



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

The A160/A180 (Port of Immingham Improvement)

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Transport**

Mary O'Rourke BA(Hons) DipTP MRTPI

Examining Authority

The Examining Authority's findings and conclusions and recommendation in respect of an application for a Development Consent Order to upgrade the existing single carriageway section of the A160 to dual carriageway with associated junction improvements along the length of the route, at South Killingholme to the west of the Port of Immingham.

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File Ref: TRO10007

- The application, dated 8 January 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 8 January 2014.
- The applicant is the Highways Agency.
- The application was accepted for examination on 27 January 2014.
- The examination of the application began on 25 April 2014 and was completed on 4 September 2014.

The development proposed comprises:

- Upgrade of the Brocklesby Interchange to an oval two bridge roundabout layout, including a dedicated left turn lane for vehicles travelling from the eastbound A180 to the A160.
- Upgrade of the single carriageway section of the A160 to dual carriageway standard.
- Relocation of Habrough Roundabout to the west of its current position with new link roads provided to Ulceby Road, Top Road and Habrough Road.
- Closure of the central reserve gap on the A160 at the junction with Town Street and partial closure of the gap at the entrance to the oil refinery.
- Provision of a new road bridge at Town Street to provide vehicle and pedestrian access between the two parts of South Killingholme.
- Provision of a new gyratory carriageway system between Manby Road Roundabout, Rosper Road Junction and the Port of Immingham, requiring the construction of a new link road and bridge beneath the railway.
- Localised diversion of third party gas pipelines that cross beneath the existing A160.

Summary of Recommendation:

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

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1 INTRODUCTION

- 1.1 The application is made by the Highways Agency (HA) and is for the A160/A180 (Port of Immingham Improvement) Development Consent Order (DCO) which would grant powers to upgrade the existing single carriageway section of the A160 to dual carriageway, with associated junction improvements along the length of the route between the junction with the A180 at Brocklesby Interchange and the Port.
- 1.2 On 17 March 2014 I was appointed to be the Examining Authority (ExA) for the examination of this application.
- 1.3 I have considered and am satisfied that the application is for a nationally significant infrastructure project (NSIP) for the purposes of section 14(1)(h) and section 22 of the Planning Act 2008 (PA2008) as amended by the Highway and Railway (Nationally Significant Infrastructure Project) Order 2013. This is because the project relates to the improvement and alteration of a highway (section 22(1)(b) and (c)); is located wholly in England and the Secretary of State is the highway authority (section 22(3)(a), (3)(b), (5)(a) and (5)(b)); it is likely to have a significant effect on the environment (section 22(5)(c)); and is greater than the relevant limit of 12.5 hectares (ha)(section 22(3)(c) and (4)(b)).
- 1.4 The main events of the examination and procedural decisions taken during the examination are listed in Appendix B. I held a Preliminary Meeting on 24 April 2014. As set out in the timetable I held an open floor hearing on 15 July 2014 at The Ashbourne Hotel, North Killingholme. I held an issue specific hearing on the draft DCO on 16 July 2014 at the same venue. A hearing into the proposed compulsory acquisition was held on 17 July 2014.
- 1.5 In addition to a number of unaccompanied site visits to see the existing road, the line of the new dual carriageway and the surrounding area, I carried out an inspection of the site in the company of the HA and interested parties on the morning of 15 July 2014¹.
- 1.6 Twenty three relevant representations were received from interested parties (IPs) within the statutory period and at the Preliminary Meeting I accepted four late representations². These were from Eric Carnaby and Son of Holton Farm, South Killingholme; NATS Safeguarding; the Homes and Communities Agency; and English Heritage (EH). In addition, I exercised my power to make Phillip Simmonds, the new owner/occupier of 37 School Road, South Killingholme, an interested party in accord with the criteria under section 102A of the PA2008. In August

¹ PI-010 is the itinerary and location plan for the accompanied site visit.

² In accordance with Rule 10(3) of the Infrastructure Planning (Examination Procedure) Rules 2010.

2014 late representations were received on behalf of Centrica PLC³ and Royal Mail⁴. I accepted the latter as an interested party. Centrica PLC is a statutory undertaker with apparatus within the application boundary.

- 1.7 During the course of the examination and as a result of responses received from the HA including changes to the draft Order, the following statutory undertakers formally withdrew their objections: - Network Rail Infrastructure Ltd (NR), National Grid⁵, Environment Agency (EA), Anglian Water Services Ltd, and Centrica PLC⁶. An objection remains outstanding from SMart Wind Ltd (SMW) on behalf of Heron Wind Ltd. I deal in more detail with their concerns at Chapters 4 to 7 below and address whether sections 127 and 138 of the PA2008 are engaged.
- 1.8 In addition to consent required under the PA2008 (the subject of this report and recommendation), the proposed project needs other consents and permissions. These are described further in Chapter 2 below.
- 1.9 This report sets out in accordance with section 83(1)(b)(i) of the PA2008 my findings and conclusions in respect of the application and my recommendation to the Secretary of State (SoS) under section 83(1)(b)(ii) of the PA2008. I first describe the main features of the site and the proposed project (Chapter 2) before giving an outline of the policy and legal context for its consideration (Chapter 3). I then set out my findings and conclusions in relation to policy and factual issues (Chapter 4) and in relation to the Habitat Regulations⁷ (Chapter 5), before concluding in Chapter 6 with my recommendation on the case for granting development consent. In Chapter 7 I address the case made for compulsory acquisition and in Chapter 8 the detail of the draft DCO with my overall conclusions and recommendation on the application at Chapter 9.

³ D5-006

⁴ AR-009

⁵ National Grid Gas plc and National Grid electricity Transmission plc

⁶ CR-010, AR-007, D6-003, D6-001 and D6-004

⁷ The Conservation of Habitats and Species Regulations 2010 (as amended) SI 2010 No. 490

2 MAIN FEATURES OF THE SITE AND THE PROPOSAL

The site

- 2.1 The A160 is located on the south bank of the Humber Estuary. It is a trunk road and the strategic route linking the Port of Immingham via the A180/ M180 to the national motorway network. Whilst the A180 is a dual carriageway with grade separated junctions, the A160 is single carriageway for the 2km section that runs north east from the A160/A180 Brocklesby Interchange to the roundabout with the Habrough Road and Top Road. The A1077 Ulceby Road joins this section of the A160 from the west at a T junction by the Ulceby Truck Stop. East of the Habrough roundabout the A160 runs through the village of South Killingholme and is a dual carriageway for 2.5km with gaps in the central reserve at Town Street and at the Humber Oil Refinery with traffic signals at the Eastfield Road junction⁸.
- 2.2 Beyond the existing Manby Road roundabout the entrance to the Port (west gate) is reached via a 700m section of single carriageway under the freight railway line that serves the Port. Rosper Road is to the north with the Immingham West Fire Station on its western side. To the east beyond Rosper Road, there are open fields and marshland, including the Rosper Road Pools, designated as a Local Wildlife Site (LWS). The Humber Estuary is located approximately 1.4km to the east and is designated as a Site of Scientific Interest (SSSI), a Special Area of Conservation (SAC), a Special Protection Area (SPA), and a Ramsar site.
- 2.3 The site is within two local authority areas. The Brocklesby Interchange is in North East Lincolnshire, whilst the majority of the new road would be in North Lincolnshire. The land adjacent to the existing A160 between the Brocklesby Interchange and the Habrough Roundabout is predominantly flat arable farm land in large open fields with remnant hedgerows. Further east the road divides the settlement of South Killingholme with more built development to the north, including the primary school, village hall, shop and GP surgery, and sparse residential development and farms to the south around Town Street South. Beyond the signalised junction with Eastfield Road, the existing A160 dual carriageway separates the northern and southern parts of the Humber Oil Refinery. There is further industrial and commercial development to the north and south along Eastfield Road and to the east around the Manby Road Roundabout.
- 2.4 The ports of Immingham and Grimsby are the largest ports in the UK by tonnage and handled 66 million tonnes of freight in 2007, some 10% of the UK's cargo market. The South Humber bank also has approximately one quarter of the UK's oil and gas refining

⁸ AD-030 There is a helpful location plan in the Non-Technical Summary of the Environmental Statement.

capacity and remains the largest area of undeveloped land fronting a deep water estuary in the UK⁹. As well as Associated British Port's (ABP) plans for expansion at Immingham, there are a number of development projects proposed and permitted in the area around South Killingholme and North Killingholme that would be accessed via local roads connecting to the A160. These include other National Significant Infrastructure Projects (NSIPs) - the Able Marine Energy Park¹⁰ and proposals for the North Killingholme Power Project¹¹ and Hornsea Offshore Wind Farm (Zone 4) Project One¹² - as well as those developments proposed and permitted by the local planning authority. In response to my question, the HA produced a plan of the area showing these developments in the vicinity of the A160, South Killingholme and the Port¹³.

- 2.5 The application's location plan shows the site in relation to the motorway network, the Port of Immingham and the Humber Estuary¹⁴. More detail is provided at Figure 1.1 of the Environmental Statement Volume 2 - Figures¹⁵.

The objectives of the project

- 2.6 These are set out in the Planning Statement and they are¹⁶:

'to reduce traffic congestion, improve journey time reliability and improve safety for road users and the local community. (The project) also seeks to meet the needs of future traffic growth resulting from existing and future developments.'

The proposal

- 2.7 The project follows the A160 from its junction with the A180 at the Brocklesby Interchange in the south, through South Killingholme, to Rosper Road and the entrance to the Port in the north east. The physical extent of the permanent works and temporary land take for construction works (within the Order limits) covers approximately 104 hectares (ha)¹⁷.
- 2.8 The HA proposes to upgrade the Brocklesby Interchange from a single bridge which carries two way traffic to an oval two bridge roundabout layout to connect the A180 eastbound and westbound with the new A160 dual carriageway. A new bridge would be

⁹ AD-031 paragraph 2.4.1

¹⁰ The Order was made by the Secretary of State for Transport on 13 January 2014, is subject to special parliamentary procedure, and was laid before Parliament on 10 February 2014.

¹¹ The Examining Authority issued its recommendation to the Secretary of State on 11 June 2014. Consent was granted on 11 September 2014 after the close of the Immingham examination.

¹² The examination was closed on 10 June 2014.

¹³ D2-005 Appendix 7

¹⁴ AD-007

¹⁵ AD-032

¹⁶ AD-029 paragraph 1.1.3

¹⁷ Figure 2.1 of the ES Volume 2 (AD-032) shows key elements of the development.

constructed over the A180 to form the east side of the new Brocklesby Interchange with new on and off slips to the west and east including a dedicated left turn lane for vehicles travelling from the eastbound A180 to the A160¹⁸.

- 2.9 The single carriageway section of the A160 would be upgraded to dual carriageway standard with the Habrough Roundabout relocated to the west of its current position. East of the new roundabout a short section of new dual carriageway would then tie in with the existing alignment of the A160 south of School Road. New single carriageway link roads would be provided from the new roundabout to Ulceby Road, Habrough Road and East Halton Road. A new single carriageway section of Greengate Lane would be constructed to link the existing road and Top Road to the new East Halton Road link¹⁹.
- 2.10 The project includes the closure of the existing gap in the central reserve at the junction with Town Street and a new link road would be constructed between Town Street North and South including a new bridge across the A160. There would be consequential works to realign Town Street South between the junction with the A160 and the new link road. A new eastbound deceleration lane would be constructed on the north side of the A160 at the Town Street junction with new physical islands²⁰.
- 2.11 The existing central reserve would be altered at the entrance to the Humber Oil Refinery to only allow right turns in a westbound direction on the A160 and to restrict all other movements that would cross the A160 central reserve²¹.
- 2.12 At the Manby Roundabout, the project proposes the construction of a new dual lane northbound link road between the roundabout and Rosper Road with the construction of a new bridge under the existing railway which is on embankment. The new Rosper Road link with the existing roads would form a one way gyratory system replacing the existing Rosper Road/Humber Road junction. A new northbound single lane road would be constructed between Humber Road and the new Rosper Road link to allow access for abnormal loads²².
- 2.13 In addition, the project includes the localised diversion/protection of various gas and water pipelines, the diversion of electric cables and the construction of up to six highway drainage attenuation pond and pollution control facilities.

¹⁸ AD-013 Sheets 1 to 3

¹⁹ AD-013 Sheets 4 to 6

²⁰ AD-013 Sheet 7

²¹ AD-013 Sheets 8 and 9

²² AD-013 Sheet 10

2.14 Associated development²³ would include -

- street works;
- new/improved footways/cycleways and means of access;
- fencing, lighting, culverts, embankments;
- site preparation works, site construction compounds and haulage routes;
- pumping stations to manage surface water run-off; and
- borrow pits.

Changes

2.15 During the examination, further information was provided by the HA on the details of the project and requests were made for the acceptance of a number of minor revisions to the plans and to the details as submitted²⁴. At my request these were subject to public consultation²⁵. Having carefully considered the information and the responses received and having regard to both the guidance from the Department of Communities and Local Government (DCLG)²⁶ and the letter dated 28 November 2011 from Bob Neill MP, then Parliamentary SoS for Planning, as I was satisfied that the revisions proposed are non-material changes I made the procedural decision to accept them on behalf of the SoS²⁷.

2.16 The non-material changes comprise -

- additional footway/cycleway facilities;
- alteration to the vertical alignment of the Rosper Road link to give greater headroom;
- amendments to the layout of the A180 eastbound diverge and westbound merge lanes;
- noise barriers;
- wig-wag signals on the Rosper Road gyratory to assist exiting emergency vehicles
- extension to the limits of deviation for Work 18; and
- other minor changes to private accesses.

The construction phase

2.17 Subject to the grant of the Order, the HA estimates a total construction period of approximately 16 months with the programme designed to allow for specific construction works to take place at night and over the Christmas 2015 period when there is a planned closure of the freight railway. Certain works would also be seasonally constrained. In addition, the

²³ There is a full description of the works and associated development in Chapter 2 of the Environmental Statement Volume 1 - Main Text (AD-031), in the Planning Statement Chapter 3 (AD-029), and in the draft DCO Schedule 1 (Appendix D).

²⁴ AD-064, AD-067, AD-070, AD-072 to AD-077

²⁵ PI-008

²⁶ Paragraphs 105-107 of DCLG Guidance for the examination of applications for development consent (April 2013)

²⁷ PI-015

construction programme would have to take account of any planned outages for the gas and water pipeline diversions.

- 2.18 Further detail on the construction phase is given in the Construction Methodology Statement²⁸.
- 2.19 The application draft DCO provides for the temporary use of land during the construction period for borrow pits (to provide a source of construction material), top soil storage areas, working areas, site compounds, and haulage routes²⁹.

When operational

- 2.20 The design year of the project is 2031. In terms of appraising impacts, costs and benefits, the assessments use a design life of 60 years³⁰.
- 2.21 Maintenance of the trunk road network is the responsibility of the HA whilst the maintenance of the local road network is the responsibility of the local highway authority. Thus the A180, A160 and the junctions on those roads would be maintained by the HA and its contractors. It is expected that side roads including the new East Halton Road link, Habrough Road link and the gyratory system at Rosper Road/Humber Road would be adopted by the North Lincolnshire Council (NLC).
- 2.22 The application includes proposals for amendments to traffic regulations within the DCO boundary, including speed limits, weight restrictions, one way restrictions and roads to be subject to escorted vehicles³¹.

Other consents

- 2.23 In addition to consent required under the PA2008, the implementation of the project would require other consents and the application included a statement relating to environmental licences required from other bodies³².
- 2.24 Amongst others, the HA has agreed Statements of Common Ground (SoCGs) with Natural England (NE)³³ and with the EA³⁴. These provide information on progress towards obtaining other consents required. NE has confirmed that the HA's draft protected species licences for water vole and badger are satisfactory and has issued Letters of No Impediment³⁵.

²⁸ AD-063

²⁹ Figure 2.2 of the ES Volume 2 (AD-032)

³⁰ See HA responses to ExA Q3.3, Q5.5, Q9.1 and Q10.6

³¹ Traffic regulations plans at AD-012 and also see Article 41 and Schedule 3 of the DCO.

³² AD-025

³³ SOG-023

³⁴ SOG-021

³⁵ SOG-023 Appendix B

2.25 The HA has advised that it is in discussion with all other consenting bodies and that all necessary consents and permits would be applied for and obtained prior to the commencement of construction. I heard nothing during the examination to give me reason to believe that they would not be granted at the appropriate time.

3 LEGAL AND POLICY CONTEXT

3.1 The legal and policy context for the consideration of the project is set out in the Planning Statement³⁶ that formed part of the application and in various chapters of the Environmental Statement (ES)³⁷.

Planning Act 2008, as amended by the Localism Act 2011

3.2 At the time of closing the examination there was no designated national policy statement (NPS) in relation to road projects under the PA2008 (although there is a draft NPS on National Networks which I deal with below). In such cases, section 105 of the PA2008 applies and requires that the SoS in deciding the application must have regard to:

- *'any local impact report*
- *any matters prescribed in relation to the development of the description to which the application relates³⁸ and*
- *any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision'.*

European Requirements and Related UK Regulations

Habitats Directive³⁹ and Birds Directive⁴⁰

3.3 The UK is bound by the terms of the Birds and Habitats Directives (the Directives). The Directives form the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and a strict system of species protection.

3.4 The Habitats Directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.), which are of European importance, and provides through designation for the protection of Special Areas of Conservation (SACs).

3.5 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union and places great emphasis on the protection of habitats for endangered as well as migratory species. The most suitable territories for these species are classified as Special Protection Areas (SPAs) and along with SACs are an integral part of the Natura 2000 network.

³⁶ AD-029

³⁷ AD-031 for example paragraphs 6.1.4 to 6.1.13 of Chapter 6 on Air Quality

³⁸ Infrastructure Planning (Decisions) Regulations 2010 (SI 2010/105) contains prescribed matters

³⁹ Council Directive 92/43/EEC

⁴⁰ Council Directive 2009/147/EC

- 3.6 The Ramsar Convention⁴¹ protects wetlands of international importance especially as waterfowl habitat.

Conservation of Habitats and Species Regulations 2010 (as amended)⁴² (Habitats Regulations)

- 3.7 The Habitats Regulations are the principal means by which the Habitats and Birds Directive are transposed into English law and provide for the protection of European sites and European protected species and plants. It is Government policy that listed or proposed Ramsar sites should be given the same protection as European sites⁴³.

- 3.8 The Humber Estuary is a designated SPA, SAC and Ramsar site as well as a nationally designated SSSI. The HA submitted an Assessment of Implications for European Sites (AIES)⁴⁴ with the application and also undertook desk based study and field surveys for various European and nationally protected species.

Environmental Impact Assessment Directive⁴⁵

- 3.9 Environmental Impact Assessment (EIA) is the process to assess the likely environmental effects of a development in order that decision makers may take these effects into account in making their determination. EIA is required in certain circumstances by European law and is implemented in English law in respect of developments requiring development consent pursuant to the PA2008 by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (EIA Regulations 2009)⁴⁶.

- 3.10 The application is for EIA development. It includes an Environmental Statement (ES) in three volumes, comprising a main statement, a non-technical summary, figures and a set of appendices⁴⁷. During the course of the examination the HA voluntarily provided an ES Addendum in April 2014⁴⁸ and then a Second Addendum in June 2014⁴⁹. Both were to correct inaccuracies that had been identified in the noise and vibration assessment in the submitted ES. In its letter of 24 June 2014⁵⁰ the HA confirmed that the Second Addendum was to replace the Noise

⁴¹ Convention on wetlands of international importance especially as waterfowl habitat Ramsar, Iran 2.2.71 as amended by the Paris Protocol 3.12.92 and the Regina amendments adopted at the extraordinary conference of contracting parties at Regina, Saskatchewan between 28.5.87 and 3.6.87.

⁴² Statutory Instrument 2010 No. 2263 and Amendment Regulations 2012 - known as the Habitats Regulations

⁴³ National Planning Policy Framework paragraph 118 6th bullet

⁴⁴ AD-020

⁴⁵ Council Directive 85/337/EEC (as amended)

⁴⁶ Statutory Instrument 2009 No. 2263

⁴⁷ AD-030 to AD-059

⁴⁸ AD-061

⁴⁹ AD-070

⁵⁰ D3-001

and Vibration assessment provided in the first Addendum and it was subsequently advertised⁵¹.

3.11 I am satisfied that the ES, with the Second Addendum, meets the definition given in regulation 2(1) of the EIA Regulations 2009.

3.12 Other environmental information was received during the examination in the form of detailed responses from the HA⁵² and interested parties. The ES and the other information deal with the environmental effects of the project both during the construction phase and when it is operational.

Water Framework Directive⁵³

3.13 All activities that interact with the water environment must take the Directive into consideration. A Water Framework Directive (WFD) assessment⁵⁴ has to be undertaken to determine the effects of any proposed scheme or development which has the potential to significantly impact on any surface or groundwater body. As a large road improvement scheme, drainage from the project has the potential to impact on various watercourses in the area. The ES includes a WFD assessment.

National Policy and Legislation

National Policy Statement on Ports

3.14 The National Policy Statement on Ports (NPSP) of January 2012 has relevance⁵⁵ as the A160 is the strategic route which links the Port of Immingham to the national road network and the project would improve access to the Port. The Government believes that there is a compelling need for additional port capacity over the next 20-30 years. The NPSP refers to the wider economic benefits of clusters of port related industries and the importance of ports in relation to energy supplies including renewable energy.

3.15 Government policy is to encourage sustainable port development to cater for long term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting demand cost effectively, thus contributing to economic growth and prosperity. The NPS acknowledges that port development may give rise to substantial impacts on the surrounding transport infrastructure.

⁵¹ PI-009, D4-019

⁵² I am satisfied that this additional environmental information is 'any other information' as defined in the EIA Regulations 2009

⁵³ Council Directive 2000/60/EC

⁵⁴ The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003

⁵⁵ See Judgement at [2013] EWHC 2937 (Admin) on the application for judicial review by Transport Solutions for Lancashire and Morecambe of the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 SI 2013/675

- 3.16 Whilst the NPS does not directly address the A160/A180 project, in my judgement it provides some policy support at national level for the project which would improve access to the Port of Immingham. I address the issue of need further in Chapter 4.

Draft National Policy Statement on National Networks⁵⁶

- 3.17 Although there is no designated National Policy Statement on the road network, the Government published the draft National Policy Statement for National Networks (dNPSNN) in December 2013. In my view it should be given some weight as the most recent statement of Government's emerging vision and policy for the future development of nationally significant infrastructure projects on the national road and rail networks.

- 3.18 The DNPSNN sets out the Government's vision and strategic objectives to *'deliver national networks that meet the country's long-term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. This means:*

- *networks with the capacity and connectivity 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*
- *networks which join up our communities and link effectively to each other.*⁵⁷

- 3.19 Paragraphs 2.1 to 2.24 of the dNPSNN set out the detailed case for the Government's conclusion that *'there is a compelling need for development of the national road network'*. The Government's policy is to deliver improvements in capacity and connectivity on the national road network to support economic growth and improve quality of life, rather than meet unconstrained traffic growth. But increased traffic without sufficient capacity will result in more congestion, greater delays and more unpredictable journeys. Without action, congestion will constrain the economy and impact negatively on quality of life.

- 3.20 New and improved road transport links are identified as playing an important role in unlocking economic development and housing, including by unblocking barriers for labour or product markets. In addition road development is needed to fix safety problems, enhance the environment and/or enhance accessibility for pedestrians and cyclists. Paragraph 2.22 specifically refers to the Government's policy to reduce congestion and unreliability by

⁵⁶ D1-004 Part 2

⁵⁷ D1-004 Part 2 dNPSNN page 7

focusing on improving and enhancing the existing national road network including *'improvements to trunk roads, in particular dualling of single carriageway strategic trunk roads to increase capacity and improve performance and resilience.'*

- 3.21 The dNPSNN sets out general policies for the assessment and determination of applications for national networks infrastructure and the consideration of generic impacts.

The National Infrastructure Plan

- 3.22 The Plan is the Government's long term plan to ensure that investment required to meet the UK's infrastructure needs to 2020 and beyond can be delivered. It is updated annually. The objectives for roads include *'addressing road quality, increasing capacity and tackling congestion, and ensuring the network provides critical connections'*⁵⁸.
- 3.23 The 2012 update of the Plan includes a reference to the application project. The latest National Infrastructure Plan, published in December 2013, confirms the A160/A180 improvement as one of the Government's Top 40 infrastructure investments⁵⁹, these priority investments being selected as making a *'crucial contribution to the achievement of the Government's strategic objectives'*⁶⁰. The application project is also one of four projects selected for the accelerated road construction pilot scheme.

Action for Roads

- 3.24 The Planning Statement refers to the Department for Transport's (DfT) Action for Roads: A Network for the 21st Century published in July 2013. This also confirms the A160/A180 as one of 52 national road projects being brought forward to tackle the most congested parts of the road network⁶¹. It sets out the Government's plan to upgrade the majority of non-motorway roads on the strategic network, with a large proportion to be improved to dual carriageway with grade separated junctions (where vehicles on the main road are able to drive over or under the junctions), to ensure freer flowing traffic nationwide. The document also refers to the need for the HA to think strategically about how it can best support non-motorised traffic, to stop the network being a barrier to walkers and cyclists⁶².

National Planning Policy Framework

- 3.25 The National Planning Policy Framework (NPPF) was published on 27 March 2012. It sets out the Government's planning policies for

⁵⁸ D1-004 Part 5 National Infrastructure Plan 2013 paragraph 3.6 page 34

⁵⁹ D1-004 Part 5 National Infrastructure Plan 2013 Table 5A page 79

⁶⁰ D1-004 Part 5 National Infrastructure Plan 2013 paragraph 5.17 page 78

⁶¹ AD-029 paragraph 5.1.27 and D1-004 Part 6 Action for Roads paragraph 2.5 page 30

⁶² D1-004 Part 6 Action for Roads paragraph 3.33 page 9

England and how these are expected to be applied. It is supported by technical guidance and by national Planning Practice Guidance (PPG).

- 3.26 The NPPF does not contain specific policies for NSIPs for which particular considerations apply. Paragraph 3 of the NPPF explains that these are to be determined in accord with the decision making framework set out in the PA2008 and relevant national policy statements for major infrastructure *'as well as any other matters that are considered both important and relevant (which may include the NPPF).'* In this case the NPPF is relevant as there is not as yet a designated national policy statement for roads.
- 3.27 Paragraph 162 of the NPPF requires that when plan making local planning authorities should *'take account of the need for strategic infrastructure including nationally significant infrastructure within their areas'*.
- 3.28 Paragraph 215 of the NPPF notes that weight should be given to relevant policies in development plans adopted before 2004 *'according to their degree of consistency with this framework'*.

The National Parks and Access to the Countryside Act 1949

- 3.29 The Act established powers to declare National Nature Reserves, to notify SSSIs and for local authorities to establish Local Nature Reserves. In relation to the application, the examination considered the possible impacts on the nearby Humber Estuary SSSI, on the North Killingholme Haven Pits SSSI and on the Rosper Road Pools Local Wildlife Site (LWS).

The Wildlife and Countryside Act 1981 (as amended)

- 3.30 The Wildlife and Countryside Act 1981 (the 1981 Act) is the primary legislation which protects birds, animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs and measures for their protection and management. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England this is NE). If a species protected under Part I of the Act is likely to be affected by the project, a protected species licence would be required from NE.
- 3.31 The 1981 Act is relevant to the consideration of the impact of the project on the Humber Estuary and North Killingholme Haven Pits SSSIs and on those protected species like water voles, and their habitats, which might be affected.

Natural Environment and Rural Communities Act 2006

- 3.32 The Natural Environment and Rural Communities Act (NERC) makes 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 duty, regard must be had to the United Nations Environmental Programme Convention on Biological Diversity of 1992. Decision makers should also consider the UK Biodiversity Action Plan and the policies in the England Biodiversity Strategy.

The Natural Environment White Paper (NEWP)

- 3.33 The White Paper *The Natural Choice: securing the value of nature* was published in June 2011. It sets out Government policy for the natural environment. The essential principle is that the value of nature and the range of services that ecosystems provide to society should be at the heart of any decision. Any assessments of NSIPs are required to consider the impact on ecosystem services to ensure that transport interventions maintain a healthy, sustainable environment⁶³.

Protection of Badgers Act 1992

- 3.34 This is specific legislation for the protection of badgers. NE is responsible for issuing licences where it is necessary to interfere with a badger sett in the course of development. I deal with the impact of the project on badgers in Chapter 4.

The Hedgerow Regulations 1997

- 3.35 These Regulations make provision for the protection of Important Hedgerows and defines criteria for their identification. They include hedgerows recorded as an integral part of a field system pre-dating the Inclosure Acts⁶⁴ and also hedgerows identified as important on ecological grounds. There are Important Hedgerows in the area and I deal with the impact on them in Chapter 4.

Local Impact Reports

- 3.36 There is a requirement under section 60(2) of the PA2008 to give notice in writing to each local authority identified under section 56A inviting them to submit Local Impact Reports. This notice was given on 21 March 2014.
- 3.37 Local Impact Reports (LIRs) were prepared separately by North East Lincolnshire Council (NELC) and by NLC⁶⁵. The principal matters raised in the LIRs are: -

⁶³ As explained in the dNPSNN paragraph 5.13

⁶⁴ See the Short Titles Act 1896 (c.14) footnote note 1 to section 5a, Part II, Schedule 1 section 5a of the Regulations

⁶⁵ LIR-001 (NELC) and LIR-002 (NLC)

- strategic spatial policy for the South Humber and the Port of Immingham
- landscape
- highways and traffic , including facilities for non-motorised users
- footpaths and public rights of way
- archaeology and cultural heritage
- socio-economic and community matters including health
- noise/light/air quality
- flood risk/drainage/water supply/water quality
- biodiversity and ecology
- waste

3.38 In accord with section 105 of the PA2008, I had regard to the matters raised in the LIRs in my examination of the application.

The Development Plan

3.39 I consider that the plans and policies that make up the development plan for the local area of the project are matters that are important and relevant to the Secretary of State's decision. The dNPSNN at paragraph 4.3 requires that environmental, social and economic benefits and adverse impacts *'should be considered at national, regional and local levels. These may be identified in this NPS, or elsewhere'*. I take the reference to *'local level'* and to *'elsewhere'* to include the development plan policies for the local area.

3.40 Both NLC and NELC have signed SoCGs⁶⁶ with the HA which confirm that the HA's Planning Statement⁶⁷ together with the LIRs⁶⁸ provide an accurate summary of the policies relevant to consideration of the application. At my request, the HA provided Supporting Information on the Planning Policy Background⁶⁹ with the full text of the policies referred to in the Planning Statement, and the NELC and NLC provided details of the local development plan policies considered to be relevant⁷⁰.

North East Lincolnshire Local Plan 2003

3.41 The formal development plan for NELC comprises the saved policies of the North East Lincolnshire Local Plan (NELLP). There are relevant policies in the General, Natural Heritage and Built Heritage chapters. I consider that they are consistent with the NPPF⁷¹.

⁶⁶ SOG-002 and SOG-024

⁶⁷ AD-029

⁶⁸ LIR-001 and LIR-002

⁶⁹ D1-004

⁷⁰ D4-009 (NLC) and D4-010 (NELC)

⁷¹ LIR-001 paragraph 7

North Lincolnshire Core Strategy 2011

- 3.42 The formal development plan for NLC comprises the North Lincolnshire Core Strategy (NLCS) and the saved policies of the North Lincolnshire Local Plan (NLLP) adopted in 2003.
- 3.43 The NLCS sets the overall development strategy up to 2026. The vision is for North Lincolnshire to become the north of England's Global Gateway. The South Humber Gateway is identified as the area's major focus for economic development, to be supported by the delivery of improved rail and road access in and around the ports. The dualling of the A160 between the A180 and the Port of Immingham is seen as a critical piece of infrastructure. The NLCS includes other policies on design, heritage, landscape, and sustainability relevant to the consideration of this application⁷².
- 3.44 There are also a number of relevant saved policies in the NLLP which refer to the South Humber Bank and its potential for growth and development as well as general policies on rural development, landscape and the countryside, accessibility, the heritage environment, minerals, waste and flood risk.
- 3.45 There is also a draft Housing and Employment Land Allocations Development Plan Document. The most recent version published in November 2010 identifies the South Humber Gateway as a major employment allocation and the A160 as a critical element in the transport network to deliver the expected developments⁷³.

Applicability of the NPPF

- 3.46 The NPPF sets out the presumption in favour of sustainable development. Section 4 in particular promotes sustainable transport and paragraph 31 refers to the transport investment necessary to support strategies for the growth of ports. Both the LIRs address the extent to which the application follows the NPPF.

Revoked plans

- 3.47 The LIR produced by NLC notes the long history of policies promoting the development of the South Humber Gateway and which set out the need for adequate infrastructure to support development around the ports especially the road network.
- 3.48 The importance of the South Humber Gateway as a major economic development opportunity was recognised at the regional level in the former 2001 Regional Planning Guidance. This was carried forward through policies in the May 2008 Regional Spatial Strategy for Yorkshire and Humber where policy T7 identified the A160 improvements as a key part of the Regional Transport

⁷² LIR-002 paragraph 4.9 et seq

⁷³ LIR-002 paragraph 4.18

Strategy to improve freight movements and increase road capacity to the Humber ports. The Regional Spatial Strategy was revoked in February 2013.

Other plans and strategies

- 3.49 The NLC's Local Transport Plan (3) covering the period 2011-2026, acknowledges the A160 as a key transport problem in the area, suffering from congestion, particularly on the single carriageway section, and lack of junction capacity. The 2011-2014 Implementation Plan supports the delivery of the application project⁷⁴.
- 3.50 The NELC Local Transport Plan (3) covers the same period and recognises the wider benefits of the project in delivering additional capacity to the surrounding area as well as improving access to the Port of Immingham⁷⁵.
- 3.51 The 2007 North Lincolnshire Freight Strategy also recommended enhancements to the road network to meet growth demands at the region's ports. In 2010 NLC and NELC contributed to the South Humber Bank Transport Strategy, a multi-modal study looking at the next 10-20 years, which had as a key objective to work closely with the HA to bring forward the A160 project⁷⁶.
- 3.52 In its relevant representation, the NELC referred to the commitment of the South Humber Bank Delivery Group to the project. In response to my question, further detail was provided of the Group which is a public/private sector group whose purpose is to work together to develop the South Humber Bank⁷⁷. It includes local authorities, port operators, logistics companies, process industries, transport representatives and utility organisations. Its stated functions include '*vi) to work with the Highways Agency,..... to encourage a common understanding and solutions to strategic development*'.

⁷⁴ AD-029 paragraphs 6.1.4-6.1.6

⁷⁵ AD-029 paragraphs 6.1.7-6.1.9

⁷⁶ D1-004 part 12

⁷⁷ D2-027

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

MAIN ISSUES

Preliminary identification of main issues

- 4.1 In accordance with section 88 of PA2008 I made an initial assessment of principal issues based on the matters raised in the relevant representation and my reading of the application documents. This was sent to all interested and affected parties and was part of the agenda for the Preliminary Meeting held on 24 April 2014.
- 4.2 The issues identified at the outset of the examination were:
- planning policy context
 - need
 - transport and highways impacts
 - visual, noise, air quality and other impacts
 - natural environment
 - socio-economic impacts
 - compulsory acquisition
 - Development Consent Order.
- 4.3 Additional detail was provided within these broad issues of topics of interest⁷⁸. No request was made at the Preliminary Meeting for any additional issues to be included in the examination⁷⁹. These issues were used to structure the written round of questions⁸⁰.

Issues arising from written submissions

- 4.4 The written submissions, including relevant representations, responses to my questions, and written representations, generally were concerned with the issues identified above. Particular concerns were raised by various statutory and other undertakers with interests in pipelines and other utility infrastructure in respect of the protective provisions in the application draft DCO. These were discussed at the DCO and compulsory acquisition hearings and I deal with them in Chapters 7 and 8. Detailed representations by the EA, in respect of flood risk, and by NE, in respect of impact on the Rosper Road Pools LWS and functional land of the Humber Estuary SPA, were considered in exchanges of written submissions and are matters that I address under the main issue of ecology below.

⁷⁸ PI-004

⁷⁹ EV-001

⁸⁰ PI-006

Issues arising in Local Impact Reports

- 4.5 I summarised in Chapter 3 the principal matters raised in the two LIRs. They include references to impacts during the construction phase and when operational. The LIRs deal with both the short term and longer term impacts on the local area in environmental terms and in respect of impacts on local residents and on highways and traffic in the area.
- 4.6 The matters raised in the LIRs were generally covered in my preliminary assessment of issues. I deal with the matters raised in the LIRs and in subsequent representations by NLC and NELC in my consideration of the key issues below.

The Environmental Statement

- 4.7 The ES is in three volumes and has a non-technical summary⁸¹. Two Addenda with updated noise assessment chapters were submitted during the examination.
- 4.8 A wide range of issues have been assessed in the ES. The ES includes details of measures proposed to mitigate identified harmful impacts.
- 4.9 The ES also addresses the cumulative effects of the project, including when considered together with other developments in the area. In response to my questions⁸² the HA provided further information on the developments referred to in the ES and their construction programmes. There was no dispute at the examination about the developments selected or the approach taken in the ES to cumulative impact assessment.
- 4.10 Although the omission of certain developments was referred to in the NE's relevant representation⁸³, this was in respect of the AIES and in-combination effects and not the ES, and the HA dealt with this to NE's satisfaction in the updated AIES⁸⁴.
- 4.11 During the course of the examination the HA put forward various non-material changes to the application which are detailed in paragraph 2.16. My assessment below is in respect of the amended project.

Key issues for the determination of the application

- 4.12 From the submitted written representations, responses to my written questions and evidence given orally at the hearings, and having regard to the assessment principles and generic impacts in the dNPSNN, I consider that the matters that emerged as key

⁸¹ AD-030 to AD-059

⁸² PI-006 Q3.9 and Q3.10

⁸³ RR-015

⁸⁴ D2-003 and D2-004

issues in the examination and which are therefore relevant to the SoS's decision are:

- the policy context
- the need for the proposed project
- landscape and visual impact
- the impact on ecology, biodiversity, protected species and statutory designations
- heritage impacts
- noise and amenity impacts including air quality
- flood risk and drainage
- traffic and highway implications, including on footways, public rights of way, and facilities for non-motorised users
- socio-economic impacts.

Policy context

- 4.13 As there is no designated NPS, section 105 of the PA2008 applies. This requires that the SoS in reaching his decision must have regard to the submitted LIRs, any matter prescribed⁸⁵ and to any other matters thought to be both important and relevant. The LIRs, the prescribed matters, and all matters that, on behalf of the SoS, I considered were both important and relevant were examined through the written evidence and the hearings held.

The draft National Policy Statement for National Networks

- 4.14 The important and relevant matters include the dNPSNN. It has been subject to public consultation and Parliamentary scrutiny during 2014 but it is not expected to be designated in its final form until the end of the year. In that it sets out the need for development of the national road network, wider Government policy on the national networks, assessment principles and guidance on generic criteria, it covers matters that the SoS may consider both important and relevant to his decision on this application.
- 4.15 I note that the SoS in his March 2014 decision on the NR application for Norton Bridge⁸⁶ whilst acknowledging that the draft NPSNN did not yet have effect for the purposes of section 104 of the PA2008, considered that it should be given some weight in considering that application *'as it contains many emerging policies that are relevant'*⁸⁷. Similarly there are many emerging policies in the dNPSNN that are relevant to the consideration of this roads application and it would be appropriate to adopt the same approach in this case.

⁸⁵ Such matters are prescribed in the Infrastructure Planning (Decisions) Regulations 2010 (SI 2010/305) and are listed buildings, conservation areas and scheduled monuments, hazardous substances and biodiversity.

⁸⁶ The Network Rail (Norton Bridge Area Improvements) Order 2014

⁸⁷ Paragraph 9 of the Department of Transport decision letter dated 31March 2014

- 4.16 The application of the dNPSNN to the project was assessed in the Planning Statement submitted by the HA⁸⁸ and in many of my written questions⁸⁹ I set the policy context by way of reference to particular parts of the dNPSNN. I deal in more detail with these emerging policies, and the extent to which the project would be in conformity with them, in my findings and conclusions that follow on each of the main issues.

The development plan

- 4.17 The main part of the route of the A160 is through the administrative area of North Lincolnshire with the Brocklesby Interchange and the land in its vicinity in North East Lincolnshire.

In North East Lincolnshire

- 4.18 The NELLP⁹⁰ is now of some age and whilst it makes no specific reference to the A160/A180 road improvements, I am satisfied that the policies relevant to the consideration of this project are generally consistent with the NPPF and can be given substantial weight. In particular policy GEN2 only permits development in the open countryside where it requires a countryside location; policy GEN3 requires a comprehensive landscape appraisal and landscaping scheme to support all development proposals; policies NH5 and NH6 protect trees and hedgerows whilst policy BH12 requires the evaluation of archaeological remains. These have been considered in the ES and I address them in the following sections.

In North Lincolnshire

- 4.19 The NLCS⁹¹ was adopted in 2011 and is up to date and consistent with the NPPF. Its spatial objectives include securing North Lincolnshire's major growth potential and improving its transport network to ensure that the area's major economic development opportunities are well served. Policy CS1 supports the development of the nationally important South Humber Bank ports, safeguarding around 900ha of land for estuary related development, and working with key partners to deliver improved rail and road access with the dualling of the A160 between the A180 and the port. It also recognises the need to protect and enhance the estuary's internationally and nationally designated sites of nature conservation importance.

- 4.20 Policy CS12 deals with the delivery of the South Humber Strategic Employment Site, refers to the South Humber Bank Gateway Delivery Group, and identifies the importance of the proposed A160/A180 highways improvement. Strategic transport policy

⁸⁸ AD-029

⁸⁹ PI-006

⁹⁰ D4-009 (NLC) and D4-010 (NELC)

⁹¹ D4-009

CS26 supports the dualling of the A160 between the A180(T) and South Killingholme including associated improvements to junctions along the route and at the port, and the project is identified in the associated Infrastructure Delivery Plan and Schedule as a critical piece of infrastructure for the area.

- 4.21 Other relevant policies include CS5 (Design), CS6 (Heritage), CS16 (Landscape, Greenspace and Waterscape), CS17 (Biodiversity), CS18 (Sustainable Resource Use and Climate Change), and CS20 (Sustainable Waste Management).
- 4.22 The need for the A160 highways improvement to support the delivery of the South Humber Gateway is also emphasised in draft policy SHBE-1 of the emerging Housing and Employment Land Allocations DPD.
- 4.23 There are relevant saved policies in the NLLP⁹² which allocate the area for estuary related development (policies IN1, IN4, IN5), provide for defined industrial amenity buffer areas (policy IN6), and safeguard land for the A160/A180 improvements (policy T17). The NLLP also includes a number of more general policies on the countryside (policies RD2 and T1), accessibility (policies T2, T6, T7, T8, and T15), heritage (policies HE5, HE8, HE9, and LC13), landscaping and trees (policies LC, 7, LC12 and LC20), flood risk (policy DS16), minerals and waste (policies M2, M7, W6, W10 and W11) and general requirements (policy DS1). These have been addressed in the ES and I consider them in the following sections.

The National Planning Policy Framework

- 4.24 Policies in the NPPF promote sustainable transport. Paragraph 31 is particularly pertinent to this project in that it encourages local authorities to work with neighbouring authorities and transport providers to develop strategies for the provision of viable infrastructure necessary to support sustainable development, including large scale facilities such as '*.. transport investment necessary to support strategies for the growth of ports*'. The NPPF advises that when planning for ports, plans should take account of their growth and role in serving business, leisure, training and emergency service needs. As set out above, the A160/A180 improvements are supported by a raft of local planning policies and delivery plans in the districts' adopted and emerging development plan documents.
- 4.25 The NPPF also requires developments to be located and designed where practical to accommodate the efficient delivery of goods and supplies, provide for pedestrian and cycle movements and create safe and secure layouts that minimise conflicts between traffic and cyclists or pedestrians. I consider below the way that these

⁹² D4-009

principles have underpinned the design process in my detailed assessment of the project.

Conclusion on the policy context

- 4.26 The policy context for the consideration of this application is provided by the dNPSNN, the NPPF and the relevant policies of the development plan. In that the dNPSNN is the most recent expression of emerging policy of Government on the development of the national road network, I consider it should be given some weight. In the following assessment, I have considered the application in terms of its compliance with the assessment principles and guidance on generic impacts set out in the dNPSNN, which themselves refer to the NPPF, with the NPPF and with applicable local planning policies.

The need for the project

- 4.27 The application includes a Traffic Forecasting Report, Economic Assessment Report and Planning Statement and the ES in Chapter 2 sets out the background to the project with Chapter 13 addressing the effects on all travellers⁹³. The HA provided further detail in responses to my questions on need⁹⁴ and in subsequent supplementary information submissions⁹⁵.

The project's objectives

- 4.28 These are set out in the Planning Statement⁹⁶. The project will provide better access to the Port of Immingham and the surrounding area and the improvements to this 5km strategic link road between the A180 and the Port would *'help to stimulate growth and unlock economic benefits in the area'*.

The current situation

- 4.29 The ports of Immingham and Grimsby are the largest ports by tonnage in the UK. With increasing land and infrastructure constraints at the major southern ports, there is potential for significant growth to take place on the South Humber. Approximately 900ha of land is identified in local plans as available for development and the Port of Immingham is forecast to grow rapidly over the next 10-15 years.
- 4.30 Whilst the Port is served by a dedicated freight railway, for road traffic the A160 is the principal route from the A180 to the Port of Immingham and the strategic link between the Port and the national motorway network, via the A180, M180 and M18. It is

⁹³ AD-026 (Traffic Forecasting Report), Ad-027 and AD-028 (Economic Assessment Report and appendices), AD-029 (Planning Statement), AD-031 (ES Volume 1)

⁹⁴ D2-001 questions 1.2-1.5

⁹⁵ D2-026 and D4-018

⁹⁶ AD-029 paragraph 1.1.3

described in the Traffic Forecasting Report⁹⁷ as '*the biggest single constraint to the area's development*' and its improvement is seen by the relevant local authorities and the South Humber Delivery Group as a critical piece of infrastructure. The almost universal support for the project was a notable feature of the examination.

- 4.31 The ES⁹⁸ describes the current congestion problems; that traffic queues occur in the peak hours; that congestion also occurs when a number of freight ferries unload from the Port of Immingham at the same time; and that without the project, predictions indicate that congestion would increase over time at a number of junctions. Chapter 13 of the ES also refers to driver stress due to the high frequency of congestion and traffic queues at peak times and when ferries unload⁹⁹.
- 4.32 The heavy freight traffic serving the port results in a high proportion of Heavy Goods Vehicles (HGVs) on the A160 of between 35% and 45% (AADT)¹⁰⁰, rising at some times during the day to more than 70%, well in excess of the national average of 10-15%¹⁰¹. This affects the throughput of vehicles on the two single carriageway sections which have significantly less capacity than the adjacent dual carriageway and in turn causes delays on the whole A160/A180 route.
- 4.33 With the planned expansion of the Port and land allocated for development with a number of large infrastructure projects already permitted or planned, considerable traffic growth is forecast in the area which would use the A160/A180. This is in addition to the usual traffic growth associated with population growth and increased car ownership. For example, forecasts of future traffic levels¹⁰² indicate that, without the proposed improvement, flows on the single carriageway between Brocklesby Interchange and the Habrough Roundabout could increase from 11,500 vehicles per day to 15,700 vehicles per day by 2031, exceeding its current theoretical capacity of 14,900 vehicles per average day¹⁰³ with worse delays and queuing.
- 4.34 A more refined assessment by the HA¹⁰⁴ of the Habrough Roundabout to take account of the unequal lane usage of the A160 arms shows that it is already operating beyond its desirable capacity threshold¹⁰⁵ and without the project (the Do Minimum scenario) this would continue to increase further and could exceed

⁹⁷ AD-026 paragraph 1.1.4

⁹⁸ AD-031 ES Volume 1 Chapter 2 paragraph 2.1

⁹⁹ AD-031 ES Volume 1 Chapter 13 paragraph 13.2.5

¹⁰⁰ Annual Average Daily Traffic

¹⁰¹ AD-026 paragraph 1.1.6

¹⁰² Having regard to population growth, increased car ownership and committed development.

¹⁰³ D2-001 HA response to Q1.2

¹⁰⁴ D2-026

¹⁰⁵ The desirable maximum RFC (ratio of flow to capacity) is 0.85, generally considered to provide adequate capacity at un-signalised roundabouts in accordance with the Design Manual for Roads and Bridges.

100% capacity¹⁰⁶ if the existing layout is retained without improvement. Congestion and delays on the A160 would worsen and with the increase in the volume of traffic, particularly in HGVs, there are likely to be more accidents.

- 4.35 Comparison of personal injury accident data illustrates that rates of serious and slight accidents for the A160/A180 are significantly above the 2009 average for England, with the majority of accidents occurring at existing junctions. The Humberside Police have particular concerns about the Brocklesby Interchange where there have been a number of collisions resulting in serious injuries and significant disruption from road closures¹⁰⁷.

Benefits of the project

- 4.36 The A160 is the critical highway link serving the Port and the major infrastructure projects proposed for the Humber Estuary South Bank. As such, at national level some support for the project can be drawn from the NPS for Ports. Local and national planning policies also support its improvement and upgrading as vital for the delivery of the economic growth planned for the area.
- 4.37 I am satisfied from the evidence submitted, including a detailed SATURN traffic model¹⁰⁸, that the project would increase capacity at the critical junctions such that even with the increased level of traffic predicted they would operate below capacity with minimal congestion. This would improve journey time reliability and safety at each junction¹⁰⁹.
- 4.38 The increase in capacity would reduce traffic congestion, both on the A160 and at the junctions, and on the surrounding local roads with more traffic using the A160 compared to the situation without the project. This in turn would result in journey time savings¹¹⁰. Over the 60 year appraisal period these have been estimated as having an economic benefit of £158 million, which contributes 85% of the £184 million overall benefits of the project, and gives a benefit cost ratio of 2.7, which represents high value for money¹¹¹.
- 4.39 The project would improve safety for road users and for the local community. It would upgrade the Brocklesby Interchange to a more standard and recognisable layout, close existing hazardous laybys, junctions and central reserve gaps, and improve facilities for non-motorised users¹¹². There would be an overall decrease in accidents and a significant reduction in the number of casualties,

¹⁰⁶ 1.00 RFC

¹⁰⁷ D2-026

¹⁰⁸ AD-026

¹⁰⁹ D2-001 HA response to Q1.2

¹¹⁰ D2-001 response to Q3.3

¹¹¹ AD-027 and AD-028

¹¹² D2-026

with the monetary value of this overall benefit assessed at £26.7 million¹¹³.

Consideration of alternatives

- 4.40 Where improvements are proposed to linear infrastructure the dNPSNN recognises that the opportunity for alternatives may be limited by the constraints of the wider network and decision makers need to bear in mind the specific conditions under which such developments must be designed¹¹⁴. In this case the identified need is to upgrade the 2km single carriageway section of the A160 to dual carriageway, replace the Habrough roundabout and upgrade the Brocklesby Interchange.
- 4.41 Work began on an initial project in 2007 and eight options were developed, although subsequent appraisal on the environmental effects, cost and benefit-cost ratio reduced the list to four recommended options, with a ninth option added following feedback from public consultation in 2009. These had a number of common '*segments*' that appeared in more than one option and they were all variants of an '*at grade*' scheme with the Habrough roundabout relocated to the west of its current position¹¹⁵.
- 4.42 The ES at Chapter 3 includes an outline of the main alternatives considered by the HA. These were the subject of environmental assessment and a Scheme Assessment Report published in November 2009 considered the environmental effects, together with information about technical issues, traffic, economics, costs, and the results of consultation with reasons for the preferred option¹¹⁶. Other than comments about minor elements of the project (which I deal with below), it is noteworthy that no one at the examination questioned the need for the project or the preferred line or put forward any alternative route.

Conclusion on need

- 4.43 The need for the project was not disputed at the examination and it has the support of the local authorities, local businesses and the Port operator. The project would improve access to the Port of Immingham. It accords with the focus in the dNPSNN on improvements to the existing national road network and in particular the dualling of single carriageway strategic trunk roads. It also aligns with Government policy in the NPPF which promotes sustainable transport and supports the provision of transport investment necessary to support the growth of ports. The national need for the project is confirmed by its identification as a priority investment in the National Infrastructure Plan.

¹¹³ From the COBA output see D2-001 HA response to Q3.3

¹¹⁴ Draft NPSNN paragraphs 4.8 and 4.9

¹¹⁵ AD-031 ES Volume 1 Chapter 3 and AD-032 ES Volume 2 Figure 3.1

¹¹⁶ D2-002

4.44 The A160/A180 improvements would reduce congestion and improve reliability, increase capacity, and improve safety on the national and local road networks. The project has been designed to accommodate predicted traffic growth from existing and future developments and by providing better access to the Port of Immingham would help to stimulate growth and unlock economic benefits in the area in accord with the objectives of local planning policies. For all the reasons set out above, I am satisfied that there is clear national and local policy support and a strong need for the project.

Landscape and visual impact

4.45 The local area to the south west of South Killingholme is characterised by flat to gently rolling fields with limited vegetation of screening belts, clipped hedgerows and isolated woodland blocks. The flat topography and low vegetation cover creates panoramic views and big skies with views influenced by the tall stacks and buildings of the industrial uses along the estuary. Other man-made features noticeable in the landscape include the road and railway embankments along the A180, A160 and the railway line to Immingham Docks. From Ulceby Road (A1077) traffic on the A160 and on the Brocklesby Interchange is seen crossing the landscape. The LIRs refer to the impact of development on the landscape and the opportunity for landscape enhancements.

4.46 The dNPSNN advises on the assessment of landscape and visual impacts¹¹⁷ and the need to demonstrate good design in terms of siting relative to existing landscape character and function, landscape permeability, landform and vegetation¹¹⁸. The impact of artificial light also needs to be considered. The NPPF recognises the intrinsic character and beauty of the countryside and local planning policies seek to protect the open countryside and landscape. In particular, NLLP policy LC20 proposes a number of landscape measures for the South Humber Bank Landscape Initiative area.

4.47 Chapter 8 of the ES addresses landscape and visual effects during the construction of the project and when operational¹¹⁹. The assessment of landscape and visual impacts was carried out in accord with advice in the Design Manual for Roads and Bridges (DMRB)¹²⁰ as updated by the HA's Interim Advice Note 135/10¹²¹ (IAN135/10) and supported by the Guidelines for Landscape and Visual Impact Assessment (GLVIA)¹²².

¹¹⁷ Draft NPSNN paragraph 5.131 et seq

¹¹⁸ Draft NPSNN paragraph 4.28

¹¹⁹ AD-031 and also AD-035 to AD-037 ES Volume 2 Figures 8.1 to 8.24

¹²⁰ The Highways Agency's Design Manual for Roads and Bridges Volume 11

¹²¹ IAN135/10 Landscape and Visual Effects Assessment, HA October 2010

¹²² 3rd edition Landscape Institute and Institute of Environmental Management and Assessment 2013

Landscape character and visual amenity

- 4.48 The area is not subject to any statutory designation. It lies within two National Character Areas: Area 41 Humber Estuary and Area 42 Lincolnshire Coast and Marshes. More detailed assessment divides the study area into five local character areas more fully described in the ES¹²³.
- 4.49 Although there are open panoramic views, because of the flat land and the screening effect of buildings, hedgerows and occasional woodland blocks, they are often not over a long distance and the zone of visual influence (ZVI) for the project and the traffic using it is relatively limited¹²⁴. Views are contained by the topography, vegetation and buildings and there are many large detractors in the landscape including power lines, the existing Killingholme Power Station, the oil refinery stacks, the buildings and plant at the Docks, as well as the A160, A180 and the railway.
- 4.50 The project is for both on-line and off-line works and would result in the loss of vegetation along the A160, including identified important hedgerows and small woodland blocks. Agricultural land and ditches would be taken for the new bridge at the Brocklesby Interchange and the new Habrough Roundabout, fields would be bisected by the new links to Habrough Road, Ulceby Road and Top Road, and additional road bridges and earthworks would be introduced into the area. It is accepted in the ES that during construction there would be a large adverse effect on the landscape character of the Drift Open Undulating Farmland and a moderate adverse effect on that of the Coast and Marshes Open Farmland. However the works would only have a slight adverse effect on the other three local landscape character areas, mainly through the reduction in tranquillity and visual amenity.
- 4.51 In terms of visual effects, the LVIA identifies fifty seven receptors, or groups of receptors¹²⁵ as likely to experience some reduction in visual amenity during construction because of vegetation loss, soil movement and construction vehicles. On completion of the project, for the majority their visual amenity would improve with any residual adverse impacts reducing from Year 1 through to 2031 (the Design Year). There would be other adverse impacts as a result of the wider realigned A160 carriageway, the larger realigned A160/180 junction, the new Habrough roundabout and the new road bridge at South Killingholme. These would include the effects of traffic moving along the road, which would generally be more visible due to the removal of vegetation, vehicle headlamps, increased lighting levels, new road signs, and new balancing ponds.

¹²³ AD-031 Chapter 8 paragraph 8.4.35 and AD-035 Figure 8.2

¹²⁴ AD-035 ES Volume 2 Figures 8.1A to 8.3B

¹²⁵ AD-031 ES Volume 1 Chapter 8 Table 8.1 - 23 residential receptors, 13 business receptors, 10 recreational routes, 6 transport routes, 6 community receptors and one heritage feature.

Cumulative impact

- 4.52 The ES assessment also considered the potential cumulative impact of the A160 improvements with other proposed developments in the area including developments at the Port and other large scale infrastructure and built development projects. Given the existing large scale industrial and port related development in the area, I do not consider that there would be significant adverse combined or sequential cumulative impacts when considered in conjunction with the wider A160 corridor and its new junctions and road bridges.

Mitigation measures

- 4.53 The project includes a range of mitigation measures designed to integrate the project into the surrounding landscape. These are shown on the Environmental Masterplan¹²⁶ and include the retention of as much of the existing vegetation as possible, planting of woodland and linear belts of trees and shrubs, the translocation of important hedgerows, edge planting including informal hedging, and grassland and wetland planting¹²⁷. Adherence to the Masterplan would be secured through Requirement 4 of the DCO as drafted. Measures to minimise the impact on the natural environment during construction are proposed to be included in the Construction Environmental Management Plan (CEMP), to be prepared in accordance with Requirement 3 of the DCO as drafted.
- 4.54 On completion of the project, I am satisfied that the proposed mitigation planting would begin to blend the new road and new landform features into the surrounding landscape although initially at Year 1 I accept that the effect would be stark. In the long term¹²⁸ and once the planting is established, although the project would be a significant feature in the landscape, I agree with the ES assessment that it would have a neutral to slight adverse residual effect on landscape character.
- 4.55 The establishment of mitigation planting along the road and around the new roundabout and road bridges would also help to screen or filter views of moving traffic and the new structures and reduce any adverse visual effects. Whilst the case was made at the open floor hearing for additional planting to screen large vehicles on the new Town Street bridge, I share the HA's view that tall hedgerow planting would look inappropriate on the approach embankments and make the bridge stand out in the flat landscape¹²⁹. The assessment in the ES is that only ten receptors (or groups of receptors) would still experience a slight adverse

¹²⁶ AD-045

¹²⁷ The mitigation measures are summarised in Table 8.3 of the ES Volume 1 (AD-031)

¹²⁸ Assessed as 2031 (15 years after completion of the project) and described as the Design Year.

¹²⁹ D4-008 paragraphs 2.8 to 2.10

effect where mitigation vegetation would not be effective enough to reduce effects to neutral. But elsewhere the change in the A160 alignment and the associated planting screening views of the oil refinery would improve existing views and have a beneficial effect for six other receptors.

DCO Requirements

- 4.56 The recommended draft DCO provides through Requirements 4 and 5 for a landscaping scheme, reflecting the measures shown on the Environmental Masterplan¹³⁰, to be prepared in consultation with the relevant planning authority, approved by the SoS¹³¹ and implemented in accordance with an agreed timetable. Both NLC and NELC have agreed that the proposals set out in the Environmental Masterplan are acceptable, subject to further discussions around the final landscaping detail, planting mixes, and maintenance¹³².
- 4.57 Most of the street lighting would be as it is now. However, the Habrough roundabout would be further to the south west and there would be lighting on the new road bridge affecting those living nearby in Town Street and Humber Road with new lighting columns around the Rosper Road gyratory. Both the dNPSNN and the NPPF seek through planning decisions to limit the impact of light pollution from artificial light on local amenity.
- 4.58 Given that the A160 is already lit through South Killingholme, I agree with the conclusion of the LVIA that these adverse effects are unlikely to be significant. However whilst the road is being built temporary lighting could be disturbing to local residents and in response to comments made in the LIRs, it is proposed that a light pollution prevention plan should form part of the CEMP, to be approved under Requirement 3 of the DCO.
- 4.59 The Environmental Masterplan shows planting around the Rosper Road Pools LWS and there were concerns that this could make the LWS less suitable for breeding and wintering waterbirds¹³³. The planting would be outside the application boundary and I understand is intended for the purposes of enhancement and would be subject to the landowner's agreement. Given the time it would take to become established it would not be effective mitigation for the construction works. In any event, since the HA has agreed to keep any planting around the LWS to a minimum and to consider the matter further as the detailed landscaping

¹³⁰ AD-045

¹³¹ D2-001 The HA response to ExA Q11.9 addresses the concern that the HA is the same legal person as the SoS and advised that discharge of requirements would be by a different directorate of the HA from the project promoter and include consultation with an appropriate body in each case. The same approach was taken in the A556 (Knutsford to Bowdon Improvement) DCO. Please also see paragraph 8.19 of this report.

¹³² SOG-007 paragraph 3.4.2 (NELC) and SOG-024 paragraph 3.4.3 (NLC)

¹³³ SOG-024 paragraph 3.4.16

design is progressed, this is not a matter that I find should weigh against the project or needs to be addressed in the DCO Requirements.

- 4.60 Good design is a requirement of both national and local planning policy. Requirement 15 provides that the development would be carried out in accordance with the agreed engineering drawings and sections. These show that the proposed structures would be of a modern design that would not be out of keeping with the mixed character of the area, not dissimilar to road bridges on the A180, and functional in terms of being fit for purpose and sustainable. As such I do not see any conflict with the section in the dNPSNN on the criteria for *'good design'*.

Conclusion on landscape and visual impact

- 4.61 Given the detail in the Environmental Masterplan and the Requirements for a CEMP and a written landscaping scheme, as well as the submitted engineering drawings, I am satisfied that the Order as drafted provides a clear framework for the submission, approval and implementation of detailed mitigation proposals to minimise any adverse landscape and visual impacts of the project and to ensure that the development is carried out to high environmental standards. As such I consider that the HA has demonstrated good design, as required by the dNPSNN and NPPF, and the project complies with the objectives of the landscape and visual impact policies of the NELLP, NLCS and NLLP, and in particular with those of NLLP policy LC20 for the South Humber Bank - Landscape Initiative.

The impact on ecology, biodiversity, protected species and statutory designations

- 4.62 The dNPSNN requires that any ES clearly sets out the effects on designated sites, protected species and habitats and that the applicant shows how the project has taken advantage of opportunities to conserve and enhance biodiversity (paragraphs 5.15 and 5.16). The NPPF seeks to minimise impacts on biodiversity, providing net gains where possible, to protect soils and to recognise the wider benefits of ecosystem services (paragraph 109).
- 4.63 Chapter 9 of the ES addresses ecology and nature conservation and assesses the effects of the project on designated sites, habitats and species in accordance with the DMRB (as updated by IAN 130/10)¹³⁴. The application also included an AIES and an Assessment of Nature Conservation Effects¹³⁵.

¹³⁴ AD-031 ES Volume 1 and AD-050 to AD-052 Technical Appendices

¹³⁵ AD-020 and AD-021

- 4.64 In response to my questions picking up concerns expressed by NE and the RSPB¹³⁶ regarding the evidence provided to support the conclusions drawn in the ES (and in the AIES¹³⁷), information was provided by the HA during the course of the examination¹³⁸. This included a complete wintering bird survey report; an assessment of the land to be lost across the extent of the project site and its value as functional land used by qualifying bird species of the Humber Estuary SPA; the modelling of construction noise at the Rosper Road Pools LWS; an update of the in-combination assessment in the HRA screening report to include other known projects in the area; and updated information on the proposed water vole mitigation area and protected species licences. As a consequence the HA updated the AIES¹³⁹.
- 4.65 The LIR of NLC also set out concerns about the local impacts on biodiversity and ecology including the impact of construction works on the Rosper Road Pools LWS, the loss of native hedgerows, semi-improved grassland and other habitats, and the impact on protected and priority species. Although NLC generally agreed the HA's approach to mitigating for the project's own impacts and creating habitat networks where possible, and supported the Requirements in the draft DCO, it advised that particular care needed to be taken around the Rosper Road Pools LWS to avoid cumulative impacts on waterbirds with other projects in the area¹⁴⁰.

Impacts on designated sites

- 4.66 The project lies some 1.4km from the Humber Estuary, defined as a European Marine Site and covering an area of approximately 38,000 ha. The Humber Estuary is recognised as one of the ten most important estuaries in Europe for conservation, is internationally important for wildlife and is designated as a SPA, SAC, and is a Ramsar site and a SSSI. The North Killingholme Haven Pits SSSI, an area of saline lagoons, is situated adjacent to the Humber Estuary on the south bank and is around 2km north of the nearest extent of the project. The qualifying features of the designations are summarised in the ES¹⁴¹. The conservation objectives of the European sites are set out in the AIES appendices¹⁴² and in the NE's written submissions¹⁴³.

¹³⁶ RR-002, RR-015

¹³⁷ AD-020

¹³⁸ D2-001 and Appendix 2 at D2-003 and D2-004

¹³⁹ D2-003 Appendix 2

¹⁴⁰ LIR-002 section 13 - specific reference was made to the Able Marine Energy Park and the Immingham Deep Water Jetty (Associated British Ports)

¹⁴¹ AD-031 Table 9.1

¹⁴² D2-003 and D2-004 Appendices A to D of Appendix 2 to the HA's Response to the ExA's Written Questions

¹⁴³ D2-014

European designated sites

4.67 During the examination the HA and NE agreed SoCGs. Following consideration of the further survey and other information provided by the HA, including the updated AIES, the final SoCG notes the NE's agreement on the following matters¹⁴⁴:

- There is no potential for impact on the Humber Estuary SAC and Ramsar site as a result of the project alone or in combination with other projects and plans.
- There are not likely to be significant water quality or air quality impacts on the Humber Estuary SPA, SAC or Ramsar site as a result of the project alone or in combination with other projects and plans.
- The AIES has provided sufficient information to determine the in-combination effects and '*no likely significant effects*' would result on the Humber Estuary designations as a result of the project alone or in combination with other projects and plans.
- Sufficient noise modelling data and bird survey data have been provided by the HA to determine that the project would not have a likely significant effect on the Humber Estuary Ramsar site or SPA or on functional land for SPA qualifying bird species and that this applies to the project alone or in combination with other projects or plans.

4.68 The RSPB confirmed that as a result of the information supplied during the examination most notably the updated AIES and the 24 June 2014 SoCG its concerns had been satisfactorily addressed and it agreed that there would be no likely significant effects on the Humber Estuary SPA as a result of the proposals¹⁴⁵.

4.69 I deal with the HRA implications in Chapter 5 where I conclude, in line with the SoCG, that there is sufficient evidence to allow the SoS to conclude that significant effects can be excluded for all the features of the relevant European sites either alone or in combination with other projects and plans.

National designated sites

4.70 In the final SoCG¹⁴⁶ the NE and HA also agreed the following matters in respect of the Humber Estuary SSSI:

- There are not likely to be significant water or air quality impacts on the SSSI as a result of the project alone or in combination with other projects and plans.
- The HA have provided sufficient wintering bird survey data and noise modelling data to be able to determine that the

¹⁴⁴ SOG-023 section 3.1

¹⁴⁵ CR-011

¹⁴⁶ SOG-023 section 3.1

project is not likely to damage features of interest of the Humber Estuary SSSI.

- 4.71 Given these conclusions, I am satisfied that the project would not adversely affect the Humber Estuary SSSI. Nor in my judgement would there be any adverse impact on the North Killingholme SSSI which is further away from the application site.

Local designated site

- 4.72 The Rosper Road Pools LWS is next to the application site. I am satisfied from the information provided in the ES that any impacts on the LWS would be neutral and I note that the NLC LIR broadly agreed with that assessment. However as a habitat of standing water, marsh/fen and reed beds the LWS has the potential to support birds listed as qualifying species for the Humber Estuary SPA. The road works would need to be carried out in a way that minimises disturbance to breeding birds and wintering and passage waterbirds and I deal with the proposed mitigation measures below.

Cumulative impacts

- 4.73 The assessment in the ES and the updated AIES considered the potential cumulative impacts of the project along with other developments proposed in the area. Specifically the AIES screening assessment for the project was revised at the request of NE to include in-combination effects with both the Able Marine Energy Park and its enabling works and with the North Killingholme Power Project¹⁴⁷.
- 4.74 I am satisfied that the cumulative impacts have been satisfactorily addressed in the application. As set out above, NE has been able to conclude that there would be no significant impacts on the SSSI, SPA, SAC or Ramsar site as a result of the project alone or in combination with other projects and plans.

Mitigation measures

- 4.75 The project includes a range of mitigation measures designed to minimise impacts on the designated sites including measures for dust control, avoidance of spills and pollution prevention.
- 4.76 To address the concerns of NE, the RSPB and NLC about potential disturbance from the construction works on overwintering SPA birds using the LWS or functional land to its north, it has been agreed that works on or to the east of Rosper Road would only take place outside of the winter months¹⁴⁸. However the SoCG clarifies that this excludes work on the railway underbridge which

¹⁴⁷ SOG-023 paragraph 3.1.12

¹⁴⁸ D5-002 Requirement 3(6)

would have to take place during the winter on account of the restrictions imposed by NR and that this would be acceptable to NE due to the short duration of the works¹⁴⁹.

DCO Requirements

- 4.77 The draft Order provides through Requirement 3 for the CEMP to include a site environmental control plan for the natural environment and to require adherence to the relevant EA Pollution Prevention Guidelines. In addition part (6) requires the CEMP to include measures to limit work on or to the east of Rosper Road to the months of April to October. The plans and programmes comprising the CEMP are also required to include measures to address the situation in the event that the authorised development coincides with any other major projects in the area so as to avoid any adverse consequences that might arise.
- 4.78 Requirement 9 of the draft Order provides for an Ecological Management Plan to be prepared in consultation with the relevant planning authority and NE, which must include the ecological mitigation and monitoring measures in the ES and in the Environmental Masterplan.

Conclusion on designated sites

- 4.79 Having regard to the advice from NE and the mitigation measures to be secured through the Requirements of the recommended draft DCO, I am satisfied that the project complies with national policy and with the objectives of NLCS policies CS1e), CS12d) and CS17 parts 1 and 2, and with NLLP policy IN4 vii).

Impacts on protected species

- 4.80 The ES includes information on protected species. Legally protected species present in the survey area include bats, great crested newts, badger, water vole and wintering and breeding birds including barn owl. Whilst the ES identifies that there is potential to adversely affect water voles and badgers, which are nationally protected, NE confirmed in its relevant representation and subsequent SoCG that it was satisfied that there are not likely to be impacts on European protected species as a result of the project¹⁵⁰.
- 4.81 The project is linear crossing fields, field boundaries and existing roadside ditches and the works would result in the loss or disturbance of water vole ditch habitat. Whilst the majority of the ditches that would be lost would be replaced by new roadside drainage constructed as part of the project, an outfall is proposed which, depending on its exact location, could affect the Rosper

¹⁴⁹ SOG-023

¹⁵⁰ RR-015 paragraph 3.2.4 and SOG-023 paragraph 3.1.5

Road ditch and require the translocation of water vole. The Environmental Masterplan¹⁵¹ shows details of the proposed water vole habitat area and by the time of my accompanied site visit I saw that most of the mitigation works had been completed, in accord with the agreement between NE and the HA outlined in the SoCG¹⁵².

- 4.82 The HA has made a draft water vole conservation licence application. Whilst no final licensing decisions can be made until the project has the necessary consents, NE has confirmed on the basis of the species information and the proposals provided that it is satisfied in relation to the mitigation proposals and has supplied a letter of no impediment¹⁵³. The mitigation is to be delivered through the Requirements of the DCO.
- 4.83 In respect of badgers, the land take for the proposal would result in the loss of some of their total available foraging resource and an outlier sett in the vicinity¹⁵⁴. At the request of NE additional survey work was carried out. Subsequently NE was able to confirm that the proposals were acceptable in principle and that no impediment was seen to a licence being granted in the future should the DCO be granted¹⁵⁵. No cumulative impacts are anticipated.

Mitigation measures and DCO Requirements

- 4.84 The ES also identifies a raft of mitigation measures that would need to be taken during the construction phase to avoid trapping animals or causing severance effects. These are best practice and are listed in the draft CEMP¹⁵⁶. Amended Requirement 3(4) of the draft Order provides for the production of a natural environment site environmental control plan as part of the CEMP that would address these matters and include monitoring with agreed thresholds to judge their effectiveness. Requirement 9 of the draft Order provides for an Ecological Management Plan to include the ecological mitigation and monitoring measures in the ES and in the Environmental Masterplan.
- 4.85 The ES describes conditions at the time of surveys carried out in 2013 but with reference back to earlier survey work in 2009. NE has satisfied itself on the basis of that work that there would be no impact on European protected species. However in response to my question, NE advised that the draft DCO should contain a Requirement that addresses the need for re-survey for mobile species before work started on site¹⁵⁷. The HA agreed and added new Requirements 10 and 11 to the draft Order which prevent

¹⁵¹ AD-045 sheet 10 of 10

¹⁵² SOG-023

¹⁵³ SOG-023 NE letter of 30 May 2014 attached to NE/HA SoCG

¹⁵⁴ AD-031 Chapter 9 Table 9.16

¹⁵⁵ SOG-023 Appendix B NE letter of 11 July 2014

¹⁵⁶ AD-068

¹⁵⁷ D2-014 page 19 response to ExA Q8.6

development until additional survey work has established whether the situation in respect of water voles, badgers and bat roosts has changed and if necessary carried out appropriate mitigation.

- 4.86 If previously unidentified European protected species were to be found when carrying out the works, Requirement 9(4) provides that construction works near their location would cease and their presence be reported to NE and the relevant planning authority. No further work would take place within 10m of their location until a scheme for their protection is prepared and any necessary licences obtained.

Conclusion on protected species

- 4.87 I am satisfied that through the plans and programmes to be incorporated into the CEMP and the other Requirements in the recommended draft DCO, suitable mitigation measures would be secured for European as well as any nationally protected species that might be affected by the proposals and any other UK Biodiversity Action Plan priority species. As such the project complies with national policy and with the objectives of NLCS policy CS17 and NLLP policies LC20 and DS1.

Impact on habitats

- 4.88 The dNPSNN requires that applicants take measures to ensure that habitats identified as being of principal importance for the conservation of biodiversity in England are protected from the adverse effects of development¹⁵⁸. National and local planning policies acknowledge the importance of ecological networks that allow species to move through the landscape and provide ecosystem services.

Habitat loss

- 4.89 Any project of this nature involving the dualling of an existing road and new roundabouts will inevitably take land and, if undeveloped land, result in the loss of habitats. The ES at Table 9.9 summarises habitat loss as a result of the application project, both short-term as the result of temporary construction uses such as work compounds, borrow pits, storage areas and site access roads and long-term direct loss of habitat within the project footprint.
- 4.90 Losses include arable land, grassland, ditches, broad-leaved plantation woodland and scrub. In its response to my written questions, the HA produced a plan indicating areas of habitat loss¹⁵⁹. The most significant areas of woodland loss would be around the Brocklesby Interchange but the woodland directly

¹⁵⁸ Draft NPSNN paragraph 5.28

¹⁵⁹ D2-001 Q8.14 and D2-005 Appendix 12

affected by the project is mostly immature or semi-mature with little ground flora.

Important Hedgerows

- 4.91 The Phase 1 Habitat Survey identified two ecologically Important Hedgerows¹⁶⁰ within the study area, in addition to other intact hedgerows which are species poor. The Environmental Masterplan indicates that as much as possible of the hedgerows affected by the project would be retained. It also shows the translocation of three hedgerows by the new Town Street bridge¹⁶¹ including the ecologically Important Hedgerow TN36H of which approximately 30m would be lost.
- 4.92 Although NLC does not consider that translocation fully aligns with NELLP policy NH6¹⁶², preferring to see lost hedges replaced with a greater length of mixed native hedgerow, I note that it did not object to the translocation in its final SoCG¹⁶³. I consider that the loss of a short length of ecologically Important Hedgerow would be a minor adverse effect of the project but offset by the translocation proposals and the proposed planting of 871m of new hedgerow.

Mitigation measures

- 4.93 Whilst the project would result in the loss of hedgerows and other habitats, it includes the creation of new ecological habitats. These are illustrated on the Environmental Masterplan and are often associated with mitigation measures for protected species. They include 20.7ha of grassland, 2.3ha of woodland, 2.6ha of scrub, 4.6km of ditch and 1.7ha of wetland (comprising the new attenuation ponds), as well as 871m of new hedgerow¹⁶⁴.
- 4.94 I am satisfied that overall the proposal has adopted a holistic approach to mitigation with a number of the features designed to provide new habitat, whilst improving connectivity and the juxtaposition of different habitats. The NLC LIR agrees that the impacts on habitats have been appropriately identified and suitable mitigation measures proposed. No cumulative impacts are anticipated.

DCO Requirements

- 4.95 Requirements 4 and 5 provide for the preparation, approval and implementation of a landscaping scheme which reflects the

¹⁶⁰ As defined by the criteria detailed in the Hedgerow Regulations 1997. They are TN36H and TN37H (beside the Rosper Road Pools and outside the Order limits) and described in the ES Volume 1 at Table 9.5 (AD-031) and shown on Figures 2.1 and 2.2 of the Phase 1 Report within Appendix 9.1 of the ES (AD-050)

¹⁶¹ AD-045 sheet 8 of 10

¹⁶² LIR-002 paragraph 13.7

¹⁶³ SOG-024 paragraph 3.4.15

¹⁶⁴ AD-031 Table 9.10 and paragraphs 9.7.5 et seq

measures shown on the Environmental Masterplan. Requirement 9 for an Ecological Management Plan¹⁶⁵ also provides for a further detailed design stage in consultation with the relevant planning authority and the NE.

Conclusion on habitats

- 4.96 I am satisfied that the Order as drafted provides for an appropriate level of habitat mitigation and monitoring and generally accords with the objectives of national and local policies including NELLP policies GEN3 and NH6, NLCS policies CS12d) and CS17 and NLLP policy LC20.

Impact on soils

- 4.97 The NPPF supports the protection and enhancement of soils and requires account to be taken of the economic and other benefits of the best and most versatile agricultural land (BMV). The ES covers geology and soils in Chapter 10 and considers the impact on agricultural land and holdings in Appendix 14.1. Construction of the new road would affect some 20.3ha of agricultural land permanently and temporary use of another 37.7ha. The DMRB provides guidance on agricultural impact assessment of new projects including consideration of land quality and severance of farm holdings and access. I deal with concerns about the latter in the section below on traffic and highways implications.

Mitigation measures

- 4.98 Given the existing line of the A160 and the objectives of the project, there is limited flexibility in the route/junction layout without significantly increasing the area of land taken and the loss of farmland is unavoidable. Those areas required for temporary use would be progressively restored and returned to agriculture on completion of their use. Of the agricultural land to be taken permanently only 2.9ha falls within the BMV category which is not considered to be significant in national terms. No cumulative impacts are anticipated.

DCO Requirements

- 4.99 The draft Order requires a Soil Management Plan to be agreed as part of the CEMP (Requirement 3(4)(b)). This would include a soil resource plan as well as details of criteria and measures for the re-use of soils on site and a plan for the borrow pits.

¹⁶⁵ Requirement 9 of the draft Order

Conclusion on soils

- 4.100 With the Soil Management Plan in place, I am satisfied that the impacts on soils as a result of the project would be acceptable, having regard to national and local planning policies.

Overall conclusion on ecology, biodiversity, protected species and statutory designations

- 4.101 During the examination, agreement was reached between the HA, NE, NELC and NLC on baseline data, on the approach to ecological management and mitigation and on the assessment of the project having regard to other developments proposed in the area. The project adopts a holistic approach to ecology and landscape mitigation and I am satisfied that any adverse impacts on the ecology of the local area, designated sites, protected species and on biodiversity, would be minimised and there would be no conflict with the objectives of national or local policy including NLCS policies CS17 on biodiversity and policy CS18 for sustainable resource use.

Heritage impacts

- 4.102 The dNPSNN recognises that the construction and operation of national networks infrastructure has the potential to result in adverse impacts on the historic environment. It sets out the approach to be taken to assessing the impact on heritage assets and to decision making which parallels that in the NPPF. Policy CS6 in the NLCS and NELLP policies BH12 and GEN2 seek to protect, conserve and enhance the area's historic environment.
- 4.103 Chapter 7 of the ES addresses the cultural heritage of the area and its assessment has been prepared in accordance with guidance in the DMRB.
- 4.104 The built heritage of the area is characterised principally by agricultural and domestic buildings of the 18th and 19th century. Whilst the project would not physically impact on any historic buildings, there would be impacts on their setting as a result of the construction of the new highway, including overbridges, junctions and embankments. However as the seven historic buildings identified in the ES are already affected by the existing road and its traffic, the impacts would range from negligible adverse to low minor adverse and the ES concludes would be acceptable when balanced with the economic benefits of the project.
- 4.105 Neither NLC nor NELC have disagreed with this assessment. Moreover EH is satisfied that the assessment is acceptable¹⁶⁶. From what I saw on my accompanied site visit, I do not consider

¹⁶⁶ AR-002

that there is any need for changes to the project or for particular mitigation measures to be put in place to protect these heritage assets. I am satisfied that account has been taken of the requirements of the Infrastructure Planning (Decisions) Regulations 2010.

- 4.106 The ES identifies 80 archaeological sites within 200m of the project footprint, including areas of surviving ridge and furrow earthworks, with both NLC and NELC noting in their LIRs the need for further archaeological evaluation work which might identify more archaeological sites. No cumulative impacts are anticipated.

Mitigation measures

- 4.107 The ES concludes that subject to mitigation comprising archaeological excavation, strip map and sample, earthwork survey, watching brief and landscape planting, there would be no significant impacts on known archaeological heritage assets, although lesser impacts of neutral and slight adverse residual significance were predicted.

DCO Requirements

- 4.108 Mitigation would be secured through Requirement 8 in the recommended draft Order which deals with any archaeological remains affected by the works and requires the preparation, in consultation with the relevant planning authority, and approval by the SoS of a written scheme of investigation (WSI) prior to work commencing.
- 4.109 To address the concerns of NLC and NELC, Requirement 8 also puts in place a process of investigating and recording previously unidentified remains found during the course of construction. These would be required to be retained in situ and reported to the relevant planning authority and SoS within 10 working days with no construction operations permitted to take place within 10m of them for a further period of 14 days from the date of notification. These notification periods of 10 and 14 days are in excess of those agreed in the Heysham to M6 Order¹⁶⁷. In response to my question, EH confirmed that it was content with the draft Requirement in respect of archaeological remains but deferred to the relevant authorities in terms of detail¹⁶⁸.
- 4.110 The HA has agreed in the SoCG signed with NLC to include its proposed methodology for topsoil stripping in the next iteration of the CEMP, to adopt a phased approach to consultation on the WSI, to extend the archaeological watching brief to cover the whole road corridor, and to survey the ridge and furrow on the north side of Town Street as part of the WSI. These would be secured

¹⁶⁷ HA response to Q7.3 D2-001

¹⁶⁸ EH response to Q7.2 D2-008

through the WSI to be prepared in accord with Requirement 8 and the archaeological management plan required to be incorporated in the CEMP through Requirement 3(4)((a)(vi).

- 4.111 The restoration of ridge and furrow in areas where it would be removed by the project remains a matter under discussion between the HA and NLC with a further assessment to be made of the condition of the ridge and furrow strips during the course of the works. I am satisfied that Requirement 8 as drafted puts in place appropriate procedures for that assessment and for the identification and treatment of any as yet undiscovered heritage assets with archaeological interest found during construction. As such it accords with guidance in the dNPSNN at paragraph 5.130.

Conclusion on heritage impacts

- 4.112 I consider that the WSI and the CEMP, through the soil management plan and inclusion of a detailed methodology for topsoil stripping and restoration, represent a satisfactory approach to securing appropriate mitigation for any adverse impacts on the historic environment that might arise as a result of the construction of the project. Thus I find that there would be no conflict with the dNPSNN or with the objectives of national and local planning policies for the protection of heritage assets.

Noise and amenity impacts including air quality

- 4.113 The dNPSNN advises at paragraph 4.53 that it is very important that possible sources of nuisance and how they might be mitigated or limited are considered so that appropriate requirements can be recommended to the SoS to be included in any subsequent DCO.
- 4.114 In accordance with regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations), the application was accompanied by a statement which identified those matters defined in section 79(1) of the Environmental Protection Act 1990 which might be engaged by the project and proposals for mitigating or limiting them¹⁶⁹.
- 4.115 It concluded that the only matters under section 79(1) that could potentially be engaged as a consequence of the project, either at construction or during operation, were artificial light, dust and noise, the latter during the construction phase only as traffic noise is excluded from the consideration of nuisance¹⁷⁰, and that with mitigation in place a statutory nuisance would not arise.
- 4.116 Notwithstanding that conclusion, relevant representations included concerns about construction dust, noise and disturbance during

¹⁶⁹ AD-024

¹⁷⁰ Section 79(6)(A) of the Environmental Protection Act 1990

construction, and lighting¹⁷¹. The NLC LIR also raised potential issues of lighting, construction dust, and construction noise and vibration, and the need to agree suitable measures to manage and alleviate any problems¹⁷².

Noise and vibration

- 4.117 There is guidance in the dNPSNN on noise and vibration impacts (paragraph 5.71 et seq) and the NPPF advises that planning decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life. NLLP policy DS1(iii) and NELLP policy GEN2 (xii) both require that there should be no unacceptable loss of amenity to neighbouring land uses as a result of noise or other nuisance.
- 4.118 Noise and vibration is considered in the ES at Chapter 12. Subsequent to the submission of the application in January 2014, it became apparent to the HA that there was an inaccuracy in the traffic model output data for the traffic speeds on certain parts of the road network and which had been used in the noise modelling¹⁷³. An updated noise impact assessment chapter¹⁷⁴ was provided to replace Chapter 12 of the ES. However later it was found that the road surface assumptions for certain sections of the A160 used in the Do Minimum scenarios were incorrect and a Second Addendum to the ES¹⁷⁵ was submitted which further updated the noise and vibration assessment and it is that document to which I have had regard in my conclusions below.
- 4.119 The ES noise and vibration assessment was undertaken in accordance with the requirements of HD 213/11- Revision 1 with noise measurements taken at various locations around the site¹⁷⁶. It was not challenged by any party during the examination. I noted on my accompanied site visit that the noise environment in the area is already dominated by road traffic noise. Although the project is largely on-line, it includes a number of new links which would have the potential to create new sources of noise for nearby sensitive receptors¹⁷⁷.

During construction

- 4.120 Using the methodology from BS5228¹⁷⁸ and measured and predicted baseline noise levels at receptor locations, the ES¹⁷⁹ indicates that during the construction phase when particular

¹⁷¹ RR-001, RR-003, RR-010, RR013

¹⁷² LIR-002 page 29 et seq

¹⁷³ HA response to ExA Q5.7 D2-001

¹⁷⁴ AD-061

¹⁷⁵ AD-070

¹⁷⁶ AD-040 Figure 12.2

¹⁷⁷ These are almost all residential properties; five other sensitive receptors include the doctors' surgery, primary school, playing field, playground and community centre (Appendix 12.5 ES AD-053)

¹⁷⁸ British Standard 5228 'Noise Control on Construction and Open Sites' 2009

¹⁷⁹ AD-070 Second Addendum Tables 2-8 and 2-9

specific works were being carried out close by, weekday and Saturday morning noise levels would increase for the majority of the representative receptors. Tables 2-8 and 2-9¹⁸⁰ show noise increases of between 0.7 to 26.7dB_{L_{Aeq}} (weekday) and 1.2 to 29.4dB_{L_{Aeq}} (Saturday morning) at various locations close to the construction works, the worst affected being Winthorne in Town Street during works planned for June 2015.

- 4.121 However I consider that these noise levels are the worst case. For most of the residential properties affected noise at these levels would only be experienced for relatively short periods of time because of the transient nature of the construction works. The site compound would be around 300m from the nearest residential properties and having regard to their existing high ambient noise levels, I consider that it would be sufficiently removed so that any adverse effects would be minor.
- 4.122 However works associated with the Habrough Roundabout and the A160 carriageway would give rise to significant adverse noise effects on properties in School Road and Janika Kennels, and the construction of the Town Street bridge would adversely affect nearby residential properties in Town Street and Humber Road¹⁸¹.
- 4.123 For reasons of access and safety a number of construction activities would be at night including working over 10 nights on the central reserve of the A160. Significant adverse impacts might occur for 1 or 2 nights at the closest properties, but as the predictions are based on all the plant operating simultaneously at the closest point to the properties I am satisfied that they represent the worst case¹⁸².
- 4.124 In terms of vibration impacts, these would result from the compacting earthworks as well as from the sheet piling works on the Town Street Bridge. The use of a low amplitude setting when earthworking close to sensitive properties would result in lower vibration levels for a number of properties, although some would still be subject to levels that would exceed those identified in BS5228 as likely to lead to complaint. However, given the decline in vibration levels over distance, the transient nature of the works, and their limited duration, lasting only two or three days when closest to residents, and with prior warning being given, I agree with the conclusion in the ES that these short-term adverse impacts would be acceptable.
- 4.125 Sheet piling works for the Town Street Bridge would impact on the properties close by. I note that the predicted vibration levels would be at a level which could lead to complaint but which BS5228 advises could be tolerated with prior warning. In this case

¹⁸⁰ AD-070

¹⁸¹ See HA response to ExA Q5.6 D2-001

¹⁸² Table 2-10 AD-070

I am mindful that the works would last at most 5 days and the impact would be temporary and below the levels defined in BS7385-2 which could give rise to cosmetic damage to buildings.

Mitigation measures and DCO Requirements

- 4.126 Proposed mitigation measures include the use of appropriate work practices including best available techniques to reduce noise and vibration impacts, environmental monitoring, and control of working hours. As drafted Requirement 3(4)(a) requires the CEMP to include a Site Environmental Control Plan to address noise, vibration and other nuisances, and for the CEMP to require adherence to set working hours for weekdays and Saturdays¹⁸³.
- 4.127 Requirement 3(5)(b) of the recommended draft DCO provides for exceptions to the set hours to allow for works associated with the bridge decks for the Town Street and Brocklesby bridges, which would require the A160 and A180 to be closed, and works in the carriageway that due to network constraints cannot be completed during normal working hours. Works to install the new rail bridge are also excluded as these have to take place over a 61 hour railway possession planned for Christmas 2015 and would be a 24 hour per day continuous process. In addition Requirement 3(5)(b)(iv) would allow extended working hours in the summer months for earthworking to take advantage of the weather/daylight. Overall this would be beneficial in shortening that phase of the works¹⁸⁴.
- 4.128 In response to my questions, the HA provided further detail of noise mitigation measures to be employed on site, the establishment of a noise monitoring regime throughout the construction site to ensure noise levels are maintained within acceptable limits, and inclusion in the draft CEMP of details of proposed liaison with the relevant authorities and local residents and stakeholders¹⁸⁵.

Conclusion on construction noise

- 4.129 I agree with the conclusion in the NLC LIR¹⁸⁶ that there is potential for significant adverse noise impact during the construction period. However the duration of this impact would be short, no cumulative impacts are anticipated, and I am satisfied that the measures to be included in the CEMP provide an appropriate means to minimise the impact to an acceptable level.
- 4.130 I have already noted above NE's agreement that it was satisfied from the noise modelling data that there are not likely to be any significant effect on the Ramsar site or on the SPA or its functional

¹⁸³ D5-002 Requirements 3(4)(a)(iv) and 3(5)(b)

¹⁸⁴ D2-001 HA response to ExAs Q5.11, Q5.14, Q5.15 and Q5.16

¹⁸⁵ D2-001 HA responses to ExA Q5.15, Q5.16 and Q5.20

¹⁸⁶ LIR-002 paragraph 11.5.3

land for SPA qualifying bird species. Nor that there would be damage to the features of interest of the Humber Estuary SSSI. Works close to the Rosper Road Pools LWS would be subject to restriction on winter working.

Operational noise

- 4.131 The project would increase the distance between properties and the carriageway and low noise surfacing is proposed on all new and altered sections to augment that existing¹⁸⁷. This would be secured through Requirement 13 of the draft DCO.
- 4.132 However the project includes new links. When operational, these could potentially affect new sensitive noise receptors. There would also be changes to the traffic flows on roads in the local road network which could change the noise and vibration impacts experienced at properties near those roads. These changes have been assessed in the ES.
- 4.133 The ES includes tables comparing predicted daytime and night-time noise levels with and without the project and operational noise contours have been generated showing areas of change¹⁸⁸. Future night-time traffic flows have been used to predict night time noise levels¹⁸⁹. Night-time traffic flows in the area, relative to daytime flows, are not typical due to the high proportion of industry in the area plus the presence of the Port. As a result predicted night-time noise levels are relatively high.
- 4.134 In the short term¹⁹⁰ around 429 dwellings and other sensitive receptors would experience small daytime noise increases¹⁹¹. I agree with the ES assessment that the changes are unlikely to be noticed by those residents with negligible impact. On the positive side, there would be perceptible¹⁹² decreases in traffic noise at 48 dwellings and for 31 of these, adjacent to Top Road, it would decrease by 5dB $L_{A10,18h}$ or more. Properties on Ulceby Road would also experience similar reductions on their southern facades.
- 4.135 In the long term (design year 2031)¹⁹³, similar results are predicted and the ES assessment indicates that no dwelling would experience perceptible increases in daytime noise as a result of the project. Again for 34 dwellings, generally along or near Top Road, there would be perceptible decreases in noise levels. But whilst 47 dwellings would experience negligible benefits as a result of the project, the assessment notes that 531 receptors would experience adverse impacts. However this is less than the 579

¹⁸⁷ See plan showing road surfacing at D4-013 and Requirement 13 in the draft DCO D5-001

¹⁸⁸ AD-031 Chapter 12 Tables 12-12 to 12.17 and AD-040 Figures 12.5 to 12.7

¹⁸⁹ Using Method 2 of TRL report 'Converting the UK traffic noise index $L_{A10,18h}$ to EU noise indices for noise mapping' AD-070 paragraph 2.6.52

¹⁹⁰ Do Something 2016 see Table 2-15 AD-070

¹⁹¹ Less than 1dB $L_{A10,18h}$ see Table 2-15 AD-070

¹⁹² Defined as 3dB(A) or more

¹⁹³ Do Something 2031 see Table 2-17 AD-070

receptors that would suffer increases in noise levels without the project because of future traffic growth¹⁹⁴.

- 4.136 In respect of night-time noise levels, in the long term without the project 37 dwellings would experience perceptible increases¹⁹⁵ compared to only 8 with the project in place¹⁹⁶. For 9 properties the project would result in a perceptible decrease in night time noise levels. Properties predicted to experience night time noise level of more than 55dB $L_{\text{night, outside}}$ are generally located around the Town Street/A160 junction and at Fields End where the increase in noise level would largely be as a result of natural traffic growth and not directly related to the project¹⁹⁷.

Mitigation measures and DCO Requirements

- 4.137 The dNPSNN paragraph 5.181 requires consideration of whether mitigation measures are needed both for operational and construction noise over and above any which may form part of the application. I have already concluded above on the acceptability of the provisions in the CEMP to mitigate the adverse impacts of noise during construction and referred to the use of low noise road surfacing to reduce road noise when the project is operational. This would be secured through Requirement 13 of the draft Order.
- 4.138 In addition during the examination¹⁹⁸, the HA put forward proposals to introduce noise barriers within the highway boundary to mitigate the effect of traffic noise on Nos. 35 to 51 School Road and Janika, off Habrough Road (qualifying properties in respect of the Noise Insulation Regulations), instead of installing secondary glazing¹⁹⁹. The proposals were the subject of public consultation and I accepted them as non-material changes to the application²⁰⁰.
- 4.139 I am satisfied from what I saw during my accompanied site visit that the introduction of fencing in the two locations proposed would be unlikely to adversely impact on views from the road, which are not sensitive, or from neighbouring properties. Intervening vegetation would be retained and the barrier would reduce views of traffic on the A160 from the backs of the properties in School Road. Requirement 14 of the recommended draft DCO requires the detailed design of the noise barriers to be agreed by the SoS in consultation with the relevant planning authority.

¹⁹⁴ This can be easily seen in a comparison of Figures 12.6 and 12.7 in AD-040

¹⁹⁵ Table 2-16 AD-070 increase of between 3 and 10dB (11+26)

¹⁹⁶ Table 2-17 Ad-070 increase of between 3 and 10dB (4+4)

¹⁹⁷ Paragraph 2.6.69 AD-070 and comparison of Figures 12.6 and 12.7 AD-040

¹⁹⁸ ExA Q5.21 PI-006

¹⁹⁹ ExA Q5.21 PI-006

²⁰⁰ PI-015

Noise and vibration nuisance

- 4.140 The ES Second Addendum includes a traffic noise nuisance assessment at Table 2-18. With the project in place fewer dwellings would experience an increase in noise nuisance as compared to the Do Minimum scenario²⁰¹ and some 47 dwellings would experience a reduction in noise nuisance. Overall the assessment indicates that the project would provide a benefit with both a reduction in the number of properties that would otherwise experience increases in noise nuisance and more properties experiencing noise nuisance reductions.
- 4.141 The HA has carried out an assessment of changes in vibration nuisance²⁰². With the new road in place 36 properties would experience a reduction in airborne vibration nuisance and it would halve the number experiencing an increase in airborne vibration nuisance, compared to the Do-Minimum scenario. Overall the project would reduce vibration nuisance and would reduce the number of properties that would, without the project, otherwise experience increases in vibration nuisance. With the reduction in the number of HGV vehicles moving on Top Road, the dwellings there would be less exposed to ground borne vibration and properties elsewhere would be sufficient distance from the carriageway that perceptible ground borne vibration from traffic sources is unlikely.

Overall conclusion on noise and vibration

- 4.142 I am satisfied that with appropriate mitigation, to be secured through the Requirements of the DCO and the CEMP²⁰³, construction work during the day would be satisfactorily controlled so as not to give rise to unacceptable noise or vibration impacts for any extended period of time. I am also satisfied that there would be no unacceptable cumulative impacts. Delivery of the project on schedule would demand some night time working and during weekends and public holidays which would affect sensitive receptors. This is unavoidable if work is to be safely carried out without causing excessive traffic disruption on local roads and because of the need for works affecting an operational railway. With the CEMP in place, I consider that reasonable and appropriate steps would be taken to mitigate and minimise the adverse impact of noise and vibration on the local area during the construction period.
- 4.143 The ES assessment shows that when the project is operational in both the short and long term there would be no perceptible increase in noise for any dwelling or other sensitive receptor and that some properties would benefit from perceptible noise

²⁰¹ 531 dwellings Do Something compared with 579 Do Minimum (less than 20%)

²⁰² Table 2-19 AD-070

²⁰³ See draft CEMP AD-069 Environmental Control Plan Env 3- Noise, Vibration and Nuisance

reductions. No evidence was submitted during the examination which challenged that assessment or its conclusions.

- 4.144 Taking into account the carriageway alignment changes, the extension of low noise surfacing as well as the noise barriers, overall I conclude that the project would produce a net benefit in terms of operational noise and vibration. As such I find the proposals consistent with paragraphs 5.171 to 5.183 of the dNPSNN and with the objectives of national and local planning policy, including NLLP policy DS1(iii) and NELLP policy GEN2(xii).

Air quality

- 4.145 The dNPSNN advises on the approach to air quality at paragraphs 5.2 to 5.12 and on dust and other emissions at paragraphs 5.74 to 5.81. They have the potential to have a detrimental impact on amenity and to contribute to adverse impacts on human health, on protected species and habitats. The NPPF makes it clear that unavoidable dust emissions should be controlled, mitigated or removed at source. General requirements for all new development are set out in NLLP policy DS1 including that there should be no unacceptable loss of amenity to neighbouring land uses in terms of dust or other nuisance and no air pollution which poses a danger or creates detrimental environmental conditions.
- 4.146 Chapter 12 of the ES deals with air quality both during the construction and operation phases and the assessment has been undertaken in accordance with the DMRB²⁰⁴ and two Interim Advice Notes produced in 2013²⁰⁵.

Construction dust

- 4.147 Construction of the road would include the extraction of material from the borrow pits, the stripping of top soil and sub soil and its storage, the breaking out of existing road surfaces, and the movement of quantities of soil within the site area to achieve a cut and fill balance. There is potential for nuisance from fugitive dust soiling windows, cars, washing and other property. Advice in the DMRB is that the majority of dust particles travel no more than 200m from source. Here the source is linear and around 339 receptors with the potential to be affected are within 200m of either the proposed new road, sections of existing road which require construction activity or areas of temporary land take²⁰⁶.

NO₂ and PM₁₀

- 4.148 In respect of emissions from plant vehicles and traffic to the site on local air quality concentrations of NO₂ and PM₁₀, NLC agrees

²⁰⁴ DMRB Volume 11 section 3 part 1 HA207/07 May 2007 (see paragraph 6.1.3 AD-031)

²⁰⁵ IAN 174/13 and IAN 175/13 (see paragraph 6.1.11 AD-031)

²⁰⁶ Figure 6.4 AD-033

with the ES that these would be negligible, and temporary in nature, when compared to normal traffic on the roads in the area²⁰⁷.

- 4.149 The A160 at South Killingholme is not an Air Quality Management Area (AQMA). The nearest AQMA is at Kings Road, Immingham where a recent report indicates that air quality no longer exceeds the PM₁₀ objective and recommends that the AQMA be revoked. Although the NLC's air quality report in 2011 highlighted possible issues with NO₂ emissions from A160 traffic movement near the Habrough roundabout, the Council agrees that the situation should improve with the new A160 road project as the new roundabout would be further from existing receptors²⁰⁸.
- 4.150 The assessment in the ES shows no receptors in exceedence of the annual mean or short term Air Quality Objectives for NO₂ or PM₁₀ and that there would be no new exceedences as a result of the project²⁰⁹. Whilst there was a small increase in modelled NO₂ concentrations (Do Something) when the speed correction used in the updated noise assessment was applied, there was no material change in the conclusions²¹⁰. The compliance risk assessment also identifies that the proposed project has a low risk of being non-compliant with the EU directive on ambient air quality.
- 4.151 I have already noted above NE's agreement in its SoCG that there are not likely to be significant air quality impacts on any of the Natura 2000 sites or the Humber Estuary SSSI as a result of the project alone or in combination with other projects or plans²¹¹. Works close to the Rosper Road Pools LWS would be subject to the dust control measures to be included in the CEMP.

Mitigation measures and DCO REquirements

- 4.152 Through Requirement 3(4)(a)(i) and the incorporation of an Air Pollution Plan in the CEMP²¹², the HA are proposing a range of dust control measures to minimise potential dust impacts. They include: sealing material stockpiles where possible; damping down dusty materials during dry weather; , the use of sprinklers and hoses to minimise dust escape from site boundaries; only mixing concrete in enclosed or shielded areas; regular damping down of unsurfaced routes; appropriate on-site speed limits; wheel washing facilities; as well as cleaning the public highway outside the site entrance.
- 4.153 In addition the CEMP would provide for a public relations and notification service for the public, a programme to monitor

²⁰⁷ LIR-002 paragraph 11.2.3 and AD-031 paragraph 6.4.6

²⁰⁸ LIR-002 Paragraph 11.2.4

²⁰⁹ AD-031 Tables 6.6 and 6.7

²¹⁰ D2-002 HA response to ExA Q6.7

²¹¹ SOG-024 paragraph 3.1.4

²¹² Requirement 3(4)(a)(i) of the draft Order D5-001

compliance and regular reviews of policies, practices and procedures²¹³. The contractor would also be encouraged to adopt various good management practices including preparation of a statement of commitment to control off site environmental effects, including fugitive dust emissions²¹⁴.

Conclusion on air quality

- 4.154 I am satisfied that through the CEMP and with the proposed dust control measures in place there would be appropriate and adequate mitigation to minimise the risk during the construction period for those living around the site of unacceptable levels of fugitive dust emissions. The assessment presented in the ES has demonstrated that overall the project would not have a significant adverse impact on air quality and no cumulative impacts are anticipated. I conclude that the project is consistent with the approach to air quality and to dust emissions in the dNPSNN and with national and local planning policy, including NLLP policy DS1.

Flood risk and drainage

- 4.155 The area around the A160 is generally low lying agricultural land drained by a series of field drains, many of which flow into a network of drains the responsibility of the North East Lindsey Internal Drainage Board (NELDB), which manages water levels and controls discharges to the Humber Estuary. Figure 15.1 in the ES Volume 2 Figures²¹⁵ shows the water environment. It also identifies that the land at the eastern end of the project, immediately north east of the railway (the Rosper Road Link), is within the Humber Estuary Flood Zone 3 (high probability of tidal flooding). Land south of the Humber Oil Refinery is within Flood Zone 3 associated with a tributary of the Habrough Marsh Drain.
- 4.156 The NPPF requires that development should be directed away from areas at highest risk of flooding *'but where development is necessary, making it safe without increasing flood risk elsewhere'*. A Sequential Test is to be applied, and if necessary, an Exception Test. Decisions should be informed by a site specific flood risk assessment and development in an area at risk of flooding should be appropriately flood resilient and resistant with any residual risk capable of being safely managed²¹⁶.
- 4.157 The dNPSNN refers to the guidance supporting the NPPF²¹⁷ which explains that essential transport infrastructure (including mass evacuation routes) which has to cross the area at risk, is permissible in areas of high flood risk, subject to the requirements of the Exception Test.

²¹³ See draft CEMP AD-069 Environmental Control Plan Env1 - Air Quality

²¹⁴ Paragraph 6.8 AD-031

²¹⁵ AD-043

²¹⁶ NPPF paragraph 103

²¹⁷ Technical Guidance to the NPPF Table 2

- 4.158 The NLC LIR refers to policies on flood risk and drainage in the NLLP and NLCS and concludes that the project cannot be located elsewhere, is of strategic importance, and as such satisfies the Sequential Test. As water compatible development as defined in the NPPF, the project would be appropriate and an Exception Test is not required. In the final revision of its SoCG²¹⁸, the NLC confirmed that it was content with the FRA and the updated flood risk modelling, and there was no longer any need to consider the Strategic FRA²¹⁹.
- 4.159 In response to my question, the HA confirmed that climate change had been taken into account in the drainage design and the flood risk assessment and the EA confirmed in its response that it supported the HA's approach to climate change²²⁰.

Flood risk

- 4.160 Surface water, groundwater and flood risk are covered in Chapter 15 of the ES and in its supporting Appendices²²¹. The application FRA identified that the new road under the railway would result in a slight increase in the area at risk of flooding in the event of the South Humber Bank flood defences being over-topped, but in the event of a breach there would be a negligible difference in the area affected by flooding compared to the existing situation²²². In a more severe flood event, the FRA concluded that the underpass would make a negligible difference to the area affected.
- 4.161 In response to the EA's concerns about the FRA and whether it dealt with the worst case²²³, an updated FRA was prepared by the HA. It included a re-run of the flood modelling to assess the flooding implications of the lower invert level now proposed under the new railway bridge²²⁴. The lower level is required by NR as part of its agreement to a concrete bridge structure so as to give clear headroom of 5.7m, due to its concerns about vehicular impact with the structure, and is above the original clearance of 5.3m, the standard headroom required by the DMRB²²⁵.

Sequential Test, Exception Test and risk

- 4.162 The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Whilst the majority of the project would be on land classified by the EA as Flood Zone 1, the proposed Rosper Road link is in Flood Zone 3. The new road

²¹⁸ SOG-024 paragraph 3.4.26

²¹⁹ North Lincolnshire and North East Lincolnshire Strategic Flood Risk Assessment 2011

²²⁰ EA response to ExA Q9.1 (D1-001) and D2-020

²²¹ AD-056 (Appendix 15.1 water Quality Calculations), AD-057 and AD-058 (Appendix 15.2 Flood Risk Assessment) and AD-059 (Appendix 15.3 Water Framework Directive)

²²² AD-031 paragraph 15.5.15 0.5% annual probability tidal flooding event, with an additional allowance for climate change.

²²³ As represented by the 0.5m limits of deviation in Article 6 of the draft Order (AD-002)

²²⁴ AD-066

²²⁵ AD-067 section 3

would be the second link between the existing Manby Road roundabout and Rosper Road. It would allow for the formation of a new gyratory system with two lanes for traffic, using the new and existing underpasses, and would improve capacity and access to the Port. It is needed to secure the transport sustainability objectives of the A160/A180 project including reducing congestion and improving reliability and safety. As such there is no alternative site in Flood Zones 1 or 2.

- 4.163 The dNPSNN at paragraph 4.36 on climate change adaptation refers to '*safety critical elements*' of transport infrastructure and the application of the high emissions scenario (high impact, low likelihood) to those elements critical to the safe operation of the infrastructure. The new link road is to provide increased capacity on the road network and to reduce queuing in Rosper Road. There is already a road under the railway which offers an alternative route in time of emergencies and Rosper Road can be accessed via Eastfield Road. In the terms of this paragraph of the dNPSNN, I do not consider that the new Rosper Road link road is an element '*critical*' to the safe operation of the infrastructure.
- 4.164 The project would be classified as essential infrastructure in Flood Zone 3; as such the Exception Test applies. The underpass would create a new pathway for potential tidal flood waters should a breach or overtopping of the Humber Estuary coastal defences occur. The updated flood risk modelling report indicates that in both scenarios there is no difference between the extent of flooding for the 0.1% AEP²²⁶ (1 in 1000 year) event now and with the project.
- 4.165 When the model was run to include a climate change allowance, as expected the extent of flooding would be more extensive than currently with the overtopping scenario extending the furthest inland. In both scenarios (breach and overtopping) the extent of flooding would only marginally increase with the revised link road profile and the depth and velocity of the flood water would be low.
- 4.166 In its updated SoCG²²⁷, the EA agrees that the updated FRA includes satisfactory modelling to cover the lowering of the carriageway on the Rosper Road Link, with a deviation of up to 0.15m²²⁸. It is also agreed that the updated FRA demonstrates that the presence of the underpass would allow a greater flood extent when compared to the undeveloped situation²²⁹ and that options for practicable mitigation measures to offset the increase in the consequences of flooding are limited.

²²⁶ Annual exceedance probability

²²⁷ SOG-021

²²⁸ This specific level of deviation for Work No. 28 is provided for in the DCO Article 6(1)(b)

²²⁹ In response to my request at the DCO hearing, the HA provided plans showing the additional flood area as a result of the projected road (see plans at D4-012)

- 4.167 The SoCG sets out the EA's final position that *'although this represents a marginal increase in flood risk to third parties, the EA is not objecting to the application and defers to the Examining Authority/Secretary of State to take a view on whether or not this is acceptable'*.
- 4.168 I am mindful of the guidance in the dNPSNN and this is not a case where the EA continues to object to the grant of development consent on the ground of flood risk. Paragraph 5.94 of the dNPSNN recognises that the nature of linear infrastructure means that there will be cases, like this, where upgrades need to be made to existing infrastructure in an area at risk of flooding. The HA and the EA have had regard to paragraph 5.96 but the SoCG accepts, and I agree, that the options for any mitigation here are limited.
- 4.169 The Exception Test has two elements and both have to be passed²³⁰. The FRA indicates that the project would be safe for its lifetime. The new underpass would provide an additional exit route for water from the area next to the Estuary. Although the SoCG confirms that the presence of the underpass would marginally increase the extent of flooding if there were to be a breach, the test is whether it would increase flood risk elsewhere. This requires a judgement to be made which includes considering the nature of the development that would be affected and its vulnerability as well as the frequency, impact, speed of onset, depth and velocity of flooding.
- 4.170 At my request, the HA produced flood hazard and flood extent plans showing existing areas at risk of flooding as a result of overtopping or breaching along with any new areas of flood hazard and flood extent arising from the new underpass²³¹. In the case of a breach, considered by the EA to be the more representative scenario, the plans show that there would be a marginal extension of the areas of flood hazard and flood extent west of the railway along the Humber Road around the Manby Road roundabout and near Houlton's Covert. From the FRA, the plans and my visits to the area, I am satisfied that there would be no additional threat to highly vulnerable development, no threat to dwellings and whilst a small area on the edge of the Humber Oil Refinery might be flooded, any floodwater would be shallow and slow moving. I do not consider that in terms of the Test the new road would increase flood risk elsewhere.
- 4.171 Moreover in respect of the first element of the Test, I am satisfied that if there were any flood risk it is outweighed by the wider sustainability benefits that the project would bring to the community. The project is identified as a priority infrastructure scheme. It would provide improved road access to support

²³⁰ Draft NPSNN paragraph 5.100 and NPPF paragraph 102

²³¹ D4-012

economic growth and the development of key strategic employment and infrastructure sites on the South Humber Bank, meeting local as well as national planning policy objectives. It would benefit the local community, businesses and transport operators by reducing existing traffic congestion, improving journey time reliability and improving road safety. These are powerful considerations that outweigh any flood risk.

Conclusion on flood risk

- 4.172 I conclude that whilst the introduction of the Rosper Road Link would marginally increase the extent of flooding, it is important to note that the EA does not object to the project. Nor is there any evidence of unacceptable cumulative impacts. In terms of flood risk, I am satisfied that the project does not conflict with either element of the Exception Test and thus complies with the dNPSNN, national policy in the NPPF and with local planning policy including NELLP policy GEN2(xiv), NLCS policies CS18 and CS19 and NLLP policies IN4 and DS16.

Drainage

- 4.173 The EA and the NELDB have agreed the baseline conditions detailed in the ES in section 15.4 and in Table 15.4²³². Surface water from the existing A160 is believed to drain into Skitter Beck and to the South Killingholme Drain, a NELDB watercourse. Local residents have referred to surface water flooding at the junction of A160 with Town Street and the FRA notes that many of the pipes in the area are fully or partially blocked²³³.
- 4.174 The highways drainage strategy for the project is described in the ES at section 2.6²³⁴. The drainage scheme would manage the surface water runoff through 7 ponds (one of which is already there), which would allow the discharge to be stored and released at a controlled rate. The catchment areas, which reflect the local topography, and the attenuation ponds are shown on the ES Volume 2 Figure 2.3²³⁵. The project also includes a pumping station to manage surface water runoff from the Rosper Road Link.
- 4.175 During the examination the HA supplied the Microdrainage WinDes calculations²³⁶ which had been reviewed by the EA at the pre-application stage and given the EA the confidence that the concept proposed to manage surface water would be achievable²³⁷. Both the EA and NELDB have agreed the methodology and outcomes of

²³² D2-007 and D2-020 responses to ExA Q9.3 and Chapter 15 of the ES Volume 1 AD-031

²³³ ES Volume 3 Appendix 15 FRA paragraph 6.4.8 (AD-057) and RR-010 and RR-013

²³⁴ Key extracts from the Drainage Strategy Report are included at Appendix H to the FRA AD-058

²³⁵ AD-032 and with more explanation at Figure 6.8 of the FRA (Appendix 15.2 ES Vol 3 AD-058)

²³⁶ AD-071

²³⁷ D2-009 and D2-020

the road drainage assessment²³⁸ and the NELDB have confirmed that it is satisfied with the proposed discharge rates²³⁹.

Mitigation measures and DCO Requirements

During construction

- 4.176 In respect of impacts during the construction phase, temporary drainage arrangements would be put in place to capture site runoff and to settle out silt²⁴⁰. Measures to control the risk of pollution would be implemented through the CEMP, and Requirement 3(4)(a)(ii) provides that it should include a Water Pollution Prevention Site Environmental Control Plan. The CEMP would also require adherence to the relevant EA Pollution Prevention Guidelines (Requirement 3(5)(a)). Although the discharge of surface waters may require an environmental permit, this depends on its quantity and quality and I accept the EA's and HA's view that this is not a matter that can be determined at this time²⁴¹. Overall I am satisfied that with the proposed mitigation in place, there would be no adverse construction phase impacts as a result of surface water runoff.

When operational

- 4.177 I am satisfied that the proposed drainage scheme through the use of attenuation ponds to capture and then discharge runoff from the road at a controlled rate would adequately mitigate for the operational impacts of the project. Their design would slow down the flow of runoff prior to discharge, retain a depth of permanent water to reduce re-suspension of pollutants, include devices to encourage settlement of solids, and provide for the isolation of flows to contain accidental spillage. By regulating discharge rates, the ponds would also help to manage flood risk.
- 4.178 Requirement 16 of the recommended draft DCO provides for the details of the surface water drainage system, to reflect the mitigation measures outlined in the ES, to be agreed by the SoS, in consultation with the relevant planning authority and the EA, and implemented in accordance with the agreed scheme.
- 4.179 I consider that the operational impacts in respect of drainage would be neutral or slightly beneficial. There is no evidence that there would be any unacceptable cumulative impacts.

²³⁸ EA and NELDB responses to ExA Q9.13 D2-007 and D2-009

²³⁹ D2-007 response to ExA Q9.12

²⁴⁰ D2-002 HA response to ExA Q9.17, Ad-063 (Construction Methodology Statement), AD-065 (revised draft CEMP)

²⁴¹ D2-002 and D2-009 HA and EA responses to ExA Q9.14

Conclusion on surface water drainage

- 4.180 I conclude that the surface water drainage management strategy proposed as part of the application is appropriate and adequately addresses the particular issues of the project and the area, both during construction and when operational. It provides for sustainable drainage through the use of wet balancing ponds and would address existing road drainage problems. Accordingly I consider that the project complies with the dNPSNN, with the objectives of national policy in the NPPF, and with local planning policy including NLCS policies CS5 and CS18.

Traffic and highway implications, including on footways, public rights of way, and facilities for non-motorised users

- 4.181 New highway developments provide an opportunity to make significant safety improvements (dNPSNN paragraph 4.55) and an objective of the application project is to improve safety for road users and the local community. The dNPSNN also sets out the Government's commitment to sustainable transport and accessibility. Local planning policies also support improvements to transport accessibility, in particular NELLP policy GEN2(x), NLCS policy CS12 c), and NLLP policies T2, T8 and T15.
- 4.182 Chapter 13 of the ES follows guidance in the DMRB and looks at the effect of the project on all travellers including drivers, passengers and non-motorised users (NMUs), which would include horse riders, cyclists and pedestrians.

Effects on drivers

- 4.183 Local planning policies, including NLCS policy CS26 and NLLP policy T17, support the improvement of the A160 and the application was generally welcomed by all the interested parties. The upgrading of the A160 to dual carriageway and the improved layout would reduce driver stress and improve road safety for all users of the highway and the local roads around. The two bridges proposed at the Brocklesby Interchange is a standard arrangement that is well known to drivers and would be safer. Non-material changes, introduced during the examination, to the diverge and merge slips, to avoid diversion of a high pressure gas main, would meet design standards and would be an improvement over the existing layout.
- 4.184 With the project, Ulceby Road, Habrough Road and Top Road would all join the A160 via the Habrough Roundabout. The new junction design would improve road safety, reduce route uncertainty, lower driver stress and reduce the fear of potential accidents. Closures of the central reservation would increase journey lengths but drivers would no longer have to cross traffic to

turn onto or off the A160. The partial closure outside the Humber Refinery is supported by Phillips 66 Ltd²⁴².

Farm traffic

- 4.185 The project provides for new farm accesses to serve fields severed or otherwise affected by the line of the new dual carriageway.
- 4.186 On my accompanied site visit I was asked to visit Elm Tree Farm and Mill Farm²⁴³, located either side of the A160, because of the concerns of Mr Dinsdale and Mr Chapman that with the closure of the gap at Town Street their farm vehicles would either have to travel some distance along the A160 to turn at the Manby Road roundabout or negotiate the new Town Street bridge²⁴⁴. Surveys carried out for the HA indicate that the larger agricultural vehicles might not be able to pass along School Road when cars are parked either side or along Town Street, despite the latter being a bus route with regular large vehicle movements²⁴⁵.
- 4.187 I note that both School Road and Town Street north are outside the Order limits so the DCO could not include traffic regulation orders for these streets. The HA has been in discussion with NLC about introducing parking controls, although it was accepted at the open floor hearing that this process could take some months to complete²⁴⁶. It seems to me that it would be for NLC to balance the needs of all road users, including that of local farmers and of visitors to the GP surgery, when arriving at a decision on the need for and extent of any parking controls.

Junction design

- 4.188 In its LIR, NLC as the local highway authority has set out its concerns about the layout of the new junction of School Road/Town Street/new bridge including the location of the bus stop²⁴⁷, and about vehicle speeds across the junction of Top Road with the new Greengate Lane link²⁴⁸. The SoCG between NLC and the HA confirms that discussions are ongoing on the detailed design of these junctions and it is agreed that detailed proposals would continue to be developed and would be subject to the Stage 2 road safety audit scheduled for later in 2014²⁴⁹. Given that agreement, I am satisfied, if consent is granted, that these are matters that could be left to be the subject of further discussion and resolution between NLC and the HA.

²⁴² RR-016 and D2-022

²⁴³ The farms are marked as farmsteads 5 and 8 on Figure 1 Appendix 1 to Appendix 14 of the ES Volume 3 AD-055

²⁴⁴ RR-017, EV-003

²⁴⁵ AD-078

²⁴⁶ D4-008

²⁴⁷ NLC LIR-002 paragraph 6.7

²⁴⁸ NLC LIR-002 paragraph 6.13

²⁴⁹ SOG-024 paragraph 3.3.26

4.189 I agree that safety on the A160 and at the A160/A180 junction would be improved by the closing of two of the existing laybys. The layby on the A160 on the eastbound carriageway has been risk assessed and the HA proposes that it is retained after temporary closure for the overbridge construction works. There were complaints at the examination about its use for overnight parking. I understand that this is to be addressed by the HA, separate from the application, through the introduction of a two hour parking restriction. As to measures to address illegal parking and reversing of HGVs in the junction taper on the south side of Town Street, which is subject to an existing clearway order, I am satisfied that these are appropriate matters to be addressed in the final junction design²⁵⁰.

Abnormal loads and emergency vehicles

4.190 Concerns were raised initially by Associated British Ports and Wynns Ltd that any bridges build over the A160 should not restrict abnormal load movements from the Port²⁵¹. I am satisfied that the layout of the Rosper Road gyratory adequately provides for the movement of abnormal loads to and from the Port and it would be for NLC as the local highway authority to determine appropriate arrangements for use of the high load vehicle route²⁵². I consider that the HA's proposals to introduce wig-wag traffic signals around the gyratory would ensure the safest possible means of interaction between normal road traffic and emergency vehicles leaving Immingham West Fire Station whilst minimising any potential delay in response times²⁵³.

Non-motorised users

4.191 The application was accompanied by detailed drawings showing provisions for non-motorised users²⁵⁴ (NMUs) and these are described in the ES at Table 13.4²⁵⁵. They include improvements to existing footways, a new toucan crossing on the A160, a 2m wide footway and equestrian height railings on the Town Street bridge, steps up to the bridge from the A160 carriageway, and new dropped kerbs.

4.192 In response to comments by NLC²⁵⁶, during the examination enhancements were made to the project including a new footway/cycleway on the south side of the A160 between Eastfield Road and Manby Road Roundabout and replacement of the footway between the Ulceby Truck Stop and Poplar Farm with a combined footway/cycleway. The new footway from the A160 onto

²⁵⁰ D2-002 HA response to ExA Q3.16 and NLC LIR-002

²⁵¹ RR-004 and RR-005

²⁵² AD-013 General Arrangement Sheet 10 of 10

²⁵³ AD-075

²⁵⁴ AD-017

²⁵⁵ AD-031

²⁵⁶ LIR-002 paragraph 6.14-6.16

Rosper Road would also be of sufficient width to allow it to be used as a cycleway if the local highway authority so wished.

- 4.193 The new road bridge at Town Street would link the two sides of South Killingholme, currently divided by the A160. Journey times for NMUs would increase but the journey would be more pleasant and safer because of the reduction in exposure to traffic. Although the project requires the permanent diversion of a public right of way (PROW FP91), it is currently overgrown and unused and a new route would be provided from the bridge.
- 4.194 I consider that these improvements would provide significant long term benefits for NMUs. Along with the new bridge at Town Street, the new footway/cycleways would provide better and safer facilities for pedestrians and cyclists for the length of the A160 through South Killingholme.

Traffic management

- 4.195 The application notes that if consent is granted work would begin on the project in 2015 to be completed by autumn 2016. With most of the works on-line, there could be a significant impact on traffic flows and management on the highway network during the construction period. There was concern during the examination about cumulative impacts as there are several other large developments planned in the area which could potentially be under construction at the same time. These include the Hornsea Offshore Wind Farm Project One, North Killingholme Power Plant, the Able Marine Energy Park as well as the Able Business and Logistics Park. There are also planned signal improvements to the A160/Eastfield Road junction and NR will be doing work to the railway bridge. The 2015 planned shutdown of the Humber Refinery will also have significant implications in terms of traffic movements²⁵⁷.
- 4.196 In response to concerns expressed in the NLC LIR and at the examination about the need to co-ordinate construction traffic and to manage any potential conflicts, Requirement 3 of the recommended draft DCO provides that the CEMP must include measures to deal with the situation if the A160 improvements coincide with any other major construction projects in the area. It was clear at the examination that the HA and its contractor are already in dialogue with those other developers with interests in the area and have made commitments in respect of keeping the same number of traffic lanes open at peak times as now, albeit with lower speed limits, and any road closures would be limited, scheduled and notified. I am satisfied that the DCO as drafted adequately deals with this matter subject to referring simply to '*major projects*' so as to include the refinery shut down.

²⁵⁷ D2-022

4.197 The NLC LIR recommended that a travel plan for construction workers should be produced. However the NLC declined to pursue this point at the DCO hearing. I consider that the construction traffic management plan to be agreed under Requirement 12 would adequately address any concerns about on-site parking for construction workers and the routing of construction traffic.

Conclusion

4.198 The project with its amendments has been designed to address the needs of cyclists, horse riders and walkers and I am satisfied that it would deliver a number of improvements to improve accessibility and reduce community severance. Both NLC and NELC are supportive in their SoCGs of the improvements proposed which link in with their wider aspirations to improve non-motorised provision in the South Humber Gateway area and to improve connectivity²⁵⁸. The proposal is fully consistent with the Government's commitment to sustainable travel and improved accessibility, for example as set out in paragraphs 3.13 to 3.17 of the dNPSNN. It also accords with the objectives of the local planning policies of both NLC and NELC, in particular NLCS policy CS12 c) and NLLP policies T8 and T15, to encourage sustainable transport and provide facilities for cyclists and pedestrians.

Socio-economic impacts

4.199 In setting out the general principles of assessment of applications for national networks infrastructure, the dNPSNN advises that environmental, social and economic benefits and adverse impacts should be considered at national, regional and local levels. The NPPF defines the purpose of the planning system as being to contribute to the achievement of sustainable development in its three dimensions; economic, social and environmental.

4.200 Chapter 14 of the ES on Community and Private Assets addresses the effect of the project on access to community assets and the effects on the economy and economic and private assets. The impacts on farming businesses are assessed in Appendix 14.1 of the ES (Volume 3)²⁵⁹ and there are other aspects that have a social and economic dimension including the effects on visual amenity and on noise, which I deal with above, and on minerals and waste.

²⁵⁸ SOG-007 paragraphs 3.3.1 et seq and SOG-024 paragraph 3.3.12 et seq

²⁵⁹ AD-055

During construction

- 4.201 NLC in its LIR highlights the long term positive impacts of the project whilst recognising that there would be some short term negative impacts during construction²⁶⁰.
- 4.202 During the construction phase there would be disruption to local communities and to businesses. There would be the loss of land, even if only temporarily for the site compounds or borrow pits, to a number of local farms. The borrow pits would provide more than half the material for the bulk earthworks fill, the rest from the cut with surplus replaced at the end²⁶¹. This would be in line with national waste policy, avoid the need to import bulk earthworks materials and reduce the number of vehicle movements²⁶².
- 4.203 For most local businesses and the utility companies, the impact would only be during the construction phase. There might be some disruption at the end of Town Street with the construction of the overbridge and its embankments and the redesign of the junction, but there is no suggestion that access would not be capable of being maintained for all road users including the large vehicles operated by Mr Carnaby from Holton Farm²⁶³.
- 4.204 The A160 is already subject to a clearway order with the eastbound layby opposite the fish and chip shop in Humber Road being the only place where vehicles can legally stop. The provision of a westbound layby was investigated but would not comply with design standards for both upstream and downstream junctions²⁶⁴. The temporary closure of the layby would have an impact on the fish and chip shop's trade. It would be short term and with the new bridge and steps in place, drivers parking in the layby and local people would be able to safely cross the A160 to the Humber Road.

Mitigation measures and DCO Requirements

- 4.205 The NLC in its SoCG confirmed that the approach to waste detailed in the CEMP was acceptable²⁶⁵. I am satisfied that the proposal provides for the efficient and sustainable management of construction waste through Requirement 3(4)(c) of the recommended draft DCO which provides for the incorporation of a Site Waste Management Plan and a Materials Management Plan into the CEMP.

²⁶⁰ LIR-002

²⁶¹ AD-031 Chapter 11

²⁶² LIR-002 section 14

²⁶³ AR-004

²⁶⁴ D2-025 section 2.3

²⁶⁵ SOG-024 paragraph 3.4.27

- 4.206 The HA has written separately to Royal Mail²⁶⁶ in respect of their late submission²⁶⁷ setting out the proposals to minimise traffic disruption during the construction phase and inviting their participation, along with other affected local businesses, in traffic management forums to be established in conjunction with the local authorities to co-ordinate activities, if consent is granted. Requirement 12 of the draft DCO provides for the approval by the SoS, in consultation with the relevant highway authority, of a traffic management plan for the construction of the project.
- 4.207 Requirement 3(7) provides that the plans and programmes making up the CEMP must include measures to address the event that the work on the road coincides with other major projects to avoid unacceptable cumulative impacts on those living and working in the area. I consider that adequate protection is provided in the recommended draft DCO to minimise any adverse impact during the road construction on Royal Mail's operation and that of other businesses and developments in the area.
- 4.208 Through the production of SoCGs, the HA has engaged with statutory undertakers and others who have interests in the area including electric lines, water pipes, gas pipelines, the oxygen pipeline, the condensate pipeline and/or apparatus that would be affected by the project and its construction²⁶⁸. As a result of this engagement most of their concerns, other than those relating to the final design details, have been met either by way of side agreements or revisions to the protective provisions in the recommended draft DCO and their representations have been withdrawn²⁶⁹. The HA and its contractor is continuing to engage with these undertakers to agree the final design details of required diversion or protection works.

Relationship with Hornsea Offshore Wind Farm Project One

- 4.209 There remains an outstanding objection from SMW, on behalf of Heron Wind²⁷⁰, which awaits the completion of a full commercial agreement with the HA²⁷¹. Since both parties were agreed that it would not be concluded before 24 October 2014²⁷², the final date for closing the examination, I took the view that there was no benefit in keeping the examination open until that date.
- 4.210 Again this is not the case that SMW objects in principle to the road project; it is merely seeking to ensure that its own interests are protected. Cabling for the Hornsea Offshore Wind Farm Project One is proposed to run west of Top Road and pass under the new

²⁶⁶ AR-010

²⁶⁷ AR-009

²⁶⁸ SOG-001 to SOG-005, SOG-008 to SOG-011, SOG-013, SOG-017 to SOG-020, SOG-022, SOG-025

²⁶⁹ AR-011, D6-001, D6-004, AR-007, AR-014, CR-010, D6-003

²⁷⁰ Applicants for the Hornsea Offshore Wind Farm Project One

²⁷¹ AR-013

²⁷² D5-008, AR-012 and AR-013

Habrough Roundabout. A decision on that NSIP by the Secretary of State for Energy and Climate Change is due by 11 December 2014.

- 4.211 Work No. 18 of the application draft Order provides for the installation of ducts in the proximity of the proposed Habrough Roundabout to house cables for the Hornsea Offshore Wind Farm Project One and there is an agreed SoCG setting out three scenarios as to how that might be achieved, depending on the timing of works for the two projects²⁷³.
- 4.212 This is not a case where the interests of another developer have been disregarded. Indeed during the course of the examination, a change was made by the HA at the request of SMW to extend the limit of deviation for the Work²⁷⁴. Work No. 18 and article 6 are intended to address this situation and I am recommending them to be included in the final DCO. Nevertheless there remain issues in respect of the wording of the DCO and the rights sought to compulsorily acquire land and the protective provisions which I address in Chapters 7 and 8.

When operational

- 4.213 NELC and NLC are very supportive of the project and see it as instrumental in delivering positive economic and social benefits for the area. The A160 provides direct access to the South Humber Gateway from the A180/M180. There is policy support for the project. Development sites have been identified and with improvements to the road network these would be progressed. In addition to investment in new sites and infrastructure, the dualling of the A160 would support existing large scale businesses already based in the area, encouraging further investment, growth and job creation.
- 4.214 The physical improvements would allow existing businesses, including those associated with the Port, as well as supply chain companies to deliver more effective transport provision through easier and more reliable access to the strategic road network. With a number of the sub-region's largest companies, particularly in the chemical and petro-chemical sectors, served by the A160, its improvement would improve response times, safety and evacuation procedures in the event of an emergency. However some businesses would be directly affected by the changes in the road layout. With the new link road, the newsagent in Top Road would lose passing trade²⁷⁵. Whilst the land take for the construction works has been minimised and new field accesses are proposed, some farm holdings would be affected by the

²⁷³ SOG-026

²⁷⁴ See Works Plans Sheet 2 of 4 TRO10007/APP/12(c) Rev 1 (AD-074) and CR-005 and SOG-004 paragraph 3.1.4 last bullet

²⁷⁵ D2-025 paragraph 2.4

permanent loss and/or the severance of land, including the loss of 2.9ha of BMV land²⁷⁶.

- 4.215 However overall I consider that the economic impact as a result of the project would be positive for the local and regional area as well as the rest of the country. There would be local community benefits with a reduction in through traffic through the villages, faster access for local communities to key network routes, and improved safety for cyclists and pedestrians as well as for drivers.

Conclusion on socio-economic impacts

- 4.216 The dNPSNN refers to the need to take account of the potential benefits of any proposed development as well as potential adverse impacts and *'in this context, environmental, social and economic benefits and adverse impacts should be considered at national, regional and local levels'* (paragraph 4.3). Paragraph 6 of the NPPF sets out the purpose of the planning system to contribute to the achievement of sustainable development.
- 4.217 The project would have both short and long term environmental impacts and some minor local economic impacts. But by improving road infrastructure that would help contribute towards building a strong, responsive and competitive economy with broader regional and national economic and social benefits, I consider that overall the project in terms of socio-economic impacts would be beneficial to the area. It would provide access to the South Humber Bank's key strategic economic development locations and would contribute towards securing Spatial Objective 2: delivering the global gateway, and Spatial Objective 9: connecting North Lincolnshire, of the NLCS. As such I consider that it would contribute towards the objectives of the dNPSNN and the NPPF.

²⁷⁶ BMV Chapter 14 ES Volume 3 AD-055

5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

- 5.1 Regulations 61 of the Habitats Regulations requires that before any consent, permission or other authorisation can be granted, which would include grant of a DCO, for a plan or project *'likely to have a significant effect on a European site... (either alone or in combination with other plans or projects)'* and which is not connected with or necessary to the management of that site, an assessment is made of the likely implications for European sites.
- 5.2 In accordance with regulations 5(2)(g) and (l) of the Infrastructure Planning (Applications: Prescribed Form and Procedure) Regulations 2009 (APFP Regs), the application was accompanied by a plan showing sites and features of nature conservation, habitats and water bodies²⁷⁷ along with the HA's AIES: Habitats Regulation Assessment Screening Report²⁷⁸. This concluded that *'there is sufficient information and assessment evidence to conclude that the proposed scheme will not cause a Likely Significant Effect on the European Sites located within 2km of the scheme, either alone or in-combination with other projects and plans'*.
- 5.3 However, both NE and RSPB raised concerns in their relevant representations²⁷⁹ that the wintering birds surveys relied upon in the HA's assessment were incomplete and did not take into account the potential impacts on functional habitat associated with the Humber Estuary European sites.
- 5.4 In response to these concerns and in answer to my questions²⁸⁰, the HA submitted an updated AIES: Habitats Regulations Assessment report (updated HRA Report)²⁸¹. This included:
- a complete wintering bird survey report
 - an assessment of the ecological value of all the land to be lost across the extent of the project site including functional land for qualifying bird species
 - a noise assessment at the Rosper Road Pools LWS (approximately 100m from the nearest extent of the project)
 - an update of the in-combination assessment in the ES to include other known projects in the area.
- 5.5 During the examination, a Report on the Implications for European Sites (RIES) was prepared by The Planning Inspectorate

²⁷⁷ AD-038

²⁷⁸ AD-020

²⁷⁹ RR-002 and RR-015

²⁸⁰ PJ-006 Q2.5, Q8.4 and Q8.5

²⁸¹ D2-003

Secretariat²⁸². It was issued for consultation on 25 July 2015. The only response received was from NE²⁸³.

Project location

5.6 The proposed project is 1.4km from the Humber Estuary which is an internationally important site for wildlife. The HA's updated HRA Report²⁸⁴ identified the following European designations for inclusion within the assessment:

- Humber Estuary Special Area of Conservation (SAC)
- Humber Estuary Special Protection Area (SPA)
- Humber Estuary Ramsar site.

5.7 Full details of the qualifying features of the European sites and their relevant conservation objectives are included in the updated HRA Report²⁸⁵ and NE's written submissions²⁸⁶.

5.8 NE has confirmed that it is satisfied with the methodology used by the HA to identify sites for inclusion in the HRA, and that the relevant European sites and designations and their correct features have been identified²⁸⁷.

In-combination effects - the relevant plans and projects

5.9 The updated HRA Report identifies the following plans and projects for consideration in the in-combination assessment:

- Able Marine Energy Park (AMEP)
- AMEP enabling works
- Hornsea Offshore Wind Farm Project One
- North Killingholme Power Project.

5.10 The NE confirms in its final SoCG that the updated HRA Report provides sufficient information to determine the in-combination effects of the application project with other plans and projects in the area²⁸⁸.

Assessment of effects resulting from the project, alone and in-combination

5.11 The potential impacts of the application project on the European sites were addressed throughout the examination.

²⁸² This is Appendix E to this report.

²⁸³ D5-005

²⁸⁴ D2-003

²⁸⁵ D2-003 and D2-004 Appendices A to D of Appendix 2 to the HA's Response to the ExA's Written Questions

²⁸⁶ D2-014

²⁸⁷ D2-014

²⁸⁸ SOG-023

- 5.12 Potential impacts identified by the HA include construction dust, traffic emissions, impacts on drainage and risks to water resources as runoff from the project would discharge into Skitter Beck and the South Killingholme Drain, both of which discharge into the Humber Estuary.
- 5.13 In response, the HA has proposed a number of mitigation measures. These include drainage management, silt containment and dust suppression measures. These measures are to be incorporated into the CEMP and would be secured through Requirement 3 of the recommended draft DCO. In respect of impacts on drainage and water resources, the application proposes the introduction of a sustainable drainage system to manage local flood risk and to improve the quality of run off from the road when completed. This would be secured through Requirement 16 of the draft DCO.
- 5.14 Having had regard to the available information, I am satisfied that the mitigation measures proposed are sufficient to either avoid entirely or reduce any potential effects to below a significant level. For that reason, I am satisfied that further consideration of the implications of these impacts on the integrity of the European sites and their qualifying features is not necessary. This view is supported by NE²⁸⁹.
- 5.15 The project is located 1.4km away from the nearest European site and there would not be any direct loss of habitat. However NE raised concerns in its relevant representation about potential for impact on the wintering bird assemblage feature of the Humber Estuary SPA utilising supporting habitat in close vicinity to the project, particularly the Rosper Road Pools LWS. This would be through both construction and operational disturbance impacts and loss of functional land²⁹⁰.
- 5.16 The HA has accepted that this land may be used by qualifying species of the European site for additional roosting, foraging or breeding²⁹¹, however the project would not result in the direct loss of land within the LWS. Whilst other land would be lost as a result of the project, it is further from the Humber Estuary and not considered by the HA to be significant to the management of or integrity of the Humber Estuary SPA²⁹².
- 5.17 Notwithstanding that conclusion, the updated HRA Report confirms that the project includes measures to create approximately 25ha of grassland, woodland and scrub habitats which would provide enhanced habitat for birds. The areas of habitat creation are shown on the Environmental Masterplan²⁹³ and would be secured

²⁸⁹ SOG-023 section 3.1

²⁹⁰ RR-015 paragraph 2.4.1

²⁹¹ D2-003

²⁹² D2-003

²⁹³ AD-045

through Requirements 4 and 5 (Landscaping) and Requirement 9 (Ecological Management Plan) of the draft DCO.

- 5.18 In its response to the RIES²⁹⁴, NE notes that fields to the north of the Rosper Road Pools LWS are regularly used by curlew. Curlew form part of the overwintering waterfowl assemblage for which the Humber Estuary SPA is designated. However given that this land is further from the site boundary than the Rosper Road Pools LWS, it seems to me, and I note that NE is similarly content, that the conclusions regarding disturbance to the SPA birds in relation to the LWS should also apply to the functional land to the north.
- 5.19 Further measures are proposed in the application to mitigate disturbance impacts on overwintering SPA birds including limiting construction work on the new northbound link road on or to the east of Rosper Road to the months of April to October inclusive and this has been agreed with NE. This has been incorporated into the draft DCO as Requirement 3(6).
- 5.20 However the SoCG between NE and HA confirms agreement that work on the road under the railway, as part of Work 28, would have to take place during the winter months. This is because of the need to fit with NR's programme, and is acceptable to NE due to the short duration of those works.
- 5.21 The HA's updated HRA Report concludes that no likely significant effects have been identified as arising from the project alone. In respect of any in-combination impacts, the conclusion is that it is highly unlikely that any impacts arising from other projects and plans could combine with those arising from the project alone. This is because of the geographic distance of the projects/plans from the project, the lack of an identified pathway for any impact to reach a sensitive receptor, and the finding of a lack of sensitive qualifying features for the European sites that could be affected by the project alone. I agree with this conclusion which was not disputed by any party during the examination.
- 5.22 I note that the RSPB has also confirmed as a result of the further information supplied that its concerns had been satisfactorily addressed and it agrees that there would be no significant effects on the Humber Estuary SPA as a result of the proposals²⁹⁵.

Conclusion

- 5.23 In considering the implications of the proposal on European sites, I have taken into account the advice of NE, as the relevant statutory nature conservation body, in its relevant and written representations²⁹⁶, its comments on the RIES²⁹⁷, and in the

²⁹⁴ D5-005

²⁹⁵ CR-011

²⁹⁶ RR-015 and D2-014

²⁹⁷ D5-005

SoCG²⁹⁸ agreed with the HA that has been revised throughout the examination. The SoCG clearly demonstrates that agreement has been reached between the HA and the NE on the conclusion of no likely significant effects on any European site.

- 5.24 I consider that there is sufficient evidence to allow the SoS to conclude that significant effects can be excluded for all the features of the relevant European or Ramsar site either alone or in combination with other plans or projects. If this is agreed, there is no requirement pursuant to Regulation 61 of the Habitat Regulations for the SoS as the competent authority, before deciding to give consent, to make an appropriate assessment of the implications for the site in view of its conservation objectives.

²⁹⁸ SOG-023

6 OVERALL CONCLUSION AND RECOMMENDATION ON THE CASE FOR DEVELOPMENT CONSENT

- 6.1 My overall conclusion on the case for development consent for this project is based on an assessment of prescribed matters and those matters that I consider are both important and relevant to the SoS's decision, as well as those matters identified in the LIRs.
- 6.2 In Chapter 3 I set out the policy context that I consider is both important and relevant to my assessment of the application. This includes the dNPSNN. I have referred to specific relevant policies in concluding on the issues examined in Chapter 4.
- 6.3 I am satisfied that the environmental information provided both in the ES, its Addendum and the other environmental information received during the course of the examination is sufficient for the Secretary of State to take into consideration before taking a decision on the application in compliance with Regulation 3(2) of the EIA Regulations 2009.
- 6.4 I have set out the reasons for my conclusions on each of the key issues in Chapter 4.
- 6.5 I am satisfied that the application is in conformity with the emerging policies in the dNPSNN. It supports the Government's vision and strategic objectives for a national road network that meets the country's long term needs, supports a prosperous and competitive economy and improves the overall quality of life. The project would help to unlock regional economic growth, and by improving the existing national road network would reduce congestion and unreliability and improve safety.
- 6.6 I consider that the application supports the policy objectives set out in the NPPF and conforms to the objectives and provisions of local planning policies. The strategic transport policy CS26 in the NLCS specifically supports the dualling of the A160 and the Infrastructure Delivery Plan identifies the project as a critical piece of infrastructure for the area.
- 6.7 The project is identified as a priority investment in the National Infrastructure Plan. It would provide better access to the Port of Immingham and unlock economic benefits stimulating regional economic growth. Dualling the single carriageway section of the A160 would reduce congestion, increase capacity, and improve reliability and safety. It accords with the objectives of Government's transport policy, would minimise adverse impacts and would deliver sustainable development.
- 6.8 I am satisfied that the application complies with all legal and regulatory requirements and that, for the reasons set out in Chapter 5, the project can proceed without putting the UK in breach of the Habitats Directive.

- 6.9 I conclude that when account is taken of the proposed mitigation what would be secured through the CEMP, the need for the project to be delivered and the other benefits of the project outweigh any adverse impacts. I therefore recommend that development consent should be granted for the application.
- 6.10 Chapter 7 that follows deals with the request for compulsory acquisition powers and Chapter 8 with the draft DCO necessary to give effect to that recommendation. My overall conclusions and recommendations are set out in Chapter 9.

7 COMPULSORY ACQUISITION AND OTHER LAND MATTERS

The request for compulsory acquisition and other powers

- 7.1 Through the draft DCO, the HA is seeking compulsory acquisition powers to acquire land and to acquire rights over land. In addition it provides that for ten specified works the benefit of the consent shall be for seven named operators of existing utility services²⁹⁹.
- 7.2 The application also seeks, within the draft DCO, additional acquisition powers in respect of:
- Stopping up of streets (article 12 and Schedule 4)
 - Temporary stopping up of streets (article 13)
 - Authority to survey and investigate land (article 18)
 - Extinguishment of private rights (article 23)
 - Acquisition of subsoil or airspace only (article 25)
 - Acquisition of part of certain properties (article 26)
 - Rights under or over streets (article 27)
 - Temporary use of land (article 28 and Schedule 7)
 - Temporary use of land for maintaining the authorised development (article 29)
 - Felling or lopping of trees (article 33)
- 7.3 The draft DCO seeks through article 24 to apply the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 with certain modifications.

The purposes for which the land is required

- 7.4 In accord with regulation 5(2)(h) of the APFP Regulations, a Statement of Reasons was submitted as part of the application³⁰⁰. It remained unchanged during the examination.
- 7.5 In broad terms, the purpose of acquisition is to enable the HA to construct the proposed improvements to the A160 on the land. It also provides for diversionary or protection works for existing utility services that would be affected by the project and for the installation of ducts to house cables for the Hornsea Offshore Wind Farm Project One. Land is also required for other associated development including street alterations, works to watercourses, landscaping, pumping stations and borrow pits.
- 7.6 The Book of Reference³⁰¹ (BoR) submitted with the application was subject to change during the course of the examination to correct

²⁹⁹ Article 6(b) D5-002

³⁰⁰ AD-004

³⁰¹ AD-006

some of the names. The Land Plans³⁰² remain unchanged. The final version of the BoR is that submitted on 31 July 2014³⁰³.

- 7.7 The BoR identifies 173 plots. There are some which the HA is seeking to acquire outright, some where the HA is seeking to take temporary possession, and some over which specific rights are sought to be acquired or created. There is some overlap in that a number of the plots are required by the HA to be used temporarily and also with rights to be provided³⁰⁴.
- 7.8 Negotiations continued through the examination period but none of the plots have been deleted. The specific purposes for which the HA requires each plot are set out in the Statement of Reasons³⁰⁵ and in the draft DCO at Schedules 5 and 7.
- 7.9 Article 19(1) of the draft DCO provides that the HA may acquire compulsorily '*so much of the Order land as is required for the authorised development or to facilitate, or is incidental to it.*' This is subject to article 22(2) (compulsory acquisition of rights) and article 28(8) (temporary use of land for carrying out the authorised development).
- 7.10 The eighty plots in respect of which full compulsory powers are sought to acquire the land so as to enable the HA to construct the project are set out in Table 1 of the Statement of Reasons and are:
- 1/1g, 1/1l, 1/1o, 1/1r, 1/1aa, 1/1ab/, 1/1ac, 1/1ad, 1/2b, 1/2c, 1/2d, 1/2e, 1/2f, 1/2g, 1/2h, 1/2i, 1/2j, 1/2k, 1/2l, 1/3b, 1/3g, 1/4a, 1/5a, 2/1b, 2/1c, 2/2d, 2/3a, 2/3b, 2/3c, 2/4a, 2/4b, 2/4c, 2/4d, 2/4e, 2/4f, 2/5b, 2/5g, 2/6b, 2/7a, 2/7i, 2/8c, 2/9b, 2/10a, 2/11a, 2/11b, 2/11c, 3/2b, 3/2c, 3/2d, 3/3a, 3/3b, 3/4, 3/5a, 3/5c, 3/6a, 3/6b, 3/7, 3/8, 3/9a, 3/9b, 3/9e, 3/10, 3/11a, 3/11b, 4/1a, 4/1b, 4/1c, 4/1e, 4/1f, 4/2, 4/3a, 4/3b, 4/3c, 4/3e, 4/4b, 4/4c, 4/4d, 4/6a, 4/6b, and 4/6c.
- 7.11 The forty one plots in respect of which specific rights are to be acquired or created and the purposes for which rights over land may be acquired are set out in Schedule 5 of the DCO and in Table 2 of the Statement of Reasons. They are:
- 1/1a, 1/1d, 1/1f, 1/1k, 1/1p, 1/1t, 1/1u, 1/1w, 1/1x, 1/1y, 1/1af, 1/1ag, 1/1ah, 1/1ak, 1/1am, 1/3c, 1/3f, 1/4b, 2/2b, 2/2c, 2/2e, 2/2f, 2/5a, 2/5c, 2/5d, 2/5i, 2/5m, 2/6a, 2/6c, 2/7b, 2/7d, 2/7f, 2/7g, 2/7h, 2/8a, 3/5b, 3/5d, 4/1d, 4/1g, 4/1j, and 4/5b.
- 7.12 There are also ninety three plots of land where the HA may take temporary possession of land and the purposes for which they

³⁰² AD-008

³⁰³ D4-014

³⁰⁴ AD-004 paragraph 5.1.6 and Tables 2 and 3 in the Statement of Reasons

³⁰⁵ AD-004

may be required are set out in Schedule 7 of the draft DCO³⁰⁶ and in Table 3 of the Statement of Reasons. They are:

1/1a, 1/1b, 1/1c, 1/1d, 1/1e, 1/1f, 1/1h, 1/1i, 1/1j, 1/1k, 1/1m, 1/1n, 1/1p, 1/1q, 1/1s, 1/1t, 1/1u, 1/1v, 1/1w, 1/1x, 1/1y, 1/1z, 1/1ae, 1/1af, 1/1ag, 1/1ah, 1/1ai, 1/1aj, 1/1ak, 1/1al, 1/1am, 1/2a, 1/3a, 1/3c, 1/3d, 1/3e, 1/3f, 1/4b, 1/4c, 1/5b, 2/1a, 2/2a, 2/2b, 2/2c, 2/2e, 2/2f, 2/5a, 2/5c, 2/5d, 2/5e, 2/5f, 2/5h, 2/5i, 2/5j, 2/5k, 2/5l, 2/5m, 2/6a, 2/6c, 2/7b, 2/7c, 2/7d, 2/7e, 2/7f, 2/7g, 2/7h, 2/7j, 2/8a, 2/8b, 2/9a, 2/10b, 2/10c, 3/1, 3/2a, 3/5b, 3/5d, 3/5e, 3/9c, 3/9d, 4/1d, 4/1g, 4/1h, 4/1i, 4/1k, 4/1j, 4/3d, 4/4a, 4/5a, 4/5b, 4/5c, 4/6d, 4/7, and 4/8.

- 7.13 The Order limits enclose some 104.4ha. The project requires the freehold acquisition of around 61.6ha of land, the temporary possession alone of 33.1 ha and the temporary possession of land with the creation of permanent rights over 9.6ha³⁰⁷. Within the Order limits there is 38.3ha of existing highway land. This includes the existing A160 (presumed to be Crown Land) and those roads within the control of NELC as the local highway authority.
- 7.14 The HA expect that the area of temporary possession and the creation of permanent rights would reduce following confirmation of the details of the service utility diversion works that are required. There is a useful plan in the ES Volume 2 showing the temporary areas for use during the construction of the road³⁰⁸.
- 7.15 The project would require the demolition of a pair of recently constructed semi-detached houses in Town Street for the construction of the northern approach to the new bridge. The houses are boarded up and the BoR identifies that they are already in the ownership of the Secretary of State for Transport. A detached single storey office building on the edge of the hardstanding in Phillips 66 Ltd's compound (plot 4/4b) by the Manby Road roundabout would be removed to accommodate the Rosper Road link³⁰⁹.

Affected persons

- 7.16 There are 65 affected persons³¹⁰. The new road would pass through farmland and there is a farm boundary plan in Appendix 14 to the ES³¹¹ showing the farm holdings affected by the project and which are subject to the compulsory acquisition of their land.

³⁰⁶ Table 3 of the Statement of Reasons is incomplete and does not include all the plots listed in Schedule 7.

³⁰⁷ AD-004 paragraph 4.1.2

³⁰⁸ AD-032 Figure 2.2

³⁰⁹ AD-013 Engineering Drawings - General Arrangements Sheet 10 of 10

³¹⁰ Section 59(4) of the PA2008 states 'A person is an affected person for the purposes of this section if the applicant, after making diligent inquiry, knows that the person is interested in the land to which the compulsory acquisition request relates or any part of that land. These are the persons within Categories 1 and 2 as defined in Section 44 of the PA2008.

³¹¹ AD-055 Figure 1

Temporary possession of other land is sought for borrow pits, material and soil storage and work compounds. Land in the ownership of NELC and NLC is required for the works to provide the new links to Top Road, Ulceby Road, Habrough Road and Rosper Road and the upgrade of the Brocklesby Interchange.

- 7.17 Those who it is considered would have their rights over existing private land affected by the project are listed in Parts 3 of the BoR. None of the land affected by the draft DCO is identified in Parts 5 of the BoR as land the acquisition of which is subject to special parliamentary procedure, is special category land, or is replacement land³¹².

Crown Land

- 7.18 The HA is seeking to acquire Crown Land, presented within Part 4 of the BoR and identified on the Crown Land Plans³¹³. There are six plots within NELC and twenty plots (six of which the HA has presumed to be Crown Land) within NLC. All Crown Land within the limits of the DCO is either known or presumed by the HA to be owned by the Secretary of State for Transport³¹⁴.
- 7.19 The Statement of Reasons notes at paragraph 9.1.4 that as all the Crown Land is known or presumed to be owned by the Secretary of State for Transport no special procedure is required for its acquisition. During the examination, to fulfil the purposes of section 135(1) and 135(2) of the PA2008, written consent was provided on behalf of the Secretary of State for Transport for the acquisition of interests in Crown Land operated and maintained by the HA to be exercised³¹⁵.

Statutory undertakers and others

- 7.20 The PA2008 sets out particular considerations in respect of the acquisition of statutory undertakers' land (section 127) and where the Order would result in the '*extinguishment of rights, and removal of apparatus, of statutory undertakers etc*' (section 138).
- 7.21 A number of existing utility services are located in the area around the existing road and would be affected by the project. Diversion or protection works for the relevant major utilities have been defined as specific works within the authorised development as listed in Schedule 1 of the DCO. However throughout the examination the HA made clear that it had been cautious as to what diversionary/protection works might be needed and their

³¹² Regulation 7(1)(e) of the APFP Regulations (special category land means land identified as forming part of a common, open space, National Trust land, or fuel or field garden allotment).

³¹³ AD-010 showing known and assumed Crown Land and that to be used temporarily

³¹⁴ Land presumed to be Crown Land and owned by the Secretary of State for Transport is currently unregistered and located on the line of the current A160 Trunk Road (AD-004 paragraph 9.1.4).

³¹⁵ D1-002

land take and once feasibility studies and/or conceptual designs were completed, some of works in the Order might not be needed.

- 7.22 Statutory undertakers who made representations in relation to the DCO are the EA, Anglian Water Services Ltd, NR, National Grid³¹⁶ and Centrica Plc. In addition SMW made representations³¹⁷ in respect of the Hornsea Offshore Wind Farm Projects One and Two, the cabling for which would cross the A160 at the new Habrough roundabout. Representations were also made by Air Products (BR) Ltd, Phillips 66 Ltd, and VPI Immingham LLP who have pipelines in the area but are not statutory undertakers.
- 7.23 At the beginning of the examination the HA provided a schedule listing the affected undertakers and their plots and setting out what steps had been taken to obtain the appropriate undertaker consent or agreement to the works and how the HA intended to satisfy sections 127 and 138 of the PA2008³¹⁸. The schedule was updated after the compulsory acquisition hearing³¹⁹.
- 7.24 The HA has agreed SoCGs with the EA, National Grid, E.ON Gas UK Ltd, Anglian Water, NR, and with SMW as well as with Phillips 66, Air Products, and VPI. Various side agreements and separate protective provisions have also been agreed. Prior to the close of the examination, all the undertakers' objections were withdrawn³²⁰, other than that made by SMW in respect of the Hornsea Offshore Wind Farm Project One³²¹. I deal below with this objection and the case made on behalf of the HA under sections 127 and 138 of the PA2008.

The requirements of the Planning Act 2008

- 7.25 The DCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 with modifications and the provisions set out in sections 138 and 158 of the Act relating to the statutory authority and protection given to override easements and other rights.
- 7.26 Section 120(5)(a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and section 117(4) provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. The DCO seeks to apply section 120(5)(a) and is in the form of a statutory instrument.

³¹⁶ National Grid Electricity Transmission Plc and National Grid Gas Plc.

³¹⁷ RR-018 (Hornsea Offshore Wind Farm Project One on behalf of Heron Wind Ltd, Njord Ltd and Vi Aura Ltd) and RR-019 (Hornsea Offshore Wind Farm Project Two on behalf of Optimus Wind Ltd and Breesea Ltd).

³¹⁸ D1-003

³¹⁹ D4-015

³²⁰ D5-007, D6-001, D6-003, D6-004, AR-001, AR-007, AR-011, AR-014

³²¹ RR-019 and AR-013 The objection made by SMW on behalf of Optimus Wind Ltd and Breesea Ltd in respect of the Hornsea Offshore Wind Farm Project Two was withdrawn.

- 7.27 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met.
- 7.28 Section 122(2) provides that the land must be required for the project to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the project, the land to be taken must be no more than is reasonably required and be proportionate.³²²
- 7.29 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not mean that the compulsory acquisition proposal can be considered in isolation from the wide consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.
- 7.30 Section 123 requires that one of three conditions is met by the proposal³²³. As the application for the DCO included a request for compulsory acquisition of the land to be authorised, I am satisfied that section 123(2) is met.
- 7.31 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers: namely that all reasonable alternatives to compulsory acquisition 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.

The examination of the case for compulsory acquisition

- 7.32 I had one round of written questions of which six were specifically directed at compulsory acquisition, including questions about sections 127/138 of the PA2008, and a further nine on the drafting of the compulsory acquisition articles in the DCO.

³²² Guidance related to procedures for compulsory acquisition DCLG February 2010

³²³ (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State 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 compulsory acquisition 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.

- 7.33 I also held a compulsory acquisition hearing on 17 July 2014. At the accompanied site visit held on 15 July 2014 I looked at the land proposed to be acquired both permanently and temporarily.
- 7.34 As representations were made by statutory undertakers, I had to consider whether sections 127 and 128 of the PA2008 relating to statutory undertakers' land would apply. In the event, following discussions with the HA, the redrafting of the protective provisions at schedule 8 of the draft DCO, and the completion of various side agreements, the objections of the EA, NR, National Grid, Anglian Water, and Centrica were withdrawn during the examination. I conclude below on SMart Wind's representation which remains outstanding and whether or not section 127 and/or section 138 are engaged.
- 7.35 The following sections draw upon the cases made in writing, including responses to my questions, as well as points made at the hearing. I first address the general case made for compulsory acquisition. I then consider in detail the particular plots that were contested individually by the affected persons, before concluding on whether I am satisfied that a case has been made for the compulsory acquisition of all, or only some, of the plots, and for the temporary possession and creation of rights over other land.

The case for the HA

- 7.36 The HA maintains that there is a compelling case in the public interest for the inclusion of compulsory acquisition powers to secure the outstanding land and property interests which are required to enable the project to be constructed. All the land is required for (or to facilitate or is incidental to) the purposes of the project that are set out in Chapter 2 of this report.
- 7.37 There is a need for timely delivery to fit with the DfT programme and the timetable in the National Infrastructure Plan. This requires there to be the powers to acquire third party interests and a means of overriding existing rights and interests and creating new rights. Without the certainty that comes through compulsory acquisition the project could not take place and the national, regional and local need for the improvements, as described *inter alia* in Chapter 4 of this report, would not be met.

Consideration of alternatives

- 7.38 The HA maintains that the acquisition of third party rights and interests cannot be avoided if delivery of the project is to be ensured and to remove uncertainty about land assembly. Wherever possible it seeks to acquire land by agreement, but this has to be within the project's timeframe and budget.
- 7.39 There is no practicable alternative to the project that would meet its stated objectives. The problems of congestion, reliability and safety, detailed in the Planning Statement and Statement of

Reasons, relate to the existing A160 which is the strategic route to the Port of Immingham. Alternative options for the project have been explored. This is a linear project and all the alternatives considered were 'at grade' options to upgrade the A160/A180 interchange and dual the single carriageway section of the A160 to connect to the dual carriageway through South Killingholme. All would take third party land.

- 7.40 The alternative options are considered in the ES³²⁴ and the Consultation Report³²⁵. They are discussed in Chapter 4 of this report. After the Preferred Route Announcement in 2010, the design of the proposed improvements was further developed and pre-application consultation held in April/May 2013. A further land requirements consultation was held in October/November 2013 on the permanent and temporary land required for the project.

The extent of the land take

- 7.41 The HA contends that the limits of the land to be acquired have been drawn as tight as possible at this stage so as to avoid unnecessary land take.
- 7.42 In addition to the land for the line of the new road, roundabout, link roads, etc, the application includes proposals for mitigation in order to avoid adverse impacts on the surrounding area, its residents and the environment. These include the provision of drainage attenuation ponds, hedgerow and tree planting, and habitat creation.
- 7.43 An earthworks strategy has been developed which shows that using some land temporarily to provide embankment fill material and to dispose of surplus cut material is an appropriate low risk engineering solution that would be faster, less costly and have a lower environmental impact than importing those materials. The sites for the borrow pits and topsoil storage areas have been chosen to be close to the works so as to minimise haul distances, would make most efficient use of plant, and reduce the number of different land ownerships that would be affected as well as limiting disruption to land boundaries. Around 41% of the land within the Order limits is intended to be used only temporarily.
- 7.44 The DCO has been drafted so as to allow flexibility if, after detailed design work, it is found possible in certain cases to reduce the area of outright acquisition and to rely on the creation of new rights instead.

³²⁴ AD-031 Chapter 3

³²⁵ AD-018 and AD-019

The case under section 122

- 7.45 The HA's case is that section 122(2) of the PA2008 is met in that all the land to be compulsorily acquired is required for, or is incidental to, the purposes of the A160 improvements project.
- 7.46 In respect of section 122(3), the HA considers that there is a compelling case in the public interest for the compulsory acquisition powers in order to reduce traffic congestion, improve journey time reliability, improve safety for users of the A160 and the local community and provide for future traffic growth. There would be benefits for local traffic including NMUs and in providing a safe connection between the two parts of South Killingholme.
- 7.47 The A160 is the strategic route to the Port of Immingham and its improvement would bring economic benefits for the development areas on the South Humber Bank.
- 7.48 The compulsory powers sought are considered to both necessary and proportionate to the extent that interference with private land and rights is justified.

The case under section 127 or section 138

- 7.49 There are a number of major utility services located within and around the Order limits as well as other pipelines associated with the Port and the refinery. The diversion or protection of these pipelines and overhead cables are listed as specific works in Schedule 1 of the draft Order³²⁶.
- 7.50 During the examination, the HA engaged with the various statutory and non-statutory undertakers to discuss the details of the project and the construction programme. SoCGs were agreed with SMW, Phillips 66, National Grid, Air Products, E.ON Gas UK, VPI and Anglian Water, as well as with NR and the EA. In addition, separate side agreements have been completed with a number of parties, including NR, Air Products and Phillips 66.
- 7.51 As a result, changes were agreed between the HA and National Grid to avoid affecting a high pressure gas pipeline at Brocklesby Interchange and various amendments were made to relevant articles in the draft Order and to the protective provisions at schedule 8. These amendments are detailed in Chapter 8.
- 7.52 The HA's case is that, other than SMW, it has been able to satisfactorily address the concerns of all those statutory and non-statutory undertakers whose land, rights or apparatus would be affected by the project enabling them to withdraw their objections.

³²⁶ For example Work No. 30 provides for the diversion of Air Products oxygen pipeline that feeds the refinery.

7.53 In respect of SMW's outstanding representation, the HA has continued to engage in constructive and positive negotiations with SMW regarding the interface between the A160/A180 project and the Hornsea Offshore Wind Farm Project One. Whilst it had not proved possible to finalise the full commercial agreement before the examination closed, both parties were confident that it would be signed in due course. When that happens SMW has committed³²⁷ to write direct to the SoS to advise of the signing of the agreement and the subsequent withdrawal of their representation. Nevertheless I have to conclude here on the position as it was at the close of the examination.

The HA's case in respect of SMW

7.54 SMW act on behalf of Heron Wind Ltd, Njord Ltd, and Vi Aura Ltd, which together are the applicant in respect of the Hornsea Offshore Wind Farm Project One³²⁸. The examination of that application has concluded and the decision is expected by the end of the year.

7.55 Under the terms of the PA2008, Heron Wind is a statutory undertaker³²⁹. However, the HA contend that neither sections 127 and 138 of the PA2008 are engaged here³³⁰.

7.56 In respect of sections 127 and 138(1)(b) of the PA2008, this is because SMW/Heron Wind have not yet acquired the land for the purposes of their undertaking. This is dependent on the outcome of the Hornsea Offshore Wind Farm Project One application and the grant of compulsory acquisition powers and the subsequent carrying out of the development. They do not currently have any relevant apparatus on, under or over the land in question. Thus the HA contend that the particular requirements of section 127(1)(a) and (c) and section 138(1)(b) are not met.

7.57 In respect of section 138(1)(a), it is the HA's case (as set out in its letter of 29 August 2015³³¹) that whilst SMW/Heron Wind etc have applied for the ability to create new rights over the land in their own DCO application, at present they have only secured options with some or all of the relevant landowners to acquire rights in it. Thus it maintains that there cannot be said to subsist over the land any relevant rights (section (1)(a)).

³²⁷ AR-013

³²⁸ SMW provided all these comments/responses during the examination and participated at the hearings. For that reason I refer to SMW throughout the report. However it should be noted that Articles 6 and 7 of the draft DCO were changed at the request of SMW to refer to Heron Wind Ltd as I understand that it would be Heron Wind who would be carrying out the cabling works if the Hornsea Offshore Windfarm Project One is granted development consent.

³²⁹ Heron Wind is a statutory undertaker by virtue of being granted a Generation Licence under Section 6 of the Electricity Act 1989.

³³⁰ AR-012

³³¹ AR-012

- 7.58 If that position is not accepted, the HA contend that the SoS can be satisfied that the land concerned can be acquired without detriment to SMW's undertaking, which is the test at section 138(4). Any rights that SMW may have affect land required for the construction of the new Habrough roundabout and link roads. The extinguishment of SMW's rights is necessary to enable the A160 project to be constructed.
- 7.59 It is the HA's case that the land in questions would be replaced with rights through the cable duct to be constructed as Work No. 18 under the draft DCO. Work No. 18 has been included as authorised development in the draft DCO to provide for the construction of ducts for SMW's future apparatus and the HA refer to the third revised SoCG which sets out the three options agreed for managing the interface of the A160/A180 project and Hornsea Project One depending on the timing of those works³³².
- 7.60 If for any reason Work No. 18 were not to be undertaken, the HA argue that upon completion of the project the land in question would become operational highway. SMW would then be able to invoke their rights as a statutory undertaker under the New Roads and Street Works Act to install apparatus underneath it. The HA maintain that SMW is already sufficiently protected by the DCO as drafted and no further changes are needed³³³.
- 7.61 SMW has asked for a new protective provision to be included in the DCO which would require the consent of Heron Wind before various plots of land could be acquired, occupied or used. This is resisted by the HA and I deal with it at paragraphs 7.118 onwards and in Chapter 8.

Availability and adequacy of funds

- 7.62 A Funding Statement was submitted with the application. The project was announced as a 'pipeline' project in May 2012, to be considered for delivery in the early years of the next Government spending review period (post 2015). In November 2012, the delivery of the project was accelerated with a target start date of summer 2015. That was reconfirmed in the Autumn Statement 2012 and the funding commitment was made in the June 2013 policy document 'Investing in Britain's Future'³³⁴.
- 7.63 The project is one of 4 accelerated road construction pilots listed in the National Infrastructure Plan 2013 as key projects for priority investment with public funding. The project would be wholly funded by the Department of Transport as part of this programme of projects.

³³² SOG-026

³³³ AR-012

³³⁴ AD-005 Appendix A Table A1 page 71

7.64 The current cost-range estimate for the whole project is given as £73.4 million to £109 million to include an allowance for compulsory acquisition, temporary possession and creation of new rights. It was confirmed at the compulsory acquisition hearing that there had been no change in the position concerning the funding of the project.

Human rights

7.65 The Statement of Reasons³³⁵ reviews the articles of the European Convention of Human Rights as applied within UK domestic law by the Human Rights Act 1998³³⁶. Article 8 protects the right of the individual to respect for his private and family life and to peaceful enjoyment of possessions under Article 1 and any interference must be proportionate and strike a fair balance between the individual's rights and the public benefit. Article 6 entitles those affected by the powers sought by the DCO to a fair and public hearing by an independent and impartial tribunal.

7.66 The case for the HA is that the land to be acquired has been kept to a minimum and the project has been designed to minimise the impact on individual property rights. The very significant public benefits that would arise from the grant of consent can only be safeguarded by the public acquisition of the land and such acquisition would not place a disproportionate burden on the affected land owners who would be paid compensation.

7.67 The Statement notes that procedures under the PA2008 and rights under the Compulsory Purchase Act 1965 and Land Compensation Act 1973 make provision for objections to be heard by the ExA as an independent tribunal and for challenges to be brought by way of judicial review in the High Court. In respect of disputes about compensation, there is a right to apply to the Upper Tribunal (Lands Chamber) as an independent tribunal.

7.68 For these reasons, the HA maintains that any infringement of the Convention rights of those whose interests are affected by the inclusion in the Order of compulsory acquisition powers would be in the public interest and that it would be appropriate and proportionate to make the DCO, including the grant of compulsory acquisition powers.

Response to representations on the draft Order

7.69 The HA noted in its summary following the compulsory acquisition hearing³³⁷ that the project had given rise to few representations in respect of the proposed land acquisition and creation of rights. Of those that had been made, they appeared more concerned about

³³⁵ AD-004

³³⁶ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

³³⁷ D4-008

the practicalities and consequences of compulsory acquisition than the acquisition itself and that no party had sought to refute the transport case for the project.

- 7.70 The HA have already acquired the houses in Town Street most severely affected by the project, have agreed terms with a number of other affected parties and are continuing to discuss with those whose objections remain outstanding.

Outstanding objections to compulsory acquisition

- 7.71 Relevant representations made by affected persons and submissions at the open floor and compulsory acquisition hearings were not generally objections to compulsory acquisition itself but to the consequences and practicalities of acquisition.
- 7.72 During the examination, through discussions on SoCGs and revised SoCGs, the signing of side agreements, and iterative revisions of the draft DCO, including additions to the protective provisions, the HA was able to satisfy the concerns of many of the affected persons.
- 7.73 In the application, the HA is seeking to acquire compulsorily so much of the Order land as is required for the development or to facilitate it, or is incidental to it. But before I conclude on whether the SoS can be satisfied as to the need for compulsory acquisition, I consider those objections by affected persons that had not been withdrawn by the close of the examination.

Wendy Carr - plot 3/10

Background

- 7.74 Mrs Carr owns a small paddock on the east side of the northern section of Town Street close to the A160 junction that is required for the new approach road to the new road bridge.

Case for the affected person

- 7.75 It was confirmed by Mrs Carr's agent at the hearing that it was accepted in principle that if the project is to proceed, then part of the paddock would be required. There was no objection to giving the land whether by agreement or compulsory acquisition. However it was important that all appropriate accommodation works were agreed as the remainder of the land was likely to continue to be used for livery and not all the horses would be owned by Mrs Carr.
- 7.76 This would include temporary and permanent fencing, retention of hedges, relocation of the stables and other buildings and any affected services. The owner and her tenant would prefer to see the project implemented sooner rather than later but wanted six

months' notice of entry prior to possession to find suitable alternative accommodation for the horses.

Response by the HA

- 7.77 The HA noted that there are no great issues between the parties. There was no proposal to change the field access and the necessary accommodation works could be discussed. Notice of entry could only be issued if and when the Order is granted. The HA would wait for the six week challenge period before issuing notice to entry which has a three week notice period.

Anthony and Vivienne Dinsdale - plots 2/5a to 2/5m, 3/1

Background

- 7.78 Mr and Mrs Dinsdale own and live at Elm Tree Farm in School Road which adjoins the existing A160 dual carriageway. Their holding includes fields around the site of the new Habrough Roundabout and link roads.

Case for the affected persons

- 7.79 The main concern is not in respect of the taking of land but the implications of the closure of the existing A160 crossing points on the carrying out of their day to day farming business. With increases in the volume and speed of traffic on the road as a result of the improvements, it would be dangerous to use the existing access from the farmyard onto the A160 and for agricultural traffic to turn into Town Street from the A160. With double parking along School Road and Town Street large farm vehicles would not be able to access the new Town Street bridge. Parking restrictions on one side of the road would ease the flow of traffic for all road users and should be included in the Order.

Response by the HA

- 7.80 One of the benefits of the project is to improve safety on the A160 by closing the central reserve gap where it crosses Town Street and constructing a new overbridge. This would stop U turns but still leave Mr Dinsdale with three alternative routes he could take to travel south. Two would involve crossing the Town Street overbridge or alternatively travelling along the A160 northwards to the Manby Road roundabout and back, about 1.5 miles in each direction.
- 7.81 Parking surveys have confirmed that with vehicles parked on either side of School Road large agricultural machinery might not be able to pass and the same would be true but to a lesser extent on Town Street. Double parking may be because of people attending the GPs surgery, which only has limited on-site parking, but Town Street is a bus route and so has regular large vehicle movements along it.

- 7.82 Town Street and School Road are outside the Order limits so it would be for the local highway authority to introduce traffic management measures. The HA has discussed this with NLC and would fund the cost although the outcome could not be guaranteed. It would be for NLC to take up the matter.

Paul and Graham Chapman - plots 3/9a to 3/9e

Background

- 7.83 The Chapmans farm land around South Killingholme and the farmyard for Mill Farm is on the south side of the A160 off Primitive Chapel Lane.

Case for the affected persons

- 7.84 Similar concerns to those of the Dinsdales were raised; that with the closure of the A160 central reserve gap it would be difficult for large farm machinery travelling to and from Mill Farm to cross the new Town Street bridge because of the on-street parking in Town Street, exacerbated by the lack of adequate on-site parking for the GPs surgery, contrary to the planning permission granted some years ago. There was also concern about driver visibility exiting Primitive Chapel Lane and the need to have sufficient room for large vehicles to turn in and out of the lane.
- 7.85 Screen hedging and fencing was needed along the bottom line of the bridge embankment.

Response by the HA

- 7.86 The question of parking controls has been taken up with NLC as the local highway authority. It would also be for NLC as the local planning authority to consider whether the planning permission referred to was still capable of implementation or enforcement.
- 7.87 If the Order is granted, the Town Street/Primitive Chapel Lane junction would be the subject of further detailed design which would include consideration of the points Mr Chapman raised.
- 7.88 Fencing around the parcels of land left after the bridge works would be discussed as part of the accommodation works.

The ExA's conclusions

- 7.89 My approach to the question whether and if so what compulsory acquisition powers should be recommended to the Secretary of State to grant has been to seek to apply the relevant sections of the Act, notably sections 122 and 123, the DCLG guidance³³⁸, and the Human Rights Act 1998; and, in the light of the

³³⁸ Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

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.

Whether there is a compelling case in the public interest

- 7.90 The draft DCO deals with both the project itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered separately from the view reached on the case for the project overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 7.91 I have concluded that development consent should be granted for the reasons set out in Chapter 4 of this report. The question therefore that I now address is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the project to proceed.

The public interest

- 7.92 The public benefit of the project derives from the reduction in congestion, improvement in reliability, increase in capacity and improved safety on the A160/A180 as part of the national road network which would also benefit the local network. The upgrade of the road would also meet the needs of future traffic growth resulting from existing and future development.
- 7.93 There would be a significant benefit in the provision of better access to the Port of Immingham that would help to stimulate growth and unlock development potential in the area, meeting the objectives of local planning policies, and bringing economic benefits to the South Humber Bank.
- 7.94 The economic benefits have been quantified and represent high value for money. The project is supported by Government transport policy and that must also be regarded as a public benefit.
- 7.95 Whilst it would be desirable for the acquisition of land or rights to be achieved by agreement, that objective has to be tempered with the need for timely and cost effective acquisition.

Alternatives and availability of funding

- 7.96 The DCLG guidance requires at paragraph 20 that the developer should be able to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the project) have been explored.
- 7.97 I have considered this in terms of the selection of the site, the scale of the development proposed, and the specific characteristics of the project.

- 7.98 In that the proposed DCO works are to improve the A160 by dualling the existing section of single carriageway and upgrading the roundabout junctions at each end, the options available to the HA are necessarily limited. Given the nature and purpose of the improvements, I accept that there is effectively no practicable alternative to an at-grade scheme with only limited choices as to what could be done at the Brocklesby Interchange and the siting of the new Habrough Roundabout. Whilst there might appear to be more flexibility at the Manby Road end, it is also constrained by the existing railway and bridge.
- 7.99 I describe the process of project design and consultation in Chapter 4 of this report where I note that whilst nine options were developed there were a number of common '*segments*' that appeared in more than one scheme. This is illustrative of the restrictions on siting and design. No alternative route has been put forward on behalf of any affected person. I do not consider that there are reasonable practicable alternatives to the project for which compulsory acquisition is sought.
- 7.100 I am satisfied that the land subject to compulsory acquisition is required for the project, including the diversion of affected utility services, or is required for associated development. I am satisfied that each plot of land has been identified with a clear purpose and no plot of land has been unnecessarily added to the land sought to be acquired permanently.
- 7.101 The HA's approach of making the application for the DCO and in parallel conducting negotiations to acquire land or rights by agreement accords with the DCLG guidance. Paragraph 25 of the guidance advises that for long linear schemes, such as this, where it may not always be practicable to acquire by agreement each plot of land, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.
- 7.102 The DCLG guidance also advises that the application must be accompanied by a clear statement as to how it is to be funded. The application was accompanied by a Funding Statement³³⁹ and it was confirmed at the compulsory acquisition hearing that there had been no change in the position on funding. It is clear that the most likely estimate of £88.5 million (in the middle of the range quoted by the HA) required to meet all costs potentially arising in connection with the project, including compulsory acquisition, the costs of temporary possession and the creation of new rights, is available within the committed roads programme of the Department for Transport.

³³⁹ AD-005

Temporary possession of land

- 7.103 Schedule 7 of the draft DCO and paragraph 7.12 above identify ninety three plots where the HA is seeking temporary possession. This land is predominantly farmland either side of the existing road which would be used during the construction works to accommodate the site compounds, areas for topsoil and other construction material storage, construction working areas, access for site traffic, for the diversion of various cables and for borrow pits. On completion, in accordance with article 28 of the recommended draft DCO, the land would be restored and returned to the landowner although some might be changed in that there could be new underground pipelines or new access tracks on the land.
- 7.104 I am satisfied that the HA has kept to a minimum the land to be used temporarily, consistent with safe and efficient construction working practices, and that the use of the power in the draft DCO is justified in order to implement the proposed development. I am also satisfied that the compensation provisions are adequate to compensate owners for the proposed interference and that these would be funded as part of the scheme.

ExA's conclusions on the outstanding objections

- 7.105 In respect of the objections made by Mrs Carr, Mr and Mrs Dinsdale and Messrs Chapman and which are outlined above, these relate more to the finer detail of the project, rather than being actual objections to the compulsory acquisition of all or part of their plots.
- 7.106 I am satisfied that the land in the Town Street area over which compulsory acquisition is sought is all necessary to accommodate the new bridge and its approaches. The Order limits have been suitably drawn to include embankments of an appropriate slope and to provide for adequate visibility onto Town Street. The project provides for new fencing and hedging around the land that would remain in the ownership of Mrs Carr and Mr Chapman, details of which would have to be agreed by the developer under Requirements 4, 5 and 6. Further detailed design work with the local highway authority is proposed on the Primitive Chapel Lane and Town Street junctions which would address the particular needs of all local road users, including Mr Chapman.
- 7.107 I have already concluded in Chapter 4 that closure of the central reserve gap would bring safety benefits and the new bridge would reduce community severance. Parking in the village is a matter for the local highway authority although the HA has indicated that it would be prepared to bear the cost if NLC decided to put parking controls in place. There is an alternative albeit longer route via the Manby Road roundabout for farm traffic going to or from Elm Tree Farm and Mill Farm that would avoid conflict with parked vehicles

in Town Street. I do not consider that any potential private disbenefits would be such as to outweigh the public benefit of the project.

My overall conclusions in relation to compulsory acquisition and other powers

Human Rights considerations

- 7.108 A key consideration in formulating a compelling case in the public interest for land to be acquired compulsorily is a consideration of the interference with human rights which would occur if those compulsory acquisition powers were to be granted. The same considerations apply in respect of the temporary possession of land and creation of new rights over land.
- 7.109 In this case, Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired or taken temporarily and whose peaceful enjoyment of their property is to be interfered with) is engaged as a significant number of interests are proposed to be acquired, either permanently or used temporarily, and rights are to be imposed on further land. In my judgement, compulsory acquisition and the temporary possession of land is justified here in so far as the public benefit of the improved road outweighs the loss to private interests in a way that would be proportionate.
- 7.110 However I do not consider that Article 8, which relates to the right of the individual to '*respect for his private and family life, his home ...*' is engaged. This is because no persons are proposed to be deprived of their homes or to have their living conditions worsened to an extent that would be regarded as giving rise to unacceptable living conditions.
- 7.111 I am satisfied that the examination process, through the procedures laid down in the PA2008 and related Regulations, including the written representations and the compulsory acquisition hearing and all other matters, has ensured a fair and public hearing under Article 6. I have taken into account all the representations made in reaching my conclusions.

Section 122

- 7.112 I am satisfied that a compelling case in the public interest has been made out for the land to be acquired compulsorily. There is a clear need for the project to proceed. There are no practicable alternatives to meet the objectives sought and the public benefit outweighs the loss to private interests or the restrictions imposed on those interests.
- 7.113 Each plot in the Book of Reference to be compulsorily acquired has been identified with a clear purpose. All the land for which compulsory acquisition is sought is required for the development

to which the application relates or is required to facilitate or is incidental to that development.

- 7.114 Funding is available for the project. The project's delivery would be jeopardised in the absence of the compulsory acquisition powers contained in the draft Order. I conclude that the tests in sections 122(2) and 122(3) of the PA2008 are met.

Section 120(5)(a) and section 126

- 7.115 The amendments to statutory provisions that are included within the draft Order such as those within Article 9 and the modification of compensation and compulsory purchase enactments for the creation of new rights under Schedule 6 were not the subject of representations during the examination. However for completeness, I note that they have precedents in the MI Junction 10a (Grade Separation) Order 2013³⁴⁰ and in the A556 (Knutsford to Bowdon Improvement) Order 2014³⁴¹. I am satisfied that these provisions are consistent with the requirements of sections 120(5)(a) and section 126.

Section 127 and section 138

- 7.116 As indicated above by the close of the examination, other than the representation by SMW, there were no outstanding representations from statutory undertakers or similar bodies to the provisions of the draft Order following amendments by the HA to the wording of relevant articles within the Order and the insertion of specific protective provisions within Schedule 8.
- 7.117 This is subject to noting that Centrica's withdrawal was conditional on an amendment to Schedule 8 to safeguard Centrica's condensate pipeline and access rights to it³⁴². The text of the Protective Provisions in Schedule 8 of the DCO that I recommend be made is in the form agreed between Centrica and the HA (Appendix D).

Hornsea Offshore Wind Farm Project One

- 7.118 In the following section and in Chapters 4 and 8 I refer to SMW. In so doing, SMW is taken to be acting on behalf of Heron Wind Ltd, Njord Ltd and VI Aura Ltd who are together the applicant in respect of the Hornsea Offshore Wind Farm Project One.
- 7.119 There is a physical overlap between the A160/A180 project and the area of land in which Project One has an interest. This is illustrated on the plan appended to the SoCG between SMW and the HA³⁴³. The Project One onshore cable route would cross under

³⁴⁰ SI 2013/2808

³⁴¹ SI 2014/2269

³⁴² D6-004 and AR-008

³⁴³ SOG-026 Appendix A

the existing A160 and would be underneath the proposed new roundabout, should development consent for both projects be forthcoming.

- 7.120 The HA has been in discussion with the parties on Hornsea Project One for some time and a SoCG was provided to the Hornsea Project One examination setting out agreement between the parties on the co-ordination of works between the two projects³⁴⁴.
- 7.121 The HA and SMW have also agreed a SoCG on this project, the third revision being dated 29 August 2014³⁴⁵. This makes clear that the parties are engaged in constructive dialogue, that there are no matters of disagreement only matters of discussion, and that a separate commercial agreement is intended to regulate the interface between the two projects.
- 7.122 However whilst it appeared during the examination that there was common purpose on both sides and a firm commitment to reach an agreement, heads of terms had still not been agreed by the end of August 2014. When asked, both parties were of the same view that there was no certainty that the commercial agreement could be completed before the final date by which the examination had to close³⁴⁶.
- 7.123 In the event that the parties are unable to reach agreement, SMW has asked for protective provisions to be included in the DCO for the benefit of Heron Wind Ltd³⁴⁷. I deal with that request in Chapter 8.

How should SMW be treated for the purposes of sections 127 and 138?

- 7.124 Section 127 applies to statutory undertakers' land only if the land has been acquired by the undertaker for the purpose of their undertaking, the representation made has not been withdrawn, and as a result of the representation the Secretary of State is satisfied that '*(i) the land is used for the purpose of carrying on the statutory undertakers' undertaking, or (ii) an interest in the land is held for those purposes*'.
- 7.125 Section 138 applies if '*(a) there subsists over the land a relevant right, or (b) there is on, under or over the land relevant apparatus*'.
- 7.126 Part 1 of the BoR identifies SMW and its partners in the Hornsea Project One as having Category 2 interests in 26 plots to the east and south of Poplar Farm on the Ulceby Road³⁴⁸. Category 2

³⁴⁴ RR-018 and D2-012

³⁴⁵ SOG-026

³⁴⁶ The last date for closure of the examination was 24 October 2014, six months after opening.

³⁴⁷ AR-013

³⁴⁸ AD-008 Land Plans Sheet 2 of 4 - plots 2/5a to 2/5m, plots 2/7a to 2/7j, and plots 2/10a to 2/10c.

people are described in the introduction to the BoR as those who have an interest in the Category 1 land or have the power to sell and convey or release this land. SMW and Heron Wind Ltd are also identified in Part 3 of the BoR as being *'entitled to enjoy easements or other private rights over land which it is proposed shall be extinguished, suspended or interfered with'*.

At the time of the examination

7.127 During the examination, the HA treated SMW as a statutory undertaker³⁴⁹. However in its final correspondence, the HA set out its belief that Sections 127 and 138 of the PA2008 were not engaged *'as SMW have not yet acquired the land for the purposes of their undertaking. They have applied for the ability to create new rights over it in their own DCO application (to be decided on or before 10 December 2014), and, the HA understands, have secured options with some or all of the relevant landowners to acquire rights in it'*³⁵⁰.

7.128 In respect of the position of SMW at the time the examination closed, the evidence is that they have not yet acquired the land for the purposes of their undertaking, any interest held is in the form of options, the land is not currently being used for the purpose of carrying on that undertaking and there is no existing relevant apparatus. In my judgement this is not sufficient to demonstrate that at the time of closing the examination the land was held for the purposes of a statutory undertaking or that SMW hold relevant rights. Thus I consider the HA's view is correct that at the time the examination closed sections 127 and 138 of the PA2008 were not engaged.

7.129 Nonetheless it is the case that through the examination the HA had accepted that SMW have an interest in the land. This is recognised in the draft DCO where Work 18 provides for the installation of ducts in the proximity of the proposed Habrough Road Roundabout to house cables for the Hornsea Offshore Wind Farm Project One.

7.130 The HA's awareness of their interest is also reflected in the drafting of articles 6 and 7 where Heron Wind Ltd is named, alongside statutory undertakers, as having the express benefit of the development consent in relation to Work 18 and its transfer.

At the time of decision

7.131 However I accept that it may be that the Secretary of State takes a different view as to the status of SMW as a statutory undertaker. Also the situation will change if the DCO for Project One is granted

³⁴⁹ For example see D4-015 and BoR Part 3 page 114 describes SMW and Heron Wind Ltd as statutory undertakers

³⁵⁰ AR-012

before the decision is taken on this application and the request within it for compulsory acquisition powers over the SMW plots.

- 7.132 It seems to me that the question then becomes whether the land concerned can be acquired by the HA for the purpose of its project without serious detriment to the carrying on of SMW/Heron Wind's undertaking (section 127(6)) and the extinguishment of any relevant right is necessary (section 138(4)) .
- 7.133 Work No. 18 forms part of the development to be authorised by the Order and comprises the installation of ducts expressly to house cables for the Hornsea Offshore Wind Farm Project One. As article 6 of the Order provides that Heron Wind Ltd would have the benefit of the consent in respect of that Work, it is difficult to see that there would be any detriment to SMW/Heron Wind.
- 7.134 The land over which the HA seeks full compulsory acquisition powers is needed for the construction of the new Habrough roundabout and its link roads. Temporary possession of other plots is sought to provide for construction working areas and material storage areas. Without all this land the project could not take place.
- 7.135 If for any reason, and I note that none have been suggested by SMW, Work No. 18 was not to be carried out, then on completion of the project the land taken temporarily would be returned to its owners and the land compulsorily acquired for the roads and roundabout would become operational highway. As such, the HA point to the fact that Heron Wind would be able to invoke their rights as a statutory undertaker under the New Roads and Street Works Act 1991 to install apparatus underneath it.

Conclusion on SMW/Heron Wind

- 7.136 In outlining alternative scenarios, I believe I have shown that there would be no serious detriment to the carrying on of SMW/Heron Wind's interests and the Secretary of State should be satisfied in respect of section 127 of the PA2008.
- 7.137 Both parties have expressly stated their willingness to progress a commercial agreement to regulate the interface between the two projects. At the close of the examination, both appeared confident that agreement would be reached before the Secretary of State made his decision in which case the objection would be withdrawn and there would be no need to consider the matters set out above.
- 7.138 But if that does not happen, I am satisfied in respect of section 138(4) that the extinguishment of any relevant rights held by SMW/Heron Wind is necessary for the purpose of carrying out the development to which the Order relates.
- 7.139 In its final letter, SMW asked, in the event that agreement was not reached, for a protective provision to be included in the DCO which

would essentially preclude the HA from exercising its powers over 19 plots of land without the consent of Heron Wind Ltd. I deal with this in more detail in Chapter 8 paragraph 8.75 onwards where I conclude that such a protective provision would be too restrictive and I recommend against it.

Overall conclusion on section 127 and section 138

- 7.140 More generally I am satisfied that the DCO articles and the protective provisions in Schedule 8 should meet all legitimate concerns of statutory undertakers, whether in relation to section 127 or section 138.

Recommendation on including compulsory acquisition and other powers in the Order

- 7.141 If the SoS is minded to grant development consent for the project, I recommend that the compulsory acquisition and other powers included in the recommended draft DCO are retained.

8 DRAFT DEVELOPMENT CONSENT ORDER

- 8.1 The draft DCO constitutes the consent sought by the HA for the project. The original text of the draft DCO³⁵¹ was submitted with the application with an accompanying Explanatory Memorandum³⁵² (EM).
- 8.2 The application draft DCO sets out the authority to be given to the HA to carry out works, including the permanent compulsory acquisition of land and interests in land and the temporary use of land; those others who have express benefit in relation to certain works; the obligations that the HA is prepared to accept to facilitate the project; the protective provisions necessary to safeguard the interests of other parties; and the requirements (corresponding to planning conditions) to be met when implementing the consent.
- 8.3 I scheduled one issue specific hearing on the draft DCO, after the receipt of detailed responses from the HA to my written questions on the draft Order and the submission of a revised draft of the DCO³⁵³, to assist me and interested and affected persons to understand how the document was intended to work. In accord with the timetable, what had been thought would be the final version of the DCO was submitted by the HA on 31 July 2014, but which was subsequently revised in the light of late representations made by statutory undertakers and others.
- 8.4 In all the HA submitted four versions of the DCO during the course of the examination: the original January version with the application³⁵⁴; a second 24 June 2014 revision produced for discussion at the 16 July 2014 hearing³⁵⁵; a third 31 July 2014 revision following the hearing³⁵⁶; and a fourth and final version on 12 August 2014³⁵⁷. Each time the HA produced a clean and a tracked changes version of the Order. The references below are to the tracked changes versions as they show the changes from one version to the next.
- 8.5 All versions were subject to comment and the revisions were made to address changes sought by interested parties, statutory undertakers and others in their written or oral representations. They were also provided in response to my written questions on drafting or seeking justification for the powers sought³⁵⁸, or in

³⁵¹ AD-002

³⁵² AD-003

³⁵³ D3-005

³⁵⁴ AD-002

³⁵⁵ D3-005

³⁵⁶ D4-003

³⁵⁷ D5-002

³⁵⁸ PI-006

response to my questions raised at or following the DCO hearing³⁵⁹ or to comply with the examination timetable.

- 8.6 Discussion about the DCO during the course of the examination was an iterative process and the HA usefully provided commentaries to explain the background to the revisions made to the 31 July 2014 and 12 August 2014 versions³⁶⁰. I consider that the reasons for seeking the powers in the Order are adequately explained in the EM³⁶¹ and in the commentaries.

The Order

- 8.7 The HA's fourth version is document D5-001³⁶² submitted on 12 August 2014. As this version of the Order is different to that submitted on 31 July 2014 (which was the deadline in the timetable for the submission of the HA's final preferred draft) and included changes to certain articles and to the protective provisions, I issued a Rule 17 request on 15 August 2014 asking for further information and responses³⁶³. I have had regard to the responses received, including that from the HA which asked for further amendments to be made to the 12 August 2014 version of the Order to address the concerns of Centrica³⁶⁴.

- 8.8 My recommended version is the HA's final version of 12 August 2014, subject to some minor amendments as described below, and is at Appendix D. I consider that should development consent be granted for the A160/A180 Port of Immingham Improvement, the DCO attached at Appendix D is appropriate.

- 8.9 During the examination statutory and other undertakers expressed considerable concern about the drafting of the Order and sought assurances that their interests were sufficiently protected. I report in this chapter on those points in the draft DCO which were contentious and to explain the changes to the draft Order that resulted from the examination. If I make no mention of particular provisions, requirements or schedules in the draft DCO, the Secretary of State can be clear that I am satisfied that the draft DCO provisions, requirements and schedules are appropriate for a road infrastructure project of this kind.

Description of works

- 8.10 The authorised development is described in Schedule 1 of the draft Order. The nationally significant infrastructure project is identified as Works 1 through to 31 comprising the works to improve the road and diversion/protection works for overhead electric cables

³⁵⁹ PI-013 and PI-014

³⁶⁰ D4-006 and D5-003

³⁶¹ D4-005 tracked change version of the Explanatory Memorandum to the 31 July 2014 Order

³⁶² The version showing track changes made during the examination is D5-002 version

³⁶³ PJ-014

³⁶⁴ D6-005, AR-008 and AR-012

and underground pipelines. Minor changes were made to the description of Works 10, 12, 14, and 17 to clarify that depending on the result of detailed investigation and design these works might involve the protection of the pipelines rather than their diversion.

- 8.11 The draft Order separately identifies 16 works of associated development within the meaning of section 115(2) of the PA2008. In response to my written questions, these were extended to include the pumping stations to manage surface water run-off and the borrow pits to provide a source of construction material³⁶⁵.
- 8.12 The description of the authorised development comprises development, within the meaning in section 32, falling within the terms of section 14(1)(h) and section 22 of the PA2008. The requirements in the draft DCO fall within the terms of section 120(1) of the PA2008.

Articles

- 8.13 The articles set out the principal powers to be granted if consent is given. Whilst the Localism Act 2011 has removed the requirement to have regard to the Model Provisions³⁶⁶, the EM explains that the draft Order is based on the model provisions (general and railways), as well as precedents set in Orders that have been made³⁶⁷. In my consideration of the draft Order, I have had regard to the Secretary of State's recent decision on the A556 (Knutsford to Bowdon Improvement) DCO 2014³⁶⁸.

Article 2 - Interpretation

- 8.14 As a result of my written questions, the HA has made a number of revisions and additions to the Requirements in Schedule 2. To assist in their drafting and to support the revisions to article 5, a definition of '*environmental statement*' has been included in article 2. The definition confirms that the environmental statement includes any addendums. This was not contentious at the examination and contributes to the clarity of the draft Order.
- 8.15 The HA has also included a definition of 'traffic regulation plans' (submitted with the application and referred to in article 38) and clarified the definition of 'cycle track' so that it is clear that it includes where the track is concurrent with pedestrian rights. The definition of 'footway' and 'footpath' has been amended to include part of a footway or footpath. Again these amendments improve the clarity of the draft Order.

³⁶⁵ PI-006 Q9.9 and Q10.7

³⁶⁶ SI 2009/2265

³⁶⁷ D4-005 In the EM there are references to the M1 Junction 10a (Grade Separation) Order 2013 and to the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road) Order 2013

³⁶⁸ SI 2014/2269

- 8.16 Article 2(2) expands the definition of rights over land and clarifies that the purpose of the power within the draft Order includes the imposition of restrictive covenants. However the HA confirmed in the letter that accompanied the 24 June 2014 revised draft Order³⁶⁹ that as it now proposed to acquire plot 3/5a there were no plots where restrictive covenants would be imposed. Accordingly the HA proposed revisions to article 22 and Schedule 6 to delete references to the imposition of restrictive covenants³⁷⁰. There are residual references to restrictive covenants in article 2(2), article 23(2) and Schedule 6 which I have therefore deleted in recommended DCO at Appendix D.
- 8.17 The definition of '*maintain*' mirrors that used in other recent highway Orders³⁷¹. There was no objection to this during the examination and I see no reason why it would not be appropriate to adopt the same definition for this project.
- 8.18 The definition of the Secretary of State, meaning the Secretary of State for Transport, replaces the definition of undertaker in the model provisions. I initially had concerns, for example in article 7(4) (consent to transfer benefit of the Order) that this could appear illogical and not provide the control intended³⁷². However the HA explained that in practical terms where the SoS appears in the Order instead of 'the undertaker' it means the HA, and in other cases such as article 7(4), it means the SoS as in the Department of Transport³⁷³.
- 8.19 In the case of the discharge of Requirements, I was told that in practice this would be by a different part of the Highways Agency from the project promoter. As amendments have been made to the Requirements to provide for the SoS to consult on their discharge with the relevant planning authority, as well as any other appropriate body such as the EA or NE³⁷⁴, I am satisfied that the procedure for approval and discharge that has been put in place is appropriately robust. In that regard, I note that similar drafting was accepted in the recent A556 decision³⁷⁵.

Article 5 - Limits of deviation

- 8.20 As originally drafted, the article allowed for lateral deviation of the works to the extent shown on the works plans and for vertical deviation from the levels shown on the engineering drawings and sections to a maximum of 0.5m upwards or downwards.

³⁶⁹ D3-001

³⁷⁰ D3-005

³⁷¹ Heysham to M6 Link Road and A556 (Knutsford to Bowdon Improvement) Order SI 2014/2269

³⁷² PI-006 Q11.9

³⁷³ D2-001 response to Q11.9

³⁷⁴ D5-002 Schedule 2 Requirements 3, 4, 7, 8, 9, 10, 11, 12, and 15

³⁷⁵ SI 2014/2269

- 8.21 The EM explains the purpose of the article. I accept that for an infrastructure project of this scale and complexity there would inevitably be more detailed design work to be done by the HA and the contractors. It is appropriate for the Order to provide for some flexibility to ensure that the project can be implemented in an optimal manner and without unnecessary delay. There is a precedent for the inclusion of limits of deviation in recent railway and road Orders³⁷⁶.
- 8.22 However, as drafted I found article 5 to be very vague in allowing for 0.5m vertical deviation upwards or downwards if '*within the scope of the environmental impact assessment*', itself a term that was not defined in the draft Order. The HA accepted this and proposed alternative wording along the lines of that used in the recently consented Network Rail (Norton Bridge Area Improvements) Order 2014³⁷⁷. I am satisfied that this would provide adequate safeguards so that development was not allowed which had not been applied for or assessed.
- 8.23 At the DCO hearing, having considered the updated flood risk assessment and amended engineering drawings proposing a lower invert level under the railway bridge, the EA asked for changes to article 5 to clarify that Work No. 28 (the Rosper Road link) could only deviate from the amended engineering drawings by a maximum of 0.15m upwards or downwards and to re-order the paragraphs. With those changes made to the 31 July 2014 revision of the Order and with no outstanding issues remaining, both NR and the EA withdrew their objections. I am satisfied that the changes should be accepted. They improve the article's clarity, secure necessary safeguards in respect of Work No. 28, whilst allowing a proportionate degree of flexibility for the other works.

Articles 6 and 7 - Benefit of Order and Consent to transfer benefit of the Order

- 8.24 These articles set out who benefits from the Order. Article 6 overrides section 156(1) of the PA2008 to give the benefit of the Order to the Secretary of State rather than anyone with an interest in the land. I accept it would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated way.
- 8.25 Certain of the Works, for example the diversion of electric cables, are for the benefit of others. In response to my question³⁷⁸, paragraph (2) was revised to make it clear who would have the express benefit of the Order in relation to certain specific Works and minor corrections made to their names. Since these Works are part of the project and have been assessed and considered as part

³⁷⁶ For example the Network Rail (Norton Bridge Area Improvements) Order 2014 SI 2014/909

³⁷⁷ SI 2014/909

³⁷⁸ PI-006 Q11.11

of the examination, I am satisfied that article 7(4) is appropriate in not requiring the Secretary of State's further consent for the transfer of their benefit to the named undertakers.

Article 8 - Application and modification of legislative provisions

- 8.26 As drafted the article was rather ambiguous and in response to my question³⁷⁹, it has been redrafted to clarify that it provides for the Order to override the listed statutory provisions.

Articles 9-15

- 8.27 These articles in Part 3 of the draft Order cover Streets. At the DCO hearing, NELC and NLC as the local highway authorities confirmed that they were content with the terms of Part 3 and were not seeking any changes. In response to my written questions³⁸⁰, both the local highway authorities confirmed in letters to the HA³⁸¹ that they accepted the guillotine provisions in articles 13(6), 18(6) and 41(11).
- 8.28 In its relevant representation, NR objected to article 10(5) which required it to maintain the new bridge³⁸². During the course of the examination, NR, the local highway authority and the HA reached agreement on a number of matters, including the maintenance of the bridge³⁸³, and the HA amended the draft Order of 31 July 2014 to include protective provisions in NR's favour in Schedule 8 and the deletion of article 10(5)³⁸⁴. NR has withdrawn its objection³⁸⁵ and I am satisfied that its interests are appropriately protected in the draft Order as amended.
- 8.29 The provisions in articles 11 and 15 would result in various traffic regulations measures that would have otherwise required the making of traffic regulation orders and I initially had concerns about the consultation and publicity that had been carried out as part of the pre-application process³⁸⁶. In response the HA undertook further consultation with those parties who would otherwise have been consulted but who had not been issued with a Section 56 notice under the PA2008. No responses were received to this consultation³⁸⁷.
- 8.30 Given that the development of the project has included regular engagement with the local highway authorities and it is the HA's intention to establish local transport forums, which public service

³⁷⁹ PI-006 Q11.13

³⁸⁰ PI-006 Q11.18, Q11.24 and Q11.37

³⁸¹ D4-018 section 3 and Appendix A

³⁸² RR-014

³⁸³ SOG-017

³⁸⁴ D4-007

³⁸⁵ CR-010

³⁸⁶ PI-006 Q11.15 and Q11.20

³⁸⁷ D4-018 section 4

vehicle providers could attend, I do not consider that the inclusion of articles 11 and 15 in the draft Order has or would prejudice any party who might have an interest in changes to traffic regulations. In response to my questions³⁸⁸, minor changes were made to article 11 to improve its drafting.

Article 16 - Discharge of water

- 8.31 In addition to a minor change to the drafting of paragraph (8)(b) to clarify the reference³⁸⁹, in the 12 August 2014 version of the draft Order the HA has added words to paragraph (1) to make clear the need for the Secretary of State to obtain the consent required under paragraph (3). The change was made at the request of Anglian Water, and was a condition of the withdrawal of its objection³⁹⁰, and I agree that it adds to the clarity of the Order.

Article 22 - Compulsory acquisition of rights

- 8.32 This article allows for rights to be acquired as well as land itself and also for new rights to be created over land. The HA had originally thought that there would be one plot (3/5a) over which only restrictive covenants would be needed. However as the HA confirmed in its note accompanying the 31 July 2014 draft Order³⁹¹ that this plot would now be acquired, amendments were made removing the plot from Schedule 5 and deleting all references to restrictive covenants in article 22.

Article 23 - Private rights over land

- 8.33 This article applies to private rights generally and minor changes have been made to clarify these are not just rights of way. Whilst I initially had concerns about the construction of paragraphs (7)(b) and (8)(a)³⁹², I am now satisfied that the wording is correct and it replicates that used in the A556 (Knutsford to Bowdon Improvement) Order 2014³⁹³.
- 8.34 Whilst Air Products (BR) Ltd asked at the DCO hearing for there to be a reference to their specific licence in article 23(9), the HA considered that it was more appropriately placed in the side agreement that was being negotiated³⁹⁴. With the completion of that agreement and withdrawal of the objection³⁹⁵, there is no need for any further change to the draft Order.

³⁸⁸ PI-006 Q11.16

³⁸⁹ PI-006 Q11.21

³⁹⁰ D6-001

³⁹¹ D4-006 and D4-007

³⁹² PI-006 Q11.28

³⁹³ Article 21 of that DCO SI 2014/2269

³⁹⁴ D4-007

³⁹⁵ AR-011

- 8.35 I am recommending that the residual reference to restrictive covenants in article 23(2) should be deleted, as it no longer serves a purpose and its removal was clearly intended by the HA³⁹⁶.

Article 24 - Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 8.36 Following the DCO hearing and at the request of National Grid, a new paragraph (3) was added to modify the application of the Act. It has a precedent in article 21 of the A556 (Knutsford to Bowdon Improvement) Order 2014³⁹⁷.

Article 28 - Temporary use of land

- 8.37 As drafted, this provides for a general power of temporary use of land not only of those plots identified in Schedule 7 but also of other Order land. I asked the HA questions as to why this general residual power was required³⁹⁸ and it was discussed at the DCO hearing, in particular whether the duration of any temporary occupation should be limited and whether details should be provided to the landowner as to why their land was being taken.
- 8.38 Having considered the case made by the HA³⁹⁹, I accept that the provision is useful for both the developer and the landowner. It would allow works to take place on the land in advance of invoking compulsory acquisition procedure and this could, in certain circumstances, obviate the need to acquire the land at all. I can see that this might apply where the Order provides for limits of deviation and when, once the alignment of the development is fixed, there might be areas of land no longer required for the final infrastructure but which are still needed temporarily to carry out the works. In such circumstances, it might be that the land would be returned unchanged to the landowner, for example if used for a compound, or have permanent changes, such as an access track or with utility diversions in place.
- 8.39 The HA referred me to the precedent set by the Network Rail (Norton Bridge Area Improvements) Order 2014⁴⁰⁰ which included a similar article. Having considered the matter, including the HA's arguments and the lack of objection from any landowner, I am satisfied that a case has been made for its inclusion in the Order and that the proposed drafting is acceptable.
- 8.40 Amendments requested by National Grid to paragraph (3) would allow the Secretary of State to remain in temporary possession of certain plots until such time as rights have been granted under article 22 for statutory undertakers to access their apparatus. This

³⁹⁶ D4-007 paragraph 7

³⁹⁷ SI 2014/2269

³⁹⁸ PI-006 Q11.31 to Q11.33

³⁹⁹ D4-007 paragraphs 10-11

⁴⁰⁰ SI 2014/909

would ensure a smooth transition of land ownership and rights, has a precedent in the A556 (Knutsford to Bowdon Improvement) Order 2014⁴⁰¹ and I consider is also justified here.

Article 33 - Felling or lopping of trees

- 8.41 As originally drafted, this would appear to allow the HA where there was a tree or shrub within the Order limits to cut back any roots that were outside the Order limits, even if on private land. The HA confirmed at the DCO hearing⁴⁰² that this was not the intent and any work to cut back roots would only take place inside the Order limits. The amendments to article 33(1) clarify this.

Article 38 - Certification of plans, etc

- 8.42 During the course of the examination, I accepted a number of non-material changes to the application⁴⁰³. I am satisfied that the amended plans are included in the HA's 12 August 2014 final revision of the draft Order.

Article 41 - Traffic regulation

- 8.43 This provides the Secretary of State with powers to make traffic regulation orders in relation to roads for which it is not the traffic authority. This is so that it can implement traffic management measures necessary to construct the authorised development. Implementation of any of the measures listed is subject to the prior approval of the relevant traffic authority and for the chief officer of police and the relevant traffic authority to be notified in advance⁴⁰⁴. With these safeguards in place, I am satisfied that the provision is appropriate and necessary to secure the timely and safe delivery of the project.
- 8.44 As explained in Chapter 4, it would not be within the power to the HA to impose parking controls in Town Street as it is outside the Order limits. The HA is taking action outside the Order to limit the duration of stay at the A160 layby.

Schedules

Schedule 3 - Classification of roads, etc

- 8.45 During the examination, the HA proposed a number of change to the project including a new cycleway/footway along the southern side of the A160 between Eastfield Road and the Manby Road roundabout, a footway/cycleway along the south side of the realigned Ulceby Road, and a new field access⁴⁰⁵. These proposals

⁴⁰¹ Article 26 of that Order SI 204/2269

⁴⁰² D4-007 paragraph 12

⁴⁰³ PI-015

⁴⁰⁴ D4-005 paragraphs 11.10 to 11.12

⁴⁰⁵ AD-064, AD-072 and AD-073

were included in Parts 11 and 12 of Schedule 3 to the draft Order of 24 June 2014. This was premature as they had not yet been accepted into the examination and so the HA deleted the references to them in the draft Order of 31 July 2014⁴⁰⁶. I accepted the proposals as non-material changes to the application on 12 August 2014 and have included them in Parts 11 and 12 of Schedule 3 in the recommended DCO in Appendix D.

Schedule 2 - Requirements

- 8.46 Development consent is subject to requirements which correspond to conditions that could be imposed on the grant of planning permission⁴⁰⁷. I have had regard to the guidance on the use of planning conditions in the NPPF and in the Planning Practice Guidance and the form of the model conditions at Appendix A to Circular 11/95⁴⁰⁸ which remains extant.
- 8.47 The Requirements in Schedule 2 generally provide for the submission of various detailed plans, schemes and programmes for the prior approval of the SoS, in consultation with the relevant planning authority. This is consistent with other recent road Orders including the A556 (Knutsford to Bowdon Improvement) Order 2014. In practice, the HA's processes and procedures when implementing a project of this nature are that the appointed contractor would seek approval from the HA, as the body that exercises the Secretary of State for Transport's functions in respect of highways.
- 8.48 During the examination a number of the Requirements were revised to also provide for consultation with other interested consultees. For example the EA in respect of contaminated land, groundwater and surface and foul water drainage (Requirements 7 and 16); NE in respect of protected species and sites (Requirements 9 and 10); and the relevant highway authority in respect of Requirement 12 (traffic management).
- 8.49 The Requirements provide that the various schemes, details and plans to be approved must reflect the mitigation measures included in the ES. This is the mechanism to ensure that environmental mitigation is secured through the Order and is consistent with the approach used in other DCOs.
- 8.50 Further there is provision in the Requirements that any approved schemes, details and plans must be implemented as approved, unless the Secretary of State subsequently approves further amendments to them (as is provided for by Requirement 17).

⁴⁰⁶ D4-007 paragraph 25

⁴⁰⁷ PA2008 section 120(2)(a)

⁴⁰⁸ The use of conditions in planning permissions

- 8.51 The Requirements were discussed in detail at the examination through the responses to my written questions, the submission of written representations, and at the DCO hearing. They were subject to considerable revision by the HA to address concerns such that the main interested parties, including the EA, NE and NELC and NLC, as the relevant planning authorities, were able to support the revised Schedule.
- 8.52 I deal briefly below with the Requirements and any modifications proposed by the HA or which I am recommending.

Requirement 1- interpretation

- 8.53 This now includes a reference to the draft CEMP⁴⁰⁹ which was submitted to the examination and was generally agreed by the main parties as being on 'the right lines'. However, as much more work would need to be done to finalise all those parts of the CEMP that have to be submitted under Requirement 3, I do not consider that there would be any benefit in requiring the CEMP that is submitted to be substantially in accordance with the draft. The definition of the environmental statement has been deleted as it is now included in article 2.

Requirement 2- time limits

- 8.54 This provides that the authorised development must begin within 5 years. The clear intent expressed at the examination was that if consent was granted construction work would begin in 2015.

Requirement 3 - CEMP

- 8.55 This Requirement provides for the detail of how the authorised development is to be carried out and the major role of the CEMP. In response to concerns about the lack of detail, it was extensively revised and expanded by the HA to set out fuller details of the plans and programmes that make up the CEMP and what they would comprise. It also helpfully now includes details of working hours during construction and the circumstances when there may have to be exceptions to these.
- 8.56 In response to concerns expressed by NE, the HA has added Requirement 3(6) which clarifies that the CEMP must include measures to ensure that the part of Work No. 28 on or to the east of Rosper Road would only take place during the months of April to October inclusive. This still allows for work on the railway bridge which NE has accepted in its SoCG would have to be take place during the Christmas 2015 closure period. I am satisfied that this appropriately protects the LWS from any adverse long term noise impacts.

⁴⁰⁹ AD-069 revised CEMP of 24 June 2014

8.57 Amongst other things, Requirement 3(7) provides that the CEMP must consider the impact on the matters covered by the various plans and programmes required as part of the CEMP if the authorised development coincides with any other major construction projects in the area. The list of projects in the EM includes any proposed shut down of the Phillips 66 and Total refineries. However contrary to its agreement at the examination, the HA has unintentionally omitted to delete the word '*construction*' from the Requirement. To avoid any debate at a later date as whether these are '*construction*' projects, I am recommending that Requirement 3(7) should simply say '*any other major projects in the area*'.

8.58 I am satisfied that subject to this amendment, the final version of the Order provides sufficient adequate and appropriate detail on those matters that need to be included in the CEMP in order for the development to be carried out in a satisfactory manner.

Requirements 4 and 5 - landscaping

8.59 As revised, these Requirements provide for the submission, approval and subsequent implementation of a landscaping scheme, to reflect the measures shown on the Environmental Masterplan.

Requirement 6 - fencing

8.60 This provides for permanent and temporary fencing to comply with the HA's Manual. The design and construction of the noise barriers is covered by Requirement 14.

Requirement 7- contaminated land and groundwater

8.61 I am satisfied that this Requirement puts in place a robust mechanism and process for dealing with any contaminated land and groundwater discovered during the construction works to include consultation with the relevant planning authority and EA as to its subsequent treatment. It precludes further work in the vicinity of the contamination until any necessary remediation has been carried out. At the DCO hearing, both NLC and the EA confirmed that they were satisfied with the wording of the Requirement.

Requirement 8 - archaeology

8.62 The NLC had initially asked in its LIR for the written scheme for the investigation of areas of archaeological interest to be agreed prior to any consent being granted. However its second SoCG confirms that this matter was no longer in dispute and the NLC confirmed at the DCO hearing that it was satisfied with the Requirement as drafted. It provides that the written scheme for investigation should reflect the mitigation measures in the ES and I am satisfied that it puts in place an appropriate methodology for

the investigation and recording of both known archaeological remains and any found during the construction works.

Requirements 9, 10 and 11 -ecological management plan and water vole, badgers and bat roosts

8.63 In response to my written questions⁴¹⁰, the HA has amended Requirement 9 to clarify that the Ecological Management Plan should reflect not only the survey results and ecological mitigation measures included in Chapter 9 of the ES, but also the measures shown on the Environmental Masterplan, and the monitoring proposals in Table 9.15 of the ES. It also usefully sets out the action to be taken by the undertaker in the event that European protected species, not previously unidentified in the ES, are found during construction.

8.64 In order to address my and the NE's concern that mitigation measures are directed to the right places, the HA added Requirement 10 to provide that additional surveys are carried out to establish the exact position of water vole, badgers and bat roosts before construction work begins on site. In response to my written question, Requirement 11 brings into effect the recommendation in the ES⁴¹¹ that a method statement detailing the sensitive management of ditches for water voles is prepared in advance of the project becoming operational.

Requirement 12 - traffic management

8.65 Whilst the CEMP (Requirement 3(4)(a)(vii)) deals with the use of the local road network during the construction period, Requirement 12 provides for a plan to regulate traffic on site during the construction period. In response to a query raised by NELC at the DCO hearing, the HA has confirmed that the plan is not to regulate the operation of the highway network once the authorised development is completed.

8.66 I have considered the request by Centrica PLC that the Requirement should be amended to include specific provision for there to be consultation with Centrica prior to the traffic management plan being approved. Contrary to Centrica's understanding, the Able Marine Energy Park DCO does not include Centrica as a named consultee on the traffic management plan Requirement⁴¹².

8.67 I am satisfied that Requirement 12 is appropriately drafted. It requires consultation with the relevant highway authority which is best placed to take account of all parties who might be affected by traffic management measures during the construction period. I am

⁴¹⁰ PI-006 Q10.4 and PI-010 Q32

⁴¹¹ PI-006 Q8.22

⁴¹² Able Marine Energy Park DCO 2013 Schedule 11 Requirement 30

not persuaded that Centrica's needs are so different from other companies operating in the area as to justify it being singled out in this way. Centrica, along with other key local businesses including Royal Mail, would be invited to attend the local traffic management forums to be established by the HA for the duration of the works.

Requirements 13, 14 and 15 - detailed design

- 8.68 Requirements 13 and 14 are needed to ensure that low noise surfacing is used on the new or altered sections of carriageway and the detailed design and construction of the proposed noise barriers is agreed and brought into use before the authorised development is operational.
- 8.69 In the interests of clarity, Requirement 15 confirms that the authorised development must be carried out in accordance with the drawings unless otherwise agreed and always provided that the development so altered does not fall outside the limits of deviation. Requirement 17 provides that any amendments to approved details must not give rise to different adverse environmental effects to those assessed in the ES. The limits of deviation are set in article 5. In that article 5(2) requires that any non-material amendments must demonstrate that they are unlikely to give rise to any materially new or materially different environmental effects to those assessed in the ES, I consider that the DCO read as a whole provides adequate and appropriate safeguards.

Requirement 16 - surface and foul water drainage

- 8.70 In response to my written question and discussion at the DCO hearing⁴¹³, for completeness a minor amendment has been made to the Requirement to refer to the pumping stations to be constructed to manage surface water runoff.

Requirement 17 - approvals and amendments to approved details

- 8.71 This Requirement clarifies that any amendments to approved details must be minor or immaterial and must not give rise to different adverse environmental effects to those assessed in the ES. I am recommending a minor change to the first line as all the Requirements in the Order in fact use the words '*unless otherwise agreed in writing by the Secretary of State*' not '**with the Secretary of State**' as drafted.

Schedule 8 - Protective provisions

- 8.72 During the examination, the HA engaged in extensive negotiations with statutory undertakers and other parties with cables, pipes and other apparatus in the area. As a result, it has agreed

⁴¹³ PI-006 Q9.9 and PI-010 Q35

amendments to the protective provisions to protect the interests of those with apparatus and equipment that might be affected by the project, not all of whom are statutory undertakers falling within the definitions in Part 1 paragraph 2. Therefore additional sub-paragraphs have been inserted in paragraph 2 of Part 1 to afford Air Products (BR) Ltd, Phillips 66 Ltd, VPI Immingham LLP and E.ON UK Gas Ltd the benefit of the protective provisions, resulting in the withdrawal of their representations⁴¹⁴.

8.73 In respect of the concerns of Anglian Water and Network Rail, new protective provisions in their favour have been included as Parts 2 and 3 and their objections have also been withdrawn⁴¹⁵.

8.74 In its late representation Centrica PLC requested that its condensate pipeline that runs along Rosper Road to the Port, and access rights to it, should be similarly protected in Schedule 8⁴¹⁶. The HA has no objection to that amendment being made to Schedule 8⁴¹⁷. I am satisfied that the amendment sought is reasonable and I have included it in my recommended DCO at Appendix D.

SMW/Heron Wind

8.75 As explained in Chapters 4 and 7, there remains one outstanding representation from Heron Wind, who is represented by SMW in respect of the Hornsea Offshore Wind Farm Project One. Whilst discussions continue with the HA to negotiate a commercial agreement, in the event that agreement is not reached SMW have requested that a protective provision for the benefit of Heron Wind Ltd should be included in the DCO. This would require that:

'The undertaker must not in exercise of the powers of this Order acquire any right over, or occupy or use, all or any part of the land shown numbered 2/1c, 2/3b, 2/4e, 2/5b, 2/5e, 2/5g, 2/5i, 2/5j, 2/5l, 2/5m, 2/7h, 2/7i, 2/9a, 2/9b, 2/10a, 2/10b, 2/10c, 2/11a, 2/11c on the land plans without the consent of Heron Wind Ltd, such consent not to be unreasonably withheld or delayed.'

8.76 The case for the inclusion of such a protective provision is set out in SMart Wind's letter of 29 August 2014⁴¹⁸. In essence, it is that Heron Wind, as a statutory undertaker, has an interest in these plots for the purposes of its undertaking as set out in its application for the Hornsea Project One.

8.77 If that Order is granted, and the A160/A180 Improvement DCO is granted, Heron Wind maintains that the acquisition by the HA of rights over the plots would cause serious detriment to the carrying

⁴¹⁴ D5-004

⁴¹⁵ D6-001 and CR-010

⁴¹⁶ D5-006

⁴¹⁷ AR-008

⁴¹⁸ AR-013

on of its undertaking as the HA's unfettered exercise of its Order powers would have the effect of extinguishing Heron Wind's property interests. It would prevent the use of construction compounds and the installation of cables and there is no other appropriate land to make good that detriment.

- 8.78 Further it was argued that the protective provision is needed because it would require the HA to seek consent from Heron Wind before it acquired a right over, occupation or use of any of the plots. This would give Heron Wind control over the use of the plots and ensure that the exercise of the HA's powers does not have a detrimental effect on its undertaking. As it would require Heron Wind to act reasonably, it was said by SMW not to be an onerous provision.
- 8.79 The inclusion of the protective provision is resisted by the HA⁴¹⁹. Its argument is brief but essentially that it must be able to acquire the land necessary for the development without impediment otherwise the development might not be able to be implemented. It contends that SMart Wind/Heron Wind is sufficiently protected by the draft DCO and that no further changes are necessary.

My conclusion on Heron Wind

- 8.80 I have already addressed many of the arguments that are put forward on behalf of Heron Wind in Chapter 7 in respect of sections 127 and 138.
- 8.81 Perusal of the Land Plan (Sheet 2)⁴²⁰ shows that the plots over which Heron Wind want to have control cover an extensive area of land. Many of the plots are existing highway land, owned either by the Secretary of State for Transport or NLC as the local highway authority, over which Heron Wind have no interest. For example plot 2/1c is the whole of Top Road from the existing roundabout up to where the new road would branch off. No reason has been given as to why Heron Wind, in pursuant of its own interests, would need to exercise control over all that land.
- 8.82 Of the plots over which Heron Wind wish to exercise control, the HA is seeking to acquire most of them for permanent works, namely for the construction of the Habrough roundabout and the new East Halton Road and the Greengate Lane link as well as for the diversion/protection of high pressure gas pipelines and, of course, the installation of ducts for the Hornsea Offshore Wind Farm Project One. I consider that to require the HA, if consent is granted, to have to ask permission from another developer before it could exercise its compulsory acquisition powers would be an unreasonable imposition which would defeat the purpose of compulsory acquisition and could prejudice the project.

⁴¹⁹ AR-012

⁴²⁰ AD-008

- 8.83 I am not persuaded by the argument put forward by SMW that the protective provision sought is necessary or that it is proportionate. The draft Order includes Work no. 18. Article 6 gives the benefit of the consent for that Work to Heron Wind. Throughout the examination there was a clear intention on HA's part to provide the cable corridor and to conclude a commercial agreement with Heron Wind and I am satisfied that there would be no disadvantage to Heron Wind.
- 8.84 I conclude that the inclusion in the Order of a protective provision along the lines suggested would be an onerous, unreasonable and excessive restriction on the HA. If however the SoS disagrees, for example if the parties find themselves unable to conclude the commercial agreement, the inclusion of a provision along the lines proposed by SMW should be made conditional on the grant of the DCO for the Hornsea Offshore Wind Farm Project One.

Conclusion and recommendation

- 8.85 I recommend that the Order is made in the form set out in Appendix D.

9 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

- 9.1 In coming to my overall conclusion I have had regard to the two LIRs submitted during the examination, the prescribed matters and all matters that I consider are both important and relevant to this application. The legal and policy context that I consider applies to this application is set out in Chapter 3. My findings and conclusions in relation to policy and factual issues are at Chapter 4 and in relation to Habitats Regulations Assessment at Chapter 5. My overall conclusion on the case for development consent and my recommendation that development consent is granted is set out in Chapter 6.
- 9.2 I have also considered the request for compulsory acquisition powers in Chapter 7 and concluded that there is a compelling case in the public interest for the grant of the compulsory acquisition powers sought by the HA and for the inclusion of powers for the temporary possession of land.
- 9.3 In Chapter 8 I have concluded and recommended that, if development consent is granted as recommended, the Order should be made in the form set out in Appendix D.
- 9.4 In coming to my view that development consent should be granted in the form proposed in Appendix D, I have taken into account all matters raised in the representations and consider that there is no reason either individually or collectively that would lead me to a different conclusion.
- 9.5 I recommend that the Secretary of State, for the reasons set out in the above report, makes the A160/A180 (Port of Immingham Improvement) Order in the form proposed in Appendix D.

APPENDICES

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APPENDIX A - EXAMINATION LIBRARY

The following list of documents has been used during the course of the Examination. The documents are grouped together by examination deadline.

Each document has been given an identification number (i.e. AD-001), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning website at the A160 – A180 Port of Immingham Improvement Scheme page:

<http://infrastructure.planningportal.gov.uk/projects/a160-a180-port-of-immingham-improvement>

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Application Documents	
Application Form	
AD-001	<u>1.1 Application Form</u>
Draft Development Consent Order	
AD-002	<u>4.1 Draft Development Consent Order</u>
AD-003	<u>4.2 Explanatory Memorandum</u>
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Plans	
AD-007	<u>5.1 Location Plan</u>
AD-008	<u>5.2 Land Plans</u>
AD-009	<u>5.3 Works Plans</u>
AD-010	<u>5.4 Crown Land Plans</u>
AD-011	<u>5.5 Streets Rights of Way and Access Plans</u>
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AD-016	<u>5.10 Engineering Drawings - Drainage Details</u>
AD-017	<u>5.11 Engineering Drawings - Non-Motorised User Provisions</u>
Reports/Statements	
AD-018	<u>11.1.1 Consultation Report - Volume 1</u>
AD-019	<u>11.1.2 Consultation Report - Volume 2 Appendices</u>
AD-020	<u>11.2 Assessment of Implications on European Sites</u>

AD-021	<u>11.3 Assessment of Nature Conservation Effects</u>
AD-022	<u>11.4 Assessment of Historic Environment Effects</u>
AD-023	<u>11.5 Flood Risk Assessment</u>
AD-024	<u>11.6 Statement Relating to Statutory Nuisances</u>
AD-025	<u>11.7 Statement Relating to Environmental Licenses from Other Bodies</u>
AD-026	<u>8.1 Traffic Forecasting Report</u>
AD-027	<u>8.2.1 Economic Assessment Report - Part 1</u>
AD-028	<u>8.2.2 Economic Assessment Report - Part 2 Appendices</u>
AD-029	<u>8.3 Planning Statement</u>
Environmental Statement	
AD-030	<u>6.1.1 Non-Technical Summary of the Environmental Statement</u>
AD-031	<u>6.1.2 Environmental Statement (ES) - Volume 1</u>
AD-032	<u>6.2.1 ES - Volume 2 Figures Chapter 1 to 3</u> 1.1 Site Location Plan 2.1 Key Elements of the Development 2.2 Temporary Areas used during Construction 2.3 Proposed Catchment Drainage Areas 3.1 Options 1-9 considered in 2009
AD-033	<u>6.2.2 ES - Volume 2 Figures Chapter 6</u> 6.1 Air Quality Study Area: Affected Road Network and Monitoring Locations 6.2 Modelled Representative Receptors 6.3 Traffic Data Link IDs 6.4 Construction Assessment Air Quality Study Area 6.5 Modelled Base Year (2012) NO2 Results 6.6 Modelled Opening Year (2016) NO2 Change due to A160 Scheme 6.7 Regional Assessment Air Quality Study Area)
AD-034	<u>6.2.3 ES - Volume 2 Figures Chapter 7</u> 7.1 Location of Archaeological Remains and Historic Buildings (two sheets) 7.2 Location of Ridge and Furrow (two sheets) 7.3 Historic Landscape 7.4 Location of Archaeological Remains, Historic Buildings and Temporary Land Take (two sheets)
AD-035	<u>6.2.4 ES - Volume 2 Figures Chapter 8.1 to 8.5</u> 8.1 Landscape Appraisal (two sheets) 8.2 Landscape Character Areas 8.3 Zone of Visual Influence (two sheets) 8.4 Photo Locations (two sheets) 8.5 Landscape Character Photographs
AD-036	<u>6.2.5 ES - Volume 2 Figures Chapter 8.6 to 8.20</u> 8.6 to 8.20 Existing Photo Viewpoints (16 sheets)
AD-037	<u>6.2.6 ES - Volume 2 Figures Chapter 8.21 to 8.24</u> 8.21 to 8.24 Photomontage Locations (14 sheets)

AD-038	<u>6.2.7 ES - Volume 2 Figures Chapter 9</u> 9.1 Designated Sites Note that the ecology survey reports in Appendix 9.1 contain their own figures.
AD-039	<u>6.2.8 ES - Volume 2 Figures Chapter 10</u> 10.1 Superficial Geology 10.2 Bedrock Geology 10.3 Borehole Location Plan (four sheets)
AD-040	<u>6.2.9 ES - Volume 2 Figures Chapter 12</u> 12.1 Noise and Vibration Study Area and Calculation Area 12.2 Noise Monitoring Locations 12.3 Construction Sample Receptor Locations 12.4 Operational Sample Receptor Locations 12.5 Noise Contours: Do Minimum year of opening versus Do Something year of opening 12.6 Noise Contours: Do Minimum year of opening versus Do Minimum design year 12.7 Noise Contours: Do Minimum year of opening versus Do Something design year
AD-041	<u>6.2.10 ES - Volume 2 Figures Chapter 13</u> 13.1 Existing Routes for Non-Motorised Users 13.2 Travellers' Views
AD-042	<u>6.2.11 ES - Volume 2 Figures Chapter 14</u> 14.1 Allocations and Proposed Land Uses 14.2 Existing Land Use and Road Network 14.3 Existing Land Use and Proposed Road Scheme
AD-043	<u>6.2.12 ES - Volume 2 Figures Chapter 15</u> 15.1 The Water Environment
AD-044	<u>6.3.0 ES - Volume 3 Appendices Contents List</u>
AD-045	<u>6.3.1 ES - Volume 3 Appendices Chapter 2.1</u> 2.1 Environmental Masterplan
AD-046	<u>6.3.2 ES - Volume 3 Appendices Chapter 6.1 to 6.7</u> 6.1 Air Quality Impact Assessment Technical Appendix 6.2 Air Quality Monitoring Data 6.3 Dispersion Model Set Up and Model Verification 6.4 Local Air Quality Assessment – Specific Receptor Modelled Results (All Scenarios) – NO2 and PM10 6.5 TAG Results 6.6 Compliance Risk Summary 6.7 Traffic Data
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AD-048	<u>6.3.4 ES - Volume 3 Appendices Chapter 7.6 to 7.10</u> 7.6 Air Photo Mapping and Interpretation for Option 7, 2009 7.7 Air Photo Mapping and Interpretation for Land at the Junction of Eastfield Road and the A160, 2011 7.8 Archaeological Evaluation 2010

	7.9 Gazetteer of Heritage Assets 7.10 Historic Maps
AD-049	<u>6.3.5 ES - Volume 3 Appendices Chapter 8.1 to 8.5</u> 8.1 Methodology 8.2 Planning Policy 8.3 Landscape Character Assessment 8.4 Landscape Effects Tables 8.5 Visual Effects Tables
AD-050	<u>6.3.6 ES - Volume 3 Appendices Chapter 9.1</u> 9.1 Survey Reports Bats Breeding Birds (CONFIDENTIAL – Not Included) Badgers (CONFIDENTIAL – Not Included) Great Crested Newts Water Vole Wintering Birds (CONFIDENTIAL – Not Included) Phase 1 Habitat Survey
AD-051	<u>6.3.7 ES - Volume 3 Appendices Chapter 9.2 to 9.4</u> 9.2 Legislative Framework 9.3 Planning Policy Text 9.4 Characterisation of Impacts
AD-052	<u>6.3.8 ES - Volume 3 Appendices Chapter 10.1 to 10.3</u> 10.1 Structural Soils Extracts 10.2 Chemical Testing Results 10.3 Hazwasteonline Outputs
AD-053	<u>6.3.9 ES - Volume 3 Appendices Chapter 12.1 to 12.5</u> 12.1 Acoustic Definitions of Terms 12.2 Construction Plant 12.3 Noise Monitoring 12.4 Construction Noise Predictions 12.5 Operational Noise Predictions
AD-054	<u>6.3.10 ES - Volume 3 Appendices Chapter 13.1</u> 13.1 Driver Stress Calculations
AD-055	<u>6.3.11 ES - Volume 3 Appendices Chapter 14.1</u> 14.1 Agricultural Assessment (including agricultural land classification survey)
AD-056	<u>6.3.12 ES - Volume 3 Appendices Chapter 15.1</u> 15.1 Water Quality Calculations
AD-057	<u>6.3.13 ES - Volume 3 Appendices Chapter 15.2 Part 1</u> 15.2 Flood Risk Assessment Part 1
AD-058	<u>6.3.14 ES - Volume 3 Appendices Chapter 15.2 Part 2</u> 15.2 Flood Risk Assessment Part 2
AD-059	<u>6.3.15 ES - Volume 3 Appendices Chapter 15.3</u> 15.3 Water Framework Directive Assessment
AD-060	<u>6.4 Environmental Impact Assessment Scoping Opinion</u>

AD-061	<u>Highways Agency - Addendum to the Environmental Statement following S51 advice issued by PINS (4 April 2014)</u>
AD-062	<u>Highways Agency - Revised Application Index accompanying additional submissions (4 April 2014)</u>
AD-063	<u>Highways Agency - Construction Methodology Statement issued as additional supporting documentation to the application (4 April 2014)</u>
AD-064	<u>Highways Agency - Eastfield Road to Manby Road Roundabout Footway/Cycleway update following completion of feasibility assessment (22 April 2014)</u>
AD-065	<u>Highways Agency - Revised Construction Environmental Management Plan (27 May 2014)</u>
AD-066	<u>Highways Agency - Updated Flood Risk Modelling (18 June 2014)</u>
AD-067	<u>Highways Agency - Rosper Road Link Vertical Alignment Alteration (13 June 2014)</u>
AD-068	<u>Highways Agency - Revised Construction Environmental Management Plan (24 June 2014)</u>
AD-069	<u>Highways Agency - Revised Construction Environmental Management Plan Appendices (24 June 2014)</u>
AD-070	<u>Highways Agency – Second Addendum to Environmental Statement (24 June 2014)</u>
AD-071	<u>Highways Agency – Microdrainage WinDes output (26 June 2014)</u>
AD-072	<u>Highways Agency - Streets, Rights of Way & Access Plans (30 June 2014)</u>
AD-073	<u>Highways Agency - Non-motorised User Provisions Plans (30 June 2014)</u>
AD-074	<u>Highways Agency - Worksplans Sheet 2 of 4 Plan update (APP-12(C)) (30 June 2014)</u>
AD-075	<u>Highways Agency - Immingham West Fire Station Emergency Egress Proposals (4 July 2014)</u>
AD-076	<u>Highways Agency - Proposed Noise Barriers (4 July 2014)</u>
AD-077	<u>Highways Agency - A180 Eastbound Diverge and Westbound Merge Layout Alteration (4 July 2014)</u>
AD-078	<u>Highways Agency - South Killingholme Parking Survey Results Summary (9 July 2014)</u>
AD-079	<u>Highways Agency - Letter regarding engagement with North Lincolnshire Council, Network Rail and the Environment Agency regarding the Rosper Road Link amendment (10 July 2014)</u>
AD-080	<u>Highways Agency - Summary of the publicity undertaken regarding the inclusion of a footway/cycleway from Eastfield Road to Manby Road</u>

	<u>Roundabout an update AIES screening assessment (10 July 2014)</u>
AD-081	<u>Highways Agency - Works Plans Regulation 5(2)(j) Sheet 1 of 4 (APP-12(B))</u>
AD-082	<u>Highways Agency - Works Plan Regulation 5(2)(j) Sheet 2 of 4 (APP-12(C))</u>
AD-083	<u>Highways Agency - Streets, Rights of Way and Access Plans Regulation 5(2)(k) Sheet 1 of 4 (APP-21.1(B))</u>
AD-084	<u>Highways Agency - Streets, Rights of Way and Access Plans Regulation 5(2)(k) Sheet 2 of 4 (APP-21.1(C))</u>
AD-085	<u>Highways Agency - Streets, Rights of Way and Access Plans Regulation 5(2)(k) Sheet 3 of 4 (APP-21.1(D))</u>
AD-086	<u>Highways Agency - Streets, Rights of Way and Access Plans Regulation 5(2)(k) Sheet 4 of 4 (APP-21.1(E))</u>
AD-087	<u>Traffic Regulation Plans Regulation 5(2)(o) Sheet 1 of 4 (APP-21.2(B))</u>
AD-088	<u>Highways Agency - Engineering Drawings Regulation 5(2)(o) General Arrangements Sheet 1 of 10 (APP-23.1(B))</u>
AD-089	<u>Highways Agency - Engineering Drawings Regulation 5(2)(o) General Arrangements Sheet 2 of 10 (APP-23.1(C))</u>
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AD-092	<u>Highways Agency - Engineering Drawings Regulations (5)(2)(o) & 6(2) Longitudinal Sections Sheet 1 of 9 (APP-23.2(A))</u>
AD-093	<u>Highways Agency - Engineering Drawings Regulations (5)(2)(o) & 6(2) Longitudinal Sections Sheet 4 of 9 (APP-23.2(D))</u>
AD-094	<u>Highways Agency - Engineering Drawings Regulations (5)(2)(o) & 6(2) Longitudinal Sections Sheet 9 of 9 (APP-23.2(I))</u>
AD-095	<u>Highways Agency - Engineering Drawings Regulations (5)(2)(o) & 6(2) Drainage Details Sheet 1 of 4 (APP-23.4(B))</u>
AD-096	<u>Highways Agency - Engineering Drawings Regulations (5)(2)(o) & 6(2) Non Motorised User Provisions Sheet 1 of 4 (APP-23.5(B))</u>
AD-097	<u>Highways Agency - Engineering Drawings Regulations (5)(2)(o) & 6(2) Non Motorised User Provisions Sheet 2 of 4 (APP-23.5(C))</u>
AD-098	<u>Highways Agency - Engineering Drawings Regulations (5)(2)(o) & 6(2) Non Motorised User Provisions Sheet 3 of 4 (APP-23.5(D))</u>
AD-099	<u>Highways Agency - Engineering Drawings Regulations (5)(2)(o) & 6(2) Non Motorised User Provisions Sheet 4 of 4 (APP-23.5(E))</u>

Transboundary Documents

TR-001	<u>Transboundary screening undertaken by the Secretary of State</u>
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Adequacy of Consultation Responses

AOC-001	<u>North East Lincolnshire - Adequacy of Consultation Responses</u>
AOC-002	<u>North Lincolnshire - Adequacy of Consultation Responses</u>
AOC-003	<u>Nottinghamshire County Council - Adequacy of Consultation Responses</u>

Correspondence

CR-001	<u>Highways Authority - Certificates of compliance (with s.56, s.59 and Reg 13)</u>
CR-002	<u>Highways Agency - Notice of Open Floor, Issue Specific and Compulsory Acquisition Hearings</u>
CR-003	<u>Highways Agency - Covering Letter to accompany submissions made to PINS (4 April 2014)</u>
CR-004	<u>Highways Agency - Covering Letter to accompany submission made to PINS (22 April 2014)</u>
CR-005	<u>Highways Agency - Covering letter to accompany submission of ES Second Addendum (24 June 2014)</u>
CR-006	<u>Highways Agency - Response to Rule 17 request regarding consultation (30 June 2014)</u>
CR-007	<u>Environment Agency - Confirmation that updated Flood Risk Modelling is acceptable (9 July 2014)</u>
CR-008	<u>Highways Agency - Covering letter to accompany submissions made to PINS (10 July 2014)</u>
CR-009	<u>National Grid - Update on negotiations between Nation Grid and Highways Agency regarding terms of a protective provisions agreement (17 July 2014)</u>
CR-010	<u>Network Rail - Withdrawal of representations and objections to the Application, as agreement with SoS has been reached</u>
CR-011	<u>RSPB - Letter stating that as a result of further information provided by the Applicant RSPB agrees that there will be no likely significant effects on the Humber Estuary SPA, and that their concerns in their relevant representation have been addressed (14 July 2014)</u>
CR-012	<u>Highways Agency - Covering letter to accompany submissions made to PINS (4 July 2014)</u>
CR-013	<u>Highways Agency - Statement of intention to submit additional information regarding Rule 17 request</u>
CR-014	<u>SMart Wind - Statement of intention to submit additional information regarding Rule 17 request</u>
CR-015	<u>Phillips 66 - Statement of intention to withdraw objection</u>

Relevant Representations

RR-001	10005286	<u>Environment Agency</u>
RR-002	10020558	<u>RSPB</u>
RR-003	10021400	<u>Edgar Sandvig</u>

RR-004	10021402	<u>Associated British Ports</u>
RR-005	10021403	<u>Wynns Limited</u>
RR-006	10021406	<u>Civil Aviation Authority</u>
RR-007	10021410	<u>Anglian Water Services Ltd</u>
RR-008	10021615	<u>Air Products Plc</u>
RR-009	10021648	<u>Synthite Ltd</u>
RR-010	10021684	<u>Mr D C Lees</u>
RR-011	10022416	<u>Mr A Cresswell</u>
RR-012	10024533	<u>P D Port Services</u>
RR-013	10025236	<u>Mrs W Richardson</u>
RR-014	10025306	<u>Network Rail Infrastructure Limited</u>
RR-015	10025324	<u>Natural England</u>
RR-016	10025356	<u>Phillips 66 Limited</u>
RR-017	10025381	<u>A R Dinsdale</u>
RR-018	10025385	<u>SMart Wind Limited on behalf of Heron Wind Limited, Njord limited and Vi Aura Limited</u>
RR-019	10025386	<u>SMart Wind Limited on behalf of Optimus Wind Limited and Breesea Limited</u>
RR-020	10025402	<u>North East Lincolnshire Council</u>
RR-021	10025416	<u>Public Health England</u>
RR-022	10025434	<u>Total Lindsey Oil Refinery</u>
RR-023	10025438	<u>National Grid Electricity Transmission Plc and National Grid Gas Plc</u>

Notifications from the Planning Inspectorate

PI-001	<u>Section 55 Checklist</u>
PI-002	<u>Notification of Decision to Accept Application (27 January 2014)</u>
PI-003	<u>Post-acceptance s51 advice issued to the Highways Agency (27 January 2014)</u>
PI-004	<u>Rule 6 Letter - Notice of Preliminary Meeting and availability of relevant representations (21 March 2014)</u>
PI-005	<u>Rule 8 Letter – Examination timetable and procedure (1 May 2014)</u>

PI-006	<u>ExA's first written questions and requests for information (1 May 2013)</u>
PI-007	<u>Notification of Site Inspection & Hearings (3 June 2014)</u>
PI-008	<u>Rule 17 request for further information from the Highways Agency - consultation and written comments in respect of a number of amendments proposed to the application (30 June 2014)</u>
PI-009	<u>Rule 17 request for further information - expansion to previous Rule 17 deadline for consultation and written comments (4 July 2014)</u>
PI-010	<u>Agenda for Accompanied Site Visit and hearings (8 July 2014)</u>
PI-011	<u>ExA's report on the Implications for European Sites (RIES) cover letter (25 July 2014)</u>
PI-012	<u>ExA's report on the Implications for European Sites (RIES) (25 July 2014)</u>
PI-013	<u>Rule 17 request for further information from the Highways Agency regarding the draft DCO (5 August 2014)</u>
PI-014	<u>Rule 17 and Rule 8(3) timetable variation and request for further information regarding the final draft DCO submitted for Deadline 5 (14 August 2014)</u>
PI-015	<u>Rule 9 notice of procedural decisions and acceptance of non-material changes to the application (12 August 2014)</u>
PI-016	<u>Notification of Completion of Examining Authority Examination (5 September 2014)</u>

Local Impact Reports & Statements of Common Ground

LIR-001	<u>North East Lincolnshire Council - Local Impact Report</u>
LIR-002	<u>North Lincolnshire Council - Local Impact Report</u>
SOG-001	<u>Statement of Common Ground between the Highways Agency and Network Rail Infrastructure Limited Revision 1</u>
SOG-002	<u>Statement of Common Ground between the Highways Agency and North Lincolnshire Council</u>
SOG-003	<u>Statement of Common Ground between the Highways Agency and Phillips 66</u>
SOG-004	<u>Statement of Common Ground between the Highways Agency and Smart Wind Ltd Revision 1</u>
SOG-005	<u>Statement of Common Ground between the Highways Agency and Vitol Pipeline Immingham</u>
SOG-006	<u>Statement of Common Ground between the Highways Agency and Natural England Revision 1</u>

SOG-007	<u>Statement of Common Ground between the Highways Agency and North East Lincolnshire Council</u>
SOG-008	<u>Statement of Common Ground between the Highways Agency and Associated British Ports</u>
SOG-009	<u>Statement of Common Ground between the Highways Agency and Air Products (BR) Limited</u>
SOG-010	<u>Statement of Common Ground between the Highways Agency and Anglian Water Services Limited</u>
SOG-011	<u>Statement of Common Ground between the Highways Agency and National Grid Electricity Transmission Plc and National Grid Gas Plc</u>
SOG-012	<u>Statement of Common Ground between the Highways Agency and the Environment Agency</u>
SOG-013	<u>Statement of Common Ground between the Highways Agency and E.ON Gas UK Limited (Late)</u>
SOG-014	<u>Statement of Common Ground between the Highways Agency and Natural England Revision 2</u>
SOG-015	<u>Statement of Common Ground between the Highways Agency and North Lincolnshire Council Revision 2</u>
SOG-016	<u>Letter from the Highways Agency providing a letter from North Lincolnshire Council regarding the Statement of Common Ground - Strategic Flood Risk Assessment</u>
SOG-017	<u>Statement of Common Ground between the Highways Agency and Network Rail Infrastructure Limited Revision 2</u>
SOG-018	<u>Statement of Common Ground between the Highways Agency and Smart Wind Ltd Revision 2</u>
SOG-019	<u>Statement of Common Ground between the Highways Agency and Anglian Water Services Limited Revision 2.0</u>
SOG-020	<u>Statement of Common Ground between the Highways Agency and E.ON Gas UK Limited Revision 2.0</u>
SOG-021	<u>Statement of Common Ground between the Highways Agency and the Environment Agency Revision 2.0</u>
SOG-022	<u>Statement of Common Ground between the Highways Agency and National Grid Electricity Transmission Plc and National Grid Gas Plc Revision 2.0</u>
SOG-023	<u>Statement of Common Ground between the Highways Agency and Natural England Revision 3.0</u>
SOG-024	<u>Statement of Common Ground between the Highways Agency an North Lincolnshire Council Revision 3.0</u>

SOG-025	<u>Statement of Common Ground between the Highways Agency and Vitol Pipeline Immingham Revision 3.0</u>
SOG-026	<u>Statement of Common Ground between the Highways Agency and SMart Wind Revision 3.0</u>

Deadline 1

D1-001	<u>Highways Agency – Covering Letter to accompany submissions made for deadline 1</u>
D1-002	<u>Highways Agency - Letter providing written consent for the acquisition of interests in Crown Land (s135)</u>
D1-003	<u>Highways Agency - A schedule providing information relating to s127 and s138 of the Planning Act 2008 (as amended)</u>
D1-004	<u>Highways Agency - Planning Policy Background</u>
D1-005	<u>GTC Pipelines - Email confirming that GTC Pipelines have no comments to make at this moment in time</u>

Deadline 2

D2-001	<u>Highways Agency - Response to ExA first written questions</u>
D2-002	<u>Highways Agency - Response to ExA first written questions - Appendix 1</u>
D2-003	<u>Highways Agency - Response to ExA first written questions - Appendix 2.1</u>
D2-004	<u>Highways Agency - Response to ExA first written questions - Appendix 2.2 [Confidential Report]</u>
D2-005	<u>Highways Agency - 13 Response to ExA first written questions- Appendix 3</u>
D2-006	<u>Associated British Ports - Response to ExA first written questions</u>
D2-007	<u>North East Lindsey Drainage Board - Response to ExA first written questions</u>
D2-008	<u>English Heritage - Response to ExA first written questions</u>
D2-009	<u>Environment Agency Response - to ExA first written questions</u>
D2-010	<u>Network Rail - Response to ExA first written questions</u>
D2-011	<u>RSPB Response - to ExA first written questions</u>
D2-012	<u>SMart Wind - Response to ExA first written questions</u>
D2-013	<u>North Lincolnshire Council - Response to ExA first written questions</u>

D2-014	<u>Natural England - Written representation & Response to ExA first written questions</u>
D2-015	<u>Anglian Water - Written representation</u>
D2-016	<u>Wynns Ltd - Written representation</u>
D2-017	<u>Creswel - Written representation</u>
D2-018	<u>Crofts - Written representation</u>
D2-019	<u>Air Products - Written representation</u>
D2-020	<u>Environment Agency Written representation</u>
D2-021	<u>Network Rail - Written representation</u>
D2-022	<u>Phillips 66 - Written representation</u>
D2-023	<u>Synthite - Written representation</u>
D2-024	<u>Highways Agency - Covering letter to accompany response to relevant representations</u>
D2-025	<u>Highways Agency - Response to relevant representations</u>
D2-026	<u>Highways Agency - Response to ExA's written question 1.2 - Supplementary Information</u>
D2-027	<u>North East Lincolnshire – Response to ExA's written questions</u>

Deadline 3

D3-001	<u>Highways Agency - Covering letter to accompany responses made for Deadline 3</u>
D3-002	<u>Highways Agency - Response to written representations</u>
D3-003	<u>Environment Agency - comments on the Highways Agency's response to ExA 1st written questions</u>
D3-004	<u>Highways Agency - Revised DCO (clean)</u>
D3-005	<u>Highways Agency - Revised DCO (with comments and tracked changes)</u>

Deadline 4

D4-001	<u>Highways Agency - Covering letter to accompany submissions made for Deadline 4</u>
D4-002	<u>Highways Agency - Final preferred draft DCO for submission Deadline 4 (clean)</u>

D4-003	<u>Highways Agency - Final preferred draft DCO for submission Deadline 4 (tracked changes)</u>
D4-004	<u>Highways Agency - Final preferred draft DCO - Explanatory Memorandum</u>
D4-005	<u>Highways Agency - Final preferred draft DCO - Explanatory Memorandum (tracked changes)</u>
D4-006	<u>Highways Agency - Commentary on final draft DCO for submission 4</u>
D4-007	<u>Highways Agency - Statement relating to draft DCO for submission Deadline 4</u>
D4-008	<u>Highways Agency - Written summary of oral case put forward at the DCO and compulsory acquisition open floor hearings</u>
D4-009	<u>North Lincolnshire Council - Local planning policies document</u>
D4-010	<u>North East Lincolnshire - Local Plan</u>
D4-011	<u>Environment Agency - Written summary of oral case at the draft DCO hearing</u>
D4-012	<u>Highways Agency - Flood Risk Plans as requested by ExA</u>
D4-013	<u>Highways Agency - Plan documents - Existing and proposed road surfacing plan; Future speed limits plan & Core traffic flow information</u>
D4-014	<u>Highways Agency - Book of Reference (Parts 1 to 5)</u>
D4-015	<u>Highways Agency - Schedule providing update on negotiations with statutory undertakers</u>
D4-016	<u>Phillips 66 - Written summary of oral case made at the draft DCO hearing</u>
D4-017	<u>Air Products - Additional representations</u>
D4-018	<u>Highways Agency - Supplementary information in response to ExA's written questions</u>
D4-019	<u>Highways Agency - Summary or responses to consultation amendments and supplementary information</u>
D4-020	<u>Natural England - Response to ExA's Rule 17 request for more information</u>

Deadline 5

D5-001	<u>Highways Agency - Final preferred draft DCO for submission Deadline 5 (clean)</u>
D5-002	<u>Highways Agency - Final preferred draft DCO for submission Deadline 5 (tracked changes)</u>
D5-003	<u>Highways Agency - Commentary on final draft DCO for submission</u>

	<u>Deadline 5</u>
D5-004	<u>Highways Agency - Statement relating to the updated draft DCO for submission Deadline 5</u>
D5-005	<u>Natural England - Comments on the ExA's Report On the Implications for European Sites (RIES)</u>
D5-006	<u>BNP Paribas Real Estate on behalf of Centrica PLC - Comments on final preferred draft DCO</u>
D5-007	<u>VPI Immingham - Comments on final preferred draft DCO</u>
D5-008	<u>SMart Wind - Update on discussions with the applicant regarding its objection</u>

Deadline 6

D6-001	<u>Anglian Water - Response to Rule 17 letter</u>
D6-002	<u>DDM Agriculture - Response to Rule 17 letter</u>
D6-003	<u>Environment Agency - Response to Rule 17 letter and withdrawal of objection</u>
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D6-005	<u>Highways Agency - Cover letter in response to Rule 17 letter</u>

Additional Representations

AR-001	<u>Network Rail - Response to Rule 6</u>
AR-002	<u>English Heritage - Notification of accepted DCO application</u>
AR-003	<u>Homes and Communities Agency - Response to Rule 6</u>
AR-004	<u>Eric Carnaby & Sons - Response to Rule 6</u>
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AR-006	<u>Highways Authority - Response to Rule 17 regarding second addendum to the ES</u>
AR-007	<u>Fieldfisher on behalf of National Grid Gas plc and National Grid Electricity Transmission plc - Withdrawal of objection to the application</u>
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AR-011	<u>Mundays LLP on behalf of Air Products – Withdrawal of objections</u>
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APPENDIX B - EVENTS IN THE EXAMINATION AND PROCEDURAL DECISIONS

Application

The application, dated 8 January 2014 was made under s37 of the Planning Act (as amended) and was received in full by the Planning Inspectorate on 8 January 2014.

The application was accepted for Examination on 27 January 2014.

Examining Authority

On 21 March 2014 [PI-004] a single Examining Inspector was appointed as Examining Authority (ExA) to conduct the examination under s61 of the Planning Act 2008 (as amended).

Rule 4 and 6 Letter

The ExA issued a letter under Rules 4 and 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) on 21 March 2014 [PI-004].

Preliminary Meeting

The ExA held the Preliminary Meeting on 24 April 2014.

Period of Examination

The Examination started on 25 April 2014 and ended on 4 September 2014.

Rule 8 Letter

The ExA issued a letter under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) on 1 May 2014 [PI-005].

Examining Authority's Written Questions

The ExA issued its first, and only, round of written questions on 1 May 2014 [PI-006] with a deadline for responses of 27 May 2014.

Procedural Decisions

The ExA issued procedural decisions under Rules 8, 9 and/or 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) on:

- 1 May 2014 [PI-005] - Rule 8 Letter
- 30 June 2014 [PI-008] - Rule 17 Letter; Request for further information and written comments
- 4 July 2014 [PI-009] - Rule 17 Letter; Request for further information and written comments
- 5 August 2014 [PI-013] - Rule 17 Letter; Request for further information from the Highways Agency regarding the draft DCO
- 15 August 2014 [PI-014] - Rule 17 and Rule 8(3) Letter; Timetable variation and request for further information regarding the final draft DCO submitted for Deadline 5
- 12 August 2014 [PI-015] - Rule 9 Letter; Notice of procedural decisions and acceptance of non-material changes to the application

Hearings

The ExA held the following Hearings:

- Open floor hearing 15 July 2014
- Issue specific hearing on the draft DCO 16 July 2014
- Compulsory acquisition hearing 17 July 2014

Accompanied Site Visit

The ExA held an Accompanied Site Visit on 15 July 2014.

APPENDIX C - LIST OF ABBREVIATIONS

AA	Appropriate Assessment
ABP	Associated British Ports
AIES	Assessment of Implications for European Sites
APFP Regs	The Infrastructure Planning (Application: Prescribed Forms and Procedures) Regulations 2009
AQMA	Air Quality Management Area
BAP	Biodiversity Action Plan
BHD	Birds and Habitats Directives
BoR	Book of Reference
CA	Compulsory Acquisition
CEMP	Construction Environmental Management Plan
DaSTA	Delivering a Sustainable Transport System
DCLG/CLG	Department for Communities and Local Government
DCO	Development Consent Order
DDA	Disability Discrimination Act
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
dNPSNN	draft National Policy Statement on National Networks
DPD	Housing and Employment Land Allocations
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
EST	Environmental Services Team
ExA	Examining Authority
FOI	Freedom of Information
GLVIA	Guidelines for Landscape and Visual Impact Assessment
HA	Highways Agency
HGVs	Heavy Goods Vehicles
HRA	Habitats Regulation Assessment
IP	Interested Party
IROPI	Imperative Reasons of Overriding Public Interest
JNCC	Joint Nature Conservation Committee
LIR	Local Impact Report
LWS	Local Wildlife Site
MAP	Major Applications and Plans

MIEU	Major Infrastructure and Environment Unit
MoD	Ministry of Defence
NE	Natural England
NELC	North East Lincolnshire Council
NELDB	North East Lindsey Internal Drainage Board
NELLP	North East Lincolnshire Local Plan
NERC	Natural Environment and Rural Communities Act
NEWP	Natural Environment White Paper
NLC	North Lincolnshire Council
NLCS	North Lincolnshire Core Strategy
NMUs	Non-Motorised Users
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NR	Network Rail
NSIPs	Nationally Significant Infrastructure Projects
PEI	Preliminary Environmental Information
Prescribed Consultee	Person or Body as Specified in section 42a Listed in Schedule 1 of APFP
PINS	The Planning Inspectorate
PPG	Planning Practice Guidance
REZ	Renewable Energy Zone
RIES	Report on the Implications for European Sites
RR	Relevant Repts
RSPB	Royal Society for the Protection of Birds
SACs	Special Areas of Conservation
SMW	Smart Wind
SoCC	Statement of Community Consultation
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Areas
SPP	Special Parliamentary Procedure
SSSI	Site of Special Scientific Interest
WFD	Water Framework Directive
WR	Written Representation
WSI	Written Scheme of Investigation
ZVI	Zone of Visual Influence

APPENDIX D - PROPOSED DEVELOPMENT CONSENT ORDER

STATUTORY INSTRUMENTS

201[] No.

INFRASTRUCTURE PLANNING

The A160/A180 (Port of Immingham Improvement)
Development Consent Order 201[]

Made - - - - 201[]

Coming into force - - 201[]

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 22, 37, 115, 120 and 122 of the Planning Act 2008(b).

[The application was examined by a [single appointed person] [Panel] (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] [Panel], 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 to the Secretary of State.]

[The Secretary of State, having considered the representations made and not withdrawn, and the report of the [single appointed person] [Panel], 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, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 22, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the A160/A180 (Port of Immingham Improvement) Development Consent Order 201[] and comes into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

(a) S.I. 2009/2264.

(b) 2008 c.29.

(c) S.I. 2010/103.

(d) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1980 Act which are not relevant to this Order.

(e) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

“the 1980 Act” means the Highways Act 1980(a);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(b);

“the 1984 Act” means the Road Traffic Regulation Act 1984(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

“the 2008 Act” means the Planning Act 2008(f);

“address” includes any number or address for the purposes of electronic transmission;

“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) or any part of them and any other development authorised by this Order or part thereof, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act and includes part of a carriageway;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“cycle track” has the same meaning as in the 1980 Act and includes part of a cycle track;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the engineering drawings and sections” means the documents certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

-
- (a) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.
- (c) 1984 c.27.
- (d) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (f) 2008 c.29.

“environmental statement” means the document submitted alongside the application for this Order, together with any addendums submitted, and certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footway” and “footpath” have the same meaning as in the 1980 Act and include part of a footway or footpath;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act and “highway” includes part of a highway;

“the land plans” means the plans 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 5;

“maintain” and any of its derivatives include inspect, repair, adjust, alter, remove or reconstruct in relation to the authorised development and any derivative of “maintain” shall be construed accordingly;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

“the Order limits” means the limits of deviation shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates being either North Lincolnshire Council or North East Lincolnshire Council;

“rights of way and access plans” means the plans certified as the rights of way and access plans by the Secretary of State for the purposes of this Order;

“Secretary of State” means the Secretary of State for Transport;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 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;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“traffic regulation plans” means the plans certified as the traffic regulation plans by the Secretary of State for the purposes of this Order;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) any other enactment;

“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

“the works plans” means the plans 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

(a) 1981 c. 67.

~~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 shall be 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 shall be construed as references to points so lettered or numbered on the rights of way and access plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the Secretary of State is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

4. The Secretary of State 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

5.—(1) Subject to article 5(2), in carrying out works the Secretary of State may—

- (a) in relation to all authorised development, deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in relation to Work No.28, deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 0.15 metres upwards or downwards; and
- (c) in relation to all authorised development other than Work No.28, deviate vertically from the levels of the authorised development shown on the engineering drawings and sections, to a maximum of 0.5 metres upwards or downwards.

(2) The authorised development must be carried out in accordance with the engineering drawings and sections subject to such non-material amendments as are approved in writing by the relevant planning authority, provided that such approval is not given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the Secretary of State have effect solely for the benefit of the Secretary of State.

(2) Paragraph (1) does not apply to the specified works for which the consent is granted by this Order for the express benefit of the following owners and occupiers of land, statutory undertakers and other persons affected by the authorised development:

- (a) Northern Powergrid: in relation to Work Nos.9 and 11;
- (b) Anglian Water Services Limited in relation to Work Nos.10 and 12;
- (c) Vitol Power Immingham in relation to Work No.14;
- (d) National Grid Gas Plc in relation to Work Nos.15 and 16;
- (e) E.ON UK Gas Limited in relation to Work No.17;
- (f) Heron Wind Limited in relation to Work No.18; and
- (g) Air Products (BR) Limited in relation to Work No.30.

Consent to transfer benefit of Order

7.—(1) The Secretary of State 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 Secretary of State and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Secretary of State 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.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the Secretary of State, except in paragraph (3), includes references to the transferee or the lessee, except where the reference is to a consenting function of the Secretary of State.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the Secretary of State.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—

- (a) Northern Power Grid for the purposes of undertaking WorkNos.9 and 11;
- (b) Anglian Water Services Limited for the purposes of undertaking Work Nos.10 and 12;
- (c) Vitol Power Immingham for the purposes of undertaking Work No.14;
- (d) National Grid Gas PLC for the purposes of undertaking Work Nos.15 and 16;
- (e) E.ON UK Gas Limited for the purposes of undertaking Work No.1;
- (f) Heron Wind Ltd for the purposes of undertaking Work No.18;
- (g) Air Products (BR) Limited for the purposes of undertaking Work No.30.

Application and modification of legislative provisions

8. Nothing in the following legislative provisions including any requirements for consent shall apply to the authorised development—

- (a) Humber Commercial Railway and Dock Act 1904(a); and
- (b) Barton and Immingham Light Railway Order 1907(b).

(a) 1904 c. lxxxv.

(b) 1907 [].

PART 3 STREETS

Application of the 1991 Act

9.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) 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) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(2) In Part 3 of the 1991 Act references, to the highway authority concerned shall, in relation to works which are major highway works by virtue of paragraph (1), be construed as references to the Secretary of State.

(3) The following provisions of the 1991 Act shall not apply in relation to any works executed under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (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 shall apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the promoter under the powers conferred by article 13 (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 referred to in paragraph (4) are—

- section 54 (advance notice of certain works), subject to paragraph (6);
- section 55 (notice of starting date of works), subject to paragraph (6);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation); and
- 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) shall 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 10 (construction and maintenance of new, altered or diverted streets) shall—

- (a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the Secretary of State shall not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

10.—(1) Any street (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 street lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the street authority from its completion.

(3) Where a highway is de-trunked under this Order—

- (a) section 265 of the 1980 Act applies in respect of that road; and
- (b) any alterations to that highway undertaken under this Order prior to and in connection with that de-trunking must, unless otherwise agreed with the local highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(4) In the case of a bridge constructed under this Order to carry a public right of way, the highway surface (being those elements over the waterproofing membrane) shall be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, shall be maintained by and at the expense of the Secretary of State.

(5) In any action against the Secretary of State 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 Secretary of State 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.

(6) For the purposes of a defence under paragraph (5), the court shall 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 Secretary of State 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;
- (e) where the Secretary of State 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 Secretary of State 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 Secretary of State had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Classification of roads, etc.

- 11.—(1) On the date on which the authorised development is completed and open for traffic—
- (a) the roads described in Part 1 of Schedule 3 (classification of roads, etc.) will become trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads;
 - (b) the roads described in columns (1) and (2) of Part 2 of Schedule 3 (classification of roads, etc.) shall cease to have the classification specified in column (3) of that Part and will take the classification specified in column (4) of that Part; and
 - (c) the roads given a classification in column (4) of Part 2 of Schedule 3 (classification of roads, etc.) will be 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) of the 1980 Act.
- (2) On such day as the Secretary of State may determine, the roads described in Part 3 of Schedule 3 (classification of roads, etc.) will—
- (a) cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads; and
 - (b) be classified as specified in column (4) of that Part as if such classification had been made under section 12(3) of the Highways Act 1980.
- (3) On the date they are open for traffic, no person is to drive any motor vehicle at a speed exceeding the speed limits specified in Parts 4, 5 and 6 of Schedule 3 (classification of roads, etc.) for the lengths of road identified in those Parts.
- (4) On the date they are open for traffic, no person is to drive any motor vehicle at a weight exceeding the weight limits specified in Part 7 of Schedule 3 (classification of roads, etc.) for the lengths of road identified in that Part except where required for access to a property located along such lengths of road.
- (5) On such a day as the Secretary of State may determine, the restrictions specified in Part 8 of Schedule 3 (classification of roads, etc.) shall apply for the length of road identified in that Part.
- (6) On the date they are open for traffic, the restrictions specified in Parts 8, 9 and 10 of Schedule 3 (classification of roads, etc.) shall apply for the lengths of road identified in that Part.
- (7) Unless otherwise agreed with the relevant planning authority the cycle tracks and footways set out in Part 11 of Schedule 3 (classification of roads, etc.) and identified on the rights of way and access plans shall be constructed by the Secretary of State in the specified locations and open for use on the date on which the authorised development is open for traffic.
- (8) Unless otherwise agreed with the relevant land owner the private accesses set out in Part 12 of Schedule 3 (classification of roads, etc.) and identified on the rights of way and access plans shall be constructed by the Secretary of State in the specified locations and open for use on the date on which the authorised development is open for traffic.
- (9) Unless otherwise agreed with the relevant landowner the public right of way set out in Part 13 of Schedule 3 (classification of roads, etc.) and identified on the rights of way and access plans shall be created by the Secretary of State.
- (10) Unless otherwise agreed with the relevant landowner the permissive right of way set out in Part 14 of Schedule 3 (classification of roads, etc.) and identified on the rights of way and access plans shall be diverted by the Secretary of State as shown on those plans during the construction of the authorised development.
- (11) The application of paragraphs (1) to (10) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Permanent stopping up and restriction of use of streets

12.—(1) Subject to the provisions of this article, the Secretary of State may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (permanent stopping up of streets) to the extent specified and described in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted (constructed) for it, which is specified in column (4) 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 to be stopped up is first provided and subsequently maintained by the Secretary of State, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (being a street 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 to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the Secretary of State is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the Secretary of State may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the Secretary of State.

(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, under Part 1 of the 1961 Act.

(7) This article is subject to article 31 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up and restriction of use of streets

13.—(1) The Secretary of State, 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 (2), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the Secretary of State may use any street temporarily stopped up or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The Secretary of State must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The Secretary of State must not temporarily stop up, alter or divert any street for which it is not 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, under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph 13(4) fails to notify the Secretary of State of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted consent.

Access to works

14. The Secretary of State 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 Secretary of State reasonably requires for the purposes of the authorised development.

Clearways

15.—(1) From the date on which the roads described in Part 1 of Schedule 3 are open for traffic, save as provided in paragraph (2) below, no person shall cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) above shall apply—

- (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 telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984(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 Vehicle and Operator Services Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(c); 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 his or her control.

(3) No person shall cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 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.

(a) 1984 c.12.
(b) 1991 c.56.
(c) 2000 c.26.

(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.

PART 4 SUPPLEMENTAL POWERS

Discharge of water

16.—(1) The Secretary of State may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance 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 subject to obtaining the consent in paragraph (3) below.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the Secretary of State under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).

(3) The Secretary of State 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 shall not be unreasonably withheld.

(4) The Secretary of State 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 shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The Secretary of State must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The Secretary of State must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, 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, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those regulations.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the Secretary of State of a decision within 28 days of receiving an application that person shall be deemed to have granted consent or given approval, as the case may be.

(a) S.I. 2010/675.

Protective work to buildings

17.—(1) Subject to the following provisions of this article, the Secretary of State may at the Secretary of State's own expense carry out such protective works to any building which may be affected by the authorised development as the Secretary of State 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 Secretary of State may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the Secretary of State may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (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 Secretary of State 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 40 (arbitration).

(7) The Secretary of State 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 Secretary of State must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article will relieve the Secretary of State from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) will be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(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

18.—(1) The Secretary of State 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 to the scope of sub-paragraph (a), make trial holes in such positions on the land as the Secretary of State thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of 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.

(3) Any person entering land under this article on behalf of the Secretary of State—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto 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
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The Secretary of State must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the Secretary of State of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4) (a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority shall be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

19.—(1) The Secretary of State may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (2) of article 22 (compulsory acquisition of rights) and paragraph (8) of article 28 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

20. Part 2 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) is incorporated in this Order subject to the modification that for the acquiring authority substitute the Secretary of State.

Time limit for exercise of authority to acquire land compulsorily

21.—(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; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 28 (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 Secretary of State 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

22.—(1) Subject to paragraph (2), the Secretary of State may acquire such rights over the Order land as may be required for any purpose for which that land may be acquired under article 19 (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 Secretary of State's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the Secretary of State acquires a right over land under paragraph (1) or (2), the Secretary of State 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.

Private rights over land

23.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the Secretary of State, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Secretary of State under section 11(1) of the 1965 Act (power of entry),

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) as from the date of the acquisition of the right ~~or the benefit of the restrictive covenant~~ by the Secretary of State, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Secretary of State under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the Secretary of State 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 Secretary of State takes temporary possession under this Order are suspended and unenforceable for as long as the Secretary of State 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 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 30 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the Secretary of State before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights over or affecting the land;
 - (ii) the Secretary of State's appropriation of it;
 - (iii) the Secretary of State's entry onto it; or
 - (iv) the Secretary of State'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 Secretary of State and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as 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 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.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

24.—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, shall have effect with the following modifications.

(3) In section 1 (application of act) for subsection 2 there shall be substituted—

“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.”.

(4) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(5) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(6) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(7) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(8) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(9) References to the 1965 Act in the 1981 Act shall be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

25.—(1) The Secretary of State may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 19 (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 Secretary of State acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the Secretary of State is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 26 (acquisition of part of certain properties) from applying where the Secretary of State acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

26.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Secretary of State a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat is, unless the Secretary of State agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Secretary of State is authorised to acquire compulsorily under this Order.

(8) If the Secretary of State agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Secretary of State is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the Secretary of State may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and in that event must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the Secretary of State must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

27.—(1) The Secretary of State 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 Secretary of State 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 Secretary of State acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be 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 an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) 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

28.—(1) The Secretary of State may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary 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 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 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, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the Secretary of State must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Secretary of State may 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) but excluding plots with reference numbers 1/1t, 1/1y, 1/1w, 1/1ag, 1/1ah, 1/1ak, 2/2b, 2/2c, 2/2e, 2/2f, 2/7d, 2/5a, 2/6a, 2/7b, 2/6c, 2/8a, 2/7f, 2/7g, 2/5c, 2/5d, 2/5i, 2/5j, 2/5e, 4/1d, 4/1g and 4/1j, 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;
- (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 Secretary of State 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; or

- (c) in the case of the plots with reference numbers 1/1t, 1/1y, 1/1w, 1/1ag, 1/1ah, 1/1ak, 2/2b, 2/2c, 2/2e, 2/2f, 2/7d, 2/5a, 2/6a, 2/7b, 2/6c, 2/8a, 2/7f, 2/7g, 2/5c, 2/5d, 2/5i, 2/5j, 2/5e, 4/1d, 4/1g and 4/1j, after the new rights have been created pursuant to article 22.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Secretary of State must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Secretary of State 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; or
- (d) remove any measures installed over or around statutory undertakers apparatus to protect that apparatus from the authorised development.

(5) The Secretary of State 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 under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 Secretary of State may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the Secretary of State is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 22 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 25 (acquisition of subsoil or airspace only).

(9) Where the Secretary of State takes possession of land under this article, the Secretary of State will not acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

(11) Paragraph (1)(a)(ii) does not authorise the Secretary of State to take temporary possession of any land which the Secretary of State is not authorised to acquire under articles 19 (compulsory acquisition of land) or 22 (compulsory acquisition of rights).

Temporary use of land for maintaining the authorised development

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the Secretary of State 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; and
- (b) 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) shall not authorise the Secretary of State 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 Secretary of State shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The Secretary of State 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.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the Secretary of State shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The Secretary of State shall 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.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 (6).
- (9) Where the Secretary of State takes possession of land under this article, the Secretary of State will not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (11) 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

30.—(1) Subject to the provisions of Schedule 8 (protective provisions) and paragraph (2), the Secretary of State may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used permanently or temporarily and described in the book of reference;
- (b) extinguish the rights of, 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 of the 1991 Act; and
- (b) article 31 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped-up streets

31.—(1) Where a street is stopped up under article 12 (permanent stopping up and restriction of use of streets), 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 12 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 Secretary of State 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 Secretary of State 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 Secretary of State, 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 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the Secretary of State and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“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

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (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 Secretary of State 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 30, 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 Secretary of State 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 31 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Felling or lopping of trees

33.—(1) The Secretary of State may fell or lop any tree or shrub, or cut back any roots, within or overhanging land within the Order limits, 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), the Secretary of State 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.

(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 under Part 1 of the 1961 Act.

(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

PART 7
MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

34.—(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) Accordingly, 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
- (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

35. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the Secretary of State 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 site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or

(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.
(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c. 25. There are other amendments to the 1974 Act which are not relevant to this Order.

(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) (consent for work on construction site 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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), does not apply where the consent relates to the use of premises by the Secretary of State for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

37. Schedule 8 (protective provisions) to the Order has effect.

Certification of plans, etc.

38.—(1) As soon as practicable after the making of this Order, copies of—

(a) the book of reference (Parts 1 to 5) (TR010007/APP/13c), Revision 1;

(b) the land plans (TR010007/APP/11):

TR010007/APP/11/(A), Revision 0;

TR010007/APP/11/(B), Revision 0;

TR010007/APP/11/(C), Revision 0;

TR010007/APP/11/(D), Revision 0;

TR010007/APP/11/(E), Revision 0;

(c) the street, rights of way and access plans (TR010007/APP/21.1):

TR010007/APP/21.1 (A), Revision 0;

TR010007/APP/21.1 (B), Revision 0;

TR010007/APP/21.1 (C), Revision 1;

TR010007/APP/21.1 (D), Revision 1;

TR010007/APP/21.1 (E), Revision 1;

(d) the works plans (TR010007/APP/12):

TR010007/APP/12 (A), Revision 0;

TR010007/APP/12 (B), Revision 0;

TR010007/APP/12 (C), Revision 1;

TR010007/APP/12 (D), Revision 0;

TR010007/APP/12 (E), Revision 0;

(e) the engineering drawings and sections:

(i) General Arrangements (TR010007/APP/23.1):

TR010007/APP/23.1(A), Revision 0;

TR010007/APP/23.1(B), Revision 0;

TR010007/APP/23.1(C), Revision 0;

TR010007/APP/23.1(D), Revision 0;

TR010007/APP/23.1(E), Revision 0;

TR010007/APP/23.1(F), Revision 0;

TR010007/APP/23.1(G), Revision 0;

TR010007/APP/23.1(H), Revision 0;

- TR010007/APP/23.1(I), Revision 0;
TR010007/APP/23.1(J), Revision 0;
TR010007/APP/23.1(K), Revision 1;
- (ii) Longitudinal Sections (TR010007/APP/23.2):
TR010007/APP/23.2 (A), Revision 0;
TR010007/APP/23.2 (B), Revision 0;
TR010007/APP/23.2 (C), Revision 0;
TR010007/APP/23.2 (D), Revision 0;
TR010007/APP/23.2 (E), Revision 0;
TR010007/APP/23.2 (F), Revision 0;
TR010007/APP/23.2 (G), Revision 0;
TR010007/APP/23.2 (H), Revision 0;
TR010007/APP/23.2 (I), Revision 1;
- (iii) Structure Details (TR010007/APP/23.3):
TR010007/APP/23.3 (A), Revision 0;
TR010007/APP/23.3 (B), Revision 0;
TR010007/APP/23.3 (C), Revision 0;
TR010007/APP/23.3 (D), Revision 0;
TR010007/APP/23.3 (E), Revision 0;
- (iv) Drainage Details (TR010007/APP/23.4):
TR010007/APP/23.4 (A), Revision 0;
TR010007/APP/23.4 (B), Revision 0;
TR010007/APP/23.4 (C), Revision 0;
TR010007/APP/23.4 (D), Revision 0;
TR010007/APP/23.4 (E), Revision 0;
- (v) Non-Motorised User Provisions (TR010007/APP/23.5):
TR010007/APP/23.5 (A), Revision 0;
TR010007/APP/23.5 (B), Revision 0;
TR010007/APP/23.5 (C), Revision 1;
TR010007/APP/23.5 (D), Revision 1;
TR010007/APP/23.5 (E), Revision 1;
- (f) the traffic regulation plans (TR010007/APP/21.2)
TR010007/APP/21.2 (A), Revision 0;
TR010007/APP/21.2 (B), Revision 0;
TR010007/APP/21.2 (C), Revision 0;
TR010007/APP/21.2 (D), Revision 0;
TR010007/APP/21.2 (E), Revision 0; and
- (g) any other plans or documents referred to in this Order,

must be certified by the Secretary of State as true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

39.—(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 of the Interpretation Act 1978(a) 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.

(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 shall 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) 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 will 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 will be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(a) 1978 c. 30.

(9) This article will not be taken to 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

40. 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.

Traffic regulation

41.—(1) This article applies to roads in respect of which the Secretary of State 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 shall not be unreasonably withheld, the Secretary of State 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 Secretary of State.

(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 Secretary of State 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 Secretary of State must not exercise the powers conferred by paragraph (2) unless the Secretary of State has—

- (a) given not less than—
 - (i) 12 weeks’ notice in writing of the Secretary of State’s intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks’ notice in writing of the Secretary of State’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 Secretary of State’s intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the Secretary of State’s intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the Secretary of State’s intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the Secretary of State under paragraph (2) shall—

- (a) have 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 of the 1984 Act,
- 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) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(a) (road traffic contraventions subject to civil enforcement).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Secretary of State from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers of paragraph (2) the Secretary of State must consult such persons as the Secretary of State considers necessary and appropriate and shall take into consideration any representations made to the Secretary of State by any such person.

(9) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

(10) The powers conferred on the Secretary of State by this article with respect to any road shall have effect subject to any agreement entered into by the Secretary of State 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 Secretary of State of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority shall be deemed to have granted consent.

Signed by authority of the Secretary of State for Transport

[] 201[]

[Name]
[Designation]
Department for Transport

(a) 2004 c. 18.

SCHEDULES

SCHEDULE 1

Article 2 and 3

AUTHORISED DEVELOPMENT

In the administration area of North East Lincolnshire and North Lincolnshire

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, comprising:

Work No.1 — the construction of a new A160 dual carriageway, north east from Brocklesby Interchange to the new Habrough Roundabout.

Work No.2 (Parts a, b, c, d, e, f) — the construction of up to 6 highway drainage attenuation pond and pollution control facilities.

Work No.3 — the construction of a new westbound A180 on-slip to the west of the Brocklesby Interchange.

Work No.4 — the construction of a new eastbound A180 off-slip to the west of the Brocklesby Interchange.

In the administration area of North East Lincolnshire

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, comprising:

Work No.5 — the construction of a new roundabout junction (referred to in this schedule as "the Brocklesby Interchange") to connect the A180 eastbound and westbound with the new A160 dual carriageway.

Work No.6 — the construction of a new A180 bridge to form the east side of the Brocklesby Interchange.

Work No.7 — the construction of a new westbound A180 off-slip to the east of the Brocklesby Interchange.

Work No.8 — the construction of a new eastbound A180 on-slip to the east of the Brocklesby Interchange.

In the administration area of North Lincolnshire

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, comprising:

Work No.9 — the diversion of electric cables and associated apparatus at the existing access across the A160, approximately 340m North of the Brocklesby Interchange.

Work No.10 — the diversion/protection of water pipeline under the new A160 just to the west of Ulceby Road Truck Stop.

Work No.11 — the diversion of electric cables and associated apparatus just to the west of Ulceby Road Truck Stop.

Work No.12 — the diversion/protection of up to 2 water pipelines just to the east of Ulceby Road Truck Stop under the new A160 and Ulceby Road Link.

Work No.13 — the construction of a new single carriageway section of A1077 Ulceby Road which will connect the existing A1077 Ulceby Road with the new Habrough Road Roundabout.

Work No.14 — the diversion/protection of high pressure gas pipeline under the new A160 and Ulceby Road Link, 300m west of the new Habrough Road Roundabout.

Work No.15 — the diversion of up to 2 high pressure gas pipelines 200m west of the new Habrough Road Roundabout under the new A160 and Ulceby Road Link.

Work No.16 — the protection of intermediate gas pipeline 200m west of the new Habrough Road Roundabout under the new A160 and Ulceby Road Link.

Work No.17 — the diversion/protection of high pressure gas pipeline 160m from the new Habrough Road Roundabout under new A160 and Ulceby Road Link.

Work No.18 — the installation of ducts in the proximity of the proposed Habrough Road Roundabout to house cables for the project named “Hornsea Offshore Wind Farm Project One”.

Work No.19 — the construction of a new roundabout to connect the A160 with A1077 Ulceby Road, Habrough Road and East Halton Road.

Work No.20 — the construction of a new single carriageway road between the new Habrough Road Roundabout and East Halton Road, northwards for a distance of 635m.

Work No.21 — the construction of a new single carriageway section of Greengate Lane to link Top Road and the existing Greengate Lane to the new East Halton Road link.

Work No.22 — the construction of a new southerly direction single carriageway link road from the new Habrough Road Roundabout to link to the existing Habrough Road and a new link to connect this to the stopped up section of the existing Habrough Road.

Work No.23 — the construction of a new aligned dual carriageway section of the A160 to link the new Habrough Road Roundabout to the existing alignment of the A160.

Work No.24 — the construction of a new eastbound deceleration area, the closure of existing central reserve and construction of physical islands on the A160 at the Town Street junction.

Work No.25 — the construction of a new link road between Town Street North and South, including a new bridge across the A160.

Work No.26 — the realignment of Town Street (South) between the junction with the A160 and the new Town Street link road.

Work No.27 — the alteration of existing central reserve on the A160 at the entrance to the Humber Oil Refinery to allow right turns in a westbound direction on the A160 only and restrict all other movements that would cross the A160 central reserve.

Work No.28 — the construction of a new dual lane northbound link road between Manby Roundabout and Rosper Road.

Work No.29 — the construction of a new bridge under the existing railway on the new Rosper Road link.

Work No.30 — the diversion of oxygen pipeline under the new Rosper Road Link just north of the existing railway.

Work No.31 — construction of a new northbound single lane road between Humber Road and the new Rosper Road link to allow access for abnormal loads.

In connection with the construction of any of those works, associated development within the Order limits consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) refurbishment works to any existing bridge,
- (d) ramps, means of access, non-motorised links, footpaths, footways, cycle tracks and crossing facilities,
- (e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, wing walls, highway lighting, fencing and culverts;
- (f) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus in a street; works to alter the position of apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of, or otherwise interfere with a watercourse;
- (h) landscaping 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) works required for the strengthening, improvement, maintenance, or reconstruction of any streets;
- (k) works to alter or remove road furniture;
- (l) 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);
- (m) establishment of site construction compounds, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting and haulage roads;
- (n) pumping stations to manage surface water run off;
- (o) borrow pits to provide a source of construction material; and
- (p) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

SCHEDULE 2

REQUIREMENTS

Article 3

Interpretation

1. In this Schedule—

“CEMP” means construction environmental management plan a draft of which has been submitted to the examination into the Order on 24 June 2014;

“commence” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out for the purposes of the authorised development, or any part of the authorised development, and does not include any demolition, site clearance, devegetation, remediation, environmental (including archaeological) investigation, site or soil survey, erection of contractors’ work compound, erection of site office, erection of fencing to site boundaries or marking out of site boundaries;

“European protected species” has the same meaning as in Regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(a);

“the undertaker” means the person who has the benefit of the Order in accordance with article 6 (benefit of Order).

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Construction Environmental Management Plan

3.—(1) No part of the authorised development is to commence until a CEMP has been prepared in consultation with the relevant planning authority, and submitted to and approved in writing by the Secretary of State.

(2) The construction of the authorised development must be carried out in accordance with the CEMP unless otherwise agreed in writing by the Secretary of State in consultation with the relevant planning authority

(3) The CEMP must reflect the mitigation measures included in chapters 6 to 15 of the environmental statement.

(4) The CEMP must incorporate the following plans and programmes—

(a) Site Environmental Control Plans as detailed below—

- (i) Air Pollution Prevention
- (ii) Water Pollution Prevention
- (iii) Light Pollution Prevention
- (iv) Noise, Vibration and Other Nuisances
- (v) Natural Environment
- (vi) Archaeological Management
- (vii) Use of Local Road Network

Each plan will incorporate the following –

- (viii) Responsibilities

(a) S.I. 2010/490.

- (ix) Consent Requirements
- (x) Client Requirements
- (xi) General Control Measures
- (xii) Specific Control Measures
- (xiii) Monitoring and Measurement
- (xiv) In the Event of an Emergency
- (b) Soil Management Plan—
 - (i) Soil resource plan – including protection of in situ soils, handling and storage codes of practice
 - (ii) On site re-use criteria and measures
 - (iii) Borrow pit plan
- (c) ~~(e)~~ Site Waste Management Plan—
 - (i) Management of excavated material and other waste arising
 - (ii) Waste minimisation
 - (iii) Hazardous waste management
 - (iv) Material re-use, and/or disposal
- (d) Materials Management Plan— (CL:AIRE)
 - (i) Material classification
 - (ii) On site re-use criteria and measures
 - (iii) Disposal measures
- (e) Change Control Process
- (5) The CEMP must require—
 - (a) adherence to the relevant Environment Agency Pollution Prevention Guidelines PPG1, PPG5, PPG6, PPG21 and PPG22; and
 - (b) adherence to working hours of 7:30 am to 6:00 pm on Mondays to Fridays and 7:30am to 1:00 pm on Saturdays except for:
 - (i) work associated with the installation of the new rail bridge;
 - (ii) work associated with the bridge decks for the Town Street and Brocklesby bridges;
 - (iii) works in the carriageway that due to network constraints cannot be completed during normal working hours; and
 - (iv) extended working hours in the summer months for the earthworks to take advantage of the weather / daylight.
- (6) The CEMP must include measures to ensure that the part of Work 28 that is on or to the east of Rosper Road can only be undertaken during the months of April to October inclusive.
- (7) The plans and programmes listed in paragraph 3(4) must include measures to address the event that the authorised development coincides with any other major ~~construction~~ projects in the area which may impact those matters, following consultation with the relevant planning authority.

Landscaping

- 4.—**(1) No part of the authorised development must commence until a written landscaping scheme for that part has been prepared in consultation with the relevant planning authority, and submitted to and approved in writing by the Secretary of State.
- (2) The landscaping scheme prepared under requirement 4(1) shall reflect the measures shown in Appendix 2.1 of the environmental statement.
- (3) The landscaping scheme prepared under requirement 4(1) shall include details of hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period; and
- (f) implementation timetables for all landscaping works.

Implementation and maintenance of Landscaping

5.—(1) The landscaping scheme prepared under Requirement 4 must be implemented as part of the authorised development in accordance with a timetable prepared in consultation with the relevant planning authority and submitted to and approved in writing by the Secretary of State.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant planning authority.

Fencing

6. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Highways Agency's *Manual of Contract Documents for Highway Works* unless otherwise agreed in writing by the Secretary of State.

Contaminated land and groundwater

7.—(1) In the event that contaminated land, including groundwater, are found at any time when carrying out the authorised development, which were not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contaminated land and must report it immediately in writing to the Secretary of State, Environment Agency and relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination.

(2) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose, must be submitted to and approved by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(3) No remedial work constituting a material operation (as defined in section 155 of the 2008 Act) in respect of contamination of any land, including groundwater, within the Order limits is to be carried out until the scheme for remediation has been approved under paragraph 7(2).

(4) Remediation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Secretary of State in consultation with the relevant planning authority, and construction of the authorised development in the vicinity of the contaminated land may not recommence until the remediation has been carried out.

Archaeology

8.—(1) No part of the authorised development must commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures

included in chapter 7 of the environmental statement, has been prepared in consultation with the relevant planning authority, and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1), unless otherwise agreed in writing by the Secretary of State in consultation with the relevant planning authority.

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) shall be deposited with the Historic Environment Record of the relevant local authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant local planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development will be retained in situ and reported to the relevant planning authority and Secretary of State within 10 working days.

(5) No construction operations will take place within 10 metres of such remains for a period of 14 days from the date of such notification unless otherwise agreed in writing by the Secretary of State.

(6) If the Secretary of State is of the view that the archaeological remains require further investigation, no construction operations will take place within 10 metres of the remains until provision has been made, in consultation with the relevant planning authority, for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the Secretary of State.

Ecological management plan

9.—(1) No part of the authorised development must commence until a written ecological management plan applicable to that part has been prepared, submitted to and approved in writing by the Secretary of State in consultation with the relevant planning authority and with Natural England in so far as relevant to protected species or protected sites.

(2) The ecological management plan prepared under requirement 9(1) shall reflect:

- (a) the survey results and ecological mitigation measures included in chapter 9 of the environmental statement;
- (b) the monitoring proposals set out in Table 9.15 of the environmental statement; and
- (c) the measures shown in Appendix 2.1 of the environmental statement,

and shall include a timetable for its implementation.

(3) The construction of the authorised development must be carried out in accordance with the ecological management plan, unless otherwise agreed with the Secretary of State.

(4) In the event that any European protected species are found at any time when carrying out the authorised development, which were not previously identified in the environmental statement the undertaker must cease construction works within 10 metres of the location of any new protected European Species found and report it immediately to Natural England and the relevant planning authority.

(5) The undertaker will prepare a written scheme for the protection and mitigation measures for any new European protected species found when carrying out the authorised development, which were not previously identified in the environmental statement.

(6) The undertaker will implement the written scheme prepared under 9(4) immediately and construction within 10 metres of the European protected Species shall not recommence until any necessary licences are obtained.

Water vole, badgers and bat roosts

10.—(1) No part of the authorised development must commence until additional surveys have been undertaken to establish the position of water vole, badgers and bat roosts.

(2) Where the presence of water vole, badgers or bat roosts are found to pose a constraint to development, the undertaker must prepare a scheme of mitigation measures to be submitted to and approved in writing by the Secretary of State in consultation with the relevant planning authority and with Natural England.

(3) The mitigation measures must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Secretary of State in consultation with the relevant planning authority and with Natural England.

11. No part of the authorised development may be brought into operation until a method statement detailing the sensitive management of highway ditches for water voles reflecting paragraph 9.7.21 of the environmental statement has been prepared, submitted to and approved in writing by the Secretary of State in consultation with the relevant planning authority.

Traffic management

12.—(1) No authorised development must commence until a traffic management plan for the construction of the authorised development has been submitted and approved by the Secretary of State, following consultation with the relevant highway authority.

(2) The authorised development must be constructed in accordance with the approved traffic management plan.

Detailed design

13. New or altered sections of carriageway shall be constructed using low noise surfacing as defined in Annex 4 of HD213/11.

14. The authorised development shall not be brought into use until the detailed design of any noise barriers to be erected as part of the scheme has been submitted and approved by the Secretary of State in consultation with the relevant planning authority and those barriers have been constructed in accordance with the approved design.

15. The authorised development must be carried out in accordance with the scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State and provided the development so altered falls within the limits of deviation.

Surface and foul water drainage

16.—(1) No authorised development must commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in chapters 2, 9 and 15 of the environmental statement and including means of pollution control and design details of the pumping stations to be constructed as part of the associated development to manage surface run off, have been prepared, submitted to and approved by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(2) The drainage system must be constructed in accordance with the approved details referred to in paragraph (1), unless otherwise agreed in writing with the Secretary of State.

Approvals and Amendments to approved details

17.—(1) Where the words “unless otherwise agreed in writing ~~by~~with the Secretary of State” are used in these requirements such agreement may only be given in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the Secretary of State that the subject matter of the agreement sought is unlikely to give rise to any materially different adverse environmental effect from those assessed in the environmental statement.

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

SCHEDULE 3

Article 11

CLASSIFICATION OF ROADS, ETC.

PART 1 TRUNK ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road to become a Trunk Road</i>
North East Lincolnshire and North Lincolnshire	A160 between point 1/9 and 2/33 on the Streets, Rights of Way and Access Plans Sheets 1 and 2
North East Lincolnshire and North Lincolnshire	A180 – A160 Eastbound off-slip between point 1/1 and 1/2 on the Streets, Rights of Way and Access Plans Sheet 1
North East Lincolnshire and North Lincolnshire	A160 – A180 Westbound on-slip between point 1/4 and 1/3 on the Streets, Rights of Way and Access Plans Sheet 1
North East Lincolnshire	A160 – A180 Eastbound on-slip between point 1/5 and 1/6 on the Streets, Rights of Way and Access Plans Sheet 1
North East Lincolnshire	A180 – A160 Westbound off-slip between point 1/8 and 1/7 on the Streets, Rights of Way and Access Plans Sheet 1
North East Lincolnshire	A160 circulatory carriageway at Brocklesby Interchange indicated by point 1/10 on the Streets, Rights of Way and Access Plans Sheet 1

PART 2 OTHER ROAD CLASSIFICATIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>	<i>(3)</i> <i>Old Classification</i>	<i>(4)</i> <i>New Classification</i>
North Lincolnshire	From point 2/21 to point 2/22 on the Streets, Rights of Way and Access Plans Sheet 2	N/A	A1077
North Lincolnshire	From point 2/23 to point 2/24 on the Streets, Rights of Way and Access Plans Sheet 2	N/A	C131
North Lincolnshire	From point 2/25 to point 2/26 on the Streets, Rights of Way and Access Plans Sheet 2	N/A	Unclassified
North Lincolnshire	From point 2/27 to point 2/28 on the Streets, Rights of Way and Access Plans Sheet 2	C131	Unclassified
North Lincolnshire	From point 2/29 to point 2/30 on the Streets, Rights of Way and Access Plans Sheet 2	N/A	C131
North Lincolnshire	From point 2/232 to point 2/31 on the Streets, Rights of Way and	N/A	Unclassified

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>	<i>(3)</i> <i>Old</i> <i>Classification</i>	<i>(4)</i> <i>New</i> <i>Classification</i>
	Access Plans Sheet 2		
North Lincolnshire	From point 3/3 to point 3/4 on the Streets, Rights of Way and Access Plans Sheet 3	N/A	Unclassified
North Lincolnshire	From point 4/2 to point 4/3 on the Streets, Rights of Way and Access Plans Sheet 4	N/A	A160
North Lincolnshire	From point 4/4 to point 4/5 on the Streets, Rights of Way and Access Plans Sheet 4	C133	A160
North Lincolnshire	From point 4/9 to point 4/10 on the Streets, Rights of Way and Access Plans Sheet 4	N/A	Unclassified

PART 3
ROADS TO BE DE-TRUNKED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road to be de-trunked</i>	<i>(3)</i> <i>Old</i> <i>classification</i>	<i>(4)</i> <i>New</i> <i>classification</i>
North Lincolnshire	From point 2/C to point 2/D on the Streets, Rights of Way and Access Plans Sheet 2	A160	A1077

PART 4
ROADS SUBJECT TO 30 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Lincolnshire	Greengate Lane from point 2/4 to point 2/5 on the Traffic Regulation Plans Sheet 2
North Lincolnshire	Town Street Link from point 3/2 to point 3/3 on the Traffic Regulation Plans Sheet 3

PART 5

ROADS SUBJECT TO 40 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Lincolnshire	C131 from point 2/1 to point 2/2 on the Traffic Regulation Plans Sheet 2
North Lincolnshire	Greengate Lane from point 2/3 to point 2/4 on the Traffic Regulation Plans Sheet 2
North Lincolnshire	Habrough Link Road from point 2/9 to point 2/10 on the Traffic Regulation Plans Sheet 2
North Lincolnshire	C131 from point 2/11 to point 2/12 on the Traffic Regulation Plans Sheet 2
North Lincolnshire	A160 from point 4/2 to points 4/9 and 4/10 on the Traffic Regulation Plans Sheet 4
North Lincolnshire	A160 from point 4/6 to point 4/8 on the Traffic Regulation Plans Sheet 4

PART 6

ROADS SUBJECT TO 50 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Lincolnshire	A160 from point 2/6 to point 2/7 on the Traffic Regulation Plans Sheet 2

PART 7

ROADS SUBJECT TO WEIGHT RESTRICTIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to weight restriction</i>	<i>(3)</i> <i>Weight restriction</i>
North Lincolnshire	C131 from point 2/1 to point 2/2 on the Traffic Regulation Plans Sheet 2	7.5 Tonne limit
North Lincolnshire	Greengate Lane from point 2/3 to point 2/5 on the Traffic Regulation Plans Sheet 2	7.5 Tonne limit
North Lincolnshire	Town Street Link from point 3/2 to point 3/3 on the Traffic Regulation Plans Sheet 3	7.5 Tonne limit

PART 8

ROADS SUBJECT TO CENTRAL RESERVE ALTERATIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to central reserve alterations</i>	<i>(3)</i> <i>Traffic movement restriction</i>
North Lincolnshire	A160 from point 3/1 to point 3/4 on the Traffic Regulation Plans Sheet 3	No right turn
North Lincolnshire	A160 from point 3/5 on the Traffic Regulation Plans Sheet 3 to point 4/1 on the Traffic Regulation Plans Sheet 4	No right turn from the Humber Oil Refinery (north of the A160) to the A160 westbound direction No right turn from the Humber Oil Refinery (south of the A160) to the A160 eastbound direction No right turn from A160 eastbound direction to the Humber Oil Refinery (south of the A160) No movement between the Humber Oil Refinery (north of the A160) and the Humber Oil Refinery (south of the A160) across the central reservation of the A160 in either direction No U turn from the A160 eastbound direction No U turn from the A160 westbound direction

PART 9

ROADS SUBJECT TO ONE WAY RESTRICTIONS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to one way restriction</i>
North Lincolnshire	A160 from point 4/2 to point 4/4 on the Traffic Regulation Plans Sheet 4
North Lincolnshire	A160 from point 4/5 to point 4/8 on the Traffic Regulation Plans Sheet 4

PART 10
ROADS SUBJECT TO ESCORTED VEHICLES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road subject to escorted vehicles</i>
North Lincolnshire	From point 4/7 to point 4/3 on the Traffic Regulation Plans Sheet 4

PART 11
CYCLE TRACKS AND FOOTWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Cycle track/Footway</i>
North Lincolnshire	From point 2/34 to point 2/35 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	From point 2/36 to point 2/37 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	From point 2/38 to point 2/39 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	From point 2/40 to point 2/41 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	From point 2/42 to point 2/43 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	From point 2/44 to point 2/45 on the Streets, Rights of Way and Access Plans Sheet 2
<u>North Lincolnshire</u>	<u>From point 2/46 to point 2/47 on the Streets, Rights of Way and Access Plans Sheet 2</u>
<u>North Lincolnshire</u>	<u>From point 3/12 on the Streets, Rights of Way and Access Plans Sheet 3 to point 4/12 on the Streets, Rights of Way and Access Plans Sheet 4</u>

PART 12
PRIVATE MEANS OF ACCESS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Access</i>
North East Lincolnshire	Private Means of Access point 1/11 on the Streets, Rights of Way and Access Plans Sheet 1
North Lincolnshire	Private Means of Access point 1/15 on the Streets, Rights of Way and Access Plans Sheet 1
<u>North Lincolnshire</u>	<u>Private Means of Access point 2/4 on the Streets, Rights of Way and Access Plans Sheet 2</u>
North Lincolnshire	Private Means of Access point 2/6 on the Streets, Rights of Way and

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Access</i>
	Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/7 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/8 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/9 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/12 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/13 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/14 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/15 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/16 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/18 on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 3/1 on the Streets, Rights of Way and Access Plans Sheet 3
North Lincolnshire	Private Means of Access point 3/10 on the Streets, Rights of Way and Access Plans Sheet 3
North Lincolnshire	Private Means of Access point 3/11 on the Streets, Rights of Way and Access Plans Sheet 3
North Lincolnshire	Private Means of Access point 4/8 to point 4/9 on the Streets, Rights of Way and Access Plans Sheet 4
North Lincolnshire	Private Means of Access point 4/10 on the Streets, Rights of Way and Access Plans Sheet 4
North Lincolnshire	Private Means of Access point 4/11 on the Streets, Rights of Way and Access Plans Sheet 4

PART 13
PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of public right of way</i>
North Lincolnshire	Footpath from point 3/7 to point 3/8 on the Streets, Rights of Way and Access Plans Sheet 3

PART 14
PERMISSIVE RIGHT OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of permissive right of way</i>
North East Lincolnshire	Permissive right of way from point 1/13 to point 1/14 on the Streets, Rights of Way and Access Plans Sheet 1

SCHEDULE 4

Article 12

PERMANENT STOPPING UP OF STREETS

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
North Lincolnshire	Private Means of Access point 1/A, on the Streets, Rights of Way and Access Plans Sheet 1	The whole access	Private Means of Access point 1/12, on the Streets, Rights of Way and Access Plans Sheet 1
North Lincolnshire	Private Means of Access point 1/B, on the Streets, Rights of Way and Access Plans Sheet 1	The whole access	Private Means of Access point 2/2 to point 2/1, on the Streets, Rights of Way and Access Plans Sheet 2
North East Lincolnshire	A180 westbound on-slip	From point 1/D to point 1/C, on the Streets, Rights of Way and Access Plans Sheet 1	From point 1/4 to point 1/3, on the Streets, Rights of Way and Access Plans Sheet 1
North East Lincolnshire	A180 westbound off-slip	From point 1/F to point 1/E, on the Streets, Rights of Way and Access Plans Sheet 1	From point 1/8 to point 1/7, on the Streets, Rights of Way and Access Plans Sheet 1
North East Lincolnshire	A180 eastbound on-slip	From point 1/G to point 1/H, on the Streets, Rights of Way and Access Plans Sheet 1	From point 1/5 to point 1/6, on the Streets, Rights of Way and Access Plans Sheet 1
North East Lincolnshire	Permissive right of way, North of A180	From point 1/I to point 1/J, on the Streets, Rights of Way and Access Plans Sheet 1	From point 1/13 to point 1/14, on the Streets, Rights of Way and Access Plans Sheet 1
North Lincolnshire	A160	From point 2/E to point 2/F, on the Streets, Rights of Way and Access Plans Sheet 2	From point 2/21 to point 2/22, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	C131	From point 2/I to point 2/H, on the Streets, Rights of	From point 2/32 to point 2/29, on the Streets, Rights of Way

<i>(1) Area</i>	<i>(2) Street to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) New street to be substituted</i>
		Way and Access Plans Sheet 2	and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/L, on the Streets, Rights of Way and Access Plans Sheet 2	The whole access	Private Means of Access from point 2/2 to point 2/3, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/M, on the Streets, Rights of Way and Access Plans Sheet 2	The whole access	Private Means of Access from point 2/2 to point 2/48, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/N, on the Streets, Rights of Way and Access Plans Sheet 2	The whole access	Private Means of Access from point 2/10 to point 2/11, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/O, on the Streets, Rights of Way and Access Plans Sheet 2	The whole access	Private Means of Access from point 2/10 to point 2/11, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/P, on the Streets, Rights of Way and Access Plans Sheet 2	The whole access	Private Means of Access from point 2/2 to point 2/4, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/Q, on the Streets, Rights of Way and Access Plans Sheet 2	The whole access	Private Means of Access from point 2/2 to point 2/5, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Private Means of Access point 2/R on the Streets, Rights of Way and Access Plans Sheet 2	The whole access	Private Means of Access from point 2/17, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Public Right of Way FP91	From point 3/C to point 3/D, on the Streets, Rights of Way and Access Plans Sheet 3	Private Right of Way from point 3/7 to point 3/8, on the Streets, Rights of Way and Access Plans Sheet 3
North Lincolnshire	Private Means of Access point 3/E, on the Streets, Rights of Way and Access	The whole access	Private Means of Access point 3/2, on the Streets, Rights of

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
	Plans Sheet 3		Way and Access Plans Sheet 3
North Lincolnshire	Private Means of Access point 3/F, on the Streets, Rights of Way and Access Plans Sheet 3	The whole access	Private Means of Access point 3/9, on the Streets, Rights of Way and Access Plans Sheet 3
North Lincolnshire	Private Means of Access point 4/A, on the Streets, Rights of Way and Access Plans Sheet 4	The whole access	Private Means of Access point 4/1, on the Streets, Rights of Way and Access Plans Sheet 4

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
North Lincolnshire	A1077, on the Streets, Rights of Way and Access Plans Sheet 2	From point 2/A to point 2/B, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	A160, on the Streets, Rights of Way and Access Plans Sheet 2	From point 2/F to point 2/G, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	C131, on the Streets, Rights of Way and Access Plans Sheet 2	From point 2/J to point 2/K, on the Streets, Rights of Way and Access Plans Sheet 2
North Lincolnshire	Public Right of Way FP85, on the Streets, Rights of Way and Access Plans Sheet 3	From point 3/B to point 3/G, on the Streets, Rights of Way and Access Plans Sheet 3
North Lincolnshire	Public Right of Way FP87, on the Streets, Rights of Way and Access Plans Sheet 3	From point 3/A to point 3/G, on the Streets, Rights of Way and Access Plans Sheet 3

SCHEDULE 5

Article 22

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 over land may be acquired</i>
Land Plans – Sheet 1	
1/1a, 1/1u, 1/1x	To construct, operate, access and maintain existing telecommunications mast.
1/1t, 1/1y, 1/1ah, 1/1ak	To construct, operate, access and maintain the diverted electric cables.
1/1w	To construct, operate, access and maintain the diverted electric cables. To construct, operate, access and maintain existing telecommunications mast. To construct, access and maintain boundary fencing.
1/1ag	To construct, operate, access and maintain the diverted electric cables. To construct, access and maintain boundary fencing.
1/1d, 1/3c, 1/1f, 1/3f, 1/1k, 1/1p, 1/4b, 1/1am	To construct, access and maintain boundary fencing.
1/1af	To access and maintain the field ditch south and east of the A160. To construct, access and maintain boundary fencing.
Land Plans – Sheet 2	
2/2b, 2/2f	To construct, operate, access and maintain the diverted water pipeline. To construct, operate, access and maintain the diverted electric cable.
2/2c	To construct, operate, access and maintain the diverted water pipeline. To construct, operate, access and maintain the diverted electric cable. To construct, access and maintain boundary fencing.
2/2e	To construct, operate, access and maintain the diverted water pipeline. To construct, operate, access and maintain the diverted electric cable. To access and maintain the field ditch east of the A160. To construct, access and maintain boundary fencing.
2/7d	To construct, operate, access and maintain the diverted electric cable.
2/7b, 2/5i, 2/5m	To access and maintain the field ditch south of the A160.
2/7f	To access and maintain the field ditch south of the A160. To construct, access and maintain boundary fencing. To construct, operate, access and maintain the diverted high pressure gas pipeline.
2/7h	To construct, access and maintain boundary fencing.
2/5a, 2/6a	To construct, operate, access and maintain the two diverted water pipelines.
2/6c	To construct, operate, access, maintain, use and protect the diverted high pressure gas pipeline. To construct, operate, access, maintain, use and protect the two

<i>(1)</i> <i>Plot Reference Number</i> <i>shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which rights over land may be acquired</i>
	diverted high and one intermediate pressure gas pipelines.
2/7g	To construct, operate, access and maintain the diverted high pressure gas pipeline.
2/5d	To construct, operate, access, maintain, use and protect the two diverted high and one intermediate pressure gas pipelines. To construct, operate, access, maintain, use and protect the diverted high pressure gas pipeline.
2/5c	To construct, operate, access, maintain, use and protect the two diverted high and one intermediate pressure gas pipelines. To construct, operate, access, maintain, use and protect the diverted high pressure gas pipeline. To access and maintain the field ditch south of the A160. To construct, access and maintain boundary fencing.
2/8a	To construct, operate, access and maintain the diverted high pressure gas pipeline.
Land Plans – Sheet 3	
3/5b, 3/5d	To construct, access and maintain the adjacent highway and drainage culvert. To lay out new Public Right of Way diversion of the existing Footpath 91.
Land Plans – Sheet 4	
4/1d	To construct, operate, access and maintain the diverted oxygen pipeline. To access existing telecommunications mast.
4/1g, 4/1j	To construct, operate, access and maintain the diverted oxygen pipeline.
4/5b	To construct, operate, access and maintain the new section of road under the new rail bridge.

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 shall 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 as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken from” there shall be substituted the words “a right ~~or restrictive covenant~~ over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable ~~or the restrictive covenant enforceable~~”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over ~~or restrictive covenant~~ affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right ~~or restrictive covenant~~ over or affecting the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right ~~or restrictive covenant~~ proposed”; and
- (d) for the words “part is” there shall be substituted the words “right ~~or restrictive covenant~~ is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, ~~or to the imposition under this Order of a restrictive covenant~~, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are 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
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

(a) 1973 c.26.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall 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 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.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right ~~or the imposition of the restrictive covenant~~ would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased ~~or the restrictive covenant imposed~~ without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased ~~or the restrictive covenant imposed~~ without seriously affecting the amenity or convenience of the house to which that land belongs,

the A160/A180 (Port of Immingham Improvement) Development Consent Order 201[](a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. 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),

(a) S.I. 201[]/ [] 1.

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.

7. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right 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~~ (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) 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.

9. Section 22 of the 1965 Act (interests omitted from purchase) is modified 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.

SCHEDULE 7

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Location	<i>(2)</i> Plan Reference Number(s) shown on Land Plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
Land Plans – Sheet 1			
In the administrative area of North East Lincolnshire Council	1/1s, 1/4b, 1/4c	Required for borrow pits to source material to construct raised sections of the new road construction.	All works
	1/1ae, 1/1al, 1/1am	Required to provide an area for topsoil and other construction material storage.	All works
	1/1n, 1/1p, 1/1q, 1/5b	Required to provide construction working area and access for site traffic.	All works
In the administrative area of North East Lincolnshire Council	1/1b, 1/1c, 1/1d, 1/1e, 1/1f, 1/1h, 1/1i, 1/1j, 1/1k, 1/1m, 1/1u, 1/1v, 1/1w, 1/1x, 1/1z, 1/1af, 1/1ag, 1/1ai, 1/1aj, 1/2a, 1/3a, 1/3c, 1/3d, 1/3e, 1/3f	Required to provide construction working area and access for site traffic.	All works
	1/1y, 1/1ah	Required for the diversion of electric cables and associated apparatus and to provide construction working area and access for site traffic.	All works
	1/1a	Required to enable the use of the existing access track between the A160, Ryehill Farm and A1077 Ulceby Road.	Work No. 1
	1/1ak, 1/1t	Required for the diversion of an electric cable and associated apparatus.	Work No. 9
Land Plans – Sheet 2			
In the administrative area of North Lincolnshire Council	2/1a, 2/2a, 2/5f, 2/5h, 2/5k, 2/8b, 2/10b	Required for the construction of accesses.	All works
	2/2f	Required for the diversion of a water pipeline and electric cable and associated apparatus.	Work No. 10 & 11
	2/2e	Required to provide construction working area and access for site	All works

<i>(1) Location</i>	<i>(2) Plan Reference Number(s) shown on Land Plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
		traffic and also the diversion of water pipeline and overhead electric cable.	
	2/2b, 2/2c	Required for the diversion of a water pipeline and electric cable and associated apparatus, and required to provide construction working area and access for site traffic.	All works
	2/5a & 2/6a	Required for the diversion of up to 2 water pipelines.	Work No. 12
	2/6c, 2/7f & 2/7g	Required for the diversion of a high pressure gas pipeline.	Work No. 14
	2/5c	Required to provide construction working area and access for site traffic and also the diversion of up to 3 high pressure gas pipelines and the protection of an intermediate pressure gas pipeline.	All works
	2/5d	Required for the diversion of up to 3 high pressure gas pipelines and the protection of an intermediate pressure gas pipeline.	Work No. 15, 16 & 17
	2/5e, 2/5i, 2/5l, 2/5m, 2/7b, 2/7h, 2/7j, 2/9a	Required to provide construction working area and access for site traffic.	All works
	2/5j, 2/10c	Required to provide topsoil and other construction material storage areas.	All works
	2/6c	Required for the diversion of up to 3 high pressure gas pipelines and the protection of an intermediate pressure gas pipeline.	Work No. 14, 15 & 16
	2/7c	Required to provide topsoil and other construction material storage areas, and required to provide construction working area and access for site traffic.	All works
	2/7d	Required for the diversion of an electric cable and associated apparatus.	Work No. 11
	2/7e	Required for the provision of the main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials and the treatment of site generated waste and also to provide	All works

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plan Reference Number(s) 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>
		construction working area and access for site traffic.	
	2/7f	Required to provide construction working area and access for site traffic and also the diversion of a high pressure gas pipeline.	Work No. 14
	2/7g	Required for the diversion of a high pressure gas pipeline.	Work No. 14
	2/8a	Required for the diversion of a high pressure gas pipeline.	Work No. 17
Land Plans – Sheet 3			
In the administrative area of North Lincolnshire Council	3/1, 3/2a	Required for the construction of a new access and the stopping up of an existing access.	All works
	3/9c	Required for the construction of a new access.	All works
	3/9d	Required to provide an area for topsoil and other construction material storage.	All works
	3/5b, 3/5d	Required for the construction of the diversion to the existing Public Right of Way and the construction of up to 3 new drainage culverts and head walls.	All works
Land Plans – Sheet 4			
In the administrative area of North Lincolnshire Council	4/1d, 4/1g, 4/1j	Required for the diversion of an oxygen pipeline.	Work No.30
	4/5a, 4/5b, 4/5c	Required for the construction of a new bridge under the existing railway and for construction working area.	Work No. 29
	4/1h, 4/3d, 4/6d	Required for the construction of accesses.	All works
	4/4a, 4/8	Required to provide construction working area and access for site traffic.	All works
	4/1i, 4/1k	Required to provide an area for topsoil and other construction material storage.	All works
	4/7	Required for the provision of a secondary site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials and the treatment of site generated waste.	All works

SCHEDULE 8

Article 37

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY AND GAS UNDERTAKERS

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the Secretary of State and the undertaker concerned, have effect.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory or other functions or Air Products (BR) Limited to fulfil its contractual obligations 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 undertaker;
- (b) in the 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 for the purposes of gas supply;
- (c) in the case of Air Products (BR) Limited any mains, pipes or other apparatus belonging to or maintained by Air Products (BR) Limited for the purpose of the supply of oxygen gas (and “gas apparatus” shall include apparatus in relation to oxygen gas);
- (d) in the case of Phillips 66 Limited all pipelines, apparatus, ancillary apparatus and other infrastructure belonging to or maintained by Phillips 66 Limited including, without prejudice to the generality of the foregoing, such works and apparatus property appurtenant to the pipelines as specified by section 65(2) of the Pipelines Act 1962 and comprising, but not limited to, concrete sleepers and slabs, marker posts including marker posts for any cathodic protection system, steps, stiles, gates and crossings;
- (e) in the case of VPI Immingham LLP any mains, pipes, isolation valves, ESD valves and other apparatus belonging to and maintained by Vitol VPI Immingham Combined Heat & Power Plant, for the purposes of transporting Natural Gas as the fuel along the pipeline owned by VPI Immingham LLP, to fire the power plant for the next generation of Steam & Electricity to supply Phillips 66 and Total refineries and supply the National Power Distribution Grid; ~~and~~
- (f) in the case of E.ON UK Gas Limited any mains, pipes, valves, other apparatus and ancillary equipment belonging to or maintained by E.ON UK Gas Limited for the purpose of transporting any gaseous fuels along the pipeline owned by E.ON UK Gas Limited; ~~and~~
- ~~(g)~~ (g) in the case of Centrica Storage Limited any mains, pipes or other apparatus belonging to or maintained by Centrica Storage Limited for the purposes of transporting condensate gas from its gas storage terminal at Easington to the Port of Immingham to be stored and then sold to third parties -

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(a) 1989 c. 29.

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“functions” includes powers and duties and in the case of Phillips 66 Limited and Centrica Storage Limited shall mean the requirements of its business from time to time;

“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; and

“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 the works to be executed;

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (c) Air Products (BR) Limited and its successor in title and function;
- (d) Phillips 66 Limited and its successor in title and function;
- (e) VPI Immingham LLP and its successor in title and function; ~~and~~
- (f) E.ON UK Gas Limited and its successor in title and function; and
~~(g)~~ Centrica Storage Limited and its successors in title and function,

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

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On street apparatus

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the Secretary of State and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 12 (permanent stopping up of streets), any undertaker whose apparatus is in the street shall have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the Secretary of State will grant to the undertaker legal easements reasonably satisfactory to the undertaker in respect of such apparatus and access to it, but nothing in this paragraph shall affect any right of the Secretary of State or of the specified undertaker to require the removal of that apparatus under paragraph 7 or the power of the Secretary of State to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of streets), an undertaker shall be at liberty at all times to take all necessary access across any such stopped up highway and/or 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 Secretary of State, in the case of the powers conferred by article 17 (protective work to buildings), shall so exercise those powers 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 Secretary of State shall not acquire any apparatus otherwise than by agreement.

(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the Secretary of State acquires any interest in any land in which any apparatus is placed or requires that the undertaker's apparatus is relocated or diverted, that apparatus shall not be removed under this part of this Schedule and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Secretary of State requires the removal of any apparatus placed in that land, he shall give to the 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 an undertaker reasonably needs to remove any of its apparatus) the Secretary of State shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Secretary of State 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 Secretary of State, or the Secretary of State 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 undertaker in question shall, on receipt of a written notice to that effect from the Secretary of State, 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 Secretary of State under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Secretary of State or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 40, and after the grant to the 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 Secretary of State to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the Secretary of State gives notice in writing to the undertaker in question that he desires himself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the Secretary of State, that work, instead of being executed by the undertaker, shall be executed by the Secretary of State without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) shall authorise the Secretary of State to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this part of this Schedule, the Secretary of State affords to an undertaker facilities and rights for the construction and maintenance in land of the Secretary of State of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Secretary of State and the undertaker in question or in default of agreement settled by arbitration in accordance with article 40 (arbitration).

(2) If the facilities and rights to be afforded by the Secretary of State 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 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 shall make such provision for the payment of compensation by the Secretary of State to that 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 Secretary of State under paragraph 7(2), the Secretary of State shall submit to the undertaker in question a plan of the works to be executed.

(2) Those works shall 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 the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Secretary of State, reasonably requires the removal of any apparatus and gives written notice to the Secretary of State of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the Secretary of State under paragraph 7(2).

(5) Nothing in this paragraph shall preclude the Secretary of State 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 shall apply to and in respect of the new plan.

(6) The Secretary of State shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and shall 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 15 metres measured in any direction of any gas apparatus, or (wherever situated) impose any load directly upon any gas apparatus or involve embankment works within 15 metres of any gas apparatus, the plan to be submitted to the undertaker under sub-paragraph (1) shall be detailed including a method statement and describing—

- (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;
- (d) the position of all gas apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

(8) 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 undertaker under sub-paragraph (1) shall be detailed including a method statement and describing—

- (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;
- (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 Secretary of State shall repay to an undertaker all expenses reasonably incurred by that 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) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions 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 Secretary of State or, in default of agreement, is not determined by arbitration in accordance with article 36 (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 undertaker in question by virtue of sub-paragraph (1) shall 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 shall 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 shall 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 an undertaker in respect of works by virtue of sub-paragraph (1) shall, 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 undertaker 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.

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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Secretary of State shall—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker 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 an undertaker on behalf of the Secretary of State or in accordance with a plan approved by an undertaker or in accordance with any requirement of an undertaker or under its supervision shall not, subject to sub-paragraph (3), excuse the Secretary of State from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) shall impose any liability on the Secretary of State with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(4) An undertaker shall give the Secretary of State reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the Secretary of State and, if he withholds such consent, he shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any of the authorised development, the Secretary of State or an undertaker requires the removal of apparatus under paragraph 7(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the Secretary of State shall 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 undertaker's undertaking and each undertaker shall use its best endeavours to co-operate with the Secretary of State for that purpose

13. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Secretary of State and an undertaker in respect of any apparatus laid or erected in land belonging to the Secretary of State on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF ANGLIAN WATER

14. For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the Secretary of State and Anglian Water, have effect.

15. In this part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drainor works vested in Anglian Water under the Water Industry Act 1991;
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“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; and

“plan” includes sections, drawings, specifications and method statements.

16. The Secretary of State shall not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres, 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the Secretary of State.

17. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the Secretary of State has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

18. In the situation, where in exercise of the powers conferred by the Order, the Secretary of State acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

19. Regardless of any provision in this Order or anything shown on any plan, the Secretary of State must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the Secretary of State shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 40.

20. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the Secretary of State shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

21. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the Secretary of State, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

22. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 17 to 19 and 21 above any damage is caused to any 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 Secretary of State shall—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
 - (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,
- by reason or in consequence of any such damage or interruption.

PART 3

FOR THE PROTECTION OF RAILWAY INTERESTS

23. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the Secretary of State and Network Rail and, in the case of paragraph 37, any other person on whom rights or obligations are conferred by that paragraph.

24. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes within the Order limits, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006 the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited within the Order limits and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

25.—(1) Where under this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the Secretary of State with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

26.—(1) The Secretary of State shall not exercise the powers conferred by articles 18 (Authority to survey and investigate land), 19 (Compulsory acquisition of land) Article 22 (Compulsory acquisition of rights), 23 (Private rights over land) 25 (Acquisition of subsoil or airspace only), 27 (Rights under or over streets), 28 (Temporary use of land for carrying out the authorised development), 29 (Temporary use of land for maintaining the authorised development), 30 (Statutory undertakers) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Secretary of State shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Secretary of State shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 30, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Secretary of State shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Prior to commencement of construction of the authorised development the Secretary of State and Network Rail shall, having regard to the Secretary of State's timetable for development, agree in writing a programme for the implementation of Work No. 29 and the Secretary of State will thereafter comply with the provisions of the programme.

(6) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement shall not be unreasonably withheld but may be given subject to reasonable conditions.

27.—(1) The Secretary of State shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the Secretary of State may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the Secretary of State. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Secretary of State that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Secretary of State desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Secretary of State in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Secretary of State.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network

Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the Secretary of State, if Network Rail so desires, and such protective works shall be carried out at the expense of the Secretary of State in either case with all reasonable dispatch and the Secretary of State shall not commence the construction of the specified works until the engineer has notified the Secretary of State that the protective works have been completed to his reasonable satisfaction.

28.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 27;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the Secretary of State shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the Secretary of State with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Secretary of State or its servants, contractors or agents.

29. The Secretary of State shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or protective work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or protective work or the method of constructing it.

30. Network Rail shall at all reasonable times afford reasonable facilities to the Secretary of State and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the Secretary of State with such information as it may reasonably require with regard to such works or the method of constructing them.

31.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Secretary of State reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the Secretary of State shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the Secretary of State, Network Rail gives notice to the Secretary of State that Network Rail desires itself to construct that part of the specified work or protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Secretary of State decides that part of the specified work or protective

work is to be constructed, Network Rail shall assume construction of that part of the specified work or protective work and the Secretary of State shall, notwithstanding any such approval of a specified work or protective work under paragraph 27(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 32(a) provide such details of the formula by which those sums have been calculated as the Secretary of State may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the Secretary of State to Network Rail under this paragraph.

32. The Secretary of State shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Secretary of State as provided by paragraph 27(3) or in constructing any protective works under the provisions of paragraph 27(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Secretary of State and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

33.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 27(1) for the relevant part of the authorised development giving rise to EMI (unless the Secretary of State has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Secretary of State shall in the design and construction of the authorised development take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Secretary of State’s compliance with sub-paragraph (3)—

- (a) the Secretary of State shall consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall

continue to consult with Network Rail (both before and after formal submission of plans under paragraph 27(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail shall make available to the Secretary of State all information in the possession of Network Rail reasonably requested by the Secretary of State in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail shall allow the Secretary of State reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to the sub-paragraph.

(6) If at any time prior to the completion of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the Secretary of State shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the Secretary of State's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the Secretary of State shall afford reasonable facilities to Network Rail for access to the Secretary of State's apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to the Secretary of State for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail shall make available to the Secretary of State any additional material information in its possession reasonably requested by the Secretary of State in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail shall allow the Secretary of State reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs shall be carried out and completed by the Secretary of State in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, paragraph 37(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 32(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 40 (Arbitration) to a single arbitrator to be agreed between the parties shall be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers to be agreed.

34. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the Secretary of State informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of railway property, the Secretary of State shall, on receipt of such

notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as not adversely to affect railway property.

35. The Secretary of State shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

36. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Secretary of State, be repaid by the Secretary of State to Network Rail.

37.—(1) The Secretary of State shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure thereof; or
- (b) by reason of any act or omission of the Secretary of State or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

and the fact that any act or thing may have been done by Network Rail on behalf of the Secretary of State or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Secretary of State from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the Secretary of State reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior written consent of the Secretary of State.

(3) The sums payable by the Secretary of State under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

38. Network Rail shall, on receipt of a request from the Secretary of State, at a frequency to be agreed between the Secretary of State and Network Rail provide the Secretary of State free of charge with written estimates of the costs, charges, expenses, future cost forecasts and other liabilities for which the Secretary of State is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 37) and with such information as may reasonably enable the Secretary of State to assess the reasonableness of any such estimate or claim

made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

39. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Secretary of State under this Schedule or increasing the sums so payable.

40. The Secretary of State and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Secretary of State of—

- (a) any railway property shown on the works and/or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

41. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

42. The Secretary of State shall give written notice to Network Rail where any application is required and is proposed to be made for the Secretary of State's consent under article 7 (Consent to transfer benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the decision-maker to whom the application is to be made.

43. The Secretary of State shall no later than 28 days from the date that the documents referred to in article 38(1) are submitted to and certified by the decision-maker in accordance with article 38 (Certification of Plans etc), provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

PART 4

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

44. For the protection of any operator, the following provisions shall, unless otherwise agreed in writing between the Secretary of State and the operator, have effect.

45. In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system shall be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

(a) 2003 c. 21.

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(a);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit 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 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State 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; and

“operator” means the operator of an electronic communications code network.

46. The exercise of the powers of article 37 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984(b) (undertaker’s works).

47.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their 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 Secretary of State shall 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) shall impose any liability on the Secretary of State 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 Secretary of State reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand shall be made without the consent of the Secretary of State which, if it withholds such consent, shall have 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 Secretary of State and the operator under this Part of this Schedule shall be referred to and settled by arbitration under article 40 (arbitration).

(5) This Part of this Schedule shall not apply to—

- (a) any apparatus in respect of which the relations between the Secretary of State and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Secretary of State and an operator in respect of any apparatus laid or erected in land belonging to the Secretary of State on the date on which this Order is made.

(a) See section 106.
(b) 1984 c. 12.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Secretary of State to provide better access to the Port of Immingham and the surrounding area by improving the A160 between the junction with the A180 at Brocklesby interchange and carry out all associated works.

The Order would permit the Secretary of State 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 and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at [].

STATUTORY INSTRUMENTS

201[] No.

INFRASTRUCTURE PLANNING

The A160/A180 (Port of Immingham Improvement)
Development Consent Order 201[]

BIRCHAM DYSON BELL LLP
50 Broadway
London SW1H 0BL
Solicitors and Parliamentary Agents
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