

**PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT  
CONSENT ORDER**

**APPLICATION REFERENCE NUMBER TR010019**

**SUBMISSION UNDER SECTION 127 AND SECTION 138 OF THE PLANNING ACT 2008**

**STATUTORY UNDERTAKER - AFFINITY WATER LIMITED**

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## 1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("**2008 Act**") (the "**Application**") by Highways England Company Limited ("**Highways England**") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "**Scheme**"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of Affinity Water Limited to the Secretary of State for Environment and Rural Affairs (the "**Secretary of State**"). It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State for Transport. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State:
  - 1.2.1 under section 127 of the 2008 Act to authorise the acquisition of land owned by and/or interest benefiting a statutory undertaker; and
  - 1.2.2 under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the improvement of the eastbound and westbound carriageway of the M4 Motorway, the realignment of junctions, the demolition of the existing Old Slade Lane overbridge over the M4, the construction of a new bridge over the M4 and the realignment of Old Slade Lane as part of the Scheme. Affinity Water Limited has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This Submission is made in order to satisfy the Secretary of State that Affinity Water Limited's land or interest in land can be purchased and not replaced without serious detriment to the carrying on of its undertaking, pursuant to section 127(3) the 2008 Act. In addition, it seeks to satisfy the Secretary of State, pursuant to section 138(4) the 2008 Act.

## 2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.

2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

### 3. Interests Subject to this Submission

3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting Affinity Water Limited for the purposes of sections 127 and 138 of the 2008 Act.

3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
26-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 25, 26a, 26b
28-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
29-01	temporary	Temporary land required for use as construction compound	All works within Schedule 1 to the DCO
26-04	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 25, 26a, 26b
27-04	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 26a, 26b
30-04	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout and The Parkway levels: land within existing highway boundary used for access to construction site, including traffic management	For work: 1a, 1b  For access: all works within Schedule 1 to the DCO
27-05	permanent	Land within existing motorway boundaries retained for construction	1a, 1b, 26a, 26b

		and operation of the Scheme	
28-05	temporary	Temporary land required for access and working space for extension of Sipson Road subway	28, 29a, 29d
29-05	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 29b, 29c
26-06	temporary	Temporary land required for access and working space for online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25, 26a, 26b
29-06	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
26-07	temporary	Temporary land required for access and working space for online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25, 26a, 26b
28-07	temporary	Temporary land required for access and working space for extension of Sipson Road subway	28, 29a, 29d
26-09	temporary	Temporary land required for access and working space for online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25, 26a, 26b
27-09	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 26a, 26b
28-09	temporary	Temporary land required for access and working space for extension of Sipson Road subway	28, 29a, 29d
26-10	temporary	Temporary land required for access and working space for online reconstruction of Old Slade Lane and Old Slade	25, 26a, 26b

		Lane overbridge	
27-10	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 26a, 26b
27-11	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 26a, 26b
30-11	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
30-12	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
25-32	temporary	Temporary land required for use as construction compound	All works within Schedule 1 to the DCO
25-33	temporary	Temporary land required for use as construction compound	All works within Schedule 1 to the DCO
25-34	temporary	Temporary land required for use as construction compound	All works within Schedule 1 to the DCO
25-35	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
25-36	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
26-04a	permanent	Land requirement for the online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25
26-09a	temporary	Possible temporary access or diversion route for Old Slade Lane	25
26-10a	temporary	Possible temporary access or diversion route for Old Slade Lane	25

26-17	permanent	Land requirement for the online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25
27-14	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
27-15	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
27-18	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
28-15	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 29a, 29d
28-16	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout and Heathrow Spur Road levels: land within existing highway boundary used for access to construction site, including traffic management	For work: 1a, 1b  For access: all works within Schedule 1 to the DCO
29-05a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 29b, 29c

3.3 The relevant apparatus of Affinity Water Limited is contained in the parcels of land listed above.

#### 4. Documents in support of the Submission

4.1 In support of the Submission, the following documents are enclosed:

4.1.1 Appendix 1: Draft of the Proposed Order;

4.1.2 Appendix 2: Book of Reference;

- 4.1.3 Appendix 3: Statement of Reasons;
  - 4.1.4 Appendix 4: Land Plans (as amended);
  - 4.1.5 Appendix 5: Schedule of Correspondence between Highways England and Affinity Water Limited.
- 4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:
- <http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.

4.3 A copy of this Submission and its enclosures has been provided to Affinity Water Limited.

## 5. Section 127 and Section 138 of the 2008 Act

5.1 Section 127 makes provision for cases where an applicant for development consent under the 2008 Act seeks the inclusion in a development consent order of provision for the compulsory acquisition of land, or a right over such land, which has been acquired by a statutory undertaker (as defined in section 127(8)) for the purpose of its undertaking. The following provisions, set out in section 127(1)(b) and (c), should apply:

(b) *a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and a representation has not been withdrawn; and*

(c) *as a result of the representation, the Secretary of State is satisfied that:*

(i) *the land is used for the purposes of carrying on the statutory undertakers' undertaking; or*

(ii) *an interest in the land is held for those purposes.*

5.2 In the circumstances, the 2008 Act provides that a development consent order including provision for compulsory acquisition of statutory undertakers' land can only be made to the extent that the Secretary of State is satisfied of the matters set out in section 127(3).

5.3 The matters set out in section 127(3) are that the nature and situation of the land are such that:

(a) *it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or*

(b) *if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.*

5.4 Sub-sections (4) to (6) of section 127 make similar provision for cases where an applicant seeks to acquire new rights over statutory undertakers' land compulsorily. In such cases, a development consent order can only include such provisions where the Secretary of State is satisfied of the matters set out in section 127(6). The matters set out in section 127(6) are that the nature and situation of the land are such that:

- (a) *the right can be purchased without serious detriment to the carrying on of the undertaking; or*
- (b) *any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right can be made good by the undertakers by the use of the land belonging to or available for acquisition by them.*

5.5 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. To an extent these provisions overlap with those of section 127 of the 2008 Act in that a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

## 6. **Applicant's Case under Section 127 and Section 138 of the 2008 Act**

6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:

6.1.1 the acquisition of land and the creation of new rights in favour of Highways England pursuant to the Application for development consent could affect Affinity Water Limited's undertaking as it has infrastructure which may be affected by the Scheme;

6.1.2 the land is required for the purposes of:

6.1.2.1 construction and operation of the Scheme;

6.1.2.2 temporary use as a construction compound;

6.1.2.3 access to the construction site and traffic management;

6.1.2.4 access and working space for the online reconstruction of Old Slade Lane and Old Slade Lane overbridge;

6.1.2.5 possible temporary access or diversion route for Old Slade Lane; and

6.1.2.6 access and working space for the extension of Sipson Road subway;

6.1.3 protective provisions appropriate for Affinity Water Limited's undertaking are included in the Proposed Order; and

6.1.4 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that Affinity Water Limited's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.

6.2 Highways England is seeking to negotiate with Affinity Water Limited to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 11 March 2013. A schedule of the communications with Affinity Water Limited is provided at Appendix 5. Whilst it has not been possible to reach agreement with Affinity Water Limited prior to the making of this



Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.

- 6.3 In the absence of private treaty agreements with Affinity Water Limited, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with Affinity Water Limited's apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in sections 127(3) and 127(6) (and 138(4)) have been met.

7. **Submission**

- 7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 127 and section 138 have been satisfied and that the proposed interests in land and land sought by Highways England can be acquired without serious detriment to the Affinity Water Limited's operational undertaking and that interference with the rights of Affinity Water Limited is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.
- 7.2 Highways England respectfully requests that the Secretary of State publishes that she is satisfied that the conditions in sections 127 and 138 of the 2008 Act in respect of the rights and interests of Affinity Water Limited in the Order Land have been met.

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**APPENDIX 5**  
**Schedule of Correspondence**

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	<b>Date</b>	<b>Type of Contact</b>	<b>Outcome</b>
1.	11/03/2013	Letter from Highways England to Affinity Water Limited	Request for information on C2 Buried Services and apparatus.
2.	03/04/2013	Letter from Affinity Water Limited to Highways England	Response to request for information on C2 Buried Services and apparatus.
3.	10/03/2014	Invitation to attend a Preview Public Information Exhibition, to be held on 18 March 2014	Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
4.	02/05/2014	Letter from Highways England requesting completion of land interest questionnaire	Questionnaire to obtain land details of interested parties who may be affected by the works.
5.	14/05/2014	Letter from Affinity Water to Highways England	Return of questionnaire to obtain land details of interested parties who may be affected by the works.
6.	16/06/2014	Email from Affinity Water Limited to Highways England	Provision of C4 budget price estimate for diversion of apparatus.
7.	17/10/2014	Letter from Highways England to Affinity Water Limited	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
8.	24/10/2014	Letter from Affinity Water Limited to Highways England	Response to questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
9.	10/11/2014	Consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
10.	10/11/2014	Further consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with

			Section 42 of the Planning Act 2008.
11.	10/11/2014	Consultation undertaken pursuant to Section 47 of the 2008 Act.	Details of the pre-application consultation to be held between 10 November and 21 December 2014.
12.	24/11/2014	Email from Affinity Water Limited to Highways England	Request for information on internal contact.
13.	25/02/2015	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Major Land Owner/ Utility questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
14.	25/02/2015	Email from Highways England to Affinity Water Limited	Provision of an electronic copy of the Major Land Owner/ Utility confirmation questionnaire.
15.	27/07/2015	Telephone call from Affinity Water Limited to Highways England	A message was taken requesting a call back regarding Major Land Owner/ Utility confirmation questionnaire.
16.	27/02/2015	Telephone call from Highways England to Affinity Water Limited	Attempt to return call, phone number not available
17.	27/02/2015	Email from Highways England to Affinity Water Limited	Follow up email sent as attempts to return call failed.
18.	27/02/2015	Telephone call from Affinity Water to Highways England	Major Land Owner/ Utility confirmation questionnaire acknowledgment.
19.	10/03/2015	Email from Affinity Water to Highways England	Enquiry over Major Land Owner/ Utility confirmation questionnaire
20.	10/03/2015	Email from Highways England to Affinity Water Limited	Discussions regarding Major Land Owner/ Utility confirmation questionnaire
21.	10/03/2015	Email from Affinity Water to Highways England	Continued discussions regarding Major Land Owner/ Utility confirmation questionnaire
22.	12/03/2015	Email from Highways England to Affinity Water	Continued discussions regarding Major Land Owner/ Utility confirmation questionnaire
23.	19/03/2015	Email from Affinity Water Limited to Highways England	Continued discussions regarding Major Land Owner/ Utility confirmation

			questionnaire
24.	19/03/2015	Email from Highways England to Affinity Water Limited	Continued discussions regarding Major Land Owner/ Utility confirmation questionnaire
25.	06/05/2015	Letter from Highways England to Affinity Water Limited Consultation report objection response	Provision of consultation report for the consultation held between 10 November and 21 December 2014.
26.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application together with details of land which Affinity Water Limited have an interest.
27.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application.
28.	08/06/2015	Telephone call from Affinity Water Limited to Highways England	Continued discussions regarding Major Land Owner/ Utility confirmation questionnaire
29.	09/06/2015	Telephone call from Highways England to Affinity Water Limited	Continued discussions regarding Major Land Owner/ Utility confirmation questionnaire.
30.	09/06/2015	Email from Highways England to Affinity Water Limited	Continued discussions regarding Major Land Owner/ Utility confirmation questionnaire
31.	16/06/2015	Letter from Highways England to Affinity Water Limited	Protective Provisions Letter.
32.	30/06/2015	Email from Highways England to Affinity Water Limited	Provided electronic copy of Protective Provisions Letter.
33.	03/07/2015	Letter from Affinity Water Limited to Highways England	Provided details of their operation and services within the M4 Scheme and outline how their services would be affected by the Scheme
34.	12/11/2015	Meeting with Highways England and Affinity Water	Meeting to discuss Protective Provisions
35.	18/12/2015	Email from Highways England to Affinity Water Limited	Plans showing pipeline at Old Slade Lane provided. Meeting request to discuss the interaction between Affinity Water and Highways England.

36.	18/12/2015	Email from Affinity Water Limited to Highways England	Further enquiries regarding Old Slade Lane and clarification required regarding pilling in the vicinity of tunnels. Acceptance of meeting request, dates proposed for January.
37.	31/12/2015	Email from Highways England to Affinity Water Limited	Follow up enquires made in communication dated 18/12/2015.
38.	31/12/2015	Email from Highways England to Affinity Water Limited	Further follow up to enquires made in communication dated 18/12/2015
39.	31/12/2015	Email from Affinity Water and Highways England	Further discussions regarding Old Slade Lane.
40.	04/01/2016	Email from Highways England to Affinity Water Limited	Further discussions regarding Old Slade Lane, Sunnymeads Tunnel and pilling methods.
41.	04/01/2016	Email from Highways England to Affinity Water Limited	Information regarding meeting on 7 January 2016

**PLANNING ACT 2008**

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**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT  
CONSENT ORDER**

**APPLICATION REFERENCE NUMBER TR010019**

**SUBMISSION UNDER SECTION 127 AND SECTION 138 OF THE PLANNING ACT 2008**

**STATUTORY UNDERTAKER - SOUTH EAST WATER LIMITED**

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## 1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("**2008 Act**") (the "**Application**") by Highways England Company Limited ("**Highways England**") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "**Scheme**"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of South East Water Limited to the Secretary of State for Environment and Rural Affairs (the "**Secretary of State**"). It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State for Transport. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State:
- 1.2.1 under section 127 of the 2008 Act to authorise the acquisition of land owned by and/or interest benefiting a statutory undertaker; and
- 1.2.2 under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the widening of the carriageway, the widening of existing bridges over and under the M4 and the construction of a new bridge over the M4 the online reconstruction of Monkey Island Lane and Monkey Island Lane overbridge as part of the Scheme. South East Water Limited has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This Submission is made in order to satisfy the Secretary of State that South East Water Limited's land or interest in land can be purchased and not replaced without serious detriment to the carrying on of its undertaking, pursuant to section 127(3) the 2008 Act. In addition, it seeks to satisfy the Secretary of State, pursuant to section 138(4) the 2008 Act.

## 2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.

2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

### 3. Interests Subject to this Submission

3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting South East Water Limited for the purposes of sections 127 and 138 of the 2008 Act.

3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
19-04	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-06	temporary	Temporary land required for access and working space for online reconstruction of Monkey Island Lane and Monkey Island Lane overbridge	8c
19-07	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-09	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-11	temporary	Temporary land required for access and working space for online reconstruction of Monkey Island Lane and Monkey Island Lane overbridge and for widening of Thames Bray underbridge, including widening of the M4 and M4 embankment	8a, 8b, 8c, 9b
19-12	permanent	Land required for northern realignment of M4 over widened Thames Bray underbridge	8a, 9a
19-04a	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-04b	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-09a	permanent	Land required for the online reconstruction of Monkey Island Lane	8c



19-09b	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-10b	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-11a	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	8a, 8b, 9a, 9b
19-12a	permanent	Land required for northern realignment of M4 over widened Thames Bray underbridge	8a, 9a
19-14	temporary	Temporary land required for access and working space for online reconstruction of Monkey Island Lane and Monkey Island Lane overbridge and for widening of Thames Bray underbridge, including widening of the M4 and M4 embankment	8a, 8b, 8c, 9b
19-14a	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	8a, 8b, 9a, 9b

3.3 The relevant apparatus of South East Water Limited is contained in the parcels of land listed above.

#### 4. Documents in support of the Submission

4.1 In support of the Submission, the following documents are enclosed:

- 4.1.1 Appendix 1: Draft of the Proposed Order;
- 4.1.2 Appendix 2: Book of Reference;
- 4.1.3 Appendix 3: Statement of Reasons;
- 4.1.4 Appendix 4: Land Plans (as amended);
- 4.1.5 Appendix 5: Schedule of Correspondence between Highways England and South East Water Limited.

- 4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:

<http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.

- 4.3 A copy of this Submission and its enclosures has been provided to South East Water Limited.

## 5. **Section 127 and Section 138 of the 2008 Act**

- 5.1 Section 127 makes provision for cases where an applicant for development consent under the 2008 Act seeks the inclusion in a development consent order of provision for the compulsory acquisition of land, or a right over such land, which has been acquired by a statutory undertaker (as defined in section 127(8)) for the purpose of its undertaking. The following provisions, set out in section 127(1)(b) and (c), should apply:

(b) *a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and a representation has not been withdrawn; and*

(c) *as a result of the representation, the Secretary of State is satisfied that:*

(i) *the land is used for the purposes of carrying on the statutory undertakers' undertaking; or*

(ii) *an interest in the land is held for those purposes.*

- 5.2 In the circumstances, the 2008 Act provides that a development consent order including provision for compulsory acquisition of statutory undertakers' land can only be made to the extent that the Secretary of State is satisfied of the matters set out in section 127(3).

- 5.3 The matters set out in section 127(3) are that the nature and situation of the land are such that:

(a) *it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or*

(b) *if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.*

- 5.4 Sub-sections (4) to (6) of section 127 make similar provision for cases where an applicant seeks to acquire new rights over statutory undertakers' land compulsorily. In such cases, a development consent order can only include such provisions where the Secretary of State is satisfied of the matters set out in section 127(6). The matters set out in section 127(6) are that the nature and situation of the land are such that:

(a) *the right can be purchased without serious detriment to the carrying on of the undertaking; or*

(b) *any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right can be made good by the undertakers by the use of the land belonging to or available for acquisition by them.*

5.5 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. To an extent these provisions overlap with those of section 127 of the 2008 Act in that a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

## 6. **Applicant's Case under Section 127 and Section 138 of the 2008 Act**

6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:

6.1.1 the acquisition of land and the creation of new rights in favour of Highways England pursuant to the Application for development consent could affect South East Water Limited's undertaking as it has infrastructure which may be affected by the Scheme;

6.1.2 land is required for the purposes of the construction and maintenance of the Scheme, the online reconstruction of Monkey Island Lane and Monkey Island Lane overbridge, the widening of Thames Bray underbridge, the realignment of the M4 over the widened Thames Bray underbridge and the widening of the M4 Motorway and the M4 Motorway embankment;

6.1.3 protective provisions appropriate for South East Water Limited's undertaking are included in the Proposed Order; and

6.1.4 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that South East Water Limited 's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.

6.2 Highways England is seeking to negotiate with South East Water Limited to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 11 March 2013. A schedule of the communications with South East Water Limited is provided at Appendix 5. Whilst it has not been possible to reach agreement with South East Water Limited prior to the making of this Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.

6.3 In the absence of private treaty agreements with South East Water Limited, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with South East Water Limited's apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in sections 127(3) and 127(6) (and 138(4)) have been met.

## 7. **Submission**

7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 127 and section 138 have been satisfied and that the proposed interests in land and land sought by Highways England can be acquired without serious detriment to South East Water Limited's operational undertaking and that interference with the rights of South East

Water Limited is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.

- 7.2 Highways England respectfully requests that the Secretary of State publishes that she is satisfied that the conditions in sections 127 and 138 of the 2008 Act in respect of the rights and interests of South East Water Limited in the Order Land have been met.

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**APPENDIX 5**  
**Schedule of Correspondence**

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	<b>Date</b>	<b>Type of Contact</b>	<b>Outcome</b>
1.	11/03/2013	Letter from Highways England to South East Water	Request for information on C2 Buried Services and apparatus
2.	10/03/2014	Invitation to attend a Preview Public Information Exhibition, to be held on 18 March 2014	Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
3.	02/05/2014	Letter from Highways England requesting completion of land ownership questionnaire	Requesting land interest details for identified areas of land which may be affected by the Scheme.
4.	12/09/2014	South East Water letter dated 12 September 2014 to Karen Jones	Email regarding Impact Ground Water.
5.	17/10/2014	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
6.	30/10/2014	Response to request for land ownership confirmation questionnaire	Completed questionnaire on request for land ownership details for South East Water.
7.	10/11/2014	Planning Act 2008 Section 42: Notice of statutory pre-application consultation period	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
8.	10/11/2014	Further consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
9.	10/11/2014	Planning Act 2008 Section 47 Notification Letter	Details of the pre-application consultation to be held between 10 November and 21 December 2014.
10.	24/11/2014	Telephone call to South East Water	Follow up enquiries regarding South East Water's confirmation response.
11.	24/11/2014	Telephone call from South East Water	Regarding follow up enquiry initial phone call.
12.	24/11/2014	Telephone call from South East Water	Phone call requesting a copy of the land ownership confirmation questionnaire as there was no record of who completed the original.

13.	24/11/2014	Email from Highways England attaching a copy of land ownership confirmation questionnaire	Copy of land ownership confirmation questionnaire sent as requested.
14.	24/11/2014	Telephone call from South East Water	Conversation regarding follow up enquiry questions.
15.	25/11/2015	Telephone call to South East Water	Voice mail left requesting a call back to discuss follow up enquires for the confirmation questionnaire.
16.	19/02/2015	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
17.	25/02/2015	Letter from Highways England requesting completion of land ownership confirmation questionnaire sent to Major Land Owners	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
18.	25/02/2015	Copy letter from Highways England requesting completion of land ownership confirmation questionnaire	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
19.	27/02/2015	Response to request for land ownership confirmation questionnaire	Completed questionnaire on request for land ownership details for South East Water.
20.	27/02/2015	Email to South Easter Water regarding confirmation questionnaire	Email following confirmation questionnaire response requesting additional information.
21.	03/03/2015	Email to South Easter Water regarding confirmation questionnaire	Follow up email regarding request for additional information.
22.	03/03/2015	Email from South East Water regarding confirmation questionnaire	Email stating that the information they sent is believed to be correct, but they will look into the queries listed in email dated 27 February 2015.
23.	03/03/2015	Email to South Easter Water regarding confirmation questionnaire	Follow up email regarding request for additional information.
24.	09/03/2015	Email to South Easter Water regarding confirmation questionnaire	Voice mail left requesting a call back to discuss follow up enquires for the confirmation questionnaire.
25.	10/03/2015	Email from South East Water regarding confirmation questionnaire	Response to the follow up enquiry sent in email dated 3 March 2015.
26.	10/03/2015	Email to South East Water regarding confirmation questionnaire	Email sent acknowledging receipt of details provided and a request for additional information.

27.	01/05/2015	Email to South East Water	Survey Access request for the ecology team to carry out non-invasive surveys.
28.	11/05/2015	Email to South East Water	Follow up request for ecology survey access.
29.	11/05/2015	Telephone call to South East Water	Follow up request for ecology survey access.
30.	12/05/2015	Email from South East Water to Highways England	An email response agreeing to survey access for the ecology team.
31.	12/05/2015	Email to South East Water	Requesting contact details for the ecology team in order to carry our surveys.
32.	12/05/2015	Email from South East Water	Email providing point of contact details for access in order to carry out surveys.
33.	12/05/2015	Email from South East Water	Additional contact details for the ecology team.
34.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application together with details of land which South East Water have an interest.
35.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application.
36.	08/06/2015	Letter from Highways England to South East Water	Letter from District Valuer: Property Negotiation.
37.	16/06/2015	Letter from Highways England to South East Water	Protective Provisions Letter.
38.	03/07/2015	Email from South East Water	Relating to Relevant Representation.
39.	29/07/2015	Letter from Highways England to South East Water	Letter from District Valuer: Property Negotiation: Follow Up
40.	28/09/2015	Highways England email response to South East Water letter dated 12 September 2014 to Karen Jones	Regarding the potential impact of the Scheme on Groundwater Protection Zones in the Bray area.
41.	12/10/2015	Email from South East Water to Highways England	Written Representation submitted for Deadline II
42.	12/10/2015	Email from South East Water to Highways England	Response to the Examining Authority's first written questions submitted for Deadline II

43.	22/10/2015	South East Water email response to Highways England letter dated 28 September 2015	Regarding the potential impact of the Scheme on Groundwater Protection Zones in the Bray area.
44.	11/11/2015	Email from Highways England to South East Water	Following email response on 22 October regarding water protection zones, email sent informing that their points raised have been responded to and can be found on the PINS website. A link was provided.



**PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT  
CONSENT ORDER**

**APPLICATION REFERENCE NUMBER TR010019**

**SUBMISSION UNDER SECTION 127 AND SECTION 138 OF THE PLANNING ACT 2008**

**STATUTORY UNDERTAKER - THAMES WATER UTILITIES LIMITED**

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## 1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("**2008 Act**") (the "**Application**") by Highways England Company Limited ("**Highways England**") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "**Scheme**"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of Thames Water Utilities Limited ("**Thames Water**") to the Secretary of State for Environment and Rural Affairs (the "**Secretary of State**"). It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State for Transport. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State:
- 1.2.1 under section 127 of the 2008 Act to authorise the acquisition of land owned by and/or interest benefiting a statutory undertaker; and
- 1.2.2 under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the improvement of the eastbound and westbound carriageway of the M4 Motorway, the realignment of junctions, the widening of the carriageway, the demolition and rebuilding of existing bridges over and under the M4, the widening of existing bridges over and under the M4, the construction of a new bridge over the M4, the extension of water and gas main subways under the M4 and the realignment of local roads as part of the Scheme. Thames Water has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This Submission is made in order to satisfy the Secretary of State that Thames Water's land or interest in land can be purchased and not replaced without serious detriment to the carrying on of its undertaking, pursuant to section 127(3) the 2008 Act. In addition, it seeks to satisfy the Secretary of State, pursuant to section 138(4) the 2008 Act.

## 2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.

2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

### 3. Interests Subject to this Submission

3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting Thames Water for the purposes of sections 127 and 138 of the 2008 Act.

3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
06-13	temporary	Temporary traffic management, including lane restrictions, to create working space for construction of the Scheme including a gantry Type 1 and realignment of Junction 11 Eastbound on slip	1a, 4b
06-14	temporary	Temporary traffic management, including lane restrictions, to create working space for construction of the Scheme including a gantry Type 1 and realignment of Junction 11 Eastbound on slip	1a, 4b
01-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
04-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
08-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b

09-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
10-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
11-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme and for temporary use as a construction compound	For work: 1a, 1b, 5e For construction compound: All works within Schedule 1 to the DCO
21-01	temporary	Temporary land required to enable temporary diversion of Rights of Way between Oldway Lane and Wood Lane	13c, 14c
23-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 19a, 19b, 19c
25-01	temporary	Temporary traffic management, including lane restrictions on Riding Court Road, to create working space for construction of the Scheme	1a, 24a
26-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 25, 26a, 26b
30-01	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 30a, 30b

02-15	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 2a, 2b
06-02	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
07-02	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
10-02	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
11-02	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme and for temporary use as a construction compound	For work: 1a, 1b, 5  For construction compound: All works within Schedule 1 to the DCO
19-02	temporary	Temporary land required for access and working space for online reconstruction of Monkey Island Lane and Monkey Island Lane overbridge	8c
21-02	temporary	Temporary land required to enable temporary diversion of Rights of Way between Oldway Lane and Wood Lane	13c,14c
24-02	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c

25-02	temporary	Temporary traffic management, including lane restrictions on Riding Court Road, to create working space for construction of the Scheme	1a, 24a
07-03	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
09-03	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
21-03	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 14a, 14b, 14c
23-03	temporary	Temporary land for access and working space to extend Water Main and Gas Main subway	18
24-03	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
25-03	temporary	Temporary traffic management, including lane restrictions on Riding Court Road, to create working space for construction of the Scheme	1a, 24a
11-04	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 5c, 5d, 5e

15-04	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
19-04	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
21-04	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a,14b,14c
23-04	temporary	Temporary land for access and working space to extend Water Main and Gas Main subway	18
24-04	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
26-04	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 25, 26a, 26b
30-04	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout and The Parkway levels: land within existing highway boundary used for access to construction site, including traffic management	For work: 1a, 1b  For access: All works within Schedule 1 to the DCO
02-05	temporary	Land within existing highway boundary used for access to Scheme construction site and construction	All works within Schedule 1 to the DCO

		compound, including traffic management	
08-05	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
15-05	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
19-05	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b,8a,8b
21-05	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a,14b,14c
24-05	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
28-05	temporary	Temporary land required for access and working space for extension of Sipson Road subway	28, 29a,29d
29-05	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 29b, 29c
30-05	permanent	At motorway level: land within existing motorway boundaries	For work: 1a, 1b For access: All works



		retained for construction and operation of the Scheme. At roundabout and The Parkway levels: land within existing highway boundary used for access to construction site, including traffic management	within Schedule 1 to the DCO
06-06	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout and A33 levels: land within existing highway boundary used for access to Scheme construction site, including traffic management	For work: 1a, 1b  For access: All works within Schedule 1 to the DCO
09-06	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
20-06	permanent	Land required for the realignment of Lake End Road	11a, 11b, 11c
21-06	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a,14b,14c
24-06	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
25-06	temporary	Temporary traffic management, including lane restrictions on Riding Court Road, to create working space	1a, 24a

		for construction of the Scheme	
06-07	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout and A33 levels: land within existing highway boundary used for access to Scheme construction site, including traffic management	For work: 1a, 1b  For access: All works within Schedule 1 to the DCO
09-07	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
21-07	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a,14b,14c
23-07	temporary	Temporary land for possible realignment of private means of access to Datchet Road	19c
24-07	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
26-07	temporary	Temporary land required for access and working space for online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25, 26a, 26b
28-07	temporary	Temporary land required for access and working space for extension of Sipson Road subway	28, 29a,29d

29-07	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
02-08	temporary	Temporary land required for use as construction compound	All Works
09-08	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
23-08	temporary	Temporary land for possible realignment of private means of access to Datchet Road	19c
24-08	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
28-08	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 28, 29a, 29d
02-09	temporary	Temporary land required for use for access to construction compound	All Works
07-09	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
09-09	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
19-09	permanent	Land required for the online reconstruction of Monkey Island Lane	8c

23-09	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c
24-09	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
25-09	temporary	Temporary traffic management, including lane restrictions on Riding Court Road, to create working space for construction of the Scheme	1a, 24a
26-09	temporary	Temporary land required for access and working space for online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25, 26a, 26b
27-09	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 26a, 26b
02-10	temporary	Temporary land required for use for access to construction compound	All works within Schedule 1 to the DCO
06-10	temporary	Temporary traffic management, including lane restrictions, to create working space for construction of the Scheme including a gantry Type 1 and realignment of Junction 11 Eastbound on slip	1a, 4b
21-10	permanent	Land required for the realignment of Wood Lane	14c
23-10	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c

24-10	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
26-10	temporary	Temporary land required for access and working space for online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25, 26a, 26b
28-10	temporary	Temporary land required for access and working space for extension of Sipson Road subway	28, 29a, 29d
02-11	temporary	Temporary land required for use for access to construction compound	All works within Schedule 1 to the DCO
06-11	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 4b, 4c
20-11	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 11a, 11b, 11c, 12d
21-11	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 14a, 14b, 14c
23-11	temporary	Temporary land required for access and working space to construct realigned Datchet Road and new Datchet Road overbridge	19a, 19c
24-11	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and	22a, 22b, 22c

		new Riding Court Road overbridge	
26-11	temporary	Possible temporary access or diversion route for Old Slade Lane	25
28-11	temporary	Temporary land required for access and working space for extension of Sipson Road subway	28, 29a, 29d
02-12	temporary	Temporary land required for use as construction compound	All works within Schedule 1 to the DCO
06-12	temporary	Temporary traffic management, including lane restrictions, to create working space for construction of the Scheme including a gantry Type 1 and realignment of Junction 11 Eastbound on slip	1a, 4b
21-12	permanent	Land required for the realignment of Wood Lane	14c
22-12	temporary	Temporary land required for access and working space for widening Windsor Branch railway underbridge to the South, including realignment of M4 and J6 Westbound off-slip and embankment strengthening and widening	1b, 16c, 17
24-12	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
26-12	temporary	Possible temporary access or diversion route for Old Slade Lane	25

10-18	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 5b, 5f
06-20	temporary	Temporary traffic management, including lane restrictions, to create working space for construction of the Scheme including a gantry Type 1 and realignment of Junction 11 Eastbound on slip	1a, 4b
10-20	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme and temporary land required for use as a construction compound	For work: 1a, 1b, 5b, 5f For construction compound: All works within Schedule 1 to the DCO
06-07a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 4b, 4c
06-12b	temporary	Temporary traffic management, including lane restrictions, to create working space for construction of the Scheme including a gantry Type 1 and realignment of Junction 11 Eastbound on slip	1a, 4b
06-14b	temporary	Temporary traffic management, including lane restrictions, to create working space for construction of the Scheme including a gantry Type 1 and realignment of Junction 11 Eastbound on slip	1a, 4b
10-01b	permanent acquisition of special category land	Land within existing motorway boundaries retained for construction and operation of the	1a, 1b

		Scheme	
18-23	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
19-05a	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-05b	permanent	Land required for the online reconstruction of Monkey Island Lane	8c
19-50	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 9b, 10a, 10b
19-55	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	9a, 9b
19-57	temporary	Temporary land for access and working space for widening of the M4 and M4 embankment.	10b
19-57a	temporary	Temporary land for access and working space for widening of the M4 and M4 embankment.	10b
19-58	temporary	Temporary land required for access and working space for online reconstruction of Marsh Lane and Marsh Lane overbridge	10c



19-60	permanent	Land required for the online reconstruction of Marsh Lane	10b
19-60a	permanent	Land required for the online reconstruction of Marsh Lane	10b
19-60b	permanent	Land required for the online reconstruction of Marsh Lane	10b
19-60c	permanent	Land required for the online reconstruction of Marsh Lane	10b
19-60d	permanent	Land required for the online reconstruction of Marsh Lane	10b
19-71	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 10a, 10b
19-74	permanent	Land required for the online reconstruction of Marsh Lane	10b
19-78	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 10a, 10b
20-14	permanent	Land required for the realignment of Lake End Road	11a, 11b, 11c
20-27	temporary	Temporary land required for access and working space to construct realigned Huntercombe Spur and new Huntercombe Spur overbridge	12b, 12c, 12d, 12e, 12f

20-28	temporary	Temporary land required for access and working space to construct realigned Huntercombe Spur and new Huntercombe Spur overbridge	12b, 12c, 12d, 12e, 12f
20-31	temporary	Temporary land required for access and working space for online reconstruction of Oldway Lane and Oldway Lane overbridge	13a, 13b, 13c
20-33	temporary	Temporary land required for access and working space for online reconstruction of Oldway Lane and Oldway Lane overbridge	13a, 13b, 13c
20-37	temporary	Temporary land required for access and working space for online reconstruction of Oldway Lane and Oldway Lane overbridge	13a, 13b, 13c
20-37b	temporary	Temporary land required for access and working space for online reconstruction of Oldway Lane and Oldway Lane overbridge	13a, 13b, 13c
20-37c	temporary	Temporary land required for access and working space for online reconstruction of Oldway Lane and Oldway Lane overbridge	13a, 13b, 13c
20-38	temporary	Temporary land required for access and working space for online reconstruction of Oldway Lane and Oldway Lane overbridge	13a, 13b, 13c
20-41	temporary	Temporary land required to enable temporary diversion of Rights of Way between	13c, 14c

		Oldway Lane and Wood Lane	
20-41a	temporary	Temporary land required to enable temporary diversion of Rights of Way between Oldway Lane and Wood Lane	13c, 14c
20-41b	temporary	Temporary land required for access and working space for online reconstruction of Oldway Lane and Oldway Lane overbridge	13a, 13b, 13c
20-41c	temporary	Temporary land required for access and working space for online reconstruction of Oldway Lane and Oldway Lane overbridge	13a, 13b, 13c
21-02a	temporary	Temporary land required to enable temporary diversion of Rights of Way between Oldway Lane and Wood Lane	13c, 14c
21-02b	temporary	Temporary land required to enable temporary diversion of Rights of Way between Oldway Lane and Wood Lane and for access and working space to construct and realign Wood Lane and new Wood Lane overbridge	13a, 13c, 14a, 14c
21-02c	temporary	Temporary land required to enable temporary diversion of Rights of Way between Oldway Lane and Wood Lane and for access and working space to construct and realign Wood Lane and new Wood Lane overbridge	13a, 13c, 14a, 14c

21-02d	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a, 14b, 14c
21-12a	permanent	Land required for the realignment of Wood Lane	14c
21-13	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a, 14b, 14c
21-14	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a, 14b, 14c
21-17	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a, 14b, 14c
22-13	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout and A355 level: land within existing highway boundary used for access to Scheme construction site, including traffic management	For work: 1a, 1b For access: All works within Schedule 1 to the DCO
22-16	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 16b, 16c, 17
22-29	permanent	Land within existing motorway boundaries retained for construction and operation of the	1a, 1b

		Scheme	
22-29a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
22-30	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
22-31	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
22-32	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
23-06a	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c
23-15	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 19a, 19b, 19c
23-17	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c
23-18	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c
23-19	temporary	Temporary land required for use as construction compound and temporary land required for access and working space to construct realigned Datchet Road and new Datchet Road	For work: 19c For construction compound: All works within Schedule 1 to the DCO

		overbridge	
23-21	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c
23-24	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c
23-25	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c
23-25a	permanent	Land required for realignment of Datchet Road	19a, 19b, 19c
23-34	temporary	Temporary land required for access and working space to extend Water Main subway	21
23-35	temporary	Temporary land required for access and working space to extend Water Main subway	21
23-36	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 19a, 19b, 19c
24-13	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
24-16	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
24-17	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and	22a, 22b, 22c

		new Riding Court Road overbridge	
24-18	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
24-19	permanent	Land required for the realignment of Riding Court Road	22a, 22b, 22c
24-26	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 22a, 22b, 22c
24-27	permanent	Land required for the realignment of Riding Court Road	22a, 22b, 22c
24-31	permanent	Land required for the realignment of Riding Court Road	22a, 22b, 22c
24-32	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
24-34	temporary	Temporary traffic management, including lane restrictions on Riding Court Road, to create working space for construction of the Scheme	1a, 23a, 23b
24-34a	temporary	Temporary land required for access and working space to construct realigned Riding Court Road and new Riding Court Road overbridge	22a, 22b, 22c
24-36	temporary	Temporary traffic management, including lane restrictions on Riding Court Road, to create working space	1a, 23a, 23b

		for construction of the Scheme	
24-40	temporary	Temporary traffic management, including lane restrictions on Riding Court Road, to create working space for construction of the Scheme	1a, 23a,23b
25-13	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 24a, 24b, 24c, 24d, 24e, 24f, 24g, 24h, 24i
25-14	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 24a, 24d
25-17	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 24a, 24d
25-18	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 24a, 24d
25-19	temporary	Temporary traffic management, including lane restrictions on Majors Farm Road, to create working space for construction of the Scheme	1b, 24d
25-20	temporary	Temporary traffic management for access to Scheme construction site	All works within Schedule 1 to the DCO
25-21	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout	For work: 1a, 1b, 24 e, 24f, 24g, 24h, 24i  For access: All works within Schedule 1 to the DCO



		and London Road levels: land within existing highway boundary used for access to construction site, including traffic management	
25-22	temporary	Temporary traffic management for access to Scheme construction site	All works within Schedule 1 to the DCO
25-26	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 24a, 24b, 24c, 24d, 24e, 24f, 24g, 24h, 24i
25-28	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 24b, 24c
25-29	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 24b, 24c
25-35	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
25-36	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
26-04a	permanent	Land requirement for the online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25
26-09a	temporary	Possible temporary access or diversion route for Old Slade Lane	25

26-10a	temporary	Possible temporary access or diversion route for Old Slade Lane	25
26-13	temporary	Possible temporary access or diversion route for Old Slade Lane	25
26-17	permanent	Land requirement for the online reconstruction of Old Slade Lane and Old Slade Lane overbridge	25
27-22	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
27-22b	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
28-15	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 29a, 29d
29-05a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 29b, 29c

3.3 The relevant apparatus of Thames Water is contained in the parcels of land listed above.

#### 4. Documents in support of the Submission

4.1 In support of the Submission, the following documents are enclosed:

4.1.1 Appendix 1: Draft of the Proposed Order;

4.1.2 Appendix 2: Book of Reference;

4.1.3 Appendix 3: Statement of Reasons;

4.1.4 Appendix 4: Land Plans (as amended);

- 4.1.5 Appendix 5: Schedule of Correspondence between Highways England and Thames Water.
- 4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:  
<http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.
- 4.3 A copy of this Submission and its enclosures has been provided to Thames Water.
5. **Section 127 and Section 138 of the 2008 Act**
- 5.1 Section 127 makes provision for cases where an applicant for development consent under the 2008 Act seeks the inclusion in a development consent order of provision for the compulsory acquisition of land, or a right over such land, which has been acquired by a statutory undertaker (as defined in section 127(8)) for the purpose of its undertaking. The following provisions, set out in section 127(1)(b) and (c), should apply:
- (b) *a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and a representation has not been withdrawn; and*
- (c) *as a result of the representation, the Secretary of State is satisfied that:*
- (i) *the land is used for the purposes of carrying on the statutory undertakers' undertaking; or*
- (ii) *an interest in the land is held for those purposes.*
- 5.2 In the circumstances, the 2008 Act provides that a development consent order including provision for compulsory acquisition of statutory undertakers' land can only be made to the extent that the Secretary of State is satisfied of the matters set out in section 127(3).
- 5.3 The matters set out in section 127(3) are that the nature and situation of the land are such that:
- (a) *it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or*
- (b) *if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.*
- 5.4 Sub-sections (4) to (6) of section 127 make similar provision for cases where an applicant seeks to acquire new rights over statutory undertakers' land compulsorily. In such cases, a development consent order can only include such provisions where the Secretary of State is satisfied of the matters set out in section 127(6). The matters set out in section 127(6) are that the nature and situation of the land are such that:
- (a) *the right can be purchased without serious detriment to the carrying on of the undertaking; or*

(b) *any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right can be made good by the undertakers by the use of the land belonging to or available for acquisition by them.*

5.5 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. To an extent these provisions overlap with those of section 127 of the 2008 Act in that a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

## 6. **Applicant's Case under Section 127 and Section 138 of the 2008 Act**

6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:

6.1.1 the acquisition of land and the creation of new rights in favour of Highways England pursuant to the Application for development consent could affect Thames Water's undertaking as it has infrastructure which may be affected by the Scheme;

6.1.2 the land is required for the purposes of the construction and operation of the Scheme, temporary traffic management, use as a construction compound, access to construction compounds, temporary diversions of Rights of Way, the realignment and reconstruction of roads and bridges, maintenance of access to local roads, the extension of water and gas mains subways, the demolition and reconstruction of existing bridges and the building of new bridges;

6.1.3 protective provisions appropriate for Thames Water 's undertaking are included in the Proposed Order; and

6.1.4 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that Thames Water's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.

6.2 Highways England is seeking to negotiate with Thames Water to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 11 March 2013. A schedule of the communications with Thames Water is provided at Appendix 5. Whilst it has not been possible to reach agreement with Thames Water prior to the making of this Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.

6.3 In the absence of private treaty agreements with Thames Water, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with Thames Water's apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in sections 127(3) and 127(6) (and 138(4)) have been met.

7. **Submission**

- 7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 127 and section 138 have been satisfied and that the proposed interests in land and land sought by Highways England can be acquired without serious detriment to Thames Water's operational undertaking and that interference with the rights of Thames Water is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.
- 7.2 Highways England respectfully requests that the Secretary of State publishes that she is satisfied that the conditions in sections 127 and 138 of the 2008 Act in respect of the rights and interests of Thames Water in the Order Land have been met.

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**APPENDIX 5**  
**Schedule of Correspondence**

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	<b>Date</b>	<b>Type of Contact</b>	<b>Outcome</b>
1.	11/03/2013	Letter from Highways England to Thames Water	Request for information on C2 Buried Services and apparatus
2.	10/03/2014	Invitation to attend a Preview Public Information Exhibition, to be held on 18 March 2014	Invitation to a Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
3.	02/05/2014	Letter from Highways Agency requesting completion of land ownership questionnaire	Requesting land interest details for identified areas of land which may be affected by the Scheme
4.	23/05/2014	Response to request for land ownership confirmation questionnaire	Completed questionnaire on request for land ownership details for Thames Water.
5.	10/11/2014	Consultation undertaken pursuant to Section 42 of the 2008 Act	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
6.	10/11/2014	Further consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
7.	10/11/2014	Consultation undertaken pursuant to Section 47 of the 2008 Act.	Details of the pre-application consultation to be held between 10 November and 21 December 2014.
8.	22/12/2014	Email to Thames Water regarding culverts located near Datchet	Email requesting initial thoughts and apparatus location request.

9.	22/12/2014	Email from Thames Water regarding culverts located near Datchet	Following email communications on 22 <sup>nd</sup> regarding apparatus.
10.	23/12/2014	Email from Thames Water regarding culverts located near Datchet	Following email communications on 22 <sup>nd</sup> regarding apparatus.
11.	06/01/2015	Email to Thames Water regarding culverts located near Datchet	Continuing discussion regarding culvert
12.	06/01/2015	Email from Thames Water regarding culverts located near Datchet	Continuing discussion regarding culvert
13.	30/01/2015	Email to Thames Water regarding culverts located near Datchet	Drawings showing alternative proposals to sleeve the existing mains within each structure and infill with foamed concrete.
14.	02/02/2015	Email from Thames Water regarding culverts located near Datchet	Continuing discussion regarding culvert, requesting payment following previous queries.
15.	25/02/2015	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Major Land Owner/ Utility questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
16.	25/02/2015	Email from Highways England requesting completion of land ownership confirmation questionnaire	Copy of Major Land Owner/ Utility questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
17.	26/02/2015	Response to request for land ownership confirmation questionnaire	Completed questionnaire on request for land ownership details by Thames Water Utilities Limited, which was addressed to Thames Water Investment Limited.

18.	27/02/2015	Telephone call from Thames Water acknowledging confirmation questionnaire.	Comparing plans with the questionnaire against their GIS systems.
19.	27/02/2015	Email to Thames Water regarding the completion of the confirmation questionnaire that was intended for Thames Water Investment Limited.	Requesting confirmation that the details shown on the questionnaire sent are correct for Thames Water Investment Limited.
20.	27/02/2015	Email from Thames Water regarding email sent relating to Thames Water Investment Limited.	Will investigate and get back to us.
21.	02/03/2015	Email from Thames Water regarding email sent relating to Thames Water Investment Limited.	Confirming the information shown on the confirmation questionnaire is a correct reflection on Thames Water's interests.
22.	03/03/2015	Email response to request for Major Land Owner land ownership confirmation questionnaire.	Completed questionnaire on request for land ownership details by Thames Water Utilities Limited, with additional queries.
23.	03/03/2015	Email response to Thames Water regarding Major Land Owner confirmation questionnaire.	Follow up enquires and clarification on queries raised on the completed land ownership confirmation questionnaire.
24.	04/03/2015	Email from Thames Water regarding Major Land Owner confirmation questionnaire.	Continued discussions regarding the completed land ownership confirmation questionnaire and contact details for further infrastructure information.
25.	04/03/2015	Email to Thames Water regarding Major Land Owner confirmation questionnaire.	Continued discussions regarding the completed land ownership confirmation questionnaire.



26.	05/03/2015	Email to Devcon Team with a copy of land ownership confirmation questionnaire.	Questionnaire sent as advised in previous correspondence dated 4 March 2015.
27.	10/03/2015	Highways England copied into Thames Water internal emails.	Forwarding of land plans in order to complete land ownership confirmation questionnaire.
28.	13/03/2015	Email from Thames Water to Highways England.	Regarding the completed land ownership confirmation questionnaire.
29.	01/05/2015	Email from Highways England to Thames Water regarding ecological surveys.	Initial survey access request in order to contact non-invasive ecology surveys.
30.	05/05/2015	Email to Highways England from Thames Water regarding Ecology Surveys.	Acknowledgment for survey access request.
31.	06/05/2015	Email to Highways England from Thames Water regarding Ecology Surveys.	Discussions regarding access for ecology surveys.
32.	06/05/2015	Email from Highways England to Thames Water regarding ecological surveys.	Continued discussions regarding access for ecology surveys.
33.	06/05/2015	Email to Highways England from Thames Water regarding Ecology Surveys.	Discussions regarding access for ecology surveys and agreement.
34.	06/05/2015	Email from Highways England to Thames Water regarding ecological surveys.	Regarding access agreement for ecological surveys.
35.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order.	Notification of acceptance of application together with details of land which Thames Water Utilities Limited have an interest.
36.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application

37.	02/06/2015	Email from Thames Water to Highways England.	Response to previous engagement. Listing conditions to be met as proposed works could affect their apparatus.
38.	08/06/2015	Letter from Highways England regarding Freehold Land Interests	Requesting confirmation whether Thames Water Utilities Limited is willing to enter into negotiating terms relating to the purchase of land.
39.	09/06/2015	Email from Thames Water to Highways England.	Sipson Subway discussion.
40.	09/06/2015	Email from Highways England to Thames Water.	Continued discussions regarding Sipson Subway.
41.	10/06/2015	Email from Thames Water to Highways England	Continued discussions regarding Sipson Subway.
42.	12/06/2015	Email from Highways England to Thames Water.	Continued discussions regarding Sipson Subway.
43.	16/06/2015	Letter from Highways England to Thames Water.	Protective Provisions Letter
44.	14/07/2015	Email from Highways England to Thames Water.	Email enquiry regarding Old Slade Lane.
45.	14/07/2015	Email from Thames Water to Highways England	Discussion regarding Old Slade Lane.
46.	17/07/2015	Email from Thames Water to Highways England	Continued discussions regarding Old Slade Lane.
47.	17/07/2015	Email from Highways England to Thames Water.	Continued discussions regarding Old Slade Lane and follow up enquiries.
48.	21/07/2015	Telephone call from Highways England to Thames Water.	Voicemail left requesting a call about regarding Old Slade Lane discussions.
49.	23/07/2015	Email from Highways England to Thames Water.	Follow up email regarding Old Slade Lane discussions.
50.	23/07/2015	Email from Thames Water to Highways England	Out of Office response following previous email relating to Old Slade Lane discussions.

51.	29/07/2015	Letter from Highways England regarding Freehold Land Interests	Chaser letter requesting confirmation whether Thames Water Utilities Limited is willing to enter into negotiating terms relating to the purchase of land.
52.	29/07/2015	Letter from Highways England regarding Leasehold Land Interests	Requesting confirmation whether Thames Water Utilities Limited is willing to enter into negotiating terms relating to the purchase of land.
53.	29/07/2015	Email from Thames Water to Highways England.	Continued discussions regarding Old Slade Lane and follow up enquiries.
54.	29/07/2015	Email from Highways England to Thames Water.	Continued discussions regarding Old Slade Lane and follow up enquiries.
55.	31/07/2015	Email from Thames Water to Highways England.	Continued discussions regarding Old Slade Lane and follow up enquiries.
56.	31/07/2015	Email from Thames Water to Highways England.	Continued discussions regarding Old Slade Lane and follow up enquiries.
57.	04/08/2015	Email from Highways England to Thames Water.	Initial additional survey access request in order to contact non-invasive ecological surveys.
58.	04/08/2015	Email from Thames Water to Highways England.	Regarding access in order to carry out additional ecology surveys.
59.	10/08/2015	Email from Thames Water to Highways England.	Access agreement for ecology team to conduct surveys.
60.	11/08/2015	Email from Highways England to Thames Water.	Discussion regarding Old Slade Lane.
61.	24/08/2015	Email from Highways England to Thames Water	Correspondence relating to Myrke Allotments Service Subway.
62.	25/08/2015	Email from Thames Water to Highways England.	Correspondence relating to Myrke Allotments Service Subway.

63.	02/11/2015	Email from Thames Water's agent to Highways England	Contents regarding the ownership of Lakeside Road, Colnbrook
64.	03/11/2015	Email from Thames Water's agent to Highways England	Copy of the email sent to PINS regarding the ownership of Lakeside Road, Colnbrook
65.	03/11/2015	Email from Highways England to Thames Water's agent	Reply to emails received regarding the ownership of Lakeside Road, Colnbrook
66.	03/11/2015	Email from Thames Water's agent to Highways England	Continued discussions relating to the ownership of Lakeside Road, Colnbrook
67.	03/11/2015	Email from Highways England to Thames Water's agent	Continued discussions relating to the ownership of Lakeside Road, Colnbrook
68.	16/11/2015	Email from Thames Water's agent to Highways England	Continued discussions relating to the ownership of Lakeside Road, Colnbrook.
69.	17/11/2015	Email from Highways England to Thames Water's agent	Discussions relating to Wood Lane, Slough and a copy of their Section 56 Notification sent
70.	17/11/2015	Email from Thames Water's agent to Highways England	Requesting a phone call following previous email regarding Wood Lane, Slough
71.	17/11/2015	Telephone call from Highways England to Thames Water's agent	Returning phone call as requested in previous email
72.	17/11/2015	Email from Thames Water's agent to Highways England	Late Holding Objection: Requesting to be able to attend and make a statement at the compulsory acquisition hearings
73.	18/11/2015	Email from Highways England to Thames Water's agent	Following phone call dated 17/11/2015. Discussions regarding replacement of existing bridges that are close to Thames Water works
74.	18/11/2015	Email from Thames Water's agent to Highways England	Further discussions regarding replacement of existing bridges that are close to Thames Water works
75.	24/11/2015	Email Pins Representation	Submission to compulsory acquisition hearing on Thursday 19 November 2015 comprising holding objection (and associated correspondence treated as submissions to Deadline IV).

76.	30/11/2015	Email from Thames Water's agent to Highways England	Costs, methodology and works enquiries.
77.	30/11/2015	Email from Highways England to Thames Water's agent	Response relating to previous email regarding costs, methodology and works enquiries
78.	30/11/2015	Email from Thames Water's agent to Highways England	Continued discussions relating to previous emails regarding costs, methodology and works enquiries.
79.	30/11/2015	Email from Highways England to Thames Water's agent	Continued discussions relating to previous emails regarding costs, methodology and works enquiries.
80.	01/12/2015	Email from Highways England to Thames Water's agent	Providing contact details for NRSWA project engineer and 80.Highways England Project Ma81.nager
81.	02/12/2015	Email from Highways England to Thames Water's agent	Resend of previous email providing contact details for NRSWA project engineer and Highways England Project Manager
82.	22/12/2015	Email from Highways England to Thames Water	Email regarding the Myrke Allotments
83.	23/12/2015	Email from Thames Water to Highways England	Continued discussions regarding land at the Myrke Allotments
84.	04/01/2016	Email from Highways England to Thames Water	Continued discussions regarding land at the Myrke Allotments

**PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT  
CONSENT ORDER**

**APPLICATION REFERENCE NUMBER TR010019**

**SUBMISSION UNDER SECTION 127 AND SECTION 138 OF THE PLANNING ACT 2008**

**STATUTORY UNDERTAKER - ENVIRONMENT AGENCY**

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## 1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("**2008 Act**") (the "**Application**") by Highways England Company Limited ("**Highways England**") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "**Scheme**"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of the Environment Agency to the Secretary of State for Environment and Rural Affairs (the "**Secretary of State**"). It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State for Transport. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State:
- 1.2.1 under section 127 of the 2008 Act to authorise the acquisition of land owned by and/or interest benefiting a statutory undertaker; and
- 1.2.2 under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the improvement of the eastbound and westbound carriageway of the M4 Motorway, the realignment of junctions, the widening of the carriageway, the demolition and rebuilding of existing bridges over and under the M4, the widening of existing bridges over and under the M4, the construction of a new bridge over the M4, the extension of Chalvey Culvert and the realignment of local roads as part of the Scheme. the Environment Agency has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This submission is made in order to satisfy the Secretary of State that the Environment Agency's land or interest in land can be purchased and not replaced without serious detriment to the carrying on of its undertaking, pursuant to section 127(3) the 2008 Act. In addition, it seeks to satisfy the Secretary of State, pursuant to section 138(4) the 2008 Act.

## 2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.

2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

### 3. Interests Subject to this Submission

3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting the Environment Agency for the purposes of sections 127 and 138 of the 2008 Act.

3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
08-03	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
19-18	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	8a, 8b, 9a, 9b
19-19	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-19a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 9b
19-19b	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-20	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-20b	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 9b
19-22	temporary	Temporary land for access and working space for widening of Thames Bray	8a, 8b, 9a, 9b



		underbridge to the North, including widening of the M4 and M4 embankment	
19-23	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	8a, 8b, 9a, 9b
19-24	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	8a, 8b, 9a, 9b
19-25	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-26	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	8a, 8b, 9a, 9b
19-27	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-32	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	8a, 8b, 9a, 9b
19-33	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-33a	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
22-10	temporary	Temporary land required for use for access to construction compound and to Scheme construction site	All works within Schedule 1 to the DCO
19-34	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	9a, 9b
19-35	permanent acquisition at motorway level and permanent rights	At motorway level: land within existing motorway boundaries retained for construction and operation of the	1a, 1b, 9a, 9b

	required to maintain and temporary use of land below motorway level	Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	
19-35a	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-36	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	9a, 9b
19-37	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-37a	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-37b	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 9b
19-38	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1a, 1b, 9a, 9b
19-38a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 9b
19-39	permanent acquisition at motorway level and permanent rights required to maintain and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river level and river bank level: temporary land required for widening Thames Bray underbridge	1b, 9a, 9b
19-39a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 9b
19-40	temporary	Temporary land for access and working	9a, 9b

		space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	
19-41	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	9a, 9b
19-42	permanent	Land required for northern realignment of M4 over widened Thames Bray underbridge	8a, 9a
19-42a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 9b
19-44	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme, including widening of M4 and Thames Bray underbridge to the north	1a, 1b, 9b
19-45	temporary	Temporary land for access and working space for widening of Thames Bray underbridge to the North, including widening of the M4 and M4 embankment	9a, 9b
19-76	temporary	Temporary land required for access and working space for online reconstruction of Marsh Lane and Marsh Lane overbridge	10c
19-79	temporary	Temporary land required for access and working space for online reconstruction of Marsh Lane and Marsh Lane overbridge	10c
27-07	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 26a, 26b
21-21	temporary	Temporary land required for access and working space for the extension of Chalvey Culvert	15
22-09	temporary	Temporary land required for use for access to construction compound and to Scheme construction site	All works within Schedule 1 to the DCO
26-11	temporary	Possible temporary access or diversion route for Old Slade Lane	25
27-08	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 26a, 26b
21-07	temporary	Temporary land required for access and working space to construct realigned Wood Lane and new Wood Lane overbridge	14a, 14b, 14c
21-19	permanent	Land within existing motorway boundaries retained for construction and	1a, 1b, 14a, 14b,

		operation of the Scheme	14c, 15, 16a, 16d
22-24a	permanent	Land required for widening Windsor Branch Railway underbridge	16b, 16c, 17
22-24b	permanent	Land required for widening Windsor Branch Railway underbridge	16b, 16c, 17
22-25	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access and working space for widening Windsor Branch railway underbridge to the South, including realignment of M4 and J6 Westbound off-slip and embankment strengthening and widening	1a, 1b, 16b, 16c, 17

3.3 The relevant apparatus of the Environment Agency is contained in the parcels of land listed above.

#### 4. Documents in support of the Submission

4.1 In support of the Submission, the following documents are enclosed:

4.1.1 Appendix 1: Draft of the Proposed Order;

4.1.2 Appendix 2: Book of Reference;

4.1.3 Appendix 3: Statement of Reasons;

4.1.4 Appendix 4: Land Plans (as amended);

4.1.5 Appendix 5: Schedule of Correspondence between Highways England and the Environment Agency.

4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:

<http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.

4.3 A copy of this Submission and its enclosures has been provided to the Environment Agency.

#### 5. Section 127 and Section 138 of the 2008 Act

5.1 Section 127 makes provision for cases where an applicant for development consent under the 2008 Act seeks the inclusion in a development consent order of provision for the compulsory acquisition of land, or a right over such land, which has been acquired by a statutory undertaker (as defined in section 127(8)) for the purpose of its undertaking. The following provisions, set out in section 127(1)(b) and (c), should apply:

- (b) *a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and a representation has not been withdrawn; and*
- (c) *as a result of the representation, the Secretary of State is satisfied that:*
  - (i) *the land is used for the purposes of carrying on the statutory undertakers' undertaking; or*
  - (ii) *an interest in the land is held for those purposes.*

5.2 In the circumstances, the 2008 Act provides that a development consent order including provision for compulsory acquisition of statutory undertakers' land can only be made to the extent that the Secretary of State is satisfied of the matters set out in section 127(3).

5.3 The matters set out in section 127(3) are that the nature and situation of the land are such that:

- (a) *it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or*
- (b) *if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.*

5.4 Sub-sections (4) to (6) of section 127 make similar provision for cases where an applicant seeks to acquire new rights over statutory undertakers' land compulsorily. In such cases, a development consent order can only include such provisions where the Secretary of State is satisfied of the matters set out in section 127(6). The matters set out in section 127(6) are that the nature and situation of the land are such that:

- (a) *the right can be purchased without serious detriment to the carrying on of the undertaking; or*
- (b) *any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right can be made good by the undertakers by the use of the land belonging to or available for acquisition by them.*

5.5 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. To an extent these provisions overlap with those of section 127 of the 2008 Act in that a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

## 6. **Applicant's Case under Section 127 and Section 138 of the 2008 Act**

6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:

- 6.1.1 the acquisition of land and the creation of new rights in favour of Highways England pursuant to the Application for development consent could affect the

Environment Agency's undertaking as it has infrastructure which may be affected by the Scheme;

- 6.1.2 land is required for the purposes of the construction and maintenance of the Scheme, the online reconstruction of Monkey Island Lane and Monkey Island Lane overbridge, the widening of Thames Bray underbridge, the realignment of the M4 over the widened Thames Bray underbridge and the widening of the M4 Motorway and the M4 Motorway embankment;
  - 6.1.3 protective provisions appropriate for the Environment Agency's undertaking are included in the Proposed Order; and
  - 6.1.4 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that the Environment Agency's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.
- 6.2 Highways England is seeking to negotiate with the Environment Agency to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 10 March 2014. A schedule of the communications with the Environment Agency is provided at Appendix 5. Whilst it has not been possible to reach agreement with the Environment Agency prior to the making of this Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.
- 6.3 In the absence of private treaty agreements with the Environment Agency, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with the Environment Agency's apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in sections 127(3) and 127(6) (and 138(4)) have been met.

## 7. **Submission**

- 7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 127 and section 138 have been satisfied and that the proposed interests in land and land sought by Highways England can be acquired without serious detriment to the Environment Agency's operational undertaking and that interference with the rights of the Environment Agency is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.
- 7.2 Highways England respectfully requests that the Secretary of State publishes that she is satisfied that the conditions in sections 127 and 138 of the 2008 Act in respect of the rights and interests of the Environment Agency in the Order Land have been met.

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**APPENDIX 5**  
**Schedule of Correspondence**

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	<b>Date</b>	<b>Type of Contact</b>	<b>Outcome</b>
1.	10/03/2014	Invitation to Public Information Exhibitions 18th to 29th March 2014	Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
2.	10/03/2014	Invitation to Public Information Exhibitions 18th to 29th March 2014	Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
3.	20/03/2015	Letter from Environment Agency to Highways England	Environment Agency confirming receipt of invitation letter to public information exhibitions.
4.	02/05/2014	Letter from Highways England requesting completion of land interest questionnaire	Questionnaire to obtain land details of interested parties who may be affected by the works.
5.	07/05/2014	Email from Environment Agency to Highways England	Acknowledging receipt of land interest questionnaire
6.	12/05/2014	Email from Environment Agency to Highways England	Request for additional information for the land interest questionnaire
7.	13/05/2014	Email from Highways England to Environment Agency	Highways England response to information request
8.	13/05/2014	Telephone call from Environment Agency to Highways England	Request plans showing grid references
9.	01/09/2014	Letter sent to Environment Agency from Highways England	SEB Workshop Invite 12th September
11.	05/09/2014	Email from Environment Agency to Highways England	Invitation to the scoping workshop communication
12.	08/09/2014	Email from Highways England to Environment Agency	Response to email regarding the invitation to the scoping workshop
13.	08/09/2014	Email from Environment Agency to Highways England	Declined invitation to the scoping workshop
14.	15/09/2014	Email to Environment Agency	Presentation to Environmental Information Workshop
15.	23/10/2014	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
16.	29/10/2014	Email from Environment Agency to Highways England	Acknowledgement of receipt of confirmation questionnaire
17.	04/11/2014	Telephone call from Environment Agency to Highways England regarding questionnaire information	Request for additional information relating to the confirmation schedule
18.	10/11/2014	Consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with

			Section 42 of the Planning Act 2008.
19.	10/11/2014	Further consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
20.	10/11/2014	Consultation undertaken pursuant to Section 47 of the 2008 Act.	Details of the pre-application consultation to be held between 10 November and 21 December 2014.
21.	14/10/2014	Email from Environment Agency to Highways England	Response regarding Section 42 notice
22.	26/11/2014	Email from Environment Agency to Highways England	Checklist of issues in Local Transport Plans and their associated Strategic Environmental Assessments
23.	18/12/2014	Letter from Environment Agency to Highways England	Objection raised: Response to the S42 consultation
24.	18/12/2014	Email from Environment Agency to Highways England	Undeliverable email - response to formal consultation.
25.	04/01/2015	Email from Environment Agency to Highways England	Response to formal consultation
26.	06/01/2015	Letter from Highways England to Environment Agency	Invite to Environmental Information Workshop
27.	06/01/2015	Email from Highways England to Highways England	Confirmation formal consultation response has been accepted.
28.	23/01/2015	Email from Highways England to Environment Agency	Statement of Common Ground: fee information and conference call times
29.	05/02/2015	Email from Environment Agency to Highways England	Response to above Statement of Common Ground email
30.	25/02/2015	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Major Land Owner/ Utility questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
32.	03/03/2015	Telephone call from Environment Agency to Highways England	Request for further information for land ownership confirmation questionnaire
33.	03/03/2015	Email from Highways England to Environment Agency	Email attaching requested information undeliverable
34.	03/03/2015	Email from Highways England to Environment Agency	Email attaching requested information
35.	03/03/2015	Email from Highways England to Environment Agency	Requested information is undeliverable as attachments too large
36.	03/03/2015	Email from Environment Agency to Highways England	Re-requested information for land ownership confirmation questionnaire
37.	03/03/2015	Response from Highways England to request for information for land ownership confirmation questionnaire	Information sent to Environment Agency
38.	03/03/2015	Email from Environment Agency to Highways England	Environment Agency confirmation email.



39.	03/03/2015	Email from Highways England to Environment Agency	Further details can be obtained if required
40.	09/03/2015	Email response to request for Major Land Owner land ownership confirmation questionnaire.	Completed questionnaire on request for land ownership details by Environment Agency
41.	22/04/2015	Email from Highways England to Environment Agency	Statement of Common Ground and teleconference
42.	22/04/2015	Email from Environment Agency to Highways England regarding PEI report	Proof of PEI report consultation response by Environment Agency and fee cost
43.	23/04/2015	Email from Highways England to Environment Agency	Confirmation of response and clarification of Environment Agency's availability to discuss Statement of Common Ground
44.	30/04/2015	Email from Environment Agency to Highways England	Information on fees for responses and additional work
45.	06/05/2015	Letter from Highways England to Environment Agency	Consultation report link
46.	11/05/2015	Email to Environment Agency regarding ecology surveys	Survey Access request for the ecology team to carry out non-invasive surveys.
47.	14/05/2015	Call to Environment Agency from Highways England regarding ecology surveys	Follow up request for ecology survey access. Environment Agency requested information
48.	14/05/2015	Email from Highways England to Environment Agency regarding ecology surveys	Requested information sent
49.	14/05/2015	Email from Environment Agency to Highways England regarding ecology surveys	Survey access for the ecology team agreed
50.	14/05/2015	Email from Highways England to Environment Agency regarding ecology surveys	Discussions regarding access for ecology surveys
51.	14/05/2015	Email from Environment Agency to Highways England regarding ecology surveys	Continued discussions regarding access for ecology surveys
52.	14/05/2015	Email from Highways England to Environment Agency regarding ecology surveys	Continued discussions regarding access for ecology surveys
53.	14/05/2015	Email from Highways England to Environment Agency regarding ecology surveys	Email confirming which contact details will be passed to the ecology team
54.	15/05/2015	Email from Highways England to Environment Agency	Land ownership enquiries
55.	15/05/2015	Email from Environment Agency to Highways England regarding land ownership	Relating to previous land ownership enquiries
56.	15/05/2015	Email from Highways England to Environment Agency regarding land ownership	Continued discussions regarding land ownership enquiry
57.	15/05/2015	Email from Environment Agency to Highways England regarding land	Continued discussions regarding land ownership enquiry

		ownership	
58.	18/05/2015	Email from Highways England to Environment Agency regarding ecology surveys	Continued discussions regarding land ownership enquiry
59.	18/05/2015	Email from Environment Agency to Highways England regarding ecology surveys	Continued discussions regarding land ownership enquiry
60.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application together with details of land which Environment Agency have an interest
61.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application
62.	08/06/2015	Letter from Highways England to Environment Agency	Letter from District Valuer: Property Negotiation.
63.	09/06/2015	Email from Highways England to Environment Agency	Dates for meeting for draft Statement of Common Ground
64.	18/06/2015	Email to Highways England from Environment Agency	Information regarding draft Statement of Common Ground
65.	02/07/2015	Email from Environment Agency to Highways England	Environment Agency's relevant representations
66.	02/07/2015	Email from Environment Agency to Highways England	Copy of relevant representations sent to PINs.
67.	06/07/2015	Email from Environment Agency to Highways England	Acknowledgement of receiving copy of representations sent to PINs. Draft Statement of Common Ground is being written.
68.	29/07/2015	Letter from Highways England to Environment Agency	Letter from District Valuer: Property Negotiation: Follow Up
69.	29/07/2015	Letter from Highways England regarding Leasehold Land Interests	Letter from District Valuer: Requesting confirmation whether Environment Agency is willing to enter into negotiating terms relating to the purchase of land
70.	12/08/2015	Email from Highways England to Environment Agency	Request for data
71.	07/09/2015	Email to District Valuer from Environment Agency	Environment Agency negotiated settlement
72.	10/09/2015	Email from Environment Agency to Highways England	Requested data provided
74.	13/09/2015	Email from Highways England to Environment Agency regarding Statement of Common Ground	Draft Statement of Common Ground and associated information emailed
75.	14/09/2015	Email from Environment Agency to Highways England	Environment Agency standard acknowledgement email
76.	15/09/2015	Email from Highways England to Environment Agency regarding Statement of Common Ground	Email closing conversation
77.	16/09/2015	Email from Highways England to Environment Agency regarding	Information regarding Statement of Common Ground, Rule 8 letter and

		Statement of Common Ground	first round of written questions
79.	16/09/2016	Email from Environment Agency to Highways England	Statement of Common Ground additional information request
80.	17/09/2015	Email from Highways England to Environment Agency regarding Statement of Common Ground	Requested information provided
81.	18/09/2015	Email from Environment Agency to Highways England regarding Statement of Common Ground	Proposed meeting dates and further information requested
82.	18/09/2015	Email from Highways England to Environment Agency regarding Statement of Common Ground	Acknowledgement of proposed meeting dates and the information requested
83.	21/09/2015	Email from Highways England to Environment Agency regarding Statement of Common Ground	Confirmation of meeting dates between Environment Agency and Highways England
84.	21/09/2015	Email from Environment Agency regarding Statement of Common Ground	Change of meeting date
85.	24/09/2015	Email from Highways England to Environment Agency regarding meeting date for Statement of Common Ground	Confirmation on new date and attendees for meeting
86.	24/09/2015	Email to Highways England from Environment Agency	Statement of Common Ground meeting confirmation
87.	30/09/2015	Email from Highways England to Environment Agency regarding Statement of Common Ground meeting	Response from Statement of Common Ground meeting and additional information sent
88.	01/10/2015	Email from Highways England to Environment Agency regarding Statement of Common Ground meeting	Provision of additional FRA and WFD information raised in Statement of Common Ground meeting
89.	01/10/2015	Email from Environment Agency to Highways England	Environment Agency legal review comments sent to Highways England
90.	01/10/2015	Email from Highways England to Environment Agency regarding legal review	Acknowledgement of legal review. Copy of previous further information sent to Environment Agency
91.	02/10/2015	Email from Environment Agency to Highways England	Environment Agency initial comments based on additional information sent.
92.	02/10/2015	Conversation between Highways England and Environment Agency	Environment Agency provided initial verbal feedback and comments on SoCG to Highways England
93.	02/10/2015	Email from Environment Agency to Highways England	Forwarded above email
94.	02/10/2015	Email from Highways England to Environment Agency	Confirmation email received
95.	02/10/2015	Email from Environment Agency to Highways England	Relevant representation summary submitted for Deadline I - 2 October 2015
96.	06/10/2015	Email from Highways England to Environment Agency	Missing data requested

97.	06/10/2015	Email from Environment Agency to Highways England	Missing date request passed to another Environment Agency team
98.	07/10/2015	Letter from Environment Agency to The Planning Inspectorate	Response to the Examining Authority's first written questions submitted for Deadline II - 8 October 2015
99.	08/10/2015	Email to Environment Agency from Highways England	Information and plans regarding flood compensation calculations
100.	08/10/2015	Email to Environment Agency from Highways England	Flood compensation calculation information undeliverable
101.	08/10/2015	Email from Environment Agency from Highways England	Confirmation email received and information regarding written representations and questions
102.	08/10/2015	Email from Environment Agency to Highways England	Information sent to Environment Agency
103.	08/10/2015	Email from Environment Agency to Highways England	Revised Statement of Common Ground sent to Highways Agency
104.	08/10/2015	Email to Environment Agency from Highways England	Standard Highways England acknowledgement response email
105.	08/10/2015	Email to Environment Agency from Highways England	Notification to PINs on update of Statement of Common Ground
106.	08/10/2015	Letter from Environment Agency to The Planning Inspectorate	Written representation with summary submitted for deadline II - 8 October 2015
107.	08/10/2015	Email from Environment Agency to Highways England	Response to Highways England email regarding PINs notification on update of Statement of Common Ground
108.	12/10/2015	Draft Statement of Common Ground	Submitted for Deadline II - 8 October 2015
109.	15/10/2015	Email from Highways England to Environment Agency	Statement of Common Ground and Environment Agency's response to PINs.
110.	15/10/2015	Email from Environment Agency to Highways England	Meeting dates for Statement of Common Ground and outstanding issues
111.	16/10/2015	Email from Highways England to Environment Agency	Confirmation of meeting date for outstanding issues
112.	16/10/2015	Email from Highways England to Environment Agency	Date for legal teams teleconference
113.	16/10/2015	Email from Environment Agency to Highways England	Missing data requested
114.	16/10/2015	Email from Highways England to Environment Agency	Further missing data to be sent to updated email address
115.	26/10/2015	Email to Environment Agency	Updated flood risk assessment report and appendices information sent
116.	26/10/2015	Email from Highways England to Environment Agency	Updated flood risk assessment report and appendices information sent
117.	28/10/2015	Email from Highways England to Environment Agency	Requested emails forwarded to Environment Agency
118.	28/10/2015	Meeting between Highways England and Environment Agency	Meeting to discuss outstanding issues

119.	02/11/2015	Email from highways England to Environment Agency regarding Statement of Common Ground	Issue of revised Statement of Common Ground draft emailed to Environment Agency
120.	03/11/2015	Email from Environment Agency to Highways England	Request for data
121.	04/11/2015	Email from Highways England to Environment Agency	Requested data emailed
122.	05/11/2015	Email from Environment Agency to Highways England	Deadline III Statement of Common Ground position statement
123.	05/11/2015	Email from Environment Agency to Highways England regarding revised FRA	Suggested teleconference and details
124.	06/11/2015	Telephone calls from Highways England to Environment Agency	Phone number unavailable, many attempts.
125.	06/11/2015	Email from Highways England to Environment Agency	Confirmation that number held is correct as no response from attempted calls.
126.	06/11/2015	Email from Highways England to Environment Agency	Requested data still not received
127.	06/11/2015	Email from Environment Agency	Flood information sent
128.	06/11/2015	Email from Highways England to Environment Agency	Acknowledgment of information received
129.	06/11/2015	Email from Highways England to Environment Agency	Requested information sent
130.	06/11/2015	Email from Environment Agency to Highways England	Further data sent
131.	06/11/2015	Email from Highways England to Environment Agency	Requested additional Product 4 information under certain grid references
132.	06/11/2015	Teleconference between Highways England and Environment Agency	Agreed actions required to be resolved for Statement of Common ground to be signed
133.	10/11/2015	Email from Environment Agency to Highways England	Environment Agency's comments on FRA additional data sent
134.	11/11/2015	Teleconference between Highways England and Environment Agency	Additional actions required to be undertaken
135.	12/11/2015	Email to Environment Agency regarding Flood Risk Assessment	Additional information issued to the Environment Agency
136.	13/11/2015	Telephone discussion between Environment Agency and Highways England	Environment Agency provided feedback on information. Additional meetings requested
137.	15/11/2015	Email from Highways England to Environment Agency	Further discussion regarding FRA
138.	16/11/2015	Teleconference between Highways England and Environment Agency	Discussion regarding FRA
139.	17/11/2015	Discussion between Highways England and Environment Agency	Further discussion regarding FRA
140.	18/11/2015	Discussion between Highways England and Environment Agency	Further discussion regarding FRA and other flood related matters
141.	23/11/2015	Meeting between Highways England and	Discussion regarding FRA and other flood related matters

142.	24/11/2014	Communication from Environment Agency to Highways England	Environment Agency provided revised draft Statement of Common ground to Highways England
143.	25/11/2015	Letter from Environment Agency to The Planning Inspectorate	Written summary of oral submissions put at issue specific hearings held in November 2015, submitted to Deadline IV.
144.	02/12/2015	Email from Environment Agency to Highways England	Follow up enquiry made on draft Statement of Common Ground
145.	04/12/2015	Email with Environment agency and Highways England	Provision of revised Statement of Common Ground
146.	04/12/2015	Email to Environment Agency from Highways England regarding Statement of Common Ground	Updated draft Statement of Common Ground sent to Environment Agency
147.	13/12/2015	Email from Highways England to Environment Agency	Request for further data
148.	16/12/2015	Email to Environment Agency from Highways England	Follow up email to chase requested data
149.	18/12/2015	Email to Environment Agency from Highways England	Follow up email chasing progress of Statement of Common Ground
150.	24/12/2015	Email and telephone communication with Environment Agency and Highways England	Payment received for requested data
151.	04/01/2016	Email from Highways England to Environment Agency	Follow up email chasing progress of Statement of Common Ground
152.	04/01/2016	Email from Environment Agency to Highways England	Environment Agency's update on Statement of Common Ground
153.	05/01/2016	Email from Environment Agency to Highways England	Environment Agency provided comments on the revisions
154.	05/01/2016	Telephone discussion between Highways England and Environment Agency	Provisional meeting dates
155.	05/01/2016	Email from Environment Agency to Highways England	Requested flood data sent
156.	06/01/2015	Discussion between Highways England and Environment Agency	Meeting arrangements
157.	07/01/2016	Email from Highways England to Environment Agency	Amended Statement of Common Ground issued to Environment Agency to sign