



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

The A19/A1058 Coast Road (Junction Improvement)

Examining Authority's Report of Findings and Conclusions

and

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

Examining Authority

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30 October 2015

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ExA's findings and conclusions and recommendation in respect of the A19/A1058 Coast Road (Junction Improvement)

File Ref TR010017

The application, dated 13 November 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 14 November 2014.

The applicant was the Highways Agency until 1 April 2015, and became Highways England Company Limited from that date.

The application was accepted for examination on 3 December 2014. The examination of the application began on 24 February 2015 and was completed on 30 July 2015.

The proposed development comprises the realignment of the A19 as a dual carriageway under the existing A19/A1058 junction roundabout and under the existing A1058 dual carriageway, which currently crosses over the junction roundabout, to create a fully grade separated junction. The development also includes: retaining walls to minimise land take; enhanced facilities for non-motorised users; and the widening of the Middle Engine Railway bridleway bridge to accommodate the A19 north facing slip roads.

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

1.0 INTRODUCTION

- 1.0.1 The A1058 dual carriageway connects Newcastle upon Tyne with the town of North Shields to the north of the River Tyne. It currently crosses a roundabout junction on the A19 dual carriageway on over bridges. The A19 is a trunk road which generally provides an eastern bypass to Newcastle using a tunnel under the River Tyne. It is part of the highway network that connects the A1(M) to the south of Newcastle with the A1 to the north of Newcastle .
- 1.0.2 The location of the junction is shown on application drawing A19T/DWG/CIV/S00/0000/0020 RevB [APP-004]. Throughout this report, references in square brackets [] refer to the examination documents listed in the examination library at Appendix B.
- 1.0.3 The scheme proposed comprises the realignment of the A19 in a continuous dual carriageway under the existing A19 roundabout junction and under the A1058 dual carriageway. This would create a fully grade separated junction.
- 1.0.4 On 3 December 2014, the Secretary of State accepted the application. In doing so, he concluded that the application was for an order granting development consent and that development consent is required for all or part of the development to which the application relates. He also concluded that the applicant had, in relation to the proposed application that became this application, complied with the pre-application procedure set out in Chapter 2 of Part 5 of the Planning Act 2008 (as amended), including in respect of consultation with prescribed persons and the local community.
- 1.0.5 The proposal is for a nationally significant infrastructure project (NSIP) for the purposes of s14(1)(h) and s22 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 construction and alteration of a highway (s22(1)(a) and (b)); is located wholly in England and the Secretary of State for Transport is the highway authority for the highway (s22(2)(a), (2)(b), (3)(a) and (3)(b)); and is greater than the relevant limit of 12.5 hectares (ha)(s22(2)(c), (3)(c) and (4)(b)).
- 1.0.6 As the scheme is an NSIP, development consent, under s31 of the PA2008, is required before the development can proceed. Development consent can be granted only by the Secretary of State. An application by the Highways Agency (HA) for an Order granting development consent for the above scheme was submitted on 14 November 2014 [APP-002].

1.0.7 The Secretary of State's screening opinion [APP-038] identified the project as a Schedule 2 development under paragraph 10(f) of the EIA Regulations¹. The screening opinion determined that the 'proposed development is not likely to have significant effects on the environment by virtue of the characteristics of development, the location of the development, and the characteristics of the potential impact, and is not EIA development'. The application is not accompanied by an Environmental Statement. However, it includes a non-statutory Environmental Assessment Report (EAR) to document the assessment of the potential effects of the scheme upon specific environmental topic areas [APP-027 to APP-037].

1.1 APPOINTMENT OF EXAMINING AUTHORITY

1.1.1 The application was accepted for examination on 3 December 2014. The applicant then gave notice under s56 of the PA2008 to the persons prescribed that the application had been accepted and gave them an opportunity to make relevant representations. It certified [CoR-002] on 23 January 2015 that this had been done. 7 relevant representations were subsequently received [RR-001 to RR-007].

1.1.2 I was appointed on 26 January 2015 as the Examining Authority (ExA) to examine and report on the application to the Secretary of State. Notice of that appointment under Rule 4 of the Examination Procedure Rules² (EPR) accompanied a letter under Rule 6, and my initial assessment of principal issues, and was issued on 27 January 2015 [PD-001].

1.2 THE EXAMINATION AND PROCEDURAL DECISIONS

1.2.1 I held a preliminary meeting (PM) on 24 February 2015 at the Royal Station Hotel, Newcastle. At the PM, the applicant and all other interested parties (IPs) were able to make representations to me about how the application should be examined. The examination began on 24 February 2015 following closure of the PM. A note of that meeting was made available. [EV-006].

1.2.2 During the examination, I made a number of procedural decisions [PD-001 to PD-012]. These included decisions relating to the examination timetable and requests for Statements of Common Ground (SoCGs) which were issued by a letter, under Rule 8 of the EPR, dated 26 February 2015 [PD-002]. The main examination events are detailed within Appendix C and the examination proceeded in line with s98 of the PA2008.

1.2.3 During the examination, SoCGs were provided between the applicant and the following organisations:

¹ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)

² The Infrastructure Planning (Examination Procedure) Rules 2010

- North Tyneside Council [REP3-026]
 - The Environment Agency [REP2-004]
 - Natural England [REP1-022]
 - Northern Gas Networks [REP3-028]
 - Northumbrian Water Limited [REP3-027]
- 1.2.4 The SoCGs are considered in more detail later in the report. At this stage however, it is of note that they do not contain any areas of outstanding disagreement.
- 1.2.5 As set out in the timetable for the examination at Appendix C, I held a specific issue hearing on the draft Development Consent Order (DCO) [EV-013] and a compulsory acquisition hearing [EV-016] on 14 April 2015. I also held an open floor hearing [EV-010] on 15 April 2015. These were all held at the Royal Station Hotel, Newcastle. Audio recordings of the PM and these hearings were made available [EV-007, 014, 015, 018, 011 & 012].
- 1.2.6 Arrangements were made for a further compulsory acquisition hearing to be held on 23 July 2015 [EV-020]. This was however cancelled, as the request to be heard at the hearing was subsequently withdrawn. This matter is considered in more detail in Chapter 2 and 6 of this report.
- 1.2.7 The timetable for the examination [PD-002] reserved time for a further specific issue hearing on 16 April 2014. Having considered the submissions made to the examination, I did not consider it necessary for my examination of the application to include the consideration of further oral representations about any other particular issue, and this reserved date was not used.
- 1.2.8 I undertook an unaccompanied site visit to various public locations at and around the site of the scheme on 23 February 2015. I also undertook an accompanied site visit on 15 April 2015 in the company of the applicant and others [EV-009].
- 1.2.9 The notice, under s60(2) of the PA2008, inviting each local authority falling under s56A to submit Local Impact Reports (LIRs) was given in the Rule 8 letter on 26 February 2015 [PD-002]. An LIR was received from the relevant planning authority (RPA), North Tyneside Council [REP1-019]. This LIR is considered further in Chapters 3 and 4 of this report.
- 1.2.10 I issued written questions on 26 February 2015 [PD-003]. The majority of these were directed to the applicant and the RPA, but the views of all IPs were sought on the questions put and answers received.
- 1.2.11 I am satisfied that all those making representations had a full opportunity to participate in the examination, through written submissions, at the hearings and at the accompanied site visit.

1.2.12 All documents, representations and submissions made, together with procedural letters, a note of the preliminary meeting and the itinerary for the accompanied site visit, are set out in Appendix B and are available on the project website. The examination was completed on 30 July 2015 [PD-012], and the dates of the main examination events are set out in Appendix C. A list of abbreviations used in this report is at Appendix D. The draft DCO, as recommended to be made by the Secretary of State, is at Appendix A.

1.3 OTHER CONSENTS REQUIRED

1.3.1 Other consents will or may be necessary for the scheme to proceed as follows [APP-028 para 1.6.1]:

- A permit from the Environment Agency (EA), under the Environmental Permitting Regulations 2010 (EPR2010) for the discharge of trade effluent, such as from excavation de-watering, to controlled water during construction;
- A waste management permit or exemption under the EPR2010 for the reuse of materials within the scheme;
- A waste management permit or exemption under the EPR2010 for the storage of excess materials prior to reuse within the scheme; and
- A consent under s61 of the Control of Pollution Act 1974 in relation to noise resulting from the proposed works.

1.3.2 Construction methods are not sufficiently detailed to allow these matters to be incorporated in the draft DCO. The consents would therefore be the subject of applications by the appointed construction contractor when the detailed construction methodology was known. I have not heard anything during the examination to give me reason to believe that they would not be granted at the appropriate time.

1.4 STRUCTURE OF REPORT

1.4.1 This report provides the Secretary of State with my findings and conclusions on the application for development consent for the A19/A1058 Coast Road (Junction Improvement) under s83(1)(b)(i) of the PA2008. This report also contains my recommendation, under s83(1)(b)(ii) on whether to grant consent for the powers sought for the compulsory acquisition of land and rights, and on the terms of the Development Consent Order (DCO) should the Secretary of State be minded to make such an Order.

1.4.2 Chapter 2 describes the main features of the scheme and the site before giving an outline of the legal and policy context for its consideration in Chapter 3. Findings and conclusions in relation to policy and factual issues are set out in Chapter 4, before concluding in Chapter 5 with my recommendation on the case for granting development consent. Chapter 6 addresses the case made for compulsory acquisition and other land matters. Chapter 7 then considers the detail of the draft DCO, with my overall conclusions and

recommendation on the application in Chapter 8. The draft DCO as recommended to be made by the Secretary of State is attached at Appendix A.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.0 THE APPLICATION AS MADE

- 2.0.1 The original applicant was the Highways Agency (HA), an executive agency of the Department for Transport. It was responsible for operating, maintaining and improving the strategic road network in England on behalf of the Secretary of State for Transport [APP-014]. These responsibilities included the acquisition, management and disposal of land and property in relation to strategic road network improvement projects.
- 2.0.2 During the examination, relevant provisions of the Infrastructure Act 2015 received Royal assent and the functions of the HA were transferred to Highways England (HE), a strategic highways company under Part 1 of that Act on 1 April 2015. HE therefore took over all of the functions carried out by, and the responsibilities of, the HA and, in relation to this application, HE became the applicant. The implications of this transfer are addressed in Chapter 7 of this report.
- 2.0.3 The application comprises a junction improvement that involves placing the A19 under the existing A19/A1058 junction in a cutting to provide a free flowing link [APP-024]. The junction provides connectivity to the Port of Tyne, which facilitates growth in North Tyneside. This would remove A19 through traffic from the A19 roundabout which is intended to relieve congestion and improve safety at the junction. The scheme would also provide increased capacity to meet the needs of predicted traffic growth over the next 10 to 15 years.
- 2.0.4 The majority of the site for the scheme is designated as existing highway at and around the existing A19/A1058 junction. There are however several areas of land outside the existing highway boundary that are required for construction, or in connection with the construction, of the scheme [APP-024]. These areas, along with their existing land uses, are described below.
- 2.0.5 That part of the site to the north west of the junction is located in an area of retail and commercial development and includes land within the boundaries of the Northumbria Police headquarters and a B&Q Warehouse on Middle Engine Lane. It generally comprises areas of shrubs and trees together with a length of bridleway BH9.
- 2.0.6 That part of the site to the north east of the junction is located in an area of retail, leisure and commercial development and includes land within the boundaries of a vacant hotel. It generally comprises areas of shrubs and trees, hard standing, permissive footpaths, car parks and a private road together with a length of bridleway BH9.
- 2.0.7 That part of the site to the southeast of the junction is located in an area of light industrial development and includes land within a car retail park, rough grassland and private roads. The car retail park is in

active use and that part within the site includes canopies over car display areas.

- 2.0.8 Areas of existing highway within the site would generally remain physically unaffected by the scheme. These are: the A1058 dual carriageway as it passes over the junction, apart from the construction of a bridge to carry it over the A19 cutting; the A19 junction roundabout, apart from the construction of two bridges to carry it over the A19 cutting; and the slip roads which connect the A1058 with this roundabout. It follows from this that the new work is focussed on the provision of the A19 dual carriageway, cutting below the junction and slip roads to connect this A19 with the existing junction roundabout.
- 2.0.9 The site does not contain any scheduled monuments, listed buildings, conservation areas or other designated heritage assets. With regard to nature conservation, there are no designated international sites, Sites of Special Scientific Interest or National Nature Reserves located within 4km of the site. There are also no nationally designated landscapes near the site.
- 2.0.10 The surrounding area to the west of the site and the A19 includes a school, which adjoins the existing roundabout at its south west quadrant, and residential areas to the north and south of the A1058.
- 2.0.11 The scheme is split into various elements or Work Nos. in Schedule 1 of the draft Development Consent Order (DCO), and the locations for these elements are shown on the works plans [REP3-013]. The scheme comprises the following elements.
- 2.0.12 A new section of A19 dual carriageway would be constructed under the existing A19/A1058 junction (Work No. 1j), with two new structures to carry the existing A19 roundabout over the lowered A19 (Work Nos. 1c and d). South of the existing A19 roundabout, the A19 would be relocated to the east of the existing alignment. This would enable the alignment design of this free flowing link to be compliant with the Design Manual for Roads and Bridges for a 50 mph speed limit whilst at the same time minimising the land required for the scheme.
- 2.0.13 The open cut underpass construction would require the removal of the majority of the embankment within the central island of the A19 roundabout which currently supports the A1058. A new structure would carry the A1058 over the underpass (Work Nos. 1a and b), and the two existing structures that support the A1058 over the A19 roundabout would be subject to concrete repairs (Work No. 1s) and then retained.
- 2.0.14 The existing roundabout junction and its slip roads to and from the A1058 would be retained, with new slip roads connecting the roundabout to the realigned A19 (Work Nos. 1e to 1h). New traffic signal control measures and revised lane destinations on the circulatory carriageway would be provided, which would improve capacity and safety for all users (Work No. 1p). To allow the signalised

roundabout junction to operate more efficiently, The Silverlink carriageway, which accesses the Silverlink Retail Park from the existing roundabout, would also be widened to three lanes over a 40m length on the approach to the traffic signals (Work No. 1l).

- 2.0.15 Due to the close proximity of the A19/A1058 junction with the A19/A193 junction to the south, an auxiliary lane would be provided adjacent to the north and southbound carriageways (Work No. 1n). This would connect the adjacent slip roads and would mitigate against the hazard of weaving traffic as the junctions are closely spaced. The application also includes proposals for the imposition of speed limits on lengths of the A19 that become part of a trunk road under the scheme.
- 2.0.16 Facilities for non-motorised users (NMUs) would be enhanced as part of the junction improvement. Combined footway/cycleways would be provided between the A19/A1058 junction and the A19/A193 junction adjacent to the A19 northbound carriageway, an improvement to what currently exists, and adjacent to the A19 southbound on slip road, to link the new bus stop layby on this slip road with that on the A1058 westbound off slip road (Work Nos. 1q and r). Two new bridges would also be provided to convey NMUs over the A1058 eastbound slip roads (Work No. 1i), thereby removing the requirement for them to cross the slip roads at grade.
- 2.0.17 The Middle Engine Railway bridge, that carries the A19 over bridleway BH9, would need to be widened and re-surfaced, along with other tie-ins, to accommodate the A19 north facing slip roads (Work Nos. 1k and o). Various utility diversions would also need to take place (Work Nos. 2a to h).
- 2.0.18 The construction period for the scheme is estimated to be 119 weeks based on a five day working week, with a limited amount of necessary night time and weekend working [APP-028]. The temporary occupation of land would be required during construction for a contractor's compound, materials storage and treatment, access and utility diversions. This is discussed further in Chapter 6.
- 2.0.19 The design year of the scheme is 2033, based on an opening year of 2018 [APP-028]. Maintenance of the trunk road network is the responsibility of HE, the applicant, whilst the maintenance of the local road network is the responsibility of the local highway authority. Thus, the A19, its junction with the A1058 and the A1058 bridge over the A19 (up to and including the waterproofing membrane) would be maintained by HE and its contractors [APP-011]. The A1058 and the Silverlink are maintained by North Tyneside Council, the local highway authority. Liability for maintenance of these roads, but limited to the highway surface of the A1058 bridge over the A19 above the waterproofing membrane, would revert to the local highway authority on completion of the scheme.

2.1 CHANGES TO THE APPLICATION DURING THE EXAMINATION

- 2.1.1 At the start of the examination, the applicant submitted amended drawings. These amendments revised certain drawing numbers and their revision letters [CoR-005]. The applicant also submitted an erratum to the air quality section of the Environmental Assessment Report [CoR-006]. This comprised a replacement section to the report which contained an updated air quality assessment, which still showed no likely significant environmental effects.
- 2.1.2 In considering whether or not to examine the application including the submitted erratum, I had regard to the 2013 DCLG Guidance for the examination of applications for development consent. I also took account of the statement by Bob Neill MP in his letter to the IPC, dated 28 November 2011. Paragraph 105 of the guidance accepts that applicants may need to change a proposal after an application has been accepted for examination.
- 2.1.3 These changes did not physically alter the scheme in any way and were not such as would result in a materially different project, as described in paragraph 106 of the guidance. I therefore accepted them into the examination.
- 2.1.4 At Deadline 2, on 7 April 2015, the applicant was changed by statute from the Highways Agency to Highways England, as previously explained [REP1-016 & 017 & REP2-006]. This is covered in more detail in Chapter 7 of this report. Again, considering the applicable guidance and the letter from Bob Neill MP referred to above, I concluded that this change could be considered under the existing application as envisaged in paragraph 106 of the guidance.
- 2.1.5 The applicant also removed Plot 2/5a from the Order land, as a result of representations made following the application [REP2-002]. It had been intended to take temporary possession of this plot for the storage of construction materials, but such possession is not now necessary. This change comprised a reduction in the extent of the Order land, no physical change to the Works themselves and no effect on existing interests. The Wheatcroft Principles would also be satisfied. The change thus would not result in a materially different project as described in paragraph 106, of the guidance and the letter from Bob Neill MP referred to above, and I accepted the change into the examination.
- 2.1.6 Finally, at Deadline 2, the applicant changed the power of temporary possession for the acquisition of rights on part of Plot 3/14 and Plots 2/7 and 2/7a at Bittern Close, Narvik Way and Third Avenue [REP2-002]. This was again as a result of representations made following the application, and the matter is covered in more detail in Chapter 6 of this report. The change would reduce the impact of the scheme and, at the end of the examination, was not the subject of any remaining objection following consultation. Again, there would be no physical change to the Works themselves, and the Wheatcroft Principles would

be satisfied. The change would not result in a materially different project as described in paragraph 106 of the guidance and the letter from Bob Neill MP referred to above. I also accepted these changes in to the examination.

- 2.1.7 On 26 March 2015 the relevant guidance was updated, and I found nothing in the revised guidance that would lead me to revisit my decision to examine the application incorporating the above amendments. That guidance also supersedes the letter from Bob Neill MP referred to above.
- 2.1.8 At Deadline 3, on 28 April 2015, the applicant made various changes in relation to Crown Land in the north east quadrant of the scheme roundabout [REP3-008, 013 & 020]. These changes again resulted in reductions in the extent of the Order land to omit working areas and included the omission of the diversion of a foul sewer. The foul sewer solely serves Crown land, and its diversion has the consent of the Crown Estate. This omission would therefore not prejudice any existing interests. Furthermore, acceptance of this change would not deprive those who should have been consulted on the changed development of the opportunity of such consultation. The Wheatcroft Principles and the other considerations in paragraph 113 of the revised guidance would thus be satisfied. In respect of the other reductions, no physical changes to the works themselves were proposed. The various changes taken together were not of such a degree that they constituted a materially different project as envisaged by paragraph 110 of the revised guidance.
- 2.1.9 At Deadline 4, on 25 June 2015, the changes made by the applicant reflected the acquisition of land within the Order limits by the Crown Estate [REP4-006, 007 & 008]. They also reflected a change from compulsory acquisition of land to the compulsory acquisition of rights on part of this land. The update at Deadline 5, on 17 July 2015, generally reflected various other changes in land ownership during the examination [REP5-008, 009 & 010]. No physical changes to the works themselves were proposed, there would be and no effect on existing interests and the Wheatcroft Principles would be satisfied. Again, taken together, the changes were not of such a degree that they constituted a materially different project as envisaged by paragraph 110 of the revised guidance.
- 2.1.10 None of the above changes were accompanied by formal change requests under the March 2015 Examination Guidance. Furthermore, none of the changes resulted in additional land under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. This is because the land proposed to be subject to new rights, Plots 2/7, 2/7a and 3/14a, was identified in the Book of Reference submitted with the application as land and therefore does not fall within the definition of additional land under paragraph 2 of the regulations. The changes therefore did not engage the regulations. None of the above changes, whether considered individually or cumulatively, would result in impacts outside of those assessed in the

applicant's Environmental Assessment Report (EAR), including the timescale for construction, or be inconsistent with the scope of the report.

- 2.1.11 As a result of all of the above points, I am satisfied that none of the changes, either individually or cumulatively, represented material changes to the application as described in paragraph 106 of the 2013 guidance or paragraph 110 of the 2015 guidance, but were rather changes of the sort that are anticipated in paragraph 105 of the 2013 guidance and paragraph 109 of the 2015 guidance. All of the changes were supported by amended plans, documentation and draft DCO during the examination. I therefore examined the application on the basis of these changes, as made, and am satisfied that there was no need for further examination beyond that undertaken.

2.2 RELEVANT PLANNING HISTORY

- 2.2.1 The preferred option, for the A19 to be placed in an open cut underpass, was announced by the Secretary of State for Transport on 19 July 2012 [APP-024 para 3.9]. The design has subsequently developed and consultation on land requirements was held in October and November 2013 and consultation on the revised proposals took place between November 2013 and January 2014.
- 2.2.2 The applicant has formally notified the local planning authority in order that nearby planning applications are referred to the applicant and that the scheme will be revealed on a search on a property in the vicinity of the scheme.
- 2.2.3 The applicant has not submitted any previous planning applications or applications for development consent in respect of the scheme.

3 LEGAL AND POLICY CONTEXT

3.0 PLANNING ACT 2008

3.0.1 S104(3) of the Planning Act 2008 (PA2008) requires that the Secretary of State must decide an application for development consent in accordance with any relevant National Policy Statement, except to the extent that the Secretary of State is satisfied that, in summary:

- doing so would lead to the United Kingdom being in breach of its international obligations;
- doing so would lead to the Secretary of State being in breach of any duty imposed on him under any enactment;
- doing so would be unlawful under any enactment;
- the adverse impact of the proposed development would outweigh its benefits; or
- that any prescribed condition for deciding the application otherwise than in accordance with the NPS would be met.

3.0.2 S104(2) of the PA2008 sets out the matters to which the Secretary of State must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPSs, any Local Impact Report (LIR); and any other matters the Secretary of State thinks are both important and relevant to the decision.

3.1 NATIONAL POLICY STATEMENT

3.1.1 The National Policy Statement for National Networks (NPS) is the designated policy statement for roads for which the Secretary of State is the highway authority. It is relevant because the scheme comprises the construction and alteration of a highway where the speed limit for any class of vehicle is expected to be 50mph or greater, the area of development exceeds 12.5ha and the Secretary of State is the highway authority. The scheme is therefore a Nationally Significant Infrastructure Project (NSIP), and the NPS provides the primary basis for decisions by the Secretary of State.

3.1.2 The NPS sets out the need for, and Government's policies to deliver, development of NSIPs on the national road network in England. It also provides planning guidance for such projects and the basis for the examination by the Examining Authority and decisions by the Secretary of State.

3.1.3 The NPS sets out how the following impacts should be considered:

- Air Quality
- Carbon Emissions
- Biodiversity and ecological conservation
- Waste management
- Civil and military aviation and defence interests
- Coastal change

- Dust, odour, artificial light, smoke, steam
- Flood risk
- Land instability
- The historic environment
- Landscape and visual impacts
- Land use including open space, green infrastructure and Green Belt
- Noise and vibration
- Impacts on transport networks
- Water quality and resources

3.1.4 The NPS also identifies the relevant development plan as an important and relevant matter.

3.2 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

HABITATS DIRECTIVE (COUNCIL DIRECTIVE 92/43/EEC)

3.2.1 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites; and the strict system of species protection.

3.2.2 Animal and plant species of interest whose conservation requires the designation of Special Areas of Conservation (SACs) are listed in Annex II of the directive. Annex IV lists animal and plants species of interest in need of strict protection. All species listed in these annexes are identified as European Protected Species (EPS) and protected under the Conservation of Habitats and Species Regulations 2010 (The Habitats Regulations 2010).

BIRDS DIRECTIVE (COUNCIL DIRECTIVE 2009/147/EC)

3.2.3 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

CONSERVATION AND SPECIES REGULATIONS 2010 (AS AMENDED) THE HABITATS REGULATIONS

CONSERVATION OF HABITATS AND SPECIES (AMENDMENT) REGULATIONS 2012

3.2.4 The Conservation of Habitats and Species Regulations 2010 are the principal means by which the Habitats Directive is transposed in England and Wales.

3.2.5 Where EPS are concerned, statutory provisions apply to which the competent authority must pay due regard. These are that adequate surveys must establish the presence or absence of the species

concerned and predict the likely impact of the proposal upon the species. This information must also accompany an application for a Habitats Regulations licence to the appropriate authority which is required to ensure that the proposed development can proceed lawfully.

- 3.2.6 The Conservation of Habitats and Species (Amendment) Regulations 2012 amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitats for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.
- 3.2.7 The forgoing directions and regulations are relevant to this application in view of the presence of the Durham Coast SAC and the Northumbria Coast SPA, which are some 5.5km and 4.3km from the scheme.

WATER FRAMEWORK DIRECTIVE

- 3.2.8 The "Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy" or, in short, the Water Framework Directive has a number of objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It includes the production of river basin management plans (RBMPs) which are designed to integrate the sustainable management of rivers. This directive is relevant to the application as the scheme is located within the EA Northumbria RBMP.

3.3 OTHER LEGAL AND POLICY PROVISIONS

UNITED NATIONS ENVIRONMENT PROGRAMME CONVENTION ON BIOLOGICAL DIVERSITY 1992

- 3.3.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to this Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In particular, the ExA finds that compliance with the UK provisions on environmental impact assessment and transboundary matters, referred to below, satisfies, with regard to impacts on biodiversity, the requirements of Article 14.
- 3.3.2 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.3.3 This is of relevance to the biodiversity and ecological considerations and landscape and visual impact which are discussed in Chapter 4 of this report.

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

- 3.3.4 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by Natural England (NE). The Act also contains measures for the protection and management of SSSIs.
- 3.3.5 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from NE. The Act is relevant to the application in view of the sites and species identified in the EAR.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

- 3.3.6 NERC2006 made provisions for bodies concerned with the natural environment and rural communities, in connection with wildlife sites and SSSIs. 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. Priority habitats and species are listed in the UK Biodiversity Action Plan. The Act is relevant to the application in view of the wildlife sites identified in the EAR and the biodiversity and ecological considerations and landscape and visual impact which are discussed in Chapter 4 of this report.

3.4 MADE DEVELOPMENT CONSENT ORDERS

- 3.4.1** The following made Orders are referred to later in this report: the M1 Junction 10a (Grade Separation) DCO 2013; the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) DCO 2013; the A556 (Knutsford to Bowden Improvement) DCO 2014; the A160/A180 (Port of Immingham Improvement) DCO 2015; and the Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015. These Orders relate to highway works and are therefore relevant to this scheme.

3.5 NATIONAL PLANNING POLICY FRAMEWORK

- 3.5.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied.
- 3.5.2 The NPPF does not contain specific policies for NSIPs for which particular considerations apply. The NPPF explains that these are to be determined in accordance with the PA2008 relevant NPSs for major

infrastructure and 'any other matters that are considered both important and relevant (which may include the NPPF)', as explained above.

- 3.5.3 In this case, the NPPF is of limited relevance as there is a relevant designated NPS. The NPPF also notes that weight should be given to relevant policies in development plan adopted before 2004 'according to their degree of consistency with this framework'.

3.6 LOCAL IMPACT REPORT

- 3.6.1 The principal matters raised in the LIR submitted by the relevant planning authority (RPA), North Tyneside Council, are:

- Economics and Transportation
- Noise and Vibration
- Ground Conditions
- Landscape and Visual Impact
- Archaeology and Heritage Assets
- Ecological Impacts
- Air Quality

- 3.6.2 These are considered in Chapter 4 of this report. The LIR is supportive of the scheme. It does however recognise that the construction of highway improvement works inevitably has some impact on the local landscape, ecology and amenities in terms of noise and air quality. It also recognises that construction works can also have a temporary adverse impact on traffic movement. The LIR demonstrates however that the RPA is satisfied that, whilst there would be some negative local impacts, primarily during the construction of the improvement works, none are so significant as to lead to the RPA to object to the scheme. The RPA is also satisfied that the impacts could be appropriately controlled by requirements within any Order made.

3.7 THE DEVELOPMENT PLAN AND OTHER LOCAL POLICES

NORTH TYNESIDE UNITARY DEVELOPMENT PLAN

- 3.7.1 The development plan for the area of the proposal comprises the policies of the North Tyneside Unitary Development Plan: 2002 (UDP) saved under the provisions of the Planning and Compulsory Purchase Act 2004. Whilst the policies referred to below are now of some age, I am satisfied that they are generally consistent with the NPPF and can be given significant weight.
- 3.7.2 The Council's LIR refers to the following saved UDP policies which are relevant to this examination [REP1-019]:
- Policy T6 seeks to ensure that the highway network is improved in terms of safety, convenience, efficiency and accessibility to main employment and other areas;
 - Policy T7 seeks to safeguard the operational, economic and environmental interests of those affected, has the agreement of

the local highway authority and would include appropriate provision for public transport, pedestrians and cyclists;

- Policy E12/6 seeks to ensure that development does not have an adverse effect on the biodiversity of the A19 wildlife corridor and that mitigation is provided to compensate for any adverse impacts; and
- Policy E14 seeks to protect existing trees within the urban environment and encourage new planting whenever possible.

3.7.3 The LIR also refers to an emerging local plan consultation draft [REP1-019]. There is however no evidence to suggest that, at this stage, it merits anything other than very limited weight, and the examination has been undertaken on this basis.

TYNE & WEAR LOCAL TRANSPORT PLAN

3.7.4 The Tyne and Wear Local Transport Plan 3 includes a ten-year strategy (2011 – 2021) covering all forms of transport in Tyne and Wear. It was produced on behalf of the five Tyne and Wear local authorities (including North Tyneside) and Nexus, the local Passenger Transport Executive. Its goals include the improvement of the efficiency and reliability of the highway network and the creation of a fairer Tyne and Wear, providing everyone with the opportunity to achieve their full potential and access a wide range of employment, training, facilities and services.

NORTH EAST STRATEGIC ECONOMIC PLAN

3.7.5 The overall vision of the Strategic Economic Plan (SEP), published by the North East Local Enterprise Partnership, is to provide over one million jobs in the economy of the North East by 2024. It is expected much of this will be through growth in business services, where the A19 corridor in North Tyneside, including Cobalt Business Park, is a competitive location. The A19 corridor already accommodates a range of medium and large businesses and elements of the new economy such as creative technology, media, telecoms, low carbon and renewable technology businesses. The corridor is supported by the designation of an Enterprise Zone along the River Tyne North Bank in Newcastle and North Tyneside.

3.7.6 The SEP sets out 6 strategic themes to address challenges and deliver economic growth. One of these is to develop the places for business to invest and for people to live. Another is transport and digital connectivity, to allow people to move around for work and leisure and connect the North East to the national and international economies. The SEP notes that the A19 corridor is a key employment location for a varied portfolio of potential development sites with the right infrastructure, which is key to leveraging investment into the area.

3.7.7 In terms of transport, the SEP notes that to achieve its economic growth aspirations, it will be necessary for people and goods to be transported within, into and out of the area. It goes on to note that a

lack of effective road connections can limit aspiration and the North East will not attract investment if the transport networks do not function effectively.

- 3.7.8 Improvements in the A19 corridor are specifically identified as a priority as reducing congestion on the road network, in particular the A1 and A19, is necessary to ensure that constraints on economic investment are relieved. Investment in the road network will have significant economic benefits for the region and enable developments in growth corridors to be delivered. The SEP identifies investment in known and specific bottlenecks on the network including at the scheme junction.

3.8 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

- 3.8.1 In reporting on the examination, it is necessary to consider whether changes to the application meant that the application had changed to the point where it was a different application. In this context, it is also necessary to consider whether the Secretary of State would have the power under s114 of the PA2008 to make a DCO having regard to the development consent applied for. The view expressed by the Government during the passage of the Localism Act that s114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made. In exercising this power the Secretary of State may wish to take into account the following.
- 3.8.2 In summary, I consider that, in relation to the changes made by the applicant during the examination: none engaged the Infrastructure Planning (Compulsory Acquisition) Regulations 2010; none would result in impacts outside of those assessed in the EAR; and none represented material changes to the application. I therefore conclude that the application had not changed to the point where it was a different application and that, should the Secretary of State decide to make the Order, it could be made on the basis of these changes.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.0 MAIN ISSUES IN THE EXAMINATION

4.0.1 Prior to holding the preliminary meeting I identified, in my Rule 6 letter [PD-001], a number of principal issues for the examination. These had regard to the application documents and the National Policy Statement for National Networks (NPS) together with the relevant representations submitted by interested parties. The principal issues were, in alphabetical order and not to be taken to imply any order of importance:

- (i) Air Quality and Emissions
- (ii) Biodiversity and Ecological Considerations
- (iii) Carbon Emissions
- (iv) Compulsory Acquisition
- (v) Draft Development Consent Order
- (vi) Economic and Social Impacts
- (vii) Historic Environment
- (viii) Landscape and Visual Impact
- (ix) Noise and Vibration
- (x) Water Issues

4.0.2 During the examination, I saw no reason to change these issues, which are the engaged issues for NPS purposes, and no one challenged or suggested additions to the issues at the preliminary meeting. I did however add issues relating to waste, land instability, land use and transport networks to further accord with the NPS.

4.0.3 This chapter of the report therefore sets out my findings and conclusions in respect of these issues, and policy considerations and the planning balance are addressed throughout. Compulsory acquisition, and related matters including financial viability, is addressed in Chapter 6 and the draft Development Consent Order (DCO) is addressed in Chapter 7. All representations, even if not explicitly mentioned, have been fully considered in reaching the conclusions set out. All of the principal matters raised in the submitted Local Impact Report (LIR) are covered by my principal issues [REP1-019]. It is also of note that, in the submitted Statement of Common Ground between the applicant and the relevant planning authority (RPA), North Tyneside Council, there are no matters not agreed or under continuing discussion.

4.0.4 The principal issues were largely consistent with guidance contained in the NPS relevant to the examination of and decisions on highways applications. This chapter of my report therefore responds to the requirements of the NPS in respect of the application. It is important to note that not all issues identified in the NPS are relevant to this application, for example, civil and military aviation and defence interests, coastal change and Green Belt.

- 4.0.5 The NPS identifies that there is a critical need to improve the national road network. This is to: address congestion; provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a network that is capable of stimulating economic growth. The Appraisal of Sustainability accompanying the NPS recognises that some developments will have adverse local impacts on noise, emissions, landscape and visual amenity, biodiversity, cultural heritage and water resources. Therefore, whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain. There is however a presumption in favour of granting development consent for national networks Nationally Significant Infrastructure Projects (NSIPs) that fall within the need for infrastructure established in this NPS. This is of course subject to the detailed policies and protections in the NPS, and the legal constraints set out in the PA2008. The following findings and conclusions take all of these matters into account.
- 4.0.6 During the pre-application stage the applicant requested an EIA screening opinion [APP-029 Appendix 1.2] from the Planning Inspectorate in accordance with Regulation 6 of the EIA Regulations³. The EIA screening opinion was duly provided with delegated authority from the Secretary of State. The EIA screening opinion confirmed that formal EIA was not necessary for the project. The decision was based upon the information contained within the applicant's screening request report [APP-028 para 1.4.2] and the criteria specified in the Regulations for considering potential likely significant environmental effects.
- 4.0.7 The screening opinion informed the applicant of environmental information required as part of the APFP Regulations⁴ and advised that this information was provided as part of the application. The applicant was also informed that the judgement made at pre-application was relevant to the description of the development provided at that time and that it may be screened again at point of application under regulation 12(4) of the EIA Regulations if "the Secretary of State is of the view that the screening opinion did not take into account information that is material to the decision as to whether the proposed development is EIA development".
- 4.0.8 The applicant submitted an Environmental Assessment Report (EAR) with the application which provided a non-statutory assessment of environmental impacts applicable to the project and addressed the requirements of the APFP Regulations. The robustness of the EIA screening opinion was considered at acceptance and throughout examination having regard to any applicable changes to the project. At no stage during the process did I consider that changes to the

³ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)

⁴ The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (as amended)

project, or any other matters considered during the examination would undermine the findings of the EIA screening opinion [APP-038]. I therefore remain satisfied that the scheme is not EIA development.

4.1 AIR QUALITY AND EMISSIONS

- 4.1.1 Air Quality and Emissions applicable to the project have been assessed within the applicants EAR. At the Preliminary Meeting the applicant provided an Air Quality erratum which I accepted [CoR-006 & APP-030]. The EAR was undertaken in accordance with guidance contained within the Design Manual for Roads and Bridges and other relevant advice and guidance. The RPA confirmed it was content with the methodology used in the erratum assessment and agrees with the erratum assessment of effect applicable to the construction works, which would be neutral [REP1-019].
- 4.1.2 The EAR included the effects from dust generated by construction activities and the effects of nitrogen dioxide (NO₂) construction vehicle emissions. In the operational phase, a detailed assessment of local NO₂ road traffic emissions was undertaken. Particulate matter smaller than 10µm in aerodynamic diameter (PM₁₀) concentrations were also considered. Regional emissions of carbon dioxide (CO₂), oxides of nitrogen (NO_x) and PM₁₀ were also assessed.
- 4.1.3 Baseline NO₂ monitoring was undertaken over a 6 month period along the A19 and the A1058 within approximately 3km of the scheme. The A19 is a road link along which the EU annual mean NO₂ limit value is exceeded at some times and in some locations, and air quality considerations are therefore particularly relevant. There are 2 monitoring locations within the study area that exceed the EU limit value and are considered to be representative of a DEFRA 'compliance risk' location but are not representative of an area of relevant long term exposure where the Government's Air Quality Strategy⁵ (AQS) objective would apply. A third location that exceeds the EU limit value is representative of residential properties and is therefore considered to be representative of an area of relevant long term exposure, so here the AQS objective would apply. There are however no Air Quality Management Areas (AQMA) within the scheme footprint, although there is one AQMA located approximately 3.4 km south of the scheme footprint and just within the study area. There is only one affected AQMA which is the Lindisfarne Roundabout / Leam Land AQMA.
- 4.1.4 Existing PM₁₀ concentrations in the local area around the scheme are well below the AQS/EU Air Quality Directive limit value, even at the relevant local authorities' worst case locations. The changes in traffic characteristics associated with the Scheme would therefore be unlikely

⁵ Department for Environment, Food and Rural Affairs (DEFRA) and the Devolved Administrations (2007). The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (Volumes 1 and 2)

to result in either the annual or 24 hr mean PM₁₀ AQS and EU thresholds being exceeded.

- 4.1.5 In terms of dust generated by the construction activities, and following the implementation of mitigation measures, it is unlikely that the construction of the scheme would result in effects giving rise to statutory nuisance at nearby residential properties and schools. These mitigation measures would include the sheeting of relevant vehicles and the use of water spray and are set out in the outline Construction Environmental Management Plan (CEMP) [APP-029 Appendix 1.3].
- 4.1.6 It is anticipated in the EAR that there would be approximately 72 heavy goods vehicle movements per day on main arterial routes in the local area associated with the construction activities. In the context of the existing traffic on these roads, there is unlikely to be a significant effect on local air quality.
- 4.1.7 At the time of opening, in 2018, the scheme would be unlikely to cause the annual mean or hourly mean NO₂ AQS/EU limit values to be exceeded in the local area. The maximum predicted NO₂ annual mean concentration increase, of 1.8µg/m³, is at Receptor 15 (42 Murrayfields) with a predicted concentration of 31.1µg/m³ at this location.
- 4.1.8 Receptor 179 (18 Lindisfarne Road) lies within the Lindisfarne Roundabout / Leam Lane AQMA and is the location with the highest NO₂ concentration in both the do-minimum 2018 scenario 32.9µg/m³ and 33.3 µg/m³ in the do something 2018 scenario, a predicted increase of 0.4µg/m³. This is the only affected AQMA and the predicted increase with the scheme over the do-minimum scenario is considered an imperceptible change.
- 4.1.9 All of these concentrations should be seen in the context of the AQS and EU limit value of 40µg/m³ annual mean. The effect of the scheme in this regard would therefore be insignificant. The effect would thus be low compliance risk, notwithstanding the distances between the monitors and receptors and the three compliance risk locations . The scheme therefore would not be likely to affect the UK's ability to comply with the Air Quality Directive, including the reporting of air quality [APP-030].
- 4.1.10 There is also no evidence that the scheme would bring about any need for a new AQMA or lead to significant deterioration in air quality in any zone/agglomeration. There is also nothing to suggest that the scheme would lead to the emission of any unacceptable odours, smoke or steam.
- 4.1.11 At regional level, there would be an overall increase in total regional air quality emissions with the scheme in both the opening and design years in terms of oxides of nitrogen (NO_x), PM₁₀ and carbon dioxide (CO₂). The EAR predicts that in terms of NO₂ however, the change in

regional air quality arising from road traffic generated by the scheme would have an insignificant effect.

4.1.12 In view of all of the above points, the scheme would accord with the aims of, and the policies and protections in, the NPS in this regard and, in particular, paragraphs 5.3 to 5.19. The effect of the scheme would also fall within the thresholds in the Government Air Quality Strategy.

4.1.13 I am therefore satisfied that the proposal would not have any unacceptable effects in terms of air quality from construction or operation and would have a neutral effect in terms of the planning balance.

4.2 BIODIVERSITY AND ECOLOGICAL CONSIDERATIONS

4.2.1 This matter is included in the EAR [APP-027, 028 & 033]. The RPA is satisfied that appropriate surveys have been carried out to assess the value of the habitat and the presence of any protected species, of which none were found. The RPA is also satisfied that, with appropriate mitigation in place under the Ecology Management Plan in the approved CEMP, the impact of the development on local biodiversity would be neutral. This is notwithstanding that the scheme would be located within a wildlife corridor identified in the UDP.

4.2.2 Natural England (NE) accepts the identification of the key environmental issues, the methodology adopted, the survey work undertaken and design approaches in the EAR [REP1-023]. NE also accepts that, given the extent of the site and the nature of the works proposed, the development does not pose a risk to designated sites or protected landscapes and that there is no need to undertake formal breeding bird surveys. There are no matters which are not agreed or cannot be agreed prior to construction between the applicant and NE.

HABITATS REGULATIONS ASSESSMENT

4.2.3 There are no statutorily designated European sites within the scheme footprint. The nearest Special Area of Conservation (SAC) to the scheme is the Durham Coast, which is also a Site of Special Scientific Interest, and is some 5.5km to the south east of the scheme. The nearest Special Protection Area (SPA) to the scheme is the Northumbria Coast, which is also a Ramsar site, and is some 4.3km to the east. Both European sites are within 10km of the scheme footprint, however their qualifying features have an affinity with the coastal attributes at the sites, and there is no evidence of any ecological connectivity with areas affected by the scheme footprint. There is also no evidence of any connectivity when the in-combination effects of other plans and projects are taken into account.

4.2.4 Having had regard to these findings, the views of the statutory nature conservation body, the overall lack of connectivity between European sites, and the scheme footprint and the impacts, I am satisfied that there is sufficient evidence to allow the Secretary of State to conclude

that the potential for significant effects can be excluded for all European sites or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans and projects. Furthermore, in accordance with the NPS, I am content that such information has been provided, as is reasonably required, for the Secretary of State to determine that an appropriate assessment is not required.

STUDY AND SURVEY WORK

- 4.2.5 The EAR comprised a desk study and a 500 m survey buffer. The desk study included protected species and nationally designated sites of nature conservation within a 2 km radius from the scheme. An Extended Phase 1 Habitat Survey was also undertaken. Further targeted species surveys were then completed for great crested newt, water vole, red squirrel, bats and reptiles. Surveys for otter and badger were not undertaken due to the lack of historical records and suitable habitat. Dedicated bird surveys were also not considered necessary as species present comprised those which are common and widespread. During the survey period, new information was available concerning the potential for presence of dingy skipper and grayling butterflies in an area near to the proposed construction compound site. A habitat suitability assessment (HSA) was undertaken in May 2014. The HSA revealed that the prevalence of habitat types which are considered suited for either butterfly species was low and it was considered unlikely that they utilise the proposed temporary construction compound location.
- 4.2.6 From the desk study, the scheme footprint is not located wholly or partially within any known statutory designated site for wildlife or natural heritage. The scheme would however be approximately 1.5km from three Local Nature Reserves (LNRs). The scheme footprint encroaches on a local authority designated wildlife corridor, and the scheme would be some 1.5km from four Sites of Nature Conservation Importance two of which are also LNRs. The scheme would also be some 1.5km from a Site of Local Conservation Importance, which is part of one of the LNRs identified above.
- 4.2.7 The protected species great crested newt and red squirrel have been recorded within 2km of the scheme footprint within the previous 10 years. Wildlife and Countryside Act 1981 Schedule 1 listed fieldfare and redwing bird species have also been recorded. These records however related to non-breeding and over-wintering, and they did not trigger a need for further assessment.

IMPACT

- 4.2.8 In terms of the effect of construction on habitat, the scheme would result in the permanent loss of carriageway margin woodland and scrub. Such habitat is common and widespread, and its loss would have a minor and therefore not significant effect. No identified ponds would be directly affected by the scheme, and the potential for indirect

effects is unlikely. Impacts due to the occupation of the proposed temporary construction compound relate to the habitats that would be lost. However, the site mostly comprises unmanaged poor semi-improved grassland and exposed bare earth and, in the surveys, no protected species were observed on these sites. The EAR predicts that the temporary loss would thus have a minor and therefore not significant effect. The EAR also predicts that, in view of the relatively small area of the scheme footprint and the distances between other developments, no significant cumulative effects with other developments are anticipated.

4.2.9 In view of the minor effects noted above, and the absence of evidence of direct pathways of effect, the scheme would be very unlikely to have any significant effects on the designated sites identified above.

4.2.10 In terms of fauna, only a limited number of bird nests were recorded during the surveys. In view of this, and the traffic disturbance already present, the EAR predicts that impacts on birds are likely to be minor, short term and therefore not significant. No bat roosts were identified during the surveys of the two lesser used bridge structures within the scheme footprint, and the habitats recorded were of low suitability for bats. Commuting and foraging bats would again be habitually accustomed to a degree of disturbance from light pollution. Whilst construction may increase this, the impact predicted in the EAR would be likely to be minor-negligible, short term and therefore not significant. The likelihood of the above outcomes, or indeed less impact, is enhanced by the inclusion of construction mitigation measures in the CEMP [APP-029 Appendix 1.3]. This mitigation would be secured by the DCO and would include directional lighting and the avoidance of vegetation clearance during the bird nesting season. The CEMP would also, more generally, include measures to regulate construction activities in the interests of biodiversity and the ecology of the local area.

4.2.11 No great crested newts (GCN) were found present in water bodies within the study area and no evidence of this species was recorded during the survey. The two ponds identified within the study area had been colonised by nesting waterfowl, which is incompatible with GCN use. The other four ponds, which were surveyed, are located outside of the study area.

4.2.12 No evidence of red squirrel was observed during the survey, and the woodland habitat present is sub-optimal habitat for the species. No evidence of water vole activity was recorded during the survey. No evidence of any reptiles was recorded during the survey. Some bat foraging and commuting activity was recorded during the survey, but no bat roosts were observed.

4.2.13 The majority of bird species recorded during the survey were 'Birds of Conservation Concern' green listed and comprised common and widespread species. Lapwing were recorded only once during the survey. The habitat suitability assessment undertaken for dingy

skipper and grayling butterflies revealed a prevalence of habitat types which are considered unsuitable for either butterfly species. It is therefore unlikely that either species utilise the areas surveyed.

- 4.2.14 The operation of the scheme would be unlikely to have any material effect on habitats. Apart from bats, the impact of the operation of the scheme according to the EAR on fauna is likely to be negligible and therefore not significant. In terms of bats, increased lighting could have an impact on commuting and foraging. The EAR states that given the presence of existing lighting in the area however, any effect is likely to be minor and therefore not significant. Post construction mitigation measures would also be undertaken, such as native species re-planting and the provision of bat boxes.
- 4.2.15 The EAR concludes that from the absence of species recorded in the surveys and the minor and negligible effects noted above, the scheme would be very unlikely to have any significant effects on protected and other species identified as being of principal importance for the conservation of biodiversity.
- 4.2.16 The restoration of the temporary construction compound area would be managed in consultation with the biodiversity officer of the RPA. This area is located within the RPA's designated wildlife corridor, and restoration would be managed in such a way that an enhancement of local biodiversity is achieved. This would include re-planting with a native species mix that would encourage re-colonisation by wildlife. Where possible, additional roadside planting of native species would be implemented in addition to the direct replacement of the areas of existing tree planting. This would complement the designated wildlife corridor. Bat boxes would also be provided.
- 4.2.17 The scheme would therefore take advantage of opportunities to conserve and enhance biodiversity and conservation interests. This would be regulated by the CEMP and landscaping requirements in the DCO [APP-029].
- 4.2.18 In view of all of the above points, I consider that the scheme would accord with the NPS in terms of biodiversity and ecological considerations and, in particular, paragraphs 5.20 to 5.38. Furthermore, the scheme would not have an adverse effect on the biodiversity of the A19 wildlife corridor and mitigation would be provided to compensate for any adverse impacts in accordance with UDP Saved Policy E12/6. I am therefore satisfied that the proposal would not have any unacceptable biodiversity or ecological effects and would have a neutral effect in terms of the planning balance.

4.3 CARBON EMISSIONS

- 4.3.1 This matter is considered in the EAR and responses to the ExA's written questions [APP-027, 028 & 029 & REP1-016]. The scheme would incorporate a number of measures to limit its carbon footprint. These would include the retention of existing infrastructure, minimisation of the scheme footprint, recycling of on-site materials where practicable and making best use of new technology. These would generally be regulated under the CEMP.
- 4.3.2 In more detail, these measures would be as follows. The existing A1058 structures at the scheme would be retained and the scheme would incorporate an urban highway cross-section. This would substantially reduce the materials required for construction and those to be removed from the scheme than would have been the case with earlier design options.
- 4.3.3 The Scheme would use LED lighting, which would reduce energy and carbon considerably compared to traditional lighting. An existing large diameter surface water sewer would be incorporated in to the highway drainage system, which would reduce the materials required. The adoption of reduced design speeds would also mean that no widening of the Middle Engine Lane underbridge would be required and only minimal widening of the Middle Engine Railway underbridge, which would reduce the need for materials.
- 4.3.4 Enhanced non-motorised user facilities within the scheme would facilitate walking and cycling. Where practicable, the off-site manufacture of components for the scheme would be undertaken to minimise the generation of on-site construction waste. Examples of this would include the facing panels for the contiguous bored piled retaining walls.
- 4.3.5 All topsoil excavated during site clearance activities would be reused within the works and would be handled in accordance with the "Construction Code of Practice for the Sustainable use of Soils on Construction Sites". The location of the construction compound directly adjacent to the works would minimise the number of vehicle trips. A site waste management plan would be produced in order to identify how waste would be prevented, reduced, reused and recycled in accordance with the waste hierarchy. Waste targets would be set and monitored, and a pre-construction waste audit would be carried out to identify materials for reuse. A Materials Management Plan detailing how all construction phase materials would be handled would also be approved by the RPA and implemented under DCO requirement 3.
- 4.3.6 The EAR did not include an objective assessment of carbon performance in terms of construction and operation apart from the consideration of CO₂ under air quality. In view of the nature and extent of the scheme however, I do not consider that the absence of such an assessment undermines my conclusion in relation to this issue or draws the scheme into conflict with the NPS in this regard.
- 4.3.7 In view of all of the above points, the scheme would accord with the NPS in this regard and, in particular, paragraphs 5.16 to 5.19.
- 4.3.8 I am therefore satisfied that the measures set out above would be both adequate and effective in order to ensure that, in relation to

design and construction, the carbon footprint would not be unnecessarily high. Matters relating to carbon emissions would therefore have a neutral effect in terms of the planning balance.

4.4 ECONOMIC IMPACTS

- 4.4.1 This matter is considered in the EAR and the Transport Assessment Report [APP-025, 027 & 028]. The benefits set out below are endorsed by the RPA [REP1-019].
- 4.4.2 The scheme footprint occupies parts of 6 Local Super Output Areas (LSOAs), and these form the study area for the assessment. These areas have a similar demographic profile, which is also similar to the averages for the North East Region and England as a whole.
- 4.4.3 In 2010, in the Indices of Multiple Deprivation, the area of North Tyneside Council had a rank of 124 out of 326 local authorities in England. This represents a decrease in ranking from 57 in 2007 and 49 in 2004. 23% of the population in North Tyneside live in areas considered to be amongst the most deprived 20% in England with associated issues of poor health and low levels of participation and attainment in education post 16 years old. The boundaries of these most deprived areas have changed little in the last 30 years.
- 4.4.4 From the 2011 census, the employment rate in North Tyneside is 62.8%, higher than the regional figure of 57.5% but lower than the national level 70.5%. The unemployment rate is 4.9%, lower than the regional figure of 5.4% but higher than the national average of 4.4%. From the 2014 National Office of Statistics Job Densities Report, the job density level, the ratio of jobs available divided by the resident population aged between 16 and 64 is 0.61, lower than the regional figure of 0.67 and the national level of 0.78, indicating less availability of employment. From the same source, the proportion of individuals classified as Job Seekers Allowance claimants is 3.7%, lower than the regional figure of 4.2%, but higher than the national average of 2.9%.
- 4.4.5 In North Tyneside and the North East Region over the last 30 years, there has been a transition from traditional manufacturing to a service based economy. Despite some recent growth, the economic base remains narrow with high dependency on the public and service sectors and small business enterprises. The A19 corridor is one of the main employment areas within North Tyneside.
- 4.4.6 Industrial and commercial premises are concentrated along the eastern edge of the scheme. The Tyne Tunnel Trading Estate North is to the south-east of the scheme junction and is designated as employment land suitable for Class B1, B2 and B8 use. The Cobalt Business Park is to the north-east of the scheme junction and is also designated as employment land. The land to the north-west of the scheme junction is designated as a current employment area/expansion land. Land adjacent to the south bound carriageway of the A19 to the north of the junction around Middle Engine Lane is

designated as employment land suitable for Class B1, B2 and B8 uses, and is also a current employment areas/expansion land.

- 4.4.7 The scheme junction is ranked number 1 in the hierarchy of junctions set out in North Tyneside's Network Management Plan [REP1-019 paras 5.9-5.11]. The EAR predicts that at present it has a significant adverse impact on journey time reliability at peak times, particularly due to through traffic on the A19 mixing with traffic accessing Silverlink Retail Park, combined with a high accident rate. In the NPS, congestion on this section of the A19 is shown to worsen from moderate to regular by 2040. Traffic conditions at the scheme junction are, and without improvement would be an increasing, restraint on accessibility and economic activity in the A19 corridor.
- 4.4.8 The scheme would have the potential for transport economic efficiency benefits of over £400 million based on a 'TUBA' economic appraisal. These benefits would be largely based on journey time savings and reduced accidents. It is anticipated that 74% of this total benefit would be external to the local-level study area, but some £106 million is forecast to accrue to the areas immediately surrounding the scheme.
- 4.4.9 The scheme would also provide potential for job safeguarding and creation. There is currently 25.5 ha of developable employment land available on the Tyne Tunnel Trading Estate which is disadvantaged by traffic congestion at the scheme junction. Based on an assumption of 1 workspace per 34 m², the scheme would safeguard the creation of approximately 7,259 jobs. Furthermore, the increased accessibility would also safeguard the 12,650 existing jobs at the Tyne Tunnel Trading Estate, Cobalt Park and Silverlink Retail Park.
- 4.4.10 Areas of land would be required permanently and temporarily for construction purposes. Whilst these would occupy designated employments areas, they would comprise some 1.3% of the total commercial land within the local-level study area. The EAR considers that the effect on local economic receptors as a whole would therefore be of minor negative significance.
- 4.4.11 It is anticipated that construction would create 518 full-time equivalent jobs per year, and this would represent some 3.9% of the economically active population in North Tyneside. The EAR concludes that construction could thus have a direct, temporary and positive effect of moderate significance on local economic receptors. It would however be unlikely that all of these opportunities would be taken by those in North Tyneside, and I therefore consider that the construction effect should be reduced to minor.
- 4.4.12 The EAR concludes that the creation of these jobs is also anticipated to create 570 indirectly related jobs. This could result in a direct, temporary and positive effect of moderate significance on local economic receptors. It would however again be unlikely that all of

these jobs would be created in the local area, and I therefore consider that the construction effect should be reduced to minor.

4.4.13 As a consequence of all of the above points, I consider that the scheme would accord with the NPS objective to support economic activity and growth in paragraphs 2.1 to 2.27. The support that the scheme would give to the economic development, regeneration and competitiveness of Tyne and Wear, by improving the efficiency and reliability of the highway network would accord with the goals of the Tyne and Wear Local Transport Plan 3 (LTP3). It would also help to create a fairer Tyne and Wear, providing everyone with the opportunity to achieve their full potential and access a wide range of employment, training, facilities and services, again one of the LTP3 goals. The improvement that the scheme would give to the A19 corridor also accords with the transport priorities in the North East Strategic Economic Plan.

4.4.14 I thus consider, on balance, that the scheme would be likely to result in an indirect, substantial and positive social effect on local economic receptors. This is a key benefit that would arise from the scheme.

4.5 SOCIAL IMPACTS

4.5.1 The area accommodates a number of education, leisure, health, religious and retail facilities. The Silverlink Retail Park, immediately adjacent to the scheme junction, contains a variety of shops, a cinema and over 1,500 free parking spaces.

4.5.2 Drivers using the A19 would experience a reduction in stress, an improvement in safety, a reduction in congestion and journey times and improved journey amenity. This would be because they would no longer need to negotiate the A19 roundabout as a free flowing route will be provided by the cutting under the junction. There would also be a positive effect on users of the retained roundabout, due to reduced traffic flows. The EAR considers that the scheme would therefore be likely to result in a direct and positive effect of minor significance on road users.

4.5.3 During the construction period, traffic flows would be regulated in accordance with a Traffic Management Plan, prepared in consultation with the local highway authority, under a DCO requirement. The RPA's LIR, which addresses traffic management, raises no concerns that could not be accommodated within the development of the plan [REP1-019]. The RPA is also satisfied that the arrangements contained in the draft plan, submitted with the application, are sufficient [REP3-026]. I therefore consider that construction impacts would not undermine the road user benefits set out above.

4.5.4 During operation, the scheme would provide improved NMU connectivity along the A1058 and would reduce traffic flows at the scheme roundabout, easing the pedestrian crossing environment. The EAR predicts that there would therefore be direct positive effects of

minor significance on NMUs and in terms of community severance and the amenity value of NMU routes. The RPA is of the view that the proposed NMU provision is at least equal to the present provision [REP3-026].

- 4.5.5 Whilst NMU routes within the scheme footprint would be generally maintained throughout construction by mitigation measures, users would experience a noticeable change to their environment. The EAR predicts that they would therefore be likely to be subject to direct, but temporary, negative effects of negligible to minor significance. Road users would be subject to some disruption from the proposed traffic management measures. They would therefore be likely to be subject to direct, but temporary, negative effects of minor significance according to the EAR. The temporary nature of such impacts would however not undermine the positive effects on completion.
- 4.5.6 During construction, in terms of community severance, whilst the scheme would not be located between a community and its facilities, the pedestrian/cycle routes along the A1058 bridge would be closed. This would be for a lengthy period of time, but users would be diverted through the junction roundabout. The NMU route under the Middle Engine Railway Bridge would also be closed for a period of time, but this would be likely to be during the winter, when use levels would be lower. The EAR predicts that these would result in a likely direct, but temporary, negative effect of minor significance in terms of community severance.
- 4.5.7 From all of the above, I consider that the scheme would accord with the aspects within Section 3 of the NPS which relate to social impact. In relation to the UDP, the scheme would improve safety and convenience on the public highway, improve conditions for pedestrians, provide for NMUs and improve accessibility to main employment areas in accordance with UDP Policy T6. The scheme would safeguard the operational, economic and environmental interests of those affected, has the agreement of the local highway authority and would include appropriate provision for public transport, pedestrians and cyclists in accordance with UDP Policy T7.
- 4.5.8 I thus consider, on balance, that the scheme would be likely to result in a direct, minor and positive effect on highway users.

4.6 HISTORIC ENVIRONMENT

- 4.6.1 This matter is considered in the EAR [APP-027, 028 & 031]. Heritage England has advised that there are no scheduled monuments, conservation areas, world heritage sites, or registered battlefields in the vicinity of the scheme footprint. It also was of the view that any further conservation advice should be sought from the RPA. The RPA is satisfied with the methodology used to evaluate the scheme impacts and considers that, with the proposed cultural management plan in place, impact of the works on archaeology would be neutral [REP1-

019]. The cultural management plan would form part of the CEMP to be approved by the RPA.

- 4.6.2 The assessment undertaken in the EAR is based on a study area which extends approximately 1 km from the edge of the scheme footprint. The baseline of the study areas has been determined using relevant Historic Environment Record (HER), a desk study and walkover survey. The assessment included consultation with English Heritage, Tyne and Wear Archaeology and the Conservation Officer at the RPA. I am satisfied that the assessment has identified the significance of heritage assets within the study area, and the level of detail is proportionate to the assets importance and sufficient to understand the potential impact of the proposal.
- 4.6.3 The EAR identifies a number of historic receptors with medium to negligible value are located within the study area. These are Grade II listed buildings and therefore designated heritage assets. The scheme however would not be inter-visible with these assets, and there would therefore be no residual harm.
- 4.6.4 Within the scheme footprint, there are no known archaeological assets dating to the prehistoric, Romano British or medieval periods. Within the wider study area, several sites dating to the prehistoric and medieval periods have been noted and there is limited known evidence for Roman activity. Within the scheme footprint there are four known assets dating to the post medieval period which are identified on the HER. Of these, two coal pits and a waggonway will have been destroyed by the construction of the original A19, but traces of a third coal pit may remain in open ground in the Tyne Tunnel Trading Estate.
- 4.6.5 The scheme could result in the loss or truncation of buried or surface archaeological remains within the area of the temporary construction compound on the Tyne Tunnel Trading Estate. As only traces of a coal pit may remain, these remains are envisaged within the EAR to have a low historical value. The area would be subject to trial trenching under a written scheme of investigation regulated under the archaeology requirement in the DCO. This would ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction. As a result, the EAR assumes that any residual harm would be likely to be negligible or minor adverse.
- 4.6.6 The requirement would also ensure that the significance of the asset was recorded, and that any analysis and reporting was deposited with the relevant HER. I consider that this approach would be proportionate to the significance of the asset and the likely level of impact.
- 4.6.7 The scheme would result in a change to the historical landscape character within the A19 corridor and the Tyne Tunnel Trading Estate. The value of this character arises from its coal mining past in terms of mines and waggonways which are identified on the HER. This landscape is however poorly preserved due to the insertion of the

existing A19 and its associated infrastructure, such as residential, industrial and recreational developments. The value of this character is therefore considered by the EAR to be negligible or low and any residual harm would be likely to be negligible or minor adverse.

- 4.6.8 In terms of archaeological remains and the historic landscape, the scheme would lead to less than substantial harm to the significance of these heritage assets. The residual harm identified in the EAR would be negligible or minor adverse. The scheme has been the subject of an appropriate level of consultation, and no objections have been made on grounds relating to the historic environment. The scheme, as designed and consulted upon, could not be implemented without the low level of harm to the historic landscape. It also could not be implemented without the temporary use of the area for a construction compound, with the associated risk to archaeological remains and a low level of harm.
- 4.6.9 In view of all of the above points, the scheme would accord with the NPS in this regard and, in particular, paragraphs 5.120 to 5.142.
- 4.6.10 The public benefits of the scheme have already been identified in this chapter of the report. In view of all of the above points, I consider that the less than substantial harm that has been found would not outweigh these benefits. I am therefore satisfied that the proposal would not have any unacceptable effects in terms of the historic environment and these matters would have a neutral effect in terms of the planning balance.

4.7 LANDSCAPE AND VISUAL IMPACT

- 4.7.1 This matter is considered in the EAR [APP-027, 028 & 032]. The RPA is satisfied with the methodology used to assess the impacts and that replacement landscaping of a satisfactory standard would be provided under the landscaping scheme regulated by the DCO [REP1-019]. This scheme would need the approval of the RPA. Furthermore, the RPA's LIR, which includes landscape and visual impact, raises no concerns in this regard.
- 4.7.2 The applicant's EAR addresses landscape and visual amenity although detailed assessment of landscape has not been carried out. The study area extended to a minimum of 1km from the scheme footprint together with areas in the zone of visual influence, and it included a desk study, site visit and assessment. The assessment considered impacts at the construction and operation, at Years 1 (opening year 2018) and 15 years after opening (design year 2033).
- 4.7.3 Mitigation during construction would include: the use of high quality hoardings; good housekeeping to reduce visual clutter; defined construction vehicle traffic routes; dust suppression; and sensitive lighting. Mitigation during the operational period would include: the retention of the maximum possible amount of existing planting; tree and shrub planting along the highway route corridors to filter views

from adjacent sensitive visual receptors; lighting and signage design to minimise visual intrusion and light spill. The nature of the scheme, to improve a specific highway junction, is such that mitigation through the siting of infrastructure and choices of materials is very limited in this case.

- 4.7.4 Visual receptors include: local residents; recreational facility users, including NMUs; nearby employees; and occupiers of the nearby Silverdale school. Visual impact related to construction activities would be attributable to: plant and equipment; material stockpiles; temporary signage fencing, and overhead gantries; construction traffic; construction compound features, scaffolding and temporary lighting. These activities would take place over a period of approximately 2½ years.
- 4.7.5 The EAR predicts that during the construction period and for the 220 residential properties and three recreational facilities affected, the general significance of effect would be moderate or large. For the 31 employment properties and three recreational facilities affected, the general significance of effect would be slight, and the significance of effect on the Silverdale School would be slight. The EAR predicts that the overall effect during the construction period would therefore be of direct, adverse and of moderate significance, but to the local area only and of a short term duration.
- 4.7.6 During the operational period, for the 220 residential properties affected, the general significance of effect assessed in the EAR would be slight to moderate at Year 1 and neutral to slight at Year 15. For the three recreational facilities affected, the general significance of effect would be slight to large at Year 1 and slight to moderate at Year 15. For the 31 employment properties affected, the general significance of effect would be slight at Years 1 and 15, and the significance of effect on the Silverdale School would be moderate at Year 1 and slight at Year 15. The overall effect at Years 1 and 15, during the operational period, would be adverse and of slight to moderate significance at Year 1 and of neutral to slight significance at Year 15. Whilst these effects would be permanent, they would however only affect the immediate local area.
- 4.7.7 The EAR considered the roads and traffic on a winter day in the year of opening, 2018, and for the summer in 2033. The seasonal difference, and therefore inconsistency, between the Year 1 and 15 assessments will have undoubtedly have improved the comparative benefit of the mitigation between these years. Year 15 vegetation would however generally be denser and less dependent of leaf cover. As a result of this, and the low level of effect at Year 15, I do not consider that the inconsistency would materially affect the assessment.
- 4.7.8 In terms of the landscape and its character, a simple landscape assessment and further review has been undertaken, with findings of

minimal landscape effects. From this, the EAR predicts that no significant landscape effect would occur.

- 4.7.9 In view of all of the above points and on balance, I consider that the scheme would accord with the NPS in this regard and, in particular, paragraphs 5.143 to 5.161. The scheme would also protect trees and landscape features within the A19 corridor in accordance with UDP Policy E14.
- 4.7.10 I am therefore satisfied that the proposal would not have any unacceptable effects in terms of landscape and visual impact and these matters would have a neutral effect in terms of the planning balance.

4.8 NOISE AND VIBRATION

- 4.8.1 This matter is considered in the EAR [APP-027, 028 & 034]. Apart from night time traffic noise, which is considered below, the RPA has not raised any other concerns regarding noise from the operation of the completed scheme [REP1-019]. The RPA is also content with the methodology used, and agrees that the impact of the construction works would be neutral and supports the mitigation measures proposed [REP3-026].

ASSESSMENT

- 4.8.2 The EAR addresses the impacts that could arise from the scheme in the construction and operation periods. In particular, the assessment considers the potential effects of changes in road traffic noise at sensitive receptors within 600m of the scheme footprint and within 50m of affected routes where there could be a change of 1 dB $L_{A10,18h}$ or more on opening or 3 dB $L_{A10,18h}$ after 15 years. It is of note that only one road beyond 1km from the scheme footprint has been classified as an affected route. There are no noise sensitive areas, quiet places or other areas that are particularly valued for their tranquillity within the study area.
- 4.8.3 Predicted noise levels from the model used in the assessment were obtained for 2012 traffic flows and compared with those measured. At 6 out of the 8 locations considered, the difference was no more than ± 2 dB. The other two locations, at Silverdale School have differences of some 7dB. The applicant has not been able to fully explain these differences, despite thorough checking. Whilst these differences are material, they do occur in two individual locations amongst other compliant predictions. Furthermore, the model shows higher noise levels than those measured for the specific locations. I am satisfied that they are therefore not sufficient to fatally undermine the model, but model output at these two locations should be treated with a degree of caution.
- 4.8.4 The assessment includes a description of noise sources, the identification of sensitive premises, the characteristics of the existing noise environment, a prediction on how this environment would

change, an assessment of the effect of these changes and mitigation measures to be employed. The prediction of road traffic noise has been based on the method described in Calculation of Road Traffic Noise⁶. I can see no reason to doubt the results of the assessment, which I consider has been proportionate to the likely noise impact.

CONSTRUCTION

- 4.8.5 In terms of construction, mitigation measures would include: DCO requirement specified working hours; plant to be silenced, appropriately sited and maintained and operated correctly; appropriately programmed deliveries; and noise barriers erected where necessary. The operation of all of these measures would be regulated by the Noise and Vibration Management Plan within the approved CEMP under a DCO requirement. Furthermore, the incorporation of the existing roundabout overbridges, rather than their replacement, reduced the construction programme by over one year, resulting in reduced noise impacts.
- 4.8.6 During the construction period and for the majority of receptors, the EAR predicts that there would be a direct adverse effect of negligible significance. There would however be some exceptions to this, which are set out below. During the road construction and pavement laying works, for Silverdale School which is of high sensitivity, there would be likely to be a direct, but short term, adverse effect of moderate significance. The approved Noise and Vibration Management Plan would however regulate the timing of this work, to avoid unacceptable disturbance in the school. This would also allow the inconsistency in the noise model to be addressed against a more defined construction process. During the same activity, the EAR predicts adverse effects of minor significance at dwellings in Melrose Gardens, Henley Gardens and at the Travelodge hotel site which is subject to re-development.
- 4.8.7 The construction of tie-ins at the slip roads would have to be undertaken at night to avoid unacceptable traffic disruption. For dwellings in Tiverton Close which are of high sensitivity, the EAR predicts there would be a likely direct, but short term, adverse effect of moderate significance. This would be likely to be unavoidable. During the same activity, adverse effects of minor significance would also be likely at dwellings in Melrose Gardens and Henley Gardens and at the Travelodge hotel site.
- 4.8.8 Concrete repairs to the A1058 would also have to be undertaken at night to avoid unacceptable traffic disruption. For dwellings in Tiverton Close, the EAR predicts direct and short term adverse effects but, with this activity, the effect would be likely to be of minor significance. The approved Noise and Vibration Management Plan would also regulate the timing of this work, which could take several months, to avoid

⁶ Department of Transport/Welsh Office (1988). Calculation of Road Traffic Noise

unacceptable effects in conjunction with the construction of tie-ins at the slip roads.

- 4.8.9 Works to the Middle Engine Lane and Middle Engine Railway bridges would have to be undertaken during the evening or at night, again to avoid unacceptable traffic disruption. The applicant's EAR predicts that for dwellings in Blackhill Avenue and Bewick Park, which are of high sensitivity, there would be likely to be a direct, but short term, adverse effect of minor and moderate significance, respectively. The activity at each location would however only be likely to extend over one week. The approved noise plan would similarly regulate this activity as set out above and allow the inconsistency in the noise model to be addressed against a more defined construction process.
- 4.8.10 The EAR identifies similar constraints applicable to gas diversion works and, for dwellings in Melrose and Henley Gardens, which are of high sensitivity, there would be likely to be a direct, but short term, adverse effect of minor and major significance, respectively. This activity would however only be likely to extend over one week. Although the applicant suggests that it would be highly unlikely, dwellings in Henley Gardens could be eligible for noise insulation in accordance with BS 5228-1. This would be as a consequence of the difference between construction noise and the equivalent ambient noise level, and the period over which this could occur. Again, this would be regulated under the approved noise plan.
- 4.8.11 For all of the above night time activities, daytime construction could reduce the effect, but this would result in disruption to many journeys. On balance therefore, I consider that the benefit of daytime construction would not outweigh the harm that would be caused. This is because of the far lower number of receptors affected and because of the control provided by the noise plan to be approved by the RPA.
- 4.8.12 In relation to construction vibration, the predicted levels in the EAR would be well below the guide values for cosmetic damage to buildings in BS5228-2 and also below the threshold typically adopted to prevent unreasonable nuisance. The worst affected receptors identified in the EAR would therefore only be likely to experience direct, but short term, adverse effects of negligible significance.

OPERATION

- 4.8.13 The below surface road levels of much of the scheme would increase the screening of existing traffic levels, and the use of low-noise surfacing would further reduce existing and future vehicle noise at source. Speed limit reductions from 50 to 40mph and solid noise barriers were considered, but these gave negligible benefit and were discounted.
- 4.8.14 The applicants EAR considers that during the operational period, out of the 6866 dwellings assessed, only 4 would be likely to experience a direct adverse noise effect of minor significance in 2018. The EAR

anticipates this to be the likely maximum level of effect. The EAR also predicts that in 2033, any likely effects would be negligible. Moreover, in 2018, it is anticipated that up to 260 dwellings would be likely to experience a direct positive effect of minor significance although, with increased traffic and noise levels over time, this effect would not extend to 2033. For the only affected route beyond the 1km from the scheme footprint, noise levels with the scheme would reduce in 2018 but increase by 2033. The EAR considers that the effects of these changes would however be likely to have a negligible significance of effect of less than 3dB in terms of BS5228-1.

- 4.8.15 The EAR predicts that in terms of operational noise nuisance between 2018 and 2033, out of the dwellings assessed, there would be likely to be an increase in nuisance level of up to 21% at 2132 dwellings. This indicates that, between 2018 and 2033, with the scheme, 2132 more dwellings would experience an increase in nuisance than would have been the case without the scheme, and the increase in nuisance level would be likely to be up to 21%. Whilst these increases in nuisance appear to conflict with the significance of effects noted above, they reflect that, in 2018, 3000 dwellings would be likely to experience adverse effects of negligible significance and, in 2033, this would be likely to increase to 5540 dwellings. However the EAR also predicts a likely decrease in nuisance level of up to 4% at 399 dwellings.
- 4.8.16 The EAR predicts that in respect of operational period airborne vibration between 2018 and 2033, out of the dwellings assessed, there would be likely to be an increase in nuisance level of up to 21% at 13 dwellings. There would however be likely to be a decrease in nuisance level of up to 28% at 835 dwellings. Ground borne vibration would be related to noise levels, and the limited nature of changes to noise levels is indicative that any changes in ground-borne vibration would also be limited.
- 4.8.17 The EAR predicts that in terms of night time traffic noise, 454 dwellings would be likely to experience a direct adverse effect of negligible significance in 2033. These would be likely to be the maximum effects. The Design Manual for Roads and Bridges suggests that an assessment should highlight dwellings where noise levels would be likely to increase anywhere in the range above 55dB $L_{\text{night, outside}}$. The EAR anticipates that of the 454 dwellings, 16 of those would be likely experience an increase from below to above 55dB, and 194 would be dwellings where the night time noise levels were already above 55dB. Notwithstanding this however, all the changes are predicted to be below 3dB and would therefore be of negligible significance.
- 4.8.18 Only four of these 210 dwellings (16 + 194) would experience a short term increase of 1dB, but at these locations, the combined noise levels would be less than 68 dB $L_{A10,18h}$, and these dwellings would therefore not be likely to be eligible for noise insulation. Finally, 64 dwellings would be likely to experience a direct positive effect, but again of negligible significance, in 2033.

4.8.19 The RPA however has some concerns in respect of the assessment carried out in relation to night time traffic noise as there is no specific prediction methodology [REP1-019]. The CEMP would include a Noise and Vibration Management Plan, and the CEMP would be approved by the RPA under requirement 3. This would give the opportunity for the RPA's concerns to be addressed with maintenance period monitoring in the 6 month period that the RPA suggests. I am satisfied that this would adequately address the concerns raised.

SUMMARY

4.8.20 It can be seen from the above that the impact of the scheme would be likely to be very limited, apart from perhaps during construction at Silverdale School from road surface works, in Tiverton Close from night time slip road tie-in works, in Bewick Park from night time bridge works and in Henley Gardens from gas diversion works. In these areas however, the effects would not be cumulative due to the different locations and types of work identified. The undertaking of these, and indeed all other, works would also be regulated by the approved noise plan. I consider that this would ensure that the noise levels from the project did not exceed those described in the assessment and would provide effective noise management due to the involvement of the RPA.

4.8.21 In relation to night time working, the benefit of alternative daytime construction to reduce night time noise disturbance would not outweigh the harm that would be caused in terms of daytime traffic disruption. In a similar manner, implementation of the scheme would not be possible without the road surface works near Silverdale School, and the benefits would again clearly outweigh the predicted disturbance.

4.8.22 The increases in levels of noise nuisance reported above are likely to be a consequence of the scheme reducing congestion and improving the capacity of the local road network. This is an unavoidable consequence of the scheme, but any increase in nuisance should be seen in the context of the relatively low level of noise increase, which is a function of the design of the scheme itself. Again therefore, I consider that the benefits of the scheme would clearly outweigh the predicted nuisance levels. Whilst it is my view that all of these individual noise impacts are outweighed by the benefits from the scheme, my view also holds when the impacts are taken together in the context of the benefits of the scheme.

POLICY

4.8.23 In relation to the Noise Policy Statement for England and the NPPF, some adverse effects on quality of life would be likely to be detected. The scheme would however avoid significant and unacceptable adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development. It would also mitigate and

minimise adverse impacts on health and quality of life from noise and, where possible, contribute to the improvement of health and quality of life through the effective management and control of noise. I therefore consider that the scheme has had due regard to the Noise Policy Statement for England.

- 4.8.24 In view of all of the above points, the scheme would accord with the NPS in this regard and, in particular, paragraphs 5.186 to 5.199. The placing of traffic below ground level would also introduce additional separation between traffic and noise sensitive development in accordance with UDP Policy E4.
- 4.8.25 I am therefore satisfied that the scheme would avoid significant adverse impacts and mitigate and minimise other adverse impacts on health and quality of life from noise and vibration. These matters would therefore have a neutral effect in terms of the planning balance.

4.9 WATER ISSUES

- 4.9.1 This matter is considered in the EAR [APP-027, 028 & 036]. The Environment Agency (EA) has accepted the identification of the key environmental issues, the methodology adopted and design approaches in the EAR [REP2-004]. The applicant's assessment addresses the impacts that could arise from surface water and groundwater in terms of flood risk and water quality. The application also included a flood risk assessment
- 4.9.2 The Scheme is located within the EA Northumbria River Basin Management Plan. The study area for flood risk comprised the scheme footprint and a wider catchment to the north of the footprint which drains towards it. This was not repeated to the south of the footprint due to the topography of the area. The study area for water quality comprised the scheme footprint and the impermeable surfaces within the Silver Link Business Park which discharge into the highway drainage together with relevant parts of the downstream drainage system. The study area for groundwater comprised the scheme footprint and an area of 625m in width outside its boundary.

SURFACE WATER FLOOD RISK

- 4.9.3 In terms of flood risk, the scheme footprint is situated in the EA Flood Zone 1, the Sequential Test in the NPPF has therefore been satisfied, and fluvial and tidal flooding does not constitute a flood risk. The EA Risk Maps for surface water flooding however indicate that the scheme junction is shown to experience a 'high' risk of flooding' in the 1 in 30 year event.
- 4.9.4 The design uses 1 in 1 to 1 in 30 year return periods plus a 20% allowance for the effects of climate change in respect of surface water and flood risk management. This has been agreed with the EA and is

the recommended national precautionary sensitivity range between 2055 to 2085 for peak rainfall intensities in the NPPF Technical Guidance⁷ [REP1-016 & REP2-004]. It is therefore appropriate for the nature and design life of the scheme to 2033. The outline surface water drainage design provides for attenuation through oversized pipes and orifice plates, and this would maintain existing discharge rates.

- 4.9.5 Surface water run-off from the scheme would drain directly to the River Tyne through a large diameter system having sufficient capacity, and within which the flow from the scheme would represent a very small proportion of the system flow.
- 4.9.6 There are no third party flooding issues within the vicinity of the scheme and it is not predicted to have an adverse impact in relation to third party flooding. Furthermore, this has been agreed with the EA. Flooding of the scheme underpass could however represent a health and safety risk for motorists. This is because, in a 1 in 100 year plus climate change of 20% event, water could accumulate, with flood levels of approximately 1.5m.
- 4.9.7 The drainage system for the underpass would operate as a gravity system rather than being reliant on pumps, which provides a greater level of reliability. To ensure robust flood management of the underpass, a CCTV system would allow it to be monitored during periods of inclement weather and safety action to be taken, including temporary closure of the underpass. Groundwater level sensors would also act as an initial alert. For flood resilience, the slip roads extend outside the underpass area, and remotely managed variable message signs would allow the underpass to be closed quickly and efficiently, supported by physical measures where necessary. This would allow the flooded area to be accessed and allow the junction to remain operational during a flood event.
- 4.9.8 The details of these mitigation measures would be approved by the RPA, in consultation with the EA, under DCO requirement 12. Their implementation would then reduce the significance of effect of surface water flooding to slight/moderate adverse. I am satisfied therefore that, in terms of all forms of flooding and with the mitigation measures proposed, the scheme would remain safe throughout its lifetime.
- 4.9.9 In view of the approved CEMP, the EAR considers that the effect of construction on surface water runoff and flood risk would be of neutral significance.

⁷ Technical Guidance to the National Planning Policy Framework: March 2012: Department for Communities and Local Government

SURFACE WATER QUALITY

- 4.9.10 In terms of surface water quality, there are no watercourses within the study area, and the nearest is approximately 450 m to the east of the scheme and culverted at its closest point. A drain borders the eastern boundary of the scheme footprint, and a small pond is approximately 100m east of the northern end of the scheme footprint. These watercourses are not in surface hydraulic connectivity with the scheme footprint, would remain so through construction and operation and would not be affected by any discharges from the scheme.
- 4.9.11 Water quality in the downstream drainage system would be protected by petrol interceptors and pollution control valves. These would also improve the quality of existing discharges and downstream water quality.
- 4.9.12 The approved CEMP would include mitigation measures, such as the control and interception of surface water on the site and the provision of designated and secure material storage areas. The EAR predicts that during the construction period, as a consequence of these measures, the discharge of surface water into the River Tyne would have a neutral significance of effect on water quality. The ponds to the north of the scheme would be upstream and would not receive surface water run-off. The one pond downstream would be protected from construction run-off by the measures regulated in the CEMP. The effect of construction on the local aquatic ecology of the ponds from surface water assessed in the EAR would therefore be of neutral significance.
- 4.9.13 During the operation period, the EAR demonstrates that the Scheme would not contravene the Water Framework Directive (WFD). This is because there would be no adverse impacts on water quality within the receiving waterbody, the River Tyne. Additionally, as there are no watercourses within the scheme footprint, the scheme would not result in changes to water features, such as the culverting of surface watercourses, which could have had an adverse impact in WFD terms. The scheme would therefore not have an adverse effect on the achievement of the environmental objectives established under the WFD. The scheme would thus have a neutral significance of effect in terms of water quality. Similarly, as for the construction period, the effect of construction on the local aquatic ecology of the ponds would be neutral.

GROUNDWATER

- 4.9.14 In terms of groundwater quality, the EA has confirmed that the scheme is not situated within a source protection zone, and there is no evidence of any potable groundwater abstractions in the area of the scheme. During the construction period, the approved CEMP would contain mitigation measures to protect groundwater quality, such as secure liquid stores and designated refuelling areas.

- 4.9.15 The groundwater vulnerability map of the scheme classifies the middle coal measures strata beneath the scheme footprint as a Secondary A Aquifer. The glacial tills into which the underpass would be excavated are not a designated aquifer or groundwater resource. Therefore, the EAR predicts that with CEMP mitigation measures in place, there is no potential for an adverse effect on groundwater quality and resources, and the resulting significance would be neutral.
- 4.9.16 A ground investigation has not indicated the presence of any specific groundwater drainage within the scheme footprint. The local groundwater regime is however likely to be in up-stream sub-surface hydraulic continuity with ponds approximately 750 m, northeast from the Scheme. These ponds have the potential to support protected species such as great crested newt. There would be some distance between the ponds and the proposed excavation of the A19 underpass. This, together with the general low permeability of the glacial deposits, indicates that base flow to the ponds would be unlikely to be reduced because of the temporary excavation works taking place or indeed the completed scheme. There are further ponds, but these are at distances of 1.5 km to the North West and 1.3 km to the South West of the scheme junction.
- 4.9.17 The scheme design would include specific drainage systems and impermeable materials to prevent the build-up of groundwater pressure and curtail the potential for groundwater seepage.
- 4.9.18 The interruption of groundwater flow resulting from the installation of retaining structures and a resulting groundwater rise would be avoided by the proposed mitigation measures. The EAR predicts that the operational impacts of the scheme in this regard are therefore of neutral significance.
- 4.9.19 In view of all of the above points, I consider that the scheme would accord with the NPS in respect of water issues and, in particular, paragraphs 5.90 to 5.115. The scheme would also seek to minimise the impact of pollution on the Environment in accordance with UDP Policy E3. These matters would therefore have a neutral effect in terms of the planning balance.

4.10 WASTE

- 4.10.1 In terms of waste, the applicant's assessment area comprised: the scheme footprint; the area of North Tyneside; and the wider area of the North East region, where the treatment and disposal of the majority of waste from the scheme would take place. The EA is content with the methodology used in the study, and no concerns have been raised in relation to waste [REP1-021]. The study area includes two facilities that accept hazardous waste and a number that accept inert or non-hazardous waste.
- 4.10.2 Construction waste would mainly arise from underpass excavation, highways structure demolition and surplus construction materials, and

the applicant's assessment includes predicted quantities. Waste from the latter two categories which needs to be taken off site would be transferred to waste management facilities or landfill sites. Over 75% of the material from underpass excavation would be suitable for reuse at other development sites, the remainder would be disposed of at inert or non-hazardous landfill sites.

- 4.10.3 The applicant has proposed a process for the management of hazardous and non-hazardous waste arising from the construction of the scheme. This would be secured through site waste and materials management plans under the CEMP approved by the RPA.
- 4.10.4 I am satisfied that this process would ensure that any such waste would be properly managed on and off-site. Construction waste could also be appropriately dealt with by the available infrastructure and would not have an adverse effect on the capacity of existing facilities. The process would also include adequate steps to minimise the volume of waste that would need to be sent to disposal. As disposal would involve the use of waste management facilities but be unlikely to lead to their premature closure upon reaching capacity, the impact is assessed in the EAR as likely to be moderate.
- 4.10.5 I am therefore satisfied that the scheme would accord with paragraphs 5.39 to 5.45 of the NPS. In view of all of the above points, I consider that the scheme would minimise and effectively manage hazardous and non-hazardous waste arising from the construction of the scheme. Matters relating to waste would therefore have a neutral effect in terms of the planning balance.

4.11 LAND INSTABILITY

- 4.11.1 In terms of land instability, the local area has been subject to historical coal mining activity. Existing coal workings would however be beyond the influence of any proposed works, based on the depths to the shallowest coal seams recorded and worked. There would therefore be no unacceptable risks from land instability in this regard. The scheme footprint has also been subject to physical ground investigation, and there is nothing to suggest that land stability could be an issue in terms of general subsidence, landslides or ground compression. Furthermore, the RPA's LIR, which addresses ground conditions, raises no concerns that could not be accommodated within the CEMP, which the RPA would approve under the DCO [REP1-019].
- 4.11.2 I am therefore satisfied that the scheme would accord with paragraphs 5.116 to 5.119 of the NPS. In view of all of the above points, I consider that the scheme would not have any unacceptable impact in terms of land instability. Matters relating to land instability would thus have a neutral effect in terms of the planning balance.

4.12 LAND USE

- 4.12.1 In terms of land use, the scheme would not occupy any existing open space, sports and recreational buildings or agricultural land. It also

would not result in a reduction in the safeguards to mineral resources. Moreover, notwithstanding the temporary occupation of construction compounds, which would be unavoidable, the green infrastructure afforded by the A19 wildlife corridor would be protected where possible and replaced where not. The scheme would occupy a very small proportion of the designated employment land in the area both permanently and temporarily. It would however be likely to improve the economic value of the remaining employment land in the area.

4.12.2 I am thus satisfied that the scheme would accord with paragraphs 5.162 to 5.185 of the NPS. In view of all of the above points, I consider, on balance, that the scheme would not have an unacceptable impact on land use. Matters relating to land use as a whole would therefore have a neutral effect in terms of the planning balance.

4.13 TRANSPORT NETWORKS

4.13.1 In terms of transport networks, the application includes a transport assessment (TA). The application has been the subject of consultation with the local highway and RPA and NEXUS the Passenger Transport Executive for the North East [APP-025 & REP1-016]. The TA concludes that the scheme would: meet the requirements of central government's transport objectives around economy, environment, social and public accounts; align with national policy; address future traffic demand and create improved traffic conditions and journey experience for motorists; improve facilities for NMUs; and create a safer environment for all users.

4.13.2 As the scheme would solely provide improvement to an existing highway junction, it would not be proportionate to carry out an assessment of the transport impacts on other networks. It is also of note that the RPA considers that bus layby provision is sufficient to meet future bus travel promotion and needs. The scheme does however have the full support of the development plan and the local transport plan.

4.13.3 I am thus satisfied that the scheme would accord with paragraphs 5.201 to 5.217 of the NPS. In view of all of the above points, the scheme would not have an adverse impact on transport networks. Matters relating to transport networks would therefore have a neutral effect in terms of the planning balance.

4.14 SUMMARY

4.14.1 From all of the above, there are no impacts as a result of the scheme that would be likely to be unacceptable. In the consideration of these main issues, no further issues arose that warranted being addressed during the examination.

5 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.0.1 In deciding the application in accordance with s104 of the Planning Act 2008, the Secretary of State must have regard to any relevant National Policy Statement, Local Impact Report (LIR), prescribed matter and other matters considered to be important and relevant to the decision. My overall conclusion on the case for development consent for this scheme is based on an assessment of these matters, including the strong levels of agreement between various bodies and the absence of significant levels of objection.

5.0.2 I have set out the reasons for my conclusions on each of the matters in Chapter 4. My conclusions on the main issues in summary are that I am satisfied that:

- the scheme would not have any unacceptable effects in terms of air quality from construction or operation;
- there is sufficient evidence to allow the Secretary of State to conclude that significant effects can be excluded for all European protected wildlife conservation sites or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects. Furthermore, such information has been provided, as is reasonably required, for the Secretary of State to determine that an appropriate assessment is not required. I am also satisfied that the proposal would not result in any unacceptable adverse impacts on wildlife sites and protected species generally;
- the carbon footprint of the scheme, in relation to design and construction, would not be unnecessarily high;
- the scheme would be likely to result in an indirect positive effect of moderate to major significance on local economic receptors and a direct and positive social effect of minor significance on road and non-motorised users;
- the scheme would not have any unacceptable impact in terms of the historic environment, landscape or visual impact;
- the scheme would avoid significant adverse impacts and mitigate and minimise other adverse impacts on health and quality of life from noise and vibration;
- the scheme would not have any unacceptable impact in terms of surface water and groundwater in terms of flood risk and water quality;
- the scheme would minimise and effectively manage hazardous and non-hazardous waste arising from the construction of the scheme;
- the scheme would not have any unacceptable impact in terms of land instability, land use or transport networks;

5.0.3 In all of these issues, the scheme would accord with the National Policy Statement for National Networks (NPS), European requirements and related UK regulations, other relevant legal and policy provisions, the National Planning Policy Framework, the LIR, the development

plan and local transport plan, and the North East Strategic Economic Plan (SEP), all as set out in Chapter 3 of this report.

- 5.0.4 In conclusion therefore, I consider that the application for the scheme accords with the NPS and that there are no adverse impacts which would outweigh the need for the project to be delivered and the other benefits of the scheme. In coming to this conclusion, I have had regard to the NPS, the LIR, prescribed matters and other matters I considered to be important and relevant to the decision. From all of these considerations, there is therefore a clear justification in favour of granting development consent for the A19/A1058 Coast Road (Junction Improvement) Scheme.

6 COMPULSORY ACQUISITION AND OTHER LAND MATTERS

6.0 THE REQUEST FOR COMPULSORY ACQUISITION AND OTHER LAND POWERS

- 6.0.1 The A19/A1058 Coast Road (Junction Improvement) would realign the A19 as a dual carriageway under the existing A19/A1058 junction roundabout and under the existing A1058 dual carriageway, which currently crosses over the junction roundabout. This would create a fully grade separated junction. The development necessary would be authorised by a Development Consent Order (DCO).
- 6.0.2 The DCO includes provision for compulsory acquisition which, in broad terms, would enable the undertaker to construct, operate and maintain the junction improvement. The land subject to compulsory acquisition is predominantly occupied by commercial development or is part of the public highway.

APPLICATION DOCUMENTS

- 6.0.3 The details of the land in relation to interests to be acquired were set out in the Book of Reference [APP-015] and shown on the land plans [APP-005] submitted with the application. These were updated during the examination [Book of Reference: REP3-005, REP4-002 & REP5-004 and land plans: REP2-002, REP3-008, REP4-006 & REP5-008].
- 6.0.4 The update at Deadline 2 amended the land plans to omit an area of land, the temporary possession of which was no longer required (paragraph 2.1.5 of this report). It also reflected a change from temporary possession to the compulsory acquisition of rights on certain plots (paragraph 2.1.6 of this report) [REP2-001].
- 6.0.5 The update to the Book of Reference and the land plans at Deadline 3 reflected changes in relation to land owned by the Crown Estate within the Order land, including the omission of a foul sewer diversion that was to serve the land owned by the Crown Estate (paragraph 2.1.8 of this report).
- 6.0.6 The update at Deadline 4 reflected the acquisition of land within the Order limits by the Crown Estate and a change from compulsory acquisition of land to the compulsory acquisition of rights on part of this land (paragraph 2.1.9 of this report).
- 6.0.7 The update at Deadline 5 generally reflected various changes in land ownership (paragraph 2.1.9 of this report).
- 6.0.8 The Statement of Reasons, submitted with the application [APP-013] and updated at Deadlines 3, 4 and 5 [REP3-011, REP4-004 & REP5-006], concludes that there is a compelling case in the public interest to acquire each plot of land. The updates reflected those made to the Book of Reference and the land plans.

6.0.9 A Funding Statement was submitted with the application [APP-014] and updated at Deadline 1 [REP1-018]. The update identifies the scheme as a committed and funded scheme within the Government's Road Investment Strategy (RIS). The update also compares the cost-range estimate for the scheme, including compulsory acquisition, with the total financial investment in the RIS and concludes that claims for blight could also be met by the applicant.

DRAFT DCO PROVISIONS

6.0.10 In this chapter of the report, references to the 'draft DCO' are to the 'ExA's recommended DCO'. References to the 'Order land' are to the 'land shown on the land plans which is within the limits to be acquired or used permanently or temporarily, and described in the Book of Reference', as defined in article 2 of the draft DCO.

6.0.11 The draft DCO includes provisions which would authorise the undertaker to compulsorily acquire land and rights in land, interfere with or extinguish existing rights in land and create new rights in land. The purpose and justification for the compulsory acquisition sought is set out in a Statement of Reasons, submitted with the application [APP-013] and updated at Deadlines 3 and 4 [REP3-011 & REP4-004]. With limited exceptions, the purpose of acquisition of individual plots is not stated in the draft DCO, although it is in most cases referred to in the Book of Reference.

6.0.12 Article 23 of the draft DCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981, with modifications as set out in Schedule 6, and the provisions set out in s158 of the Act relating to the statutory authority and protection given to override easements and other rights. In this, the draft DCO seeks to apply s120(5)(a) of the PA2008 and is therefore in the form of a statutory instrument.

6.0.13 The draft DCO seeks the compulsory acquisition of land within the Order land as is required for the authorised development (article 18). Certain areas are not subject to outright acquisition, but to the acquisition of rights (article 21(2) and Schedule 5). The land specified in Schedule 7 (temporary possession of which land is required to carry out the development) is also excluded from acquisition, but may still be subject to compulsory creation of rights or compulsory acquisition of the subsoil (article 27(8)).

6.0.14 The compulsory acquisition of land can also include the subsoil under, or airspace over, any land that is subject to compulsory acquisition (article 24).

6.0.15 The draft DCO also seeks authority to compulsorily acquire rights, both new and existing, within the Order land if they would be required for any purpose for which the land could be acquired outright (article 21). In certain areas, the rights that could be acquired would be limited to specific purposes, as set out in the draft DCO (Schedule 5).

- 6.0.16 The draft DCO also seeks the extinguishment of all private rights over land that is subject to compulsory acquisition (article 22). In addition, on land where rights would be compulsorily acquired or on land owned by the undertaker, private rights would be extinguished where those rights are inconsistent with the rights being acquired or inconsistent with activities on land owned by the undertaker (article 22). Similarly, where temporary possession of land has been taken under other powers within the draft DCO, without compulsory acquisition, all private rights over that land would be suspended and unenforceable for as long as the temporary possession is in place (article 22(4)).
- 6.0.17 The draft DCO also seeks temporary powers, not involving compulsory acquisition, over the whole of the Order land within the limits of deviation and other land specified in the draft DCO (articles 27 & 28 and Schedule 7). These powers would give temporary possession, to the exclusion of all others, for carrying out the authorised development (article 27 and Schedule 7). They would allow the undertaker to remain in possession for a period up to one year from the completion of the relevant work. The powers would also give similar temporary possession for reasonably maintaining the scheme within a period of five years from the date on which that part of the authorised development is open for use (article 28).
- 6.0.18 General powers are also sought to survey and investigate any land within the Order limits or which may be affected by the authorised development (article 17). This includes the ability to carry out intrusive and non-intrusive investigations subject to certain highway related limitations.
- 6.0.19 The draft DCO also seeks additional powers in respect of:
- Access to works (article 13)
 - Discharge of water (article 15)
 - Temporary stopping up and restriction of use of streets (article 11)
 - Permanent stopping up and restriction of use of streets (article 12)
 - Rights under or over streets (article 26)
 - Felling or lopping of trees (article 32)
- 6.0.20 In each of the last four cases, the owner of the land affected may be entitled to compensation.
- 6.1 THE BOOK OF REFERENCE**
- 6.1.1 The Book of Reference identifies affected persons and land in three parts [REP5-004].

BOOK OF REFERENCE PART 1

- 6.1.2 Part 1 lists the plots over which compulsory acquisition powers are sought and includes persons falling within Categories 1 and 2 as set out in s57 of the Planning Act 2008 (PA2008). A Category 1 person is an owner, lessee, tenant or occupier of the land. A Category 2 person has an interest in the land or the power to sell, convey or release the land.
- 6.1.3 The column of the Book of Reference headed 'Description of the land' both describes the land in each plot and also whether it is to be acquired, or to be subject to the acquisition of rights over it or to temporary possession.
- 6.1.4 Part 1 identifies 50 plots totalling approximately 19.7ha [REP5-004]. Plots to be compulsorily acquired outright are shaded in pink on the land plans, and those subject to the compulsory acquisition of rights are shaded in blue (articles 18 and 21 and Schedule 5).
- 6.1.5 The draft DCO seeks compulsory powers of acquisition or a right of use in respect of all plots of land required for the scheme, even where the applicant already holds an interest or presumes it holds an interest in the land [REP5-004]. This approach has been taken to ensure that the undertaker has the right to acquire the interests it requires throughout the Order land, even where an unidentified person later asserts an interest in land which the applicant owns.
- 6.1.6 Plot 3/11 is subject to compulsory acquisition, except for those interests owned by the Crown Estate [REP5-004]. The acquisition of this plot is the subject of an agreement entered into by the Crown Estate and the applicant [REP5-011]. Plots comprising the existing adopted highway within the Order land and occupied by the Secretary of State and the applicant are subject to compulsory acquisition. The Secretary of State for Transport has given consent to the compulsory acquisition of interests in this Crown land operated by the Secretary of State [REP3-003].
- 6.1.7 Under draft DCO article 27, Plots 2/4a and 3/14 are not subject to compulsory acquisition, but to temporary possession powers within the DCO [REP5-004]. These plots are shaded green on the land plans [REP3-008 & REP5-008].
- 6.1.8 In addition, Part 1 includes three plots that are required for the scheme but over which compulsory acquisition powers are not sought. These, Plots 3/3j, 3/3n and 3/3y, are in the ownership of the Crown Estate and are shown as unshaded plots on the land plans. The works in these plots comprise the widening of, and a roundabout tie-in to, The Silverlink together with associated high and low voltage electricity diversions. These are Work Nos. 1l, 1h, 2e and 2h respectively.
- 6.1.9 It is envisaged that the re-development of an adjacent site owned by the Crown Estate would precede the development that would be authorised by the draft DCO if made [REP5-003]. The re-development

has the benefit of planning permission. Should this development go ahead, it would include the widening of, and the tie-in to, The Silverlink together with the low voltage electricity diversion.

- 6.1.10 These works would take place within Plots 3/3j, 3/3n and 3/3y, and it is for this reason that compulsory acquisition is not sought in these plots [REP5-004]. From the representations made by the applicant and the Crown Estate however, together with the fact that these plots are unshaded on the land plans, it appears to me that the three plots and Plot 3/3i should be excluded from article 18 of the draft DCO. This amendment was proposed by the applicant at Deadline 5, following the acquisition of the plots by the Crown Estate, and I have incorporated this in the draft DCO. The Book of Reference also states that Plot 3/3i is required to provide access to construct/inspect/maintain the proposed electricity diversions, and is owned by the Crown.
- 6.1.11 It is also of note that Part 1 of the Book of Reference appears to be incorrect in this regard, where the Description of Land entry for Plot 3/3i in Part 1 states (Rights to be Permanently Acquired) [REP5-008].
- 6.1.12 There is however no guarantee that the re-development of the site owned by the Crown Estate would take place before the development that would be authorised by the DCO if made. Should the draft DCO development take place in advance of that of the Crown Estate, the applicant anticipates that the Crown would enter into an agreement in relation to the acquisition of the necessary land and rights to enable the draft DCO scheme to be delivered as applied for [REP5-03].
- 6.1.13 If, for any reason, an agreement with the Crown Estate cannot be concluded, the low voltage electricity diversion could be re-routed through plots, outside of Crown land, which are being compulsorily acquired [REP5-003]. This diversion is Work No. 2h, and it could take place in this manner without any material increase in cost or technical difficulty. The purpose of the widening of The Silverlink would be to reduce congestion at the proposed A19 junction roundabout towards the design year, which is 2033 [APP-028]. This widening is Work No. 1l, and it could be undertaken as a separate scheme, given the additional time available to reach agreement with the Crown Estate. Finally, the roundabout tie-in to The Silverlink, which is part of Work No. 1h, could be amended so as not to impact on Crown land.
- 6.1.14 This leaves the matter of the high voltage electricity diversion, which is Work No. 2e and would require rights in Plots 3/3i, 3/3n, 3/3j and 3/3y [REP5-003]. Discussions between the applicant and the Crown Estate are continuing in relation to the rights required for this work. There is no reason to believe that agreement would not be reached, as the delay relates to the finalisation of the detailed design of the Crown Estate scheme. In the event that an agreement cannot be concluded however, the diversion could be re-routed through plots, outside of Crown land, which are being compulsorily acquired.

- 6.1.15 Part 1 of the Book of Reference also includes Plot 3/11a and, although it does not have any Category 1 or 2 persons identified in connection with it [REP5-004], it appears that it is Crown land. It is included in the land plans as unshaded land required for or affected by the proposed development and not to be compulsorily acquired [REP5-008]. Access rights within the plot would be required to inspect or maintain a retaining wall [REP5-011].
- 6.1.16 The provision of these rights is included within an agreement between the applicant and the Crown Estate [REP5-003 & 011]. It should be omitted from article 18 by reference to article 37. This is similar to the situation that the applicant wishes to arrive at in relation to those plots required for the high voltage electricity diversion. In my view therefore, the Book of Reference appears to be in error in this regard.

BOOK OF REFERENCE PART 2

- 6.1.17 Part 2 lists all Category 3 persons who the applicant thinks would or might be entitled to make a claim under the Compulsory Purchase Act 1965 or the Land and Compensation Act 1973 [REP5-004]. This part identifies 120 persons within this category. It also includes further references to unknown persons where relevant and includes all plots within the Order limits where unknown persons may be entitled to enjoy easements or private rights over the land. Furthermore, due to the nature of the table, some persons appear against one or more plots. The references to Plots 3/14 and 3/14a in this part mention Crown rights of access. The applicant has obtained consent from the Crown Estate for the temporary possession of Plot 3/14 and the compulsory acquisition of rights over Plot 3/14a [REP5-011].

BOOK OF REFERENCE PART 3

- 6.1.18 Part 3 identifies 27 persons entitled to enjoy easements or private rights over the land which would be extinguished, suspended or interfered with and statutory undertakers and other like bodies with a right to keep equipment within the Works limits that would be affected by the authorised development [REP5-004]. It also includes further references to unknown persons where relevant. Again, some persons appear against more than one plot.

BOOK OF REFERENCE PARTS 4 AND 5

- 6.1.19 Part 4 identifies the location of any Crown land, either known or assumed, to be used either permanently or temporarily which is shown on the Crown land plans [REP5-004, 009 & 010]. This part includes land in which the Crown (the Secretary of State for Transport) has an interest. The applicant states that Crown consent has been obtained [REP5-007], but no copy has been provided. As noted earlier, conditional Crown consent has also been obtained from the Crown Estate in respect of the plots in which it has an interest [REP5-011].

6.1.20 There is no acquisition which would be subject to special parliamentary procedure, special category land or associated replacement land. There are therefore no entries in Part 5 of the Book of Reference.

6.2 THE REQUIREMENTS OF THE PLANNING ACT 2008 (AS AMENDED)

STATUTORY REQUIREMENTS AND GOVERNMENT GUIDANCE

- 6.2.1 Compulsory acquisition powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met. Government guidance is provided in 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (September 2013)', (the Department for Communities and Local Government (DCLG) Guidance).
- 6.2.2 Section 122(2) provides that the land to be compulsorily acquired must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. The DCLG Guidance indicates that the proposed interference with the rights of those with an interest in the land must be for a legitimate purpose, be necessary, and be no more than is reasonably required. The applicant must have a clear idea of how the land is to be used.
- 6.2.3 Section 122(3) requires that there must be a compelling case in the public interest. This 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. This does not however mean that the compulsory acquisition proposal can be considered in isolation from the wider 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.
- 6.2.4 Section 123 requires that one of three conditions is met by the proposal⁸, one of which is that the DCO includes a request for compulsory acquisition of the land to be authorised.
- 6.2.5 Section 138 requires that the extinguishment of a statutory undertaker's right or the removal of its apparatus under an Order must be necessary for the purpose of carrying out the development to which the Order relates.

⁸ (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.

- 6.2.6 Section 120(5) allows a DCO to apply, modify or exclude a statutory provision which relates to any provision within the DCO, or include any provision that is necessary or expedient to give effect to another provision of the DCO.
- 6.2.7 Section 126 requires that compensation provisions in relation to compulsory acquisition are not subject to modifications, apart from those necessary to apply them, and are not excluded from a relevant DCO.
- 6.2.8 Section 127 applies where it is proposed to compulsorily acquire statutory undertaker's land.
- 6.2.9 Section 135 sets out restrictions in relation to the compulsory acquisition of interests in, and provisions applying to, Crown land.
- 6.2.10 Section 138 applies where land containing statutory undertaker's apparatus is proposed to be compulsorily acquired.
- 6.2.11 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:
- (i) all reasonable alternatives to compulsory acquisition must have been explored;
 - (ii) the applicant must have a clear idea of how it intends to use the land and to demonstrate a reasonable prospect of funds being available; and
 - (iii) the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate, necessary and proportionate and sufficiently justify the inevitable interference with the human rights of those with an interest in the land affected.

CHANGES TO COMPULSORY ACQUISITION PROPOSALS DURING THE EXAMINATION

- 6.2.12 Plot 2/7 in the application Book of Reference [APP-015] was stated to be part of a private road on the Tyne Tunnel Trading Estate. Plot 3/14 was stated to be in various uses including Bittern Close, a private road servicing a commercial estate. These plots were required for temporary use to provide vehicular access in connection with the construction of the scheme. This could have potentially given possession to the undertaker, to the exclusion of all others. Such exclusion would have resulted in significant disruption to the business occupiers that rely on these roads as their only means of vehicular access, and was the subject of representations [RR-003 & REP1-012].
- 6.2.13 At Deadline 2, the applicant subdivided Plot 3/14 into 3/14 and 3/14a. Plots 2/7, 2/7a and 3/14a, which had previously been subject to temporary use to provide vehicular access to the scheme during the construction period, were instead to be subject to the acquisition of new rights [REP2-002 & 006], which would not have the effect of excluding other vehicular access. This would reduce the impacts of the

scheme. These plots comprise private access roads on the Tyne Tunnel Trading Estate and Bittern Close commercial area.

- 6.2.14 Notwithstanding the absence of greater impact, and following the principles of natural justice, those with interests were specifically advised of their opportunity to comment on the proposed changes and given the opportunity to request to be heard at a compulsory acquisition hearing following the changes [PD-010]. At Deadline 2, the applicant also deleted Plot 2/5a from the areas to be subject to temporary use under article 27 [REP2-002 & 006].
- 6.2.15 At Deadline 3, the applicant withdrew Work No. 2c, a foul sewer diversion and pumping station, from the application [REP3-005, 008, 010, 011, 019 & 021]. This resulted in the deletion of Plots 3/3h, 3/10, 3/11b & 3/11d from the land to be subject to new rights [REP5-004] and also resulted in the deletion of Plots 3/11c, 3/11e and 3/11f from the areas to be subject to temporary use under article 27.
- 6.2.16 Also at Deadline 3 and as a consequence of the adjoining re-development on Crown Estate land, the applicant also deleted Plot 3/11a from the land to be compulsorily acquired.
- 6.2.17 As no additional land was involved in any of these changes, Regulations 5 to 9 of The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 are not engaged. Furthermore, there was nothing to suggest that the amendments would result in any greater impact on those with interests in the land concerned than would have been the case with the original application but the opportunity for Affected Persons to be engaged in the examination is explained below.

6.3 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION AND OTHER LAND POWERS

- 6.3.1 I asked 9 questions specifically directed at Part 5 of the draft DCO in relation to powers of compulsory acquisition and the article 27 powers for temporary possession [REP1-016].
- 6.3.2 I also generally inspected the land on which compulsory acquisition and temporary possession is sought at my unaccompanied and accompanied site visits on 23 February and 15 April 2015 respectively [EV-009].
- 6.3.3 Three affected persons, Northumberland Estates, Ralph George Algernon Percy Duke of Northumberland and the Biscuit Motor Company notified me of their wish to be heard at a compulsory acquisition hearing [REP1-002 & 009]. I held such a hearing on 14 April 2015 [EV-16 & 18].
- 6.3.4 The opportunity to request to be heard at an additional compulsory acquisition hearing, following the applicant's amendments in relation to temporary possession, resulted in such a request from an additional affected person, UK Land Estates (Partnership) Limited [REP5-001].

This request was however withdrawn, in conjunction with an agreement relating to the additional compulsory acquisition powers, prior to the timetabled hearing [ENV-022]. The hearing then did not take place [PD-011]. The fact that the hearing was dependent on their being a request to be heard at it was set out in the timetable amendment relating to the hearing [PD-010].

- 6.3.5 At Deadline 1, confirmation was provided that, although their policy was not to enter into any Statement of Common Ground (SoCG), BT Openreach had agreed to the protective provisions in Schedule 8 of the draft DCO. This was in relation to the proposed BT Openreach diversion and any rights that they may have over the Order land [REP1-017]. Similar confirmation was also provided in relation to Northern Powergrid for the high and low voltage electricity diversions and any existing rights. At Deadline 3, a signed SoCG between the applicant and Northern Gas Networks was submitted [REP3-028]. The matters not agreed or under discussion related to diversion setting out details, exact diversion cost and exact easement and access right details within the highway verge. At the time of the agreed SoCG, the transfer of the land for the highway verge to the applicant had not been agreed with the Crown Estate. This agreement is however now in place, and the diversion would be located in a verge under the ownership of Highways England in line with common practice [REP05-11].
- 6.3.6 At Deadline 3, a signed SoCG between the applicant and Northumbrian Water was submitted [REP3-027]. The matters not agreed or under discussion related to diversion connection details and finalised diversion costs.

THE APPLICANT'S CASE

Requirement for the DCO Land, Compensation and Funding

- 6.3.7 The applicant has set out much of its case in the Statement of Reasons, including the specific purposes for which each parcel of land is required [REP5-006]. Without this land, the scheme could not take place, and this is demonstrated in the works and land plans. To ensure that the development can be delivered requires the acquisition of a number of property interests in so much of the land as is in third party ownership. It also requires a means of overriding existing rights and interests in or over land together with the creation of new rights over land.
- 6.3.8 The applicant's position is that there must be certainty that these publicly funded works can be constructed and therefore certainty that this land will be available. Without compulsory powers of acquisition, the land might not be assembled. This would leave uncertainty as to whether construction would continue, and this could also be to the detriment of the affected land interests. Moreover, the scheme objectives may not be achieved, and the local and regional need for the scheme would not be met [APP-024].

- 6.3.9 The applicant contends that it would, wherever possible, seek to acquire the land by agreement on terms that would allow the scheme to proceed within budget and on time. It cannot however be assumed that the applicant would successfully acquire all this land without using compulsory acquisition powers. The applicant therefore seeks these powers to ensure that the scheme can proceed.
- 6.3.10 The applicant considers that it has explored alternative options for the scheme and selected the most appropriate option [APP-017]. There is no practicable alternative route that would achieve the scheme's objectives without acquisition of third party rights and interests. The limits of the land have also been drawn as tightly as possible so as to avoid unnecessary land-take. Furthermore, in the event less land is required, the applicant would not seek to acquire all the land identified.
- 6.3.11 Under the rules governing compulsory acquisition, the applicant acknowledges that it would be required to pay a fair, open market price for the land and rights it acquires.
- 6.3.12 The applicant has described its access to the requisite funds to meet the costs of the scheme, any acquisition and the amounts of compensation which will be payable as a result of the use of the compulsory purchase and other powers [REP1-018].

Compelling Case in Public Interest

- 6.3.13 The A19 is a strategic route that provides an alternative to the A1 between North Yorkshire and Northumberland. The A1058 Coast Road provides access from Newcastle-Upon-Tyne to the coast at Tynemouth and crosses over the A19 at the scheme junction. The junction also provides access to a number of employment sites, including the Silverlink retail and Cobalt business parks. Existing problems at the junction include: severe congestion during peak hours; congestion at weekends associated with the retail park; and a higher than national average accident rate. The applicant contends that, without the scheme, the existing problems at the junction would worsen over time.
- 6.3.14 The applicant advises that the key objectives of the scheme are to reduce traffic congestion, increase capacity and improve journey times and safety for road users and the local community. It also seeks to meet the needs of future traffic growth resulting from existing and future developments. Furthermore, the local community would benefit from improved facilities for pedestrians and cyclists travelling along the A19 and A1058 Coast Road routes.
- 6.3.15 The applicant is of the view that the scheme aligns with the National Networks NPS, particularly in that it would 'reduce congestion and unreliability by focusing on improving and enhancing the existing national road network' [REP1-017]. The need for the scheme is also documented in various policy documents [APP-024]. Moreover, the

scheme would complement transport proposals contained in the regional and local transport authority development plans. In particular, it would complement improvements to the local network of highways at the New Tyne Crossing, the Seaton Burn pinch point scheme and the Testos Junction and A1 Lobley Hill improvement schemes.

- 6.3.16 The evolution of the scheme commenced in 2003, following the recommendation in the Tyneside Area Multi-Modal Study that the A19/A1058 Coast Road junction be improved to relieve congestion. 15 options were identified and considered between 2003 and 2009 [APP-017]. 6 of these options were then consulted on to seek the views of local residents, businesses and other key stakeholders. Following the public consultation, a preferred route announcement was made in July 2012.
- 6.3.17 The economic benefits have been quantified, and the applicant suggests that these represent high value for money [APP-025 & 028 & REP1-018]. The project is supported by Government transport policy and is included in the December 2014 Road Investment Strategy as a committed funded scheme. Following the preferred route announcement, the design for the scheme was further progressed, leading to a PA2008 pre-application consultation between November 2013 and January 2014 [APP-016].

Human Rights

- 6.3.18 The applicant is of the opinion that it has considered the potential infringement of convention rights in consequence of the compulsory acquisition powers, as well as temporary possession, within the draft DCO. The land to be acquired has been kept to a minimum, and the scheme has been designed to minimise interference with the peaceful enjoyment of a person's possessions under Article 1 of the First Protocol of the European Convention on Human Rights.
- 6.3.19 The applicant considers that there would be very significant public benefit arising from the scheme, as already identified. This benefit can only be realised if the development consent is accompanied by the grant of powers of compulsory acquisition. The public interest can thus only be safeguarded by the acquisition of this land.
- 6.3.20 This very significant public benefit therefore outweighs the effects of the draft DCO upon persons with property rights in the land and would not be a disproportionate interference with their rights under Articles 1 and 8 of the First Protocol. In addition, those affected by compulsory acquisition powers, as well as by temporary possession, would be entitled to compensation.
- 6.3.21 In relation to Article 6, there has been an opportunity for members of the public to make representations on the application. In accordance with Part 5 of the PA2008, the applicant's consultation included known owners and occupiers of the Order land. It also includes those who

could make claims either under the Compulsory Purchase Act 1965 or the Land Compensation Act 1973. The beneficiaries of restrictive covenants and other rights overridden by the exercise of powers in the draft DCO would also be capable of making claims under the Compulsory Purchase Act 1965.

- 6.3.22 Furthermore, representations can be made by way of: objections to the application in response to any notice given under s56 of the PA2008; any written representations procedure which the Examining Authority decides to hold; and, in particular, any compulsory acquisition hearing under s92 of the PA2008. Furthermore, should the draft DCO be made, any person aggrieved may challenge it by judicial review in the High Court under s118 of the PA2008. In relation to disputes about compensation, affected persons have the right to apply to the independent Upper Tribunal (Lands Chamber).
- 6.3.23 For the above reasons, the applicant considers that any infringement of convention rights of those whose interests are affected, as a consequence of the inclusion of powers of compulsory acquisition and temporary possession, is in the public interest. The applicant concludes that it would therefore be appropriate and proportionate, according to national and European law, to make the DCO, including the grant of compulsory acquisition and temporary possession powers.

Summary

- 6.3.24 The applicant is of the view that the powers sought meet the compulsory acquisition tests, in that the land and rights that are being acquired are being properly requested and are required to facilitate the authorised development [REP5-006]. The powers in the draft DCO also justify interference with the human rights of those persons with an interest in the land over which interests and rights are to be permanently acquired and created for the longer term.
- 6.3.25 The applicant considers that the inclusion of compulsory acquisition and temporary possession powers within the draft DCO meet the conditions of the PA2008 and that the interests being sought are no more than are reasonably required. The authorised development conforms with the National Policy Statement for National Networks, the Roads Investment Strategy and national and local plan policy [APP-024]. The authorised development is fully funded and can be delivered by the applicant [REP1-018]. There is a compelling case in the public interest for the compulsorily acquisition powers being sought by the Order.

THE AFFECTED PERSONS' CASES

- 6.3.26 During the examination, the applicant was able to satisfy the concerns of Richard Hardie Limited [REP1-012, REP2-001 & REP5-002]. This was by the removal of the power of temporary possession from Plot 3/14a, and its replacement with the compulsory acquisition of a right of access, as previously described. In the interests of consistency, the

applicant repeated this replacement on Plots 2/7 and 2/7a. The consequential objection to this replacement on Plots 2/7 and 2/7a from UK Land Estates (Partnership) Limited was subsequently withdrawn [REP5-001 & EV-022].

6.3.27 The Allied Irish Bank (AIB) Group (UK) Plc had first charge over the Vroom The Car Retail Park when the retail park was owned by Richville Limited [REP1-001]. Following the transfer of this land to Northumberland Estates Limited, AIB are no longer Category 2 affected persons, and I have therefore taken the objection from AIB as being withdrawn [REP5-003].

6.3.28 The following objections remained at the end of the examination period.

- Northumberland Estates Limited and Ralph George Algernon Percy Duke of Northumberland (NEL)
- Various occupiers at Vroom The Car Retail Park

The case for NEL

6.3.29 NEL supports the scheme in principle. This is notwithstanding that they have a significant number of land plots affected by it [REP1-009 & REP3-002]. They are a Category 1 person, and their objection relates to a single plot, Plot 2/4a, which they intend to develop for B2 and B8 purposes. A planning application in this regard is to be submitted in the near future. The local area lacks B2 and B8 facilities, and now is an opportune time for such development by NEL, as it is the only speculative developer for these purposes in the local area. The proposed possession would delay such development, result in the loss of the current market opportunity and expose NEL to higher future build costs.

6.3.30 NEL questions the lawfulness of temporary possession powers on the following grounds. The PA2008 does not contain express powers for temporary possession, and this point is agreed by the applicant. There is no guidance in respect of such powers; a point again agreed by the applicant. There is also no temporary possession mechanism such as the compulsory purchase code.

6.3.31 Furthermore, the applicant cannot rely on s120(5) of the PA2008, as it does. That power relies on expediency, which is a much lower test than those of necessity and a compelling case in the public interest which are applied to compulsory purchase. As temporary possession amounts to a significant interference in the land, as does compulsory acquisition, it would be surprising and novel if the relevant test was that much lower. NEL suggests that an alternative source of the purported power may be s120(3) and (4) and Schedule 5 paragraph 2 of the PA2008. However, whatever the power, it should be exercised in accordance with natural justice.

6.3.32 A power to take temporary possession originally came from the Railways Clauses Compensation Act 1845, where a landowner was

afforded a significant number of protections. These included the ability to offer alternative land or to require compulsory acquisition and the availability of interim payments prior to the settlement of compensation. Here, NEL considers that they are absent, and this places the landowner at a significant disadvantage.

- 6.3.33 Moreover, NEL suggests that the identified compensation in Part 1 of the 1961 Act does not determine a basis for compensation beyond loss or damage, as the compensation code is not applied. All of the above points raise questions in relation to the fairness of the temporary possession proposed. Moreover, whilst practice and precedent exist in relation to this type of temporary possession, over reliance on precedent, as the applicant has done, is not an appropriate response where statute is absent.
- 6.3.34 NEL submits that, in terms of human rights, the applicant's Statement of Reasons has not balanced the temporary possession powers against them. Article 1 of the First Protocol is engaged, and the interference is unjustified.
- 6.3.35 Whilst the applicant is of the view that it cannot come to any position on possession by agreement at the present time, NEL refers to Government guidance, which it states is clear that compulsory acquisition should only be sought where agreement has failed. This situation is analogous here, and is particularly relevant to the single plot in question, as there is no justification for the possession as part of a linear scheme. Furthermore, the applicant's reliance on s248 of the Highways Act 1980 is wholly misplaced, as this relates to land which may be required, and here the land is required.

The cases for the occupiers of Vroom The Car Retail Park

- 6.3.36 Biscuit Vehicle Leasing, trading as The Biscuit Motor Company, opposes the scheme and the compulsory acquisition proposed in the application [REP1-002]. The company is a Category 1 person and occupies premises within Vroom The Car Retail Park for the sale of cars, with capacity for approximately 108 vehicles. The compulsory acquisition of Plot 3/6d would result in the loss of approximately half of its vehicle display area.
- 6.3.37 Whitley Bay Motors Limited opposes the scheme and the compulsory acquisition proposed in the application [REP1-015]. The company is a Category 1 person and occupies premises at Vroom The Car Retail Park for the sale of cars, at a level of some 80 to 100 every month. The company employs 7 people. The company suggests that the compulsory acquisition of Plot 3/6h would result in the loss of 50% of the area of the premises and would result in redundancies as workload would decrease.
- 6.3.38 McDougal & Breen Limited opposes the scheme and the compulsory acquisition proposed in the application [REP1-005]. The company is a Category 1 person and occupies Unit 5 at Vroom The Car Retail Park

for the purchase and sale of motor vehicles, with approximately 90 on display at any one time. The company explains that it is profitable, and increasingly so, and employs 9 people.

- 6.3.39 The company contends that the compulsory acquisition of Plot 3/6f would result in the loss of more than half of the company's forecourt area, leaving it in an unviable position. Furthermore, the company already suffers from dirt and dust from the existing A19 and A1058 roads. The scheme would bring road traffic closer to the remainder of Unit 5, and the increased dirt and dust would mean that cars could not be realistically presented for sale.
- 6.3.40 The owners of the company have been unable to find alternative premises within the 10 mile radius necessary to retain the goodwill of its customer base. The company is of the view that the loss of the forecourt land could therefore result in the closure of the business, the waste of recent investment and the loss of 9 jobs, as the considerable business risk of relocation over a distance of 10 miles may be too great.
- 6.3.41 The Cartec Motor Company, Cartec@Vroom Ltd, wholly opposes the scheme and the compulsory acquisition proposed in the application [REP1-003]. The company is a Category 1 person and occupies Unit 2b at Vroom The Car Retail Park for a used car dealership, with in excess of 50 vehicles on display.
- 6.3.42 The company considers that the compulsory acquisition of Plot 3/6c would result in the loss of a large proportion of the company's sales area, having a disastrous effect upon the viability of the business. It would also leave no room for planned company growth. Construction works would also result in massive disruption from noise and dust pollution and a negative effect on footfall to the Vroom site as a whole. This could have a terminal effect on the company and the corporate identity of Vroom The Car Retail Park.
- 6.3.43 The company also occupies Units 1c and 2c as a vehicle repair workshop which is wholly reliant on the car sales companies at Vroom The Car Retail Park [REP1-004]. The company submits that a reduction in stock levels at these companies would result in a similar reduction in workload and, if this was 50%, the repair business would be unworkable.
- 6.3.44 All of the above affected persons suggest that the applicant has failed to engage with them, in accordance with the Crichel Down Rules [REP3-001]. In doing so, it has failed to procure the information necessary to calculate a robust and reasonable budget for the assembly of the necessary land, as required by Circular 06/04. Furthermore, no financial support has been offered to appoint independent professional advice. The affected persons suggest that the failure to engage has resulted in the absence of responses to the public consultation being taken as acceptance of the interference with

those interests that would be affected. The affected persons state that this is clearly not the case.

- 6.3.45 The interests here are leasehold, and so the affected persons consider that the property market value from Rule 2 of s5 of the 1961 Act would be likely to be minimal. Under Rule 6, compensation for business disturbance is assessed on value to owner. This requires financial information, which is usually confidential. Here, whilst one of the companies would qualify for statutory extinguishment, the other three consider that the loss of display land would make their sites unviable. They would therefore have to relocate.
- 6.3.46 The lack of engagement on compensation will, the affected persons suggest, have led to an inaccurate budget, which could have undermined the route selection and design process. This draws into question whether the preferred route represents best value to the public purse. It is particularly relevant where expensive retaining walls have been used to reduce land take in areas where businesses would have to relocate in any event, due to the loss of land.
- 6.3.47 The affected persons suggest that the use of these powers of compulsory acquisition is deemed to be unlawful interference with property rights protected under Article 1 of the First Protocol of the European Convention of Human Rights and the Human Rights Act 1998.
- 6.3.48 The affected persons add that the scheme would also displace long-standing and stable employment, and the applicant has failed to demonstrate that the scheme would deliver a net benefit to the community in terms of employment.
- 6.3.49 Trinity Motors (Newcastle) Limited wholly opposes the scheme and the compulsory acquisition proposed in the application [REP1-013]. The growing company is a Category 1 person and occupies Units 4a and 4b at Vroom The Car Retail Park for a used car dealership, with over 90 vehicles on display. The company contends that the compulsory acquisition of Plot 3/6e would result in the loss of 50% of the company's pitch area, leaving it in an unworkable position. Construction works would also deter customers.
- 6.3.50 William Scott Dickson, trading as W.D. Motors, wholly opposes the scheme and the compulsory acquisition proposed in the application [REP1-014]. The company is a Category 1 person and occupies Unit 6, which has canopied storage, at Vroom The Car Retail Park for a used car dealership, with 100 vehicles on display. The company suggests that the compulsory acquisition of Plot 3/6g would result in the loss of 50% of the company's pitch area and the canopied storage, have a disastrous impact on viability and leave it in an unworkable position. Construction works would also deter customers, which could have a terminal effect on the business and the corporate identity of the car retail park.

- 6.3.51 Motorcare (Newcastle) Ltd, a Category 3 affected person, opposes the scheme and the compulsory acquisition proposed in the application [REP1-006]. Its premises are situated at Unit 6 within Vroom The Car Retail Park, and 90% of its trade relies on car sales companies within the park. The company is of the opinion that compulsory acquisition would severely reduce the number of cars sold and would catastrophically reduce the turnover of the business to render it unviable.
- 6.3.52 Paul Rogers, a Category 3 affected person, opposes the scheme [REP1-010]. His premises are situated at Unit 8 within Vroom The Car Retail Park. If the scheme was to proceed, he states that he would have to cease trading and would not be able to employ people from the local area.
- 6.3.53 Pit Stop Cafe, a Category 3 affected person, opposes the scheme [REP1-011]. Its premises are situated at a unit within Vroom The Car Retail Park. The company submits that the cafe is reliant on the car sales companies at Vroom The Car Retail Park. A reduction in stock levels at these companies would result in a similar reduction in workload and, if this was 50%, the cafe would be unworkable. Construction works would also deter customers.

THE APPLICANT'S CASE FOR SPECIFIC PARCELS OF LAND AND RESPONSE TO OBJECTIONS

Northumberland Estates Limited and Ralph George Algernon Percy Duke of Northumberland

- 6.3.54 The applicant requires the temporary possession, under draft DCO article 27, of Plot 2/4a for the provision of a site construction compound that would be accessible from the site of the authorised development and from a nearby public highway [REP5-006].
- 6.3.55 The affected person's suggestion that there are no powers under the PA2008 for article 27 is completely rejected [REP2-001]. The applicant has included this power in the draft DCO under s120(5)(c) of the PA2008 which refers to 'any provision...necessary or expedient for giving full effect to any other provision of the Order'. Similar articles feature in many other DCOs made to date and in the former Model Provisions.
- 6.3.56 The legal basis for the assessment of compensation is the express obligation in article 27 and the involvement of the Upper Lands Tribunal Chamber in the case of disputes. Whilst the future development of Plot 2/4a may be delayed, this carries little weight as no planning application has been made.
- 6.3.57 As a result of all of these points, the applicant considers that any interference is proportionate. Furthermore, a fair balance has been struck between public benefit and interference with property rights under Article 1 of the First Protocol of the European Convention of Human Rights.

The occupiers of Vroom The Car Retail Park site

- 6.3.58 The objections relating to this site make similar points, and the applicant's response to these is combined below [REP2-001].
- 6.3.59 The applicant explains that the preferred option, from the option selection procedure and in terms of junction layout, minimises land take at the Vroom site. This is primarily due to the absence of free-flow links outside of the hub of the junction. The minimisation of land take was also an aspect of the preliminary design. Examples include the adoption of a tighter urban highway cross section and the use of retaining walls.
- 6.3.60 In relation to consultation, the applicant adds that this was initially with the site owners and its lease management company. No tenants attended the public exhibition or responded to the consultation questionnaire, despite having been sent invitations. Only three tenants then responded to the Book of Reference request for information. No tenants made relevant representations. Following the Examination Preliminary Meeting, a meeting between the applicant and tenants took place. Various written representations were then received into the Examination, as recorded in the Examination library. The applicant therefore considers that all appropriate consultation has taken place.
- 6.3.61 The applicant explains that the loss of employment land is indeed a matter that the development plan seeks to prevent. It does however identify exceptions to this protection, one of which relates to proposals essential to the aim of encouraging the regeneration of its older areas. Here, the improved A19 would enhance access to these areas as well as to the A19 key employment corridor. Moreover, there is no objection from the local planning authority, indeed there is strong support for the scheme. It is against this background that the loss of employment land at the Vroom site has to be considered, and here the adverse impacts are far outweighed by the benefits of the scheme. The compelling case in favour of the scheme is thus made.
- 6.3.62 There is no requirement, nor is it usual, for the applicant to obtain financial information from affected parties at this stage of compulsory acquisition. At this stage, the relevant estimates are prepared by expert valuers. There is also no failure to demonstrate the procurement of special category land.
- 6.3.63 The applicant suggests that the Construction and Environmental Management Plan (CEMP), required under the draft DCO, would keep disruption to a minimum through various mitigation measures. It is not envisaged that the operation of the completed scheme would give rise to any issues beyond those currently experienced. Engagement with landowners and human rights has been dealt with above. The applicant considers that the other material points raised relate to compensation rather than whether the tests in the PA2008 have been met.

THE APPLICANT'S CASE UNDER SECTIONS 122, 127 AND 138

- 6.3.64 The applicant considers that the case under s122 of the PA2008 has been adequately made and the tests met. In particular, specific purposes and need have been given for each parcel of land affected, and a compelling case explained.
- 6.3.65 There is no s127 land affected by the draft DCO. The removal of statutory undertakers' apparatus which would be affected by the scheme under s138 is identified by individual works numbers within the draft DCO, in order that the necessity and scope of any removal and replacement is clear. Statutory undertakers' rights would also be protected by the protective provisions in the draft DCO which have been agreed with the utility concerned.

6.4 THE EXA CONSIDERATION OF THE ISSUES

EXA'S APPROACH

- 6.4.1 I have considered the application documents and all of the representations submitted in the examination on compulsory acquisition matters in the light of s122, s123, s120, s127 and s138 of the PA2008, the Human Rights Act 1998 (HRA1998) and DCLG Guidance⁹; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case, for each plot in the Book of Reference, has been made in the public interest, balancing the public benefit against private loss. I have also considered the application documents and all of the representations submitted in the examination on temporary possession matters in the light of the PA2008, the Human Rights Act 1998 (HRA1998), public benefit and private loss.
- 6.4.2 The draft DCO does not seek to acquire any statutory undertakers land, and therefore s127 of the PA2008 is not engaged in the consideration of the application. There is however relevant statutory undertaker apparatus on land that is the subject of compulsory acquisition. Section 138 of the PA2008 is therefore engaged, and I have considered the application and representations accordingly.
- 6.4.3 The draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until a view has been formed on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 6.4.4 In my conclusions to Chapters 4 and 5 of this report, I have reached the view that development consent should be granted. The question therefore that I address here is the extent to which, in the light of the

⁹ Planning Act 2008, Guidance related to procedures for compulsory acquisition of land – September 2013

factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

THE PUBLIC BENEFIT

- 6.4.5 The scheme junction between the A19 and the A1058 is part of the strategic highway network and provides access to a number of employment sites. These include The Silverlink retail and Cobalt business parks. Existing problems at the junction include: severe congestion during peak hours; congestion at weekends associated with the retail park; and a higher than national average accident rate. Without the scheme, the existing problems at the junction would worsen over time.
- 6.4.6 The public benefit of the project derives from the reduction in traffic congestion, an increase in capacity and the improvement of journey times and safety for road users and the local community. The upgrade of the junction would also meet the needs of future traffic growth resulting from existing and future developments along the A19 key employment corridor. Furthermore, the local community would benefit from improved facilities for pedestrians and cyclists travelling along the A19 and A1058 Coast Road routes.
- 6.4.7 The economic benefits have been quantified and represent high value for money. The project is supported by Government transport policy and is included in the December 2014 Road Investment Strategy as a committed funded scheme. All of these factors also comprise public benefits.
- 6.4.8 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

- 6.4.9 The DCLG Guidance requires that the promoter should be able to demonstrate that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. I have considered this in terms of the selection of the site and the scale and specific characteristics of the scheme.
- 6.4.10 As the purpose of the scheme is to improve a specific highway junction in an urban location, the options available are necessarily limited. It is however the case that a wide range of junction types have been considered, from the use of free-flow links to the retention of existing highway infrastructure as much as possible.
- 6.4.11 I note that the preferred and final option is one of the least intrusive in terms of compulsory acquisition. Whilst objections have been raised over the need for, and extent of, compulsory acquisition, no reasoned alternative proposals have been put forward by any affected person. I therefore do not consider that there are reasonable practicable alternatives to the scheme for which compulsory acquisition is sought.

- 6.4.12 I am satisfied that the land subject to compulsory acquisition is required for the project, including the diversion of affected statutory undertakers' services. I am also satisfied that each plot of land has been identified with a clear purpose and that no plot of land has been unnecessarily added to the land sought to be acquired permanently.
- 6.4.13 The applicant'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, if the compulsory acquisition of many separate plots of land is involved, it may not always be practicable to acquire by agreement each plot of land, and it is reasonable to include a provision authorising compulsory acquisition to cover all the land required at the outset. The scheme under consideration is a scheme which has little flexibility in its line and location and which requires a large number of relatively small elements of landholdings compared to its total area. It is my view therefore that the guidance principle outlined above is also appropriate in this case.
- 6.4.14 The DCLG Guidance also advises that an application must be accompanied by a clear statement as to how it would be funded, and this application was accompanied by such a statement. It is clear that the scheme is a committed and funded element of the Government's Road Investment Strategy. Furthermore, even the maximum cost-range estimate of £126 million required to meet all costs potentially arising in connection with the project, including compulsory acquisition, the creation of new rights, temporary possession and the provision of compensation is a minor part of the £15 billion to be invested in major roads before 2021.

CROWN LAND

- 6.4.15 The Order land includes Crown land as set out below.
- 6.4.16 Plots 1/1, 1/2, 2/3, 2/3b, 3/3ac, 3/3q and 3/3x comprise Crown land which is adopted highway and operated by the Secretary of State for Transport and the applicant [REP3-019]. The Secretary of State has given consent under s135 of the PA2008 for the acquisition of all interests in these plots, apart from those held by The North East Combined Authority and Tyne & Wear Passenger Transport Executive, as set out in the draft DCO [REP3-003]. The acquisition is to avoid an unidentified person later asserting an interest in land which the applicant owns and preventing completion of the authorised development.
- 6.4.17 The acquisition of the freehold of Plot 3/11 is required for highway construction in Work No. 1h and 1j and would become part of the adopted highway on completion [REP5-006]. The draft DCO includes the compulsory acquisition of all interests apart from those of the Crown Estate, and the Crown Estate has consented to the acquisition of this freehold by the applicant [REP5-011]. This consent is

conditional on the inclusion of an article relating to the protection of Crown rights, which is included in the draft DCO at article 37.

- 6.4.18 The acquisition of rights in Plot 3/11a is required for work to, and the future maintenance of, a highway retaining wall [REP3-019]. The DCO does not include any powers in relation to this plot. The Crown Estate has conditionally consented to the acquisition of the necessary rights by the applicant [REP5-011].
- 6.4.19 The acquisition of rights in Plots 3/3i, 3/3j, 3/3n and 3/3y are required to construct and maintain high and low voltage electricity diversion cables. The DCO does not include any powers in relation to these plots, and the Crown Estate has not yet consented to the acquisition of the necessary rights by the applicant [REP5-011]. Alternative routes for these diversions are however available within the land to be acquired by the undertaker under the draft DCO, and the absence of a Crown consent is not an impediment to the authorised development.
- 6.4.20 The acquisition of the freehold of Plot 3/3n is required for highway construction Work No. 1h and would become part of the adopted highway on completion. The DCO does not include any powers in relation to this plot, and the Crown Estate has not yet consented to the acquisition of the freehold by the applicant [REP5-011]. The roundabout tie-in to The Silverlink, which is that part of Work No. 1h on plot 3/3n, could be amended so as not to impact on Crown land. The absence of a Crown consent is therefore not an impediment to the authorised development.
- 6.4.21 The acquisition of the freehold of Plots 3/3j and 3/3y are required for highway construction Work No. 1l and would become part of the adopted highway on completion. The DCO does not include any powers in relation to this plot, and the Crown Estate has not yet consented to the acquisition of the by the applicant [REP5-011]. Work No 1l is not however necessary for some 15 years, leaving ample time for an alternative scheme to be developed. The absence of a Crown consent is therefore not an impediment to the authorised development.
- 6.4.22 The Crown Estate has also given conditional consent in relation to interests in the relevant above Crown plots which are held otherwise by or on behalf of the Crown [REP5-011]. The Crown Estate has also given conditional consent in relation to the draft DCO powers in respect of the temporary possession of Plot 3/14 and the acquisition of permanent rights over Plot 3/14a. These consents have been given, subject to the inclusion of a Crown article in the draft DCO, which is considered further in the next chapter of this report.
- 6.4.23 In view of all of the above points, I am satisfied that appropriate Crown consents have either been received in order to comply with the requirements of the PA2008 or are not an impediment to allow the authorised development to take place.

TEMPORARY POSSESSION OF LAND

- 6.4.24 Schedule 7 of the draft DCO identifies two plots, 2/4a and 3/14, where temporary possession is specifically sought. Currently, this land is predominantly set aside for future development within commercial areas served by estate access roads. The two plots adjoin land to be used for the authorised development and would be used during the construction works to accommodate the site compounds and the storage of plant and materials. On completion, in accordance with article 27 of the draft DCO, the land would be restored and returned to the landowner.
- 6.4.25 In addition, article 27 would give temporary possession powers over the whole of the Order land within the limits of deviation. This would allow the undertaker, after detailed design, to minimise the extent of land to be compulsorily acquired, but retain the use of land within the limits of deviation for construction and for one year after completion. Article 28 would give a similar power within the area of land to be acquired or used, but for maintenance purposes and for five years from the opening of that part of the authorised development.
- 6.4.26 I am satisfied that the applicant has kept to a minimum the land to be used temporarily, consistent with safe and efficient construction working practices. I am also satisfied that the use of the power in the draft DCO is reasonable and justified in order to implement the proposed development. Furthermore, I am satisfied that the provisions for compensation set out in articles 27 and 28 are adequate to compensate owners for the proposed interference. These would be generally equivalent to those for compulsory acquisition and funded as part of the scheme. In view of all of the above points, I consider that the public benefit would outweigh any private loss that would result from the temporary possession powers included in the draft DCO.

HUMAN RIGHTS ACT 1998 CONSIDERATIONS

- 6.4.27 A key consideration in formulating a compelling case is a consideration of the interference with human rights which would occur if compulsory acquisition powers are granted or by the inclusion of powers for temporary possession in the draft DCO.
- 6.4.28 The draft DCO engages Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights. The rights and freedoms under this convention are given effect through the HRA1998. Article 1 provides a right to the protection of property, which can include the peaceful enjoyment of property or possessions or any effect of development on property values. Article 8 provides a right to respect for private and family life, which can include interference with home life through disturbance. These rights are however qualified and can be interfered with in certain circumstances, such as if it is necessary to protect the legitimate interests of the wider community.

- 6.4.29 In this case, the need to relieve existing problems at the junction, through the improvements within the scheme, is a legitimate interest of the wider community. The compulsory acquisition and temporary possession powers sought by the draft DCO are an integral part of the overall scheme. I have already found that the scheme demonstrates a satisfactory balance between potential negative impacts and public benefits. The powers are also no more than is required to secure the interests of the wider community and are not likely to place an excessive burden on those whose human rights could be affected. I therefore consider that there would be no violation of Articles 1 and 8.
- 6.4.30 The draft DCO also engages Article 6 of the Convention which relates to the need for a fair hearing. There have not been any representations that have made any claims under this article in relation to compulsory acquisition. In any event however, the application and its examination procedurally accord with the PA2008 and related guidance. There is therefore nothing to suggest that parties have not had a reasonable chance to put their case or been put at a substantial disadvantage in relation to other parties. There would therefore be no violation of Article 6.
- 6.4.31 Finally, in terms of the overarching aims of the HRA1998, DCLG Guidance and the required balancing exercise, the scheme would represent an improvement to the national road network that accords with national policy. This improvement to the network clearly outweighs any interference with the human rights of those with an interest in the land affected.
- 6.4.32 I therefore conclude that the proposal would not violate human rights in relation to the HRA1998 and the European Convention on Human Rights.

EXA'S CONCLUSIONS ON THE OUTSTANDING OBJECTIONS

- 6.4.33 I will first consider the objection made by Northumberland Estates Limited and Ralph George Algernon Percy Duke of Northumberland (NEL). This concerns the temporary possession of Plot 2/4a for use as a construction compound.
- 6.4.34 The majority of the proposed construction works would take place within a live highway, which is situated within a constrained environment surrounded by developed land. To give full effect to the provisions that authorise the construction of the scheme, in particular article 3 of the draft DCO, it would therefore be necessary to have such a compound. This compound would accommodate construction related facilities, such as offices and plant and materials storage. The plot would appear to be reasonable in size and DCO regulated timescale for such a compound in relation to the scale and nature of the scheme. My view is strengthened by the fact that the applicant has shown itself to be responsive to changes in circumstances during the examination. This is by the omission from the draft DCO of application

Plot 2/5a which is subject to development proposals and no longer required for temporary use in connection with this scheme.

- 6.4.35 Plot 2/4a is the only vacant land which adjoins the main body of the scheme to the south of the A1058 and which is not the subject of defined development proposals. The location would avoid journeys on the local highway network by plant and road vehicles between the scheme and a more distant compound. This would reduce negative impacts on the local and wider environment in terms of noise, air quality and carbon emissions. The temporary possession would thus be advantageous, appropriate and expedient. I am therefore satisfied that the temporary possession powers for the construction compound would be lawful under s120(5)(c) of the PA2008.
- 6.4.36 From the above, the passing of the tests in s120(5)(c) is not in any way surprising or novel, as has been suggested by NEL. Moreover, the tests may well be lower than those for compulsory acquisition, but the power would be temporary and not permanent. Furthermore, the existence of ample precedent supports my view, and there is nothing to suggest that the principles of natural justice would be offended.
- 6.4.37 I now turn to NEL's suggestion that the identified compensation in Part 1 of the 1961 Act does not determine a basis for compensation beyond loss or damage, as the compensation code is not applied. In relation to compensation for temporary possession, article 27 provides that any dispute as to the amount or entitlement to compensation arising from temporary use for carrying out the development is to be determined under Part 1 of the Land Compensation Act 1961. A similar provision is contained in article 28(7) in relation to temporary use for maintaining the development. Articles in this form in relation to temporary possession and other matters not strictly involving compulsory acquisition are a commonplace provision in made DCOs. It was an approach taken in the former Model Provisions, such as Model Provision article 11 (Temporary stopping up of streets).
- 6.4.38 Part 1 of the 1961 Act makes provision for compensation issues in relation to compulsory acquisition to be determined by the Upper Tribunal, in accordance with subsequent provisions of the Act. Those include the rules for assessing compensation. There is no evidence before me to suggest that those rules would be disapplied, applied in any different way or that compensation determined under them in relation to the consequences of temporary possession would be inadequate. The suggestion by NEL does not therefore influence my view on the adequacy of compensation provisions.
- 6.4.39 The proposed temporary possession could unarguably delay the development of the land concerned. There are however no defined proposals which have been put forward for the land concerned and, at the time of the examination, no planning application had been made. Whilst some delay could result from the possession, there is no reasonable alternative to it. Any dis-benefit in this regard from the possession should therefore be weighed against the significant

economic benefits of the scheme that have previously been identified. These benefits would clearly outweigh the impact that the possession could have on the future development of the site, including any higher future build costs. It is also of note that the scheme would improve the attractiveness of the surrounding area for economic development. Such an improvement could also enhance the future development prospects of the area in question following the temporary possession.

6.4.40 In view of all of the above points, I do not consider that the temporary possession would outweigh the public benefit or would infringe Article 1 of the First Protocol, as suggested by NEL. There is also nothing in the NEL objection to lead me to a view that the temporary possession powers should not be granted.

6.4.41 I now turn to the objections made by The Biscuit Motor Company, Whitley Bay Motors Limited, McDougal & Breen Limited and the Cartec Motor Company/Cartec@Vroom Ltd. The extent of the land which would be compulsorily acquired is governed by the alignment of the A19 underpass through the junction and its slip roads. These alignments are set by highway design criteria that include safety matters. A number of alternatives were considered before the application was made, and the chosen option minimises the land needing to be compulsorily acquired. Moreover, the carriageway cross-section design is urban in nature, again reducing the land required. I am therefore satisfied that the land over which compulsory acquisition is sought is all necessary to accommodate the scheme which has been developed in a well-reasoned manner. Furthermore, from the proportions of the land holdings that would be acquired, the draft DCO does, in my opinion, include satisfactory compensation provisions in this regard. It also includes an appropriate mechanism for determining the level of compensation.

6.4.42 The difference in level between the Vroom site and the slip road which would occupy part of the site would be accommodated by means of a sloping batter. It is possible that land take could have been reduced by the substitution of a retaining wall for this batter. The difference in land take would however amount to some 10m in depth across the plots concerned. Whilst this could potentially allow the car sale canopies to be retained, I am satisfied with the applicant's position that the difference in land take would not justify the additional construction and maintenance cost of a retaining wall. Indeed, it has been suggested by affected persons that, as businesses would have to be extinguished on the Vroom site in any event, the provision of retaining walls to reduce land take would not represent value for money.

6.4.43 I am not convinced that the closer proximity of carriageways to the location of these objections would result in increased dirt and dust resulting in a loss of business following completion of the scheme. There is no evidence of this in the applicant's Environmental Assessment Report. Indeed, the scheme would reduce traffic flows on

the nearest slip road and A19 through traffic would pass the locations of these objections at a lower level than it does presently.

- 6.4.44 The scheme would reduce future congestion on the A19, and this would make these commercial plots more easily accessible than they currently are, with a corresponding improvement in viability. Various objections were made that related to a loss of business due to disruption during the construction period. Whilst there may be some construction disruption, the draft DCO, including the CEMP, does however, in my opinion, include adequate mitigation provisions in this regard. As a consequence of this and the future accessibility improvement, construction period disruption would not be sufficient to fatally undermine the justification for the compulsory acquisition.
- 6.4.45 Whilst engagement with the tenants at the Vroom site has been late in the process, opportunities were available previously. Indeed, the applicant had expressed surprise to the landowner's managing agent at the site that no tenants had previously responded [REP3-019 & EV-011 & 012]. I thus do not consider that the actions of the applicant have fallen below an appropriate standard, or that the lack of financial information may have resulted in a poorer scheme in terms of value for money.
- 6.4.46 The scheme would result in the loss of employment land at the Vroom site. The applicants' Environmental Assessment Report suggests that the scheme would however safeguard the creation of approximately 7,259 jobs on developable employment land at the Tyne Tunnel Trading Estate. This land is currently disadvantaged by traffic congestion at the scheme junction. This is a substantial benefit from the scheme, and I consider that it would outweigh any loss of employment as a consequence of the proposed compulsory acquisition.
- 6.4.47 From all of the above, I do not consider that the compulsory acquisition would infringe Article 1 of the First Protocol, as suggested in the objections. There is also nothing in the objections to lead me to a view that the compulsory acquisition powers should not be granted.
- 6.4.48 I now turn to the objections made by Trinity Motors (Newcastle) Limited and W.D. Motors. I am again satisfied that the land over which compulsory acquisition is sought is all necessary to accommodate the scheme which has been developed in a well-reasoned manner, for the reasons set out previously. The objections also related to a loss of business and extinguishment due to the loss of land and disruption. The draft DCO does however, in my opinion, include adequate mitigation and compensation provisions in this regard, as previously noted. In respect of the objections made by Motorcare (Newcastle) Ltd, Paul Rogers and the Pit Stop Café, the draft DCO again, in my opinion, includes adequate mitigation and compensation provisions in this regard, as set out above. There is also nothing in the objections to lead me to a view that the compulsory acquisition powers should not be granted.

6.5 THE EXA'S OVERALL CONCLUSIONS AND RECOMMENDATIONS

SECTION 122

- 6.5.1 Each plot in the Book of Reference to be compulsorily acquired has been identified with a clear purpose, notwithstanding the typographical errors identified in relation to Plots 3/3i and 3/11a, as set out previously in this chapter of the report. 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.
- 6.5.2 I am satisfied that a compelling case in the public interest has been made out for each of the plots of 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.
- 6.5.3 I am absolutely satisfied that 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 DCO. I therefore conclude that the tests in sections 122(2) and 122(3) of the PA2008 are met.

SECTION 123

- 6.5.4 The application for the Order included a request for compulsory acquisition of the land to be authorised. I therefore conclude that the proposal would satisfy s123 of the PA2008.

SECTIONS 120(5) AND 126

- 6.5.5 The application and modification of legislative provisions that are included within the draft DCO, such as those within article 8 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 A556 (Knutsford to Bowdon Improvement) DCO 2014 and the A160/A180 (Port of Immingham Improvement) DCO 2015. These applications and modifications relate to matters for which provision may be made in the Order and do not infringe s126.
- 6.5.6 In relation to s120(5)(c), in view of the lack of other alternatives adjacent to the authorised development and its constrained nature, I am satisfied that the temporary possession powers for construction compounds are necessary, appropriate and proportionate. I am also satisfied that the existence of temporary possession powers would minimise compulsory acquisition where possible and would be necessary and expedient to give full effect to the provisions that authorise the construction of the scheme.

- 6.5.7 In view of all of the above points, I conclude that the proposal would accord with s120(5) and s126 of the PA2008.

SECTIONS 127 AND 138

- 6.5.8 As indicated above, there is no relevant land in the scheme in terms of s127 of the PA2008, so that section is not engaged. The draft DCO includes provisions for the extinguishment of rights and the removal and repositioning of apparatus of statutory undertakers within the limits of deviation. The protective provisions within the draft DCO require the approval of the statutory undertaker concerned prior to any work on or around apparatus or any extinguishment. Any associated costs would also be the responsibility of the undertaker.
- 6.5.9 From the location information on the works plans [REP3-013] and Schedule 1 of the draft DCO and the engineering drawing general arrangement plans [REP3-015], I am satisfied that extinguishment or removal would be necessary for the purpose of carrying out the development. I therefore conclude that the proposal would satisfy s138 of the PA2008.

SECTION 135

- 6.5.10 As set out above, I am satisfied that appropriate Crown consent has been received in order to comply with the requirements of s135(1) and (2) of the PA2008 and allow the authorised development to take place or where no consent has been obtained that this does not represent a bar to the scheme proceeding.

TEMPORARY POSSESSION

- 6.5.11 I am satisfied that the proposed temporary possession is reasonable in terms of its extent and DCO regulated timescale. The area to the south of the A1058, Plot 2/4a, has already been considered above, in terms of the objection to the possession. The area to the north of the A1058, Plot 3/14, is similarly the only vacant plot of its type, and the seeking of temporary possession is justified on the same basis.

HUMAN RIGHTS CONSIDERATIONS AND DCLG GUIDANCE

- 6.5.12 Finally, in terms of the overarching aims of the HRA1998, DCLG Guidance and the required balancing exercise, the scheme would represent an improvement to the national road network that accords with national policy. It is necessary to alleviate existing problems, a legitimate public interest. I am therefore of the view that the case has been sufficiently made that the junction improvement would be a proportionate solution, taking into account the balance between environmental considerations and the works required. The purposes for the compulsory acquisition powers sought, and those for temporary possession under articles 27 and 28, are therefore legitimate, necessary and proportionate and sufficiently justify, and clearly outweigh, any interference with the human rights of those with an interest in the land affected.

6.5.13 I am satisfied that the proposal would not violate human rights in relation to the HRA1998 and the European Convention on Human Rights and would comply with DCLG Guidance.

**THE EXA'S RECOMMENDATIONS ON THE GRANTING OF
COMPULSORY ACQUISITION AND TEMPORARY POSSESSION
POWERS**

6.5.14 My recommendation arises from the examination process, including consideration of the application, all submissions and the proceedings of the compulsory acquisition hearing.

6.5.15 In view of my foregoing conclusions, I recommend that the compulsory acquisition and temporary possession powers included in the draft DCO in respect of the land detailed in the Land Plans [REP3-008 and REP5-008] and Book of Reference [REP5-004], whilst noting the typographical errors identified for Plots 3/3i and 3/11a in the Book of Reference in this section, are approved if the Secretary of State is minded to grant development consent for this scheme.

7 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.0 INTRODUCTION

- 7.0.1 The Development Consent Order (DCO), if made, will constitute the consent for the proposed development. It will set out: the authority to be given to the undertaker, Highways England (HE), (including the permanent and temporary acquisition of land and interests in land); the commitments that the undertaker must accept to facilitate the development; the further approvals that are required before particular works can commence; 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. The application draft DCO [APP-011] is accompanied by the required Explanatory Memorandum [APP-012], and both form an integral part of the application.
- 7.0.2 Section 120(5)(a) of the Planning Act 2008 (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. If the Order includes such provision, s117(4) requires that it must be in the form of a statutory instrument. The draft DCO includes such provision and is in the form of a statutory instrument.
- 7.0.3 The draft DCO developed during the examination and was amended iteratively by the applicant in response to my questions and responses thereto, together with representations, submissions and hearing proceedings. It also developed in response to negotiations between the applicant and interested parties, who submitted representations to the examination, and affected persons, whose land would be affected. Consequently, there were four versions of the draft DCO that were considered during the examination and a fifth version that accompanies this report. Tracked changes were used on successive drafts to illustrate revisions and allow comparisons.
- 7.0.4 The application included the **applicant's initial draft DCO** for the purposes of the examination [APP-011]. This, together with the associated Explanatory Memorandum [APP-012] and Book of Reference [APP-015], relevant responses to my initial questions submitted at Deadline 1 [REP1-008 & 016] and the **applicant's second draft DCO** submitted at Deadline 2 [REP2-006], were considered at the DCO issue specific hearing on 14 April 2015. This consideration resulted in the submission of the **applicant's final draft DCO** [REP3-021] together with a revised Explanatory Memorandum [REP3-024] and Book of Reference [REP3-005] at examination Deadline 3.
- 7.0.5 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 made in response to my written questions on drafting or seeking

justification for the powers sought, or in response to my questions raised at or following the DCO hearing or to comply with the examination timetable.

- 7.0.6 I then issued the **ExA's draft DCO** on 5 May 2015, taking into account matters raised during the examination [PD-006]. This draft was the subject of a response from the applicant which was submitted at Deadline 4 [REP4-001]. This was accompanied by a revised Book of Reference [REP4-002], which was then further amended at Deadline 5 [REP5-004]. The **ExA's recommended DCO**, which forms part of my recommendation and takes into account these comments, is at Appendix A to this report.
- 7.0.7 This chapter reports on any points in the applicant's initial draft DCO which were contentious and explains any significant changes to the draft DCO submitted with the application which resulted from the examination. It also generally compares the ExA's recommended DCO with previous Orders made by the Secretary of State and the previously extant model provisions. If there is no mention of particular provisions, requirements or schedules in the ExA's recommended DCO, the Secretary of State can be clear that I am satisfied that such particular matters are appropriate for the proposed development.
- 7.0.8 The reasons for seeking the powers in my view have been adequately explained in the revised Explanatory Memorandum submitted during the examination [REP3-024], with the exception of those relating to the discharge of requirements. Matters relating to the discharge of requirements are addressed later in this chapter of my report. The purpose of the revision to the Explanatory Memorandum was primarily to replace references to the Highways Agency and the Secretary of State with HEAs the undertaker, as a consequence of the statutory changes that took place during the examination [REP1-016 question 3.4.2]. The only other change to the explanation of the draft DCO that had been provided in the Explanatory Memorandum submitted with the application [APP-012] was an explanation of an article relating to Crown rights, that had been added to the draft DCO at the Deadline 3 submission [REP3-021].
- 7.0.9 In addition to the changes made as a consequence of the above statutory changes, the other changes to the draft DCO during the examination were as follows. At Deadline 2, the applicant revised various requirements and Schedules 5 and 7, respectively identifying land subject to new rights and to temporary possession [REP2-006]. At Deadline 3, the applicant revised the schedules of land relating to the compulsory acquisition of new rights and for temporary use for construction purposes [REP3-021]. At Deadline 3, the applicant also deleted Work No 2c, the diversion of a foul sewer.
- 7.0.10 The structure of the ExA's recommended DCO is similar to that of the A160/A180 (Port of Immingham Improvement) DCO 2015 (S.I. 2015/129). Part 1 contains the preliminary provisions for citation, commencement and interpretation. Part 2 sets out the works

provisions, with articles 3 to 7 containing the principal powers for the undertaker to carry out and maintain the authorised development within the limits of deviation and to be able to transfer the benefit of the DCO with the consent of the Secretary of State as described.

- 7.0.11 Part 3 contains provisions concerning streets, with article 8 setting out the application of the New Roads and Street Works Act 1991. Articles 9 to 14 of Part 3 would give powers to: construct, have classified and maintain new, altered or diverted streets, including their use as clearways; temporarily or permanently stop up and restrict the use of streets; and form or improve means of access in association with the authorised development. Part 4, in articles 15 to 17, would give supplemental powers in respect of the discharge of water, protective work to buildings and authority to survey and investigate the land.
- 7.0.12 Part 5 sets out the powers of acquisition and possession of land. Articles 18 to 23 relate to the compulsory acquisition of land and rights with associated time limits and the extinguishment of private rights together with the application of the Compulsory Purchase (Vesting Declarations) Act 1981. Articles 24 to 31 set out matters concerning: the acquisition of subsoil, airspace and parts of properties; rights in streets; the temporary use of land for carrying out and maintaining the authorised development; and statutory undertakers.
- 7.0.13 Part 6, with article 32, contains provisions relating to the felling or lopping of trees. Part 7 comprises the remaining articles covering a number of miscellaneous and general provisions. Articles 33 to 42 set out matters in respect of: the application of landlord and tenant law; operational land for purposes of the Town and Country Planning Act 1990; statutory nuisance; the protection of interests; Crown rights; plan certification; the service of notices; arbitration; traffic regulation; and Schedule 2 approvals.
- 7.0.14 Schedules 1 to 8 contain information referred to in the articles of the draft Order. Schedule 1 identifies the authorised development, as referred to in articles 2 and 3. Schedule 2 sets out the requirements imposed by article 3. Schedule 3 identifies roads that would be classified as trunk roads, roads which would be subject to a 50 miles per hour speed limit, and cycle tracks and footways, referred to in article 10.
- 7.0.15 Schedule 4 identifies the streets that would be permanently stopped up under article 12. Schedules 5 and 6 identify land over which new rights could be acquired under article 21 and modify the compensation and compulsory purchase enactments to include the creation of these rights. Schedule 7 identifies land that could be subject to temporary possession under article 27. Schedule 8 contains provisions, under article 36, for the protection of: electricity, water and sewerage undertakers; Northern Gas Networks Limited; and operators of electronic communications code networks.

7.0.16 In the following paragraphs of this chapter of the report, references to numbered articles, schedules or requirements are to those in the ExA's recommended DCO unless otherwise stated.

7.1 ARTICLES

7.1.1 The articles set out the principal powers to be granted if consent is given. Whilst the Localism Act 2011 has changed the approach to the Model Provisions in SI 2009:2265, they remain a sensible starting point for those drafting an Order, and they have generally been used in that way here.

7.1.2 In preparing the draft DCO, the applicant has also had regard to the wording of articles that have been included in recent Orders for similar development, such as the M1 Junction 10a (Grade Separation) DCO 2013, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) DCO 2013, the A556 (Knutsford to Bowden Improvement) DCO 2014 and the A160/A180 (Port of Immingham Improvement) DCO 2015. These are referred to in this chapter as 'the previous highway orders'. Regard has also been had to the Network Rail (North Doncaster Chord) DCO 2012 and the Rookery South (Resource Recovery Facility) DCO 2011. Where, in this chapter, reference is drawn to the previous highway orders, the reference is particularly aimed at the latest of these DCOs made having the benefit of the consent delivered by the then Highways Agency on behalf of the Secretary of State - that is the A160/A180 (Port of Immingham Improvement) DCO 2015.

7.1.3 Further detail in relation to the purpose of and background to each of the articles is contained within the Explanatory Memorandum [REP3-024] which accompanied the applicant's final draft DCO at Deadline 3 [REP3-021]. Where departures from the Explanatory Memorandum have been made in respect of the ExA's recommended DCO, they are identified below. Notable changes to the articles during the examination are set out below. At each version of the draft DCO minor changes to improve the wording and consistency of the document were made but, to maintain clarity in this report, these are not included below. They are however identifiable from the track changed versions of the draft DCO [REP2-006, REP3-023 & PD-007].

PART 1 - PRELIMINARY

Article 2 - Interpretation

7.1.4 The applicant's Deadline 2 version of the DCO [REP2-006] defined the undertaker as Highways England [REP2-006] introduced a number of new definitions:

- "undertaker", being Highways England;
- "highway authority" being the undertaker;
- "local highway authority" being North Tyneside Council;
- "traffic authority"; and
- "traffic regulation plans".

- 7.1.5 The implications of the change to the submitted draft DCO by referring to HEas "the undertaker" are discussed later in this chapter.
- 7.1.6 The Deadline 2 DCO also identified four specific statutory undertakers: BT Telecommunications plc; Northern Gas Networks Ltd; Northern Powergrid Ltd; and Northumbrian Water Ltd. The definition of 'maintain' mirrors that used in the previous highway Orders. 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 scheme. The remainder of article 2 generally follows the Model Provisions and the previous highway Orders.
- 7.1.7 The ExA's recommended DCO expands the definition of "environmental report" to make clear that it refers to the report as certified by the Secretary of State [PD-006].

The role of Highways England as undertaker

- 7.1.8 The application was submitted by the Highways Agency (HA). The HA was an executive agency of the Department for Transport, and was responsible for operating, maintaining and improving the strategic road network on behalf of the Secretary of State [APP-014 para 2]. The application draft DCO reflected this position by identifying the Secretary of State as the beneficiary of the consent. In practice, the development authorised by the DCO would then have been delivered by the HA, as had been the case on previous DCOs. The Secretary of State therefore had two roles under the application draft DCO, that of consenting authority and that of the highway authority carrying out the development. This had been the case in the M1, Knutsford and A160/A180 Orders identified above.
- 7.1.9 During the early stages of the examination, HE was appointed as highway authority for all highways within England for which the Secretary of State for Transport was previously highway authority [REP1-016 question 3.4.2]. This appointment was made under the Infrastructure Act 2015 and the Appointment of a Strategic Highways Company Order 2015 (S.I. 2015/651). The transfer of relevant highway authority functions on 1 April 2015 from the Secretary of State to HE was provided for by the transitional regulations¹⁰.
- 7.1.10 The effect of Regulation 4 of the Transitional Regulations is that HE is able to continue with the DCO application from 1 April 2015 in place of the Secretary of State without having to restart the procedure (Regulation 4(2)) [REP1-016 question 3.4.2]. Under Regulation 4(3), anything which was done by the Secretary of State or the HA in relation to the application before 1 April 2015 should be treated as if it had been done by HE. The effect of these two provisions is that the application would be treated as though it had been made by HE.

¹⁰ The Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015 (S.I. 2015/377)

- 7.1.11 HE operates under a licence granted by the Secretary of State under the Infrastructure Act 2015. In this regard, the present overall situation of the Secretary of State is similar to that which existed at the time of the application. This is in that the benefits of the draft DCO would be delivered by an organisation that exists under an arrangement with the Secretary of State, over which the Secretary of State has a level of control.
- 7.1.12 Furthermore, under the Infrastructure Act 2015, provision is made to transfer all relevant property from the Secretary of State to HE. Accordingly, the compulsory acquisition powers in the draft DCO going forward would be consistent with the wider property holding arrangements for the strategic road network.
- 7.1.13 As a consequence of all of the above points, I am satisfied that the changes to the draft DCO during the examination, to effectively substitute HE for the Secretary of State in its articles, effectively as beneficiary of the draft DCO, would be appropriate. Moreover, these substitutions did not prompt any objections during the examination, and the substitutions do not undermine the validity of the application in any way.
- 7.1.14 The presence of HE in the draft DCO as undertaker is correctly identified in article 2, and the substitution of the Secretary of State with the undertaker has taken place in changes to all relevant articles. The general requirement for the consent of the Secretary of State for Transport prior to the transfer of the benefit of any provisions of the draft DCO remains in article 7, as it did at the time of the application.

PART 2 - PRINCIPAL POWERS

Articles 3 and 4- Development and maintenance consent

- 7.1.15 The principal powers that would be granted by the draft DCO are to carry out the authorised development, as defined in article 2, and then maintain it at any time. These articles generally follow the Model Provisions and the previous highway Orders.

Article 5 - Limits of deviation

- 7.1.16 This article generally follows the Model Provisions and the previous highway Orders. At Deadline 2, the term 'authorised development' replaced 'linear works' for consistency within the document, and a restriction was added to ensure that any deviation would be unlikely to result in effects beyond those assessed in the environmental report.
- 7.1.17 The article allows a maximum deviation of 1m downwards from the levels of the authorised development shown on the engineering drawings and sections, against 0.5m in the A160/A180 Order. The authorised development would include the construction of a new section of A19 dual carriageway under the existing A19/A1058 Coast Road junction.

7.1.18 This work would be carried out below ground level with an increased risk of unforeseen construction work. The engineering sections submitted during the examination [REP3-015] show road construction depths which could need to be varied over and above any carriageway level deviation. The Environment Agency and the relevant planning authority (RPA) have no objection to this downwards limit of deviation. Furthermore, any change to the scheme design shown on the engineering drawings, including construction depths shown on the sections, could only take place with the approval of the RPA under requirement 11. A maximum downwards limit of deviation of 1m would therefore be reasonable in this case.

Article 6 - Benefit of Order

7.1.19 This article generally follows the Model Provisions, and it overrides section 156(1) of the PA2008 to give the benefit of the draft DCO to the undertaker rather than anyone with an interest in the land. This mechanism was introduced into the draft DCO by the applicant at Deadline 2 by the deletion of application article 6(1)(a) [REP2-006]. Article 6(1) also follows the A160/A180 Order. The draft DCO under consideration here however would not give the benefit of the draft DCO directly to statutory undertakers and certain other persons affected by the development in relation to diversion works that would be authorised by the draft DCO, as was the case in article 6(2) of the A160/A180 Order. Here, the draft DCO would allow the transfer of the benefit of the draft DCO from the undertaker to those statutory undertakers who operate services which have been diverted under article 7(4). This could take place without the need for approval from the Secretary of State. Such a transfer would be instigated by the undertaker.

7.1.20 Whilst this would give greater powers to the undertaker, the interests of the statutory undertakers concerned would be protected by the provisions in Schedule 8. Furthermore, the use of article 7(4), instead of the mechanism in the A160/A180 Order, has not been the subject of any objection from statutory undertakers. I am satisfied that this article in the draft DCO would be appropriate, as it would keep responsibilities and benefits together unless and until the undertaker transfers the benefit to a statutory undertaker under article 7. This single point of contact would assist in clarity and control during the implementation of the development.

Article 7 - Consent to transfer benefit of Order

7.1.21 This article generally follows the Model Provisions and the previous highway Orders, except that the consent of the Secretary of State is not required where the transfer is to BT Telecommunications plc, Northern Gas Networks Ltd, Northern Powergrid Ltd or Northumbrian Water Ltd.

PART 3 - STREETS

Article 8 - Application of 1991 Act

7.1.22 This article generally follows the previous highway Orders.

Article 9 - Construction and maintenance of new, altered or diverted streets

7.1.23 This article generally follows the Model Provisions and the previous highway Orders.

Article 10 - Classification of roads etc.

7.1.24 This article generally follows the previous highway Orders. At Deadline 3, the applicant clarified the position in the draft DCO, that the relevant roads would become trunk roads on their individual completion and opening [REP3-021]. This was rather than on completion of the works as a whole as set out in the application draft DCO [APP-011].

Articles 11 and 12 - Stopping up and restriction of use of streets

7.1.25 These articles generally follow the Model Provisions and the previous highway Orders.

Articles 13 and 14 - Access to works and clearways

7.1.26 These articles generally follow the previous highway Orders.

PART 4 - SUPPLEMENTAL POWERS

Articles 15, 16 and 17- Discharge of water, protective work to buildings and authority to survey and investigate the land

7.1.27 These articles generally follow the Model Provisions and the previous highway Orders.

PART 5 - POWERS OF ACQUISITION

Articles 18 and 19 - Compulsory acquisition of land and incorporation of the mineral code

7.1.28 These articles generally follow the previous highway Orders.

Article 20 - Time limit for exercise of authority to acquire land compulsorily

7.1.29 This article generally follows the Model Provisions and the previous highway Orders.

Articles 21, 22 and 23 - Compulsory acquisition of rights, private rights over land and application of the Compulsory

Purchase (Vesting Declarations) Act 1981

- 7.1.30 These articles generally follow the previous highway Orders. In article 21, the applicant's Deadline 3 draft DCO and the ExA's draft DCO removed the reference to restrictive covenants, as these do not feature in the scheme [REP3-021 & PD-006]. A similar amendment was also made to article 29.

Article 24, 25 and 26 - Acquisition of subsoil or airspace only, acquisition of part of certain properties and rights under or over streets

- 7.1.31 These articles generally follow the Model Provisions and the previous highway Orders.

Article 27 - Temporary use of land for carrying out the authorised development

- 7.1.32 This article generally follows the previous highway Orders. It does not though prevent temporary possession after new rights have been created, as was the case in article 28(3)(c) of the A160/A180 Order. The applicant has however satisfactorily justified this position and amended the Book of Reference and Statement of Reasons accordingly [REP1-016 question 3.4.25]. The applicant's Deadline 2 draft DCO correctly restricted the scope of the mitigation works referred to in article 27(1)(d) to those in connection with the authorised development [REP2-006].

Article 28 - Temporary use of land for maintaining the authorised development

- 7.1.33 This article generally follows the Model Provisions and the previous highway Orders.

Article 29 - Statutory undertakers

- 7.1.34 This article generally follows the previous highway Orders.

Articles 30 and 31 - Apparatus and rights of statutory undertakers in stopped-up streets and recovery of costs of new connections

- 7.1.35 These articles generally follow the Model Provisions and the previous highway Orders.

PART 6 - OPERATIONS

Article 32 - Felling or lopping of trees

- 7.1.36 This article generally follows the Model Provisions and the previous highway Orders.

PART 7 - MISCELLANEOUS AND GENERAL

Articles 33, 34, 35 and 36 - Application of landlord and tenant law, operational land for purposes of the 1990 Act, defence to proceedings in respect of statutory nuisance and protection of interests

7.1.37 These articles generally follow the Model Provisions and the previous highway Orders.

Article 37 - Crown rights

7.1.38 The applicant added this article, at Deadline 3, to give further protection to the Crown in relation to its interests that would be affected by the draft DCO, and this was taken forward into the ExA's draft DCO [REP3-019 & PD-006]. The Crown consent received during the examination, under s135 of the PA2008, is subject to the inclusion of this article in the DCO [REP5-011].

7.1.39 Immediately prior to the examination, the Secretary of State made the Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015. That DCO did not contain an article such as the applicant's above, on the basis that it would duplicate the provisions of s135 of the PA2008.

7.1.40 Here however, the Crown consent obtained towards the end of the examination is expressly dependent on the inclusion of such an article and, to omit it, would require a further consent from the Crown. Whilst the article may well represent duplication, it would not change any matters relating to the scheme or the draft DCO. In my view therefore, and in this case, the public interest and matters of expediency would not be best served by the need to carry out additional work to obtain a further unqualified Crown consent. The article has therefore been retained in the ExA's recommended DCO together with the reference to it in article 18(2).

Article 38 - Certification of plans etc

7.1.41 This article lists the plans and documents that the Secretary of State would have to certify as true copies of the plans and documents referred to in the draft DCO, as soon as practicable after the making of an Order. The article generally follows the Model Provisions and the previous highway Orders.

7.1.42 The certification of an outline construction environmental management plan and the environmental report submitted with the application were added to the applicant's Draft DCO at Deadlines 2 and 3 [REP2-006 & REP3-021]. These are necessary additions, as the documents are referred to in the draft DCO. The article includes document and plan reference numbers, which were updated by the applicant at the end of the examination at Deadline 5 and are included in the ExA's recommended DCO [REP5-003]. The typographical amendment

suggested by applicant at Deadline 4 is accepted and has been incorporated in the ExA's recommended DCO [REP4-001].

Articles 39, 40 and 41- Service of notices, arbitration and traffic regulation

7.1.43 These articles generally follow the previous highway Orders.

Article 42 - Provision as to approval etc under Schedule 2

7.1.44 This article generally follows the Network Rail (Norton Bridge Area Improvements) DCO 2014 made by the Secretary of State. In that Order, various requirements were subject to the approval of a local planning authority, and the article imported the appeal provisions of the Town and Country Planning Act 1990.

7.1.45 A similar situation exists in this draft DCO and, to ensure that the scheme can proceed in a reasonable and appropriate manner, it would be necessary that similar appeal provisions are imported. Here however, the provisions include the circumstance where a local planning authority fails to give notice on an application for approval under a requirement. This would seek to prevent the scheme being unreasonably delayed by the action, or inaction, of a local planning authority, and there is no reason to have this circumstance excluded, as was the case in the Norton Bridge Order.

7.1.46 This article was proposed by the ExA [PD-006] and was the subject of objection from the applicant during the examination, as part of a general objection regarding the discharge of requirements [REP4-001]. The objection is considered later in this chapter of the report, and the article in the ExA's recommended DCO is a departure from the applicant's final draft DCO and Explanatory Memorandum.

SUMMARY IN RELATION TO THE ARTICLES

7.1.47 It can be seen from the above that the draft DCO articles closely follow the previous highway Orders, including where they differ from, or add to, the repealed Model Provisions. These differences from or additions to the Model Provisions particularly occur in articles relating to: the application of the New Roads and Street Works Act 1991, article 8; the classification of roads etc., article 10; access works and clearways, articles 13 and 14; the compulsory acquisition of land and incorporation of the mineral code, articles 18 and 19; the compulsory acquisition of rights and private rights over land and the application of the Compulsory Purchase (Vesting Declarations) Act 1981, articles 21, 22 and 23; the temporary use of land for carrying out the authorised development, article 27; statutory undertakers, article 29; the services of notices, arbitration and traffic regulation, articles 39, 40 and 41; and approvals under Schedule 2, article 42. It is therefore the case that the ExA's recommended DCO articles, generally as submitted by the applicant and without adverse comment from the applicant [REP4-001], apart from article 42, represent an appropriate progression alongside the appointment of HE as a highway authority.

7.2 DESCRIPTION OF WORKS

- 7.2.1 The authorised development is defined in Schedule 1 of the draft DCO. The works are divided into relatively small sections. Such division does however lead to a more comprehensive description of the development, and has simplified, and will continue to do so, the identification of individual elements of the development. The separation of the east and westbound carriageways of the A1058 over the A19 cutting is of particular note. The applicant's reason for this separation is that the bridge would be likely to be constructed in a phased manner in association with each carriageway, and the work numbers follow this methodology [EV-014 & 015]. The definitions have not been the subject of any adverse comment during the course of the examination.
- 7.2.2 The applicant's deletion of Work No 2c at Deadline 3 was required as this foul sewer diversion was now to be carried out outside the scope of the DCO [REP3-019 & 021]. This deletion was made with the agreement of the Crown Estate whose land the foul sewer solely served [REP3-020].
- 7.2.3 In view of all of the above points, the description of the authorised development is adequate and comprises development, within the meaning of section 32 and falling within the terms of s14(1)(h) and 22 of the PA2008.

7.3 REQUIREMENTS

- 7.3.1 Requirements are set out in Schedule 2. The requirements fall within the terms of section 120(1) of the PA2008.

MECHANISM FOR THE DISCHARGE OF REQUIREMENTS REQUIRING APPROVALS

- 7.3.2 Requirements 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in the applicant's final draft DCO include mechanisms whereby the approval of details sought by the requirement are submitted to and approved by the undertaker, who is the applicant [REP3-021]. This arrangement is somewhat similar to the previous highway orders, where submission and approval was to and by the Secretary of State. The ExA's recommended DCO however places responsibility for the approval of these matters with the RPA, apart from requirement 10. These requirements are therefore a departure from the applicant's final draft DCO and Explanatory Memorandum [REP3-024].
- 7.3.3 The previous highway Orders were to be implemented by the then highway authority for the highway concerned, the Highways Agency (HA), an executive agency of the Department for Transport. The above submission and approval roles were effectively delegated to the HA by the Secretary of State. These functions have now been transferred to the applicant, as previously described.

- 7.3.4 The applicant operates under a licence from the Secretary of State. This changed arrangement places greater separation between the Secretary of State and the applicant as highway authority. Indeed, the changes have been made to improve efficiency, drive forward progress on innovation and transform the network amongst other things [REP1-017].
- 7.3.5 From submissions made to the examination, this new arrangement would appear to give greater flexibility to the applicant than was the case with the HA. Whilst these are laudable aims, there would be a possibility that the new organisation could have a different day to day emphasis and pressures to those which existed previously with the HA. In requirements under the previous highway Orders, the submission, approval and benefit would be made and received by the Secretary of State. The separation within the Department of Transport was however based on well-established practice and not subject to new and somewhat unproven circumstances.
- 7.3.6 The applicant confirmed, during the examination, that consideration was being given as to whether it would be appropriate for a different approach to be adopted in relation to the approval of matters under the requirements and that discussions regarding this were ongoing [REP3-019 para 2.5]. At that stage in the examination, the applicant advised that the resolution of the matter was unlikely to be achieved by the close of the examination. At Deadline 4 however, the applicant did confirm that its internal discussion had concluded, and that the applicant's draft DCO should remain as previously submitted [REP4-01]. During the examination, the applicant was given opportunities to further explain its intended requirement approval process, and indeed the examination period was extended at the applicant's request [CoR-008 & 009 and PD-008 & 009].
- 7.3.7 In this case therefore, no specific arrangements have been put forward to address this concern. This leaves the involvement of the RPA as, in my view, the only appropriate mechanism for the discharge of the above requirements. This would ensure a degree of local accountability in terms of the detail of the scheme, which would be identified at a future detailed design stage, together with the manner in which the development would be carried out. It is also of note that the RPA is the body responsible for the enforcement of the requirements. Moreover, the urban nature of the area around the scheme and the proximity of residential areas gives particular weight in support of this approach in this particular scheme.
- 7.3.8 Furthermore, the ExA's proposal in this regard is similar to the approach included in the Network Rail (Norton Bridge Area Improvements) DCO 2014, that was also made by the Secretary of State for Transport. The ExA's recommended DCO here also includes, as does the Norton Bridge Order, a provision relating to an appeal mechanism, to the Secretary of State for Communities and Local Government, should the RPA not approve a submission under a requirement. This is in article 42 of the ExA's recommended DCO. In

this case though, the appeal mechanism goes further than that under the Norton Bridge Order, by allowing an appeal where the RPA has failed to give notice of a decision on such an application. Both of these protections would prevent delay as a result of any unreasonable actions by the RPA.

- 7.3.9 In its Statement of Common Ground with the applicant, North Tyneside Council, as the RPA, had no objection to the applicant's version of the draft DCO [REP3-026 para 3.2.11]. During discussion on this matter in the Issue Specific Hearing on the draft DCO, the RPA was however also content to undertake the approval role in the discharge of this and other requirements [EV-014 & 015].
- 7.3.10 It is on this basis that the approval of the RPA in relation to the discharge of the requirement was proposed by the ExA and is included in the ExA's recommended DCO.
- 7.3.11 The applicant has suggested that, rather than making the RPA responsible for approvals instead of the undertaker, a consultation mechanism, as in requirement 2 in the applicant's final draft DCO, be incorporated within the relevant requirements. The approval role would however still be held by the undertaker. In my view, this could result in meaningful dialogue between the parties. From what has been put before me, there would however be no obligation to take into account any response from such consultation, and the mechanism suggested would therefore lack the necessary clarity. Furthermore, this suggestion would not result in jointly owned and easily identifiable details to protect interests outside of the scheme and outside of the primary interests of the applicant. I thus do not consider that the suggested consultation mechanism would be appropriate in this case.
- 7.3.12 The applicant has also suggested that the RPA may not have the necessary expertise to have such a role in the discharge of requirements [REP4-001]. The approval process however would not seem to be unusual in the context of planning applications generally. Furthermore, the RPA's role is to protect the public interest, not to provide an expert analysis of every aspect of a proposal before it. I therefore do not consider that any lack of specific expertise is a valid reason to retain the submission and approval of details under requirements wholly within the undertaker's organisation.

TAILPIECES

- 7.3.13 Requirements 8 (Archaeology), 9 (Ecological management plan) and 12 (Drainage) include mechanisms whereby variations to schemes, plans and details previously approved under the requirements by the RPA can be subsequently agreed in a similar manner. Such mechanisms have been referred to as tailpieces.
- 7.3.14 The tailpieces identified above would return previously approved matters to the authority that the draft DCO gave responsibility for their approval to in the first instance. They therefore would not have

the potential to extend the scope of the works beyond that detailed in articles and schedules of the draft DCO. Such variations would thus not go to the heart of the proposal. Furthermore, they would not prejudice the interests of any affected parties, on the basis that the tailpieces would not have the potential to vary the draft DCO that has been the subject of public consultation.

- 7.3.15 Moreover, the tailpieces would not allow any post consent modification of the requirements to which they refer, only to clearly defined matters approved under that requirement. They would therefore be specific to an area of work authorised by the draft DCO. The tailpieces also would not allow any post consent modification of any other elements of the Order, either material or non-material.
- 7.3.16 There are two possible approaches to finalising the details of a project, beyond the level which is appropriate or necessary in a DCO. The first is to incorporate a requirement which invites the submission of detailed proposals to the RPA but does not preclude the variation of approved detailed proposals if circumstances subsequently require. The inclusion of a tailpiece in the requirement would achieve that flexibility.
- 7.3.17 The second is to preclude the variation of approved detailed proposals. In the absence of that flexibility in the requirement, submissions for approval would be likely to come forward in less detail. This could subsequently allow unregulated variations within the approved details without the need for further approval. It could also result in the delivery of the scheme in a sub-optimal manner or applications to change the DCO (or possibly apply for another DCO) with consequential delays in the start of the authorised development.
- 7.3.18 In my view, the first approach is more appropriate in this case. The tailpiece mechanisms within requirements 8, 9 and 12 are therefore both appropriate and necessary for the effective and regulated implementation of the proposal.

INDIVIDUAL REQUIREMENTS

- 7.3.19 The versions of the draft DCO submitted by the applicant included a definition of commence in requirement 1 (Interpretation). Immediately prior to the examination however, the Secretary of State made the Cornwall Council (A30 Temple to Higher Carblake Improvement) Order. That DCO did not contain such a definition on the basis that s155 of the PA2008 provides for this matter. The definition has therefore been omitted from the ExA's recommended DCO. Definitions for protected species and a suitably qualified ecologist were added at Deadlines 2 and 3 respectively [REP2-006 & REP3-021].
- 7.3.20 Requirement 2 (Time limits) places a time limit of 5 years on the commencement of the authorised development. It follows the previous highway Orders.

- 7.3.21 Requirement 3 (Construction Environmental Management Plan) sets out matters relating to the Construction Environmental Management Plan (CEMP) to protect the living conditions of nearby occupiers and the environment amongst other things. An outline of this document was considered during the examination and would be certified, as an outline document, by the Secretary of State, under article 38. Under this requirement, a CEMP must be approved by the RPA prior to the commencement of the development, which then must be carried out in accordance with the CEMP. The CEMP must be substantially in accordance with the certified outline and accord with other matters set out in the requirement, including working hours and various subsidiary management plans.
- 7.3.22 Whilst this requirement very generally follows that in the A160/A180 Order made by the Secretary of State, it does contain some key differences. In that Order, the CEMP did not need the approval of the RPA but needed the approval of the Secretary of State. It also did not have to accord with an outline considered during the examination, but did have to reflect the mitigation measures included in the Environmental Statement for that scheme.
- 7.3.23 The role of the RPA in discharging requirements has already been addressed in this chapter of the report. At Deadline 2, reference to the suggested management plans set out in the Environmental Report were added to requirement 3. At Deadline 3, the scope of the CEMP was further defined within the requirement. This was that the CEMP had to substantially accord with an outline certified by the Secretary of State after a DCO was made and include the working hours set out in the requirement [REP3-021]. The typographical amendment suggested by applicant at Deadline 4 is accepted and has been incorporated in the ExA's recommended DCO [REP4-01].
- 7.3.24 Requirement 4 (Landscaping) would secure a written hard and soft landscaping scheme prior to the commencement of the relevant part of the authorised development. This would protect the character and appearance of the surrounding area. It would be based on a preliminary design in the environmental report submitted with the application and would need to be approved by the RPA before the part of the authorised development to which it relates commences. Requirement 5 (Implementation and maintenance) would then secure the implementation and maintenance of this landscaping scheme.
- 7.3.25 The applicant's final draft DCO proposed that the submission, by the undertaker, of the scheme to discharge requirement 4 should be approved by the undertaker, who would also have the benefit of the DCO, if made. This matter has already been addressed in this chapter of the report and, apart from this matter, these requirements are similar to those incorporated in the A160/A180 Order made by the Secretary of State.

- 7.3.26 At Deadline 3, the need for an arboricultural walkover survey and tree survey was added to requirement 4, at the request of North Tyneside Council [REP3-021 & EV-014 & 015].
- 7.3.27 Requirement 6 (Fencing) would secure a standard for permanent or temporary fencing to be used in the scheme. This again follows the requirement incorporated in the A160/A180 Order, except that departures from the identified standard would need to be approved by the RPA. The potential for such departures was added by the applicant at Deadline 2 [REP2-006].
- 7.3.28 Requirements 7 (Contaminated land and groundwater) and 8 (Archaeology) would secure mechanisms in relation to contaminated land and groundwater, in the interests of public health and the natural environment, and archaeology, to protect the historic environment. They generally follow the requirements incorporated in the A160/A180 Order, apart from the authority discharging them, as set out above, and some amendments in respect of precision and enforceability. The requirements were the subject of various amendments by the applicant, in the interests of clarity, at Deadlines 2 and 3 [REP2-006 & REP3-021].
- 7.3.29 Requirement 9 (Ecological management plan) would secure a written ecological management plan prior to the commencement of the relevant part of the authorised development and its subsequent implementation. It would protect the natural environment and generally follows the requirement incorporated in the A160/A180 Order, apart from the discharging authority, as set out above.
- 7.3.30 It does however introduce a role for a suitably qualified ecologist with regard to matters relating to protected species and other amendments in respect of precision and enforceability. The role for the suitably qualified ecologist has the agreement of Natural England (NE), and there are no matters not agreed between the applicant and NE [REP1-022 & 023]. The role for the ecologist was introduced by the applicant at Deadline 3 [REP3-021].
- 7.3.31 Requirement 10 (Traffic management) would secure a traffic management plan for the construction of the development, prior to the commencement of the development, which had been prepared in consultation with the local highway authority. This requirement would be necessary in the interests of highway safety.
- 7.3.32 The undertaker would be the highway authority for the majority of the highway within the Order land, and it would therefore be appropriate that the approval regime under the requirement reflects this. The ExA's recommended DCO amends the applicant's final draft DCO [REP4-001] in the interests of precision. These amendments did not attract any adverse comments from any party. The requirement follows the requirement incorporated in the A160/A180 Order, apart from the substitution of the undertaker for the Secretary of State in terms of approval of the plan.

- 7.3.33 Requirement 11 (Detailed design) would seek to regulate departures, within the limits of deviation, from the scheme design shown on the engineering drawings and sections, by permitting these only with the approval of the RPA. Any departures would also be limited in terms of those effects assessed in the environmental report in accordance with requirement 13. The requirement differs from that submitted by the applicant, in that approval for the undertaker was to be sought by the undertaker. As the application scheme design has not been the subject of adverse comment from the RPA, the reasoning previously given for the inclusion of tailpieces also applies to departures under this requirement. RPA approval would therefore be both appropriate and necessary for the effective and regulated implementation of this proposal.
- 7.3.34 Requirement 12 (Surface and foul water drainage) would secure written details of the surface and foul water drainage system, prior to the commencement of the development, to reflect the mitigation measures within the environmental report and the interests of the water environment. It generally follows the requirement incorporated in the A160/A180 Order. This is apart from matters relating to the discharge of requirements, as set out above, and the inclusion of an 'unless otherwise agreed in writing' mechanism, which has been considered previously.
- 7.3.35 Requirement 13 (Approvals and amendments to approved details) would provide a limitation on RPA approvals to ensure that their effect would be unlikely to exceed those in the environmental report. The requirement in the ExA's draft DCO included first stage approvals as well as the approval of amendments, in the interests of precision, and this did not attract specific adverse comment during the examination. The second limb of the requirement follows that incorporated in the A160/A180 Order, apart from the matters relating to the discharge of requirements, as set out above.
- 7.3.36 In view of all of the above points, I am satisfied that the requirements in the ExA's recommended DCO meet the test set out in paragraph 4.9 of the National Policy Statement for National Networks.

7.4 OTHER SCHEDULES

- 7.4.1 Parts 1 to 3 of Schedule 3 identify: roads that would become Trunk Roads, as shown on the rights of way and access plans; roads that would be subject to a 50mph speed limit; and proposed cycle tracks and footways, all under article 10. The latter two parts of the schedule are as shown on the traffic regulation plans. Schedule 4 identifies the permanent stopping up of streets for which no substitute would be provided under article 12, as shown on the traffic regulation plans.
- 7.4.2 The contents of all of these schedules are agreed with North Tyneside Council, as the local highway authority [REP3-026 para 3.2.11].

- 7.4.3 Schedule 5 identifies land in which only new rights could be acquired under article 21, as shown on the Land Plans. At Deadline 2, the applicant added: Plots 2/7 and 2/7a, to allow access to a temporary working area without having to use the A19 carriageway, Plots 3/3h and 3/10 to facilitate a foul sewer diversion; and Plot 3/14a to allow access to a proposed retaining wall [REP2-006]. At Deadline 3, the applicant added information to relate the identified plots to the works and deleted Plots 3/3h, 3/10, 3/11a, 3/11b and 3/11d. These deletions reflected the omission of the foul sewer diversion and an area relating to the proposed retaining wall from the scheme following agreement with the Crown Estate. Following the issue of the ExA's draft DCO, the Crown Estate acquired Plot 3/3i [REP4-001], and it has therefore been omitted from Schedule 5 in the ExA's recommended DCO.
- 7.4.4 Schedule 6 would modify compensation and compulsory purchase enactments for the creation of these rights under article 21. It generally follows the previous highway Orders. Schedule 7 identifies land of which temporary possession may be taken under article 27. At Deadline 2, the applicant removed Plot 2/5a at the request of the landowner because it was no longer required for the transfer of surplus material between schemes promoted by the applicant. The applicant also removed Plots 2/7, 2/7a, as a result of their inclusion in Schedule 5, and Plots 3/11c, 3/11e and 3/11f, as a result of the omission of the foul sewer diversion from the scheme following agreement with the Crown Estate.
- 7.4.5 Parts 1 to 3 of Schedule 8 contain provisions for the protection of: electricity, water and sewerage undertakers, Northern Gas Networks Limited; and operators of electronic communications code networks respectively, under article 36 (not 37 as in the applicant's final draft DCO). The ExA's recommended DCO reflects the article correctly. The applicant also made amendments to Schedule 8 at Deadline 2 to clarify the positions of and references to the undertaker and the utility undertaker. These are however not material to the protection provided by the provisions. At Deadline 4, the applicant suggested the correction of a typographical error in paragraph 21(9) of the schedule, with which I concur and have included in the ExA's recommended DCO.
- 7.4.6 Part 1 of the schedule has been agreed with Northumbrian Water Limited, which provides mains water and sewerage services in the area around the scheme [REP3-027 table 1]. Part 2 has been agreed with Northern Gas Networks, which is responsible for distributing gas to homes and businesses in the area around the scheme [REP3-028 para 2.1]. No other utility undertakers or operators have made any submissions to the examination in relation to the protective provisions in Schedule 8.
- 7.4.7 The purposes of each of the schedules follow those of the schedules in the A160/A180 Order. Furthermore, Schedule 6 and Parts 1 and 3 of Schedule 8, in particular, follow the wording of the equivalent

schedules in the A160/A180 Order. Schedule 8 and the corresponding articles 29, 30 and 36 would protect the interests of relevant statutory undertakers. This would ensure that the impact from any extinguishment or removal would be kept to the minimum necessary for the purpose of carrying out the development in accordance with s138 of the PA2008. There is no relevant land in terms of s127 of the PA2008.

7.4.8 No other adverse submissions have been received in relation to any of the schedules. In view of all of the above points, these other schedules are a necessary and appropriate part of the draft DCO.

7.5 OTHER LEGAL AGREEMENTS/RELATED DOCUMENTS

7.5.1 The implementation of the authorised development may also require other consents in addition to the powers sought in the draft DCO and any consents under the draft DCO, and these are as follows:

- A permit under the Environmental Permitting Regulations 2010 (EPR2010) may be required for the discharge of trade effluent generated from the dewatering of excavations;
- A waste management permit or exemption under the EPR2010 may be required for the reuse of materials within the scheme and their storage prior to re-use; and
- An application under the Control of Pollution Act 1974 may be required in relation to the control of construction noise.

7.5.2 The consenting bodies relating to the above consents, the Environment Agency and the RPA, do not have any matters not agreed or further matters under discussion [REP1-021 para 4.1.11 & REP1-021 tbls 4.2 & 4.3]. In particular, the RPA agrees to the approach in relation to the assessment of noise and supports the proposed mitigation measures [REP1-021 para 3.2.4].

7.5.3 No party has suggested that any s106 undertakings or obligations or any s278 agreements should be entered into in relation to the scheme.

7.6 CONCLUSION AND RECOMMENDATION

7.6.1 The ExA's recommended DCO has the agreement of the applicant, apart from matters relating to the discharge of requirements as previously set out.

7.6.2 In view of all of the above points, I conclude that the ExA's recommended DCO is appropriate in relation to the proposal. I therefore recommend that, should the overall consent be given, the Order is made in the form set out in Appendix A.

8 SUMMARY OF FINDINGS AND CONCLUSIONS

- 8.0.1 In coming to my overall conclusion I have had regard to the relevant National Policy Statement (NPS), the Local Impact Report submitted during the examination, any 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 in relation to policy and factual issues are in Chapter 4. My overall conclusion on the case for development consent and my recommendation that development consent is granted is set out in Chapter 5.
- 8.0.2 I have also considered the request for compulsory acquisition and other land powers in Chapter 6 and concluded that there is a compelling case in the public interest for the grant of the compulsory acquisition and other land powers sought by the applicant.
- 8.0.3 In Chapter 7, I concluded and recommended that, if development consent is granted as recommended, the Order should be made in the form set out in Appendix A.
- 8.0.4 In coming to my view that development consent should be granted in the form proposed in Appendix A, 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. I also consider that to conclude as above would: not lead to the United Kingdom being in breach of any of its international obligations; not lead to the Secretary of State being in breach of any duty imposed by or under any enactment; not be unlawful by virtue of any enactment; not result in the adverse impact of the scheme outweighing its benefits; and meet any condition prescribed for deciding an application otherwise than in accordance with the NPS, all in accordance with s104 of the PA2008.
- 8.0.5 Other consents are required and some may be required to implement the scheme but, from the submitted statements of common ground, there is every reason to suppose that they would be granted if required. None of the consents identified in Chapter 1 would be a prerequisite of making the Order.

RECOMMENDATION

- 8.0.6 For all of the above reasons and in the light of the my findings and conclusions on important and relevant matters set out in the report, I recommend, under the Planning Act 2008 (as amended), that the Secretary of State makes the A19/A1058 Coast Road (Junction Improvement) Order as set out in Appendix A.

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APPENDICES

**APPENDIX A: RECOMMENDED DEVELOPMENT CONSENT
ORDER**

201[] No.

INFRASTRUCTURE PLANNING

**The A19/A1058 Coast Road (Junction Improvement)
Development Consent Order 201[]**

Made - - - - *date month 201[]*

Coming into force - - *date month 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 (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report 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, 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 A19/A1058 Coast Road (Junction Improvement) Development Consent Order 201[] and comes into force on [] 201[].

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/2381, S.I. 2015/377; modified by S.I. 2012/1659.
(b) 2008. c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20). Section 22 was replaced by Article 3 of S.I. 2013/1883, and amended by section 1 and schedule 1 of the Infrastructure Act 2015 (c.7).
(c) S.I. 2010/103, amended by S.I. 2012/635.

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

“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 described in Schedule 1 (authorised development) or any part of it and any other development authorised by this Order or part

-
- (a) 1961 c.33. Part I was amended by article 1, schedule 1 and schedule 5 of S.I. 2009/1307. There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 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.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22) and section 1 and schedule 1 of the Infrastructure Act 2015 (c.7); section 1(1A) was inserted by section 1 and schedule 1 of the Infrastructure Act 2015 (c.7); 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) and section 1 and schedule 1 of the Infrastructure Act 2015 (c.7); 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 I 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) and section 1 and schedule 1 of the Infrastructure Act 2015 (c.7). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 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. II). 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.
- (e) 1984c.27. Section 142 was amended by section 168 and schedule 8 to the New Roads and Street Works Act 1991 (c.27). There are other amendments to the 1980 Act which are not relevant to this Order.
- (f) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and II 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.
- (g) 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 I to, the Traffic Management Act 2004 (c.18). Part 3 has been amended by the Water Consolidation (Consequential Provisions) Act 1991, the Traffic Management Act 2004, the Local Transport Act 2008, the Flood and Water Management Act 2010, and the Infrastructure Act 2015 (c.7).
- (h) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20), and this act has also been amended by the Infrastructure Act 2015 (c.7).

thereof, which is development within the meaning of section 32 (meaning of development) 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;

“British Telecommunications Public Limited Company” means the company of that name, company number 1800000, whose registered office is at 81 Newgate Street London EC1A 7AJ;

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

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

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act and includes part of a cycle track(a);

“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;

“environmental report” means the environmental assessment report submitted with the application for this Order and certified as the environmental report 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”, has the same meaning as in the 1980 Act and “highway” includes part of a highway;

“highway authority” means the undertaker;

“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;

“local highway authority” means North Tyneside Council;

“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” is to 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 (interpretation) of the Acquisition of Land Act 1981(b) ;

“Northern Gas Network Limited” means the company of that name, company number 05167070, whose registered office is at 1100 Century Way, Thorpe Park Business Park, Colton Leeds, LS15 8TU;

“Northern Powergrid Limited” means the company of that name, company number 03271033, whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF;

(a) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c.38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54).

(b) 1981 c.67. The definition of “owner” was amended by paragraph 9 of schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 7 which are not relevant to this Order.

“Northumbrian Water Limited” means the company of that name, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“relevant planning authority” means North Tyneside 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) (statutory undertakers’ land), 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;

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

“traffic authority” has the same meaning as in the Road Traffic Regulation Act 1984;

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

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

- (a) section 10(a) or 19(1)(b) 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;

“undertaker” means Highways England Company Limited, company number 9346363, whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“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.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the Book of Reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way and access plans.

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

(a) As amended by section 22(2) of the 1991 Act and paragraph 22 of schedule 2 to the 2008 Act, and by section 1 and schedule 1 of the Infrastructure Act 2015 (c.7).

(b) As amended by section 1 and schedule 1 of the Infrastructure Act 2015 (c.7).

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 undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Limits of deviation

5.—(1) In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) 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 1.0 metres downwards.

(2) Any deviation under paragraph (1) is only permitted if it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental report.

Benefit of Order

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

Consent to transfer benefit of Order

7.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

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

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

- (a) British Telecommunications Public Limited Company for the purposes of undertaking work number 2d;
- (b) Northern Powergrid Limited for the purposes of undertaking work numbers 2e and 2h;
- (c) Northumbrian Water Limited for the purposes of undertaking work number 2b;

- (d) Northern Gas Network Limited for the purposes of undertaking work numbers 2a, 2f and 2g.

PART 3 STREETS

Application of the 1991 Act

8.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184 of that Act (vehicle crossings over footways and verges).

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

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

- section 56(b) (directions as to timing);
- section 56A(c) (power to give directions as to placing of apparatus);
- section 58(d) (restrictions following substantial road works);
- section 58A(e) (restriction on works following substantial street works);
- section 73A(f) (power to require undertaker to re-surface street);
- section 73B(g) (power to specify timing etc. of re-surfacing);
- section 73C(h) (materials, workmanship and standard of re-surfacing);
- section 78A(i) (contributions to costs of re-surfacing by undertaker);
- and Schedule 3A(j) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the promoter under the powers conferred by article 11 (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(a) referred to in paragraph (4) are—

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- (a) As amended by section 102 of, and schedule 17 to, the Local Government Act 1985 (c.51) and section 168(2) of, and schedule 9 to the New Roads and Street Works Act 1991 (c.22).
 - (b) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c.18).
 - (c) Inserted by section 44 of the Traffic Management Act 2004.
 - (d) As amended by section 51 of the Traffic Management Act 2004
 - (e) Inserted by section 52 of the Traffic Management Act 2004.
 - (f) Inserted by section 55 of the Traffic Management Act 2004.
 - (g) Inserted by section 55 of the Traffic Management Act 2004.
 - (h) Inserted by section 55 of the Traffic Management Act 2004
 - (i) Inserted by section 57 of the Traffic Management Act 2004
 - (j) Inserted by section 52 and schedule 4 of the Traffic Management Act 2004.

section 54(b) (advance notice of certain works), subject to paragraph (6);
section 55(c) (notice of starting date of works), subject to paragraph (6);
section 57(d) (notice of emergency works);
section 59(e) (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) 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 9 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has 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

9.—(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) 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) must 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, must be maintained by and at the expense of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

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- (a) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and schedule 1 to, the Traffic Management Act 2004 (c.18).
 - (b) As also amended by section 49(1) of the Traffic Management Act 2004.
 - (c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
 - (d) As also amended by section 52(3) of the Traffic Management Act 2004.
 - (e) As amended by section 42 of the Traffic Management Act 2004.

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause dangers to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Classification of roads etc.

10.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads etc.) are complete and open for traffic, they will become trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act^(a) specifying that date as the date on which they were to become trunk roads.

(2) From the date the roads specified in Part 2 of Schedule 3 (classification of roads, etc.) are open for traffic, no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of road identified in that Part.

(3) Unless otherwise agreed with the relevant planning authority the cycle tracks and footways set out in Part 3 of Schedule 3 (classification of roads, etc.) and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(4) The application of paragraphs (1) and (3) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Temporary stopping up and restriction of use of streets

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

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

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

(4) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(a) As amended by section 22 of the New Roads and Street Works Act 1991, and by section 1 and schedule 1 of the Infrastructure Act 2015.

(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 I of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph 11(4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Permanent stopping up and restriction of use of streets

12.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (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 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 (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The condition referred to in paragraph (2) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street 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.

(4) 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 undertaker 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 undertaker.

(5) 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 I of the 1961 Act.

(6) This article is subject to article 30 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

13. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Clearways

14.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads etc.) are open for traffic, save as provided in paragraph (2) below, no person is to 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 applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus

for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 (the Telecommunications Code) 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 is to 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.

(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

15.—(1) The undertaker 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.

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

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(a) 1984 c.12

(b) 1991 c.56

(c) 2000 c.26

(d) 1991 c.56. Section 106 was amended by section 35(1) and (8) of, and schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), sections 36(2) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of schedule 3 to the Flood and Water Management Act 2010 (c.29).

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker 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 undertaker 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) (requirement for environmental permit) 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, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

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

Protective work to buildings

16.—(1) Subject to the following provisions of this article, the undertaker may at the undertaker’s own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may 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 undertaker 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,

(a) S.I.2010/675 as amended by S.I. 2011/2043 and S.I. 2013/390; there are other amending instruments but none are relevant.

(b) 1991 c.57.

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) of the 2008 Act (compensation in case where no right to claim in nuisance).

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

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation to the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (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 undertaker —

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the surveyor 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 must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part I (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 undertaker 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 is deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker 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 21 (compulsory acquisition of rights), paragraph (8) of article 27 (temporary use of land for carrying out the authorised development) and article 37 (Crown rights).

Compulsory acquisition of land – incorporation of the mineral code

19. Part 2 of Schedule 2 (minerals) to the Acquisition of Land Act 1981^(a) is incorporated in this Order subject to the modification that for the “acquiring authority” substitute the “undertaker”.

Time limit for exercise of authority to acquire land compulsorily

20.—(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 I of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker 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.

(a) 1981 c.67.

Compulsory acquisition of rights

21.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements 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 (other provisions as to divided land) 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 undertaker acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

Private rights over land

22.—(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 undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11 (1) (power of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of the rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part I 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 29 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights over or affecting the land;

- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement 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

23.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

“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) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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)” substitute “(1)” and after “given” insert “and published”.

(6) In that section, for subsections (5) and (6) substitute—

“(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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(9) References to the 1965 Act in the 1981 Act are to 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

24.—(1) The undertaker 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 18 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 25 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

25.—(1) This article applies instead of section 8(1) (other provisions as to divided land) of the 1965 Act (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 undertaker 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 undertaker 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 undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker 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 undertaker 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 undertaker 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 undertaker 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

26.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is a statutory undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

27.—(1) The undertaker 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 II (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 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 in connection with the authorised development.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker 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), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 7, or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d);

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or

(d) remove any measures installed over or around statutory undertakers apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part I of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

(a) acquiring new rights over any part of that land under article 21 (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 24 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under articles 18 (compulsory acquisition of land) or 21 (compulsory acquisition of rights).

Temporary use of land for maintaining the authorised development

28.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; 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) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part I of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) applies 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

29.—(1) Subject to the provisions of Schedule 8 (protective provisions) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights 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 (street works in England and Wales) of the 1991 Act; and
- (b) Article 30 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped-up streets

30.—(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 undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 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 undertaker 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

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article-

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

“public utility undertaker” has the same meaning as in section 329 (1) (Further provision as to interpretation) the 1980 Act.

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

PART 6 OPERATIONS

Felling or lopping of trees

32.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(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 I of the 1961 Act.

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

33.—(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

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

Defence to proceedings in respect of statutory nuisance

35.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990^(a) in relation to a nuisance falling within 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)^(b) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction 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^(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (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), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

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

Crown rights

37.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description—
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land;
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(a) 1990 c.43. There are amendments to this sub-section which are not relevant to this Order

(b) Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c.40); there are other amendments to this subsection but none are relevant to this Order.

(c) 1974 c.40. Sections 61 and 65 were amended by section 162 of, and paragraph 15(1), (3) and (4) of schedule 15 to, the Environmental Protection Act 1990 c.43; there are other amendments to sections 61 and 65 but none is relevant to this Order.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Certification of plans, etc.

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

- (a) the book of reference;
- (b) the land plans (document reference A19T-DWG-CIV-S00-0100-0067 revision D, A19T-DWG-CIV-S00-0100-0068 revision D, A19T-DWG-CIV-S00-0100-0069 revision G and A19T-DWG-CIV-S00-0100-0070 revision D);
- (c) the rights of way and access plans (document reference A19T-DWG-CIV-S00-0100-0071 revision C);
- (d) the works plans (document reference A19T-DWG-CIV-S00-0100-0072 revision D, A19T-DWG-CIV-S00-0100-0073 revision D, A19T-DWG-CIV-S00-0100-0074 revision E and A19T-DWG-CIV-S00-0100-0075 revision E);
- (e) the engineering drawings and sections (document reference A19T-DWG-CIV-S00-0100-0057 revision B; A19T-DWG-CIV-S00-0100-0058 to 0061 revision B; A19T-DWG-CIV-S00-0100-0017 to 0019 revision C; A19T-DWG-CIV-S00-0100-0078 to 0083 revision B; and A19T-DWG-CIV-S00-0100-0042 to 0043 revision B);
- (f) the traffic regulation plans (document reference A19T-DWG-CIV-S00-0100-0084 revision D);
- (g) Crown Estate Land Plans (document reference A19T-DWG-CIV-S00-0100-0076 revision E; A19T-DWG-CIV-S00-0100-0085 revision D);
- (h) the outline construction environmental management plan (document reference A19T-EIA-ENV-SOO-3000-0020-revision A); and
- (i) the environmental report (document reference A19T-EIA-ENV-S00-3000-0020 revision B) and erratum no.1 (application document reference TR010017/6.5 Issue 1)

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 is 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 (references to service by post) 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 is to be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
 - (b) the notice or document is capable of being accessed by the recipient;
 - (c) the notice or document is legible in all material respects; and
 - (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.
- (10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

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 undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) of the 1984 Act(a),and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.

(a) Section 32 was amended by section 102 of, and schedule 17 to, the Local Government Act 1985 (c.51) and section 168(1) of, and paragraph 39 of schedule 8 to, the 1991 Act.

(b) 2004 c.18

(8) Before exercising the powers of paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

Provision as to approvals etc. under Schedule 2

42.—(1) Where the application is for a consent, agreement or approval required by a requirement under Schedule 2 (requirements), the following provisions apply, as far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of a planning permission—

- (a) sections 78 and 79 (right of appeal in relation to planning decisions) of the 1990 Act; and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Signed by authority of the Secretary of State for Transport

Address
Date

Name
Parliamentary Under Secretary of State
Department for Transport

SCHEDULES

SCHEDULE 1

Articles 2 and 3

AUTHORISED DEVELOPMENT

In the administration area of North Tyneside Council

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act(a), comprising:

Work No.1a - the construction of one half of a new bridge to carry the westbound A1058 Coast Road over the A19 cutting.

Work No. 1b - the construction of one half of a new bridge to carry the eastbound A1058 Coast Road over the A19 cutting.

Work No.1c - the construction of a new bridge to carry the southern section of the A19 Roundabout over the A19 cutting.

Work No.1d - the construction of a new bridge to carry the northern section of the A19 Roundabout over the A19 cutting.

Work No.1e - the construction of a new southbound A19 on-slip road to the south of the A19/A1058 Coast Road junction.

Work No.1f - the construction of a new northbound A19 off-slip road to the south of the A19/A1058 Coast Road junction predominantly through utilisation of the existing A19 northbound carriageway.

Work No.1g - the construction of a new northbound A19 on-slip road to the north of the A19/A1058 Coast Road junction.

Work No.1h - the construction of a new southbound A19 off-slip road to the north of the A19/A1058 Coast Road junction.

Work No.1i - the construction of 2 new shared-use bridges over the eastbound A1058 Coast Road off-slip road and on-slip road to connect the existing footway/cycleways to the east and west of the junction to the footway/cycleway on the A1058 Coast Road through the A19/A1058 Coast Road junction.

Work No. 1j - the construction of a new section of A19 dual carriageway under the existing A19/A1058 Coast Road junction.

Work No. 1k - the widening of Middle Engine Lane Railway Bridge to the north of the A19/A1058 Coast Road junction.

Work No. 1l - the widening of the Silverlink road on the north-east of the A19/A1058 Coast Road junction to provide an additional southbound lane on the immediate approach to the A19 roundabout.

Work No. 1m – works on the A19 to tie in the proposed works at the southern extent of the Scheme with the existing highway layout.

(a) Section 22 was substituted by article 3 of S.I. 2013/1883.

Work No. 1n – the construction of a revised road cross section on the A19 that includes an auxiliary lane in addition to two lanes on the A19 mainline in both north and southbound directions.

Work No. 1o – works on the A19 to tie in the proposed works at the northern extent of the Scheme with the existing highway layout.

Work No. 1p – the construction of a new traffic signal installation incorporating MOVA and enhanced non-motorised user facilities at the A19 roundabout.

Work No. 1q – a combined footway/cycleway between the A19/A1058 Coast Road junction and the A19/A193 Wallsend junction adjacent to the A19 Northbound carriageway.

Work No. 1r – a combined footway/cycleway adjacent to the A19 southbound on-slip road linking the bus stop on the A1058 Coast Road Westbound off-slip road and the access to the Tyne Tunnel Trading Estate.

Work No. 1s – concrete repair works to the existing A1058 structures that support the A1058 Coast Road over the A19 roundabout.

Work No. 2a – the diversion of a Northern Gas Network medium pressure main through the new bridge constructed to carry the southern section of the A19 roundabout over the A19 cutting.

Work No. 2b - the construction of a new potable water main for Northumbrian Water Limited along Middle Engine Lane and Middle Engine Railway bridleway.

Work No. 2c – not used.

Work No. 2d – the diversion of British Telecommunications Public Limited Company cables through the new bridge constructed to carry the northern section of the A19 roundabout over the A19 cutting.

Work No. 2e – the diversion of Northern Powergrid high voltage cables through the new bridge constructed to carry the A1058 Coast Road over the A19 cutting.

Work No. 2f – the diversion of Northern Gas Network intermediate pressure mains within the verges of the A19 southbound on slip road and off slip road.

Work No. 2g – the diversion of a Northern Gas Network medium pressure main within the verge of the A19 southbound on slip road.

Work No. 2h – the diversion of Northern Powergrid low voltage cables within the Silverlink.

In connection with the construction of any of those works, further development within the Order limits consisting of –

- (a) alteration to 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, 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, cycleways 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 up 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; and
- (n) 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;

“European protected species” has the same meaning as in Regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(a);

“protected species” means species which are subject to protection under the laws of England or which are European protected species;

“suitably qualified ecologist” means an ecologist who is a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM).

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 authorised development is to commence until a CEMP has been submitted to and approved in writing by the relevant planning authority.

(2) The CEMP must—

- (a) be substantially in accordance with the outline construction environmental management plan certified under Article 38;
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) incorporate the measures as detailed in the environmental report;
- (d) include information on the control measures required to mitigate and reduce potential impacts which reflect the mitigation measures included in sections 4-13 of the environmental report; and
- (e) require adherence to working hours of 7:00am to 7:00pm on Mondays to Fridays and 7:00am to 1:00pm on Saturdays, except for—
 - (i) works associated with changes to the traffic management layout;
 - (ii) works associated with the construction of tie-ins at slip roads;
 - (iii) works associated with concrete repairs to the existing A1058 structures at the A19 roundabout;
 - (iv) works associated with bridge resurfacing and waterproofing of the Middle Engine Lane and Middle Engine Lane structures;
 - (v) works associated with the medium pressure gas diversion across the A19 roundabout circulatory carriageway;
 - (vi) works associated with providing drainage connections across the A19 carriageway at the A19/A193 Wallsend Junction from the north and southbound verges;
 - (vii) works associated with traffic signal duct crossings and loops;

- (viii) any emergency works;
 - (f) require adherence to working hours of 8:00am to 6:00pm on Mondays to Fridays for any works involving impact piling.
 - (g) include management plans, working methods and mitigation measures for each of the topics covered in the environmental report, including—
 - (i) Air Quality Management Plan;
 - (ii) Landscape Plan;
 - (iii) Cultural Heritage Management Plan;
 - (iv) Ecology Management Plan;
 - (v) Materials Management Plan;
 - (vi) Site Waste Management Plan;
 - (vii) Noise and Vibration Management Plan;
 - (viii) Water and Drainage Management Plan.
- (3) The authorised development must be constructed in accordance with the approved CEMP.

Landscaping

4.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the relevant planning authority.

(2) No part of the authorised development including vegetation clearance is to commence until an arboricultural walkover survey and tree survey for that part taking due regard to the guidance in *British Standard 5837:2012 (BS5837)* have been undertaken to identify any significant constraints posed by trees.

(3) The landscaping scheme prepared under Requirement 4(1) must be based on the preliminary landscape design contained in Appendix 6.3 of the environmental report and the results of the surveys undertaken under Requirement 4(2)—

(4) The landscaping scheme prepared under Requirement 4(1) must 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) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 4.

(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 the relevant planning authority gives consent in writing to a variation.

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 undertaker's Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the relevant planning authority in connection with the authorised development.

Contaminated land and groundwater

7.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental report, 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 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 which must be submitted to the relevant planning authority.

(2) Where the relevant planning authority 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 as well as a programme for the recommencement of construction of the authorised development in the vicinity of the contaminated land, must be prepared in consultation with the Environment Agency and submitted to the relevant planning authority for approval.

(3) No remedial measures constituting a material operation (as defined in section 155 (when development begins) of the 2008 Act) in respect of contamination of any land, including groundwater, within the Order limits are to be carried out until the scheme and programme for remedial measures has been approved in writing under sub-paragraph (2).

(4) Remedial measures must be carried out in accordance with the approved scheme and programme and construction must recommence in accordance with the programme for the recommencement of construction of the authorised development in the vicinity of the contaminated land.

(5) Where the relevant planning authority determines in writing that remediation is not necessary, construction of the authorised development in the vicinity of the contaminated land may recommence.

Archaeology

8.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in section 5 of the environmental report, has been submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the scheme referred to in Requirement 8(1), unless otherwise agreed in writing by the relevant planning authority.

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in Requirement 8(1) must be deposited with the Historic Environment Record of the relevant planning 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 planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority within a period of 14 days from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in Requirement 8(4) for a period of 14 days from the date they are identified unless otherwise agreed in writing by the relevant planning authority.

(6) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations must take place within 10 metres of the remains until provision has been made 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 relevant planning authority.

Ecological management plan

9.—(1) No part of the authorised development is to commence until a written ecological management plan applicable to that part, reflecting the survey results and ecological mitigation measures included in section 7 of the environmental report, and including a timetable for its implementation, has been prepared in consultation with Natural England in so far as relevant to protected species or protected sites and submitted to and approved in writing by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approved ecological management plan referred to in Requirement 9(1), unless otherwise agreed in writing by the relevant planning authority.

(3) In the event that any protected species, or evidence of protected species, is found at any time when carrying out the authorised development, which was not previously identified in the environmental report, the undertaker must cease construction and contact a suitably qualified ecologist (SQE) to seek advice as to whether a method statement/species protection plan must be prepared to ensure the protection of the protected species.

(4) If the SQE advises the undertaker that a method statement/species protection plan is required under sub-paragraph (3), the undertaker must in consultation with an SQE and Natural England prepare a method statement/species protection plan together with a programme for its implementation and the recommencement of construction to be submitted to the relevant planning authority for approval in writing.

(5) The undertaker must implement the method statement/species protection plan in accordance with the programme for implementation and recommencement of construction approved under sub-paragraph (4).

(6) If the SQE advises the undertaker that a method statement/species protection plan is not required under sub-paragraph (3), the undertaker may recommence construction following receipt of written confirmation from the SQE.

Traffic Management

10.—(1) No authorised development is to commence until a traffic management plan for the construction of the authorised development has been prepared in consultation with the local highway authority and submitted to and approved in writing by the undertaker.

(2) The authorised development must be constructed in accordance with the approved management plan.

Detailed design

11. The authorised development must be carried out in accordance with the scheme design shown on the engineering drawings and sections unless otherwise approved in writing by the relevant planning authority and provided the development so altered falls within the limits of deviation.

Surface and foul water drainage

12.—(1) No authorised development is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in section 12 of the environmental report and including means of pollution control, have been prepared in consultation with the Environment Agency and submitted to and approved in writing by the relevant planning authority.

(2) The drainage system must be constructed in accordance with the approved details referred to in Requirement 12(1), unless otherwise agreed in writing by the relevant planning authority.

Approvals and Amendments to approved details

13.—(1) Where the agreement or approval of the relevant planning authority is required under any requirement in the Schedule, such agreement or approval may only be given in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the agreement or approval sought is unlikely to give rise to any materially different adverse environmental effect from those assessed in the environmental report.

(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 or agreed in writing by the relevant planning authority.

SCHEDULE 3

Article 10

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 Tyneside	Southbound A19 on-slip road to the south of the A19/A1058 Coast Road junction between point 1/1 and point 1/2 on the rights of way and access plans, comprising 364 metres.
North Tyneside	Northbound on-slip road to the north of the A19/A1058 Coast Road junction between point 1/3 and point 1/4 on the rights of way and access plans, comprising 475 metres.
North Tyneside	Southbound off-slip to the north of the A19/A1058 Coast Road junction between point 1/5 and point 1/6 on the rights of way and access plans, comprising 407 metres.
North Tyneside	New section of A19 dual carriageway under the existing A19/A1058 Coast Road junction between point 1/7 and point 1/8 on the rights of way and access plans, comprising 867m.

PART 2

ROADS SUBJECT TO 50 MILES PER HOUR LIMIT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
North Tyneside	Southbound A19 on slip road to the south of the A19/A1058 Coast Road junction between point 1/1 and point 1/2 on the traffic regulation plans, comprising 364 metres.
North Tyneside	Northbound A19 off slip road to the south of the A19/A1058 Coast Road junction between point 1/3 and point 1/4 on the traffic regulation plans, comprising 544 metres.
North Tyneside	Northbound on slip road to the north of the A19/A1058 Coast Road junction between point 1/5 and point 1/6 on the traffic regulation plans, comprising 475 metres.
North Tyneside	Southbound off slip to the north of the A19/A1058 Coast Road junction between point 1/7 and point 1/8 on the traffic regulation plans, comprising 407 metres.
North Tyneside	A19 mainline on both north and southbound carriageways from point 1/9 to point 1/10 on the traffic regulation plans, comprising 2120 metres.

PART 3

CYCLE TRACKS AND FOOTWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of Cycle track/Footway</i>
North Tyneside	1186m combined footway / cycleway from point 1/11 to point 1/12 on the traffic regulation plans.
North Tyneside	237m combined footway / cycleway from point 1/13 to point 1/14

	on the traffic regulation plans.
North Tyneside	418m combined footway / cycleway from point 1/15 to point 1/16 on the traffic regulation plans.
North Tyneside	339m combined footway / cycleway from point 1/17 to point 1/18 on the traffic regulation plans.
North Tyneside	113m combined footway / cycleway from point 1/19 to point 1/20 on the traffic regulation plans.

SCHEDULE 4

Article 12

PERMANENT STOPPING UP OF STREETS

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 Tyneside	Closure of a layby on A19 mainline northbound carriageway on the traffic regulation plans.	Location 1/21 on the traffic regulation plans.
North Tyneside	Closure of a layby on A19 mainline southbound carriageway on the traffic regulation plans.	Location 1/22 on the traffic regulation plans.

SCHEDULE 5

Article 21

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1) Plot Reference Number shown on Land Plans</i>	<i>(2) Purpose for which rights over land may be acquired</i>	<i>(3) Relevant part of the authorised development</i>
Land Plans – Sheet 2		
2/7 and 2/7a	To access Plot 2/4a that is to be temporarily acquired for use in connection with the construction of the Scheme.	All work elements
Land Plans – Sheet 3		
3/3c	To construct, operate, access and maintain a new potable water supply for Northumbrian Water Limited.	Work No 2b
3/12	To construct, access and maintain a retaining wall.	Work No 1h
3/14a	To access Plots 3/12, 3/12a and 3/3q in order to inspect and maintain the retaining wall and access Plot 3/14 that is to be temporarily acquired for use in connection with the construction of the Scheme.	Work No 1h and Work No 1k
Land Plans – Sheet 4		
4/3e and 4/3f	To construct, operate, access and maintain a new potable water supply station and a new foul sewer for Northumbrian Water Limited.	Work No 2b

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right 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 “land is acquired or taken from” substitute “a right over land is purchased from”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable”.

(3) In section 58(1)(b) (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, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken or imposed without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken or imposed without seriously affecting the amenity or convenience of the house.

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right proposed to be acquired, and, in a case where the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”

Application of the 1965 Act

3.—(1) The 1965 Act has 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 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 I of the 1965 Act applies 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

(b) Section 58(1) was amended by section 16(3) and schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 4 of, and paragraph 29(1) of schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11) and S.I. 2009/1307.

4. For section 7 of the 1965 Act (measure of compensation) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right 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) substitute—

“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 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 without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the A19/A1058 Coast Road (Junction 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.”

(1) 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.

(2) 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),

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 is vested absolutely in the acquiring authority.

7. Section 11(a) (powers of entry) of the 1965 Act 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 (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(d) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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- (a) Section 11 was amended by section 34(1) of, and schedule 4 to, the Acquisition of Land Act 1981 (c.67), section 3 of, and part 1 of schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
 - (b) Section 12 was amended by section 56(2) of, and part 1 of schedule 9 to, the Courts Act 1971 (c.23).
 - (c) Section 13 was amended by section 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of schedule 23 to, The Tribunals, Courts and Enforcement Act 2007 (c.15).
 - (d) Section 20 was amended by paragraph 4 of schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

SCHEDULE 7

Article 27

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 2			
In the administrative area of North Tyneside Council	2/4a	Required for the provision of a site construction compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and material and the treatment of site generated waste.	All Works
Land Plans – Sheet 3			
In the administrative area of North Tyneside Council	3/14	Required for access to construct the Scheme, and may also be used to store materials with a low economic value such as top soil, sub base etc., in relation to the widening of Middle Engine Railway Bridge, the diversion of a Northumbrian Water Limited potable water supply and the construction of a retaining wall.	Work No.1h Work No. 1k Work No. 2b

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (c) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(c) of that Act or an agreement to adopt made under section 104(d) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; 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;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part I of the Electricity Act 1989;
- (b) a water undertaker within the meaning of the Water Industry Act 1991; and
- (c) a sewerage undertaker within the meaning of Part I of the Water Industry Act 1991,

(a) 1989 c.29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24, and 38(1) and (3) of schedule 6 to the Utilities Act 2000 (c.27).

(b) 1991 c.56

(c) As amended by section 96(1) of the Water Act 2003 (c.37).

(d) As amended by section 96(4) of the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c.29).

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 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 utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker is to grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the specified utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up and restricted use of streets), a utility undertaker is 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 undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such

apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that 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 undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker 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 undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 39 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, or involve embankment works within 10 metres of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must 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 undertaker or, in default of agreement, is not determined by arbitration in accordance with article 39 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7 (2), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision must not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED

Application

14. For the protection of the utility undertaker the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker, have effect.

Interpretation

15. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of the utility undertaker to enable the utility undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Northern Gas Networks Limited, a gas transporter within the meaning of Part I of the Gas Act 1986(a) for the purpose of gas supply and include any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to Works, apparatus or alternative apparatus in land includes a reference to such Works, apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

“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;

“utility undertaker” means Northern Gas Networks Limited, a gas transporter within the meaning of Part I of the Gas Act 1986.

16. Except for paragraphs 4 (apparatus of utility undertaker in stopped up streets), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity), this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Statutory utility undertaker in stopped up streets

17.—(1) Where any street is stopped up under article 12 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street or accessed via that street must be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker is to grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11, a utility undertaker is 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

(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 sections 3(2) and 76 of, and paragraphs 1 and 4 of schedule 6, and schedule 8 to, the Utilities Act 2000 (c.27), sections 149(1) and (5) and 197(9) of, and part 1 of schedule 23 to, the Energy Act 2004 (c.20) and S.I. 2011/2704.

at the time of the stopping up or diversion was in that highway, subject always to the undertaker's unimpeded ability to carry out the Works.

Acquisition of land

18. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker must not acquire any apparatus or override any easement or other interest of the utility undertaker otherwise than by agreement.

Removal or diversion of apparatus

19.—(1) If the undertaker acquires any interest in land in which the utility undertaker's apparatus is placed, that apparatus must not be removed and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker.

(2) If, for the purpose of executing any Works, the undertaker requires the removal or diversion of any apparatus, it must give to the utility undertaker 90 days' advance written notice of that requirement, together with a plan of the Works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. The utility undertaker must reasonably approve these details. The undertaker must afford to the utility undertaker to their reasonable satisfaction the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land; and
- (b) the maintenance of that apparatus

and the utility undertaker must commence the planning for the removal or diversion works within 90 days of receiving notice under this sub-paragraph and must complete the works using its reasonable endeavours to meet the undertaker's proposed timeline, and in any event without undue delay, in accordance with the details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the Works carried out by the undertaker, a utility undertaker reasonably needs to remove or divert any of its apparatus, it must without undue delay give the undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker must reasonably approve these details and must afford to the utility undertaker to their reasonable satisfaction the necessary facilities and rights for

- (a) the construction of alternative apparatus; and
- (b) the maintenance of that apparatus

and the utility undertaker must commence the planning for the removal or diversion works within 90 days of the details of its proposed works being approved by the undertaker under this sub-paragraph, and must complete the works without undue delay and in accordance with the approved details.

(4) If the utility undertaker fails to either reasonably approve, or provide a reasons for its failure to approve, along with an indication of what would be required to make acceptable, any proposed details relating to required removal or diversion works under sub-paragraph (2) within 70 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.

(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraphs (2) and (3), the utility undertaker must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but this obligation must not require the utility undertaker to use its compulsory purchase powers unless it elects to so do.

(6) Paragraphs 9 (Expenses) and 10 (Indemnity) of this Schedule apply to removal or diversions works under this paragraph 6, but a utility undertaker must provide a cost estimate for works that it proposes to carry out to the undertaker for its approval, and the undertaker is not liable for any costs under this paragraph 6 that are not in accordance with an estimate that it has approved.

Facilities and rights for alternative apparatus

20.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in the undertaker's land of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker and must be no less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise reasonably agreed.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus are less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, then the undertaker and the utility undertaker must agree appropriate compensation. If the amount of compensation cannot be agreed, then either the undertaker or the utility undertaker may refer the matter to arbitration, and the arbitrator must make such provision for the payment of compensation by the undertaker to the utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

21.—(1) Not less than 56 days before commencing the execution of any Works that will or may affect any apparatus, the removal or diversion of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker must submit to the utility undertaker in question a plan showing the Works and the apparatus.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed including a material 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 including details of excavation, positioning of plant etc;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any apparatus.

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraphs (1) or (2) applies until the utility undertaker has given written approval of the plan so submitted.

(4) Any approval of the utility undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed; and
- (c) is deemed to be granted after the expiry of 70 days from receipt by the utility undertaker of the plan if no material response to the request for approval has been provided within the initial 56 day period, provided that the undertaker must have first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such

a response. In any event no work is to proceed without the utility undertaker's consent (not to be unreasonably withheld or delayed).

(5) In relation to a work to which sub-paragraph (2) applies, the utility undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under the Order to which this paragraph 8 applies must be executed only in accordance with the relevant plan, notified under sub-paragraph (1) or approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the undertaker and the utility undertaker. The utility undertaker is entitled to watch and inspect the execution of those Works.

(7) Where the utility undertaker requires any protective works or subsidence monitoring to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature), the utility undertaker must give the undertaker notice of such requirement in its approval under sub-paragraph (3), and

- (a) such protective works must be carried out to the utility undertakers' reasonable satisfaction prior to the carrying out of the relevant part of the Works;
- (b) ground subsidence monitoring must be carried out in accordance with a scheme approved by the utility undertaker (such approval not to be unreasonably withheld or delayed), which must set out:
 - (i) the apparatus which is to be subject to such monitoring;
 - (ii) the extent of land to be monitored;
 - (iii) the manner in which ground levels are to be monitored;
 - (iv) the timescales of any monitoring activities; and
 - (v) the extent of ground subsidence which, if exceeded, is to require the undertaker to submit for the utility undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence;
- (c) if a subsidence mitigation scheme is required, it must be carried out as approved (such approval not to be unreasonably withheld or delayed).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the relevant Works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(9) The undertaker must not be required to comply with sub-paragraphs (1) or (2) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to the utility undertaker notice as soon as is reasonably practicable and a plan of those works to comply with the other requirements in this paragraph insofar as is reasonably practicable in the circumstances, provided that it always complies with sub-paragraph (10).

(10) At all times when carrying out any works authorised under this Order, the undertaker must comply with the utility undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties "NGN/SPSSW22" and Health and Safety Executive guidance document "HS(G)47 Avoiding Danger from underground services".

Expenses

22.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the utility undertaker on demand all charges, costs and expenses reasonably incurred by the utility undertaker in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of the Works, including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that the utility undertaker elects to use CPO powers to acquire any necessary rights under 6(7), all costs reasonably incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any works referred to in this Schedule; and
- (g) any statutory loss of supply payments under the ‘Guaranteed Standards of Service’ regime that the utility undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the utility undertaker must give the undertaker notice as soon as reasonably practicable of the payments and their likely amount.

(2) The utility undertaker must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any expenses capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the utility undertaker is to provide an explanation of how the claimed expenses have been minimised. The undertaker is only liable to pay expenses that have been reasonably incurred.

(3) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal, net of disposal costs.

(4) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus 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 situated,

then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for like) replacement at the same depth, the undertaker must not be liable for this additional expense.

(5) For the purposes of sub-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.

Indemnity

23.—(1) Subject to sub-paragraphs (2),(3) and (4), if by reason or in consequence of the construction of any works carried out under this Schedule or in consequence of the construction, use, maintenance or failure of any of the Works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the utility undertaker, or the utility undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by the utility undertaker in making good such damage or restoring the supply; and
- (b) indemnify the utility undertaker for any other expenses, loss (other than consequential losses), demands, proceedings, damages, claims, penalty or costs (save to the extent that the same arise due to the sole, partial or complete act, neglect or default of the utility undertaker) incurred by or recovered from the utility undertaker.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision must not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of this sub-paragraph (1).

(3) The utility undertaker must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the utility undertaker must provide an explanation of how the claimed expenses have been minimised. The undertaker is only liable to pay expenses that have been reasonably incurred.

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of the utility undertaker, its officers, servants, contractors or agents.

(5) The utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without first consulting the undertaker and considering their promptly made representations to the extent practicable.

Enactments and agreements

24. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker.

Co-operation

25. Where in consequence of the proposed construction of any of the Works the undertaker or the utility undertaker requires the removal of apparatus in accordance with the provisions of these Protective Provisions, the undertaker must use its best endeavours to co-ordinate the execution of the works to or for the benefit of the apparatus in the interests of safety and the efficient and economic execution of such works, taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking, and the utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

Access

26. If in consequence of an agreement reached in accordance with paragraph 5 or the powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the utility undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

27. Any difference or dispute arising between the undertaker and the utility undertaker under this Schedule must, unless otherwise agreed in writing between the undertaker and that utility undertaker, be determined by arbitration in accordance with article 39 of this Order.

Works falling outside of development authorised by the Order

28. Nothing in this schedule requires the undertaker to carry out works, or requires the undertaker to enable the utility undertaker to carry out works, that are not authorised by this Order. The utility undertaker must not request any alteration, diversion, protective work or any other

work which is not authorised to be carried out under this Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permission available to it).

PART 3

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

29. For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

30. 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 is to be construed in accordance with paragraph 1(3A)(b) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“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 undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

31. The exercise of the powers of article 29 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984(d) (undertaker’s works).

32.—(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 undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(a) 2003 c.21

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraph 1 and 4 of schedule 3 to, the Communications Act 2003.

(c) See section 106 of the 2003 Act.

(d) 1984 C.12, Paragraph 23 was amended by section 190 of, and paragraph 68 of schedule 25 and part 1 of schedule 27 to, the Water Act 1989 (c.15), section 112(4) of, and schedule 18 to, the Electricity Act 1989 (c.29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of schedule 3 to, the Communications Act 2003.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 39 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 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 affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to reduce congestion and improve road safety by improving the A19 junction with the A1058 and carry out all associated works.

The Order would permit Highways England 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 37 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT.

APPENDIX B: EXAMINATION LIBRARY

TR010017
A19-A1058 Coast Road Junction Improvement by Highways England
Examination Library Index

Category	Reference
<u>Application Documents</u> <i>(as submitted, amended versions saved under specific deadlines)</i>	APP-xxx
<u>Adequacy of Consultation Responses</u>	AoC-xxx
<u>Correspondence to the ExA</u> <i>(this includes anything accepted at the PM, correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination; includes s56, s58 and s59 certificates)</i>	CoR-xxx
<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the ExA</u>	PD-xxx
Representations by Deadline	
<u>Deadline 1 - 24 March 2015</u>	REP1-xxx
<u>Deadline 2 - 7 April 2015</u>	REP2-xxx
<u>Deadline 3 - 28 April 2015</u>	REP3-xxx
<u>Deadline 4 - 25 June 2015</u>	REP4-xxx
<u>Deadline 5 - 17 July 2015</u>	REP5-xxx
<u>Events and Hearings</u> <i>(includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to R6 and R8)</i>	EV-xxx

**TR010017 A19-A1058 Coast Road Junction Improvement
Examination Library**

Application documents

APP-001 [1.1 Application Documents List](#)

APP-002 [1.2 Covering Letter](#)

APP-003 [1.3 Application Form](#)

Plans and Drawings

APP-004 [2.1 Location Plan](#)

APP-005 [2.2 Land Plans](#)

APP-006 [2.3 Works Plans](#)

APP-007 [2.4 Rights of Way and Access Plans](#)

APP-008 [2.5 Engineering Drawings and Sections](#)

APP-009 [2.6 Crown Land Plans](#)

APP-010 [2.7 Traffic Regulation Plans](#)

Draft Development Consent Order documents

APP-011 [3.1 Draft DCO - Statutory Instrument Version](#)

APP-012 [3.2 Explanatory Memorandum](#)

Compulsory Acquisition and Funding documents

APP-013 [4.1 Statement of Reasons](#)

APP-014 [4.2 Funding Statement](#)

APP-015 [4.3 Book of Reference](#)

Reports

APP-016 [5.1 Consultation Report](#)

APP-017 [5.2 Options Report](#)

APP-018 [5.3 Flood Risk Assessment](#)

APP-019	<u>5.4 Nature Conservation Effects</u>
APP-020	<u>5.5 Effects on Historic Environment</u>
APP-021	<u>5.6 Statutory Nuisance Statement</u>
APP-022	<u>5.7 Assessment of Implications on European Sites</u>
APP-023	<u>5.8 Statement Relating to Environmental Licences required from Other Bodies</u>
APP-024	<u>7.1 Planning Statement</u>
APP-025	<u>7.2 Transport Assessment Report</u>
APP-026	<u>7.3 Traffic Management Plan</u>
Environmental Assessment Report (EAR)	
APP-027	<u>6.1 EAR Volume 1 - Non-Technical Summary</u>
APP-028	<u>6.2 EAR Volume 2 - Main Text Issue 1</u>
APP-029	<u>6.3.1 EAR Volume 3 - Section 1 Figures and Appendices</u>
APP-030	<u>6.3.2 EAR Volume 3 - Section 4 Figures and Appendices</u>
APP-031	<u>6.3.3 EAR Volume 3 - Section 5 Figures and Appendices</u>
APP-032	<u>6.3.4 EAR Volume 3 - Section 6 Figures and Appendices</u>
APP-033	<u>6.3.5 EAR Volume 3 - Section 7 Figures and Appendices</u>
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APP-035	<u>6.3.7 EAR Volume 3 - Section 11 Figures and Appendices</u>
APP-036	<u>6.3.8 EAR Volume 3 - Section 12 Figures and Appendices</u>
APP-037	<u>6.3.9 EAR Volume 3 - Section 13 Figures and Appendices</u>
APP-038	<u>6.4 Screening Opinion</u>
Adequacy of Consultation Responses	
AoC-001	<u>North Tyneside Council - preliminary email</u>
AoC-002	<u>North Tyneside Council</u>
AoC-003	<u>Northumberland County Council - preliminary email</u>

AoC-004	<u>Northumberland County Council</u>
AoC-005	<u>South Tyneside Council</u>
AoC-006	<u>Newcastle City Council</u>
Correspondence to the Examining Authority	
CoR-001	<u>Certificates of Compliance Letter - 23 January 2015</u>
CoR-002	<u>Compliance Certificate – Section 56</u>
CoR-003	<u>Compliance Certificate – Section 59</u>
CoR-004	<u>Highways England- Letter dated 17 February 2015. Errata and updates to application documents</u>
CoR-005	<u>Highways England- Amended drawings submitted following the Preliminary Meeting on 24 February 2015.</u>
CoR-006	<u>Highways England - Air Quality Erratum submitted following the Preliminary Meeting on 24 February 2015</u>
CoR-007	<u>Highways England - Air Quality Erratum comparisons with tracked changes. Submitted following the Preliminary Meeting on 24 February 2015</u>
CoR-008	<u>Highways England - Request to amend the examination timetable dated 15 April 2015</u>
CoR-009	<u>Highways England - Request to extend the examination timetable for Deadline 4 and update on discussions with the Crown, dated 6 May 2015</u>
Relevant Representations	
RR-001	<u>David Scoins</u>
RR-002	<u>The Coal Authority</u>
RR-003	<u>Richard Hardie Limited</u>
RR-004	<u>Natural England</u>
RR-005	<u>Public Health England</u>
RR-006	<u>North Tyneside Council</u>
RR-007	<u>Environment Agency</u>

Procedural Decisions and Notifications from the ExA

PD-001	<u>Rule 6 Letter</u>
PD-002	<u>Rule 8 Letter</u>
PD-003	<u>Examining Authority's First Written Questions</u>
PD-004	<u>Rule 13(4) and Rule 17 Letter – 26 March 2015</u>
PD-005	<u>Rule 8(3) - Notice of a variation to the timetable – 17 April 2015</u>
PD-006	<u>Examining Authority's draft DCO</u>
PD-007	<u>Examining Authority's draft DCO (Comparison)</u>
PD-008	<u>Rule 8(3) - Notice of a variation to the timetable - 8 May 2015</u>
PD-009	<u>Rule 8(3) - Notice of a variation to the timetable - 11 June 2015</u>
PD-010	<u>Rule 8(3) - Notice of a variation to the timetable - 25 June 2015</u>
PD-011	<u>Notification of cancellation of Compulsory Acquisition Hearing on 23 July 2015</u>
PD-012	<u>Notification of Completion of ExA Examination 30 July 2015</u>

Deadline 1- 24 March 2015

- *Comments on relevant representations*
 - *Written representations (WRs) by all interested parties*
 - *Summaries of all WRs exceeding 1500 words*
 - *Local Impact Reports from any local authorities*
 - *Statements of Common Ground requested by ExA*
 - *Responses to ExA's first written questions (R1Q)*
 - *Notification of wish to make oral representations at the issue specific hearing on the draft Development Consent Order*
 - *Notification of wish to speak at any compulsory acquisition hearing. Notification of wish to make oral representations at any other issue specific hearing*
 - *Notification of wish to speak at an open floor hearing*
 - *Notification by statutory parties that they are to become interested parties.*
 - *Any submissions (or amendments to submissions already made) arising from the designation of the National Policy Statement for National Networks*
 - *Any comments on submissions made at or following the preliminary meeting*
- Representations relating to locations to view at the site or in the surrounding area*

REP1-001	<u>Allied Irish Bank (WR)</u>
REP1-002	<u>Biscuit Motor Company (WR)</u>
REP1-003	<u>Cartec Motor Company (WR)</u>
REP1-004	<u>Cartec Vroom Limited (WR)</u>
REP1-005	<u>McDougal & Breen Limited (WR)</u>
REP1-006	<u>Motorcare (Newcastle) Limited (WR)</u>
REP1-007	<u>Natural England (WR)</u>
REP1-008	<u>North Tyneside Council (R1Q)</u>
REP1-009	<u>Northumberland Estates (WR and R1Q)</u>
REP1-010	<u>Paul Rogers (WR)</u>
REP1-011	<u>Pitstop Cafe (WR)</u>
REP1-012	<u>Richard Hardie Limited (WR)</u>
REP1-013	<u>Trinity Motors (WR)</u>
REP1-014	<u>W.D. Motors (WR)</u>
REP1-015	<u>Whitley Bay Motors (WR)</u>
REP1-016	<u>Highways Agency (R1Q)</u>
REP1-017	<u>Highways Agency (R1Q - Appendices A-M)</u>
REP1-018	<u>Highways Agency - 4.2 Updated Funding Statement March 2015</u>
Local Impact Reports	
REP1-019	<u>North Tyneside Council - Local Impact Report and Appendices A-C</u>
Statements of Common Ground	
REP1-020	<u>Highways England and North Tyneside Council</u>
REP1-021	<u>Highways England and Environment Agency</u>
REP1-022	<u>Highways England and Natural England (Signed page)</u>
REP1-023	<u>Highways England and Natural England</u>

Deadline 2 – 7 April 2015

- *Comments on WRs and responses to comments on RRs*
- *Comments on LIRs*
- *Comments on responses to ExA's first written questions*
- *Responses to the request for information – Rule 17 Letter issued on 26 March 2015*

REP2-001 Highways England - Comments on Written Representations, Local Impact Reports and Response to Rule 17 Letter of 26 March 2015. Includes Annex: Public Consultation

REP2-002 Highways England - 2.2 Land Plans - Sheets 1-4

REP2-003 Statement of Common Ground between Highways England and Northern Gas Networks

REP2-004 Statement of Common Ground between Highways England and Environment Agency

REP2-005 Statement of Common Ground between Highways England and Northumbrian Water Limited (signed)

REP2-006 Highways England - 3.1 Draft DCO with Tracked Changes)

Deadline 3 – 28 April 2015

- *Revised draft DCO from the Applicant*
- *Any revised Book of Reference or Explanatory Memorandum from applicant.*
- *Post-hearing documents, including any written summary of an oral case put any hearing and any documents/amendments requested by the ExA*
- *The final signed copies of any legal agreements, undertakings, or similar documents to which parties wish the ExA to have regard when reporting to the Secretary of State*
- *Comments on responses to the request for information - Rule 17 letter issued on 26 March 2015*

REP3-001 Whitley Bay Motors, McDougal & Breen, The Biscuit Motor Company and Cartec

REP3-002 Northumberland Estates Limited & Duke of Northumberland - Summary of oral case from Compulsory Acquisition Hearing of 14 April 2015)

REP3-003 Highways England - Consent under Section 135. Appendix 5m

REP3-004 Highways England - North Tyneside Council Letter to The Crown Estate. Appendix 5a

REP3-005 Highways England - 4.3 Revised Book of Reference. Appendix 5b

REP3-006	Highways England - 4.3 Revised Book of Reference with Tracked Changes. Appendix 5c)
REP3-007	Highways England - 2.1 Location Plan. Appendix 5f
REP3-008	Highways England - 2.2 Land Plans. Appendix 5g
REP3-009	Highways England - 2.4 Rights of Way Plans. Appendix 5i
REP3-010	Highways England - 2.6 Crown Land Plans. Appendix 5j
REP3-011	Highways England - 4.1 Statement of Reasons. Appendix 5d
REP3-012	Highways England - 4.1 Statement of Reasons with Tracked Changes. Appendix 5e
REP3-013	Highways England - 2.3 Works Plans. Appendix 5h
REP3-014	Highways England - 3.7 Traffic Regulation Plans. Appendix 5k
REP3-015	Highways England - Engineering Drawings Parts 1-3. Appendix 5l
REP3-016	Highways England - Structure Diagram. Appendix 2a
REP3-017	Highways England - Extracts from Network Rail's Norton Bridge Area Improvements Development Consent Order 2014 Requirements. Appendix 2b
REP3-018	Highways England - Extracts from Manual of Contract documents. Appendix 4a
REP3-019	Highways England - Summary of oral case put at the DCO and CA hearings, Open Floor Hearing and post hearing notes
REP3-020	Highways England - Joint Statement with The Crown Estate. Appendix 5n
Updated draft Development Consent documents	
REP3-021	Highways England - 3.1 Revised draft DCO. Appendix 1a
REP3-022	Highways England - Validation Report. Appendix 1b
REP3-023	Highways England - 3.1 Revised draft DCO with Tracked Changes. Appendix 1c
REP3-024	Highways England - 3.2 Revised Explanatory Memorandum. Appendix 1d

REP3-025	<u>Highways England - 3.2 Revised Explanatory Memorandum with Tracked Changes. Appendix 1e</u>
REP3-026	<u>Highways England - Signed SoCG with North Tyneside Council. Appendix 6</u>
REP3-027	<u>Highways England - Signed SoCG with Northumbrian Water</u>
REP3-028	<u>Highways England - Signed SoCG with Northern Gas Networks</u>
REP3-029	<u>Health and Safety Executive (Late submission)</u>
<p>Deadline 4 – 25 June 2015</p> <ul style="list-style-type: none"> • <i>Comments on ExA's draft DCO</i> • <i>Updated references for plans and documents to be certified under the draft DCO</i> 	
REP4-001	<u>Highways England - Submissions for Deadline 4 and Appendix 1 - Amendments to Book of Reference following the Crown's acquisition of Land</u>
REP4-002	<u>Highways England - 4.3 Revised Book of Reference. Appendix 2a (Clean)</u>
REP4-003	<u>Highways England - 4.3 Revised Book of Reference with Tracked Changes. Appendix 2b</u>
REP4-004	<u>Highways England - 4.1 Statement of Reasons. Appendix 3a (Clean)</u>
REP4-005	<u>Highways England - 4.1 Revised Statement of Reasons with Tracked Changes. Appendix 3b</u>
REP4-006	<u>Highways England - 2.2 Revised Land Plans. Appendix 4</u>
REP4-007	<u>Highways England - 2.6 Revised Crown Land Plans - Sheet 1 of 2. Appendix 5</u>
REP4-008	<u>Highways England - 2.6 Revised Crown Land Plans - Sheet 2 of 2. Appendix 5</u>
<p>Deadline 5 – 17 July 2015</p> <ul style="list-style-type: none"> • <i>Any comments on submissions made at Deadline 4</i> • <i>Any outstanding comments on submissions to the examination made before this date</i> 	
REP5-001	UK Land Estates (Partnership) Limited -This Rep is stored in <u>Compulsory Acquisition Hearing 2</u>

REP5-002	Richard Hardie Limited - This Rep is stored in <u>Compulsory Acquisition Hearing 2</u>
REP5-003	<u>Highways England - Update on the Crown Estate's position. Main Submission and Appendix 1 - Amendments to Application Documents</u>
REP5-004	<u>Highways England - 4.3 Book of Reference. Appendix 1a</u>
REP5-005	<u>Highways England - 4.3 Book of Reference with Tracked Changes. Appendix 1b</u>
REP5-006	<u>Highways England - 4.1 Statement of Reasons. Appendix 1c</u>
REP5-007	<u>Highways England - 4.1 Statement of Reasons with Tracked Changes. Appendix 1d</u>
REP5-008	<u>Highways England - 2.2 Land Plans Sheet 3 of 4. Appendix 1e</u>
REP5-009	<u>Highways England - 2.6 Crown Land Plans Sheet 1 of 2. Appendix 1f</u>
REP5-010	<u>Highways England - 2.6 Crown Land Plans Sheet 2 of 2. Appendix 1g</u>
REP5-011	<u>Highways England - Letter from The Crown Estate dated 17 July 2015 - Agreement with Highways England and Section 135 Consent. Appendix 2</u>
Events	
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EV-001	<u>Matt Verlander: PM attendance notification</u>
EV-002	<u>Emily Wood for Allied Irish (Group) Ltd: PM attendance notification</u>
EV-003	<u>Elaine Devine for Richville Ltd: PM attendance notification</u>
EV-004	<u>Northumbria Police: PM attendance notification</u>
EV-005	<u>Natural England: PM attendance notification</u>
EV-006	<u>Preliminary Meeting Note</u>
EV-007	<u>Preliminary Meeting Audio Recording</u>
Applicant's Notice of Hearings	
EV-008	<u>Highways Agency: Notification of Hearings dated 19 March 2015. Submission for Deadline 2</u>

Accompanied Site Visit – 15 April 2015	
EV-009	<u>Site Visit Itinerary</u>
Open Floor Hearing – 15 April 2015	
EV-010	<u>Hearing Agenda - Open Floor</u>
EV-011	<u>Open Floor Hearing - Audio recording Session 1</u>
EV-012	<u>Open Floor Hearing - Audio recording Session 2</u>
Draft Development Consent Order Issue Specific Hearing – 14 April 2015	
EV-013	<u>Hearing Agenda - Draft DCO</u>
EV-014	<u>Draft DCO ISH - Audio recording Session 1</u>
EV-015	<u>Draft DCO ISH - Audio recording Session 2</u>
Compulsory Acquisition Issue Specific Hearing – 14 April 2015	
EV-016	<u>Hearing Agenda - Compulsory Acquisition</u>
EV-017	<u>Richard Hardie Limited: Notification of agreement with Highways England dated 13 April 2015</u>
EV-018	<u>Compulsory Acquisition ISH - Audio recording</u>
Compulsory Acquisition Issue Specific Hearing – 23 July 2015	
EV-019	<u>Highways England - Applicant's advertisement for the Compulsory Acquisition Hearing on 23 July 2015</u>
EV-020	<u>Agenda for Compulsory Acquisition Hearing - 23 July 2015</u>
REP5-01	<u>UK Land Estates (Partnership) Limited: Submission to CAH dated 8 July 2015 for Deadline 5</u>
REP5-02	<u>Richard Hardie Limited - Submission to CAH dated 16 July 2015 for Deadline 5</u>
EV-022	<u>UK Land Estates (Partnership) Limited: Letter confirming agreement with Highways England dated 21 July 2015</u>

APPENDIX C: EVENTS IN THE EXAMINATION

APPENDIX C: EVENTS IN THE EXAMINATION

The list below contains the main events which occurred, and procedural decisions taken, during the examination.

Date	Event
24 February 2015	Preliminary Meeting
26 February 2015	<p>Issue by ExA of:</p> <p>The Examining Authority's first written questions and requests for information</p> <p>Rule 8 Letter consisting of:</p> <ul style="list-style-type: none"> (i) Examination timetable and procedure (ii) Request for Submissions of Common Ground (iii) Request for Local Impact Reports (iv) Request for Written representations and comments on relevant representations (v) Request for Notifications of wish to attend hearings (vi) Request for Notifications of wish to attend an accompanied site inspection
24 March 2015	<p>Deadline 1</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> (i) Local impact reports (LIR) from any local authorities (ii) Statements of Common Ground (SoCG) requested by the ExA – see Annex G (iii) Responses to ExA's first written questions (iv) Comments on relevant representations (RRs) (v) Summaries of all RRs exceeding 1500 words (vi) Written representations (WRs) by all interested parties (vii) Summaries of all WRs exceeding 1500 words (viii) Comments on any submissions received prior to the preliminary meeting (ix) Schedule of compulsory acquisition (x) Schedule of mitigation (xi) Submissions from interested parties recommending locations or items for the itinerary for the accompanied site visit (xii) Any further information requested by the ExA for this deadline <p>Notifications:</p> <ul style="list-style-type: none"> (i) Notification by interested parties of wish to be heard at an open floor hearing

	<ul style="list-style-type: none"> (ii) Notification of wish to speak at a compulsory acquisition hearing (iii) Notification by interested parties of their intention to attend the accompanied site visit(s) (iv) Notification by statutory parties of wish to be considered an interested party
26 March 2015	Issue by ExA of a request for information and notice of a variation the timetable
7 April 2015	<p>Deadline 2</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> (i) Comments on WRs and responses to comments on RRs. Comments on LIRs. Comments on responses to ExA's first written questions. (ii) Responses to the request for information issued on 26 March 2015
14 April 2015	Issue Specific Hearing on the Draft Development Consent Order (DCO)
14 April 2015	Compulsory Acquisition Hearing
15 April 2015	Accompanied Site Visit
15 April 2015	Open Floor Hearing
17 April 2015	Issue by ExA of notice of a variation to the timetable
28 April 2015	<p>Deadline 3</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> (i) Revised draft DCO from the applicant. Any revised Book of Reference or Explanatory Memorandum from applicant. Post-hearing documents, including any written summary of an oral case put at any hearing and any documents/amendments requested by the ExA. The final signed copies of any legal agreements, undertakings, or similar documents to which parties wish the ExA to have regard when reporting to the Secretary of State. (ii) Comments on responses to the request for information issued on 26 March 2015
5 May 2015	Issue by ExA of draft DCO and comparison between ExA's draft DCO and applicant's Draft DCO of 28 April 2015
8 May 2015	Issue by ExA of notice of a variation to the timetable
11 June 2015	Issue by ExA of notice of a variation to the timetable
25 June 2015	<p>Deadline 4</p> <p>Deadline for receipt of:</p>

	<ul style="list-style-type: none"> (i) Comments on ExA's draft DCO. (ii) Updated references for plans and documents to be certified under the draft DCO.
25 June 2015	Issue by ExA of notice of a variation to the timetable and notice of a hearing
17 July 2015	<p>Deadline 5</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> (i) Any comments on submissions made at deadline 4. (ii) Any outstanding comments on submissions to the examination made before this date.
22 July 2015	Publication by the ExA of notification of cancellation of Compulsory Acquisition hearing on 23 July 2015
30 July 2015	Close of Examination
30 July 2015	Notification by the ExA of completion of the examination

APPENDIX D: LIST OF ABBREVIATIONS

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Abbreviation or usage	Reference
AIB	The Allied Irish Bank (AIB) Group (UK) Plc
APFP	Applications: Prescribed Forms and Procedures
APP	Application Document
AQS	Air Quality Strategy
AQMAs	Air Quality Management Areas
CEMP	Construction Management Plan
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
EA	Environment Agency
EIA	Environmental Impact Assessment
EAR	Environmental Assessment Report
EPR2010	Environmental Permitting Regulations 2010
EPR	Examination Procedure Rules
EPS	European Protected Species
EU	European Union
EV	Event
ExA	Examining Authority
GCN	Great Crested Newts
HA	Highways Agency
HE	Highways England
HER	Historic Environment Record
HRA1998	Human Rights Act 1998
HSA	Habitat Suitability Assessment
IP/IPs	Interested Party/Parties
IPC	Infrastructure Planning Commission
LIR	Local Impact Report
LNRs	Local Nature Reserves
LTP	Local Transport Plan
LSOAs	Local Super Output Areas
NE	Natural England
NEL	Northumberland Estates Limited
NMUs	Non-motorised users
NPPF	National Planning Policy Framework
NPS	National Policy Statement for National Networks
NSIP	Nationally Significant Infrastructure Project
PA2008	Planning Act 2008
PD	Procedural Decision
PM	Preliminary Meeting
RPA	Relevant Planning Authority
RBMPs	River Basin Management plans
REP	Representation
RIS	Road Investment Strategy
RPA	Relevant Local Authority

RR	Relevant Representation
SACs	Special Areas of Conservation
SEP	Strategic Economic Plan
SoCG	Statement of Common Ground
SPAs	Special Protection Areas
SSSI	Sites of Special Scientific Interest
TA	Transport Assessment
TUBA	Dft Transport Users Benefit Appraisal
UDP	Unitary Development Plan
WFD	Water Framework Directive