considered the objections raised by those persons affected by the application for the permanent acquisition of land and the permanent acquisition of rights in land where they are directly or indirectly related to TP. We have also taken all relevant objections into account in reaching our conclusions on the application for TP powers in the same way as for permanent acquisition.
- 8.6.22. We are satisfied that the TP powers sought would be needed to facilitate implementation of the Proposed Development. We are also satisfied that adequate compensation provisions are in place in the rdDCO.

### **Conclusion on the general case**

- 8.6.23. From all of the above, we conclude that the Applicant has made a case sufficient to justify its general request for CA and related powers. We now move on to consider whether there are specific matters relating to objections, SUs, Crown land and the Human Rights 1998 and Equality 2010 Acts that would outweigh our finding on the general case in any regard.

### **Objections**

- 8.6.24. We have considered all of the objections as set out above. None of these objections leads us to the view that our conclusion in relation to the Applicant's general case in relation to CA and TP should be changed in any way. We therefore recommend the grant of CA and TP powers in each individual case as set out in the CA Negotiation and Objections Tracker.

### **Statutory Undertakers**

- 8.6.25. We have considered all the representations associated with s127 of PA2008. In all cases, we find that the CA of land and rights sought within the rdDCO can be purchased without serious detriment to the carrying on of the undertaking concerned. In relation to s138 of PA2008, we are

satisfied that, throughout the scope of the rdDCO, the extinguishment and the removal of apparatus under the rdDCO would be necessary for the purpose of carrying out the Proposed Development.

## **Crown land**

- 8.6.26. The only Special Category land that would be affected by the Proposed Development would be Crown land at Plots 2-08, 10, 12 and 25. This land is held by HEHRE and not by the Crown. Consent for CA is required under s135(1) of PA2008. We have considered the representations on this matter made by the Applicant [[REP11-010](#)].
- 8.6.27. We have raised the matter of HEHRE consent at various stages during the Examination. The Applicant has made contact with both HEHRE and the DfT's Transport and Works Act (TWA) Orders Unit, but we have not seen any such consent. The TWA Unit appears to be more involved with the consent process at this stage. The Applicant's final position is given in its Closing Submissions (Other Interested parties). The rdDCO cannot be made without this consent.
- 8.6.28. If, subject to the SoST being content with the remainder of the rdDCO, this consent cannot be obtained before the SoST is in a position to make the Order, then the following option appears to us to be available.
- 8.6.29. This is to exclude the CA within Plots 2-08, 10, 12 and 25 from the DCO, which is the matter that would require HEHRE consent. The CA sought in both plots is similar in its scope, that is the acquisition of all interests and rights for the construction, operation and maintenance of the approach road to the proposed bridge. There has been nothing put to us to suggest that consent would be more likely on one plot than the other, and HEHRE ownership appears to have arisen in the same manner at the same time. This option would allow the Applicant to pursue the matter with HEHRE and DfT, as it has said that it will do following the closure of the Examination.
- 8.6.30. The necessary changes to the rdDCO to facilitate the second option are described in Chapter 9 of this report. We consider that it is important to stress that the rdDCO cannot be made without the consent of DfT in the context of the above option.

## **Human Rights**

- 8.6.31. In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is necessary to consider the interference with human rights which would occur, if CA and TP powers were granted. We agree with the Applicant that the rdDCO would engage Article 1 of the First Protocol and Article 8 of the ECHR.
- 8.6.32. Article 1 provides a right to the protection of property, which can include the peaceful enjoyment of property or possessions or any effect of development on property values. Article 8 provides a right to respect for private and family life, which can include interference with home life through disturbance. These rights are however qualified and can be

interfered with in certain circumstances, such as if it is necessary to protect the legitimate interests of the wider community.

8.6.33. In this case, we have attributed substantial weight to the need described in the NPSNN for new road infrastructure and how the project would assist in meeting this need. This is a legitimate interest of the wider community. In this context, it is also relevant that those affected would be entitled to compensation. Moreover, the Applicant has taken a number of steps to ensure its approach to land acquisition is proportionate and would not give rise to interference with private rights beyond what is absolutely necessary.

8.6.34. The Applicant has varied the Order limits to ensure that the land affected has been kept to a minimum, and the detailed route choice has avoided key infrastructure and development. Reliance has also been placed upon TP wherever possible, rather than permanent acquisition. The Applicant has also sought to reach voluntary agreements with all persons with an interest in the land affected.

8.6.35. We are therefore satisfied that the powers sought would be no more than is required to secure the interests of the wider community. We are also satisfied that they would not be likely to place an excessive burden on those whose human rights could be affected. We therefore consider that there would be no violation of Articles 1 and 8.

8.6.36. We also agree with the Applicant that the rdDCO engages Article 6 of the ECHR which relates to the need for a fair hearing. The application and its Examination procedurally accord with PA2008 and related guidance. There is therefore nothing to suggest that parties have not had a reasonable chance to put their case or been put at a substantial disadvantage in relation to other parties. We therefore consider that there has been no violation of Article 6.

8.6.37. Finally, in terms of the overarching aims of the Human Rights Act 1998, DCLG Guidance and the required balancing exercise, we are satisfied that the public benefit from the Proposed Development would clearly outweigh any interference with the human rights of those with an interest in the land affected.

8.6.38. We therefore consider that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest.

## **Equality Act 2010**

8.6.39. Section 149 of the Equality Act requires a public authority, in the exercise of its functions, to: have due regard to the need to eliminate discrimination harassment and victimisation and any other conduct prohibited by or under the Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics are: age; gender; gender reassignment; disability; pregnancy and maternity; religion and belief; and race.

- 8.6.40. There is no evidence that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not. Moreover, and this is a view shared by SCC, allowing the Proposed Development would not have any harmful equality implications.

### **Funding adequacy**

- 8.6.41. The Funding Statement, which accompanied the application, indicated that the total cost of the Proposed Development was £91.7m plus a further £2m in respect of outline business case costs. The Applicant has been awarded £75.39m provisional funding from DfT and has agreed to underwrite the remainder of the £93.7m cost. The Applicant has also acknowledged that there is an upward pressure of up to £8m on the original estimate for property costs and has agreed that the further funding of £8m would be made available if it is needed.
- 8.6.42. We can see no reason to doubt the validity of these estimates, particularly as various project related cost risks have been the subject of a Quantified Risk Assessment to produce the £91.7m estimate. This is described in the Applicant's Outline Business Case. The business case and property costs have also been subject to further review.
- 8.6.43. A final decision on additional funding would be made by the Applicant following the initial appointment of a contractor. Bearing in mind the stage at which the design is at and the ability of the Applicant, as a Highway Authority, to provide, and also seek sources for, funding, we consider this to be a realistic and reasonable approach. We have no reason to doubt that the Applicant is of sound financial standing and that the necessary funds would become available to finance the project, including CA.

## **8.7. CONCLUSIONS**

### **S122(2) - THE PURPOSE FOR WHICH COMPULSORY ACQUISITION IS SOUGHT**

- 8.7.1. We are satisfied that the CA sought in all the plots of land included in the final BoR and shown on the final Land Plans [[REP10-067](#), [APP-017](#) and [APP-018](#) and [REP10-016](#), [REP10-017](#) and [REP10-018](#)] would be required and is proportionate for, or to facilitate or be incidental to, the Proposed Development to which the development consent relates. Both the principal development and the associated development identified by the application would be needed for that purpose. The final BoR includes additional land, the CA of which is necessary for NMC1. The requirements of s122(2)(a) and (b) of PA2008 are therefore met.

### **S122(3) - WHETHER THERE IS A COMPELLING CASE IN THE PUBLIC INTEREST**

- 8.7.2. We have had regard to the objections raised by all APs. Furthermore, the ExA is satisfied that consent has been received from all those with an identified interest in the additional land. Notwithstanding the objections, we conclude that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation and maintenance of the project.
- 8.7.3. We have also taken into account the particular points made by objectors in relation to alternatives. We are however satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development. The objections raised do not dissuade us from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred.
- 8.7.4. The Applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there is a reasonable prospect of the requisite funds, both for acquiring the land and implementing the project, becoming available.
- 8.7.5. We conclude that:
- The development for which the land is sought would be in accordance with national policy as set out in the relevant NPSs and development consent should be granted;
  - the NPSNN identifies a national need for new road infrastructure of the type that is the subject of the application;
  - the need to secure the land and rights required and to construct the development within a reasonable timeframe represent a significant public benefit to weigh in the balance;
  - the private loss to those affected has been mitigated through the selection of the application land, and the extent of the land, rights and interests proposed to be acquired and would be outweighed by the public benefit derived from the CA;
  - the Applicant has explored all reasonable alternatives to the CA of the rights and interests sought, and there are no alternatives which ought to be preferred; and
  - adequate and secure funding would be available to enable the CA within the statutory period following the Order being made.
- 8.7.6. Taking these various factors together, we consider that there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the final Land Plans. The proposal would thus comply with s122(3) of PA2008.

## **S120(5)(A) AND S126 - THE INCORPORATION OF OTHER STATUTORY POWERS**

- 8.7.7. The rdDCO seeks, in a number of instances, to apply s120(5)(a) of PA2008 and apply, modify or exclude a statutory provision. Since the rdDCO is in the form of a statutory instrument, it would comply with s117(4) of PA2008. Furthermore, no provision would contravene the



provisions of s126 of PA2008 which relates to the modification or exclusion of a compensation provision.

### **S127 AND S138**

- 8.7.8. Section 127 and s138 representations have been made and not withdrawn. These representations have been considered as set out above. In the case of each s127 representation, we conclude that the SoST can be satisfied that there would be no serious detriment caused to the carrying on of the undertaking of the SU in question should the CA powers sought be granted. In the case of s138, we are satisfied that the extinguishment of the relevant rights, or the removal of the relevant apparatus, would be necessary for the purpose of carrying out the development to which the Order relates.

### **S135 - CROWN LAND**

- 8.7.9. We consider that the SoST must obtain s135(1) consent from the Crown authority before any Order is made authorising the CA of the interests in Crown land that are held otherwise than by or on behalf of the Crown as set out in the BoR. If this consent is not forthcoming these plots should be excluded from the scope of CA authorised by the rdDCO.

### **TEMPORARY POSSESSION**

- 8.7.10. We are satisfied that the TP powers sought are necessary both to facilitate implementation of the Proposed Development and to maintain it and that adequate compensation provisions are in place in the rdDCO.

### **HUMAN RIGHTS ACT 1998 AND THE EQUALITY ACT 2010**

- 8.7.11. We are satisfied that, in relation to the inclusion of CA and TP powers in the rdDCO, any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest. We are also satisfied that there is no evidence that the Proposed Development would not accord with s149 of the Equality Act 2010.

### **ADEQUACY OF FUNDING**

- 8.7.12. The identified sources of funding do not provide us with any cause for concern or reason to doubt that the Proposed Development would, in fact, be implemented, if granted consent.

### **EXAMINING AUTHORITY RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS**

- 8.7.13. In the event that the SoST is minded to grant development consent for the Proposed Development, we recommend that:

- The CA powers included in the rdDCO be granted, subject to the matters as set out below in relation to Crown land;
- the TP powers included in the rdDCO be granted;
- **the CA powers sought in respect of Crown land should not be granted until the necessary consent from the Crown authority has been obtained;**
- the powers authorising the CA of SUs' land and rights over land included in the rdDCO be granted;
- the powers authorising the extinguishment of rights and removal of apparatus of SUs included in the rdDCO be granted; and
- the powers included in the rdDCO to apply, modify or exclude a statutory provision be granted.

## **9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **9.1. INTRODUCTION**

- 9.1.1. A dDCO [[APP-005](#)] was submitted by the Applicant as a part of the application for development consent. We raised questions on the content of the dDCO in our First Written Questions (ExQ1) which accompanied the Rule 8 letter [[PD-005](#)].
- 9.1.2. At Deadline (D)3, the Applicant submitted a further revised dDCO [[REP3-030](#) and [REP3-031](#)] and an explanatory note [[REP3-032](#)]. An Issue Specific Hearing (ISH) on the dDCO [[EV-009](#)] was held on 13 February 2019 which included discussion of these proposals.
- 9.1.3. A further iteration of the dDCO was submitted by the Applicant at D4, again accompanied by an explanatory note [[REP4-007](#), [REP4-008](#) and [REP4-009](#)]. This was in turn speeded by a further dDCO submitted by the Applicant at D5 [[REP5-003](#) and [REP5-004](#)] again with accompanying explanatory note [[REP5-037](#)].
- 9.1.4. This process continued with the submission of a further revised dDCO at D9 [[REP9-003](#) and [REP9-004](#)] with an explanation of changes [[REP9-005](#)]. D10 saw a further revision [[REP10-004](#) and [REP10-005](#)] with an explanation of the changes [[REP10-072](#)]. These changes reflected the NMCs submitted by the Applicant and as a result of ongoing discussions with IPs. Following the publication of the ExA's dDCO published on the 29 May 2019 [[PD-016](#)] the Applicant submitted a further version of the dDCO on the 4 June 2019, which included 'final changes' to the document and responded to the changes undertaken by the ExA. These submissions also included an updated Explanatory Memorandum, reflecting the changes.
- 9.1.5. Subsequent to this and immediately prior to the closure of the Examination, the Applicant submitted their final version of the dDCO on the 5 June 2019 [[AS-030](#) and [AS-031](#)]. This document has not been the subject of consultation and other Interested Parties (IP) have not had the opportunity to make representations to it. Nevertheless, a summary of the changes set out therein is included for consideration of the Secretary of State (SoS).

### **9.2. CHANGES DURING EXAMINATION**

- 9.2.1. Given the number of iterations of the dDCO set out above it is evident there have been considerable changes to it. Although no change was made such that would constitute a material amendment to the Proposed Development itself, the Applicant proposed a number of non-material changes (NMCs) that have been considered and accepted by the ExA. We list the main changes below, however, we do not discuss every change made to the DCO where there has been agreement. Nor do we duplicate discussion where significant issues and implications for the dDCO have been subject to substantive consideration in other chapters above.

9.2.2. In summarising the changes, we refer to the differences between the dDCO [[APP-005](#)] submitted with the application and the recommended draft DCO (rdDCO) as submitted to the SoS (Appendix D). We do not include amendments made to correct drafting errors.

### **9.3. STRUCTURE OF THE DRAFT DCO**

9.3.1. The dDCO comprises 5 Parts and 14 Schedules as follows:

#### *Parts 1-7*

- Part 1- contains the preliminary provisions providing for commencement, citation, interpretation and disapplication of legislation.
- Part 2 – under Works Provisions, sets out the principal powers within Articles (A)4 to 21. There was discussion as to the extent of the powers sought, in particular under Articles 5 and 20 which have been amended in agreement with the Applicant.
- Part 3 – A22 to A40 sets out powers of acquisition and possession of land. The ExA sought the inclusion of two additional Articles in respect of Crown land (A22-23) which have been accepted by the Applicant. As set out in Chapter 8 above, there has been an extensive exploration of the CA issues in respect of a number of IPs.
- Part 4- A41-47 address operational provisions, covering the operation of the bridge, its maintenance and protections against dredging. There remains disagreement over the scope of some of these provisions, specifically in relation to the operation of the bridge, secured through the dSoO and these are addressed below in respect of the specific Articles.
- Part 5- A48-63 cover miscellaneous and general provisions such as the benefits of the order, planning permission, statutory nuisance through to deemed marine licences, Crown rights, protective provisions and arbitration. Again, specific Articles, specifically relating to protective provisions, were and remain the subject of objection from IPs, and these are in turn addressed below.

#### *Schedules*

- Schedule 1 identifies the development for which authorisation is sought.
- Schedule 2 (parts 1 and 2) address Requirements and procedures for their discharge.
- Schedule 3 (parts 1 and 2) deal specifically with Trunk and other roads.
- Schedule 4 (parts 1 to 6) address the stopping-up of highways and means of private access and related matters.
- Schedule 5 deals with trees which are the subject of Tree Preservation Orders.
- Schedule 6 (parts 1 and 2) addresses matters relating to land on which only new rights may be acquired and those relating to statutory undertakers (Cadent Gas Ltd).
- Schedule 7 deals with modification of compensation in relation to compulsory purchase.

- Schedule 8 concerns land in which only air space and new rights may be acquired.
- Schedule 9 concerns land in which only Temporary Possession may be taken.
- Schedule 10 (parts 1 to 4) addresses by laws, covering conduct and behaviour, access, traffic and general matters.
- Schedule 11 (parts 1 to 2) covers traffic regulations including speed limits.
- Schedule 12 (parts 1 to 2) covers addresses the DML, covering construction activities, dredging and maintenance.
- Schedule 13 (parts 1 to 7) address protective provisions, covering the Environment Agency, utility undertakers, railway interests, water companies, the aforementioned Cadent Gas Ltd and the Harbour Authority. Again, these provisions were explored at length during the examination and certain of them, specifically as they relate to the Harbour Authority, remain the subject of objection. These detailed matters are addressed below.
- Schedule 14 identified the documents to be certified in the event the Order is made.

## **9.4. THE EXAMINING AUTHORITY'S EXAMINATION OF THE DRAFT DCO**

### **ARTICLES**

9.4.1. There was an extensive discussion on a range of the Articles set out in the initially submitted dDCO and a number were resolved in the course of the Examination. A summary of the changes, by numerical order, is set out below:

- Article 2 Definitions of 'harbour authority' and 'Lowestoft Harbour' were agreed.
- Article 3 the disapplication of port byelaws, all but byelaw 25 are agreed as deleted.
- Article 5 (9) Limits of deviation (ABP approval of dredging depths). As the Applicant clarifies in their Deadline 10 response [[REP10-080](#)] dredging has approval under harbour authority's Protective Provisions as a 'specified work'. As there is no useful purpose in having two separate approval regimes running in parallel (under Article 5 and under the Protective Provisions) this sub-clause is deleted from the Article in the dDCO.
- Articles 8 and 11 (Stopping up of streets) This has been agreed and the dDCO amended.
- Article 20 (Temporary suspension of navigation) this has been agreed with all IPs, with an extended notification period.
- Article 21 (Removal of vessels) has been agreed.
- Article 23 (Crown land) The Applicant's Deadline 11 dDCO offered changes to Article 23, in respect of Crown land. Amendments include the omission of a reference to the 2008 Act and the term 'for the time being' in clause (b). We included rdDCO Articles 23 and 57 in our published dDCO [[PD-016](#)]. The Applicant accepted these in principle, and they were included in its subsequent dDCOs. The Applicant did

however change the title for A23 [[REP11-004](#)]. We do not agree with this, on the basis that DCOs should have a consistency between them where possible, and the rdDCO reverts to our title. The Applicant also changed the sub-paragraph arrangement in A57 to read correctly and which we accept.

- Article 41 (Operation of the bridge) The essential framework is agreed between the Applicant and IPs, although there remains disagreement in areas on the precise wording. The Applicant advises that 'either party' or 'relevant party' be replaced by the 'undertaker or the harbour authority (as applicable)'. As this makes more explicit the parties concerned, thus adding clarity, we have accepted this amendment and the Article is duly amended in the attached rdDCO.
- Article 42 (Extinguishment of right of navigation within Lake Lothing in connection with authorised development) is agreed.
- Article 45 (Protection against dredging) have been agreed.
- Article 46 (Byelaws) This has agreement save paragraph 6 additional Byelaw 37G. Here the Applicant seeks an additional general Byelaw to secure compliance with the SoO. We consider this a reasonable provision as the final SoO includes a number of responsibilities on vessel masters who will not be subject to Article 41 (1), as this applies only to the undertaker. The attached rdDCO is duly amended to reflect this.
- Article 57 (Crown Rights) This Article was included, along with Article 23, by the ExA. The Applicant in their D11 submission offered a revised version with minor alterations to wording for clarity which we accept.
- Article 62 (Arbitration) The wording of this Article has been amended to reflect the changes to paragraph 52 of the Protective Provisions accommodating changes sought by Network Rail.

## **SCHEDULES**

### **Schedule 2 – Requirements**

- 9.4.2. Through the course of the Examination there was an ongoing process of discussion and refinement of the Requirements. We set out below the background to specific Requirements where particular issues have been raised.
- 9.4.3. In our consideration of the proposed Requirements, we have had regard to the advice and tests set out in Planning Practice Guidance on 'Use of Planning Conditions', the principles of which are applicable to the imposition of Requirements.
- Requirements 4 and 7 are agreed.
  - Requirement 8 This relates to ground water contamination The final wording of the Requirement confirms that in the event of contamination or its discovery this must be reported as soon as reasonably practicable to the county planning authority, the local planning authority, the Environment Agency, and, in the event of any contaminated land, including groundwater, being found within

Lowestoft Harbour, the harbour authority. We consider the scope of notification here to be proportionate and reasonable.

- Requirement 11 As the Applicant identifies in their post-Deadline 11 submissions [[AS-027](#)], the matter of dispute resolution arises because of the obligation under Requirement 11(5) for the undertaker to comply with the NRA in the future as subsequently incorporated into the harbour authority's harbour-wide NRA (of which any updates will therefore be of their choice, not that of the Undertaker). It is necessary therefore that the Undertaker be able to refer disputes for resolution, and it is more appropriate for the arbitration procedure applying to the Protective Provisions to apply to such disputes as opposed to the appeals process set out in Schedule 2. This is because the latter is more concerned with planning-related matters, whereas disputes in relation to the NRA are likely to be similar to disputes arising under the Protective Provisions. The Harbour Authority's approval of the NRA under Requirement 11(3) is of much the same nature as the approvals it will need to give, pre-construction, under its Protective Provisions. It is the Applicant's view that the dispute resolution process applying under the Protective Provisions is the more appropriate process for such matters arising under Requirement 11(3). We agree, and the wording of paragraphs (6) and (7) of the Requirement have been revised in the rdDCO to reflect this. As ABP and other IPs have not had the chance to comment on this the SoS may wish to consider further consultation on this prior to determining the Order. Such a consideration is not however determinant on the recommendation as this is a matter of which method of redress is appropriate rather than whether a means of address is available to the Undertaker.

### **Schedule 2, Part 2 - Procedure for discharging Requirements**

- 9.4.4. The application dDCO made provision for Requirements to be discharged by the county planning authority. Relevant planning authority is defined in Schedule 2 (1) of the dDCO as 'Suffolk County Council in its role as county planning authority for the county of Suffolk under section 1(1)(a) of the Town and Country Planning Act 1990(a)'.

### **Schedule 12 – Deemed Marine Licence**

- 9.4.5. There was also discussion on a range on Schedule 12 set out in the initially submitted dDCO and a number of its components were resolved in the course of the Examination. An explanation is set out below:
- Schedule 12 (paragraph 11) Deemed Maritime Licence. As the Applicant sets out in their Deadline 10 response [[REP10-080](#)], the same point on duplication arises as in relation to Article 5 (see above). The harbour authority would be able to impose appropriate controls and monitoring in relation to such specific matters as specified coatings and treatments (to the structure) if it felt necessary pursuant to approvals given under its protective provisions. We agree, and as such the need for specific referral to the harbour authority under this Schedule is indeed a duplication, and therefore unnecessary.



## **Schedule 13 - Protective Provisions**

- 9.4.6. Articles 34 and 55 (A34 and A55) in the application dDCO set out provisions for the protection of the interests of various parties. They are in six parts:
- Part 1 - Electricity, gas, water, and sewerage undertakers.
  - Part 2 - Operators of electronic communications code networks.
  - Part 3 – The Environment Agency.
  - Part 4 – Railway Interests.
  - Part 5 – The Harbour Authority.
  - Part 6 – Anglian Water.
- 9.4.7. The Protective Provisions in the application dDCO (Revision 0 or R0) [[APP-005](#)] were subject to the Applicant’s amendments during the Examination. Clean and track changed copies and some explanations of changes were submitted at:
- D3 (R1) [[REP3-030](#), clean and [REP3-031](#), track changed].
  - D4 (R2) [[REP4-007](#), clean and [REP4-008](#), track changed and [REP4-009](#), explanation of changes].
  - D5 (R3) [[REP5-003](#), [REP5-004](#) and [REP5-037](#)].
  - D9 (R4) [[REP9-003](#), [REP9-004](#) and [REP9-005](#)].
  - D10 (R5) [[REP10-004](#), clean and [REP10-005](#), track changed] and (R6) [[REP10-070](#), clean, [REP10-071](#), track changed and [REP10-072](#), explanation of changes].
  - D11 (R7) [[REP11-003](#), clean and [REP11-004](#), track changed].
- 9.4.8. The ExA published its dDCO between D10 and D11 [[PD-016](#)]. The Applicant’s D11 (R7) dDCO, its final allocated dDCO submission in the Examination timetable, repeated some of the amendments to the Applicant’s D10 (R5) made in the ExA’s dDCO. At D11, the Applicant also submitted a track changed version of its dDCO to show all the amendments up to that point in the Examination [[REP11-006](#)].
- 9.4.9. The Applicant however submitted a further dDCO in the final minutes of the Examination (R8) [[AS-030](#), clean and [AS-031](#), track changed], after the final deadline, D11. Other parties therefore did not have the opportunity to comment on this version of the dDCO. At this stage, the Applicant also submitted a further track changed version of its dDCO to show all the amendments up to that point in the Examination [[AS-029](#)].
- 9.4.10. The Protective Provisions in the rdDCO would be exercised under A35 and A58. The Applicant added a Part 6 to the Protective Provisions, for the benefit of Cadent Gas, at D3 (R1). The Protective Provisions in Schedule 13 of the rdDCO are agreed with the relevant Statutory Undertakers apart from Part 5 relating to ABP, the Harbour Authority. We have considered these outstanding matters below.

### ***Part 5 - The Harbour Authority***

- 9.4.11. The Protective Provisions relating to the Harbour Authority are not agreed with ABP [[REP10-080](#)].

- 9.4.12. Paragraph 63(4) in the rdDCO is not agreed between the Applicant and ABP. The Applicant considers that a dispute under this paragraph should be subject to arbitration and ABP disagrees. We concur with the Applicant that paragraph 63(2), and possibly other powers of the Statutory Harbour Authority, would allow ABP to address safety matters directly [[REP10-080](#)]. There would therefore be no safety critical delay period and the reasonableness of actions undertaken could then be determined retrospectively by the arbitration.
- 9.4.13. Furthermore, the Applicant adds that the inclusion of such a provision for a harbour authority is not unusual in a DCO, and indeed ABP accepted this wording on the Swansea Bay Tidal Lagoon DCO. It is also of note that, at various stages during the Examination, the Applicant has moved towards ABP's position on paragraph 63. This includes the restoration of works, even where the management and operation of them has been approved by the Harbour Authority [[REP11-004](#)]. We consider that these factors add weight to our position on this matter.
- 9.4.14. Paragraph 64 in the rdDCO is not agreed between the Applicant and ABP. In paragraph 64(1)(c), the Applicant considers that the indemnity in respect of the Navigation Risk Assessment should be related to the Scheme of Operation [[REP10-080](#)]. This is rather than just to Requirement 11 as sought by ABP.
- 9.4.15. The Applicant has however subsequently moved towards ABP's position [[REP11-013](#)] by including the operation of the new bridge generally [[AS-031](#)]. This has not been subject to comment by ABP, as this version of the dDCO was submitted after the final timetable deadline. We agree however with the Applicant's final position, on the basis that this element of the indemnity should relate to the effect of the operation of the proposed bridge on navigation.
- 9.4.16. In paragraph 64(1)(f) and (g), the Applicant does not agree with ABP that operation should be included in this element of the indemnity, as this would include losses from the new bridge simply being there [[REP10-080](#)]. The indemnity should be restricted to losses which are the result of the acts or omissions of the undertaker. This would not be unusual and the Applicant considers that indemnity for appropriate and relevant aspects of operation already exist in other parts of paragraph 64. We agree with the Applicant, on the basis that the bridge would be a properly consented development, for which land related compensation would have been paid. Furthermore, it would be unusual for a Highway Authority to indemnify adjoining landowners in such a manner.
- 9.4.17. We also cannot see a need for the inclusion of consultation, consent or a description of example losses in paragraph 64. This is because such matters would be determined at the time of the loss, within the indemnity that we have already found to be sufficiently comprehensive.
- 9.4.18. Other parties have not had the opportunity to comment on matters within the Applicant's dDCO submitted after the final Examination deadline. We cannot see any amendments to the Protective Provisions

that go beyond the positions of the Applicant and ABP at D11. Indeed, the amendments to paragraphs 56(4) and 64(1)(e) accord with ABP requests and those at paragraph 64(1)(c) seem to us to move towards ABP's position. The SoST may however wish to give other parties the opportunity to respond more generally to the Applicant's final dDCO [[AS-030](#)], but we do not see this as necessary to support our rdDCO.

## **9.5. THE APPLICANT'S PROPOSED CHANGES TO THE DRAFT DCO IMMEDIATELY PRIOR TO THE CLOSURE OF THE EXAMINATION**

- 9.5.1. The Applicant refers to an error in respect of A2 whereby the reference to 'security' should be omitted. This is an amendment suggested by IPs at D11 and thus a technical correction to the dDCO has been undertaken. We are confident that although not the subject of consultation, such a correction may be undertaken without compromise to those with an interest in the Proposed Development.
- 9.5.2. The Applicant also accedes now in respect of A20 that the NWG will now be retained within the CoCP (as per the D10 version) this consultative vehicle now being considered more appropriate than the PMSC. This is in effect to return to the preference in the ExA's published version of the dDCO.
- 9.5.3. The Applicant also proposes revisions to paragraphs 6 and 7 of R11(5) relating to dispute resolution. As A62 incorporates referral of any such disputes to a third party, in the absence of further consultation, we feel this is a matter properly addressed by the SoS after receipt of this report.

## **9.6. DCO AMENDMENTS SHOULD CROWN LAND CONSENT NOT BE OBTAINED**

- 9.6.1. Chapter 8 of this report advises that, should CA consent not be received from the relevant authority in respect of the Crown land within the Order limits, then the rdDCO would need to be amended. We now set out those amendments.
- 9.6.2. In view of the fact that Crown land would exist within the Order limits, we consider that it would be prudent to retain A23 and A57 for the avoidance of doubt in relation to the status of, and protection afforded to, Crown land. It would however be necessary to remove the pink shading from Plots 2-08, 10, 12 and 25 on Sheet 2 of the Land Plans. This would exclude the plots from the Order land and remove the offending CA powers from the DCO. The Crown land plots would still be referred to in the BoR, but would not be subject to CA powers. These references would then be for information only.

## 9.7. CONCLUSIONS

- 9.7.1. The dDCO as initially submitted has undergone successive modification and refinement through the examination process. Such a process, as the revisions demonstrate, has resulted in a significant narrowing of the differences between the Applicant and IPs. Although consensus on all its elements has not been fully achieved, we consider, **subject to the necessary Crown land consent**, it now to be a robust, fair and fit for purpose vehicle for the delivery of the Lake Lothing Third Crossing.

# 10. SUMMARY OF FINDINGS AND CONCLUSIONS

## 10.1. INTRODUCTION

10.1.1. This chapter summarises the Examining Authority's (ExA) conclusions arising from the report as a whole and sets out the primary recommendation to the Secretary of State (SoS).

## 10.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

10.2.1. In relation to section (s)104 of Planning Act 2008 (PA2008) we conclude in summary:

- That making the recommended draft Development Consent Order (rdDCO) would be in accordance with the National Policy Statement for National Networks (NPSNN), National Policy Statement for Ports (NPSP), any relevant development plans and other relevant policy, all of which have been taken into account in this report.
- That we have had regard to the submitted Local Impact Reports from Suffolk County Council, Waveney District Council and Great Yarmouth Borough Council in making our recommendation.
- That whilst the SoS is the competent authority under the Habitats Regulations and will make the definitive assessment, we find that, in our view, the proposal would not be likely to have significant effects on European sites, species or habitats, and we have taken this into account in reaching our recommendation.
- That in regard to the matters in the s35 direction, that the making of the order would support the strengthening of the Trans-European Network, the resilience of the adjacent Strategic Road Network and contribute to the overall development of the port of Lowestoft and its ability to service the offshore energy sector.
- That in regard to all other matters and representations received, we found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.
- That with the mitigation proposed through the rdDCO (Appendix D), there is no adverse impact arising from the Proposed Development that would outweigh its benefits.
- That there is no reason to indicate that the application should be decided other than in accordance with the relevant National Policy Statements.

10.2.2. In relation to the application for Compulsory Acquisition (CA) and related powers within the recommended rdDCO, the ExA in summary concludes:

- That the CA powers included in the rdDCO be granted, **subject to the matters set out in Chapter 8 in relation to Crown land.**
- That the Temporary Possession powers included in the rdDCO be granted.
- That the powers authorising the CA of Statutory Undertakers' (SU) land and rights over land included in the rdDCO be granted.

- that the powers authorising the extinguishment of rights and removal of apparatus of SUs included in the rdDCO be granted; and
- that the powers included in the rdDCO to apply, modify or exclude a statutory provision be granted.

10.2.3. We have had regard to the provisions of the Human Rights Act 1998. We are satisfied that the powers sought are no more than is required to secure the interests of the wider community and are not likely to place an excessive burden on those whose human rights could be affected. We therefore consider that there would be no violation of Article 1 of the First Protocol and Articles 6 and 8 of the European Convention on Human Rights or the Human Rights Act 1998.

### **10.3. RECOMMENDATION**

10.3.1. Our findings and conclusions on important and relevant matters are set out in this report under s83 of the PA2008. In considering our recommendations the SoS may wish to satisfy themselves on the following point:

- The representations made by the Applicant in respect of certain matters in their submissions immediately prior to the closure of the examination and not the subject of public or other consultation [[AS-027 to AS-033](#)].

10.3.2. Subject to the above, we recommend that the SoS for Transport makes the Lake Lothing Third Crossing Development Consent Order in the form attached at Appendix D to this report.

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## **APPENDICES**

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## **APPENDIX A: EVENTS IN THE EXAMINATION**

The table below lists the main events occurring during the Examination and the main Procedural Decisions taken by the Examining Authority (ExA).

<b>Event</b>	<b>Date(s)</b>
<b>Preliminary Meeting</b>	<b>5 December 2018 (Morning)</b>
<b>Open Floor Hearing 1</b>	<b>5 December 2018 (Afternoon)</b>
<p><b>Deadline 1</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at Open Floor Hearing held on 5 December 2018</li> <li>• Any further submissions/ clarifications from the Applicant in response to the Planning Inspectorate's s51 advice dated 9 August 2018</li> </ul>	<b>12 December 2018</b>
<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Examination Timetable</li> </ul> <p>Publication of:</p> <ul style="list-style-type: none"> <li>• The ExA's First Written Questions</li> </ul>	<b>17 December 2018</b>
<p><b>Deadline 2</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of wish to speak at a Compulsory Acquisition Hearing</li> <li>• Notification of wish to speak at a subsequent Open Floor Hearing</li> <li>• Notification of wish to attend Accompanied Site Inspection 1 on 12 February 2019</li> <li>• Notification by Statutory Parties of wish to be considered an Interested Party</li> </ul>	<b>4 January 2019</b>
<p><b>Deadline 3</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on Relevant Representations (RRs)</li> <li>• Summaries of all RR's exceeding 1500 words</li> <li>• Written Representations (WRs)</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Local Impact Reports from any Local Authorities</li> </ul>	<b>8 January 2019</b>

<ul style="list-style-type: none"> <li>• Responses to the ExA’s First Written Questions</li> <li>• Applicant’s first revised draft Development Consent Order (dDCO)</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated Book of Reference reconciling the s59 certificate</li> <li>• An updated Statement of Common Ground (SoCG) Report</li> <li>• An Application Document Tracker</li> <li>• Applicant’s draft itinerary for the Accompanied Site Inspection scheduled for 12 February 2019</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules<sup>32</sup></li> </ul>	
<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of date, time and place of hearings to be held between 13 and 15 February 2019</li> <li>• Notification of date, time and meeting place for Accompanied Site Inspection 1 on 12 February 2019</li> </ul> <p>Publication of:</p> <ul style="list-style-type: none"> <li>• Itinerary for Accompanied Site Inspection 1 on 12 February 2019</li> </ul>	<b>14 January 2019</b>
<p>Issue by The Planning Inspectorate of:</p> <ul style="list-style-type: none"> <li>• Notification of change in the ExA</li> </ul> <p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of temporary postponement of Issue Specific Hearing 2 (Environment) and Open Floor Hearing 2</li> </ul>	<b>23 January 2019</b>
<p><b>Deadline 4</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs and responses to comments on RRs</li> <li>• Comments on Local Impact Report(s)</li> <li>• Comments on responses to the ExA’s Written Questions</li> <li>• SoCGs requested by the ExA</li> </ul>	<b>29 January 2019</b>

<sup>32</sup> The Infrastructure Planning (Examination Procedure) Rules 2010

<ul style="list-style-type: none"> <li>• Comments on any further information requested by the ExA and received to Deadline 3</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of new date, time and place for previously postponed Issue Specific Hearing 2 (Environment) and Open Floor Hearing 2 to be held on 7 and 8 March 2019</li> </ul>	<b>4 February 2019</b>
<p><b>NMC<sup>33</sup> Key Event 1</b></p> <p>Applicant submits request to make changes to the application</p>	<b>29 January 2019</b>
<b>Accompanied Site Inspection 1</b>	<b>12 February 2019</b>
<b>Issue Specific Hearing 1 (draft DCO)</b>	<b>13 February 2019 (Morning)</b>
<p><b>Compulsory Acquisition Hearing 1</b></p> <p>This hearing was adjourned to 11.00am on 8 March 2019</p>	<b>13 February 2019 (Afternoon)</b>
<p><b>Deadline 5</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings on 13 February 2019</li> <li>• Applicant's second revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 4</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>22 February 2019</b>
<p><b>Deadline 6</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Raw responses received by the Applicant to consultation on proposed changes to the application</li> </ul>	<b>5 March 2019</b>

<sup>33</sup> 'Non-material change'

<b>Accompanied Site Inspection 1a</b> Targeted inspection of Motorlings site	<b>6 March 2019</b>
<b>Issue Specific Hearing 2 (Environment)</b>	<b>7 March 2019</b>
<b>Open Floor Hearing 2</b>	<b>8 March 2019 (Morning)</b>
<b>Compulsory Acquisition Hearing 1</b> Reconvened after adjournment on 13 February 2019	<b>8 March 2019 (Morning and afternoon)</b>
<b>Deadline 7</b> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings held on 7 and 8 March 2019</li> <li>• Applicant's report dealing with consultation on changes to the application proposed in Deadline 4 submission</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 6</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>15 March 2019</b>
<b>NMC Key Event 2</b> Applicant submits report dealing with consultation on proposed changes to the application	<b>15 March 2019</b>
Publication of: <ul style="list-style-type: none"> <li>• The ExA's Second Written Questions</li> </ul>	<b>22 March 2019</b>
<b>Deadline 8</b> Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Responses to the ExA's Second Written Questions</li> <li>• Comments on Applicant's report dealing with consultation on changes to the application proposed in Deadline 4 submission</li> <li>• Comments on any further information requested by the ExA and received to Deadline 7</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>12 April 2019</b>
Issue by the ExA of:	<b>15 April 2019</b>

<ul style="list-style-type: none"> <li>• Notification of any further hearings to be held in the week beginning 13 May 2019</li> </ul>	
<p><b>Deadline 9</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's Second Written Questions</li> <li>• Applicant's third revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 8</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>26 April 2019</b>
<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> <li>• Report on the Implications for European Sites (RIES)</li> </ul>	<b>3 May 2019</b>
<p><b>NMC Key Event 3</b></p> <p>ExA issues Procedural Decision to accept changes to the application</p>	<b>9 May 2019</b>
<p><b>Accompanied Site Inspection 2</b></p>	<b>13 May 2019</b>
<p>Applicant submits updated application documents reflecting accepted changes to the application</p>	<b>13 May 2019</b>
<p><b>Issue Specific Hearing 3 (dDCO)</b></p>	<b>14 May 2019 (Morning)</b>
<p><b>Compulsory Acquisition Hearing 2</b></p>	<b>14 May 2019 (Afternoon)</b>
<p><b>Deadline 10</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings held on 14 May 2019</li> <li>• Applicant's fourth revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> </ul>	<b>24 May 2019</b>

<ul style="list-style-type: none"> <li>• Comments on any further information requested by the ExA and received to Deadline 9</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
<p>Publication of:</p> <ul style="list-style-type: none"> <li>• The ExA's dDCO</li> </ul>	<b>29 May 2019</b>
<p><b>Deadline 11</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the ExA's dDCO</li> <li>• Comments on the RIES</li> <li>• Comments on any further information requested by the ExA and received to Deadline 10</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	<b>4 June 2019</b>
<p><b>Deadline 12</b></p> <p>The ExA is under a duty to complete the examination of the application by the end of the period of 6 months</p>	<b>5 June 2019</b>



## **APPENDIX B: THE EXAMINATION LIBRARY**

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<b>Category</b>	<b>Reference</b>
<a href="#">Application Documents</a> As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received <a href="#">Plans</a> <a href="#">Reports</a> <a href="#">Environmental Statement</a> <a href="#">Other Documents</a>	APP-xxx
<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the Examining Authority</a> Includes Examining Authority’s questions, s55, and post acceptance s51	PD-xxx
<a href="#">Additional Submissions</a> Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<a href="#">Events and Hearings</a> Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant’s hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
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**TR010023 - Lake Lothing Third Crossing  
Examination Library**

**Application Documents**

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APP-182	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 10B - Visual Effects Schedule
APP-183	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11A - Preliminary Ecological Appraisal

APP-184	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11B - Bat Survey
APP-185	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11C - BAP List
APP-186	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11D - Wintering Bird Survey Report
APP-187	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11E - Reptile Survey
APP-188	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11F - Benthic Survey
APP-189	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 11G - Invertebrate Survey
APP-190	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 12A - Environmental Desk Study Part 1 of 2
APP-191	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 12A - Environmental Desk Study Part 2 of 2
APP-192	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 12B - GIR
APP-193	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 12C - Piling Works Risk Assessment
APP-194	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 13A - Baseline Noise Monitoring Results
APP-195	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 13B - Sound Power for Construction
APP-196	<a href="#">Suffolk County Council</a>

	6.3 Environmental Statement Volume 3 Appendix 13C - Noise Meter Calibration Certificates
APP-197	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix App 13D - Operational noise & vibration nuisance assessment
APP-198	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix App 15A - Vessel Simulation Report
APP-199	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 17A - WFD Assessment
APP-200	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix App 17B - HAWRAT
APP-201	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 17C - Sediment Transport Assessment
APP-202	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 18A - Flood Risk Assessment
APP-203	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 18A - Flood Risk Assessment Annex A, B + C
APP-204	<a href="#">Suffolk County Council</a> 6.3 Environmental Statement Volume 3 Appendix 18B - Drainage Strategy
APP-205	<a href="#">Suffolk County Council</a> 6.4 Environmental Statement Non-Technical Summary
APP-206	<a href="#">Suffolk County Council</a> 6.5 Habitats Regulations Assessment Report
APP-207	<a href="#">Suffolk County Council</a> 6.6 Statement of Statutory Nuisance
APP-208	<a href="#">Suffolk County Council</a> 6.7 Preliminary Navigation Risk Assessment

APP-209	<a href="#">Suffolk County Council</a> 6.8 Equalities Impact Assessment Screening
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Suffolk County Council</a> Adequacy of Consultation Representation
AoC-002	<a href="#">Norfolk County Council</a> Adequacy of Consultation Representation
AoC-003	<a href="#">South Norfolk Council</a> Adequacy of Consultation Representation
AoC-004	<a href="#">Waveney District Council</a> Adequacy of Consultation Representation
AoC-005	<a href="#">The Broads Authority</a> Adequacy of Consultation Representation
AoC-006	<a href="#">Babergh and Mid Suffolk District Councils</a> Adequacy of Consultation Representation
AoC-007	<a href="#">Great Yarmouth Borough Council</a> Adequacy of Consultation Representation
<b>Relevant Representations</b>	
RR-001	<a href="#">The Coal Authority</a>
RR-002	<a href="#">Stephen Berry</a>
RR-003	<a href="#">Judith White</a>
RR-004	<a href="#">Derek Johnson</a>
RR-005	<a href="#">John Corkett</a>
RR-006	<a href="#">SMS Group</a>
RR-007	<a href="#">Great Yarmouth Borough Council</a>
RR-008	<a href="#">Broads Authority</a>
RR-009	<a href="#">Environment Agency</a>
RR-010	<a href="#">Mr R Cousin</a>

RR-011	<a href="#">BS Pension Fund Trustee Ltd</a>
RR-012	<a href="#">Lings Motor Group</a>
RR-013	<a href="#">Anglian Water Services Ltd</a>
RR-014	<a href="#">Cadent Gas Limited</a>
RR-015	<a href="#">Cara Robinson</a>
RR-016	<a href="#">Lowestoft Cruising Club</a>
RR-017	<a href="#">Northumbrian Water Limited</a>
RR-018	<a href="#">Statuslist Limited</a>
RR-019	<a href="#">Trinity House</a>
RR-020	<a href="#">Waveney District Council and Suffolk County Council</a>
RR-021	<a href="#">Network Rail Infrastructure Limited</a>
RR-022	<a href="#">Associated British Ports</a>
RR-023	<a href="#">Broadland Housing Group</a>
RR-024	<a href="#">Brookhouse (Lowestoft) Nominees VI Limited</a>
RR-025	<a href="#">Historic England</a>
RR-026	<a href="#">Hitech Grand Prix Limited</a>
RR-027	<a href="#">Lift Truck Rentals Limited</a>
RR-028	<a href="#">Marine Management Organisation</a>
RR-029	<a href="#">Nexen Lift Trucks Limited</a>
RR-030	<a href="#">Norfolk and Suffolk Boating Association</a>
RR-031	<a href="#">Oakes Recruitment Limited</a>
RR-032	<a href="#">Overseas Interests Inc</a>
RR-033	<a href="#">Public Health England</a>
RR-034	<a href="#">Royal Mail Group Limited</a>
RR-035	<a href="#">Royal Yachting Association</a>
RR-036	<a href="#">Team Oakes Limited</a>

RR-037	<a href="#">Waveney Fork Trucks limited</a>
<b>Procedural Decisions and notifications from the Examining Authority</b>	
PD-001	<a href="#">Appointment of the Examining Authority</a>
PD-002	<a href="#">Notification of Decision to Accept Application</a>
PD-003	<a href="#">Section 55 Checklist</a>
PD-004	<a href="#">Post-acceptance Advice to the Applicant Provided under Section 51</a>
PD-005	<a href="#">Rule 6 Letter - Notification of the Preliminary Meeting and Matters to be Discussed</a>
PD-006	<a href="#">Rule 8 Letter - Notification of Timetable for the Examination</a>
PD-007	<a href="#">Examining Authority's Written Questions</a>
PD-008	<a href="#">Response to Applicant's letter dated 15 January 2019</a>
PD-009	<a href="#">Rule 13 and Rule 16 - Notification of Hearings and Accompanied Site Inspection (ASI)</a>
PD-010	<a href="#">Appointment of the Examining Authority</a>
PD-011	<a href="#">Rule 8 – notification of timetable for the examination and Rule 13 - Notification of Hearing</a>
PD-012	<a href="#">Further Written Questions</a>
PD-013	<a href="#">Notification of hearings and Accompanied Site Inspection - Rule 13 and Rule 16</a>
PD-014	<a href="#">Report on the Implications for European Sites (RIES)</a> Issued by the Examining Authority – 3 May 2019
PD-015	<a href="#">Section 89 - Notification of Procedural Decision in respect of proposed changes to the application</a>
PD-016	<a href="#">Examining Authority's draft Development Consent Order</a> Published on 29 May 2019
PD-017	<a href="#">Notification of completion of the Examining Authority's Examination</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">CMS LLP for B.S. Pension Fund Trustee Limited</a> Additional Submission - Accepted at the discretion of the Examining Authority

AS-002	<a href="#">Suffolk Chamber of Commerce</a> Additional Submission (from non-Interested Party) accepted at the discretion of the Examining Authority
AS-003	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Updated Habitats Regulations Assessment (HRA) Report (clean)
AS-004	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Note on Updated NPPF
AS-005	REFERENCE NOT IN USE
AS-006	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Updated Habitats Regulations Assessment (HRA) Report (track change)
AS-007	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Statements of Common Ground Report
AS-008	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Applicant's response to Rule 6 letter
AS-009	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Applicant's response to s51 advice issued by the Planning Inspectorate on 9 August 2018
AS-010	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority comprising Applicant's Errata Report
AS-011	<a href="#">Marine Management Organisation</a> Additional Submission accepted at the discretion of the Examining Authority
AS-012	<a href="#">Associated British Ports</a> Additional Submission accepted at the discretion of the Examining Authority
AS-013	<a href="#">Suffolk County Council</a>

	Additional Submission accepted at the discretion of the Examining Authority comprising Applicant's Response to Relevant Representations
AS-014	<a href="#">Marine Management Organisation</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-015	<a href="#">Waveney Gymnastics Club</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-016	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority
AS-017	<a href="#">Clyde &amp; Co LLP on behalf of Associated British Ports</a> Additional Submission accepted at the discretion of the Examining Authority
AS-018	<a href="#">Clyde &amp; Co LLP on behalf of Associated British Ports</a> Additional Submission accepted at the discretion of the Examining Authority
AS-019	<a href="#">Birketts LLP on behalf of PFK Ling Limited</a> Additional Submission Accepted at the discretion of the Examining Authority
AS-020	<a href="#">Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority - Letter from the Applicant explaining position on proposed non-material changes
AS-021	<a href="#">Richard Brown</a> Additional Submission accepted at the discretion of the Examining Authority
AS-022	<a href="#">Axis Property Consultancy LLP on behalf of Brookhouse (Lowestoft) Nominees VI Ltd - North Quay Retail Park</a> Additional Submission accepted at the discretion of the Examining Authority
AS-023	<a href="#">Shakespeare Martineau LLP on behalf of Cadent Gas Limited</a> Additional Submission accepted at the discretion of the Examining Authority
AS-024	<a href="#">Anglian Water Services Limited</a>



	Additional Submission accepted at the discretion of the Examining Authority
AS-025	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of Northumbrian Water Limited (NWL)</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-026	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of Northumbrian Water Limited</a> Additional Submission accepted at the discretion of the Examining Authority
AS-027	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) Cover Letter
AS-028	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) Application Document Tracker
AS-029	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) DCO R8 comparison against Application DCO (Revision 0)
AS-030	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) DCO R8 - Clean
AS-031	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) DCO R8 - Tracked Changes
AS-032	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5 June 2019) Scheme of Operation for the new bridge - Revision 3 - clean
AS-033	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Additional Submission accepted at the discretion of the Examining Authority (Received before the Examination closed at 23:59 on 5

	June 2019) Scheme of Operation for the new bridge - Revision 3 - tracked
<b>Events and hearings</b>	
<b>Preliminary Meeting</b>	
EV-001	<a href="#">Recording of Preliminary Meeting - 05 December 2018</a>
EV-002	<a href="#">Preliminary Meeting Note</a>
<b>Site inspections and hearings</b>	
EV-003	<a href="#">Note of Unaccompanied Site Inspection - 30 October 2018</a>
EV-004	<a href="#">Recording of Open Floor Hearing - 05 December 2018</a>
EV-005	<a href="#">Suffolk County Council</a> Accompanied Site Inspection Itinerary
EV-006	<a href="#">Agenda for Issue Specific Hearing</a> Agenda for Issue Specific Hearing 1 dealing with matters relating to the draft Development Consent Order scheduled for 10.00am on 13 February 2019
EV-007	<a href="#">Agenda for Compulsory Acquisition Hearing</a> Agenda for Compulsory Acquisition Hearing 1 scheduled for 2.00pm on 13 February 2019
EV-008	<a href="#">Agenda for Issue Specific Hearing</a> Agenda for Issue Specific Hearing 2 dealing with matters relating to the environment scheduled for 10.00am on 7 March 2019
EV-009	<a href="#">Recording of Issue Specific Hearing 1 - Draft DCO - 13 February 2019</a>
EV-010	<a href="#">Recording of Compulsory Acquisition Hearing 1 - 13 February 2019</a>
EV-011	<a href="#">Recording of Issue Specific Hearing 2 - 7th March 2019 AM</a>
EV-012	<a href="#">Recording of Issue Specific Hearing 2 - 7th March 2019 PM</a>
EV-013	<a href="#">Recording of Open Floor Hearing 2 - 8th March 2019</a>
EV-014	<a href="#">Supplementary agenda for resumed Issue Specific Hearing 2</a>
EV-015	<a href="#">Recording of Issue Specific Hearing 2 Reconvened - 1st April 2019 AM</a>
EV-016	<a href="#">Recording of Issue Specific Hearing 2 Reconvened - 1st April 2019 PM</a>

EV-017	<a href="#">Note of targeted ASI with representatives of Lings Motor Group - 6 March 2019</a>
EV-018	<a href="#">Accompanied Site Inspection 2 Itinerary</a>
EV-019	<a href="#">Agenda for Issue Specific Hearing 3</a>
EV-020	<a href="#">Agenda for Compulsory Acquisition Hearing 2</a>
EV-021	<a href="#">Recording of Issue Specific Hearing 3 - 14 May 2019 AM</a>
EV-022	<a href="#">Recording of Issue Specific Hearing 3 - 14 May 2019 PM</a>
EV-023	<a href="#">Recording of Compulsory Acquisition Hearing 2 (CAH2) - 14 May 2019</a>
<b>Representations</b>	
<b>Deadline 1 – 12 December 2018</b>	
<ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at Open Floor Hearing held on 5 December 2018</li> <li>• Any further submissions/ clarifications from the Applicant in response to the Planning Inspectorate's s51 advice dated 9 August 2018</li> </ul>	
REP1-001	<a href="#">Oulton Broad Parish Council</a> Open Floor Hearing Representation
<b>Deadline 2 – 4 January 2019</b>	
<ul style="list-style-type: none"> <li>• Notification of wish to speak at a Compulsory Acquisition Hearing</li> <li>• Notification of wish to speak at a subsequent Open Floor Hearing</li> <li>• Notification of wish to attend Accompanied Site Inspection 1 on 12 February 2019</li> <li>• Notification by Statutory Parties of wish to be considered an Interested Party</li> </ul>	
-	No Deadline 2 submissions received
<b>Deadline 3 – 8 January 2019</b>	
<ul style="list-style-type: none"> <li>• Comments on Relevant Representations (RRs)</li> <li>• Summaries of all RR's exceeding 1500 words</li> <li>• Written Representations (WRs)</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Local Impact Reports from any Local Authorities</li> <li>• Responses to the ExA's First Written Questions</li> <li>• Applicant's first revised draft Development Consent Order (dDCO)</li> </ul>	

<ul style="list-style-type: none"> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated Book of Reference reconciling the s59 certificate</li> <li>• An updated Statement of Common Ground (SoCG) Report</li> <li>• An Application Document Tracker</li> <li>• Applicant’s draft itinerary for the Accompanied Site Inspection scheduled for 12 February 2019</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules<sup>34</sup></li> </ul>	
REP3-001	<a href="#">Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></a> Deadline 3 Submission - Responses to Comments on Relevant Representations
REP3-002	<a href="#">Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></a> Deadline 3 Submission - Responses to the responses of the Examining Authority's Written Questions (ExQ1)
REP3-003	<a href="#">Harlaxton Energy Networks Limited</a> Deadline 3 Submission
REP3-004	<a href="#">Waveney District Council</a> Deadline 3 Submission - Response to the Examining Authority’s Written Question 3.1
REP3-005	<a href="#">ESP Utilities Group Ltd</a> Deadline 3 Submission
REP3-006	<a href="#">New Anglia Local Enterprise Partnership</a> Deadline 3 Submission - Written Representation
REP3-007	<a href="#">Historic England</a> Deadline 3 Submission - Written Representation
REP3-008	<a href="#">Shakespeare Martineau on behalf of <b>Cadent Gas Limited</b></a> Deadline 3 Submission - Written Representation
REP3-009	<a href="#">Nwes Property Services Limited</a> Deadline 3 Submission - Written Representation
REP3-010	<a href="#">Great Yarmouth Borough Council</a> Deadline 3 Submission - Local impact Report

<sup>34</sup> The Infrastructure Planning (Examination Procedure) Rules 2010

REP3-011	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 3 Submission - Written Representation - Summary and Main Report
REP3-012	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 3 Submission - Written Representation -Transport Highways Supporting Evidence
REP3-013	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 3 Submission - Written Representation - Noise Assessment Supporting Evidence
REP3-014	<a href="#"><u>Marine Management Organisation</u></a> Deadline 3 Submission - Comments on Relevant Representations, Summaries of all Relevant Representations exceeding 1500 words, Written Representation
REP3-015	<a href="#"><u>Environment Agency</u></a> Deadline 3 Submission - Responses to the Examining Authority's Written Questions
REP3-016	<a href="#"><u>Waveney District Council and Suffolk County Council</u></a> Deadline 3 Submission - Joint Local Impact Report
REP3-017	<a href="#"><u>CMS Cameron McKenna Nabarro Olswang LLP on behalf of <b>B.S. Pension Fund Trustee Limited</b></u></a> Deadline 3 Submission - Written Representation and appendices
REP3-018	<a href="#"><u>Howes Percival LLP on behalf of <b>Our Clients</b></u></a> Deadline 3 Submission - Written representations and appendices
REP3-019	<a href="#"><u>Howes Percival LLP on behalf of <b>Our Clients</b></u></a> Deadline 3 Submission - Summary of Written representations
REP3-020	<a href="#"><u>Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail</b></u></a> Deadline 3 Submission - Written Representation
REP3-021	<a href="#"><u>Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail</b></u></a> Deadline 3 Submission - Summary of Written Representation
REP3-022	<a href="#"><u>Carter Jonas LLP on behalf of <b>Cara Robinson</b></u></a> Deadline 3 Submission - Written Representation

REP3-023	<a href="#"><u>Birketts LLP on behalf of <b>PFK Ling Limited</b></u></a> Deadline 3 Submission - Written Representations and appendices
REP3-024	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 3 Submission - Written Representation and appendices
REP3-025	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 3 Submission - Summary of Written Representation
REP3-026	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 3 Submission - Responses to the Examining Authority's Written Questions
REP3-027	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Cover Letter
REP3-028	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Application Document Tracker
REP3-029	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Responses to the Examining Authority's Written Questions
REP3-030	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft DCO R1 - Clean
REP3-031	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft DCO R1 - tracked
REP3-032	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Explanation of Changes to the DCO
REP3-033	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft Scheme of operation
REP3-034	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Compulsory Acquisition Negotiation & Objections Tracker
REP3-035	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft Accompanied Site Visit Itinerary

REP3-036	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Draft Design Guidance Manual R1
REP3-037	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - late Submission - Draft DGM Change Log
REP3-038	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - HRA R2 - clean
REP3-039	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - HRA R2 - Tracked
REP3-040	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Landscape Plans
REP3-041	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Mitigation Route Map Table 1-1 R1
REP3-042	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - General Arrangement Sheet 1
REP3-043	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 5A CoCP R1 - Clean
REP3-044	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 5A CoCP R1 - Tracked
REP3-045	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 9F WSI R1 - Clean
REP3-046	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 9F WSI R1 - tracked
REP3-047	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 12C Pilling Works Risk R1 - Clean
REP3-048	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 3 Submission - Late Submission - ES Appendix 12C Piling Works Risk R1 - Tracked
REP3-049	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 17C sediment R1- Clean
REP3-050	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 17C sediment R1 - Tracked changes
REP3-051	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 17C Sediment - Table of changes
REP3-052	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 18A Annex A - EA Consultation - R1
REP3-053	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 18B Drainage R1 - Clean
REP3-054	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES Appendix 18B Drainage R1 - Tracked
REP3-055	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - TA Appendix I Junction Modelling Outputs R1
REP3-056	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Transport Assessment R1 - Clean
REP3-057	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - Transport Assessment R1 - Tacked
REP3-058	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES C11 R1 - Clean
REP3-059	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 3 Submission - Late Submission - ES C11 R1 - Tracked
REP3-060	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>



	Deadline 3 Submission - Late Submission - Vessel Survey Report R1 - Clean
REP3-061	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 3 Submission - Late Submission - Vessel Survey Report R1 - Track Changes
REP3-062	<a href="#">Suffolk County Council</a> Deadline 3 Submission - Appendix 12B GIR R1 - Clean
REP3-063	<a href="#">Suffolk County Council</a> Deadline 3 Submission - Appendix 12B GIR R1 - Tracked
REP3-064	<a href="#">Anglian Water</a> Deadline 3 Submission - Late submission accepted at the discretion of the Examining Authority
<p><b>Deadline 4 - 29 January 2019</b></p> <ul style="list-style-type: none"> <li>• Comments on WRs and responses to comments on RRs</li> <li>• Comments on Local Impact Report(s)</li> <li>• Comments on responses to the ExA's Written Questions</li> <li>• SoCGs requested by the ExA</li> <li>• Comments on any further information requested by the ExA and received to Deadline 3</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP4-001	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Cover Letter
REP4-002	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Application Document Tracker
REP4-003	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Updated Book of Reference R1 - Clean
REP4-004	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Updated Book of Reference R1 - Track Changes
REP4-005	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Book of Reference - Schedule of Changes
REP4-006	<a href="#">Pinsent Masons LLP on behalf of Suffolk County Council</a> Deadline 4 Submission - Book of Reference - List of New Interests

REP4-007	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Revised draft Development Consent Order (dDCO) R2 - Clean
REP4-008	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Revised draft Development Consent Order (dDCO) R2 - Track changes
REP4-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Explanation of changes to draft DCO
REP4-010	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Response to the Local Impact Report
REP4-011	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Statements of Common Ground Report - Clean
REP4-012	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Statements of Common Ground Report - Tracked
REP4-013	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Proposed Non-Material Changes to the Application
REP4-014	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Responses to Written Representations and Interested Parties Responses to Written Questions
REP4-015	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Impact of the Scheme on the Port of Lowestoft
REP4-016	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Justification and Traffic Effects of draft Scheme of Operation Revision 0
REP4-017	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Interim Code of Construction Practice - Clean - Revision 2
REP4-018	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Interim Code of Construction Practice - Tracked - Revision 2

REP4-019	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Updated Engineering Section Drawings and Plans Mainline Long Section Sheet 2 of 2 - Revision 1
REP4-020	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Written Scheme of Investigation for Future Evaluation and Mitigation Revision 2 - Clean
REP4-021	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Written Scheme of Investigation for Future Evaluation and Mitigation Revision 2 - Track Changes
REP4-022	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Response to Interested Parties' Deadline 3 Submissions - Appendix F
REP4-023	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Chapter 11 of the Environmental Statement - R2 - Clean
REP4-024	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 4 Submission - Chapter 11 of the Environmental Statement - R2 - Track changes
REP4-025	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 4 Submission - Response to Deadline 4
REP4-026	<a href="#"><u>Axis Property Consultancy LLP on behalf of <b>Brookhouse Group</b></u></a> Deadline 4 Submission - Response to Deadline 4
REP4-027	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 4 Submission - Further Written Representation
REP4-028	<a href="#"><u>Marine Management Organisation</u></a> Deadline 4 Submission - Response to Deadline 4
REP4-029	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 4 Submission - Comments on the Applicant's Response to Associated British Ports Relevant Representations and annexes
REP4-030	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 4 Submission - Comments on the Local Impact Report
REP4-031	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a>

	Deadline 4 Submission - Comments on the First Revised Draft Development Consent Order R1
REP4-032	<a href="#"><u>Clyde &amp; Co LLP on behalf of Associated British Ports</u></a> Deadline 4 Submission - Comments on the Applicant's Response to Examining Authority's First Written Questions and annexes
REP4-033	<a href="#"><u>Clyde &amp; Co LLP on behalf of Associated British Ports</u></a> Deadline 4 Submission - Comments on the draft Scheme of Operation
REP4-034	<a href="#"><u>Howes Percival LLP on behalf of Our Clients</u></a> Deadline 4 Submission - Comments on representations made by the Applicant and the Applicant's responses to Examining Authority's Written Questions and appendices
<p><b>Deadline 5 - 22 February 2019</b></p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings on 13 February 2019</li> <li>• Applicant's second revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 4</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP5-001	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 5 Submission - Cover Letter
REP5-002	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 5 Submission - Application Document Tracker
REP5-003	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 5 Submission - Applicant's revised draft Development Consent Order (dDCO) R3 - Clean
REP5-004	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 5 Submission - Applicant's revised draft Development Consent Order (dDCO) R3 - Track Changes
REP5-005	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 5 Submission - Statements of Common Ground Report - Clean

REP5-006	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Statements of Common Ground Report - Tracked
REP5-007	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Applicant's Responses to Interested Parties' Representations Submitted at Deadline 4
REP5-008	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Compulsory Acquisition Negotiations and Objections Tracker Revision 2
REP5-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Written summaries of oral submissions at Issue Specific Hearing 1 (draft DCO)
REP5-010	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Written summaries of oral submissions at Compulsory Acquisition Hearing 1
REP5-011	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Site Visit Information Pack for Accompanied Site Inspection 12 February 2019
REP5-012	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Chapter 12 of the Environmental Statement R1 - Clean
REP5-013	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Chapter 12 of the Environmental Statement R1 - Tracked
REP5-014	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Environmental Statement Volume 3 Appendix 18B Drainage Strategy and Plans Revision 2 - clean
REP5-015	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 5 Submission - Environmental Statement Volume 3 Appendix 18B Drainage Strategy and Plans Revision 2 - Tracked
REP5-016	<a href="#"><u>Suffolk County Council</u></a> Deadline 5 Submission - Response to Deadline 5
REP5-017	<a href="#"><u>Squire Patton Boggs (UK) LLP on behalf of <b>Statuslist Limited</b></u></a> Deadline 5 Submission - Response to Deadline 5

REP5-018	<a href="#"><u>Birketts LLP on behalf of <b>PFK Ling Limited</b></u></a> Deadline 5 Submission - Written Representation
REP5-019	<a href="#"><u>Birketts LLP on behalf of <b>PFK Ling Limited</b></u></a> Deadline 5 Submission - Response to Deadline 5 and Appendices
REP5-020	<a href="#"><u>Howes Percival LLP on behalf of <b>Our Clients</b></u></a> Deadline 5 Submission -Written summary of oral submission at Draft DCO hearing 13 Feb 2019
REP5-021	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Written summary of oral submission at Draft DCO hearing 13 Feb 2019
REP5-022	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Response to the Applicant's Response on Environmental Statement Matters
REP5-023	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Response to the Impact of the Scheme on the Port of Lowestoft Report
REP5-024	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Post Inquiry Note in respect of Compulsory Acquisition Matters
REP5-025	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Post Inquiry Note in respect of Funding Arrangements
REP5-026	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Annex 1 - 'Port of Lowestoft, Berth Utilisation Assessment - Years 2015 to 2017', ABPmer (February 2019)
REP5-027	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Annex 2- Off shore Wind Opportunities in the Port of Lowestoft, BVG Associates (January 2019)
REP5-028	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Annex 3- Overview of CTV Characteristics, ABPmer (February 2019)
REP5-029	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 5 Submission - Annex 4 - Extract of data from the A47 Bascule Bridge Lift Record Book

REP5-030	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 5 Submission - -Annex 5 - 'Vessel Mooring Systems in Tidal Ports', ABP Lowestoft (February 2019), annexing the ABPmer Mooring Analysis
REP5-031	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 5 Submission - Annex 6 - Response to the Justification and Traffic Effects of the draft Scheme of Operation report
REP5-032	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 5 Submission - Annex 7 -Response to the Technical Report - Review of Central and Western Bridge Options, Appendix B to the Applicant's Response to Written Representations
REP5-033	<a href="#">Shakespeare Martineau on behalf of <b>Cadent Gas Limited</b></a> Deadline 5 Submission - Response to Deadline 5
REP5-034	<a href="#">Dr David Bennett on behalf of <b>Lowestoft Cruising Club</b></a> Deadline 5 Submission - Written summary of oral submission at Draft DCO hearing 13 Feb 2019
REP5-035	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></a> Deadline 5 Submission - Further Written Representations
REP5-036	<a href="#">Marine Management Organisation</a> Deadline 5 Submission - Response to Deadline 5
REP5-037	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 5 Submission - Explanation of changes to draft DCO
<b>Deadline 6 – 5 March 2019</b>	
<ul style="list-style-type: none"> <li>Raw responses received by the Applicant to consultation on proposed changes to the application</li> </ul>	
REP6-001	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 6 Submission - Cover Letter
REP6-002	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 6 Submission - Consultation Responses
<b>Deadline 7 – 18 March 2019</b>	
<ul style="list-style-type: none"> <li>Written summaries of oral submissions put at hearings held on 7 and 8 March 2019</li> <li>Applicant's report dealing with consultation on changes to the application proposed in Deadline 4 submission</li> </ul>	

	<ul style="list-style-type: none"> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 6</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>
REP7-001	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 7 Submission - Cover Letter
REP7-002	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 7 Submission - Application Document Tracker Deadline 7 Submission - Application Document Tracker
REP7-003	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 7 Submission - Consultation Report on the Proposed Non-Material Changes to the Application
REP7-004	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 7 Submission - Response to Northumbrian Water Limited and NWES' Oral Submissions at 7-8 March 2019
REP7-005	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 7 Submission - Response to ABP's Deadline 5 and Oral Submissions at 7 & 8 March 2019 Hearings
REP7-006	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 7 Submission - Summary of oral submissions made by ABP at the examination hearing held on Thursday 7 March 2019 and Annexes
REP7-007	<a href="#"><u>Clyde and Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 7 Submission - Summary of oral submissions made by ABP at the examination hearing held on Friday 8 March 2019 and Annexes
REP7-008	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 7 Submission - ABP Curriculum Vitaes
REP7-009	<a href="#"><u>Lowesoft Cruising Club</u></a> Deadline 7 Submission - Discussion of Scheme of Operation
REP7-010	<a href="#"><u>Lowesoft Cruising Club</u></a> Deadline 7 Submission - Response to the Applicant's latest revised dDCO Deadline 5 submission - Article 40



REP7-011	<a href="#">Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></a> Deadline 7 Submission - Further Written Representations and Summary of oral submissions made at the Issue Specific Hearing
REP7-012	<a href="#">Nwes Property Services Ltd</a> Deadline 7 Submission - Post Hearing Submission
<b>Deadline 8 - 12 April 2019</b>	
<ul style="list-style-type: none"> <li>• Responses to the ExA's Second Written Questions</li> <li>• Comments on Applicant's report dealing with consultation on changes to the application proposed in Deadline 4 submission</li> <li>• Comments on any further information requested by the ExA and received to Deadline 7</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP8-001	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Cover Letter
REP8-002	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Application Document Tracker
REP8-003	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Compulsory Acquisition Negotiations and Objections Tracker - Revision 3
REP8-004	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Responses to the Examining Authority's Second Written Questions
REP8-005	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Summary of the Applicant's Oral Submissions at Issue Specific Hearing on Navigation Matters of 1 April 2019
REP8-006	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Applicant's Responses to Interested Parties' Representations Submitted at Deadline 7
REP8-007	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 8 Submission - Response to ABP's Summary of Case at 8 March Hearing and to Second Written Questions 1.11 to 1.13
REP8-008	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a>

	Deadline 8 Submission - Impact of the Scheme on the Port of Lowestoft - R1 Clean
REP8-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 8 Submission - Impact of the Scheme on the Port of Lowestoft - R1 Track Changes
REP8-010	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - ABP Response to the Examining Authority's Second Suite of Written Questions
REP8-011	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Summary of oral submissions made by ABP at the Issue Specific Hearing 2 (Reconvened) held on Monday 1 April 2019
REP8-012	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Comments on the Applicant Response to ABP's DL5 and Oral Submissions at 7 & 8 March 2019 Hearings
REP8-013	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 1 - Plan 1 Future Berthing Scenarios
REP8-014	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 1 - Plan 2 Future Berthing Scenarios
REP8-015	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 1 - Plan 3 Future Berthing Scenarios
REP8-016	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 1 - Plan 4 Future Berthing Scenarios
REP8-017	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 2 - North Quay Bollard Plan
REP8-018	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 3- Port of Lowestoft, Berth Utilisation Assessment - Years 2015 to 2017, ABPmer (April 2019) - Clean
REP8-019	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 3- Port of Lowestoft, Berth Utilisation Assessment - Years 2015 to 2017, ABPmer (April 2019) - Tracked
REP8-020	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 4 - Post Hearing Examination Note - Justification of Assumptions of Future Development at the Port of Lowestoft

REP8-021	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 5 - Assessment of Trends in the European CTV Market, 4C Offshore Limited (5 April 2019)
REP8-022	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 6 - Njord Offshore Crew Transfer Vessels - Future Vessel Development Plans Paper, ABP Lowestoft (April 2019)
REP8-023	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 7 - Statement given to the Examination by Andrew Harston, Regional Director for ABP's Short Sea Ports
REP8-024	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 8 Submission - Annex 8 - Post Examination Note - Impact of Additional Restrictions Imposed by the Scheme of Operation on Vessel Transit Times
REP8-025	<a href="#"><u>Marine Management Organisation</u></a> Deadline 8 Submission - Response to Deadline 8
REP8-026	<a href="#"><u>Anglian Water Services Limited</u></a> Deadline 8 Submission - Response to the Examining Authority's Written Questions
REP8-027	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 8 Submission - Response to Deadline 8
REP8-028	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 8 Submission - Written summary of oral case at Issue Specific Hearing 2 (Reconvened) 1st April 2019
REP8-029	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 8 Submission -Response to REP7-009 - Scheme of Operation
REP8-030	<a href="#"><u>Howes Percival LLP on behalf of <b>Nexen Group</b></u></a> Deadline 8 Submission - Response to the Examining Authority's Written Questions
REP8-031	<a href="#"><u>Howes Percival LLP on behalf of <b>Nexen Group</b></u></a> Deadline 8 Submission -Swept Path Analysis Nexen 2/01 to 2/07
REP8-032	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a>

	Deadline 8 Submission - Response to the Examining Authority's Written Questions and Further Written Representations
REP8-033	<a href="#">Nwes Property Services Ltd</a> Deadline 8 Submission - Response to the Examining Authority's Written Questions
REP8-034	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 8 Submission - Supporting Video
REP8-035	<a href="#">Squire Patton Boggs (UK) LLP on behalf of <b>Statuslist Limited</b></a> Deadline 8 Submission - Response to Deadline 8
<p><b>Deadline 9 – 26 April 2019</b></p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA’s Second Written Questions</li> <li>• Applicant’s third revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 8</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP9-001	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Cover Letter
REP9-002	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Application Document Tracker
REP9-003	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Applicant’s revised draft Development Consent Order (dDCO) R4 - Clean
REP9-004	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Applicant’s revised draft Development Consent Order (dDCO) R4 - Tracked
REP9-005	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Explanation of changes to draft DCO
REP9-006	<a href="#">Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></a> Deadline 9 Submission - Compulsory Acquisition Negotiations and Objections Tracker

REP9-007	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 9 Submission - Statements of Common Ground Report - Clean
REP9-008	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 9 Submission - Statements of Common Ground Report - Tracked
REP9-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 9 Submission - Comments on responses to the Examining Authority's Second Written Questions and to Interested Parties' Representations Submitted at Deadline 8
REP9-010	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 9 Submission - Response to ABP's Deadline 8 Submissions
REP9-011	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Comments on the Applicant's Response to ABP's Summary of Case at 8 March Hearing and to Second Written Questions 1.11 to 1.13
REP9-012	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Annex 1 - The Port of Lowestoft Master Plan Consultation Draft (April 2019)
REP9-013	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Annex 2 - A Peer Review and Assessment of the Applicant's pNRA ABPmer (April 2019)
REP9-014	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Annex 3 - ABP's comments on the Applicant's Port Impact Paper
REP9-015	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 9 Submission - Annex 4 - ABP's Comments on the Applicant's Oral Submission at the Issue Specific Hearing on Navigation Matters of 1 April 2019
REP9-016	<a href="#"><u>Howes Percival LLP on behalf of <b>Nexen Group</b></u></a> Deadline 9 Submission - Comments on the Applicants responses to the Examining Authority's second written questions
REP9-017	<a href="#"><u>Bryan Cave Leighton Paisner LLP on behalf of <b>Northumbrian Water Limited</b></u></a> Deadline 9 Submission - Response to Deadline 9
<b>Deadline 10 – 24 May 2019</b>	

	<ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at hearings held on 14 May 2019</li> <li>• Applicant’s fourth revised dDCO</li> <li>• An updated version of the Compulsory Acquisition Negotiations Tracker</li> <li>• An updated SoCG Report</li> <li>• An updated Application Document Tracker</li> <li>• Comments on any further information requested by the ExA and received to Deadline 9</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>
REP10-001	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Cover Letter
REP10-002	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Application Document Tracker
REP10-003	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Table of changes to application documents for Non-Material Changes
REP10-004	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Applicant’s revised draft Development Consent Order (dDCO) R5 - Clean
REP10-005	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Applicant’s revised draft Development Consent Order (dDCO) R5- Track changes
REP10-006	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Updated Book of Reference R2 – Clean
REP10-007	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Updated Book of Reference R2 – Track Changes
REP10-008	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - BoR Schedule of Changes
REP10-009	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Statement of Reasons (clean)
REP10-010	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Statement of Reasons (tracked)
REP10-011	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a>

	Deadline 10 Submission - Plans Drawings and Sections
REP10-012	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Location Plan (Sheet 1 of 1)
REP10-013	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - General Arrangement Plans – Key Plan
REP10-014	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - General Arrangement Plans P01 (Sheet 1 of 2)
REP10-015	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - General Arrangement Plans (Sheet 2 of 2)
REP10-016	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Land Plans (Sheet 3 of 5)
REP10-017	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Land Plans (Sheet 4 of 5)
REP10-018	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Land Plans (Sheet 5 of 5)
REP10-019	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Works Plan - Key Plan
REP10-020	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Works Plan (Sheet 2 of 2)
REP10-021	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Rights of Way and Access Plans - Key Plan
REP10-022	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Rights of Way and Access Plans (Sheet 1 of 2)
REP10-023	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Rights of Way and Access Plans (Sheet 2 of 2)
REP10-024	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Traffic Regulation Measures Plans – Key Plan
REP10-025	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 10 Submission - Traffic Regulation Measures Plans (Clearways and Prohibitions) (Sheet 1 of 3)
REP10-026	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Traffic Regulation Measures Plans (Clearways and Prohibitions) (Sheet 2 of 3)
REP10-027	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Traffic Regulation Measures Plans (Clearways and Prohibition) (Sheet 3 of 3)
REP10-028	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Traffic Regulation Measures Plans Speed Limits & Restricted Roads (Sheet 2 of 2)
REP10-029	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Classifications of Roads Plan
REP10-030	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Landscape Plans - Key Plan
REP10-031	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Landscape Plans – P01 (Sheet 1 of 2)
REP10-032	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Landscape Plans – P01 (Sheet 2 of 2)
REP10-033	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads Key Plan
REP10-034	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads (Sheet 5 of 9)
REP10-035	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads (Sheet 6 of 9)
REP10-036	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads (Sheet 7 of 9)
REP10-037	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans Side Roads (Sheet 9 of 9)



REP10-038	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans and Elevations - Key Plan
REP10-039	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans and Elevations - Mainline Key Plan
REP10-040	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans and Elevations - Mainline (Sheet 1 of 2)
REP10-041	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Engineering Sections Drawings, Plans and Elevations - Mainline (Sheet 2 of 2)
REP10-042	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Trees subject to Tree Preservation Order
REP10-043	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Limits of Dredging
REP10-044	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - New Bridge Area - Key Plan
REP10-045	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - New Bridge Area (Sheet 2 of 2)
REP10-046	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Harbour Limits Plan
REP10-047	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Rights of Navigation Plan
REP10-048	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figure 1.2
REP10-049	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 4.1 and 4.3
REP10-050	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 5.1 to 5.5

REP10-051	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figure 8.2
REP10-052	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 9.1, 9.3 and 9.4
REP10-053	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 11.3 to 11.6
REP10-054	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 12
REP10-055	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figure 13.1
REP10-056	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figure 15.2
REP10-057	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 17
REP10-058	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 18
REP10-059	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 2 Figures 19.2 and 19.3
REP10-060	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 3 Appendix 18A - Flood Risk Assessment Annex C: Figures 3.1 and 6.1
REP10-061	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Environmental Statement Volume 3 Appendix 18B - Drainage Strategy and Plans
REP10-062	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 10 Submission - Habitats Regulations Assessment Report Figure 1
REP10-063	<a href="#"><u>Marine Management Organisation</u></a> Deadline 10 Submission - Issue Specific Hearing 3 Notification Letter
REP10-064	<a href="#"><u>Birketts LLP on behalf of PFK Ling Limited</u></a> Deadline 10 Submission - written summary of the oral submissions made at the recent CAH hearing
REP10-065	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Cover Letter
REP10-066	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Application Document Tracker Deadline 10
REP10-067	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Updated Book of Reference R3 – Clean
REP10-068	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Updated Book of Reference R3 – Track Changes
REP10-069	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - BoR Schedule of Changes
REP10-070	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Applicant’s revised draft Development Consent Order (dDCO) R6 - Clean
REP10-071	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Applicant’s revised draft Development Consent Order (dDCO) R6- Track changes
REP10-072	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Explanation of changes to draft DCO
REP10-073	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Compulsory Acquisition Negotiation and Objections Tracker
REP10-074	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a> Deadline 10 Submission - Scheme of Operation for the new bridge - Clean
REP10-075	<a href="#"><u>Pinsent Masons LLP on behalf of Suffolk County Council</u></a>

	Deadline 10 Submission - Scheme of Operation for the new bridge - Tracked
REP10-076	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Statements of Common Ground Report - Clean
REP10-077	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Statements of Common Ground Report - Tracked
REP10-078	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Interim Code of Construction Practice (Appendix 5A of the ES) - clean
REP10-079	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Interim Code of Construction Practice (Appendix 5A of the ES) - Tracked
REP10-080	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 10 Submission - Summary of Applicant's Oral Submissions at Hearings on 14 May and Responses to Interested Parties' Deadline 9 Submissions
REP10-081	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Summary of oral submissions made by ABP at the examination hearing held on Monday 14 May 2019 and comments on the draft Development Consent Order
REP10-082	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Document 1 (Annex 1 - clean) - The Applicant's amendments to Article 40 of the dDCO
REP10-083	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Document 1 (Annex 1 - Track Change) - The Applicant's amendments to Article 40 of the dDCO
REP10-084	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Comments on the draft Scheme of Operation
REP10-085	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Document 2 (Annex 1) - The Applicant's amendments to draft Scheme of Operation (Revision 2)
REP10-086	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a>

	Deadline 10 Submission - Comments on the Applicant's response to ABP's issues raised in Deadline 8 submissions
REP10-087	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Further comment on the Applicant's Oral Submissions at the Issue Specific Hearing on Navigation Matters of 1 April 2019
REP10-088	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 10 Submission - Document 4 (Annex 1 ) - Port of Lowestoft Berth Utilisation
REP10-089	<a href="#"><u>Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></u></a> Deadline 10 Submission - Closing Submission, Document Tracker and Summary Position
REP10-090	<a href="#"><u>Howes Percival LLP on behalf of <b>Nexen Group</b></u></a> Deadline 10 Submission - Written Summary of Oral Submissions
<p><b>Deadline 11 - 4 June 2019</b></p> <ul style="list-style-type: none"> <li>• Comments on the ExA's dDCO</li> <li>• Comments on the RIES</li> <li>• Comments on any further information requested by the ExA and received to Deadline 10</li> <li>• Any further information requested by the ExA under Rule 17 of the Exam Rules</li> </ul>	
REP11-001	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Cover Letter
REP11-002	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Application Document Tracker
REP11-003	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Applicant's revised draft Development Consent Order (dDCO) R7 - Clean
REP11-004	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Applicant's revised draft Development Consent Order (dDCO) R7 - Track Changes
REP11-005	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - DCO Validation Report
REP11-006	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a>

	Deadline 11 Submission - LLTC Development Consent Order (DCO) R7 v Application DCO Revision 0 - Track Changes
REP11-007	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Scheme of Operation for the new bridge - Revision 2 - clean
REP11-008	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Scheme of Operation for the new bridge - Revision 2 - Track Changes
REP11-009	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Closing Submission (ABP)
REP11-010	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Closing Submissions (Other Interested parties)
REP11-011	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Updated Explanatory Memorandum - Clean
REP11-012	<a href="#"><u>Pinsent Masons LLP on behalf of <b>Suffolk County Council</b></u></a> Deadline 11 Submission - Updated Explanatory Memorandum - Track Changes
REP11-013	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Response to the Applicant's Deadline 10 submissions and the Examining Authority's draft Development Consent Order
REP11-014	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Closing Submissions
REP11-015	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Letter from ABP to the Secretary of State dated 31 May 2019
REP11-016	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Appendix 1
REP11-017	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Appendix 2
REP11-018	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a> Deadline 11 Submission - Appendix 3
REP11-019	<a href="#"><u>Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></u></a>

	Deadline 11 Submission - Appendix 4a
REP11-020	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 11 Submission - Appendix 4b
REP11-021	<a href="#">Clyde &amp; Co LLP on behalf of <b>Associated British Ports</b></a> Deadline 11 Submission - Appendix 5
REP11-022	<a href="#">Dr David B Bennett on behalf of <b>Lowestoft Cruising Club</b></a> Deadline 11 Submission - Response to Deadline 10 Submissions
REP11-023	<a href="#">Marine Management Organisation</a> Deadline 11 Submission - Comments on the Examining Authority's draft Development Consent Order
REP11-024	<a href="#">Womble Bond Dickinson (UK) LLP on behalf of <b>Network Rail</b></a> Deadline 11 Submission - Comments on the Examining Authority's draft Development Consent Order
REP11-025	<a href="#">Howes Percival LLP on behalf of <b>Nexen Group</b></a> Deadline 11 Submission - Closing position statement
REP11-026	<a href="#">Birketts LLP on behalf of <b>PFK Ling Limited</b></a> Deadline 11 Submission - Letter to the Examining Authority
<b>Other Documents</b>	
OD-001	<a href="#">LLTC - Regulation 24 Transboundary Screening</a>
OD-002	<a href="#">Suffolk County Council</a> Certificates under s58 and s59 of the Planning Act 2008 and Regulation 14 of The Infrastructure Planning (EIA) Regulations 2009, including updated Book of Reference
OD-003	<a href="#">Suffolk County Council</a> Section 56 Notice

## **APPENDIX C: LIST OF ABBREVIATIONS USED IN THE EXAMINATION**



<b>Abbreviation or usage</b>	<b>Reference</b>
AADT	Annual Average Daytime Traffic
ABP	Associated British Ports
AONB	Area of Outstanding Natural Beauty
AQD	Air Quality Directive
AQMA	Air Quality Management Area
AQS	Air Quality Strategy
AQSR	Air Quality Standards Regulations 2010
ASI	Accompanied Site Inspection
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CHA	Competent Harbour Authority
CO <sub>2</sub>	Carbon Dioxide
CO <sub>2e</sub>	Carbon Dioxide Equivalent
CoCP	Code of Construction Practice
CRTN	Calculation of Road Traffic Noise
CRWA	The Countryside and Rights of Way Act 2000
CTV	Crew Transfer Vessels
CWS	County Wildlife Site
dB	decibel
DCLG	Department for Communities and Local Government
dDCO	Draft Development Consent Order
DCO	Development Consent Order
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport

DMRB	Design Manual for Roads and Bridges
dSoO	Draft Scheme of Operation
EC	European Commission
ECHR	European Convention on Human Rights
EEA	European Economic Area
EIA	Environment Impact Assessment
EIMP	East Inshore Marine Plan
EOMP	East Offshore Marine Plan
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
ESC	East Suffolk Council
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ1	Examining Authority's First Written Questions
ExQ2	Examining Authority's Second Written Questions
FRA	Flood Risk Assessment
GIS	Geographic information systems
GVA	Gross Value Added
GYBC	Great Yarmouth Borough Council
ha	Hectare
HAT	Highest astronomical tide
HAWRAT	Highways Agency Water Risk Assessment Tool
HCA	Homes and Communities Agency
HGV	Heavy Goods Vehicle
HRA	Habitat Regulations Assessment
HRAR	Habitats Regulations Assessment Report

IAPI	Initial Assessment of Principal Issues
ICoCP	Interim Code of Construction Practice
IP	Interested Party
ISH	Issue Specific Hearing
km	kilometre
LHA	Local Highway Authority
LIR	Local Impact Report
LNR	Local Nature Reserve
LPA	Local Planning Authority
LSE	Likely Significant Effects
MCAA	Marine and Coastal Access Act 2009
MHCLG	Ministry of Housing, Communities and Local Government
MMO	Marine Management Organisation
NE	Natural England
NERCA	Natural Environment and Rural Communities Act 2006
NIDP	National Infrastructure Delivery Plan
NIP	National Infrastructure Plan
NMC	Non-Material Change
NMU	Non-Motorised Users
NO <sub>2</sub>	Nitrogen dioxide
NO <sub>x</sub>	Mono-nitrogen oxides NO and NO <sub>2</sub>
NPACA	The National Parks and Access to the Countryside Act 1949
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSNN	National Policy Statement for National Networks
NPSP	National Policy Statement for Ports

NRA	Navigational Risk Assessment
NRIL	National Rail Infrastructure Limited
NSIP	Nationally Significant Infrastructure Project
NVMS	Noise and Vibration Monitoring Strategy
OFH	Open Floor Hearing
PA2008	Planning Act 2008
PM	Preliminary Meeting
PM10	Particulate matter 10 micrometres or less in diameter
PM2.5	Particulate matter less than 2.5 micrometres in diameter
PNRA	Preliminary Navigational Risk Assessment
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
rdDCO	Recommended draft Development Consent Order (Appendix D)
RIES	Report on the Implications for European Sites
RBC	Riverside Business Centre
RR	Relevant Representation
SAC	Special Area of Conservation
SCC	Suffolk County Council
SHA	Statutory Harbour Authority
SO <sub>2</sub>	Sulphur Dioxide
SoCG	Statement of Common Ground
SoO	Scheme of Operation
SoR	Statement of Reasons
SoS	Secretary of State
SoSEFRA	Secretary of State for the Environment, Food and Rural Affairs

SoSHCLG	Secretary of State for Housing, Communities and Local Government
SoST	Secretary of State for Transport
SPA	Special Protection Area
SRN	Strategic Road Network
SSSI	Sites of Special Scientific Interest
SU	Statutory Undertaker
TEMPro	Trip End Model Presentation Programme
TP	Temporary Possession
UK	United Kingdom
UNEPC	United Nations Environment Programme Convention
USI	Unaccompanied Site Inspection
WCA	Wildlife and Countryside Act 1981
WDC	Waveney District Council
WebTAG	Department for Transport Web-based Traffic Analysis Guidance
WFD	Water Framework Directive
WGC	Waveney Gymnastics Club
WR	Written Representation

## **APPENDIX D: THE RECOMMENDED dDCO**

See separate document – combined pdf to be provided 6 September 2019



# Department for Transport

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30 April 2020

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED LAKE LOTHING THIRD CROSSING DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the Report dated 5 September 2019 of the Examining Authority, a Panel of two examining inspectors consisting of David Morgan and Stephen Roscoe (“the Panel”) who conducted an examination into the application made by Suffolk County Council (“the Applicant”) for the Lake Lothing Third Crossing Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- the late representations received by the Secretary of State following the close of the examination; and
- the further responses received from the consultation undertaken by the Secretary of State following the close of the examination in respect of the application.

2. The application was accepted for examination on 9 August 2018. The examination began on 5 December 2018 and was completed on 5 June 2019. The Secretary of State notes with sadness that Panel member Dr Peter Widd passed away unexpectedly in January 2019. Stephen Roscoe was subsequently appointed to restore the panel to two members. The Secretary of State notes that work undertaken by Dr Widd has been incorporated into the examination. The examination was conducted on the basis of written and oral submissions submitted to the Panel and by a series of hearings. The Panel also undertook three accompanied site inspections and one unaccompanied site inspection.

3. The DCO as applied for would grant development consent for a new multi-span single carriageway opening bascule bridge highway crossing which, via associated approach roads and new roundabout junctions connecting into the existing road network, would link the areas north and south of Lake Lothing, Lowestoft. The Proposed Development would also include new moorings within the inner harbour for recreational vessels and a new access road linking Waveney Drive to Riverside Road on the south side of Lake Lothing.

4. Published alongside this letter on the Planning Inspectorate’s website is a copy of the Panel’s Report of Findings, Conclusions and Recommendations to the Secretary of State



("the Panel's Report"). The main features of the proposal and the site is set out in Chapter 2 of the Panel's Report, and the Panel's summary of findings and conclusions is set out in Chapter 10.

### **Summary of the Panel's Recommendations**

5. The principal issues considered during the Examination on which the Panel has reached conclusions on the case for development consent are set out in the Panel's Report under the following broad headings:

- Legal and policy context (Chapter 3);
- Planning issues including conformity with national policy statements, marine policy statements, development plans and issues arising in local impact reports (Chapter 4);
- Finding and conclusions in relation to the planning issues on the environment (Chapter 5);
- Findings and conclusions in relation to the Habitats Regulations Assessment (Chapter 6);
- Conclusion on the case for Development Consent (Chapter 7);
- Compulsory Acquisition and Related Matters (Chapter 8); and
- Draft Development Consent Order and Related Matters (Chapter 9).

6. For the reasons set out in the Panel's Report, the Panel recommended that, subject to the necessary Crown Land consent being obtained, the DCO be made in the form set out in Appendix D to the Panel's Report.

### **Summary of Secretary of State's Decision**

7. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

### **Secretary of State's Consideration**

8. The Secretary of State's consideration of the Panel's Report, the late representations, the responses to the consultation and all other material considerations are set out in the following paragraphs. Where not stated in this letter, the Secretary of State can be taken to agree with the Panel's findings, conclusions and recommendations as set out in the Panel's Report and the reasons given for the Secretary of State's decision are those given by the Panel in support of the conclusions and recommendations. All "PR" references are to the specified paragraph in the Panel's Report and references to "requirements" are to those in Schedule 2 of the DCO as recommended by the Panel at Appendix D of the Panel's Report.

### **Legal and Policy Context**

9. On 22 March 2016, the Secretary of State for Transport made a direction under section 35 of the 2008 Act that he was satisfied that the Lake Lothing Third Crossing

development is “of national significance”. Although currently falling outside the definition of a “nationally significant infrastructure project” as provided for in section 14 of the 2008 Act, he directed that the development, together with any matters associated with it, be treated as development for which development consent is required. The reasons given are set out in PR 3.2.1.

10. Given that the application requires development consent, section 104(2) of the 2008 Act has effect in relation to the development to which the application relates. In determining this application, the Secretary of State must therefore have regard to the relevant National Policy Statements; any appropriate marine policy documents, determined in accordance with section 59 of the Marine and Coastal Access Act 2009; any Local Impact Reports (“LIR”) submitted; any matters prescribed in relation to the development of the description to which the application relates; and any other matters that the Secretary of State considers to be both important and relevant to the decision (PR 3.2.3). Accordingly, this application needs to be considered in accordance with the National Policy Statement (“NPS”) for National Networks (“NPSNN”).

11. The Secretary of State notes that the Proposed Development does not propose new port development but as it does cross Lake Lothing and interfaces with the Port of Lowestoft, he concurs with the Panel that relevant content within the NPS for Ports (“NPSP”) is an important and relevant consideration in the assessment of this application (PR 3.2.12-3.2.13).

12. The Secretary of State agrees that as the application is located within a Marine Plan area the objectives of the UK Marine Policy Statement are relevant and that the relevant marine plan is the East Inshore Marine Plan (PR 3.3.7-3.3.10). The relevant development plan and local strategy documents which the Secretary of State has had regard to are set out in PR 3.8.

13. The Secretary of State also notes the Panel’s assessment set out in PR 3.4 and 3.5 of European Law and related UK Regulations and other legal and policy provisions and agrees these are relevant and important matters to be considered in deciding this application. The Secretary of State notes that amendments to the Climate Change Act 2008 made by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 were not taken into account by the Panel due to timing (PR 3.5.3). The Secretary of State notes the assessment of carbon dioxide emissions undertaken in paragraphs 8.5.38-8.5.42 of the Environmental Statement (“ES”) and considers that the small increase in carbon dioxide emissions identified would not have a material impact on the ability of the Government to meet its carbon targets.

## **Findings and Conclusions in Relation to the Potential Impacts of the Development**

### Noise

14. The Secretary of State notes the policy requirements within the NPSNN and NPSP in relation to noise (PR 5.2.2-5.2.7) and the Applicant’s approach through the framework of the ES and through specific provisions in the draft Development Consent Order (“dDCO”) to meet these requirements (PR 5.2.8). Requirement 4 of Schedule 2 to the dDCO requires the submission of a Code of Construction Practice (“CoCP”) to be approved by the county planning authority prior to commencement of any part of the development (PR 5.2.11). The

Secretary of State notes concerns raised by interested parties principally Nwes and Northumbria Water over noise and vibration during the construction and operation of the crossing (PR 5.2.1). He further notes that Northumbria Water's objection has been withdrawn as a side agreement has been signed by the Applicant and Northumbria Water in relation to noise and vibration (PR 5.2.14). Nwes wrote to the Secretary of State on 14 January 2020 stating it had entered into a legal agreement with Applicant and withdrawn their objection. The Secretary of State therefore concurs with the Panel that noise effects fall well below a magnitude that can be considered material harm (PR 5.2.15), and supports the Panel's conclusions that the Proposed Development accords with policy expectations set out in paragraphs 5.186 to 5.200 of the NPSNN and paragraphs 5.10.1 to 5.10.13 of NPSP (PR 5.2.16).

### Air quality

15. The Secretary of State notes the policy requirements for air quality under the NPSNN and NPSP. This requires the Applicant to provide judgements on the risk as to whether the project would affect the UK's ability to comply with the Air Quality Directive ("AQD"); in particular that the Proposed Development should not result in any zone/agglomeration currently compliant with the AQD becoming non-compliant or undermine the ability of a non-compliant area seeking compliance (PR 5.3.2-5.3.3). However, he further notes that the Applicant's assessment of air quality effects in Chapter 8 of the ES concluded the Proposed Development will not affect the UK's ability to comply with the AQD, result in a zone/agglomeration becoming non-compliant or affect the ability to achieve regional compliance (PR 5.3.4).

16. The Secretary of State has noted that representations were made regarding the management of dust during construction and has noted the mitigation measures to be implemented through the CoCP which is capable of further refinement in accordance with Requirement 4 (PR 5.3.6-5.3.7). Having regard to these mitigation measures, the Secretary of State concurs with the Panel that although objections from the interested parties have not been withdrawn, the effects on air quality fall well below the magnitude of material harm and the impacts and effective mitigation have been comprehensively addressed by the Applicant (PR 5.3.8). The Secretary of State agrees with the Panel that air quality accords with policy expectations set out in section 5 of the NPSNN and sections 5.7 and 5.8 of the NPSP and thus does not weigh in the planning balance (PR 5.3.8).

### Traffic and Transportation

17. The Secretary of State notes the Applicant (who is also the local Highway Authority) in preparing the Transport Assessment considered both national and local policy. This included the NPSNN and National Planning Policy Framework as well as the local planning documents of Waveney District Council, the Suffolk Local Transport Plan and the Lowestoft Transport Strategy (PR 5.5.4).

18. Concerns of Interested Parties relate to the configuration of junctions with Riverside Way, parking provision on the new southerly access road and private access to properties (PR 5.5.1). Regarding the first two concerns, the Secretary of State has noted that late representations were made on behalf of Statuslist in respect of elements of the changes to the application proposed by the Applicant and subsequently accepted by the Panel and that agreement with Statuslist is anticipated, although had not been secured by the end of the Examination (PR 5.5.11). The Secretary of State has no evidence to suggest that these

agreements will not be concluded and notes the Panel's conclusion that detailed concerns over elements of the highways design have been substantively addressed in amendments to these areas (PR 5.5.15). An objection is still outstanding with British Steel Pension Fund Ltd on the adverse effect on access to one of their tenant's units. The Secretary of State notes this objection has not been replicated by present tenants of the site in question and there are no objections by Statutory Undertakers, or the Highway Authority that would support it. The Secretary of State concurs with the Panel that their concerns remain unsupported by technical evidence and fall well below a magnitude that can be considered material harm (PR 5.5.14-5.5.15).

19. The NPSNN sets out the need case for development on the national networks in order *inter alia* to address congestion, improve resilience and support social and economic activity. He agrees with the Panel that the Proposed Development will assist in delivering key objectives of the NPSNN and accords with the economic objectives of the NPSP (PR 5.5.16-5.5.17). The Secretary of State agrees with the Panel that the Proposed Development accords with local and regional transport policy, and insofar as the Proposed Development will form a link in the Trans-European Network and act as a tactical diversion for the Strategic Road Network, weighs significantly in favour of the Proposed Development (PR 5.5.18).

#### Historic Environment

20. The Secretary of State notes that Historic England's initial concerns on the direct impact of the development on non-designated heritage assets within the area of the development footprint have been addressed by the Applicant through provisions in the ES (PR 5.6.6). The Secretary of State has also had regard to concerns that were raised in relation to the impact of the Proposed Development on the South Lowestoft and Oulton Broad Conservation Areas and on the significance of a number of heritage assets through development within their setting. The Secretary of State notes that the specific Cultural Heritage and Townscape Visual Impact Chapters in the ES confirm that there are only limited views from these designated heritage assets and therefore that significant adverse impact on setting of these assets will be avoided and appropriately mitigated. (PR 5.6.7-5.6.8). The Secretary of State therefore concurs that the Proposed Development accords with paragraphs 5.120 to 5.142 of the NPSNN and paragraphs 5.12.1 to 5.12.20 of the NPSP (PR 5.6.8).

21. The Secretary of State notes that the Panel recommend the dDCO include a provision for the delivery of a project-specific Written Scheme of Investigation to minimise the impact on the historic environment (PR 5.6.6) and notes this is included in the recommended draft Development Consent Order ("rdDCO").

#### Navigation (Recreation and Leisure Related navigation and Commercial Port-Related Navigation)

22. The Secretary of State notes the concerns from Interested Parties regarding the effects on recreational and leisure navigation, and in particular concerns regarding impacts of the closure of the western harbour to access to the sea for a three-week period during the construction process (raised by Lowestoft Cruising Club); the provision of a waiting pontoon for leisure craft, and the mechanisms for consultation with leisure craft groups during and after the construction of the crossing (PR 5.7.2-5.7.3). The Secretary of State notes the Applicant's approach to address these concerns is included in the dDCO and the Draft Scheme of Operation which includes a three months period of prior notification of the

closure. The Draft Scheme of Operation also makes provision for a waiting pontoon in the harbour area between the existing and proposed bridges and for a robust consultation process in the event of modifications to the Scheme of Operation or if it were to be replaced (PR 5.7.4). The Secretary of State agrees with the Panel that the dDCO and the provisions of the Draft Scheme of Operation offer sufficient assurance to leisure craft users both during and after construction of the new crossing (PR 5.7.5) and that insofar as the provisions of the Preliminary Navigation Risk Assessment and Draft Scheme of Operation safeguard the recreational activities of the harbour, the Proposed Development avoids conflict with paragraph 4.6.2 of the NSPS (PR 5.7.6).

### The Effect of the Proposed Development on the Operation of the Port

23. The Secretary of State notes the opposition of Associated British Ports (“ABP”) and in its capacity as the Statutory Harbour Authority (“SHA”) to the Proposed Development. This is set out in PR 5.8.3-5.8.41. Clyde and Co acting on behalf of ABP wrote to the Secretary of State on 31 May 2019 (during the Examination) and on 11 October 2019 (in response to further consultation undertaken by the Secretary of State) expressing its opposition to the Proposed Development. It was explained that ABP would only withdraw its opposition if the Applicant would be prepared to provide the package of measures sought by ABP, which ABP considered was necessary so as to mitigate the harm that would otherwise be caused by the Proposed Development.

24. Clyde and Co wrote again on 6 April 2020 to inform the Secretary of State that ABP and the Applicant had completed a “Settlement Agreement” on 2 April 2020 and as a consequence ABP has formally withdrawn their objection to the Proposed Development.

25. The Secretary of State further notes the Panel’s position that whilst the Proposed Development would cause material harm to the operation of the port, the extent of this harm, when considered in the context of the port operation as a whole, might be characterised as no more than moderate (PR 5.8.156). The Secretary of State therefore concludes that the effect of the Proposed Development on the operation of the port would not justify refusing development consent even if a settlement had not been agreed between the Applicant and ABP.

### **Findings and Conclusions in Relation to Habitats Regulations Assessment (HRA)**

26. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site<sup>1</sup>. The Proposed Development is not directly connected with or necessary to the management of any European Site. The Secretary of State must therefore undertake an appropriate assessment (“AA”) if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects cannot be ruled out. The Secretary of State notes that the Applicant provided a Habitats Regulations Assessment Report (“HRAR”) with its DCO application (PR 6.3.2), which was later updated prior to the start of the Examination to contain an updated assessment of the predicted effects on the Outer Thames Estuary Special Protection Area (PR 6.3.3-6.3.4). The Secretary of State further notes that the screening assessment in the

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<sup>1</sup> The term “European Site” in the PR and in this decision letter includes Ramsar Sites.

HRAR concluded there were four sites which is likely to give rise to significant effects, alone or in-combination with other project or plans. These being:

- The Broads Special Area of Conservation
- Broadland Ramsar site
- Southern North Sea Site of Community Importance
- Outer Thames Estuary Special Protection Area

27. The Secretary of State notes the Applicant concluded that, with the implementation of the proposed pollution control mitigation measures set out in PR 6.6.2-6.6.3, the integrity of these sites would not be adversely affected by the Proposed Development (PR 6.6.5).

28. The Secretary of State notes Natural England (“NE”) did not submit any representations during the Examination but agreed that the application HRAR adequately assessed the risks to European sites and agreed its conclusions. Furthermore, the updated Statement of Common Ground confirmed that for the revised HRA, all HRA matters were agreed between the Applicant and NE (PR 6.4.11). In the Environment Agency’s response, it deferred to NE for HRA matters but considered that there were no overriding factors that suggested they should deviate from this position (PR 6.4.13). In addition, the Secretary of State notes that the Marine Management Organisation (“MMO”) deferred to the opinion of NE in relation to impacts on European sites but where mitigation measures are required to avoid or reduce any adverse effects on site integrity, the MMO would require such measures to be attached as Deemed Marine Licence conditions or included within an approved method statement (PR 6.4.16).

#### Secretary of State’s Conclusions

29. Having given consideration to the assessment material submitted during the Examination, the Secretary of State considers that likely significant effects in relation to construction and/or operations could not be ruled out. The Secretary of State therefore considered an AA should be undertaken to discharge his obligations under the Habitats Regulations. The AA is attached at annex B of this letter.

30. In the Secretary of State’s view, the material provided during the Examination contained sufficient information to inform consideration under regulation 63 of the Habitats Regulations as to the likely impact on the European Sites. The AA has considered the conclusions and recommendation of the Panel. The AA has also taken account of the advice of the Statutory Nature Conservation Body, which in this case is NE and the views of other interested parties as submitted during the Examination.

31. The Secretary of State, having carried out the AA, is content that the construction and operation of the Development, as proposed, with all the avoidance and mitigation measures secured in the DCO and the Deemed Marine Licence, will not adversely affect the integrity of any European Site. The Secretary of State’s therefore agrees with the Panel that the Proposed Development would have no adverse effect, either alone or in-combination with other plans or projects, on any European site (PR 6.7.2).

#### **Conclusion on the Case for Development Consent**

32. The NPSNN and the NPSP provide the primary basis for determining this application for development consent. The Secretary of State concurs with the Panel as set out in PR

7.2.1 that the Proposed Development would provide additional capacity that would help to reduce traffic congestion, improve journey times and support social and economic activity in accordance with the Government's vision and strategic objectives. The Secretary of State also agrees with the Panel that that the Proposed Development has an aspirational aesthetic component to its design, delivering an iconic new work of architectural engineering which achieves a key aim of NPS policy (PR 7.2.2). Taking into account the impacts of the Proposed Development, and the withdrawal of ABP's objection, the Secretary of State agrees with the Panel that any harm to the operation of the port, is clearly outweighed by the significant benefits the Proposed Development would bring (PR 7.4.5).

## **Compulsory Acquisition and Related Matters**

### Crown land

33. The Secretary of State notes that the Order limits include an area of land which includes Crown land. By virtue of section 135 of the 2008 Act these powers cannot be granted without the consent of the appropriate Crown authority. The appropriate Crown Authority is the government department having the management of the land. In this case, the land is managed on behalf of the Secretary of State for Transport by Highways England Historical Railways Estate. They advised the Applicant that the Department for Transport ("DfT") is the appropriate body to issue the consent. At the end of the Inquiry consent had yet to be granted and the Secretary of State wrote to DfT Estates Management on 7 October to inquire about the latest position. On 27 February 2020, DfT Estates wrote to the Secretary of State setting out it would have no objection to the compulsory acquisition by the Applicant of third party rights over the Crown land.

### Statutory Undertaker Land

34. The Secretary of State has considered the compulsory acquisition ("CA") powers sought by the Applicant in accordance with sections 122, 123, 127, and 138 of the 2008 Act, the Human Rights Act 1998 and relevant guidance. In doing so he has taken into account the cases of the Applicant and the affected persons as set out in PR 8.5.

35. The Secretary of State agrees with the Panel that in the context of section 127 of the 2008 Act that the CA and TP powers sought would be detrimental to the carrying out of ABP's statutory undertaking but this detriment would not be serious (PR 8.5.193). However, as set out in paragraph 24, the Secretary of State notes that ABP has now withdrawn their objection to the Proposed Development.

### Royal Mail Group

36. The Secretary of State notes the Royal Mail Group's concerns regarding removal of a post-box in Waveney Drive. The Secretary of State agrees with the Panel that the removal of the post-box would be necessary for carrying out the Proposed Development and that its removal would not cause serious detriment to the carrying on of the undertaking. He is therefore content, in the context of section 127 and section 138 of the 2008 Act, to grant the powers sought (PR 8.5.201-8.5.203).

Cara Jane Robinson

37. The Secretary of State notes that Ms Robinson entered a legal agreement with the Applicant and formally withdrew her objection on 2 December 2019, regarding CA of her property where she ran a beauty business.

PFK Ling Limited

38. The Secretary of State notes PFK Ling Limited (Lings) operates a car and motorcycle retailing business on a site which would adjoin the Proposed Development. Part of the frontage of the site would be subject to CA. Parts of the site would also be subject to the CA of rights for construction and maintenance purposes and others subject to TP for construction purposes. The Secretary of State notes the impact Lings believe it would have on its business; its view that it would have to relocate; and its concerns about the CA powers sought (PR 8.5.213-8.5.216).

39. The Secretary of State notes the measures proposed by the Applicant in response to Lings' objections set out in PR 8.5.217-8.5.226, including securing traffic management measures and continuous access to the Lings' site in the rdDCO through the CoCP, which the Applicant considers to adequately mitigate the impacts of the CA (PR 8.5.220). He also notes that the Applicant sought the TP of adjacent land to the north of the Lings' site to provide additional space for Lings' operations during construction (PR 8.5. 221). The dDCO would also return the land currently occupied by Enterprise (whom operate a car rental franchise on the site) to Lings (PR 8.5.219).

40. The Secretary of State notes the Panel's consideration of this matter at PR 8.5.227 and that, whilst the Enterprise franchise would probably leave the Lings' site following the CA of its lease, both Enterprise and Lings would have access to compensation for loss as a result (PR 8.5.229). The Secretary of State agrees with the Panel that whilst there would be business disruption due to the CA and TP powers, that this would not be severe or any reason to justify the relocation of the Lings business (PR 8.5.231), and that this objection should not prevent the grant of the CA or TP powers sought (PR 8.5.233).

The Nexen Group

41. The Secretary of State notes the Nexen Group consists of various companies which undertake various business activities on land close to the Proposed Development. Access to the Group's land would be compulsorily acquired and part of the land would be subject to the CA of rights for construction and maintenance access. The CA sought would sever the Group's land from the local highway network. Although an alternative access would be provided, the Group believes access to its retained land may be interrupted during the construction or maintenance of the Proposed Development, which could have a severe and irreparable impact on their business. The Group also set out that the CA of its existing access would limit its ability to service an area identified for future development within its land (PR 8.5.234-8.5.239).

42. The Secretary of State notes the Applicant's response and that access to the Group's land during construction would be secured under the CoCP. In addition, following representation by the Group, a second private means of access would be provided to the Group's land. The TP of the site for future development would be for the short term, and its possession and return would be subject to compensation provisions (PR 8.5.240-8.5.243).



43. The Secretary of State has noted the Panel's consideration of this matter set out in PR 8.5.246-8.5.254. This includes its view that the CA at the existing access has been adequately mitigated. On future development, the Secretary of State notes the Panel considers that the Proposed Development could delay the timing of future development on this part of the Group's site. The potential future development does not however appear to be imminent and the period of delay would reduce as construction took place. While access to the part of the Group's land identified for future development by way of the relocated access may well be less efficient in terms of future development, any impact on its value due to the change in access would be compensable. The Secretary of State therefore concurs with the Panel that this objection should not prevent the grant of the CA or TP powers sought (PR 8.5.254).

#### Nwes Property Services Limited Group

44. The Secretary of State notes objections regarding traffic, noise, fumes and parking problems from Nwes, a not for profit enterprise agency providing business support. Nwes owns the Riverside Business Centre which is situated close to the Proposed Development. The CA and TA powers sought would include outdoor areas around the business centre building and 8 car parking spaces. Nwes wrote to the Secretary of State on 14 January 2020, formally withdrawing their objection having entered into a legal agreement with the Applicant.

#### Statuslist Limited

45. The Secretary of State notes concerns from Statuslist, a registered proprietor of freehold land which would be subject to CA for a new access road under the rdDCO. The road would bisect the land and would impact on the current and future use of the land. He further notes that good progress has been made on an agreement between the parties (PR 8.5.264-8.5.266) and Heads of Terms ("HoTs") are now at an advanced stage (PR 8.5.269).

46. The Secretary of State has not received confirmation that an agreement has been finalised. In the absence of an agreement, and having regard to the Panel's views, including that the road is required to replace the existing accesses, and that in crossing undeveloped land the road would have least impact, the Secretary of State agrees there is a compelling case for the CA powers sought and that the TP powers are justified (PR 8.5.270-8.5.273).

#### B.S. Pensions Fund Limited

47. The Secretary of State notes the B.S. Pension Fund Limited owns land which would be subject to the CA of all interests and this land, and that in its immediate vicinity, is let to Wickes Building Supplies Limited. B.S. Pensions Fund Ltd consider the CA of this land would have the potential to adversely affect access to the unit let to Wickes Limited (PR 8.5.274). The Secretary of State further notes that progress has been made on voluntary acquisition and HoTs have been agreed but no agreement concluded by the end of the Examination (PR 8.5.276) and the Secretary of State has not received confirmation that an agreement has been finalised since the examination closed. The Panel's view is that the impact of the CA on the operation of the site is negligible, and, in the absence of an agreement, the Secretary of State agrees with the Panel that there is a compelling case for the CA powers sought and that the TP powers are justified (PR 8.5.277-8.5.278).

## Overall Conclusions

48. The Secretary has considered the general case for CA powers set out in PR 8.6.1-8.6.23. Taking into account the Panel's view, the Secretary of State notes that -

- there is significant public benefit to be weighed in the balance concerning the compelling case for CA (PR 8.6.11);
- interference with private rights have been minimised and mitigated where possible (PR 8.6.15);
- there are no viable main alternatives to the location of the Proposed Development (PR 8.6.18); and;
- that TP powers sought would be needed to facilitate implementation (PR 8.6.22).

The Secretary of State concurs with the Panel that the Applicant has made a case sufficient to justify its general request for CA and related powers (PR 8.6.23).

49. On the consideration of specific matters, the Secretary of State agrees that -

- there are no specific objections that the Applicant's position on CA and TP powers should be changed (PR 8.6.24);
- the CA of land and rights sought within the rdDCO can be purchased without serious detriment to the carrying on of the statutory undertaking concerned and that the extinguishment and removal of apparatus under the rdDCO would be necessary for the purpose of carrying out the Proposed Development (PR 8.6.25);
- in terms of the Human Rights Act 1998, DCLG Guidance and the requiring balancing exercise, the public benefit from the Proposed Development would clearly outweigh any interference with the human rights of those with an interest in the land affected (PR 8.6.37) and that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest (PR 8.6.38);
- there is no evidence that the Proposed Development would have any harmful equality impacts under section 149 of the Equality Act 2010 (PR 8.6.39-8.6.40); and
- there is no reason to doubt that the Applicant is of sound financial standing and that the necessary funds would become available to finance the project, including CA (PR 8.6.43).

50. In conclusion the Secretary of State agrees that the land which is sought would be in accordance with national policy and is required to facilitate or be incidental to the Proposed Development and the powers granted in the rdDCO should be granted.

## **Draft Development Consent Order and Related Matters**

51. The Secretary of State notes the final version of the dDCO was submitted by the Applicant on 5 June 2019, immediately prior to the closure of the examination, which has not been the subject of consultation and other parties have not had the opportunity to make representations to it. This has involved considerable changes to articles, Protective Provisions and Requirements in the DCO. As these impacted on ABP, the Secretary of State consulted with them by letter dated 27 September 2019 and Clyde & Co replied on their behalf on 11 October 2019.

52. The Secretary of State accepts the proposed amendments to articles 2 (definitions of "harbour authority" and "Lowestoft Harbour") and 20 (temporary suspension of navigation)

which the Applicant and ABP have both agreed and which he does not consider will materially affect any other party.

53 The Secretary of State concurs with the drafting of requirement 11 of the rdDCO for the reasons set out by the Panel (PR 9.4.3), and declines to delete the provision allowing recourse to arbitration.

54. The Secretary of State has considered the submissions made on article 46 and in particular, on proposed Byelaw 37G. Article 41 (operation of the bridge) requires the undertaker to operate the bridge in accordance with a scheme of operation, which is a certified document. Article 46 (byelaws) then provides that the undertaker may make byelaws on various matters including placing controls on the passage of vessels. Article 46(5) amends the existing 1993 harbour byelaws to add in a number of new byelaws. ABP object to proposed Byelaw 37G, which requires *inter alia*, compliance by vessel masters with the scheme of operation.

55. The Secretary of State considers that it is not clear how masters of vessels would be informed of the contents of the scheme of operation, and how they would understand the relationship between directions issued by the harbour authority and the scheme. It is also not clear why many of the matters set out in the scheme need to or should be enforced through byelaws, and to take precedence over the explicit provisions of other byelaws.

56. Clyde and Co on behalf of ABP have suggested that requirements imposed on anyone other than the undertaker should be imposed through a general direction made by the harbour authority not the scheme of operation. The Applicant has submitted in their letter of 5 June 2019 that there was no guarantee that ABP as harbour authority would issue a general direction and Byelaw 37G is therefore necessary to secure that the scheme of operation can be enforced.

57. Applying the provisions of the scheme of operation through a general direction would accord with common practice for regulating vessel operations in the harbour and reduce the sources of regulation applied to masters of vessels. The concerns of the Applicant can be addressed through a provision in the DCO requiring the issue by the harbour authority of a general direction. The Secretary of State considers that, given that the harbour authority have themselves suggested that this route would be preferable, in the particular circumstances imposing an obligation on a party other than the undertaker is justified. The Secretary of State has accordingly made amendments to articles 41 and 46.

58. The main modifications which the Secretary of State has decided to make to the DCO are as follows:

- Pre-ambule. Paragraphs 30A and 30B of Schedule 5 to the 2008 Act have been added to the vires paragraph, so as to provide cover for the deemed marine licence and conditions of that licence.
- Article 2 (interpretation). The definition of “Cadent” now contains the updated details for the Company and a definition for “MMO” has been included.
- Article 5 (limits of deviation). As the limits of deviation are to any extent with the limits allowed, the wording ‘so far as the undertaker considers to be necessary or convenient’ is redundant and has been deleted.
- Article 9 (classification of roads, etc.). The Secretary of State considers that the reference to two, potentially different dates in article 9(a) and (b) being the date roads are open to traffic or the date determined by the undertaker is unclear and

inconsistent. The references to ‘from such date as the undertaker may determine’ are therefore deleted. A small amendment has been made to the paragraph references set out in article 9(a) and (b)

- Article 10 (permanent stopping up of streets and private means of access). The original Part 2 of Schedule 4 contained no entries and so has been deleted. The remaining Parts of the Schedule have been renumbered.
- Article 26(2) and (3). The Secretary of State is concerned that the drafting of these articles as set out in the DCO may not in practice achieve its intended effect. The changes proposed in subsections (2) and (3) create a parallel power to that set out in article 49 (transfer of benefit of Order). Further the changes proposed provide that the benefit of the powers of compulsory acquisition of rights under the Order may be transferred to the statutory undertakers by way of written consent by the undertaker. This is in contrast to the procedure set out in article 49(1) which require the consent of the Secretary of State. There is no explanation set out in the Explanatory Memorandum for the need of this provision and how it would work, and the Secretary of State notes that these changes are not discussed within the ExA’s report. The Secretary of State has further concerns that the effect of the transfer of benefit to any statutory undertaker would not transfer the liability for the payment of compensation to them. The Secretary of State is unclear how this would be expected to work in practice and is concerned that this may result in a lack of understanding or appreciation on the part of any affected landowners, which the Secretary of State does not consider fair or reasonable. For these circumstances in relation to this application, the Secretary of State believes that fairness and transparency requires the removal of these provisions. Any transfer of functions or powers under the Order that needs to be made to a statutory undertaker can be undertaken by way of the procedure set out in article 49(1).
- Article 27 (acquisition of subsoil and airspace only). The reference in article 27(4)(c) has been amended to section 153(4A).
- Article 41 (operation of the new bridge). Article 41(8) has been amended to provide that the harbour authority must issue a general direction imposing the relevant requirements of the scheme of operation on masters of vessels.
- Article 46 (byelaws). Article 46(5)(b) inserts a new Part IVA (new bridge controls on vessels), from which Byelaw 37G has been deleted.
- Article 49 (transfer of benefit of Order, etc.). As a consequence of the matters set out in relation to article 26, paragraph (4) has been reworked so as to remove subparagraph (b).
- Schedule 2. The requested minor corrections to borehole references in paragraph 8(1)(a) and paragraph 8(2)(b) have been made. The requested changes have been made to paragraph 20(1) and (2) so as to refer to ‘the discharging authority’.
- Schedule 9. The requested amendment to correct a cross reference to refer to ‘Sheet 3’.

59. The Secretary of State is making a number of other minor textual amendments to the rdDCO set out in Appendix D to the Panel’s Report in the interests of clarity, consistency and precision. He considers that none of these changes, nor the changes set out in paragraph 58<sup>2</sup>, either individually or taken together, materially alter the effect of the DCO.

### **Secretary of State’s overall conclusion**

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<sup>2</sup> The number 58 replaces the numbers in the original decision letter, and corrects a typographical error.

60. For the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the Proposed Development. The permission with the appropriate crown land has now been obtained. Subject to the changes referred above in paras 96 he is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed.

### **Challenge to Decision**

61. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A of this letter.

### **Publicity for the Decision**

62 The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours faithfully,

Susan Anderson

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The Lake Lothing Third Crossing Development Consent Order 2020 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/lake-lothing-third-crossing/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).**

**Annex B**

**HABITATS REGULATIONS ASSESSMENT FOR AN APPLICATION UNDER  
THE PLANNING ACT 2008**

***Development title:* Lake Lothing Third Crossing**

**30 April 2020**

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# 1. Introduction

## Background

- 1.1 This is a record of the Habitats Regulations Assessment (“HRA”) that the Secretary of State for Transport has undertaken under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) in respect of the Development Consent Order (“DCO”), including the Deemed Marine Licence (“DML”) for the proposed Lake Lothing third crossing (“the Development”). The HRA includes an appropriate assessment for the purposes of regulation 63.
- 1.2 Suffolk County Council (“the Applicant”) applied to the Secretary of State for a DCO under section 37 of the Planning Act 2008 (“PA 2008”) for the Proposed Development. The Development application is described in more detail in section 2 of this report.
- 1.3 The Development constitutes a Nationally Significant Infrastructure Project by virtue of the direction given by the Secretary of State under section 35 of PA 2008. The Development application was accepted for examination by the Planning Inspectorate on 9 August 2018.
- 1.4 A two-person panel was appointed as the Examining Authority (“ExA”) for the application, David Morgan and Dr Peter Widd. Unfortunately, Dr Peter Widd passed away unexpectedly. The Secretary of State for the Ministry of Housing, Communities and Local Government subsequently appointed Inspector Stephen Roscoe to restore the panel to two persons. The Secretary of State notes that the work undertaken by Dr Widd was incorporated into the examination.
- 1.5 The Applicant submitted a request during the examination (on 29 January 2019) to make a series of changes to the Development. The request was subsequently amended in a letter from the Applicant dated 12 April 2019. The ExA accepted the proposed changes as being non-material in their letter dated 9 May 2019 and the Applicant duly produced revised application documents which were submitted at deadline 10 of the examination.
- 1.6 The ExA submitted the report of the examination, including its recommendation (“the ExA’s report”) to the Secretary of State on 5 September 2019. The Secretary of State’s conclusions in relation to European sites have been informed by the ExA’s report and the documents submitted during the examination as described below.

## Habitats Regulations Assessment

- 1.7 Council Directive 92/43/EEC (“the Habitats Directive”) and Council Directive 2009/147/EC (“the Birds Directive”) provide for the designation of sites for the protection of certain species and habitats. The sites

designated under these Directives are collectively termed European sites and form part of a network of protected sites across Europe, known as the Natura 2000 network. In the UK the Habitats Regulations transpose these Directives into national law and apply up to the 12 nautical mile limit of territorial waters.

- 1.8 The UK Government is also a signatory to the Convention on Wetlands of International Importance 1972 ("the Ramsar Convention"). The Ramsar Convention provides for the listing of wetlands of international importance. UK Government policy is to give sites listed under this convention ("Ramsar sites") the same protection as European sites.
- 1.9 For the purposes of this report, in line with the Habitats Regulations and relevant Government policy, the term European sites includes Special Areas of Conservation ("SACs"), Special Protection Areas ("SPAs"), candidate SACs ("cSAC"), potential SPAs ("pSPA"), possible SACs ("pSAC"), Sites of Community Importance (SCI), listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- 1.10 Regulation 63 of the Habitats Regulations requires that:  
*"(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which-  
(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and  
(b) is not directly connected with or necessary to the management of that site,  
must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives..."*
- 1.11 The Development is not connected with or necessary to the management of any European sites. Accordingly, the Secretary of State, as the competent authority for the purposes of the DCO/DML application, has undertaken an assessment in line with the requirements of the Habitats Regulations. This HRA is the record of the appropriate assessment for the purposes of regulation 63.

[The Report on the Implications for European Sites and consultation with the appropriate nature conservation body](#)

- 1.12 The ExA, with support from the Environmental Services Team at the Planning Inspectorate produced a Report on the Implications for European Sites ("the RIES"). The purpose of the RIES was to compile, document and signpost information submitted by the Applicant and Interested Parties ("IPs") during the examination up to deadline 9 of the examination. It was issued to ensure that IPs, including Natural England ("NE") had been formally consulted on Habitats Regulations matters during the examination. The consultation period ran between 3 May 2019 and 4 June 2019.

- 1.13 Regulation 63(3) of the Habitats Regulations requires the Secretary of State, if they undertake an appropriate assessment, to consult the appropriate nature conservation body and have regard to any representations made by that body. For the purposes of this application, NE are the appropriate nature conservation body.
- 1.14 NE did not submit any representations during the examination and did not comment on the RIES. However, two Statements of Common Ground ("SoCG") were agreed between the Applicant and NE, which were submitted at deadlines 4 and 5 of the examination. Both SoCG confirmed that all matters relating to HRA were agreed between them. The Applicant's Document SCC/LLTC/EX/69 'Proposed Non-Material Changes to the Application' confirms that NE were consulted on the non-material changes to the DCO.
- 1.15 The Secretary of State is satisfied that NE have been consulted and has been given suitable opportunities to make representations thereon in accordance with regulation 63(3) of the Habitats Regulations.

#### Documents referred to in the HRA

- 1.16 This HRA has taken account of and should be read in conjunction with the documents produced as part of the application and examination as listed in Annex 1 to this report.
- 1.17 The Applicant submitted a report entitled 'Lake Lothing Third Crossing Habitats Regulation Assessment Report' ("the HRAR") as part of their DCO application. A revised version was submitted to the examination on 20 November 2018 ("the UHRAR") which superseded the report submitted as an application document. A final version of the UHRAR ("the UHRAR 2") was submitted at deadline 3 of the examination
- 1.18 This HRA has considered the information presented in the UHRAR 2 rather than the original HRAR or the UHRAR.

#### Structure of this report

- 1.19 The remainder of this HRA is presented as follows
- Section 2 provides a general description of the Development.
  - Section 3 describes the location of the Development and its relationship with European sites.
  - Section 4 identifies the European sites and qualifying features subject to likely significant effects, alone or in combination with other plans or project.
  - Section 5 considers adverse effects on the integrity of European sites, alone or in combination with other plans or projects.

## 2. Development description

- 2.1 The Development would comprise the following components:
- an opening bascule bridge over the Port of Lowestoft, in Lake Lothing;
  - on the north side of Lake Lothing, a bridge over the East Suffolk railway line linked via an earth embankment to a new roundabout junction to the C970 Peto Way between Rotterdam Road and Barnards Way;
  - on the south side of Lake Lothing, a bridge over the northern end of Riverside Road linked by an earth embankment to a new roundabout junction with the B1531 Waveney Drive;
  - a control tower for the bascule bridge opening situated immediately to the south of Lake Lothing;
  - provision of a new pontoon bridge for use by recreational vessels situated to the east of the new highway crossing, in the inner harbour of Lake Lothing; and
  - changes to the existing local road network including the closure of several junctions, the construction of a replacement road between Riverside Road and Canning Road and a new access road to property at Riverside Business Park.
- 2.2 The Development would be approximately 1km in length. During operation it would be able to carry both vehicular and non-motorised road users including pedestrians, while allowing large vessels to access the Port of Lowestoft.
- 2.3 The works to facilitate the construction, operation and maintenance of the Development include the installation of road drainage and lighting, landscaping and diversion and installation of utility services. The road drainage will connect to existing drainage systems via a Sustainable Drainage System (SuDS).
- 2.4 Construction of the Development is expected to take approximately two years. It would involve the following activities:
- site clearance including breaking hardstanding, demolition of buildings and vegetation clearance;
  - establishment of three construction compounds within the Order limits, providing parking for staff, storage areas and site offices;
  - use of generators, temporary machinery and lighting;
  - installation of cofferdams and temporary piers for the bridge construction (the worst case scenario would see the construction of cofferdams from both the north and south quays);
  - sediment removal and disposal of suitable sediment to an offshore disposal site;
  - piling into the lake bed to form the foundations of the bascule bridge and its approaches;
  - use of floating barges to construct the bridge piers and deck;
  - levelling and earthworks using scrapers, bulldozers and dump trucks;
  - import and export of material to form the carriageway;

- piling for the foundations of the bridge over the East Sussex railway line;
  - diversion of utilities and telecommunications; and
  - temporary road closures and diversions.
- 2.5 Routine maintenance of the bascule bridge may include dredging of Lake Lothing and could also affect existing dredging activities undertaken by Associated British Ports in relation to the Port of Lowestoft.
- 2.6 Decommissioning works are yet to be determined but the Applicant has advised that the Development will be designed to have an operational life of at least 120 years.
- 2.7 The Applicant proposed a number of non-material changes that consist of:
- a new turning head on Canning Road;
  - revised parking provision in Riverside Road and Canning Road;
  - amendment to/clarification of limits of deviation for elements of the Development;
  - addition of a new private means of access to Network Rail land;
  - addition of a new private means of access to the Nexen site;
  - addition of a new private means of access to the MotorLings site; and
  - addition of a T-junction arrangement on the new access road.
- 2.8 The potential effects on European sites associated with the construction, operation and decommissioning of the Development are discussed in section 4 of this HRA.

### 3. Project location and relationship with European sites

#### Location and existing land use

- 3.1 Lake Lothing is located in Lowestoft. It is a saltwater waterbody linking the North Sea and the Broads National Park; it divides the north and south parts of Lowestoft. There are two existing bridges crossing Lake Lothing, Mutford Bridge (to the west of the Development) and the A47 Bascule Bridge (to the east of the Development).
- 3.2 The Port of Lowestoft lies between the north and south sections of Lake Lothing. It is divided into inner and outer harbours. Lake Lothing constitutes the inner harbour and contains the Town Quay, South Quay, Silo Quay, North Quay, Shell Quay, the Lowestoft Haven Marina and a central navigation channel. The outer harbour lies to the west of the A47 Bascule Bridge and is constructed from breakwaters. It comprises the Hamilton Dock, Waveney Dock, Trawl Dock and a yacht marina.
- 3.3 The Development would cross from Peto Way (located to the north of Lake Lothing) to the B1531 Waveney Drive (located on the south side of Lake Lothing). On the northern side of Lake Lothing, the land within the Order limits includes operational land within the Port of Lowestoft and land relating to the East Sussex railway line. On the southern side of Lake Lothing within and adjacent to the Order limits are a number of commercial and municipal buildings, including a manufacturer of forklift trucks and a car sales business.
- 3.4 In the area surrounding the Order limits on both sides of Lake Lothing, the land uses are mainly urban and consist of a mixture of transport, residential and commercial uses. The Port of Lowestoft operations cover approximately 40ha of the land on the northern edge of Lake Lothing. There are a number of significant transport links running through the area including the A47 and A12 which lie to the east of the Development and the A1177 which runs to the west. The East Sussex railway line runs parallel to the northern edge of Lake Lothing and connects to Lowestoft railway station centre at a point west of Lowestoft town centre.

#### European sites potentially affected by the Development

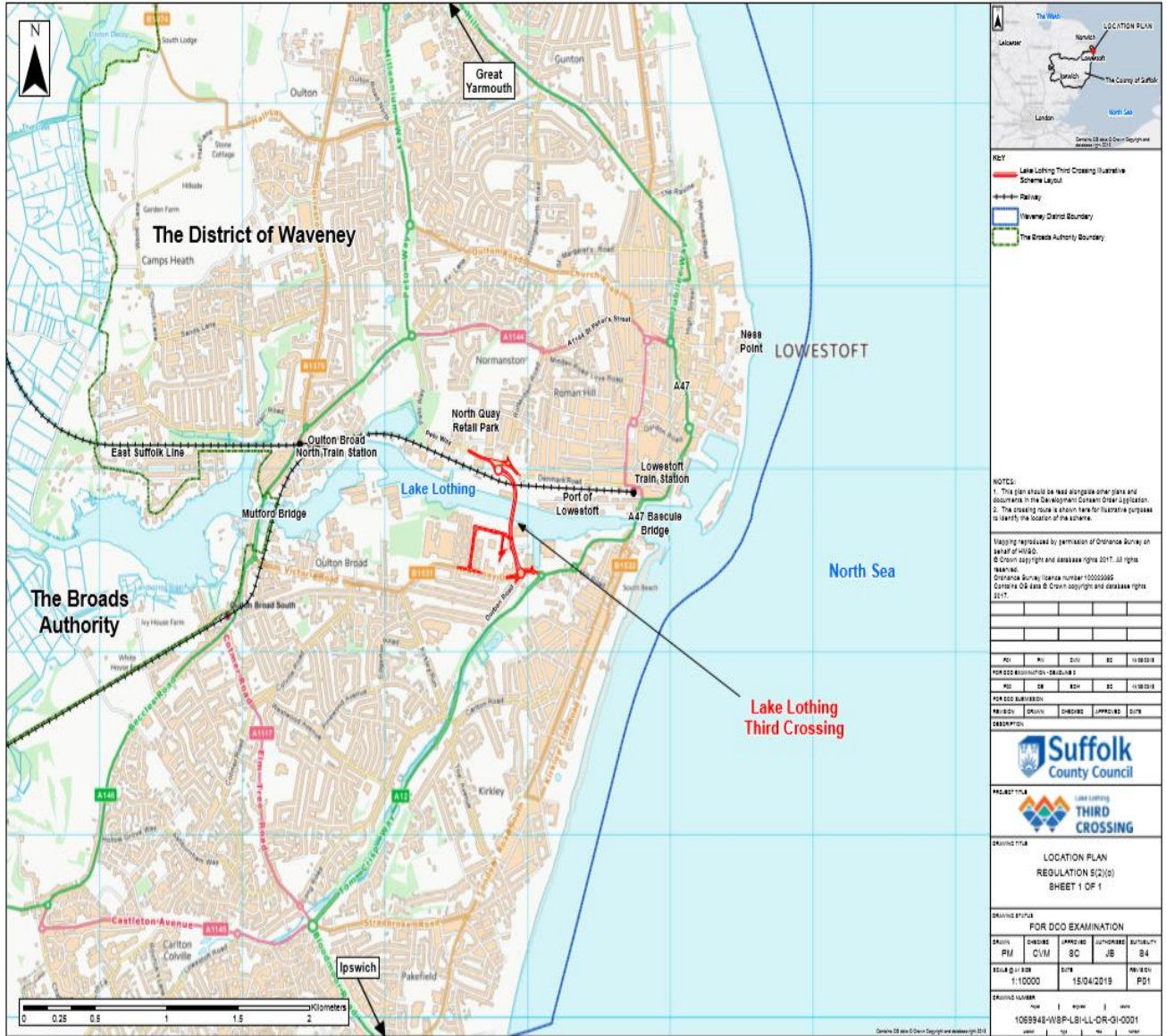
- 3.5 The Order limits of the Development do not overlap with the boundaries of any European sites. The Applicant's UHRAR 2 identifies six European sites within 30km of the Development for which there could be pathways of effect. The environmental impact assessment (EIA) Scoping Opinion issued by the Planning Inspectorate to the Applicant on behalf of the Secretary of State requested that the Applicant also address any effects on the Alde-Ore Estuary SPA which is located more than 30km away. NE also endorsed this approach through their EIA scoping consultation response.
- 3.6 Accordingly, the Applicant identified seven European sites for inclusion within the URAR 2:
  - The Broads SAC;

- Broadland SPA;
- Broadland Ramsar site;
- Southern North Sea SAC;
- Outer Thames Estuary SPA;
- Benacre to Easton Bavents SPA
- Alde-Ore Estuary SPA.

3.7 No evidence was presented during the examination to suggest that effects could occur to any other European sites. The Secretary of State is therefore satisfied that no other European sites need to be considered in this HRA.



# Location of the Development





#### 4. Assessment of likely significant effects (LSE)

##### Potential effects from the Development

4.1 The UHRAR 2 identified the following potential effects which could occur as a result of construction, operation and decommissioning activities necessary for the Development:

- direct habitat loss;
- displacement of species as a result of noise or visual disturbance;
- changes to water quality as a result of sediment re-suspension and deposition; and
- changes to air or water quality as a result of the emission of pollutants.

4.2 No evidence was presented during the examination that the development was likely to give rise to any other effects on European sites.

##### Sites and features which could be affected

4.3 The Applicant's UHRAR 2 screened the sites and qualifying features listed in Table 4.1 to establish if significant effects were likely. The Secretary of State is content that this list includes all of the sites and qualifying features which require to be considered.

##### Conservation objectives

4.4 The conservation objectives for European sites define the desired state for a European site when it will contribute to favourable conservation status for the designated features. The conservation objectives, as published by NE and the Joint Nature Conservation Committee are provided in Annex 2 of this HRA.

4.5 Conservation objectives are not published for Ramsar sites. However, since the features of the Ramsar site are similar to those for The Broads SAC and the Broadlands SPA, this HRA has treated the conservation objectives for those sites as a proxy for the Ramsar site.

##### Assessment of in-combination effects

4.6 The Applicant's UHRAR 2 presented the other projects (no plans were identified) which were reviewed for potential in-combination effects with the Development on European sites. The projects assessed in the UHRAR 2 were the:

- Former Sanyo Site, School Road, Lowestoft (DC/15/2004/RG3);
- Brooke Peninsula and Jeld Wen mixed use development (DC/13/3482/OUT);
- Lowestoft Tidal Barrier;
- East Anglia Array Windfarm (East Anglia ONE and East Anglia THREE);
- Great Yarmouth Third River Crossing; and
- Sizewell C nuclear power station.

Having considered the list presented in the UHRAR 2, the Secretary of State is content that all projects with the potential to have in-combination effects have been identified.

Conclusions on LSE

4.7 The Applicant’s UHRAR 2 concluded that, having regard to the distances between the Development, the other projects and the European sites under consideration, there would be no direct habitat loss, displacement of species or changes to air quality. Effects on water quality from sediment re-suspension was excluded on the basis of the modelling undertaken by the Applicant.

**Table 4.1 – Sites screened in Applicant’s UHRAR 2**

<b>Name of European site</b>	<b>Qualifying features</b>
The Broads SAC (approximately 2.4km west of the Order limits)	Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara</i> species
	Natural eutrophic lakes with <i>Magnopotamion</i> or <i>Hydrocharition</i> – type vegetation
	Transition mires and quaking bogs
	Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davalliana</i>
	Alkaline fens
	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i>
	Molinia meadows on calcareous, peaty or clayey-silt-laden soils
	Desmoulin’s whorl snail
	Fen orchid
	Ramshorn snail
	Otter
	Broadland SPA (approximately 2.4km west of the Order limits)
Bewick's swan (non-breeding)	
Whooper swan (non-breeding)	
Marsh Harrier (breeding)	
Hen harrier (non-breeding)	
Ruff (non-breeding)	
Wigeon (non-breeding)	
Gadwall (non-breeding)	
Shoveler (non-breeding)	

Broadland Ramsar site (approximately 2.4km west of the Order limits)	Criterion 2 (site supports a number of rare species and habitats within the biogeographical zone context):
	<ul style="list-style-type: none"> <li>• Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i></li> <li>• Calcium-rich fen dominated by great fen sedge (saw sedge)</li> <li>• Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)</li> <li>• Alkaline fens</li> <li>• Desmoulin`s whorl snail</li> <li>• Otter</li> <li>• Fen orchid</li> </ul>
	Criterion 6 (site supports species/populations occurring at international level) – peak counts in winter:
	<ul style="list-style-type: none"> <li>• Bewick's swan</li> <li>• Wigeon</li> <li>• Gadwall</li> <li>• Shoveler</li> </ul>
	Identified subsequent to designation for possible future consideration under Criterion 6 (peak counts in winter):
	<ul style="list-style-type: none"> <li>• Pink-footed goose</li> <li>• Greylag goose</li> </ul>
Southern North Sea SAC	Harbour porpoise
Outer Thames Estuary SPA	Red-throated diver (non-breeding)
	Little tern (breeding)
	Common tern (breeding)
Benacre to Easton Bavents SPA	Bittern (breeding)
	Little tern (breeding)
	Marsh harrier (breeding)
Alde-Ore Estuary SPA	Avocet (breeding and non-breeding)
	Little tern (breeding)
	Marsh Harrier (breeding)
	Sandwich tern (breeding)
	Lesser black-backed gull (breeding)
	Redshank (non-breeding)
	Ruff (non-breeding)

- 4.8 The UHRAR 2 states impacts from noise due to piling would not lead to LSE on the harbour porpoise population associated with the Southern North Sea SAC because of the distance between the European site and the Development. The Applicant confirmed its intent to comply with the Statutory Nature Conservation Agency protocol for minimising harm to individual marine mammals but as a matter of good practice rather than any form of mitigation for the effects of the Development.
- 4.9 The only LSE identified in the UHRAR 2 was from impacts to water quality, should a release of pollutants occur at any stage in the lifetime of the Development. There was no discernible pathway of effects for several of the European sites considered in the UHRAR 2 which could result in LSE. The UHRAR 2 therefore concluded that there would be no LSE as a result of the Development, either alone or in-combination with other plans or projects for:
- Broadland SPA;
  - Benacre to Easton Bavents SPA; and
  - Alde-Ore Estuary SPA.
- 4.10 The Secretary of State considers that the screening exercise carried out by the Applicant in UHRAR 2 is appropriate and that the only LSE to be considered is water quality. The Secretary of States agrees that there are no LSEs for Broadland Spa, Benacre to Easton Bavents SPA and the Alde-Ore Estuary SPA which require to be considered further in this HRA.
- 4.11 For the remaining sites, the designated features include mobile species which are likely to spend part of their time outside the boundaries of the European sites and could therefore be vulnerable to effects on water quality. The sites and features for which LSE were identified from the Development alone or in combination with other plans or projects were:
- The Broads SAC – otters;
  - Broadland Ramsar site – otters;
  - Southern North Sea SAC – harbour porpoise; and
  - Outer Thames Estuary SPA – red-throated diver.
- 4.12 The SoCG between NE and the Applicant stated that NE agreed with the Applicant’s approach and conclusions in the UHRAR 2. NE did not submit any other representations to the examination. The SoCG between the Applicant and Suffolk County Council/Waveney District Council also demonstrates agreement on the approach and conclusions of the original HRAR. The Environment Agency (EA) and Marine Management Organisation (MMO) advised that they would defer to NE’s opinion in relation to effects on European sites.
- 4.13 The Secretary of State is content that the correct European sites and features have been identified and assessed in relation to LSE. The Secretary of State is also content that the correct European sites, features and effects are progressed to the appropriate assessment in section 5 of this HRA.

## 5. Appropriate assessment

### Introduction

- 5.1 As LSE cannot be excluded, the Secretary of State, as the competent authority is required to undertake an appropriate assessment to determine the implications for the conservation objectives of the affected European sites. In line with the requirements of regulation 63 of the Habitats Regulations, the competent authority *'...may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site...In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given'*.
- 5.2 As noted in section 1 of this HRA, the competent authority is obliged to consult the appropriate nature conservation body and have regard to any representations made by that body.
- 5.3 If the competent authority cannot exclude adverse effects on the integrity of the affected European sites on the basis of objective scientific evidence, then it can only consent a plan or project if it complies with the requirements of regulation 64 of the Habitats Regulations. This means that there must be no alternative solutions to the delivery of the plan or project that would have lesser effects on the European sites, the plan or project must be delivered for imperative overriding reasons of public interest. In addition, regulation 68 requires compensatory measures to be secured which maintain the overall coherence of the Natura 2000 network.

### Effects on the integrity of the European sites

- 5.4 The Applicant's conclusion in the UHRAR 2 is that adverse effects on the integrity of European sites can be avoided with the implementation of appropriate pollution control measures. If contamination of Lake Lothing is avoided through implementation of such measures, there would be no implications for the conservation objectives of any of the European sites under consideration.
- 5.5 To address effects during construction, the Applicant produced an interim code of construction practice (ICoCP) which outlined the measures which would be taken by the contractor responsible for building the Development. The ICoCP is a certified document to the DCO.
- 5.6 Requirement 4 of the DCO secures the implementation of a full code of construction practice as follows:  
*"(1) No part of the authorised development may commence until a code of construction practice for that part of the authorised development has been submitted to the county planning authority by the undertaker following consultation with the Environment Agency, the harbour authority and the local planning authority and the submitted code of*

*construction practice has been approved by the county planning authority.*

*(2) Any code of construction practice produced under paragraph (1) must be in accordance with the interim code of construction practice.*

*(3) The authorised development must be carried out in accordance with the code of construction practice produced under paragraph 1."*

- 5.7 To address effects during operation, the Applicant produced a drainage strategy which describes the structures and measures which will be implemented to deal with pollutants from road run-off. The measures would also provide protection from accidental spillage of pollutants, for instance as a result of a road traffic accident. The drainage strategy is also a certified document.
- 5.8 Delivery of the drainage strategy is secured through requirement 6 of the DCO and is worded as follows:  
*"(1) No part of the authorised development which comprises any part of a surface water drainage system must commence until written details of that surface water drainage system have been submitted to the county planning authority by the undertaker following consultation with the local planning authority, the harbour authority and the surface water drainage system has been approved in writing by the county planning authority.  
(2) The surface water drainage system submitted for approval by the county planning authority under sub-paragraph (1) must be in accordance with the drainage strategy.  
(3) The surface water drainage strategy must be constructed in accordance with the approved detailed referred to in sub-paragraph (1)."*
- 5.9 The UHRAR 2 states that measures followed during decommissioning of the Development would broadly follow those used during construction. However, the DCO does not seek powers to decommission the Development at the end of its lifetime.
- 5.10 The review of in-combination effects in UHRAR 2 concludes that there would be no additional effects on any of the European sites. Interactions between the effects of the Development and the effects from the Great Yarmouth Third River Crossing, East Anglia ONE and East Anglia THREE wind farms and Sizewell C were excluded on the basis of their distance from the Development.
- 5.11 In-combination effects from the Lowestoft Tidal Barrier were not predicted because of the scale of the development and the likely need to include suitable pollution control measures in any consent granted for the project. The UHRAR 2 also notes that the application for the Tidal Barrier had not been submitted, making it unlikely that it would be constructed at the same time as the Development. In-combination effects from the other projects under consideration were excluded because the consents for these projects already secure measures to mitigate effects on water quality.

## Conclusions on the effects on the integrity of the European sites

- 5.12 The mitigation measures proposed by the Applicant for construction will be designed in line with best practice Pollution Prevention Guidance and would be agreed with the EA prior to the commencement of construction. The mitigation measures during operation will follow the guidance within Highways England's Design Manual for Roads and Bridges and the EA's current advice on good practice. Any alteration in effects on water quality as a result of the non-material changes to the DCO would still be addressed by the mitigation measures proposed by the Applicant and secured by the DCO.
- 5.13 As noted in section 4 of this HRA, NE agreed with the Applicant's approach and conclusions regarding effects on European sites. No other interested parties raised specific concerns about potential effects on the integrity of European sites.
- 5.14 The Secretary of State is confident that the mitigation measures will be effective. With those measures in place, it does not appear that there would be any implications for the achievement of the conservation objectives for the relevant European sites. The Secretary of State therefore agrees with the conclusions of the recommendation report that there would be no adverse effects on the integrity of any European site.

## ANNEX 1 – DOCUMENTS USED TO INFORM THIS HRA

### **Application documents**

Lake Lothing Third Crossing Environmental Statement

Lake Lothing Third Crossing Habitats Regulations Assessment Report (June 2018)

### **Examination documents produced by Applicant**

Application Document Tracker Deadline 7

Covering letter for deadline 11 submissions

Habitats Regulations Assessment Report Figure 1

Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report (November 2018)

Lake Lothing Third Crossing Updated Habitats Regulations Assessment Report Revision 2 (January 2019)

Proposed Non-Material Changes to the Application (January 2019)

Response to the Examining Authority's Written Questions

Response to Written Representations and Interested Parties' Responses to Written Questions

Statements of Common Ground Report (November 2018)

Statements of Common Ground Report (January 2019)

Statements of Common Ground Report (February 2019)

Table of changes to application documents for Non-Material changes

### **Examination documents produced by Examining Authority**

Notification of Procedural Decision in respect of proposed changes to the application

Report on the Implications for European Sites for the Lake Lothing third crossing

Written Questions (December 2018)

### **Examination documents produced by Interested Parties**

Environment Agency Response to the Examining Authority's Written Questions

Marine Management Organisation Deadline 3 Response to the Examining Authority's Written Questions

Marine Management Organisation Deadline 4 Response to the Examining Authority's Written Questions



## ANNEX 2 – CONSERVATION OBJECTIVES

### Alde-Ore Estuary SPA

The site's conservation objectives apply to the site and the individual species and/or assemblage of species for which the site has been classified (the "Qualifying features" listed below).

The objectives are to ensure that, subject to natural changes, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of each of the qualifying features; and
- the distribution of qualifying features within the site.

This should be read in conjunction with the accompanying supplementary advice...which provides more detailed information to help achieve the objectives set out above, including which attributes should be maintained and which restored.

### Qualifying features

- Avocet (breeding and non-breeding)
- Lesser black-backed gull (breeding)
- Little tern (breeding)
- Marsh harrier (breeding)
- Redshank (non-breeding)
- Ruff (non-breeding)
- Sandwich tern (breeding)

### Benacre to Easton Bavents SPA

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of each of the qualifying features; and
- the distribution of qualifying features within the site.

The conservation objectives should be read in conjunction with the accompanying *Supplementary Advice* document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

### **Qualifying Features**

- Botaurus stellaris; Great bittern (Breeding)
- Circus aeruginosus; Eurasian marsh harrier (Breeding)
- Sterna albifrons; Little tern (Breeding)

### [Broadland SPA](#)

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of each of the qualifying features; and
- the distribution of qualifying features within the site.

### **Qualifying features:**

- Botaurus stellaris; Great bittern (Breeding)
- Cygnus columbianus bewickii; Bewick's swan (Non-breeding)
- Cygnus; Whooper swan (Non-breeding)
- Anas penelope; Eurasian wigeon (Non-breeding)
- Anas strepera; Gadwall (Non-breeding)
- Anas clypeata; Northern shoveler (Non-breeding)
- Circus aeruginosus; Eurasian marsh harrier (Breeding)
- Circus cyaneus; Hen harrier (Non-breeding)
- Philomachus pugnax; Ruff (Non-breeding)

### [Outer Thames Estuary SPA](#)

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;

- the supporting processes on which the habitats of the qualifying features rely;
- the populations of each of the qualifying features; and
- the distribution of qualifying features within the site.

The conservation objectives should be read in conjunction with the accompanying *Supplementary Advice* document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

### **Qualifying features**

- *Gavia stellata*; Red-throated diver (Non-breeding)
- *Sterna hirundo*; Common tern (Breeding)
- *Sternula albifrons*; Little tern (Breeding)

### [The Broads SAC](#)

With regard to the SAC and the natural habitats and/or species for which the site has been designated (the "Qualifying Features") listed below, and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving Favourable Conservation Status of its Qualifying Features by maintaining or restoring;

- the extent and distribution of qualifying natural habitats and habitats of qualifying species;
- the structure and function (including typical species) of qualifying species;
- the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;
- the populations of qualifying species; and
- the distribution of qualifying features within the site.

The Objectives should be read in conjunction with the accompanying *Supplementary Advice* document which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

### **Qualifying features**

- Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp.; Calcium-rich nutrient-poor lakes, lochs and pools
- Natural eutrophic lakes with *Magnopotamion* or *Hydrocharition*-type vegetation; Naturally nutrient-rich lakes or lochs which are often dominated by pondweed
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*); Purple moor-grass meadows

- Transition mires and quaking bogs; Very wet mires often identified by an unstable `quaking` surface
- Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae*; Calcium-rich fen dominated by great fen sedge (saw sedge)
- Alkaline fens; Calcium-rich springwater-fed fens
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*); Alder woodland on floodplains
- *Vertigo moulinsiana*; Desmoulin`s whorl snail
- *Lutra*; Otter
- *Liparis loeselii*; Fen orchid
- *Anisus vorticulus*; Little whorlpool ram's-horn snail

#### Southern North Sea SAC

To ensure that the integrity of the site is maintained and that it makes the best possible contribution to maintaining Favourable Conservation Status (FCS) for harbour porpoise in UK waters:

In the context of natural change, this will be achieved by ensuring that:

1. harbour porpoise is a viable component of the site;
2. there is no significant disturbance of the species; and the condition of supporting habitats and processes, and the availability of prey is maintained.

**Appendix B Copy of the A47 North Tuddenham to Easton Development Consent Order 2022**

**2022 No. 000**

**INFRASTRUCTURE PLANNING**

**The A47 North Tuddenham to Easton Development Consent  
Order 2022**

*Made* - - - - *12th August 2022*

*Coming into force* - - *2nd September 2022*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation, is satisfied that open space comprised within the Order Land, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public and that, accordingly, section 132(3) of the 2008 Act applies or, where open space comprised within the Order Land is being acquired for a temporary purpose that, accordingly, section 132(4B) of the 2008 Act applies.

The Secretary of State, having considered the representations made and not withdrawn, and the report and recommendation of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(d), 115(e), 117(f), 120(g), 122(h) and 123(i) of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 Schedule 5(j) to, the 2008 Act, makes the following Order—

## PART 1 PRELIMINARY

### Citation and commencement

**1.** This Order may be cited as the A47 North Tuddenham to Easton Development Consent Order 2022 and comes into force on 2nd September 2022.

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- (a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).  
(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, S.I. 2019/734, S.I. 2020/764, S.I. 2020/1534 and S.I.2021/978.  
(c) S.I. 2010/103, amended by S.I. 2012/635.  
(d) Section 114 was amended by paragraph 55 of Part 1 of Schedule 11 to the Localism Act 2011.  
(e) Section 115 was amended by paragraph 56 of Part 2 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011 and section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).  
(f) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.  
(g) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.  
(h) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.  
(i) Section 123 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.  
(j) Part 1 of Schedule 5 was amended by paragraph 4 of Part 1 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23), paragraph 71 of Part 1 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Part 3 of Schedule 6 to the Wales Act 2017.

## Interpretation

2.—(1) In this Order except where provided otherwise—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1984 Act” means the Road Traffic Regulation Act 1984(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2004 Act” means the Traffic Management Act 2004(h);

“the 2008 Act” means the Planning Act 2008(i);

“address” includes any number or address for the purposes of electronic transmission;

“Anglian Water” means Anglian Water Services Limited (company number 2366656), whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, United Kingdom, PE29 6XU (or a related subsidiary company);

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order;

“book of reference” means the document of that description certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

“BT” means British Telecommunications Plc (company number 1800000), whose registered office is at 81 Newgate Street, London, EC1A 7AJ;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in section 329(1) of the 1980 Act;

“classification of roads plans” means the documents of that description certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act)(j) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works, ecological surveys and pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant, equipment, welfare facilities and temporary buildings and site clearance, and the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

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(a) 1961 c. 33.

(b) 1965 c. 56.

(c) 1980 c. 66.

(d) 1981 c. 66.

(e) 1984 c. 27.

(f) 1990 c. 8.

(g) 1991 c. 22.

(h) 2004 c.18.

(i) 2008 c. 29.

(j) Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34).

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act<sup>(a)</sup> and for the purposes of this Order includes parts of a cycle track and a right of way on foot;

“de-trunking plans” mean the documents of that description certified by the Secretary of State as the de-trunking plans for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003<sup>(b)</sup>;

“EMP (First Iteration)” means the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage and certified by the Secretary of State as the environmental management plan for the purposes of the Order;

“engineering drawings and sections” means the documents of that description certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“environmental statement” means the document of that description certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk assessment” means the document of that description certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” has the same meaning as in section 329(1) of the 1980 Act;;

“footway” has the same meaning as in section 329(1) of the 1980 Act;

“general arrangement plans” means the documents of that description certified by the Secretary of State as the general arrangement plans for the purposes of this Order;

“hedgerow plans” means the documents of that description certified as the hedgerow plans by the Secretary of State for the purposes of this Order;

“highway” has the same meaning as in section 328(1) of the 1980 Act;

“highway authority” means the undertaker;

“horizontal directional drilling” refers to a boring technique involving drilling in an arc between two points;

“horizontal directional drilling compound” means a construction site associated with the onshore connection works where horizontal directional drilling or other trenchless construction technique is proposed including hard standing, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas comprising water and bentonite tanks, pumps and pipes, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“Hornsea Three” means the wind farm to be constructed pursuant to the Hornsea Three Order;

“Hornsea Three Order” means the Hornsea Three Offshore Wind Farm Order 2020;

“land plans” means the documents of that description certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“local highway authority” means Norfolk County Council;

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(a) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove, replace or reconstruct, provided such works do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

“NGG” means National Grid Gas Plc (company number 2006000), whose registered office is at 1-3 Strand, London, WC2N 5EH;

“Order land” means the land shown on the land plans which is within the limits of the land to be acquired permanently or used permanently or temporarily and described in the Book of Reference;

“Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans and works plans within which the authorised development may be carried out;

“Ørsted” means Ørsted Hornsea Project Three (UK) Limited (company number 08584210), whose registered office is at 5 Howick Place, London, SW1P 1WG;

“outline traffic management plan” means the document of that description certified as the outline traffic management plan by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“relevant highway authority” means the local highway authority for the land in question;

“relevant planning authority” means in any given provision of this Order, the planning authority for the area in which the land to which the provision relates is situated;

“rights of way and access plans” means the documents of that description certified as the rights of way and access plans by the Secretary of State for the purposes of this Order;

“special category land plans” means the documents of that description certified by the Secretary of State as the special category land plans for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48(b) (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street,

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A(c) (traffic authorities) of the 1984 Act;

“traffic regulation plans” means the documents of that description certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10(d) (general provision as to trunk roads) or section 19(1)(e) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (b) an order made or direction given under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) any other enactment;

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(a) 1981 c. 67. The definition of “owner” was amended in section 7 by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(b) Section 48 was amended by section 124 of the Local Transport Act 2008 (c. 26).

(c) Section 121A was inserted by section 168(1) of, and paragraph 70 of Schedule 8 to, the 1991 Act, and amended by section 1(6) of, and paragraph 95(2) and (3) of Schedule 1 to, the Infrastructure Act 2015 (c.7) and S.I. 2001/1400.

(d) Section 10 was amended by section 22(2) of the 1991 Act and paragraph 22 of Schedule 2 to the 2008 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

(e) Section 19(1) was amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

“UKPN” means UK Power Networks (Operations) Limited (company number 03870728), whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;

“undertaker” means National Highways Limited, (company number 09346363), whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the documents of that description certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

(7) The expression “includes” may be construed without limitation.

### **Disapplication of legislative provisions**

**3.—**(1) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> insofar as they relate to temporary possession of land under articles 33 (temporary use of land for carrying out the authorised development) and 34 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development.

(2) Section 32 (variation of awards) of the Land Drainage Act 1991 does 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.

(3) In the event that compliance with any provision of:

(a) this Order means that Hornsea Three will be carried out in breach of the terms of the Hornsea Three Order or that Ørsted cannot comply with the terms of the Hornsea Three Order, or

(b) the Hornsea Three Order means that the authorised development will be carried out in breach of the terms of this Order or that the undertaker cannot comply with the terms of the this Order;

section 161(1) of the 2008 Act shall not apply to that breach.

### **Maintenance of drainage works**

**4.—**(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise agreed in writing between the undertaker and the person responsible.

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(a) 2017 c. 20.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(a).

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

5.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out and operated within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

#### **Maintenance of authorised development**

6. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

#### **Limits of deviation**

7.—(1) In carrying out the authorised development the undertaker must construct any such work within the lateral limits of deviation or extents of work shown on the works plans for the relevant work.

(2) In carrying out any work comprised in the authorised development the undertaker may deviate vertically from the levels of the authorised development shown on the engineering drawings and sections, to a maximum of 1 metre upwards or 1 metre downwards except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

#### **Benefit of Order**

8.—(1) Subject to article 9 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

#### **Consent to transfer benefit of Order**

9.—(1) Subject to paragraph (4) the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee;
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

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(a) 1991 c. 59. The definition of “drainage” was substituted by section 100 of the Environment Act 1995 (c. 25).

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is not required under this article, where the transfer or grant is made to—

- (a) NGG for the purposes of undertaking any works relating to its apparatus set out in Work Nos. 84;
- (b) Anglian Water for the purposes of undertaking any works relating to its apparatus set out in Work Nos. 74, 77, 80, 84, 89 and 92;
- (c) UKPN for the purposes of undertaking any works relating to its apparatus set out in Work Nos. 74, 76, 78, 79, 84, 86, 88, 89, 90, 92, 93 and 95;
- (d) BT for the purposes of undertaking any works relating to its apparatus set out in Work Nos. 73, 74, 75, 80, 81, 82, 83, 84, 85, 87, 89, 90, 91 and 92; or
- (e) Ørsted for the purposes of undertaking Work Nos. 94 and 99.

## PART 3 STREETS

### **Application of the 1991 Act**

**10.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b)(vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(c) (power to give directions as to timing of street works);
- (b) section 56A(d) (power to give directions as to placing of apparatus);
- (c) section 58(e) (restrictions on works following substantial road works);
- (d) section 58A(f) (restriction on works following substantial street works);

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(a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the 1991 Act.

(b) Section 184 was amended by sections 35,37, 38 and 46 of the Criminal Justice Act 1982 (c.48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and Schedule 8, and Schedule 9 to, the 1991 Act.

(c) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the 2004 Act.

(d) Section 56A was inserted by section 44 of the 2004 Act.

(e) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the 2004 Act.

(f) Section 58A was inserted by section 52 of the 2004 Act.

- (e) section 73A (power to require undertaker to re-surface street);
- (f) section 73B (power to specify timing etc. of re-surfacing);
- (g) section 73C (materials, workmanship and standard of re-surfacing);
- (h) section 78A (contributions to costs of re-surfacing by undertaker); and
- (i) Schedule 3A(a) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(b) referred to in paragraph (4) are—

- (a) section 54(c) (advance notice of certain works), subject to paragraph (6);
- (b) section 55(d) (notice of starting date of works), subject to paragraph (6);
- (c) section 57(e) (notice of emergency works);
- (d) section 59(f) (general duty of street authority to co-ordinate works);
- (e) section 60(g) (general duty of undertakers to co-operate);
- (f) section 68(h) (facilities to be afforded to street authority);
- (g) section 69(i) (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route)

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 11 (construction and maintenance of new, altered or diverted streets and other structures)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

### **Construction and maintenance of new, altered or diverted streets and other structures**

**11.—(1)** Any highway (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway

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(a) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the 2004 Act.  
 (b) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the 2004 Act.  
 (c) Section 54 was amended by section 49(1) of the 2004 Act.  
 (d) Section 55 was amended by sections 49(2) and 51(9) of the 2004 Act.  
 (e) Section 57 was amended by section 52(3) of the 2004 Act.  
 (f) Section 59 was amended by section 42 of the 2004 Act.  
 (g) Section 60 was amended by section 40 of, and Schedule 1 to, the 2004 Act.  
 (h) Section 68 was amended by section 40 of, and Schedule 1 to, the 2004 Act.  
 (i) Section 69 was amended by section 40 of, and Schedule 1 to, the 2004 Act.



lies and, unless otherwise agreed in writing with the local highway authority, the highway including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion with the exception of the culvert to be delivered as Work No. 5 which must be maintained by the undertaker from its completion.

(2) Where a highway (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(4) Where a street which is not, and is not intended to be, a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(5) Where a highway is de-trunked under this Order—

- (a) section 265(a) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must, unless otherwise agreed in writing with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(6) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority unless otherwise agreed in writing between the undertaker and the local highway authority, and the remainder of the bridge, including the waterproofing membrane, and structure below, parapets and any system of lighting must be maintained by and at the expense of the undertaker.

(7) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(8) For the purposes of a defence under paragraph (7), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

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(a) Section 265 was amended by section 146 of, and paragraph 45 of Schedule 3 to, the Road Traffic Regulation Act 1984 and by section 57 of, and paragraph 52 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and the competent person had carried out those instructions.

### **Classification of roads, etc.**

**12.—**(1) On and after the date on which the roads described in Part 1 (trunk roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2)(a) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On and after the date on which the roads described in Part 2 (classified B roads) and Part 2A (classified C roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(3) On and after the date on which the roads described in Part 3 (unclassified roads) of Schedule 3 and identified on the classification of roads plans are completed and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.

(4) On and after the date on which the roads specified in Part 4 (speed limits) of Schedule 3 and identified on the traffic regulation plans are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(5) On such day as the undertaker may determine, the order specified in column (3) of Part 5 (revocations and variations of existing traffic regulation orders) of Schedule 3 is to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(6) Subject to paragraph (7) unless otherwise agreed in writing with the relevant highway authority, the footpaths, cycle tracks, footways and bridleways set out in column (2) of Part 6 (footpaths, cycle tracks, footways and bridleways) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(7) The cycle track with reference CF1 to CF2a in column (2) of Part 6 of Schedule 3 and identified on the rights of way and access plans may only be constructed by the undertaker in the specified location if approved by the relevant highway authority and opened for use on such day as approved by the relevant highway authority.

(8) On such day as the undertaker may determine, the roads described in Part 7 (roads to be de-trunked) of Schedule 3 and identified on the de-trunking plans are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(9) The application of paragraphs (1) to (8) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

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(a) Section 10(2) was amended by section 22(2)(a) of the 1991 Act, and by section 1(6) of, and paragraphs 10(1) and (2) of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

### **Power to alter layout etc. of streets**

**13.**—(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days' notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which receives an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 6 weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(5) Any application to which this article applies must include a statement that the provisions of paragraph (4) apply to that application.

(6) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Street works**

**14.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street; or carry out works to strengthen or repair the carriageway;
- (c) ;
- (d) place and keep apparatus in or under the street;
- (e) maintain, renew or alter apparatus in the street or change its position;
- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for, or incidental to, any works referred to in subparagraphs (a) to (j).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Temporary stopping up and restriction of use of streets**

**15.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up, altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) 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 was made, it is deemed to have granted consent.

(7) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

### **Permanent stopping up and restriction of use of streets and private means of access**

**16.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Part 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and identified on the rights of way and access plans to the extent specified and described in column (3) of those parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Part 2 or Part 3 of Schedule 4 is to be wholly or partly stopped up under this article unless—

- (a) the new highway or private means of access to be constructed and substituted for it, which is specified in column (4) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the highway or private means of access until the completion and opening of the new highway or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Part 4 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or

- (b) there is no right of access to the land from the street or private means of access concerned; or
  - (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
  - (d) the owners and occupiers of the land have agreed to the stopping up.
- (5) Where a street or private means of access has been stopped up under this article—
- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
  - (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.
- (6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.
- (7) This article is subject to article 36 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**17.** The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Clearways**

**18.—**(1) Except as provided in paragraph (2), on and after such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 8 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) and identified on the traffic regulation plans where it is identified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission of, constable or traffic officer in uniform.

- (2) Nothing in paragraph (1) applies—
- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
    - (i) the removal of any obstruction to traffic;
    - (ii) the maintenance, improvement, reconstruction or operation of the road;
    - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable, or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003 (a); or
    - (iv) any building operation or demolition;
  - (b) in relation to a vehicle being used—
    - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
    - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

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(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

- (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(a)</sup>; or
- (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000<sup>(b)</sup>; or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person’s control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the 2004 Act<sup>(c)</sup>.

### **Traffic regulation**

**19.**—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

- (a) given not less than—
  - (i) 12 weeks’ notice in writing of the undertaker’s intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

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(a) 1991 c. 56.  
 (b) 2000 c. 26.  
 (c) 2004 c. 18.

- (ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily, to the chief officer of police and to the traffic authority in whose area the road is situated; and
  - (b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—
- (a) has effect as if duly made by, as the case may be—
    - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
    - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) of the 1984 Act<sup>(a)</sup>, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
  - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act<sup>(b)</sup>.
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.
- (12) Any application to which this article applies must include a statement that the provisions of paragraph (11) apply to that application.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**20.**—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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(a) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) 2004 c. 18.

(2) Any dispute arising from the making of connections to or use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

(8) Any application to which this article applies must include a statement that the provisions of paragraph (7) apply to that application.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

### **Protective work to buildings**

**21.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and

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(a) Section 106 was amended by sections 35(1) and (8) and section 43(2) and 56(7) of, and paragraph 1 of Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I.2016/1154 amended by S.I. 2018/110.

(c) 1991 c. 57.



- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 52 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(11) In this article “protective works” in relation to a building means —

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

#### **Authority to survey and investigate the land**

**22.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker sees fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

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(a) Section 152 was amended by S.I. 2009/1307.

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land indicating the nature of the survey or investigation that the undertaker intends to carry out.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and

(b) may take into the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority or the local highway authority as the case may be; or

(b) in a private street without the consent of the street authority.

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(6) If either the highway authority, the local highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of the highway authority or the local highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(7) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**23.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 26 (compulsory acquisition of rights and imposition of restrictive covenants), paragraph (8) of article 33 (temporary use of land for carrying out the authorised development) and article 53 (crown rights).

#### **Compulsory acquisition of land – incorporation of the mineral code**

**24.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated into this Order subject to the modifications that—

(a) paragraph 8(3) is not incorporated;

(b) for “the acquiring authority” substitute “the undertaker”; and

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(a) 1981 c. 67.

- (c) for “undertaking” substitute “authorised development”.

### **Time limit for exercise of authority to acquire land compulsorily**

**25.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by article 29 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights and imposition of restrictive covenants**

**26.**—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purposes specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

### **Public rights of way**

**27.**—(1) Subject to paragraph (2), the public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) and shown on the rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(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 28 days prior to the extinguishment of that right of way.

### **Private rights over land**

**28.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) on the date of acquisition of the land by the undertaker whether compulsorily or by agreement; or

- (b) on the date of entry on the land by the undertaker under section 11(1)(a) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) on the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (b)(compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(c) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 35 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of the restrictive covenants over or affecting the land;

- (ii) the undertaker's appropriation of it;

- (iii) the undertaker's entry onto it; or

- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and

- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including

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(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c.22).

(b) Section 152 was amended by S.I. 2009/1307.

(c) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Modification of Part 1 of the 1965 Act**

**29.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(a) (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows—

(2) In section 4A(1)(b)(extension of time limit during challenge)

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), and;

(b) for the “three year period” mentioned in section 4 substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsory) of the A47 North Tuddenham to Easton Development Consent Order 2022”.

(3) In section 11A(c) (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”;

(b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 25 (time limit for exercise of authority to acquire land compulsory) of the A47 North Tuddenham to Easton Development Consent Order 2022”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 31 (acquisition of subsoil or airspace only) of the A47 North Tuddenham to Easton Development Consent Order 2022, which excludes the acquisition of subsoil or airspace only from this Schedule” and

(b) after paragraph 29, end insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective works to buildings), 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the A47 North Tuddenham to Easton Development Consent Order 2022.”

### **Application of the 1981 Act**

**30.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

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(a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.

(c) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(4) In section 5(2)(a) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(b)(time limit for general vesting declaration).

(6) In section 5B(c) (extension of time limit during challenge)

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order),” substitute “section 118( (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008”; and,

(b) for “the three year period mentioned in Section 5A” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the A47 North Tuddenham to Easton Development Consent Order 2022”.

(7) In section (6)(d)(notices after execution of declaration), replace subsection (1)(b) with—

“(b) on every person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served in section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7(e) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration) omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125(g) (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 29 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil or airspace only**

**31.—**(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over the land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 29 (modification of Part 1 of the 1965 Act));

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and

(c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

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(a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(c) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(d) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(e) Section 7(1) was substituted by paragraphs 1 and 3 of schedule 18 to the Housing and Planning Act 2016.

(f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

(g) Section 125 was amended by section 190 of, and paragraph 17 of, Schedule 16 to the Housing and Planning Act 2016.

### **Rights under or over streets**

**32.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is a statutory undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**33.**—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 25 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11(powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act,
- (b) remove any buildings and vegetation from that land,
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken), or construct any permanent works in connection with Work No. 94 or any other mitigation works in connection with the authorised development.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii)

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7; or

- (b) in the case of any land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (e) remove or reposition any apparatus installed for or belonging to statutory undertakers or necessary mitigation works.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil or airspace over (or rights in the subsoil or airspace over) that land under article 31 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 23 (compulsory acquisition of land) or article 26 (compulsory acquisition of rights and imposition of restrictive covenants).

### **Temporary use of land for maintaining the authorised development**

**34.—**(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;

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(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).



- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and must explain the purpose for which entry is taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of-

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment.

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, as if it were a dispute is to be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

### **Statutory undertakers**

**35.—**(1) Subject to the provisions of article 26 (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

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(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 36 (apparatus and rights of statutory undertakers in stopped up streets).

### **Apparatus and rights of statutory undertakers in stopped up streets**

**36.**—(1) Where a street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 16 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by

deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

### **Recovery of costs of new connections**

**37.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers in stopped up streets) of Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(b); and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

### **Special category land**

**38.**—(1) On the exercise by the undertaker of the relevant Order powers, so much of the special category land as is required for the purposes of the exercise by the undertaker of the Order rights is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise by the undertaker of the Order rights.

(2) So far as the temporary use of land under article 33 (temporary use of land for carrying out the authorised development) is concerned, then the discharge in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

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(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

(b) 2003 c. 21, as implemented by Article 1, Section 2 and Schedule 1 of S.I. 2003/1900, Article 3 of S.I. 2003/3142; as amended by Schedule 1 of S.I. 2011/1210.

“Order rights” means the rights and powers exercisable over the special category land by the undertaker under article 26 (compulsory acquisition of rights and imposition of restrictive covenants) and article 33; and

“special category land” means the land identified as forming part of a public open space numbered 1/2f, 1/2i and 2/2a in the book of reference and on the plan entitled “special category land plans”.

## PART 6 OPERATIONS

### **Felling or lopping of trees and removal of hedgerows**

**39.**—(1) The undertaker may fell or lop any tree or shrub, within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (4), the undertaker must

- (a) do no unnecessary damage to any tree or shrub;
- (b) pay compensation to any person for any loss or damage arising from such activity; and
- (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981(a) and the Conservation of Habitats and Species Regulations 2017(b) or any successor acts and regulations.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2) —

- (a) remove any hedgerows within the Order limits and specified in Schedule 8 Part 1 (removal of hedgerows);
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 8 Part 2 (removal of important hedgerows); and
- (c) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits that is required to be removed.

(5) The grant of consent of a local authority in terms of paragraph (4)(c) must not be unreasonably withheld.

(6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(c) the local authority is deemed to have granted consent.

(7) Any application to which this article applies must include a statement that the provisions of paragraph (6) apply to that application.

(8) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(c).

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(a) 1981 c.69  
(b) S.I. 2017/1012.  
(c) S.I. 1997/1160.

### **Trees subject to tree preservation orders**

**40.**—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after 24 July 2020, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to passengers or other persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;
- (b) the duty contained in section 206(1)(a) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and
- (c) the undertaker must consult the relevant planning authority prior to that activity taking place.

(3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## **PART 7**

### **MISCELLANEOUS AND GENERAL**

#### **Application of landlord and tenant law**

**41.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

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(a) Section 206(1) was amended by paragraph 11 of Schedule 8 to the 2008 Act.

- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for purposes of the 1990 Act**

**42.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

### **Defence to proceedings in respect of statutory nuisance**

**43.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraphs (d), (fb), (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9)(c) (prior consent for work on construction sites) to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **No double recovery**

**44.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract, or any rule of law, or under two or more different provisions of this Order.

### **Disregard of certain improvements etc.**

**45.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

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(a) 1990 c. 43. There is an amendment to section 82(1) which is not relevant to this Order.  
(b) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There is another amendment to this subsection which is not relevant to this Order.  
(c) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are further amendments to section 61 which are not relevant to this Order.

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

### **Set off for enhancement in value of retained land**

**46.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 26 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

### **Appeals relating to the Control of Pollution Act 1974**

**47.**—(1) The undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not give consent or grants consent but subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(a).

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed

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(a) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990. There are other amendments to section 61 which are not relevant to this Order.

person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(8) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(10) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(11) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(12) Except where a direction is given under paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(14) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Department for Levelling Up, Housing, and Communities or such guidance as may from time to time replace it.

### **Use of consecrated land**

**48.**—(1) Section 239 (use and development of burial grounds) of the 1990 Act applies—



- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 33 (temporary use of land for constructing the authorised development) or 34 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(2) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950(a) do not apply to the authorised development.

### **Protection of interests**

**49.** Schedule 9 (protective provisions) to the Order has effect.

### **Certification of documents, etc.**

**50.—**(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents, etc to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 requires to be amended to reflect the terms of the Secretary of State’s decision to make the Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

**51.—**(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(b) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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(a) S.I. 1950/792.  
 (b) 1978 c.30.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

## **Arbitration**

**52.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

## **Crown Rights**

**53.—(1)** Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

- (b) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Signed by authority of the Secretary of State for Transport

*Natasha Kopala*  
Head of the Transport and Works Act Orders Unit  
Department for Transport

12th August 2022

# SCHEDULES

## SCHEDULE 1

Article 2

### AUTHORISED DEVELOPMENT

**In the administrative areas of Norfolk County Council and Broadland, South Norfolk and Breckland District Councils.**

The authorised development is a nationally significant infrastructure project as defined in sections 14 (nationally significant infrastructure projects: general) and 22 (highways)(a) of the 2008 Act and associated development within the meaning of section 115(2)(b) of the 2008 Act, comprising—

**Work No. 1** – Alteration of the A47 of 9,169 metres in length from a point 370m west of Fox Lane overbridge to a point 180m west of Easton roundabout, including the construction of a mainline dual carriageway, footways, embankments, two laybys, police observation platform, maintenance accesses, approaches and associated drainage and noise barriers shown on sheet numbers 1, 2, 4 to 9 and 11 to 16 of the works plans;

**Work No. 2** – a combination of re-surfaced, realigned and new carriageway from Main Road east for 380 metres to the new junction with Lyng Road (Work No. 4) and then 775 metres to re-join the existing A47 alignment at the altered junction with Low Road, including footways, embankments, approaches, associated drainage and flood protection bund shown on sheet numbers 1, 2 and 4 of the works plans;

**Work No. 3** – a new driveable access track, associated earthworks and drainage, from an existing access onto Fox Lane and a new field access with passing places, running eastwards for 579 metres to a private property east of Oak Farm, shown on sheet number 1 of the works plans;

**Work No. 4** – a combination of new and realigned carriageway, footways, embankments, approaches and associated drainage to form the realigned Lyng Road north of the junction with Work No. 2, shown on sheet number 2 of the works plans;

**Work No. 5** – drainage works east of Oak Farm comprising an extension of the existing West Culvert under the proposed A47 mainline dual carriageway (Work No.1) and creation of the new West Culvert under Work No. 2 east of the new junction to the realigned Lyng Road (Work No. 4), shown on sheet number 2 of the works plans;

**Work No. 6** – a new drainage basin south east of Oak Farm, plus associated drainage and driveable maintenance access track with an outfall into the local watercourse and a drainage connection to the basin on the southern side of the proposed A47 mainline dual carriageway (Work No.1), shown on sheet number 2 of the works plans;

**Work No. 7** – a new drainage basin with associated drainage and driveable maintenance access track south from the A47 mainline dual carriageway (Work No. 1) with an outfall into the River Tud east of Whitford bridge and a drainage connection to the basin, shown on sheet 4 of the works plans;

**Work No. 8** – a combination of new and widened carriageway, footways, embankments and associated drainage between the existing Mattishall Lane alignment and the proposed Mattishall Lane Link Road (Work No. 9), shown on sheet number 4 of the works plans;

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(a) Section 22 was substituted by S.I. 2013/1883 and amended by section 1(6) of, and paragraph 153 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(b) Section 115(2) was amended by section 160(1) and (3) of the Housing and Planning Act 2016 (c. 22). There are other amendments to section 115(2) which are not relevant to this Order.

**Work No. 9** – a new carriageway, footways, approaches, drainage and underbridge with cycle track forming the new Mattishall Lane Link Road from the existing A47 471 metres south west to Mattishall Lane, shown on sheet number 4 of the works plans;

**Work No. 10** – alteration of the existing A47 and Mattishall Lane junction including the provision of a ghost island and the creation and upgrade of footways on Mattishall Lane and the existing A47 between the new Mattishall Lane Link Road (Work No.9) junction to the west and the Hockering junction with the existing A47 to the east plus the creation of a new field access off Mattishall Lane, shown on sheet 4 of the works plans;

**Work No. 11** – a new driveable access track with passing places, from Mattishall Lane south of the proposed A47 mainline dual carriageway (Work No. 1) running eastwards for 469 metres, shown on sheet numbers 4 and 5 of the works plans;

**Work No. 12** – a new drainage basin, associated drainage and driveable maintenance access track and a new outfall into the River Tud between Work No. 11 and the River Tud with a drainage connection to the basin, shown on sheet number 5 of the works plans;

**Work No. 13** – a new culvert at Newgate House, under the proposed A47 mainline dual carriageway (Work No. 1) south of Gypsy Lane, shown on sheet number 6 of the works plans;

**Work No. 14** – a new drainage basin east of Gypsy Lane with associated drainage and a driveable maintenance access track north from the A47 mainline dual carriageway (Work No. 1) with an outfall into the River Tud to the south and a drainage connection under the proposed A47 mainline dual carriageway (Work No. 1) to the basin, shown on sheet number 6 of the works plans;

**Work No. 15** – a new drainage basin, associated drainage, a wetland area east of Church Lane, and a driveable maintenance access track from Work No 16, with a new outfall into the River Tud east of Church Lane bridge and a drainage connection to the basin shown on sheet number 7 of the works plans;

**Work No. 16** – a new driveable access track with passing place, associated earthworks and drainage, from Church Lane 469 metres east to Work No. 15 and Hillcrest Cottage, shown on sheet numbers 7 and 8 of the works plans;

**Work No. 17** – a combination of re-surfaced, realigned and new carriageway with cycle track, embankments, approaches and associated drainage to form the new link road from the existing A47 east of Hockering 913 metres east to Wood Lane junction northern dumbbell roundabout (Work No. 20), shown on sheet numbers 7, 8 and 10 of the works plans;

**Work No. 18** – a new carriageway, embankments and associated drainage to form the Wood Lane junction east bound off slip road to the northern dumbbell roundabout, shown on sheet numbers 8, 9 and 10 of the works plans;

**Work No. 19** – a new carriageway, embankments and associated drainage to form the Wood Lane junction west bound on slip road from the southern dumbbell roundabout, shown on sheet numbers 8 and 9 of the works plans;

**Work No. 20** – a new carriageway, embankments and associated drainage to form the Wood Lane junction northern dumbbell roundabout, shown on sheet number 10 of the works plans;

**Work No. 21** – a new Wood Lane junction underbridge and associated carriageway, embankments and drainage between the dumbbell roundabouts (Work Nos. 20 and 22), shown on sheet numbers 9 and 10 of the works plans;

**Work No. 22** – a new carriageway, embankments and associated drainage to form the Wood Lane junction southern dumbbell roundabout, shown on sheet number 9 of the works plans;

**Work No. 23** – a new carriageway, embankments and associated drainage to form the Wood Lane junction east bound on slip road from the northern dumbbell roundabout, shown on sheet numbers 9 and 10 of the works plans;

**Work No. 24** – a new carriageway, embankments and associated drainage to form the Wood Lane junction west bound off slip road to the southern dumbbell roundabout, shown on sheet numbers 9 and 11 of the works plans;

**Work No. 25** – a combination of re-surfaced and new carriageway, footways, embankments and associated drainage to form the new B1535 Wood Lane junction with Work No. 17, shown on sheet number 10 of the works plans;

**Work No. 26** – a new restricted byway from Hall Farm underpass (Work No. 30) west 781 metres to Work No. 26a the optional cycle track connection to the realigned Wood Lane, shown on sheet numbers 9, 10 and 11 of the works plans;

**Work No. 26a** – a new cycle track between the realigned B1535 Wood Lane (Work No. 25) and the start of the new restricted byway (Work No. 26) which meets the diverted restricted byway Honingham RB1, shown on sheet number 10 of the works plans;

**Work No. 27** – a new drainage basin, associated drainage and driveable maintenance access track, between the existing A47 and proposed A47 mainline dual carriageway (Work No. 1) east of the proposed A47 Wood Lane junction southern dumbbell roundabout (Work No. 22), accessed from Work No. 32, shown on sheet number 9 of the works plans;

**Work No. 28** – a combination of realigned and new carriageway with footways, embankments, approaches and associated drainage to form the link to Dereham Road, Honingham, from Work No. 32 and traffic calming measures at Dereham Road, shown on sheet numbers 9 of the works plans;

**Work No. 29** – a new bridleway with new cycle track between Berrys Lane and Dereham Road to replace an existing parallel footpath, shown on sheet number 9 of the works plans;

**Work No. 30** – a new Hall Farm underpass, access road to the existing A47 and new section of associated access ramps joining the new restricted byway from Wood Lane junction (Work No. 26), shown on sheet number 11 of the works plans;

**Work No. 31** – a new drainage basin between the existing A47 and proposed A47 mainline dual carriageway (Work No. 1) and south east of Hall Farm underpass (Work No. 30), with associated drainage connections and a driveable maintenance access track to the Hall Farm access track (Work No. 30), shown on sheet number 11 of the works plans;

**Work No. 32** – reconfiguration of the existing A47 carriageway north of Honingham with a new cycle track, embankments and associated drainage, including a ghost island at the existing A47 junction with the realigned Dereham Road (Work No.28) and modified Honingham bypass structure over the River Tud, between the Wood Lane junction southern dumbbell roundabout (Work No. 22) east 1,663 metres to the existing A47 Honingham roundabout, shown on sheet numbers 9, 11, 12 and 13 of the works plans;

**Work No. 33** – a new driveable private access track with passing places, associated earthworks and drainage, connecting Hall Farm to Hall Farm underpass and access road (Work No. 30), shown on sheet number 11 of the works plans;

**Work No. 34** – a new drainage basin, east of the proposed A47 mainline dual carriageway (Work No. 1) and north of the new A47 River Tud crossing (Work No. 35), with associated drainage and a driveable access track from Work No. 1, shown on sheet number 12 of the works plans;

**Work No. 35** – a new bridge structure over the River Tud with new carriageway, embankments, approaches and associated drainage for the A47 River Tud crossing, with associated flood risk compensation earthworks south of the River Tud between the existing A47 and proposed A47 mainline dual carriageway (Work No. 1) including fences for the protection of bats shown on sheet number 12 of the works plans;

**Work No. 36** – a new drainage basin and wetland area south of the River Tud crossing (Work No. 35), between the existing A47 and proposed A47 mainline dual carriageway (Work No. 1), with associated drainage connections and a new outfall to the River Tud west of the River Tud crossing

and driveable maintenance access track from Work No. 32, shown on sheet number 12 of the works plans;

**Work No. 37** – a new cycle track between Honingham roundabout and the existing A47 west of St Andrew’s Church (Work No. 39), new Honingham church underpass, embankments, and drainage shown on sheet number 13 of the works plans;

**Work No. 38** – a replacement hardstanding area west of St Andrew’s Church, Honingham, and associated access road to the existing A47 (Work No. 39), shown on sheet number 13 of the works plans.

**Work No. 39** –alteration and reconfiguration of the existing A47 between the proposed cycle track (Work No. 37) and Taverham Road to provide a single lane access road incorporating parking spaces, a vehicle turning area, a secure access gate and adjacent cycle track south east of St Andrew’s Church, shown on sheet numbers 13 and 14 of the works plans;

**Work No. 40** – realigned new carriageway, footways, embankments, and drainage between Honingham roundabout and the proposed Norwich Road junction southern dumbbell roundabout (Work No. 46), shown on sheet numbers 13 and 14 of the works plans;

**Work No. 41** – a new drainage basin and wetland area, associated drainage with new outfall to the River Tud and driveable access track, east of Taverham Road and between the River Tud and Work No. 47, shown on sheet 14 of the works plans;

**Work No. 42** – a new carriageway, embankments and drainage to form the proposed Norwich Road junction eastbound off-slip road to the northern dumbbell roundabout, shown on sheet numbers 13 and 14 of the works plans;

**Work No. 43** – a new carriageway, embankments and drainage to form the proposed Norwich Road junction westbound on-slip road from the southern dumbbell roundabout, shown on sheet numbers 13 and 14 of the works plans;

**Work No. 44** – a new carriageway, embankments and drainage to form the proposed Norwich Road junction northern dumbbell roundabout, shown on sheet number 14 of the works plans;

**Work No. 45** – a new Norwich Road junction underbridge and associated carriageway, embankments and drainage between the dumbbell roundabouts (Work Nos. 44 and 46), shown on sheet number 14 of the works plans;

**Work No. 46** – a new carriageway, embankments and drainage to form the proposed Norwich Road junction southern dumbbell roundabout, shown on sheet number 14 of the works plans;

**Work No. 47** – a new and altered carriageway, footways, embankment and drainage from the proposed Norwich Road junction northern dumbbell roundabout (Work No. 44) north 270 metres to Taverham Road, shown on sheet number 14 of the works plans;

**Work No. 48** – new carriageway, embankments, approaches and drainage to form the proposed Norwich Road junction east bound on slip road from the northern dumbbell roundabout, shown on sheet numbers 14 and 15 of the works plans;

**Work No. 49** – a new carriageway, embankments, approaches and drainage to form the proposed Norwich Road junction west bound off slip road to the southern dumbbell roundabout, shown on sheet numbers 14 and 15 of the works plans;

**Work No. 50** – a realigned and new carriageway, embankments, approaches and drainage from the proposed Norwich Road junction southern dumbbell roundabout (Work No. 46) east 1,265 metres to Dereham Road, Easton, shown on sheet numbers 14, 15 and 16 of the works plans;

**Work No. 51** – a new carriageway from the realigned Taverham Road (Work No. 47) to a new field access and a new cycle track to Church Lane, Easton, plus associated embankments and drainage, shown on sheet numbers 14, 15 and 16 of the works plans;

**Work No. 52** – a new Easton footbridge, embankments, drainage and access ramps to carry a cycle track between Church Lane, north of the A47, and Dereham Road, Easton, shown on sheet numbers 15 and 16 of the works plans;

**Work No. 53** – alterations to Church Lane carriageway, embankments and drainage to create a new driveable access road and new cycle track linking Work No. 52 with the junction of Church Lane with Ringland Road, shown on sheet number 16 of the works plans;

**Work No. 54** – altering the southern corner of Rotten Row and Church Lane junction with associated drainage alterations, shown on sheet number 17 of the works plans;

**Work No. 55** – southern end of a surface water drainage channel crossing the new driveable access track, between Church Lane and Hillcrest Cottage (Work No. 16) from the north side, shown on sheet number 8 of the works plans;

**Work No. 56** – flood alleviation compensation and environmental mitigation area including earthworks, embankments, new ponds, new wetlands and watercourse alterations north of Work No. 2 and east of Lyng Road, shown on sheet 2 and sheet number 2 (inset A) of the works plans;

**Work No. 57** – flood alleviation compensation and environmental mitigation area, including watercourse alterations and new wetlands, north of The Street and to the east of Hockering, shown on sheet number 6 and sheet number 6 (inset B) of the works plans;

**Work No. 58** – a temporary material storage, management and processing area south of the proposed A47 mainline dual carriageway (Work No. 1), south east of Work No. 5, east of Lyng Road and north of Low Road, shown on sheet 2 of the works plans;

**Work No. 59** – a traffic management site compound between the existing A47, Low Road, the proposed A47 mainline dual carriageway (Work No. 1) and the proposed Mattishall Lane Link Road (Work No. 9), shown on sheet 4 of the work plans;

**Work No. 60** – a temporary material storage area between the existing A47, the proposed A47 mainline dual carriageway (Work No. 1), the proposed Mattishall Lane Link Road (Work No. 9) and existing Mattishall Lane, shown on sheet 4 of the works plans;

**Work No. 61** – a temporary material storage, management and processing area, between the existing A47 and proposed A47 mainline dual carriageway (Work No.1) south east of Hockering, shown on sheet numbers 6 and 7 of the works plans;

**Work No. 62** – a temporary compound area, including material storage, management and processing, south of the proposed A47 mainline dual carriageway (Work No. 1), east of Hillcrest Cottage and south west of the proposed A47 Wood Lane Junction southern dumbbell roundabout (Work No. 22), including a temporary connection to existing overhead 11kV electricity cables shown on sheets 8 and 9 of the works plans;

**Work No. 63** – a temporary material storage area south and west of the proposed A47 Wood Lane Junction southern dumbbell roundabout (Work No. 22), shown on sheet 9 of the works plans;

**Work No. 64** – a material storage area north of the proposed A47 mainline dual carriageway (Work No. 1) and east of the proposed A47 Wood Lane Junction northern dumbbell roundabout (Work No. 20), shown on sheet numbers 10 and 11 of the works plans;

**Work No. 65** – a temporary main compound area, including material storage, management and processing, south of the existing A47 Honingham roundabout, shown on sheet 13 of the work plans;

**Work No. 66** – a temporary material storage, management and processing area south of the existing A47 Honingham roundabout adjacent to east side of Work No. 65, shown on sheet 13 of the work plans;



**Work No. 67** – a temporary material storage, management and processing area north east of the proposed A47 Norwich Road junction northern dumbbell roundabout (Work No. 44) and east of Work No. 41, shown on sheet 14 of the works plans;

**Work No. 68** – a temporary material storage, management and processing area east of the proposed Norwich Road junction southern dumbbell roundabout (Work No. 46), shown on sheet numbers 14 and 15 of the works plans;

**Work No. 69** –a temporary material storage, management and processing area north of the proposed A47 mainline dual carriageway (Work No. 1) situated between Work Nos. 93 and 94, shown on sheet number 15 of the works plans;

**Work No. 70** –a temporary material storage, management and processing area north of the proposed A47 mainline dual carriageway (Work No. 1) situated between Work No. 93 and 94, shown on sheet number 15 of the works plans;

**Work No. 71** – a temporary compound area north of the existing Easton roundabout and west of Church Lane, Easton, shown on sheet numbers 15 and 16 of the works plans;

**Work No. 72** – a temporary material storage, management and processing area north of Work No. 71 and between Work No. 94 and Church Lane, Easton, shown on sheet numbers 15 and 16 of the works plans;

**Work No. 73** – removal of the overhead electronic communications cables crossing Work No.1 and 2 between Poppy Wood and Oak Farm, shown on sheet numbers 1 and 2 of the works plans;

**Work No. 74** – diversion of potable water pipes and overhead electronic communications and low voltage electricity utility cables along the route of and to the west of the existing Mattishall Lane and crossing Work Nos. 1, 8, 9, 10 and 11, shown on sheet number 4 of the works plans;

**Work No. 75** – undergrounding an overhead electronic communications utility line along Mill Lane, Hockering, crossing Work No. 1, shown on sheet number 5 of the works plans;

**Work No. 76** – diversion and undergrounding an overhead 11kV electricity line crossing Work No. 1 between the existing A47 and the River Tud, east of Mill Lane, Hockering, shown on sheet number 5 of the works plans;

**Work No. 77** – diversion of a main effluent pipeline crossing Work No. 1 between Hockering Water Recycling Centre, Gypsy Lane, and the River Tud, shown on sheet number 6 of the works plans;

**Work No. 78** – diversion and undergrounding of an overhead 11kV electricity line crossing Work No. 1 south east of Gypsy Lane and west of a private property at the western end of Trap's Lane, shown on sheet numbers 6 and 7 of the works plans;

**Work No. 79** – diversion and undergrounding of an overhead 11kV electricity line crossing Work No. 1 between the existing A47 and Trap's Lane, west of Church Lane, shown on sheet number 7 of the works plans;

**Work No. 80** – diversion of potable water pipeline and electronic communications cables crossed by Work No. 1, 15, 16 and 17 between the existing A47 and the Church Lane properties and between Church Lane and Hillcrest Cottage, shown on sheet numbers 7 and 8 of the works plans;

**Work No. 81** – installation of ducts, cables and apparatus for utilities and electronic communications code operators in north side of the verge of Work No. 17 between the existing A47 and Wood Lane junction northern dumbbell roundabout (Work No. 20), shown on sheet numbers 7, 8 and 10 of the works plans;

**Work No. 82** – removal of electronic communications overhead utility cables to Hillcrest Cottage replaced by Work Nos. 80 and 83, shown on sheet number 8 of the works plans;

**Work No. 83** – installation of ducts, cables and apparatus for utilities electronic communications code operators along the track between Hillcrest Cottage and Wood Lane junction southern

dumbbell roundabout (Work No. 22) crossing Work Nos 1 and 16, shown on sheet numbers 8 and 9 of the works plans;

**Work No. 84** – diversion of a high pressure gas pipeline, potable water pipeline and overhead electronic communications and low voltage electricity utility cables along Wood Lane, the existing A47, Berrys Lane and Dereham Road, Honingham, affected by Works Nos. 1, 19, 22, 23, 24, 26, 27, 28, 29 and 32, shown on sheet numbers 9 and 10 of the works plans;

**Work No. 85** – diversion and undergrounding of electronic communications overhead utility cables, east of Wood Lane, crossing Work Nos. 1, 17, 18, 20, 21, 22, 24, 25 and 26a, shown on sheet numbers 9 and 10 of the works plans;

**Work No. 86** – diversion of 11kV electricity cables crossing the new junction between the new Hall Farm underpass and access road (Work No. 30) and the existing A47, shown on sheet number 11 of the works plans;

**Work No. 87** – diversion and undergrounding of electronic communications overhead utility cables along the access track to Hall Farm from the existing A47 crossing Work Nos. 1 and 33, shown on sheet number 11 of the works plans;

**Work No. 88** – diversion and undergrounding an overhead 11kV electricity cable crossing Work No. 1 between the existing A47 and Hall Farm, shown on sheet number 11 of the works plans;

**Work No. 89** – diversion of a potable water pipeline, an effluent pipeline, overhead electronic communications and low voltage electricity utility cables between the existing Honingham roundabout and existing A47 east of St Andrew's Church crossed by Works Nos. 1, 32, 37, 38, 39 and 40, shown on sheet numbers 12, 13 and 14 of the works plans;

**Work No. 90** – diversion of electricity and electronic communications utility cables crossing the existing A47 and realigned Taverham Road (Works No. 39 and 47), shown on sheet number 14 of the works plans;

**Work No. 91** – diversion of electronic communication utility cables crossed by Work Nos. 1, 39, 40, 42, 43 and 47, from Church Farm bridge south along Taverham Road and Blind Lane, then east along Red Barn Lane and Church Road to a connection beside Dereham Road, south-east of St Peter's Church, Easton, shown on sheet numbers 14, 15, 16, 18 and 19 of the works plans;

**Work No. 92** – diversions on the north side of the proposed A47 mainline dual carriageway (Work No. 1) of a potable water pipeline, an effluent pipeline and overhead electronic communications and low voltage electricity utility cables between Taverham Road and Dereham Road, Easton, crossed by the proposed A47 mainline dual carriageway (Work No. 1), Norwich Road junction northern dumbbell roundabout (Work No. 44) and connecting slip roads and side roads, shown on sheet numbers 14 and 15 of the works plans;

**Work No. 93** – alterations to the overhead 132kV electricity line with associated temporary work areas between the pylons with temporary access routes to Taverham Road and Church Road, Easton, shown on sheet numbers 15, 19 and 20 of the works plans;

**Work No. 94** – installation of the onshore connection works west of Easton consented as part of the Hornsea Three Offshore Wind Farm Order 2020, comprising up to six cable circuits and associated electrical circuit ducts under Works Nos. 1, 50 and 51, and associated link boxes, joint bays, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying, haul roads, vehicular accesses and construction compounds or if horizontal direction drilling is to be used, horizontal direction drilling compounds shown on sheet numbers 15 and 19 of the works plans;

**Work No. 95** – removal of existing 11kV overhead electricity utility cables and installation of new ground based sub-station beside Dereham Road with low voltage connection to existing network in highway boundary, shown on sheet numbers 15 and 16 of the works plans;

**Work No. 96** – environmental mitigation, including watercourse improvements and creation of ponds and wetlands between the River Tud and proposed A47 mainline dual carriageway (Work No. 1), shown on sheet number 6 of the works plans;

**Work No. 97** – River Tud crossing ecological and environmental mitigation, including earthworks, watercourse alterations and creation of ponds and wetlands between the River Tud, existing A47, the proposed A47 mainline dual carriageway (Work No. 1) and the drainage basin east of Hall Farm underpass (Work No. 31), shown on sheet numbers 11 and 12 of the works plans;

**Work No. 98** – new carriageway 50m in length and associated embankments, approaches and drainage to provide the option for Norwich Western Link road to connect to the proposed A47 Wood Lane Junction northern dumbbell roundabout (Work No. 20), shown on sheet number 10 of the works plans;

**Work No. 99** – temporary haul route from the new field access carriageway connecting to the realigned Taverham Road (Work No. 51) to land parcels between the River Tud, Taverham Road, the A47 mainline dual carriageway (Work No. 1) and Church Lane, north of Easton, to replace access for large vehicles following severance of direct A47 access from Church Lane, shown on sheet numbers 14 and 15 of the works plans;

And for the purposes of or in connection with the construction of any of those works mentioned above, further development within the Order limits which does not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement consisting of:

- (a) alteration to the layout of any street permanently or temporarily, including as part of de-trunking or stopping up orders, including but not limited to increasing or reducing the width of the carriageway of the street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level of any such kerb, footpath, footway, cycle track or verge; installing low noise surfacing; and landscaping sections of abandoned sections;
- (b) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, cycle tracks and crossing facilities;
- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, barriers, pumping stations, parapets, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (f) works to place, alter, remove or maintain street furniture or apparatus in a street, or apparatus in other land, including mains, sewers, drains, soakaways, pipes, cables, ducts, traffic signals and lights;
- (g) works to alter the course of or otherwise interfere with a watercourse;
- (h) landscaping, noise bunds and barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (k) the felling of trees;
- (l) construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction-related buildings, temporary worker accommodation facilities, welfare facilities, construction

- lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences;
- (m) the provision of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (n) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development.

## SCHEDULE 2 REQUIREMENTS

Article 5

### PART 1 REQUIREMENTS

#### **Interpretation**

**1.** In this Schedule—

“completion or completed” means the relevant parts of the authorised development are completed and fully open to traffic;

“contaminated land” has the same meaning as that term is given in section 78A of the Environmental Protection Act 1990(a);

“DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“drainage strategy” means the strategy in Appendix 13.2 of the environmental statement;

“ecological works” means Work Nos. 56 and 97;

“EMP (Second Iteration)” means the second iteration of the environmental management plan produced in accordance with the DMRB, which is to be a refined version of the EMP (First Iteration) including more detailed versions of the outline plans contained or listed within the EMP (First Iteration) or any other plans as required;

“EMP (Third Iteration)” means the third iteration of the environmental management plan produced in accordance with the DMRB, which is a refined version of the EMP (Second Iteration) and which relates to the operational and maintenance phase of the authorised development;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(b);

“the environmental masterplan” means the document certified as the masterplan under article 50 (certification of documents, etc.);

“lead local flood authority” has the same meaning as in the Flood and Water Management Act 2010;

“IDB” means the Norfolk Rivers Drainage Board;

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(a) 1990 c.43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).

(b) S.I. 2017/1012.

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England or any equivalent replacement published for that document;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(a); and

“REAC” means the Register of Environmental Actions and Commitments forming table 3.1 of the EMP (First Iteration).

### **Time limits**

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

### **Detailed design**

3.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

### **Environmental Management Plan**

4.—(1) No part of the authorised development, except for the ecological works, is to commence until an EMP (Second Iteration) for that part, substantially in accordance with the EMP (First Iteration) has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, local highway authority, lead local flood authority, the Environment Agency and Natural England to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions.

(2) The EMP (Second Iteration) for a part must be written in accordance with ISO14001 and so far as is relevant to that part of the authorised development, must reflect the mitigation measures required by the REAC and set out in the environmental statement and must include as many of the following plans and strategies as are applicable to the part of the authorised development to which it relates—

- (a) Site waste management plan;
- (b) Materials management plan;
- (c) Soil handling management plan;
- (d) Construction noise and dust management plan;
- (e) Construction communication strategy;
- (f) Landscape and ecology management plan;
- (g) Biosecurity management plan;
- (h) Water monitoring and management plan;
- (i) Detailed heritage Written Scheme of Investigation;

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(a) 1981 c.69

- (j) Temporary surface water drainage strategy;
- (k) INNS management plan; and
- (l) Operational UXO emergency plan.

(3) The relevant part of the authorised development must be constructed in accordance with the approved EMP (Second Iteration).

(4) On completion of construction of each part of the authorised development the EMP (Third Iteration) relating to that part must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the relevant local highway authority to the extent that the content of the EMP (Third Iteration) relates to matters relevant to their functions.

(5) The relevant part of the authorised development must be operated and maintained in accordance with the EMP (Third Iteration).

### **Landscaping**

**5.**—(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation with—

- (a) the relevant planning authority; and
- (b) Natural England.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the environmental masterplan.

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels;
- (e) implementation timetables for all landscaping works; and
- (f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged.

(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice, provided these meet or exceed the appropriate British Standards.

### **Contaminated land and groundwater**

**6.**—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the risk assessment prepared in accordance with sub-paragraph (1) determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose and to prevent any impacts on controlled waters must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

### **Protected species**

7.—(1) No part of the authorised development is to commence until, for that part, final preconstruction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by that part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in subparagraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation by the undertaker with Natural England, and under any necessary licences.

### **Surface water drainage**

8.—(1) No part of the authorised development, except for the ecological works, is to commence until, for that part, written details of the surface water drainage system, reflecting the drainage strategy and the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation by the undertaker with the lead local flood authority, IDB and the Environment Agency on matters related to their functions.

(2) The surface water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the lead local flood authority, IDB and the Environment Agency on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

### **Archaeological remains**

9.—(1) No part of the authorised development, is to commence until, for that part, a written scheme of investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, Norfolk County Council Historic Strategy and Advice Team and Historic England on matters related to their functions.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

### **Traffic management**

**10.**—(1) No part of the authorised development comprising the construction, alteration or improvement of Work No. 1 is to commence until a traffic management plan substantially in accordance with the outline traffic management plan, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant highway authority on matters related to its function.

(2) The authorised development must be implemented in accordance with the traffic management plan referred to in sub-paragraph (1).

### **Fencing**

**11.** Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Manual of Contract Documents for Highway Works maintained by or on behalf of the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

### **Ecological works**

**12.**—(1) No part of the ecological works is to commence until the siting, design, method of construction and timetable for delivery of the new ponds and ditches to be included within Work Nos. 56 and 97 have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Natural England.

(2) The construction of the ponds and ditches forming part of the ecological works must thereafter be carried out in accordance with the approved details.

### **Ørsted works**

**13.**—(1) No part of Work No. 94 is to commence without the written approval of Ørsted and all works must be carried out in accordance with requirements 10, 17, 18 and 22 in Schedule 1 Part 3 of the Hornsea Three Order.

### **Approvals and amendments to approved details**

**14.** With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### **Applications made under requirements**

**15.**—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 15 (further information); or
- (c) such longer period as may be agreed between the parties.



(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

### **Further information**

**16.—**(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within that 21 day business period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 14 (applications made under requirements) and in this paragraph.

(5) In this paragraph, “business day” means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

### **Register of requirements**

**17.—**(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

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(a) 1971 c. 80.

### Anticipatory steps towards compliance with any requirement

18. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

### Details of consultation

19. In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 15 business days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

## SCHEDULE 3

Articles 12 and 18

### CLASSIFICATIONS OF ROADS, ETC.

#### PART 1

#### TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheets 1-2, 4-9 and 11-16</b>	
North Tuddenham Parish Hockering Parish East Tuddenham Parish Honingham Parish Easton Parish	A 9.169 kilometre length of new highway to be classified as part of the A47 Trunk Road. On the eastbound carriageway from point A 368 metres east of the centreline of the Fox Lane overbridge in an easterly direction to point B (sheet 16) for a distance of 9.169 kilometres. On the westbound carriageway from point C 368 metres east of the centreline of the Fox Lane overbridge in an easterly direction to point D (sheet 16) for a distance of 9.169 kilometres.
<b>The classification of roads plans – sheet 7</b>	
East Tuddenham Parish Honingham Parish	New eastbound diverge slip road A 794 metre length of carriageway to be classified as part of the A47 Trunk Road from point U 132 metres east of the centreline of the Church Lane junction in a north-easterly direction to point V (sheet 10).
<b>The classification of roads plans – sheet 8</b>	
East Tuddenham Parish	New westbound merge slip road A 644 metre length of carriage way to be classified as part of the A47 Trunk Road from point W 285 metres east of the centreline of the Church Lane junction in a south-easterly direction to point X (sheet 9) a distance of 644

	metres.
<b>The classification of roads plans – sheet 9</b>	
East Tuddenham Parish Honingham Parish	New westbound diverge slip road A 664 metre length of carriageway to be classified as part of the A47 Trunk Road from point AI 693 metres north west of the River Tud in an easterly direction to point AJ (sheet 11).
<b>The classification of roads plans – sheet 10</b>	
Honingham Parish	New eastbound merge slip road A 609 metre length of carriageway to be classified as part of the A47 Trunk Road from point AG 185 metres north of the junction of the B1535 with the existing A47 in an easterly direction to point AH (sheet 11).
<b>The classification of roads plans – sheet 13</b>	
Honingham Parish	New eastbound diverge slip road A 707 metre length of new carriageway to be classified as part of the A47 mainline dual carriageway from point AS 233 metres east of the centrepoint of the roundabout with Norwich Road in a south-easterly direction to point AT (sheet 14).
Honingham Parish	New westbound merge slip road A 763 metre length of carriageway to be classified as part of the A47 Trunk Road from point AQ 223 metres east of the centrepoint of the roundabout with Norwich Road in a south-easterly direction to point AR (sheet 14).
<b>The classification of roads plans – sheet 15</b>	
Honingham Parish Easton Parish	New eastbound merge slip road A 716 metre length of carriageway to be classified as part of the A47 Trunk Road from point BB 403m west of the centrepoint of the A47 roundabout with Dereham Road in an westerly direction to point BA (sheet 14).
Honingham Parish Easton Parish	New westbound diverge slip road A 620 metre length of carriageway to be classified as part of the A47 Trunk Road from point BD 518m west of the centrepoint of the A47 roundabout with Dereham Road in an westerly direction to point BC (sheet 14).

**PART 2**  
**CLASSIFIED B ROADS**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheet 9</b>	
East Tuddenham Parish	New roundabout to be classified as B Road with reference AB, 980 metres east of the centreline of the existing A47/Church Lane

	junction with the existing A47.
<b>The classification of roads plans – sheet 10</b>	
East Tuddenham Parish	New roundabout to be classified as B Road with reference AA, 990 metres east of the centreline of the existing A47/Church Lane junction.
East Tuddenham Parish Honingham Parish	New roundabout connector road A 111 metre length of carriageway to be classified as B Road from point AC, 953 metres east of the centreline of the existing A47/Church Lane junction, in a south-easterly direction to point AD (sheet 9).
East Tuddenham Parish	Link to Wood Lane A 305 metre length of new carriageway to be classed as B Road from point S, 145 metres west of the centrepoint of the proposed Wood Lane junction northern roundabout, in a northern direction to point T.
East Tuddenham Parish	Link Road to existing A47 A 95 metre length of new carriageway to be classed as B Road from point R1 at the junction with the proposed link to Wood Lane, in an easterly direction to point R.
<b>The classification of roads plans – sheet 14</b>	
Honingham Parish	New roundabout to be classified as B Road with reference AY, the centrepoint of the roundabout is 118 metres east of the centreline of Blind Lane.
Honingham Parish	New roundabout to be classified as B Road with reference AZ, the centrepoint of the roundabout is 103 metres east of the centreline of Blind Lane.
Honingham Parish	New roundabout connector road A 144 metre length of carriageway to be classified as B Road from point AX 82 metres east of the centreline of Blind Lane in a northerly direction to point AW.

## PART 2A

### CLASSIFIED C ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheet 1</b>	
North Tuddenham Parish Hockering Parish	Link Road to existing A47 A 1154 metre length of new carriageway to be classed as C Road. From point G 493 metres east of the Fox Lane overbridge in an easterly direction to point H (sheet 4).
<b>The classification of roads plans – sheet 2</b>	
North Tuddenham Parish Hockering Parish	Link to B1147 (Lyng Road) A 168 metre length of new carriageway to be

	classified as C Road from point E at the north side of the existing pond between the B1147 and the existing A47, in a southerly direction to point F on the B1147.
<b>The classification of roads plans – sheet 4</b>	
East Tuddenham Parish Hockering Parish	Existing A47 A 2090 metre length of de-trunked carriageway to be classed as C Road from point H 140 metres north west of the Matishall Lane Link Road junction in a south easterly direction to point Q (sheet 7).
Hockering Parish	Proposed Mattishall Lane Link Road A 471 metre length of new carriageway to be classified as C Road from point L, 160 metres north west of the centreline of the existing A47 / Mattishall Lane junction, in a south westerly direction to point K.
<b>The classification of roads plans – sheet 7</b>	
East Tuddenham Parish	Link Road to existing A47 A 820 metre length of new carriageway to be classed as C Road from point Q, 12.5 metres east of the centreline of the existing A47/Church Lane junction, in an easterly direction to point R1 (sheet 10).
<b>The classification of roads plans – sheet 9</b>	
Honingham Parish	Link to Dereham Road A 266 metre length of new carriageway to be classified as C Road from point AM, 269 metres south east of the centreline of the existing A47 / Berrys Lane junction, in a south then south easterly direction to point AN.
East Tuddenham Parish Honingham Parish	Link Road to existing A47 A 1680 metre length of new carriageway to be classed as C Road from point AK 38 metres south of the existing A47/Berrys Lane junction in an south easterly direction to point AL (sheet 13).
<b>The classification of roads plans – sheet 13</b>	
Honingham Parish	Link to Norwich Road A 1029 metre length of new carriageway to be classified as C Road from point AE, 46 metres east of the centrepoint of the Honingham roundabout in a south easterly direction to point AF (sheet 14).
Honingham Parish	Existing roundabout to be classified as C Road with reference BI the centrepoint of the roundabout is 375 metres west of the access to St Andrew's Church.
<b>The classification of roads plans – sheet 14</b>	
Honingham Parish	Link to Taverham Road A 247 metre length of new carriageway to be classified as C Road from point AU, 29 metres south of the access to Church House Farm in a south easterly direction to point AV.

Honingham Parish Easton Parish	Link to Dereham Road A 1264 metre length of new carriageway to be classified as C Road from point BE, 29 metres south east of the centrepoint of the proposed Norwich Road junction southern roundabout in an easterly direction to point BF (sheet 16).
<b>The classification of roads plans – sheet 17</b>	
Easton Parish	Realignment of Rotten Row A 55 metre length of new carriageway to be classified as C Road from point BG, 55 metres west of the centreline of the Rotten Row / Church Lane junction to point BH.”

### PART 3 UNCLASSIFIED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
<b>The classification of roads plans – sheet 4</b>	
Hockering Parish	Existing A47 west of Hockering junction A 71 metre length of carriageway to be unclassified from point M, at the existing Mattishall Lane / A47 junction, in a south westerly direction to point N.
Hockering Parish	Link from Mattishall Lane Link Road to existing Mattishall Lane A 158 metre length of carriageway from point I, at junction with Mattishall Lane Link Road 330m south of junction with existing A47 in an easterly direction to point J.
<b>The classification of roads plans – sheets 13</b>	
Honingham Parish	Existing A47 to Taverham Road A 444 metre length of existing carriageway to be unclassified from point AO, at the access next to St Andrew’s Church, in an eastern direction to point AP (sheet 14).

### PART 4 SPEED LIMITS

Note: where speed limits are indicated on the plans relating to this Part (the traffic regulation plans) but are not referenced in this schedule they indicate that national speed limits apply in accordance with either:

- (a) the national speed limit set out in—
  - (i) Section 86 (speed limits for particular classes of vehicles) of, and Schedule 6 (speed limits for particular classes of vehicles) to the 1984 Act; and
  - (ii) the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 as varied by the 70 miles per hour, 60 miles per hour and 50 miles

per hour (Temporary Speed Limit) (Variation) Order 1978 and continued indefinitely by Regulation 2 of the 70 Miles Per Hour, 60 Miles Per Hour and 50 Miles Per Hour (Temporary Speed Limit) (Continuation) Order 1978 (SI 1978/1548)(a); or

- (b) sections 81 and 82 of the Road Traffic Regulation Act 1984 (which defines speed limits on ‘restricted roads’ by reference to street lighting),

and are not subject to this order. For details of the scheme lighting design, refer to the general arrangement plans.

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed Limit</i>
<b>The traffic regulation plans – sheet 1</b>		
North Tuddenham Parish Hockering Parish	Proposed Unnamed Road linking to existing A47 From point E, 26m west of the Fox Lane overbridge in an eastern direction to point F (sheet 4) a distance of 1699m.	50 miles per hour
<b>The traffic regulation plans – sheet 2</b>		
North Tuddenham Parish Hockering Parish	Unnamed Road which leads to Stone Road From point AY, at junction with proposed new road 760m east of junction with Hall Lane in a northern direction to point AZ, for a distance of 168m.	50 miles per hour
<b>The traffic regulation plans – sheet 4</b>		
Hockering Parish	Low Road From point BB, at the junction with the existing A47 in a southern direction to point BA a distance of 23m. (To be used as Field Access).	50 miles per hour
Hockering Parish	Proposed Mattishall Lane Link Road From point BD, at junction with existing A47 260m west of junction with The Street in a south-western direction to point BC for a distance of 471m.	60 miles per hour
Hockering Parish	Mattishall Lane From point BF, at junction with Mattishall Lane Link Road 330m south of junction with existing A47 in an easterly direction to point BE for a distance of 110m.	60 miles per hour
Hockering Parish	Mattishall Lane From point BH, at the junction	50 miles per hour

- (a) SI 1978/1548. The 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) Order 1977 and the 70 miles per hour, 60 miles per hour and 50 miles per hour (Temporary Speed Limit) (Variation) Order 1978 were not statutory instruments.

	with the existing A47 100m northwest of The Street, in a southwestern direction to point BG a distance of 71m.	
<b>The traffic regulation plans – sheet 7</b>		
East Tuddenham Parish Honingham Parish	Proposed Unnamed Road From point G, at the crossroads with Church Lane and Sandy Lane in an eastern direction to point H (sheet 10) at the give way line for the northern roundabout of the proposed A47 Wood Lane Junction a distance of 916m.	50 miles per hour
<b>The traffic regulation plans – sheet 9</b>		
Honingham Parish	Proposed Link to Dereham Road From point Z, at junction with the existing A47 in an southern direction to point AA 295m west of junction with Dereham Road a distance of 243m.	30 miles per hour
East Tuddenham Parish Honingham Parish	Existing A47 From point X, at the exit from the southern roundabout of the proposed A47 Wood Lane junction in an eastern direction to point Y (sheet 13) the centre point of the existing Honingham roundabout a distance of 1664m.	Removal of restricted road status 50 miles per hour
<b>The traffic regulation plans – sheet 10</b>		
East Tuddenham Parish	Wood Lane From point BJ, at junction with new link road in a northern direction to point BK 1250m south of junction with Broadway a distance of 305m.	50 miles per hour
<b>The traffic regulation plans – sheet 13</b>		
Honingham Parish	Proposed Unnamed Road From point AB, at the centrepont of existing Honingham roundabout in an eastern direction to point AC (sheet 14) at give way line of Proposed Norwich Road Junction southern roundabout a distance of 1049m.	Removal of restricted road status 50 miles per hour
<b>The traffic regulation plans – sheet 14</b>		
Honingham Parish	Existing A47 Road From point AE, at junction with Taverham Road in a western direction to point AD (sheet 13) a distance of 411m.	30 miles per hour



Honingham Parish	Taverham Road From point AG, at new roundabout at Wood Lane Junction in a northern direction to point AF 1565m south of junction with Weston Road a distance of 243m.	30 miles per hour
Honingham Parish Easton Parish	Proposed Link to Dereham Road From point AS, at exit from Proposed "Norwich Road Junction" southern roundabout in an eastern direction to point AT (sheet 16) 335m west of junction with Ringland Lane a distance of 1264m.	Removal of restricted road status 50 miles per hour
<b>The traffic regulation plans – sheet 17</b>		
East Tuddenham Parish	Widened section of Rotten Row and Church Lane junction From point AW, at the junction to point AX a distance of 44 metres.	60 miles per hour

## PART 5

### REVOCATIONS & VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Revocations or Variations</i>
<b>The traffic regulation plans – sheet 1</b>			
North Tuddenham Parish Hockering Parish East Tuddenham Parish Honingham Parish Easton Parish	Existing A47 From point I to points B and D, a length of 8302 metres	The A47 Trunk Road (Wansford, City of Peterborough to Great Yarmouth) (24 Hour Clearway) Order 2013	Revocation of clearway along existing A47 from point I to points B and D (sheet 16).

## PART 6

### FOOTPATHS, CYCLE TRACKS, FOOTWAYS AND BRIDLEWAYS

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of Footpath/Cycle track/Footway/Bridleway</i>
<b>The rights of way and access plans – sheet 2</b>	
North Tuddenham Parish Hockering Parish	Reference CF27 to CF28 A cycletrack in the verge on the northern side of the Link Road to the Existing A47 and western

	side of Lyng Road from point CF27 to CF28, a distance of 95 metres.
North Tuddenham Parish Hockering Parish	Reference CF29 to CF30 (sheet 4) A cycletrack in the verge on the eastern side of Lyng Road and northern side of the Link Road to the Existing A47 from point CF29 to CF30, a distance of 691 metres.
<b>The rights of way and access plans – sheet 4</b>	
Hockering Parish	Reference CF31 to CF32 A cycletrack in the verge on the northern side of the Link Road to the Existing A47 from point CF31 to CF32, a distance of 30 metres.
Hockering Parish	Reference CF33 to CF34 A cycletrack in the verge on the eastern side of the Mattishall Lane Link Road from point CF33 to CF34, a distance of 105 metres.
Hockering Parish	Reference CF35 to CF36 A cycletrack in the verge on the eastern side of the Mattishall Lane Link Road, along the existing A47 and the western verge of Mattishall Lane from point CF35 to CF36, a distance of 480 metres.
Hockering Parish	Reference CF37 to CF38 . A cycletrack in the verge on the southern side of the existing A47 from point CF37 to CF38, a distance of 101.6 metres.
<b>The rights of way and access plans – sheet 6</b>	
Hockering Parish	Reference A13 to A14 A footpath from point A13 on Honingham FP8 and point A14 on Honingham FP7, a distance of 23 metres.
<b>The rights of way and access plans – sheet 7</b>	
East Tuddenham Parish	Reference CF41 to CF42 (sheet 10) A cycletrack in the verge on the northern side of the Link Road from the existing A47 and the western side of the Link to Wood Lane from point CF41 to CF42, a distance of 844 metres.
<b>The rights of way and access plans – sheet 9</b>	
Honingham Parish	Reference CF7 to CF8 A cycle track in the verge on the southern side of Dereham Road from point CF7 to CF8, a distance of 66 metres.
Honingham Parish	Reference CF9 to CF9A A cycle track in the verge on the eastern side of Dereham Road from point CF9 in a northerly direction to meet the existing A47 and then in the verge on the southern side of the existing A47 in an easterly direction to a point CF9A, a distance of 260 metres.
Honingham Parish	Reference CF9A to CF10 (sheet 11) A restricted byway in the verge from point CF9A on the southern side of the existing A47 in an easterly direction to a point CF10, a distance of 159 metres.

East Tuddenham Parish Honingham Parish	Reference CF25 to CF26 A bridleway from a point CF25 on Dereham Road in a westerly direction to a point CF26 on Blind Lane, a distance of 284 metres
<b>The rights of way and access plans – sheet 10</b>	
East Tuddenham Parish Honingham Parish	Reference A38 to CF2a A restricted byway running from the existing restricted byway, Honingham RB1 to the new restricted byway at point CF2a, a distance of 175 metres
East Tuddenham Parish Honingham Parish	Reference CF1 to CF2a A cycle track from the realigned B1535 Wood Lane from point CF1 to a point CF2a, to the east of the proposed Norwich Western Link road, a distance of 264 metres
Honingham Parish	Reference CF2a to CF2 (sheet 11) A restricted byway from the connection with the diverted Honingham RB1 at point CF2a in a south easterly direction to the western side of the Hall Farm access track and then in a southern direction to point CF2, a distance of 815 metres.
<b>The rights of way and access plans – sheet 11</b>	
Honingham Parish	Reference CF3 to CF4 (sheet 13) A cycle track in the verge on the northern side of the existing A47 from point CF3 in a south easterly direction to a point CF4, a distance of 862 metres.
<b>The rights of way and access plans – sheets 12</b>	
Honingham Parish	Reference CF5 to CF6 (sheet 13) A cycle track in the verge on the northern side of the existing A47 from point CF5 to a point CF6 at Honingham roundabout, a distance of 257 metres.
<b>The rights of way and access plans – sheet 13</b>	
Honingham Parish	Reference CF11 to CF12 A cycle track from point CF11 at Honingham roundabout in a south easterly direction to the Honingham underpass, a north easterly direction through the underpass and then in south easterly direction to a point CF12 west of St Andrew's Church, a distance of 368 metres.
Honingham Parish	Reference CF13 to CF14 A cycle track in the verge on the northern side of the existing A47 from point CF13 south of St Andrew's Church in an easterly direction to a point CF14, a distance of 19 metres.
Honingham Parish	Reference CF15 to CF16 (sheet 14) A cycle track in the verge on the northern side of the existing A47 from point CF15 south of St Andrew's Church in an easterly direction to a point CF16, a distance of 186 metres.
<b>The rights of way and access plans – sheet 14</b>	
Honingham Parish	Reference CF17 to CF18

	A cycle track in the verge on the northern side of the existing A47 from a point CF17 south west of Church House Farm in an easterly direction to a point CF18 on Taverham Road, a distance of 172 metres.
Honingham Parish Easton Parish	Reference CF19 to CF20 (sheet 16) A cycle track from a point CF19 in the verge on the northern side of Taverham road in a south easterly direction to point C37 where it separates from Taverham road and continues in an easterly direction to a point CF20 at Ringland Lane, a distance of 1670 metres.
<b>The rights of way and access plans – sheet 16</b>	
Easton Parish	Reference CF21 to CF22 A cycle track from a point CF21 on the cycle track between Taverham Road and Ringland Lane (CF19 to CF20) over the new Easton footbridge to a point CF22 on Dereham Road, a distance of 427 metres.
Easton Parish	Reference CF23 to CF24 A footpath from a point CF23 on the cycle track between Taverham Road and Ringland Lane (CF19 to CF20) to the base of the new Easton footbridge at point CF24, a distance of 69 metres.

## PART 7

### ROADS TO BE DE-TRUNKED

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of Road</i>
<b>The de-trunking plans – sheets 4, 5, 6, 7 &amp; 8</b>	
East Tuddenham Parish Hockering	A length of 2283 metres of the A47 Trunk Road from point A 303 metres north west of the centreline of the existing Mattishall Lane / existing A47 junction to point B.
<b>The de-trunking plans – sheets 9, 11, 12 &amp; 13</b>	
Honingham Parish	A length of 1700 metres of the A47 Trunk Road from point C 174 metres south east of the centreline of the Berrys Lane / existing A47 junction, to point D.
<b>The de-trunking plans – sheet 13</b>	
Honingham Parish	A length of 948 metres of the A47 Trunk Road from point E 70 metres west of the access to St Andrew's Church, to point F (sheet 14).
<b>The de-trunking plans – sheet 15</b>	
Easton Parish Honingham Parish	A length of 708 metres of the A47 Trunk Road from point G 683 metres west of the centrepoint of the existing A47 / Church Lane roundabout, to point H (sheet 16).
<b>The de-trunking plans – sheet 16</b>	
Easton Parish	A length of 39 metres of the A47 Trunk Road

	from point I 23 metres north of the centrepoint of the existing A47 / Church Lane roundabout, to point J.
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## PART 8

### TRAFFIC REGULATION MEASURES (CLEARWAYS AND PROHIBITIONS)

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Measures</i>
<b>The traffic regulation plans – sheets 1 to 16</b>		
East Tuddenham Parish Hockering Parish Honingham Parish Easton Parish	A47 Trunk Road eastbound from point A to point B (sheet 16) a distance of 8470 metres.	Clearway (including verges, hardshoulders).
East Tuddenham Parish Hockering Parish Honingham Parish Easton Parish	A47 Trunk Road westbound from point C to point D (sheet 16) a distance of 8470 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 5</b>		
Hockering Parish	Layby on the A47 westbound reference point AU, 142 metres east of Mill Lane	Proposed waiting time restriction.
Hockering Parish	Layby on the A47 eastbound reference point AV, 298 metres east of Mill Lane	Proposed waiting time restriction.
<b>The traffic regulation plans – sheet 8</b>		
East Tuddenham Parish Honingham Parish	A47 Trunk Road eastbound diverge slip road from point J to point K (sheet 10) a distance of 708 metres.	Clearway (including verges, hardshoulders).
East Tuddenham Parish Honingham Parish	A47 Trunk Road westbound merge slip road from point T to point U (sheet 9) a distance of 541 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 9</b>		
East Tuddenham Parish Honingham Parish	A47 Trunk Road westbound diverge from point V to point W (sheet 11) a distance of 536 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 10</b>		
East Tuddenham Parish Honingham Parish	A47 Trunk Road eastbound merge from point P to point Q (sheet 11) a distance of 514 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 13</b>		
Honingham Parish	A47 Trunk Road eastbound diverge slip road from point AH to point AI (sheet 14) a distance of 617 metres.	Clearway (including verges, hardshoulders).
Honingham Parish	A47 Trunk Road westbound merge slip road from point AN	Clearway (including verges, hardshoulders).

	to point AO (sheet 14) a distance of 663 metres.	
<b>The traffic regulation plans – sheet 14</b>		
Honingham Parish	A47 Trunk Road eastbound merge from point AL to point AM (sheet 15) a distance of 595 metres.	Clearway (including verges, hardshoulders).
<b>The traffic regulation plans – sheet 15</b>		
Honingham Parish	A47 Trunk Road westbound diverge from point AR to point AQ (sheet 14) a distance of 593 metres.	Clearway (including verges, hardshoulders).
Honingham Parish	Layby on the A47 eastbound reference point AP, 125 metres west of the Easton footbridge	Proposed waiting time restriction.

## SCHEDULE 4

Articles 16 and 26

### PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS & PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS

In relating this Schedule to the rights of way and access plans, the provisions described in this Schedule are shown on the rights of way and access plans in the following manner—

- (a) Existing highways are to be stopped up, as described in column (2) of Parts 1 and 2 of this Schedule, are shown by blue diagonal hatching (as shown in the key on the rights of way and access plans) over the extent of the area to be stopped up, which is described in column (3) of Parts 1 and 2 of this Schedule and given a reference label in a square box (a capital A followed by a number).
- (b) New highways which are to be substituted for a highway to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 2 of this Schedule, are shown by—
  - (i) red honeycomb-hatching (for motorways and trunk roads),
  - (ii) yellow cross-hatching (for other classified roads and highways),
  - (iii) green vertical hatching (for cycle tracks and restricted byways),
  - (iv) a green dashed line (for public rights of way),

(as shown in the key on the rights of way and access plans) and are given a reference label in a square (D for new highway and CF for new public rights of way and cycle tracks to be substituted or provided) and will be a road unless the word ‘footpath’, ‘bridleway’, ‘footway’ or ‘cycle track’ appears beneath its reference letter in column (4) of Part 2 of this Schedule.
- (c) Private means of access to be stopped up, as described in column (2) of Parts 3 and 4 of this Schedule, are shown by solid lime green shading (as shown in the key on the rights of way and access plans) over the extent of stopping up described in column (3) of Parts 3 and 4 of this Schedule, and are given a reference label in a square (a capital B followed by a number).
- (d) New private means of access to be substituted for a private means of access to be stopped up (or which are otherwise to be provided), as are included in column (4) of Part 3 of this Schedule, are shown by red diagonal hatching (as shown in the key on the rights of way and access plans) and are given a reference label in a square (a capital C followed by a number).

## PART 1

### HIGHWAYS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
<b>The rights of way and access plans – sheet 2</b>		
Norfolk County Council Hockering Parish	Reference A36 to A37 Hockering FP12	Reference A36 to A37 public footpath to be stopped up from a point A36 from the existing A47 in a southern direction to a point A37, a distance of 16m.
Norfolk County Council North Tuddenham Parish	Reference A42 to A43 Part of a cycle track	Reference A42 to A43 From point A42 located on the existing Lyng Road in a south easterly direction to point A43 a distance of 28 metres.
Norfolk County Council North Tuddenham Parish	Reference A44 to A45 Part of a cycle track	Reference A44 to A45 From point A44 located 52 metres west of the existing Lyng Road in a south easterly direction to point A45 a distance of 15 metres.
Norfolk County Council North Tuddenham Parish	Reference A46 to A47 Part of a cycle track	Reference A46 to A47 From point A46 located 37 metres north of the existing A47 in a southerly direction to point A47 a distance of 11 metres.
<b>The rights of way and access plans – sheet 6</b>		
Norfolk County Council Hockering Parish	Reference A10 to A11 Part of Hockering FP7	Reference A10 to A11 Public footpath to be stopped up from point A10, 79 metres south of the access to Newgate House in a southern direction to point A11, a distance of 34 metres.
Norfolk County Council Hockering Parish	Reference A11 to A12 Part of Hockering FP7	Reference A11 to A12 Public footpath to be stopped up from point A11 in a westerly direction a distance of 95 metres to point A12.
<b>The rights of way and access plans – sheet 7</b>		
Norfolk County Council East Tuddenham Parish	Reference A15 to A16 on Church Lane	Reference A15 to A16 Highway to be stopped up from point A15, at junction on existing A47 in a southern direction 125 metres to point A16.
<b>The rights of way and access plans – sheet 9</b>		
Norfolk County Council East Tuddenham Parish	Reference A21 to A23 on Berry's Lane	Reference A21 to A23 Highway to be stopped up

		from point A21, at junction connecting Berrys Lane to the existing A47 in a southern direction to point A23, a distance of 157 metres.
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## PART 2

### HIGHWAYS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW HIGHWAYS WHICH ARE OTHERWISE TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Highway to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New highway to be substituted/provided
<b>The rights of way and access plans – sheet 1</b>			
Norfolk County Council North Tuddenham Parish	-	-	Reference D1 to D2 A new trunk road from D1 to D2 in an eastern direction for 8458 metres. D1 is 227 metres from Fox Lane diverge. D2 is 164 metres from existing A47 roundabout for Easton.
<b>The rights of way and access plans – sheet 2</b>			
Norfolk County Council North Tuddenham Parish Hockering Parish	Reference A1 to A2 Part of the B1147 and cycle track connection	Reference A1 to A2 From point A1 784 metres east of the Fox Lane bridge over the Existing A47 to point A2, 854 metres east of Fox Lane bridge over the Existing A47, a distance of 134 metres	Reference D5 to D6 To be substituted by a length of new highway from point D5 860 metres from Fox Lane bridge over the Existing A47 in a southerly direction to point D6, 874 metres from Fox Lane bridge over the Existing A47, for 168 metres.
Norfolk County Council Hockering Parish	Reference A3 to A4 Part of the existing A47 and cycle track	Reference A3 to A4 From point A3 north west of the junction where Low Road meets the existing A47 in an easterly direction to point A4 where Low Road meets the existing A47, a distance of 245 metres.	Reference D3 to A4 To be substituted by a new highway from point D3, 493 metres east of the Fox Lane bridge over the existing A47 to point A4 where Low Road meets the existing A47, a distance of 1052 metres.
Norfolk County Council Hockering Parish	Reference A4 to A5 Part of the existing A47	Reference A4 to A5 From point A4 located where Low Road	Reference D7 to D8 To be substituted by a new highway from



		meets the existing A47 to point A5, a distance of 348 metres	point D7 located 160 metres north west of the junction where Mattishall Lane meets the Existing A47 in a south westerly direction to point D8 located 24 metres north east of junction where unnamed road meets Mattishall Lane, a distance of 470 metres.
Norfolk County Council North Tuddenham Parish	-	-	Reference D1 to D2 See sheet 1.
<b>The rights of way and access plans – sheet 4</b>			
Norfolk County Council North Tuddenham Parish	-	-	Reference D1 to D2 See sheet 1.
Norfolk County Council Hockering Parish	Reference A3 to A4 See sheet 2		Reference D3 to A4 See sheet 2.
Norfolk County Council Hockering Parish	Reference A4 to A5 See sheet 2		Reference D7 to D8 See sheet 2.
Norfolk County Council Hockering Parish	Reference A6 to A7 Part of Mattishall Lane	Reference A6 to A7 From point A6 located on Mattishall Lane 88 metres south east of where the lane meets the Existing A47 to point A7 located 250 metres south east of where the lane meets the Existing A47, a distance of 161 metres.	Reference D7 to D8 To be substituted by a new highway from point D7 located 160 metres north west of the junction where Mattishall Lane meets the Existing A47 in a south westerly direction to point D8 located 24 metres north east of junction where unnamed road meets Mattishall Lane, a distance of 470 metres.
Norfolk County Council Hockering Parish	Reference A8 to A9 Part of Mattishall Lane	Reference A8 to A9 From point A8 located on Mattishall Lane 385 metres south west where the lane meets the Existing A47 to point A9 located 513 metres south west of where the lane meets the Existing A47, a distance of 133 metres.	Reference D7 to D8 To be substituted by a new highway from point D7 located 160 metres north west of the junction where Mattishall Lane meets the Existing A47 in a south westerly direction to point D8 located 24 metres north east of junction

			where unnamed road meets Mattishall Lane, a distance of 470 metres.
<b>The rights of way and access plans – sheet 5</b>			
Norfolk County Council Hockering Parish	-	-	Reference D1 to D2 See sheet 1
<b>The rights of way and access plans – sheet 6</b>			
Norfolk County Council Hockering Parish	-	-	Reference D1 to D2 See sheet 1
Norfolk County Council Hockering Parish	Reference A12 to A13 Part of Hockering FP8	Reference A12 to A13 From point A12 located 1043 metres west of where Church Lane meets the Existing A47 to point A13 located 1064 metres west of where Church Lane meets the Existing A47, a distance of 54 metres.	Reference A13 to A14 To be substituted by a new footpath from point A13 located 1064 metres west of where Church Lane meets the Existing A47 in an easterly direction to point A14 located 1044 metres west of where Church Lane meets the Existing A47, a distance of 55 metres.
Norfolk County Council Hockering Parish	Reference A12 to A14 Part of Hockering FP7	Reference A12 to A14 From point A12 located 1043 metres west of where Church Lane meets the Existing A47 to point A14 located 1044 metres west of where Church Lane meets the Existing A47, a distance of 16 metres.	Reference A13 to A14 To be substituted by a new footpath from point A13 located 1064 metres west of where Church Lane meets the Existing A47 in an easterly direction to point A14 located 1044 metres west of where Church Lane meets the Existing A47, a distance of 24 metres.
<b>The rights of way and access plans – sheet 7</b>			
Norfolk County Council Hockering Parish East Tuddenham Parish	-	-	Reference D1 to D2 See sheet 1
<b>The rights of way and access plans – sheet 8</b>			
Norfolk County Council East Tuddenham Parish	-	-	Reference D1 to D2 See sheet 1
Norfolk County Council East Tuddenham Parish	Reference A17 to A18 See sheet 9		References D9 to D10, D11 to D12, D15 to D16, D17 to D18, D19 to D20,

			D21 to D22 See sheet 9
<b>The rights of way and access plans – sheet 9</b>			
Norfolk County Council East Tuddenham Parish Honingham Parish	-	-	Reference D1 to D2 See sheet 1
Norfolk County Council Hockering Parish East Tuddenham Parish	Reference A17 to A18 Part of the existing A47	Reference A17 to A18. From point A17 160 metres east of the Sandy Lane/A47 junction in a south easterly direction to a point A18, a distance of 1063 metres.	References D9 to D10, D11 to D12, D15 to D16, D17 to D18, D19 to D20 and D21 to D22 To be substituted by the following lengths of new highway: <ul style="list-style-type: none"><li>— From point D9 173 metres east of the Sandy Lane/A47 junction to point D10 on the northern roundabout of Wood Lane junction, a distance of 752 metres</li><li>— From point D11 282 metres east of the Sandy Lane/A47 junction to point D12 on the southern roundabout of Wood Lane junction, a distance of 644 metres</li><li>— From point D15 on the northern roundabout of Wood Lane junction in a southerly direction to point D16 on the southern roundabout, a</li></ul>

			<p>distance of 438 metres</p> <ul style="list-style-type: none"> <li>— From point D17 on the northern roundabout of Wood Lane junction in an easterly direction to point D18, a distance of 610 metres</li> <li>— From a point D19 on the southern roundabout of Wood Lane junction in an easterly direction to point D20, a distance of 669 metres</li> <li>— From a point D21 on the southern roundabout of Wood Lane junction in a south easterly direction to point D22 on Honingham roundabout, a distance of 1663 metres.</li> </ul>
Norfolk County Council Honingham Parish East Tuddenham Parish	Reference A19 to A20 See sheet 10	Reference A19 to A20 See sheet 10	Reference D13 to D14 and D14 to D4 See sheet 10
Norfolk County Council Honingham Parish East Tuddenham Parish	Reference A21 to A22 Part of Berrys Lane	Reference A21 to A22 From a point A21 where Berrys Lane joins the existing A47 in a south easterly direction to point A22, a distance of 363 metres.	Reference D21 to D22 and D23 to D24 To be substituted by the following lengths of new highway: <ul style="list-style-type: none"> <li>— From a point D21 on the southern roundabout of Wood Lane junction in a south</li> </ul>

			<p>easterly direction to point D22 on Honingham roundabout, a distance of 1663 metres</p> <p>— From a point D23 314 metres east of the southern roundabout of Wood Lane junction in a southerly direction to point D24 on Dereham Road, a distance of 241 metres.</p>
Norfolk County Council Honingham Parish East Tuddenham Parish	Reference A40 to A41 Honingham FP3	Reference A40 to A41 From point A40 on Dereham Road in a westerly direction to a point A41, a distance of 300 metres.	To be substituted by a new bridleway between point CF25 on Dereham Road 219 metres south of the existing A47 in a westerly direction to point CF26, a distance of 284 metres.
<b>The rights of way and access plans – sheet 10</b>			
Norfolk County Council East Tuddenham Parish	Reference A19 to A20 Part of Wood Lane B1535	Reference A19 to A20 From a point A19 where Wood Lane meets the A47 in a northerly direction to a point A20, a distance of 528 metres.	Reference D13 to D14 and D14 to D4 To be substituted by the following lengths of new highway: <ul style="list-style-type: none"> <li>— From point D13 534 metres north of the existing A47 in a southerly direction to point D14, a distance of 301 metres</li> <li>— From a point D14 228 metres north of the existing A47 in an easterly direction to a point D4 on the northern roundabout</li> </ul>

			of Wood Lane junction, a distance of 97 metres.
Norfolk County Council East Tuddenham Parish	Reference A21 to A22 See sheet 9		References D21 to D22, D23 to D24 See sheet 9
Norfolk County Council Honingham Parish	Reference A38 to A39 Part of Honingham RB1	Reference A38 to A39 285 metres north east of centrepoint of the northern roundabout of Wood Lane junction, to A39 11m south of the existing A47 a distance of 467 metres.	Reference A38 to CF2a To be substituted by a new restricted byway from point A38 on the existing Honingham RB1 in a westerly direction to point CF2a 117 metres north east of the northern roundabout of Wood Lane junction, a distance of 242 metres.
<b>The rights of way and access plans – sheet 11</b>			
Norfolk County Council Honingham Parish	-	-	Reference D1 to D2 See sheet 1
<b>The rights of way and access plans – sheet 12</b>			
Norfolk County Council Honingham Parish	-	-	Reference D1 to D2 See sheet 1
<b>The rights of way and access plans – sheet 13</b>			
Norfolk County Council Honingham Parish	-	-	Reference D1 to D2 See sheet 1
Norfolk County Council Honingham Parish	Reference A24 to A25 Part of the existing A47	Reference A24 to A25 From point A24 205m metres west of the existing property St Andrew's Church in an eastern direction of 188m to point A25.	References D25 to D26, D27 to D28, D41 to D42 and D33 to D34 To be substituted by the following lengths of new highway:  — From a point D25 on Honingham roundabout in an easterly direction to point D26 on the southern roundabout of Norwich Road junction, a distance of

			<p>1030 metres</p> <p>— From a point D27 68 metres west of St Andrew's Church in an easterly direction to a point D28 on Taverham Road, a distance of 460 metres</p> <p>— From a point D41 south of Church House Farm in a south easterly direction to D42 on the northern roundabout of Norwich Road junction, a distance of 248 metres</p> <p>— From point D33 on the northern roundabout of Norwich Road junction in a southerly direction to point D34 on the southern roundabout, a distance of 314 metres.</p>
<b>The rights of way and access plans – sheet 14</b>			
Norfolk County Council Honingham Parish	-	-	Reference D1 to D2 See sheet 1
Norfolk County Council Honingham Parish	Reference A27 to A28 Part of Blind Lane	Reference A27 to A28	References D25 to D26, D33 to D34 and D41 to D42 To be substituted by the following lengths of new highway: — From a point D25 on

			<p>Honingham roundabout in an easterly direction to point D26 on the southern roundabout of Norwich Road junction, a distance of 1030 metres</p> <p>— From point D33 on the northern roundabout of Norwich Road junction in a southerly direction to point D34 on the southern roundabout, a distance of 314 metres</p> <p>— From a point D41 south of Church House Farm in a south easterly direction to D42 on the northern roundabout of Norwich Road junction, a distance of 248 metres.</p>
Norfolk County Council Honingham Parish	Reference A26 to A29 Part of the existing A47	Reference A26 to A29. From point A26 104 metres south of the existing property access to Church House Farm in an eastern direction for 702 metres to point A29.	References D29 to D30, D31 to D32, D33 to D34, D35 to D36 and D37 to D38 To be substituted by the following lengths of new highway:  — From point D29 on the new mainline dual carriageway 122 metres west of St Andrew's



			<p>Church in an easterly direction to point D30 on the new northern roundabout of Norwich Road junction, a distance of 707 metres.</p> <p>— From point D31 on the new mainline dual carriageway 143 metres west of St Andrew's Church in an easterly direction to point D32 on the new southern roundabout of Norwich Road junction, a distance of 763 metres.</p> <p>— From point D33 on the northern roundabout of Norwich Road junction in a southerly direction to point D34 on the southern roundabout, a distance of 314 metres</p> <p>— From point D35 on the new northern roundabout of Norwich Road junction in an easterly direction to point D36 on</p>
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			<p>the new mainline dual carriageway, a distance of 712 metres</p> <p>— From point D37 on the new southern roundabout of Norwich Road junction in an easterly direction to point D38 on the new mainline dual carriageway, a distance of 619 metres.</p>
<b>The rights of way and access plans – sheet 15</b>			
Norfolk County Council Easton Parish Honingham Parish	Reference A26 to A29 See sheet 14		References D29 to D30, D31 to D32, D33 to D34, D35 to D36, D37 to D38 See sheet 14
<b>The rights of way and access plans – sheet 15</b>			
Norfolk County Council Easton Parish Honingham Parish	-	-	Reference D1 to D2 See sheet 1
Norfolk County Council Easton Parish Honingham Parish	Reference A30 to A31 Part of the existing A47	Reference A30 to A31 From point A30 210 metres west of the existing Easton roundabout in an easterly direction to point A31, a distance of 290 metres.	References D2 to D36, D2, D2 to D38 and D39 to D40 To be substituted by the following lengths of new highway: <p>— The new mainline dual carriageway between D36 and D2 (eastbound carriageway) and between D2 and D38 (westbound carriageway), a distance of 1290 metres</p> <p>— From a point D39 on the southern dumbbell roundabout</p>

			of Norwich Road junction in an easterly direction to a point D40 85 metres south of the Church Lane junction on Dereham Road, a distance of 1265 metres.
<b>The rights of way and access plans – sheet 16</b>			
Norfolk County Council Easton Parish	-	-	Reference D1 to D2 See sheet 1
Norfolk County Council Easton Parish Honingham Parish	Reference A30 to A31 See sheet 15		References D2 to D36, D2, D2 to D38 and D39 to D40 See sheet 15
Norfolk County Council Easton Parish Honingham Parish	Reference A32 to A33 Church Lane	Reference A32 to A33 From point A32 at the junction of Church Lane and Ringland Lane in a south westerly direction to point A33 on the Easton roundabout, a distance of 315 metres.	Reference CF20 to CF24 To be substituted by a new cycle track from the new Easton overbridge at point CF24 in a north easterly direction to point CF20 on Ringland Lane, a distance of 332 metres.
Norfolk County Council Easton Parish Honingham Parish	Reference A34 to A35 Part of Dereham Road	Reference A34 to A35 From point A34 on the Easton roundabout in a southerly direction to point A35, a distance of 45 metres.	Reference D39 to D40 From a point D39 on the southern dumbbell roundabout of Norwich Road junction in an easterly direction to a point D40 85 metres south of the Church Lane junction on Dereham Road, a distance of 1265 metres.

### PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED AND NEW PRIVATE MEANS OF ACCESS WHICH ARE OTHERWISE TO BE PROVIDED

(1) Area	(2) Private means of	(3) Extent of stopping up	(4) New private means of
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	<i>access to be stopped</i>		<i>access to be substitutes or provided</i>
<b>The rights of way and access plans – sheet 1</b>			
Norfolk County Council North Tuddenham Parish	Reference B1 to B2	Reference B1 to B2 A private access track from length from the existing A47 to a point 313 metres south.	Reference C1 to C2. To be substituted by a new private access road which connects into Fox Lane from a point 498 metres west of the current access.
<b>The rights of way and access plans – sheet 2</b>			
Norfolk County Council North Tuddenham Parish Hockering Parish			Reference C3 to C4. A new private access road to provide access to a drainage basin from Lyng Road between C3 and C4.
<b>The rights of way and access plans – sheet 4</b>			
Norfolk County Council Hockering Parish			Reference C5 to C6 A new private means of access to agricultural land from the existing A47 at the junction with Low Road.
Norfolk County Council Hockering Parish			Reference C7 to C8 A new private means of access to drainage basin from the proposed mainline dual carriageway (D1 to D2), 108 metres north west of the Mattishall Lane underpass.
Norfolk County Council Hockering Parish			Reference C9 to C10 A new private means of access to agricultural land from the existing Mattishall Lane, 16 metres north east of point A6.
Norfolk County Council Hockering Parish	Reference B3 to B4 Mill Lane	Reference B3 to B4 A length from a point 73 metres south of the existing A47 southwards to the private timber yard.	Reference C11 to C12 To be substituted by a new private access road from a point C11 430 metres north west of the current access on Mattishall Lane in an easterly direction for a distance of 460 metres to point C12.
<b>The rights of way and access plans – sheet 5</b>			
Norfolk County	Reference B3 to B4		Reference C11 to C12

Council Hockering Parish	See sheet 4		See sheet 4
Norfolk County Council Hockering Parish			Reference C13 to C14 A new private means of access to a drainage basin from the new private access track (Reference C11 to C12).
<b>The rights of way and access plans – sheet 6</b>			
Norfolk County Council Hockering Parish			Reference C15 to C16 A new private means of access to a drainage basin from the new mainline dual carriageway (Reference D1 to D2).
<b>The rights of way and access plans – sheet 7</b>			
Norfolk County Council East Tuddenham Parish	Reference B5 to B6 private access road from existing A47	Reference B5 to B6 A point B6 adjacent to the existing A47 just West of the Berrys Lane junction extending 189 metres west to B5.	Reference C17 to C18 To be substituted by a new private means of access being provided from Church Lane 644 metres west of the current access point.
Norfolk County Council East Tuddenham Parish			Reference C19 to C20 A new private means of access to a drainage basin from a new private access track (Reference C17 to C18).
<b>The rights of way and access plans – sheet 8</b>			
Norfolk County Council East Tuddenham Parish	Reference B5 to B6 See sheet 7		Reference C17 to C18 See sheet 7
<b>The rights of way and access plans – sheet 9</b>			
Norfolk County Council Hockering Parish			Reference C23 to C24 A new private means of access to a drainage basin from point C23 on the existing A47 352 metres east of the junction of Berrys Lane with existing A47.
<b>The rights of way and access plans – sheet 11</b>			
Norfolk County Council Honingham Parish	Reference B9 to B10 private access road from existing A47 leading to Hall Farm	Reference B9 to B10 extending from the existing A47 for 184 metres north.	Reference C25 to C26 To be substituted by a new private access track being provided from point C25 on the existing (de-trunked) A47 348 metres west

			of the current access in a northerly direction and then in an easterly direction to point C26 for a distance of 530 metres.
Norfolk County Council Honingham Parish			Reference C27 to C28 A new private means of access to a drainage basin from a new private access track from the existing A47 to Hall Farm (C25 to C26).
<b>The rights of way and access plans – sheet 12</b>			
Norfolk County Council Honingham Parish			Reference C29 to C30 A new private means of access to a drainage basin from the new dual carriageway between point C29 211 metres north west of the River Tud crossing to point C30 a distance of 17 metres.
Norfolk County Council Honingham Parish			Reference C31 to C32 A new private means of access to a drainage basin from the de-trunked A47 between point C31 273 metres north west from the centre of the existing roundabout with Norwich Road and the existing A47 to point C32 a distance of 10 metres.
<b>The rights of way and access plans – sheet 13</b>			
Norfolk County Council Honingham Parish			Reference C33 to C34 A new private means of access to the car park for St Andrew's Church from the de-trunked A47 from point C33 60 metres west of the entrance to St Andrew's Church to point C34 a distance of 9 metres.
<b>The rights of way and access plans – sheet 14</b>			
Norfolk County Council Honingham Parish			Reference C35 to C36 A new private means of access to a drainage

			basin from point C35 on Taverham Road 55 metres south of the access to Church House Farm to point C36 a distance of 8 metres.
Norfolk County Council Honingham Parish			Reference C37 and C38 A new private means of access to agricultural land and construction compounds to the north of the proposed mainline dual carriageway from the realigned Taverham Road from point C37 85 metres east of the junction of Blind Lane with the existing A47 to point C38, a distance of 74 metres.
<b>The rights of way and access plans – sheet 16</b>			
Norfolk County Council Easton Parish			Reference C21 to C22 A new private means of access to agricultural land and construction compounds to the north of the proposed mainline dual carriageway from points C21 at the junction of Church Lane and Ringland Lane to point C22, a distance of 89 metres.

#### PART 4

#### PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Private means of access to be stopped up	<i>(3)</i> Extent of stopping up
<b>The rights of way and access plans – sheet 6</b>		
Norfolk County Council Hockering Parish	Reference B11 to B12 Private access road to Newgate House	Reference B11 to B12 A point B11 extending south towards Newgate House to point B12, a distance of 42 metres.

<b>The rights of way and access plans – sheet 9</b>		
Norfolk County Council East Tuddenham Parish	Reference B7 to B8 private access road off existing A47	Reference B7 to B8 A point extending from the existing A47 132 metres south.

## SCHEDULE 5

Article 26

### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Plot reference number shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights and restrictive covenants over land may be acquired</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
<b>Land Plans – Sheet No. 1</b>		
1/2f	Removal of cables and apparatus for electronic communications and associated infrastructure. Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers Right to pass and repass with or without plant and vehicles and including access to highways To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	Work No. 1, 2 and 73
<b>Land Plans – Sheet No. 2</b>		
2/4b	Right to pass and repass with or without plant and vehicles and to access land for ecological mitigation commitments	Work No. 56 and ecological mitigation
<b>Land Plans – Sheet No. 3</b>		
3/1a	Right to pass and repass with or without plant and vehicles and to access land for ecological mitigation commitments	Work No. 56 and ecological mitigation
3/2b	Right to pass and repass with or without plant and vehicles and to access land for	Work No. 56 and ecological mitigation



	ecological mitigation commitments	
3/3b	Right to pass and repass with or without plant and vehicles and to access land for ecological mitigation commitments	Work No. 56 and ecological mitigation
3/4a	Right to pass and repass with or without plant and vehicles and to access land for ecological mitigation commitments	Work No. 56 and ecological mitigation
3/5a	Right to pass and repass with or without plant and vehicles and to access land for ecological mitigation commitments	Work No. 56 and ecological mitigation
3/6a	Right to pass and repass with or without plant and vehicles and to access land for ecological mitigation commitments	Work No. 56 and ecological mitigation
<b>Land Plans – Sheet No. 4</b>		
4/1g	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker</p>	Work No. 74

	<p>posts and inspection chambers  Right to pass and repass with or without plant and vehicles and including access to highways  To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
4/1j	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure  Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers  Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers  Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers  Right to pass and repass with or without plant and vehicles and including access to highways  To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 74

**Land Plans – Sheet No. 5**

<p>5/4c</p>	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers Right to pass and repass with or without plant and vehicles and including access to highways To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	<p>Work No. 1 and 75</p>
<p>5/7c</p>	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers Right to pass and repass with or without plant and vehicles and including access to highways</p>	<p>Work No. 1 and 75</p>

	To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	
5/9c	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 1 and 76
5/9e	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p>	Work No. 1 and 75

	<p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
<b>Land Plans – Sheet No. 6</b>		
6/4e	<p>Right to pass and repass with or without plant and vehicles and to access adjoining parcels permanently acquired or already owned by the undertaker</p>	Work No. 1, 14 and 61
6/6a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and to access adjoining parcels permanently acquired or already owned by the undertaker</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 1 and 77
6/10c	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including</p>	Work No. 1 and 78

	<p>mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
<b>Land Plans – Sheet No. 7</b>		
7/1n	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	Work No. 81
7/6b	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to</p>	Work No. 1 and 79

	<p>highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
7/6d	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipeline and associated infrastructure</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed</p>	Work No. 1 and 80

	apparatus being made materially more difficult	
7/9a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 15, 16 and 80
7/10a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker</p>	Work No. 81



	<p>posts and inspection chambers  Right to pass and repass with or without plant and vehicles and including access to highways  To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
<b>Land Plans – Sheet No. 8</b>		
8/1c	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers.  Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers  Right to pass and repass with or without plant and vehicles and including access to highways  To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 81
8/3b	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers.  Place, divert, alter, remove or</p>	Work No. 81

	<p>maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
8/3f	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Install, retain, use, monitor, alter, maintain and remove ducts, cables and apparatus for services and utilities</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 82 and 83
8/4c	<p>Divert, install, underground, alter, retain, use, monitor and</p>	Work No. 15, 16 and 80

	<p>maintain and remove water pipelines and associated infrastructure</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
8/4d	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 15, 16 and 80
<b>Land Plans – Sheet No. 9</b>		
9/1d	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a gas main and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and</p>	Work No. 84

	<p>maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
9/1h	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a gas main and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a water pipeline and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and</p>	Work No. 84

	<p>maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
9/1j	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a gas main and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a water pipeline and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p>	Work No. 84

	<p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
9/11	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a gas main and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 22, 32, 63 and 84
9/1m	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a gas main and associated</p>	Work No. 19, 22, 63 and 84

	<p>infrastructure Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
9/6b	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a gas main and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and</p>	Work No. 28 and 84

	<p>inspection chambers Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers Right to pass and repass with or without plant and vehicles and including access to highways To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
<b>Land Plans – Sheet No. 10</b>		
10/5b	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove a gas main and associated infrastructure Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers Right to pass and repass with or without plant and vehicles and including access to highways</p>	Work No. 20, 23, 26, 26a, 84 and 98



	To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	
<b>Land Plans – Sheet No. 11</b>		
11/1b	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 1, 33, 87 and 97
11/1c	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker</p>	Work No. 1 and 88

	<p>posts and inspection chambers  Right to pass and repass with or without plant and vehicles and including access to highways  To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
11/1g	<p>Right to pass and repass with or without plant and vehicles and to access land for ecological mitigation commitments</p>	Ecological mitigation
<b>Land Plans – Sheet No. 12</b>		
12/4c	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure  Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers  Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers  Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.  Right to pass and repass with or without plant and vehicles and including access to highways</p>	Work No. 89

	To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult	
<b>Land Plans – Sheet No. 13</b>		
13/1d	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 65, 66 and 89
13/1e	Divert, install, underground, alter, retain, use, monitor and maintain and remove water	Work No. 65, 66 and 89

	<p>pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
13/1(i)	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and</p>	Work No. 65, 66 and 89

	<p>inspection chambers Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers Right to pass and repass with or without plant and vehicles and including access to highways To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
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**Land Plans – Sheet No. 14**

14/4g	<p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery, and vehicles to access adjoining parcels of land, highways and Ørsted's Hornsea Three Offshore Windfarm's onshore export cables Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p>	Work No. 1, 48, 51, 92, 94, and 99
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	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being obstructed or made materially more difficult</p>	
<b>Land Plans – Sheet No. 15</b>		
15/1a	<p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery, and vehicles to access adjoining parcels of land, highways and Ørsted’s Hornsea Three Offshore Windfarm’s onshore export cables</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables</p>	Work No. 1, 48, 51, 92, 94, and 99

	<p>together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being obstructed or made materially more difficult</p>	
15/3c	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 91
15/4b	Right to lay temporary	Work No. 1, 48, 51, 69, 70, 92,

	<p>surfaces and to pass and repass with or without plant, machinery, and vehicles to access adjoining parcels of land, highways and Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Works in connection with the overhead 132kV electricity line</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being obstructed or made materially more difficult</p>	<p>93, 94 and 99</p>
15/4e	Construct, install, retain use,	Work No. 72, 94 and 99



	<p>maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve cabling, ducts, jointing bays, telecommunications and other ancillary apparatus (including but not limited to access chambers, manholes, and marker posts) for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus</p> <p>Right to continuous vertical and lateral support for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Right to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works in connection with Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery, and vehicles to access adjoining parcels of land, highways and Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Divert, install, underground,</p>	
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	<p>alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus, landscaping, ecological mitigation or enhancement works from excavation, interference or damage and to prevent access to the installed apparatus, landscaping, ecological mitigation or enhancement works being obstructed or made materially more difficult</p>	
15/5b	<p>Construct, install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve cabling, ducts, jointing bays, telecommunications and other ancillary apparatus (including but not limited to access chambers, manholes and marker posts) for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus</p> <p>Right to continuous vertical and lateral support for Ørsted's</p>	Work No. 50, 92, 93 and 94

	<p>Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Right to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works in connection with Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Right to pass and repass with or without plant, machinery, and vehicles to access adjoining parcels of land, highways and Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Works in connection with the overhead 132kV electricity line</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove water pipelines and associated infrastructure</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic</p>	
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	<p>communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery and vehicles to access adjoining parcels of land, highways and work area for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>To include restrictive covenants for protecting the installed apparatus, landscaping, ecological mitigation or enhancement works from excavation, interference or damage and to prevent access to the installed apparatus, landscaping, ecological mitigation or enhancement works being obstructed or made materially more difficult</p>	
15/6a	<p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery, and vehicles to access adjoining parcels of land, highways and Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to</p>	Work No. 71, 94, and 95

	<p>highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being obstructed or made materially more difficult</p>	
15/7a	<p>Construct, install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve cabling, ducts, jointing bays, telecommunications and other ancillary apparatus (including but not limited to access chambers, manholes and marker posts) for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus</p> <p>Right to continuous vertical and lateral support for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Right to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works in connection with Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Right to pass and repass with or without plant,</p>	Work No. 50, 94 and 95

	<p>machinery, and vehicles to access adjoining parcels of land, highways and Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery and vehicles to access adjoining parcels of land, highways and work area for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>To include restrictive covenants for protecting the installed apparatus, landscaping, ecological mitigation or enhancement works from excavation, interference or damage and to prevent access to the installed apparatus, landscaping, ecological mitigation or enhancement works being obstructed or made materially more difficult</p>	
15/8a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including</p>	Work No. 95

	<p>mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
15/9a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 50 and 95
15/10a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and</p>	Work No. 91

	<p>inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
15/11a	<p>Works in connection with the overhead 132kV electricity line</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 93

**Land Plans – Sheet No. 16**



16/1a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery, and vehicles to access adjoining parcels of land, highways and Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being obstructed or made materially more difficult</p>	Work No. 72, 94, and 95
16/2a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery, and vehicles to access adjoining parcels of land, highways and Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Place, divert, alter, remove or</p>	Work No. 51, 52, 53, 71, 94, and 95

	<p>maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being obstructed or made materially more difficult</p>	
16/5a	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 50 and 95
16/6c	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p>	Work No. 50 and 95

	<p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	
<b>Land Plans – Sheet No. 18</b>		
18/1b	<p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus electricity cables including overhead electricity cables together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 91
18/4a	<p>Right to pass and repass with or without plant and vehicles and to access land for</p>	Ecological mitigation

	ecological mitigation commitments	
18/4b	Right to pass and repass with or without plant and vehicles and to access land for ecological mitigation commitments	Ecological mitigation
<b>Land Plans – Sheet No. 19</b>		
19/1a	<p>Works in connection with the overhead 132kV electricity line</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 91 and 93
19/2a	<p>Works in connection with the overhead 132kV electricity line</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications apparatus including overhead electronic communications apparatus together with accesses to highways and associated infrastructure including marker posts and inspection chambers.</p>	Work No. 91, 93 and 94

	<p>Construct, install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve cabling, ducts, jointing bays, telecommunications and other ancillary apparatus (including but not limited to access chambers, manholes and marker posts) for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus</p> <p>Right to continuous vertical and lateral support for Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Right to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works in connection with Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>Divert, install, underground, alter, retain, use, monitor and maintain and remove electronic communications cables, apparatus and associated infrastructure</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains,</p>	
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	<p>soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>Right to lay temporary surfaces and to pass and repass with or without plant, machinery and vehicles to access Ørsted's Hornsea Three Offshore Windfarm's onshore export cables</p> <p>To include restrictive covenants for protecting the installed apparatus, landscaping, ecological mitigation or enhancement works from excavation, interference or damage and to prevent access to the installed apparatus, landscaping, ecological mitigation or enhancement works being obstructed or made materially more difficult</p>	
19/3a	<p>Works in connection with the overhead 132kV electricity line</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult</p>	Work No. 93
<b>Land Plans – Sheet No. 20</b>		
20/1a	Works in connection with the overhead 132kV electricity	Work No. 93

	<p>line.</p> <p>Place, divert, alter, remove or maintain apparatus including mains, sewers, drains, soakaways, pipes, cables, conduits, lights and electronic communications apparatus, together with associated infrastructure including marker posts and inspection chambers.</p> <p>Right to pass and repass with or without plant and vehicles and including access to highways.</p> <p>To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.</p>	
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## SCHEDULE 6

Article 26

### MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

#### *Compensation enactments*

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

**2.—**(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5(A) (5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the A47 North Tuddenham to Easton Development Consent Order 2022 (“the A47 North Tuddenham to Easton Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the A47 North Tuddenham to Easton Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right”.

**3.**—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973<sup>(a)</sup> has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

*Application of Part 1 of the 1965 Act*

**4.** Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 26(1) (compulsory acquisition of rights and imposition of restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

**5.**—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For Section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11<sup>(b)</sup>(powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well

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(a) 1973 c. 26.

(b) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of



as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 23), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12(c) (unauthorised entry), and 13(d) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(e) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 29(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

### *Introduction*

**1.**—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 30 (application of the 1981 Act) of the A47 North Tuddenham to Easton Development Consent Order 2022 in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil or airspace only) of the A47 North Tuddenham to Easton Development Consent Order 2022 which excludes the acquisition of subsoil or airspace only from this Schedule.

**2.** In this Schedule, “house” includes any park or garden belonging to a house.

### *Counter-notice requiring purchase of land*

**3.** A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

**4.** A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

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Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

- (a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
- (b) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
- (c) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
- (d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunal, Courts and Enforcement Act 2007 (c. 15).
- (e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

*Response to counter-notice*

**5.** On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

**6.** The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

**7.** If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

**8.** If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

**9.** If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they are included the owner’s interest in the house, building or factory.

*Determination by the Upper Tribunal*

**10.** On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

**13.** If the Upper Tribunal determines that the undertaker ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

**14.—(1)** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

**(2)** If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

15. Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

## SCHEDULE 7

Article 33

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Norfolk County Council Parish of North Tuddenham	1/2h	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. New private access track.	1 and 3
Norfolk County Council Parish of North Tuddenham	1/2i	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: New link road between Main Road and the existing A47 west of Hockering.	2 and 73
Norfolk County Council Parish of North Tuddenham	1/3a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. New private access track.	1 and 3
Norfolk County Council Parish of North Tuddenham	1/4b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1 and 3
Norfolk County Council Parish of North Tuddenham	2/2a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:	2, 4 and 73

		New link road between Main Road and the existing A47 west of Hockering. Realignment of Lyng Road south-east of Poppy Wood.	
Norfolk County Council Parish of North Tuddenham	2/3b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1 and 73
Norfolk County Council Parish of Hockering	2/4c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: New link road between Main Road and the existing A47 west of Hockering.	2 and 56
Norfolk County Council Parish of Hockering	2/5b	Material storage, management and processing area. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Drainage basin, maintenance track and associated drainage. Stopping up Low Lane due to A47 mainline dual carriageway.	1, 5, 6 and 58
Norfolk County Council Parish of Hockering	2/5c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Stopping up Low Lane due to A47 mainline dual carriageway.	1 and 58
Norfolk County	2/7a	Temporary storage,	1 and 58

Council Parish of Hockering		laydown areas, access and working space to support construction of the following in adjoining land parcels: Stopping up Low Lane due to A47 mainline dual carriageway.	
Norfolk County Council Parish of Hockering	4/1a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Drainage basin and associated drainage maintenance access track.	1, 7, 9 and 74
Norfolk County Council Parish of Hockering	4/1d	Temporary compound for traffic management. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Mattishall Lane Link Road and underbridge. New road between Main Road and existing A47 west of Hockering, including stopping up Low Lane and altering junction with the existing A47.	1, 2, 7, 9 and 59
Norfolk County Council Parish of Hockering	4/1e	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcel: Mattishall Lane Link Road, connections to existing and realigned Mattishall Lane. Drainage basin plus associated drainage and maintenance access track.	1, 7, 8, 9 and 74

Norfolk County Council Parish of Hockering	4/1f	Material storage, management and processing area. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcel: A47 mainline dual carriageway. Mattishall Lane Link Road and underbridge. New or upgraded footways on Mattishall Lane and the existing A47. Works to de-trunk the existing A47. Stopping up Mattishall Lane due to A47 mainline dual carriageway.	1, 9, 10, 60 and 74
Norfolk County Council Parish of Hockering	4/4b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: New link road between Main Road and the existing A47 west of Hockering.	2
Norfolk County Council Parish of Hockering	4/5a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: New link road between Main Road and the existing A47 west of Hockering.	2
Norfolk County Council Parish of Hockering	4/6a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Realignment of Mattishall Lane to connect with the new Mattishall Lane Link Road. Stopping up parts of	1, 8, 9 and 74

		Mattishall Lane due to the A47 mainline dual carriageway.	
Norfolk County Council Parish of Hockering	4/6e	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. New private access track between Mattishall Lane and Mill Lane.	1 and 11
Norfolk County Council Parish of Hockering	4/9a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway, plus noise barriers.	1
Norfolk County Council Parish of Hockering	5/1a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Drainage basin provision on adjoining land. New private access track between Mattishall Lane and Mill Lane.	1, 11 and 12
Norfolk County Council Parish of Hockering	5/5a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway, plus noise barriers.	1
Norfolk County Council Parish of Hockering	5/7b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1

Norfolk County Council Parish of Hockering	5/9b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcel: A47 mainline dual carriageway.	1, 75 and 76
Norfolk County Council Parish of Hockering	5/9d	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1 and 76
Norfolk County Council Parish of Hockering	6/3b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1, 13, 77 and 96
Norfolk County Council Parish of Hockering	6/10b	Material storage and processing area. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Drainage basin, maintenance track and associated drainage. Newgate House culvert.	1, 14, 61 and 78
Norfolk County Council Parish of East Tuddenham	7/1j	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Installation of ducts, cables and apparatus for electronic communications operators. New road connecting the existing A47 east of Hockering with the Wood Lane junction northern dumbbell roundabout.	1, 17, 80 and 81



Norfolk County Council Parish of Hockering	7/3a	Material storage, management and processing area. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1 and 61
Norfolk County Council Parish of East Tuddenham	7/6c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1, 79 and 80
Norfolk County Council Parish of East Tuddenham	7/6e	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1 and 79
Norfolk County Council Parish of East Tuddenham	8/1a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Installation of ducts, cables and apparatus for electronic communications operators. New road connecting the existing A47 east of Hockering with A47 Wood Lane junction northern dumbbell roundabout.	17, 80 and 81
Norfolk County Council Parish of East Tuddenham	8/3a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Installation of ducts, cables and apparatus for electronic communications operators. New road connecting	17, 80 and 81

		the existing A47 east of Hockering with the Wood Lane junction northern dumbbell roundabout.	
Norfolk County Council Parish of East Tuddenham	8/3d	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Wood Lane junction west bound on slip road.	1, 19, 82 and 83
Norfolk County Council Parish of East Tuddenham	8/3h	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcel: A47 mainline dual carriageway.	1, 19, 80, 82 and 83
Norfolk County Council Parish of East Tuddenham	8/4b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcel: Diversion of surface water drainage.	16, 55 and 80
Norfolk County Council Parish of East Tuddenham	8/5a	Temporary compound, including material storage, management and processing area.	1, 62 and 63
Norfolk County Council Parish of East Tuddenham	8/6b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Installation of ducts, cables and apparatus for electronic communications operators. New road connecting the existing A47 east of Hockering with A47 Wood Lane junction northern dumbbell roundabout.	17, 80 and 81
Norfolk County Council	9/1a	Temporary compound, including	19, 22, 32, 62, 63 and 84

Parish of East Tuddenham		material storage, management and processing area. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Wood Lane junction west bound on slip road. Wood Lane junction southern dumbbell roundabout, plus connecting road to existing A47 north of Honingham.	
Norfolk County Council Parish of East Tuddenham	9/1c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: New River Tud outfall and surface water drainage channel for Wood Lane junction drainage.	22, 32 and 84
Norfolk County Council Parish of East Tuddenham	9/1n	Temporary storage, laydown areas, access and working space to support construction of Wood Lane junction southern dumbbell roundabout, plus connecting road to existing A47 north of Honingham.	22, 32 and 84
Norfolk County Council Parish of Honingham	9/6c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Alteration of the existing A47, north of Honingham, between the new junctions with Dereham Road junction and new Hall Farm access track.	27, 28, 30 and 32
Norfolk County Council Parish of East Tuddenham	10/2b	Temporary storage, laydown areas, access and working space to support construction	17, 25 and 81

		<p>of the following in adjoining land parcels:  New road between the existing A47 east of Hockering and Wood Lane junction northern dumbbell roundabout.  Realigning B1535 Wood Lane to tie into above new road.</p>	
Norfolk County Council Parish of East Tuddenham	10/3a	<p>Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:  Realigned B1535 Wood Lane connection with new road between existing A47 east of Hockering and Wood Lane junction northern dumbbell roundabout.</p>	17, 25 and 81
Norfolk County Council Parish of East Tuddenham Parish of Honingham	10/5c	<p>Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:  Realigned B1535 Wood Lane connection with new road between existing A47 east of Hockering and Wood Lane junction northern dumbbell roundabout.</p>	25, 26a, 81 and 85
Norfolk County Council Parish of Honingham	10/5e	<p>Material storage, management and processing area.  Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:  A47 mainline dual carriageway.  A47 Wood Lane Junction and side road connections.  New footway/cycleway track.</p>	1, 20, 22, 23, 26, 64 and 84

Norfolk County Council Parish of Honingham	10/5f	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Wood Lane junction northern dumbbell roundabout. New road between existing A47 east of Hockering and Wood Lane junction northern dumbbell roundabout, plus realigned B1535 Wood Lane connection. New cycle track. Optional 50m carriageway and associated footways, embankment and approaches for Norwich Western Link.	17, 18, 20, 25, 26, 26a and 98
Norfolk County Council Parish of Honingham	11/1e	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Maintenance access track to drainage basin.	1, 33, 34 and 88
Norfolk County Council Parish of Honingham	11/1f	Material storage, management and processing area. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Hall Farm underpass and access track. New cycle track.	1, 26, 30, 31, 33 and 64
Norfolk County Council Parish of Honingham	11/1h	Temporary storage, laydown areas, access and working space to support construction of the following in	1, 33, 87 and 88

		adjoining land parcel: A47 mainline dual carriageway. Hall Farm access track.	
Norfolk County Council Parish of Honingham	11/3b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Altering existing A47 between the Wood Lane junction southern dumbbell roundabout and existing Honingham roundabout. New Hall Farm access track junction with existing A47.	23, 30, 31, 32 and 86
Norfolk County Council Parish of Honingham	12/3b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Attenuation pond and associated drainage connections and maintenance access track. A47 mainline dual carriageway.	1 and 34
Norfolk County Council Parish of Honingham	12/4b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway River Tud crossing	1, 35 and 36
Norfolk County Council Parish of Honingham	13/1a	Temporary compound. Material storage, management and processing area. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway.	1, 32, 37, 38, 40, 42, 43, 65, 66 and 89

		<p>Honingham church underpass.</p> <p>Alteration of existing A47 connection to Honingham roundabout.</p> <p>Side road connection between Honingham roundabout and Norwich Road junction southern dumbbell roundabout.</p>	
Norfolk County Council Parish of Honingham	13/1h	<p>Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Replacement hardstanding area for the farmer. Honingham church underpass.</p>	1, 37, 38 and 39
Norfolk County Council Parish of Honingham	14/4b	<p>Temporary compound.</p> <p>Material storage, management and processing area.</p> <p>Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Norwich Road junction west bound on slip road. Side road connection between Honingham roundabout and Norwich Road junction southern dumbbell roundabout.</p>	1, 40 and 43
Norfolk County Council Parish of Honingham	14/4e	<p>Material storage, management and processing area.</p> <p>Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:</p>	41, 44, 47, 48, 51, 67 and 92

		<p>Drainage basin and maintenance access track.</p> <p>Cycle track between Taverham Road and Church Lane, Easton</p> <p>Norwich Road junction northern dumbbell roundabout.</p> <p>Realigned Taverham Road connection to Norwich Road junction northern dumbbell roundabout.</p> <p>Norwich Road junction east bound on slip road.</p>	
Norfolk County Council Parish of Honingham	14/4f	<p>Material storage, management and processing area.</p> <p>Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:</p> <p>Norwich Road junction west bound off slip road</p> <p>Side road connection between Dereham Road, Easton, and Norwich Road junction southern dumbbell roundabout.</p>	49, 50 and 58
Norfolk County Council Parish of Honingham	14/5a	<p>Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:</p> <p>Side road connection between Honingham roundabout and Norwich Road junction southern dumbbell roundabout.</p> <p>Stopping up Blind Lane due to A1 mainline and Norwich Road junction slip roads and side road.</p>	1, 40, 42 and 43
Norfolk County Council Parish of Honingham	14/6a	<p>Temporary access and working space to support construction of the following in</p>	39, 47, 90 and 91



		<p>adjoining land parcels:  Realignment of Taverham Road to connect with the proposed Norwich Road junction.  Reconfiguration of the existing A47 connection to Taverham Road.</p>	
<p>Norfolk County Council  Parish of Honingham</p>	14/8b	<p>Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:  Norwich Road junction southern dumbbell roundabout.  Side road connection between Honingham roundabout and Norwich Road junction southern dumbbell roundabout.  Side road connection between Dereham Road, Easton, and Norwich Road junction southern dumbbell roundabout.  Stopping up Blind Lane due to A1 mainline and Norwich Road junction slip roads and side road.</p>	1, 40, 42, 43, 46, 50 and 91
<p>Norfolk County Council  Parish of Honingham</p>	15/1e	<p>Material storage, management and processing area.  Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels:  Norwich Road junction west bound off slip road  New road between Norwich Road junction southern dumbbell roundabout and Dereham Road, Easton.</p>	49, 50 and 68
<p>Norfolk County Council</p>	15/4a	<p>Temporary storage, laydown areas, access</p>	1, 48, 51, 92 and 93

Parish of Easton		and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. Norwich Road junction east bound on slip road. New cycle track linking Taverham Road and Church Lane, Easton.	
Norfolk County Council Parish of Easton	15/4d	Material storage, management and processing area. Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: A47 mainline dual carriageway. New cycle track linking Taverham Road and Church Lane, Easton.	1, 51, 69, 70, 93 and 94
Norfolk County Council Parish of Easton	15/5c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcel: A47 mainline dual carriageway. Norwich Road junction west bound off slip road. New road linking Dereham Road, Easton, with Norwich Road junction southern dumbbell roundabout.	1, 49, 50 and 92
Norfolk County Council Parish of Easton	16/1c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: New cycle track between Taverham Road and Church Lane, Easton. Alteration of Church	52, 53, 71, 72 and 95

		Lane, Easton, north of the A47.	
Norfolk County Council Parish of Easton	16/5c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Norwich Road junction side road connection to Dereham Road, Easton.	50, 51 and 52
Norfolk County Council Parish of Easton	16/6a	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Norwich Road junction side road connection to Dereham Road, Easton.	50, 51 and 52
Norfolk County Council Parish of Easton	16/7b	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Tying A47 mainline dual carriageway into existing A47 dual carriageway.	1
Norfolk County Council Parish of Easton	17/1c	Temporary storage, laydown areas, access and working space to support construction of the following in adjoining land parcels: Altering southern corner of Rotten Row and Church Lane junction with associated drainage alterations	54

## SCHEDULE 8

Article 39

### REMOVAL OF HEDGEROWS

#### PART 1

#### REMOVAL OF HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
H49 to H50 shown on sheets 1 and 2 of the Hedgerow Plans	Partial removal	Work Nos. 2, 4 and 73
H51 to H52 shown on sheets 1 and 2 of the Hedgerow Plans	Full removal	Work Nos. 2 and 73
H57 to H57a shown on sheet 2 of the Hedgerow Plans	Full removal	Work Nos. 1 and 5
H61 to H62 shown on sheet 3 of the Hedgerow Plans	Partial removal	Work Nos. 2, 9 and 10
H1 to H2 shown on sheet 5 of the Hedgerow Plans	Partial removal	Work Nos. 1, 75 and 76
H3 to H4 shown on sheets 5 and 6 of the Hedgerow Plans	Partial removal	Work Nos. 1 and 77
H7 to H8 shown on sheet 6 of the Hedgerow Plans	Full removal	Work Nos. 1 and 14
H11 to H12 shown on sheets 6 and 7 of the Hedgerow Plans	Partial removal	Work Nos. 1 and 61
H17 to H18 shown on sheets 7 and 8 of the Hedgerow Plans	Full removal	Work Nos. 1 and 80
H104 to H105 shown on sheet 8 of the Hedgerow Plans	Partial removal	Work Nos. 1, 17 and 18
H72 to H72a shown on sheet 9 of the Hedgerow Plans	Partial removal	Work Nos. 19, 22, 32 and 84
H82 to H83 shown on sheet 9 of the Hedgerow Plans	Partial removal	Work Nos. 27, 32 and 84
H74a to H75 shown on sheets 9 and 10 of the Hedgerow Plans	Full removal	Work Nos. 1, 21, 22 and 24
H49 to H50 shown on sheet 13 of the Hedgerow Plans	Partial removal	Work Nos. 1, 40 and 89
H37 to H38 shown on sheets 13 and 14 of the Hedgerow Plans	Partial removal	Work Nos. 40, 43 and 91
H90 to H91 shown on sheet 14 of the Hedgerow Plans	Full removal	Work Nos. 39, 41, 47, 90 and 91
H96 to H97 shown on sheet 15 of the Hedgerow Plans	Full removal	Work Nos. 1, 49, 92 and 95

#### PART 2

#### REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
H53 to H54 shown on sheet 2 of the Hedgerow Plans	Partial removal	Work Nos. 2 and 4
H55 to H56 shown on sheet 2 of the Hedgerow Plans	Partial removal	Work Nos. 2 and 5
H57a to H58 shown on sheet 2 of the Hedgerow Plans	Full removal	Work Nos. 1 and 5
H59 to H60 shown on sheet 2 of the Hedgerow Plans	Full removal	Work No. 1
H63 to H64 shown on sheet 4 of the Hedgerow Plans	Full removal	Work No. 8
H5 to H6 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work Nos. 1 and 13
H9 to H10 shown on sheet 6 of the Hedgerow Plans	Partial removal	Work Nos. 1
H13 to H14 shown on sheet 7 of the Hedgerow Plans	Full removal	Work Nos. 1 and 80
H15 to H16 shown on sheet 7 of the Hedgerow Plans	Full removal	Work Nos. 1, 15, 16 and 80
H65 to H66 shown on sheet 7 of the Hedgerow Plans	Partial removal	Work No. 1
H70 to H71 shown on sheet 9 of the Hedgerow Plans	Partial removal	Work No. 62
H72a to H73 shown on sheet 9 of the Hedgerow Plans	Partial removal	Work Nos. 32 and 84
H76 to H77 shown on sheet 9 of the Hedgerow Plans	Partial removal	Work Nos. 32 and 84
H78 to H79 shown on sheet 9 of the Hedgerow Plans	Partial removal	Work Nos. 28, 32 and 84
H74 to H74a shown on sheet 10 of the Hedgerow Plans	Full removal	Work Nos. 17, 18, 20, 21 25, 26a, 81 and 85
H80 to H81 shown on sheet 10 of the Hedgerow Plans	Partial removal	Work Nos. 26a, 84 and 98
H21 to H22 shown on sheets 9 and 10 of the Hedgerow Plans	Full removal	Work Nos. 1, 17, 20, 21 and 85
H23 to H24 shown on sheets 9 and 10 of the Hedgerow Plans	Partial removal	Work Nos. 1, 23, 26, 64 and 84
H19 to H20 shown on sheet 10 of the Hedgerow Plans	Partial removal	Work Nos. 25, 26a and 85
H25 to H26 shown on sheet 11 of the Hedgerow Plans	Partial removal	Work Nos. 1, 23, 26, 30 and 86
H27 to H28 shown on sheet 11 of the Hedgerow Plans	Partial removal	Work Nos. 1, 33, 64, 87 and 97
H29 to H30 shown on sheet 11 of the Hedgerow Plans	Full removal	Work Nos. 1, 33, 87 and 97
H84 to H85 shown on sheet 11 of the Hedgerow Plans	Full removal	Work Nos. 1, 31 and 33
H86 to H87 shown on sheet 11 of the Hedgerow Plans	Partial removal	Work Nos. 1 and 33
H31 to H32 shown on sheets 11 and 12 of the Hedgerow Plans	Partial removal	Work Nos. 1 and 88

H33 to H34 shown on sheets 11 and 12 of the Hedgerow Plans	Partial removal	Work Nos. 1, 88 and 97
H35 to H36 shown on sheet 13 of the Hedgerow Plans	Partial removal	Work Nos. 1, 40, 42, 43 and 89
H39 to H40 shown on sheet 14 of the Hedgerow Plans	Partial removal	Work Nos. 1, 40, 42 and 43
H91 to H92 shown on sheet 14 of the Hedgerow Plans	Partial removal	Work Nos. 41, 47 and 90
H93 to H94 shown on sheet 14 of the Hedgerow Plans	Full removal	Work Nos. 1, 42 and 91
H41 to H42 shown on sheet 14 of the Hedgerow Plans	Full removal	Work Nos. 1, 40, 42, 43, 90, 91 and 92
H43 to H44 shown on sheets 14 and 15 of the Hedgerow Plans	Partial removal	Work Nos. 40 and 91
H95 to H96 shown on sheets 14 and 15 of the Hedgerow Plans	Full removal	Work Nos. 1, 41, 47, 48, 51, 92 and 99
H102 to H103 shown on sheets 14 and 15 of the Hedgerow Plans	Full removal	Work Nos. 1, 41, 44, 47, 48, 49, 50 and 92
H45 to H46 shown on sheet 15 of the Hedgerow Plans	Partial removal	Work Nos. 49 and 50
H47 to H48 shown on sheet 15 of the Hedgerow Plans	Partial removal	Work Nos. 1, 51 and 95
H98 to H99 shown on sheet 15 of the Hedgerow Plans	Partial Removal	Work Nos. 1, 48, 51, 92 and 99
H100 to H101 shown on sheet 15 of the Hedgerow Plans	Partial removal	Work Nos. 1, 51, 69, 70, 92 and 99

## SCHEDULE 9

Article 35 and 49

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a), belonging to or maintained by that utility undertaker;
- (b) in that case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act(d),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably

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(a) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by section 108 of, and paragraphs 24 and 38(1) and (3) of Schedule 6 to, the Utilities Act 2000 (c.27).

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6, and Schedule 8 to, the Utilities Act 2000 (c. 27), sections 149(1) and (5) and 197(9) of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.

(c) 1991 c. 56.

(d) Section 102(4) was amended by sections 96(1) of the Water Act 2003(c.37).

satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

7.—(1) — If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 52 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.



(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

### **Facilities and rights for alternative apparatus**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under subparagraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (5) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under subparagraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;

- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

### **Expenses and costs**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

## Cooperation

**12.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker’s undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

**13.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**14.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

**15.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(**a**);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications, networks and services) of Part 2 of the 2003 Act(**b**);

“electronic communications code network” means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

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(a) 2003 c.21.

(b) See section 106 of the 2003 Act, which was amended by section 4(3) to (9) of the Digital Economy Act 2017. (c.30). See also Schedule 3A to the 2003 Act, which was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017.

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

**16.** The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertakers works affecting electronic communications apparatus) the electronic communications code in the 2003 Act.

**17.—(1)** Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 52 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 3

### FOR THE PROTECTION OF NATIONAL GRID AS GAS UNDERTAKER

#### **Application**

**18.—(1)** For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but see paragraph 28(3)(b)).

## **Interpretation**

**19.** In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by National Grid for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in paragraph 26 and 28 of this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment,

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Gas Plc or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986 as the context requires;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 24(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 24(2) or otherwise.

**20.** Except for paragraphs 21 (apparatus in stopped up streets), 26 (retained apparatus: protection), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in stopped up streets**

**21.—(1)** Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 24 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 26.

(2) Notwithstanding the temporary alteration, diversion or restriction of any highway under the powers of article 15 (temporary stopping up and restriction of use of streets), National Grid will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the alteration, diversion or restriction was in that street.

### **Protective works to buildings**

**22.** The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (such consent not to be unreasonably withheld).

### **Acquisition of land**

**23.—(1)** Regardless of any provision in this Order or anything shown on the land plans, the undertaker may not acquire any interest in land or apparatus or override any easement or other interest of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds

and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by National Grid under paragraph 26 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**24.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its reasonable satisfaction (taking into account paragraph 25(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or secured by, the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**25.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed

between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker under paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 32 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of gas undertaker**

**26.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7) ; and,
- (b) must not be unreasonably withheld or delayed.

(5) National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and National Grid; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).



(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under paragraph 24(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 28.

(11) The undertaker is not be required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(12) In sub-paragraph (11), “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

## **Expenses**

**27.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 24(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 32 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**28.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any

requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by National Grid in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 9 (consent to transfer benefit of Order).

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

### **Enactments and agreements**

**29.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**30.—**(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 24(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 26, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted under this schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

### **Access**

**31.** If in consequence of the agreement reached in accordance with paragraph 23(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

32. Save for differences or disputes arising under paragraph 24(2), 24(4) and 25(1), any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 52 (*arbitration*).

## **Notices**

33. Notwithstanding article 51 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 26 must be sent to [REDACTED] and National Grid Plant Protection at [assetprotection@nationalgrid.com](mailto:assetprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# **PART 4**

## **FOR THE PROTECTION OF ANGLIAN WATER**

## **Application**

34. For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

## **Interpretation**

35. In this part of this Schedule –

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under The Water Industry Act 1991,
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act; and
- (d) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus

and for the purpose of this definition, where words are defined by section 219 of the Water Industry Act 1991 they shall be taken to have the same meaning.

“functions” includes powers and duties

“in” in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

### **On street apparatus**

36. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus in stopped up streets**

37.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets and private means of access), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 40 or the power of the undertaker to carry out works under paragraph 42.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of the use of streets), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

38. The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### **Acquisition of land**

39. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

40.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not (without the prior written consent of Anglian Water) be extinguished, until:

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 41.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 52 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) Notice under sub-paragraph (6) that Anglian Water desires the undertaker to execute any work, or part of any work, must be given within 14 days of agreement under sub-paragraph (4) or, in default of agreement, within 14 days of the date of settlement by arbitration under sub-paragraph (4).

(8) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(9) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

### **Facilities and rights for alternative apparatus**

**41.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 52 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision

for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

### **Retained apparatus**

**42.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 40(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 40(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances and will keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1), works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres
- (c) 4.5 metres where the diameter of the pipe is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres.

### **Expenses and costs**

**43.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of the Schedule.

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 52 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Anglian Water in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Anglian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**44.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 38 or 40(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.



## Cooperation

45. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 40(2) or Anglian Water makes requirements for the protection or alteration of apparatus under subparagraph (9), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

46. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

47. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

48. Any time period in which an action must be taken in this part of the Schedule may be amended by written agreement between the undertaker and Anglian Water.

## SCHEDULE 10

Articles 2 and 50

### DOCUMENTS, ETC. TO BE CERTIFIED

(1) <i>Document</i>	(2) <i>Document Reference</i>	(3) <i>Revision</i>
EMP (First Iteration)	TR010038/APP/7.4	Revision 1 [REP7-035]
Environmental statement  Chapter 2 Figures 7.1 to 7.5	TR010038/APP/6.1 – 6/3	Revision 0 [APP-040, APP-042 to APP-044, APP-046 to APP-047, APP-049 to APP-052, APP-055 to APP-059, APP-061 to APP-093, APP-095 to APP-133] Revision 1 [AS-005] Revision 1 [REP2-012] Revision 1 [REP3-012] Revision 1 [REP7-006] Revision 1 [REP3-014] Revision 1 [REP6-030] Revision 1 [REP7-008]
Book of Reference	TR010038/APP/4.3	Revision 4 [REP9-013]
Land plans	TR010038/APP/2.3	Revision 2 [REP5-002]
Special category land plans	TR010038/APP/2.10	Revision 0 [APP-013]
Environmental masterplan	TR010038/APP/6.8	Revision 4 [REP8-011]
General arrangement plans	TR010038/APP/2.2	Revision 1 [AS-027]
Works plans	TR010038/APP/2.4	Revision 2 [AS-028]
Rights of way and access plans	TR010038/APP/2.5	Revision 3 [REP8-004]
Traffic regulation plans	TR010038/APP/2.6	Revision 4 [REP9-004]
Engineering drawings and sections	TR010038/APP/2.7	Revision 1 [REP5-003]
Classification of roads plans	TR010038/APP/2.11	Revision 4 [REP9-005]

Hedgerow plans	TR010038/APP/2.12	Revision 4 [REP9-006]
De-trunking plans	TR010038/APP/2.13	Revision 2 [AS-033]
Outline traffic management plan	TR010038/APP/7.5	Revision 0 [APP-144]
Drainage and Surface Water Plans	TR010038/APP/2.8	Revision 2 [AS-031]

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises National Highways to improve the A47 between North Tuddenham to Easton in Norfolk and carry out all associated works.

The Order permits National Highways to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, book of reference, environmental statement and other documents mentioned in this Order and certified in accordance with article 50 (certification of documents, etc.) may be inspected free of charge during working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.