



National Infrastructure Planning
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Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: A19TestosJunction@pins.gsi.gov.uk

Your Ref:

Our Ref: TR010020

Date: 17 October 2017

Dear Sir/Madam

Planning Act 2008 (as amended) – Section 88 and the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 6 and Rule 10

Application by Highways England for an Order Granting Development Consent for the A19/A184 Testos Junction Improvement project

Appointment of the Examining Authority

I write to you following my appointment by the Secretary of State as the Examining Authority (ExA) to carry out an examination of the above application by Highways England. A copy of the appointment letter can be viewed at:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010020/TR010020-000269-Notice%20of%20the%20Appointment%20of%20Examining%20Authority.pdf>

Invitation to the Preliminary Meeting

This letter is an invitation to the Preliminary Meeting to discuss the examination procedure and contains a number of supporting annexes. I would like to thank those of you who submitted Relevant Representations. These representations have assisted me when preparing my proposals regarding how to examine this application.

Date of meeting: Tuesday, 14 November 2017

Seating available from: 9.30am

Meeting begins: 10.00am

Venue: Quality Hotel Boldon
Witney Way
Boldon, Tyne and Wear
NE35 9PE

Access and parking:

Free parking available at the venue.

Public transport access via:

Abingdon Way bus stops

Stagecoach bus number X34 (Newcastle – Boldon – Horsley Hill)

Go North East bus number 9 (North Shields – Sunderland)

Newcastle Road (A184) bus stops

Stagecoach bus numbers X9, X10 (Newcastle – Middlesbrough) and X34

(Newcastle – Boldon – Horsley Hill)

Given the volume and frequency of letters the Planning Inspectorate needs to send to Interested Parties during an examination, the Planning Inspectorate aims to communicate with people by email wherever possible, as electronic communication is more environmentally friendly and cost effective for the Planning Inspectorate as a Government agency. If you are able to receive communications by email, please confirm this with us.

Purpose of the Preliminary Meeting

The purpose of the Preliminary Meeting is to enable views to be put to me about the way in which the application is to be examined. At this stage, I am looking at the procedure for the examination, and not the merits of the application. The merits of the application will only be considered once the Examination starts, which is after the Preliminary Meeting has closed.

I wish to run a fair, efficient and effective meeting so that all relevant views can be heard. As such, I strongly encourage groups of individuals who have similar views on the procedure to choose one representative to speak for the group.

The agenda for the meeting is in **Annex A**. This has been set following my Initial Assessment of the Principal Issues arising on the application. That assessment is set out in **Annex B**. As a result of this assessment I wish to hear at the meeting from the Applicant, Interested Parties, Statutory Parties and Local Authorities where they consider changes may be needed to the draft Examination Timetable set out in **Annex C**.

Up to date information about the project and the Examination can be obtained from:

<https://infrastructure.planninginspectorate.gov.uk/projects/North%20East/A19--A184-Testos-Junction-Improvement/>

This is the project website address from which I will make copies of all future communications and Examination documents available to the public. You can use this page to track progress of the Examination and access all relevant documents and correspondence from the links it contains. As the examination process makes substantial use of electronic documents, it will be useful to become familiar with this resource.

If you wish to receive an email notification when relevant documents and correspondence are published you can register on the project website to do so.

Further information on the Examination process is given in [Advice Note 8.4](#), which is available on the Planning Inspectorate's website.

Attendance at the Preliminary Meeting

If you wish to attend the Preliminary Meeting contact Emré Williams, Case Manager using the details set out at the top of this letter. Please confirm this by **midday (12 noon), 7 November 2017**.

It will help the management of the meeting and benefit everyone if you also:

- Tell us whether you wish to speak at the meeting and on which agenda items (**Annex A**), listing points you wish to make; and
- Notify us of any special requirements you may have (eg disabled access, hearing loop etc).

The Preliminary Meeting provides a useful introduction to the examination process. I will use it to make procedural decisions that will affect everyone participating in the Examination. The meeting provides you with an opportunity to have your say about procedural issues before these decisions are finalised. If you intend to play an active part in the Examination or you have questions about any procedure it is useful to attend the meeting. However, please note that you are not required to attend the Preliminary Meeting in order to participate in the Examination.

If you are an Interested Party you will still be able to make written representations and participate in any hearings that are arranged. Should you no longer wish to be an Interested Party and do not wish to be involved in the examination process, you can notify the Case Manager of this in writing.

After the Preliminary Meeting

After the Preliminary Meeting you will be sent a letter setting out the timetable for the Examination. An audio recording and a note of the meeting will also be published on the project page of the National Infrastructure Planning website.

Interested Parties have the right to request an Open Floor Hearing (OFH) and those persons affected by any request for compulsory acquisition or temporary possession of their land or rights may request a Compulsory Acquisition Hearing (CAH). The draft timetable at **Annex C** indicates dates for the OFHs and CAHs that I may hold, should these be requested.

Any Issue Specific Hearings (ISH) are held at the discretion of the ExA and will be arranged if I feel that consideration of oral representations would ensure an issue is adequately considered. My initial suggestions for ISHs are set out in the draft timetable at **Annex C** with the particular topics indicated, although you will see further below that I have made a firm decision to proceed with my first ISH into the draft Development Consent Order (DCO) the day after the Preliminary Meeting on Wednesday, 15 November 2017.

My Examination will comprise of Written Representations about the proposal and any oral representations made at the hearings, in addition to consideration of the application documents, policy and legal positions, site inspections and any other matters I consider to be relevant and important.

All relevant and important matters will be taken into account when I make a recommendation to the Secretary of State for Transport, who will take the final decision in this case.

Procedural Decisions made by the ExA

I have made some preliminary Procedural Decisions which include the setting of dates for action. These include:

- the setting of deadlines for the submission of:
 - comments on Relevant Representations (RRs);
 - Written Representations (WRs);
 - summaries of any representations exceeding 1500 words;
 - agreements and submissions of Statement of Common Grounds (SoCG);
 - comments on any updated Application Documents submitted by the Applicant;
- the notification by Interested Parties (IP) of their wish to be heard at a subsequent OFH or CAH;
- the notification by IPs of their wish to attend an Accompanied Site Inspection (ASI) and their nomination of locations including justifications for the consideration of the ExA for their nominations;
- the notification by Statutory Parties, or certain Local Authorities of their wish to be considered as an IP by the ExA; and
- the provision of additional information by the Applicant and comments upon this.

These Procedural Decisions are set out in full at **Annex G**.

Please read my Procedural Decisions in **Annex G** carefully, alongside the draft Examination timetable in **Annex C**. Some of my Procedural Decisions provide you with the opportunity to take action before the date for the Preliminary Meeting and/or set dates that require you to take action shortly after that date. If you have questions or wish to discuss any aspect of these decisions, please attend the Preliminary Meeting. I will give careful consideration to all matters raised there before confirming my timetable and procedural decisions for this examination.

Notification of hearing

I have made a Procedural Decision to hold an ISH into the DCO on the day following the Preliminary Meeting, **Wednesday, 15 November 2017**. Important information about this hearing is provided at **Annex D** and an Agenda can be found at **Annex E**

Your status in the Examination

This letter has been sent to you because you (or the body you represent) fall within one of the categories in s88(3) of the Planning Act 2008 (PA2008).

If you have made a RR, have a legal interest in the land affected by the application, or are a relevant Local Authority (reference numbers beginning with 'A19T-AFP' or 'A19T-S57'), you have a formal status as an Interested Party in the Examination.

Interested Parties will receive notifications from the Planning Inspectorate about the Examination throughout the process and may make written and oral submissions regarding the application.

If you are a prescribed consultee (ie body specified in the relevant regulations supporting the PA2008) but have not made a RR (reference number beginning with 'A19T-SP') you will not automatically be an Interested Party. However, following the Preliminary Meeting, you will have a further opportunity to notify the Planning Inspectorate that you wish to be treated as an IP.

If you are not sure whether you are an Interested Party, please contact the Case Manager using the details at the top of this letter. Information regarding the formal status of Interested Parties and how you can get involved in the process is set out in the Planning Inspectorate Advice Note 8 Series on the National Infrastructure Planning website: <http://bit.ly/1zdsVW5>.

Award of Costs

I also draw your attention to the possibility of the Award of Costs against Interested Parties who behave unreasonably. You should be aware of the relevant cost guidance "Awards of costs; examinations of applications for development consent orders" which applies to National Infrastructure projects. This guidance is available at: <http://bit.ly/1ODUUFi>

Management of Information

The Planning Inspectorate has a commitment to transparency. Therefore, all information submitted for this project (if accepted by the EXA) and any record of advice which has been provided, is published on the project website.

All Examination documents can also be viewed electronically at the locations listed in **Annex F**. Physical copies of some documents are available at some locations and these are identified in the annex.

The privacy of any other personal information has been protected in accordance with the Planning Inspectorate's Information Charter.

I look forward to working with all parties in the examination of this application.

Yours faithfully

Rynd Smith

Examining Authority

Annexes

- A** Agenda for the Preliminary Meeting
- B** Initial Assessment of Principal Issues
- C** Draft timetable for Examination of the application
- D** Notification of Issue Specific Hearing into the draft Development Consent Order (dDCO)
- E** Agenda for Issue Specific Hearing into the dDCO
- F** Availability of Relevant Representations and Examination documents
- G** Procedural decisions made by the Examining Authority

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

Agenda for the Preliminary Meeting

Date:	Tuesday, 14 November 2017
Registration open from:	09-30
Meeting Start Time:	10-00
Venue:	Quality Hotel Boldon Witney Way Boldon Tyne and Wear NE35 9PE
Access and Parking:	Free parking <u>Abingdon Way</u> bus stops Stagecoach bus number X34 (Newcastle – Boldon – Horsley Hill) Go North East bus number 9 (North Shields – Sunderland) <u>Newcastle Road (A184)</u> bus stops Stagecoach bus number X9, X10 and X34 (Newcastle – Middlesbrough) (Newcastle – Boldon – Horsley Hill)

1	Welcome and introductions
2	The Examining Authority's (ExA's) remarks about the examination process
3	Initial Assessment of Principal Issues – see Annex B
4	Draft timetable for the examination – see Annex C
5	<p>Deadlines for submission of:</p> <ul style="list-style-type: none"> • Comments on Relevant Representations (RRs); • Written Representations (WRs); • Statements of Common Ground (SoCGs); • Comments on post-application submissions from the Applicant; • Local Impact Reports (LIRs); • Responses to the ExA's Written Questions; • Notifications relating to any hearings; and • Notifications relating to nomination of locations for site inspections. • Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting by 7 November 2017.
6	<p>Hearings and Accompanied Site Inspection (ASI):</p> <ul style="list-style-type: none"> • Procedure, matters and issues for Issue Specific Hearing into the draft Development Consent Order on 15 November 2017 (ISH1) – see Annexes D and E; • Dates reserved and arrangement for other Issue Specific Hearings (ISH);

	<ul style="list-style-type: none"> • Date reserved and arrangements for Open Floor Hearing (OFH); • Dates reserved and arrangements for Compulsory Acquisition Hearings (CAH); and • Date and arrangements for ASI. • Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting by 7 November 2017.
7	Any remaining procedural questions or submissions not set out in the agenda that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting by 7 November 2017
8	Any other matters
9	Close of the Preliminary Meeting

Please note: Please register and be available from the start and throughout the meeting. The agenda is subject to change at the discretion of the ExA. The ExA will conclude the meeting as soon as all relevant contributions have been made. If there are any additional matters to be dealt with or submissions take a considerable amount of time the ExA may change the order of the agenda items and may introduce breaks in the proceedings.

Initial Assessment of Principal Issues

This is the Initial Assessment of the Principal Issues arising from consideration by the Examining Authority (ExA) of the application documents and Relevant Representations (RRs) received. It is not a comprehensive or exclusive list of all relevant matters; regard will be had to all important and relevant matters in reaching a recommendation after the Examination is concluded. The identified Principal Issues are listed in alphabetical order and should not be taken to imply an order of importance.

The policy and consenting requirements and documents associated with the Planning Act 2008 (PA2008) are an integral part of the Examination and are therefore not set out as separate Principal Issues. In addition, it should be noted that a number of these Principal Issues set out below have an interrelationship and overlap and these will be reflected in the Examination.

1. Air Quality and Emissions

- Adequacy of baseline assessment.
- Operational effects of the development.

2. Biodiversity, Ecology and Natural Environment

- Adequacy of baseline assessment.
- Loss of or change to the ecological value of terrestrial and aquatic habitats and their species, including impacts on the ecological value, quality and capacity of land, waterways and water bodies.
- Implications for European/international sites and their qualifying features.
- Implications for statutorily and locally protected sites.
- Effects on specific fauna and flora species and their habitats (including European protected species).
- Timing of works and potential seasonal effects.

3. Compulsory Acquisition and /or Temporary Possession

- The need for the land proposed to be subject to compulsory acquisition and / or temporary possession.
- Effects on statutory undertakers.
- Effects on infrastructure and infrastructure providers.
- Adequacy and security of funding for compensation.
- Land not proposed to be taken ('yellow land'): West House Farm and environs.

4. Draft Development Consent Order (dDCO)

- The structure of the dDCO.
- The appropriateness of proposed provisions.
- Relationships with other consents.

5. Electricity Connections and Other Infrastructure

- Effects on existing and proposed transmission and distribution alignments and facilities.
- Effects on the operational area and environs of West Boldon Lodge Sub-station.
- Effects on other infrastructure.

6. Landscape and Visual

- Construction effects.
- Operational effects.

7. Noise and Vibration

- Construction effects.
- Operational effects.

8. Other Strategic Projects and Proposals

- The relationship of the proposal to other known major projects nearby (including the A19 Downhill Lane project, A1 Birtley to Coalhouse project and the International Advanced Manufacturing Park (IAMP) proposals).
- Cumulative and in-combination effects on and with other major projects and proposals.

9. Socio-Economic Effects

- Economic and employment effects, in construction and operation.
- Effects on surrounding communities including on agriculture, business and nearby residents, in construction and operation.

10. Transportation and Traffic

- Traffic modelling: the case for and benefits of the scheme.
- Construction effects on the nearby road network.
- Construction effects on the use of the Public Right of Way (PRoW) network.
- Operational effects.

11. Water Environment

- Construction effects on water courses and water bodies.
- Water abstraction and drainage.
- Operational effects.

Draft timetable for Examination of the application

The Examining Authority (ExA) is under a duty to complete the examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting. The ExA however may close the examination before the end of the six month period if he is satisfied that all relevant matters have been addressed and discussed.

My examination of the application primarily takes the form of the consideration of written submissions. The ExA will also consider any oral representations made at Hearings.

Item	Matters	Due Dates
1	Preliminary Meeting (PM)	Tuesday 14 November 2017
2	Issue Specific Hearing (ISH) ISH1 into: <ul style="list-style-type: none"> • the draft Development Consent Order (dDCO) 	Wednesday 15 November 2017
3	Issue by ExA of: <ul style="list-style-type: none"> • Examination timetable • ExA's Written Questions (ExQ1) 	As soon as practicable following the PM
4	Deadline 1 Deadline for receipt of: <ul style="list-style-type: none"> • comments on any updates to Application Documents submitted by the Applicant before or at the PM; • comments on Relevant Representations (RRs); • summaries of all RR's exceeding 1500 words; • Written Representations (WRs) by all Interested Parties (IPs); • summaries of all WRs exceeding 1500 words; • Statements of Common Ground (SoCG) requested by ExA – see Annex G; • response to any further information requested by the ExA for this deadline • post-hearing submissions including written submissions of oral cases • notification by Statutory Parties of their wish to be considered as an IP by the ExA; • notification of wish to speak at any subsequent Issue Specific Hearings (ISH); 	Tuesday 28 November 2017

Item	Matters	Due Dates
	<ul style="list-style-type: none"> • notification of wish to speak at a Compulsory Acquisition Hearing (CAH); • notification of wish to speak at an Open Floor Hearing (OFH); • provision of suggested locations and justifications for site inspections for consideration by the ExA; • notification of wish to attend an Accompanied Site Inspection (ASI); and • notification of wish to have future correspondence received electronically. 	
5	<p>Deadline 2</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on WRs; • comments on any SoCGs • Local Impact Reports (LIR) from any Local Authorities; • responses to ExA's Written Questions (ExQ1); • comments on any additional information/submissions received by D1; and • responses to any further information requested by the ExA for this deadline. 	Monday 18 December 2017
6	<p>Accompanied Site Inspection</p> <p>Date reserved to hold an ASI (if required)</p>	Tuesday 16 January 2018
7	<p>Open Floor Hearing</p> <p>Date reserved to hold an OFH</p>	Tuesday 16 January 2018 (Evening)
8	<p>Issue Specific Hearing</p> <p>Issue Specific Hearing (ISH2) into:</p> <ul style="list-style-type: none"> • the Interrelationship of major proposals in the Area, Environmental & Landscape/Visual Issues and any Legal matters. 	Wednesday 17 January 2018
9	<p>Compulsory Acquisition Hearing</p> <p>Date reserved to hold a CAH1</p>	Thursday 18 January 2018

Item	Matters	Due Dates
10	<p>Issue Specific Hearing</p> <p>Issue Specific Hearing (ISH3) into:</p> <ul style="list-style-type: none"> • the dDCO. 	<p>Friday 19 January 2018</p>
11	<p>Deadline 3</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • post-hearing submissions including written submissions of oral cases; • comments on LIRs; • comments on responses to ExA's Written Questions (ExQ1); • any revised/updated SoCGs (if any) • the Applicants revised dDCO; • comments on any additional information/submissions received by D2; and • responses to any further information requested by the ExA for this deadline. 	<p>Thursday 25 January 2018</p>
12	<p>Deadline 4</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • comments on the Applicant's revised dDCO; • comments on any revised/updated SoCGs (if any); • comments on any additional information/submissions received by D3; and • responses to any further information requested by the ExA for this deadline. 	<p>Tuesday 6 February 2018</p>
13	<p>Publication by ExA of:</p> <ul style="list-style-type: none"> • Further Written Questions (ExQ2) (if required); • ExA's consultation on the dDCO or dDCO commentary (if required); and • Report on the Implications for European Sites (RIES) (if required). 	<p>Thursday 15 February 2018</p>
14	<p>Issue Specific Hearing (if required)</p> <p>Date reserved to hold Issue Specific Hearing (ISH4) into:</p> <ul style="list-style-type: none"> • Any outstanding issues 	<p>Wednesday 28 February 2018</p>

Item	Matters	Due Dates
15	<p>Compulsory Acquisition Hearing (if required)</p> <p>Date reserved to hold a CAH2</p>	<p>Thursday 1 March 2018 (morning)</p>
16	<p>Issue Specific Hearing (if required)</p> <p>Date reserved to hold Issue Specific Hearing (ISH5) into:</p> <ul style="list-style-type: none"> • the dDCO. 	<p>Thursday 1 March 2018 (afternoon)</p>
17	<p>Deadline 5</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • post-hearing submissions including written submissions of oral cases; • any revised/ updated SoCGs • response to the ExA's Written Questions (ExQ2) (if required); • comments on the ExA's consultation on the dDCO or dDCO commentary (if required); • comments on the ExA's RIES (if required); • comments on any additional information/ submissions received by D4 • responses to any further information requested by the ExA for this deadline. 	<p>Thursday 8 March 2018</p>
18	<p>Deadline 6</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • comments on any revised/ updated SoCGs; • comments on responses to ExA's Written Questions (ExQ2) (if required); • the Applicant's Final Preferred DCO in the SI template validation report; • comments on any additional information/ submissions received by D5; and • responses to any further information requested by the ExA for this deadline. 	<p>Thursday 15 March 2018</p>

Item	Matters	Due Dates
19	<p>Deadline 7</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • comments on the Applicant's Final Preferred DCO; • comments on any additional information/submissions received by D6; and • responses to any further information requested by the ExA for this deadline. 	<p>Monday 26 March 2018</p>
20	<p>The ExA is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.</p> <p>The ExA may close the examination before the end of the six month period if he is satisfied that all relevant matters have been addressed and discussed.</p>	<p>Monday 14 May 2018</p>

Publication Dates

All information received will be published on the project website as soon as practicable after the deadline for submissions. An Examination Library will be kept up to date throughout the Examination and can be accessed via the project page. Each document will be afforded a unique reference. These references will be used by the ExA during the Examination.

Hearing Agendas

Please note that we will aim to publish a detailed draft agenda for each hearing on the project website at least five working days in advance of the hearing date; but the actual agenda on the day of each hearing may be subject to change at the discretion of the ExA.

Report on the Implications for European Sites (RIES)

Where the applicant has provided a No Significant Effects Report or a Habitats Regulations Assessment (HRA) Report with the DCO application, the ExA may decide to issue a RIES during the Examination.

The RIES is a factual account of the information and evidence provided to the ExA on HRA matters during the Examination up to the date of the publication of the RIES, for the purposes of enabling the Secretary of State, as competent authority, to undertake its HRA. It is not the ExA's opinion on HRA matters. Comments on the RIES will be invited by the ExA and any received will be taken into account as part of the ExA's Recommendation to the relevant Secretary of State.

The Secretary of State may rely on the consultation on the RIES to meet its obligations under Regulation 61(3) of the Habitats Regulations and/ or Regulation 25 of the Offshore Marine Regulations.

Notification of Hearing under section 91 of the Planning Act 2008

The first Issue Specific Hearing (ISH1) will be held as follows:

Date	Hearing	Starting Time	Venue	Access and Parking
Wednesday, 15 November 2017	Issue Specific Hearing into the draft Development Consent Order (dDCO) (ISH1)	10-00	Quality Hotel Boldon Witney Way Boldon Tyne and Wear NE35 9PE	Bus routes <u>Abingdon Way</u> Stagecoach X34 Go North East 9 <u>Newcastle Road (A184)</u> Stagecoach X9, X10 and X34 Free parking at venue.

The agenda for this initial hearing is included at **Annex E**.

Those Interested Parties (IPs) who wish to speak at the hearing should notify the Case Manager (Emré Williams) at the postal or email address in the covering letter by **midday (12 noon), 7 November 2017**.

It would help with the management of the hearing if by the same date you can let the Case Manager know:

- whether you wish to speak at the hearing and on which agenda items, listing points you wish to make; and
- of any special needs you may have (e.g. disabled access, hearing loop).

Please ensure that you include your IP reference number in your correspondence.

The hearing venue will be open 30 minutes prior to the start of the hearing to enable a prompt start. Hearings will finish as soon as the ExA deems that all those present have had their say and all necessary issues have been covered.

Every effort will be made to ensure that the issues in the agenda will be discussed on the day.

Depending on the number of parties wishing to speak, it may be necessary to limit the time allocated to each speaker.

The ExA reserves the right to rearrange the agenda for this hearing on the day. If discussion of an issue takes longer than anticipated, it may have to be completed at a later date.

Agenda for the Issue Specific Hearing into the draft Development Consent Order (ISH1)

This document sets out the agenda for the issue specific hearing into the draft Development Consent Order as notified by the Examining Authority (ExA) in **Annex D**.

Date:	Wednesday 15 November 2017
Time:	10-00 Hearing room opens from 09-30
Venue:	Quality Hotel Boldon Witney Way Boldon Tyne and Wear NE35 9PE
Access and Parking:	Free parking <u>Abingdon Way</u> bus stops Stagecoach bus number X34 (Newcastle – Boldon – Horsley Hill) Go North East bus number 9 (North Shields – Sunderland) <u>Newcastle Road (A184)</u> bus stops Stagecoach bus number X9, X10 and X34 (Newcastle – Middlesbrough) (Newcastle – Boldon – Horsley Hill)

Purpose of the Issue Specific Hearing

The ExA will examine the draft Development Consent Order (dDCO) within the framework of the matters set out below to consider:

- i. how the draft responds to the project definition and addresses the relationship between the proposed junction improvements and other infrastructure, including electricity connections to the National Grid West Boldon Lodge substation;
- ii. the approach taken in the draft to principal, associated and ancillary development;
- iii. the applicant's response to guidance in PINS Advice Notes, particularly AN13 and AN15¹;
- iv. the relationship between the dDCO and recently made Orders for similar highway proposals;
- v. the justification for any innovative approaches and changes from established practice;
- vi. the need for changes to other legislative provisions, ensuring that these are clear and are not unduly reductive of other persons' rights;

¹ The Planning Inspectorate's Advice Notes can be found at:
<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

- vii. whether policy tests for planning conditions relevant to requirements are met;
- viii. the need for protective provisions and the scope for changes to the current draft to respond to negotiations in progress;
- ix. the need for any commercial agreements, planning obligations or equivalent side provisions and progress towards these; and
- x. the need for Crown, statutory undertaker and any other consents.

The ExA will not examine matters arising from the content of individual relevant representations (RRs) at this hearing. Technical drafting considerations relating to compulsory acquisition (CA) and the temporary possession (TP) of land will be examined, but individual affected persons (APs) concerns about their land and rights will not be examined. These are all matters that will be the subject of future hearings, following the submission of Written Representations (WRs).

Schedule of Questions into the dDCO

In addition to the matters identified above, the ExA will review detailed issues and questions about individual dDCO provisions that I have identified and included in **Table 1: Schedule of ExA issues and questions relating to the draft DCO** attached below. Additional issues and questions arising from Interested Parties (IPs) that have not been identified in the schedule will not be discussed at this time, however these will be considered as the examination progresses, in writing or orally as required.

This hearing will not examine the detailed content of provisions relating to the compulsory acquisition of land or rights or temporary possession of land. The draft examination timetable proposes separate Compulsory Acquisition Hearing(s) (CAHs) on these topics and they may also be returned to in subsequent DCO ISHs.

Participation, conduct and management of hearing

This early hearing on the dDCO is being held to address matters, issues and questions identified by the ExA during its Initial Assessment of Principal Issues, before its consideration of Written Representations (WRs). The ExA considers that it is expedient to examine these matters, issues and questions orally at the outset of the examination in order to ensure that technical and legal matters arising from the dDCO are identified and considered as early as possible. This hearing, and any subsequent hearings on the dDCO, will be held without prejudice to the ExA's consideration of the broader planning merits of the Application.

All IPs are invited to attend the hearing. Each IP is entitled to make oral representations at the hearing. However, this is subject to the ExA's power to control the hearing.

The ExA requests that the following attendees participate in ISH1 into the dDCO:

- Highways England (the Applicant)
- South Tyneside Council (STC)
- Gateshead Council (GC)

- Sunderland City Council (SCC)
- North East Combined Authority (NECA)
- Environment Agency (EA)
- National Grid Electricity Transmission (NGET)
- Any other IPs with an interest in the drafting of the DCO; implementation or discharge of proposed articles, requirements or other provisions; seeking protective provisions or any related side agreements.

Participants may be legally represented if they wish, but the hearing will be conducted to ensure that legal representation is not required. The Applicant and IPs may consider attending with the following expert advisers, but IPs may participate without expert advice:

- Engineers and project managers, responsible for project design and delivery;
- Lawyers engaged in statutory drafting, planning and environmental law; and
- Town Planners or Surveyors engaged in the negotiation of requirements and agreements relating to the use and development of land.

Guidance under the Planning Act 2008 (PA 2008)² and the Infrastructure Planning (Examination Procedure) Rules 2010 provide that it is the ExA that will probe, test and assess the evidence through direct questioning of persons making oral representations at hearings. Questioning at the hearing will be led by the ExA.

Cross-questioning of the person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that a person has had a fair chance to put their case. The hearing will run until all IPs have made their representations and responded to the ExA's exploration of the matters in accordance with the agenda set.

Please note that the following agenda is indicative and may be amended by the ExA at the start of the hearing session. Furthermore, the ExA may wish to raise other matters arising from submissions, and pursue lines of inquiry in the course of the discussion which are not on the agenda.

² DCLG: 'Planning Act 2008: Guidance for the examination of applications for development consent', March 2015.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance-__final_for_publication.pdf

Agenda

1. Welcome, introductions and arrangements for this Issue Specific Hearing

2. Changes to the submitted dDCO

The ExA will ask the Applicant:

- a) to introduce proposed changes to the submitted draft DCO foreshadowed in its correspondence of 5 October 2017; and
- b) to identify in outline what the changes are proposed to achieve.

Views from the Applicant and IPs about the procedural implications of any proposed changes will be sought.

3. The function and structure of the submitted dDCO

The ExA will ask the applicant about:

- a) the proposed articles;
- b) the proposed project description (Schedule 1) and its relationship with other major projects;
- c) the proposed requirements (Schedule 2, Parts 1 and 2);
- d) the approach taken to protected trees (Schedule 8);
- e) the need for and progress on protective provisions (Schedule 9);
- f) the means of recording documents to be certified (Schedule 10);
- g) the need for and progress on any planning obligations and or side agreements;
- h) the need for and progress on any other consents; and
- i) progress on Statements of Common Ground relevant to the DCO.

4. Discharge of requirements and conditions, appeals and disputes

The ExA will ask IPs and particularly the agencies and South Tyneside Council whether they have any significant concerns in principle with the proposed approaches taken to the discharge of requirements, or for managing appeals or disputes under the dDCO.

5. Specific issues and questions bearing on the dDCO, raised by the ExA

A schedule of issues and questions is attached to this agenda (see **Table 1**). Questions will be put to the Applicant and views will be sought from IPs. Where they are relevant to the discussions under matters 3 and 4 above, the questions in Table 1 may be drawn out within those matters. Any remaining questions that have not been addressed there will be examined individually here.

6. Review of issues and actions arising

The ExA will address how any actions placed on the Applicant are to be met and consider the approaches to be taken to the examination of the dDCO and any changes to it, in the light of issues raised in this hearing.

7. Next steps

8. Closure of the hearing



Application by Highways England for the A19 / A184 Testos Junction Improvement

Schedule of Examining Authority issues and questions relating to the draft Development Consent Order

The issues and questions set out below expand on the Examining Authority's (ExA's) identification of the draft Development Consent Order (DCO) (Revision 0) as submitted [APP-010] as a matter for examination in the initial assessment of principal issues. They will be referred to in the first issue-specific hearing (ISH1) into the dDCO on **Wednesday 15 November 2017**. They are principally addressed to the Applicant but observations from other interested parties (IPs) attending the hearing are welcome.

Abbreviations Used

PA2008	<i>The Planning Act 2008 as amended</i>	LIR	<i>Local Impact Report</i>
Art	<i>Article</i>	LPA	<i>Local planning authority</i>
ALA 1981	<i>Acquisition of Land Act 1981</i>	MP	<i>Model Provision (in the MP Order)</i>
BoR	<i>Book of Reference [APP-015]</i>	MP Order	<i>The Infrastructure Planning (Model Provisions)(England & Wales) Order 2009</i>
CA	<i>Compulsory Acquisition</i>	NPS	<i>National Policy Statement</i>
CPO	<i>Compulsory Purchase Order</i>	NSIP	<i>Nationally Significant Infrastructure Project</i>
dDCO	<i>Draft DCO [APP-010](Rev 0)</i>	R	<i>Requirement</i>
EM	<i>Explanatory Memorandum [APP-011](Rev 0)</i>	SI	<i>Statutory Instrument</i>
ES	<i>Environmental Statement [APP-018 – 048]</i>	SoS	<i>Secretary of State</i>
ExA	<i>Examining authority</i>	TP	<i>Temporary Possession</i>

The Examination Library

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link:

<http://infrastructure.planninginspectorate.gov.uk/document/TR010020-000263>.

It will be updated as the examination progresses.

Citation of Questions

Questions in this table should be cited as follows:

Hearing reference: question number, eg **ISH1:1** – refers to question 1 in this table.

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Q No.	Part of DCO	Drafting example (where relevant)	Question
1.	General: Order Format and Tracking of Changes		<p>General drafting considerations The Applicant is asked to confirm that subsequent versions of the draft Development Consent Order (dDCO) submitted after the application version will be:</p> <ul style="list-style-type: none"> • supplied in both .pdf and Word formats and in two versions, the first forming the latest consolidated draft and the second showing changes from the previous version in tracked changes, with comments outlining the reason for the change; and • the consolidated draft version in Word is to be supported by a report validating that version of the dDCO as being in the SI template, obtained from the publishing section of the legislation.gov.uk website; and • endorsed with updated revision numbers consecutively from the application version.
2.	General: List of Plans or Documents to be Certified		<p>The Applicant is asked to confirm that Schedule 10 (Documents to be Certified) will be updated in each subsequent version of the dDCO provided during the examination. This should accompany a table of recording the latest version of each plan and documents required to support the examination and the dDCO (the 'plan of plans').</p>
3.	General: Plan or Document Changes and Revision Numbers		<p>The Applicant is asked to ensure that all application or subsequent plans and documents referred to in the dDCO in whatever provision are identified by Drawing or Document and Revision Numbers in subsequent versions of the dDCO. Where revisions are prepared to plans and documents, these should be reflected in the latest version of the dDCO. The Applicant should undertake a final audit of plans and documents referred to in the dDCO prior to submitting its final preferred dDCO to the Examination. It should ensure that the results of this audit are reflected in all references, in Schedule 10 and in the final 'plan of plans' (see Q2). It should take all reasonable steps thereafter to ensure that changes to plans and documents are not required.</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
4.	General: drafting usage		<p>The Applicant is requested to review the dDCO to ensure that common terms are drafted consistently throughout. Examples of such issues are provided below (although this is not exhaustive):</p> <ul style="list-style-type: none"> • The term 'stopped-up' is employed with both a hyphen connecting the words and in an un-hyphenated form, as two separate words. • 'Tree Preservation Orders' are referred to as both a capitalised and un-capitalised term. • There are references to legislation that has a defined term in Art 2(1) by both its full title and by the term defined for it. • Companies are referred to as both 'Limited' and 'Ltd.' <p>Unless there are good reasons for inconsistency, preferred drafting forms should be chosen and consistently applied throughout the draft.</p>
5.	General: drafting approach to the NSIP		<p>Section 2 of the Explanatory Memorandum (EM) to the dDCO [APP-011] (at paragraphs 2.8 and 2.9) identifies the drafting approach taken in the dDCO to the status of the proposal as a Nationally Significant Infrastructure Project (NSIP) pursuant to sections 14(1)(h) and 22 of the Planning Act 2008 (as amended) (PA2008). The basis for the NSIP status of the Application Proposal and for the drafting of the dDCO is stated as being that it provides for 'the alteration of a highway lying wholly within England' (s22(1)(b) PA2008). Section 22(1)(c) PA2008 is relevant to an NSIP that constitutes an 'improvement of a highway...' subject to the proviso (in s22(5)) amongst others that 'the improvement is likely to have a significant effect on the environment'.</p> <ul style="list-style-type: none"> • Please add to the explanation provided in the EM, clarifying the distinction between an application under s22(1)(b) and s22(1)(c). • Can it be demonstrated that this is an application to which s22(1)(b) applies, but s22(1)(c) does not? • Are there any circumstances in which it might be necessary and appropriate to provide that this application was proceeding under both s22(1)(b) and (c) jointly?

Q No.	Part of DCO	Drafting example (where relevant)	Question
6.	General: drafting approach to associated and ancillary development		<p>Sections 3 and 4 of the EM [APP-011] identify the drafting approach taken in the dDCO to associated and ancillary development. Section 3 makes clear that the Applicant has chosen not to distinguish between the principal development of the NSIP and associated development in Schedule 1 of the dDCO. The approaches taken in the A19 / A1058 Coast Road (Junction Improvement) Order 2016, the A14 Cambridge to Huntingdon Improvement Order 2016 and M4 Motorway (Junctions 3 to 12 (Smart Motorway) Order 2016 are used to justify the approach taken here.</p> <p>Reference to paragraphs 8.3.1 – 8.3.7 of the A14 Recommendation Report make clear that whilst the Panel accepted and was content to recommend equivalent drafting in that case, it did so from a standpoint of having received detailed submissions, explaining which works were understood to be principal development – comprised within the NSIP, which were associated and which were ancillary development. It was able to use these submissions to assure itself that the dDCO in that case was legally sound and that relevant DCLG guidance¹ had been responded to. For these reasons, the Applicant is requested to prepare a table, itemising all proposed works (Works Nos. 1 – 30 and items (a) – (p) listed in Schedule 1) and categorising each in the following terms:</p> <ul style="list-style-type: none"> • Principal development; • Associated development; • Ancillary development; or • Composite development, being works having the character of a composite of any two or all three of principal, associated or ancillary development at the same time.

¹ Planning Act 2008, Guidance on associated development applications for major infrastructure projects, DCLG, April 2013

Q No.	Part of DCO	Drafting example (where relevant)	Question
7.	General: drafting approach to compensation for CA and TP		<p>(The Land Compensation Act 1961) A number of articles make provision for “<i>compensation to be determined, in case of dispute, under Part 1 of the 1961 Act</i>”. It is acknowledged that a provision in this form is in various MPs and is commonplace in DCOs and other similar Orders. However, Part 1 of the 1961 Act only relates to compensation for compulsory acquisition.</p> <ul style="list-style-type: none"> • In order for there to be certainty that it would apply in other situations (e.g. carrying out protective works under Art 18, the temporary use of land under Art 29, or the felling of trees under Art 34), the Applicant is asked if a modification should be included as with the other compensation provisions in Schedule 6? If not, why not? • If the Applicant takes the view that such an amendment is not necessary, it would assist the ExA to be directed to examples of cases where the Tribunal has accepted jurisdiction but where the matter at issue did directly involve compulsory acquisition as strictly defined (for example because it related to protective works, temporary use or possession of land or felling of trees).
8.	General: 'guillotine' provisions		<p>A number of individual articles (eg Art 12, Art 17, Art 19) and a procedural requirement (R13) relevant to all applications to the SoS for any consent, agreement or approval under any other requirement make provision for deemed consent to be granted if a consultee does not respond within a certain period – a ‘guillotine’ provision.</p> <p>The ExA is aware that such provisions are included in a number of made DCOs: however, they have tended to be justified with reference to the particular characteristics of the development permitted in each DCO. This type of provision is not automatically appropriate to all NSIP development and has to be justified on a project-specific basis.</p> <ul style="list-style-type: none"> • The Applicant is asked to justify why the proposed ‘guillotine’ provisions are necessary and appropriate, having regard to the particular circumstances of the development applied for.

Q No.	Part of DCO	Drafting example (where relevant)	Question
			<ul style="list-style-type: none"> • If 'guillotine' provisions are to be recommended, there is an argument that they should make clear that any notice provided associated with an application for consent under the relevant article must draw attention to the existence and effect of the 'guillotine' period? Please consider this point and propose drafting amendments that address it. • Could any other provisions than 'guillotine' provisions address the Applicant's objective for their inclusion? • Noting that a number of the proposed 'guillotine' provisions affect the SoS, but in relation also to any entity that such provisions affect, what evidence does the Applicant have that they have consulted with and taken account of respondents' views about the appropriateness and operation of such provisions? • R13 sets out a procedure in respect of SoS determination where the outcome of a 'guillotine' depends on a judgment as to whether the consent, agreement or approval 'would give rise to any materially new or materially worse environmental effects...' <ul style="list-style-type: none"> ○ How and by whom is such a judgment best made? ○ Is there an argument that it should be made by the decision-maker and not by the Applicant? • How would the operation of the guillotine provisions interact with the arbitration provision under Art 43?
9.	General: determinations and discharge of requirements		<p>In contrast with many made Orders for non-highways NSIPs and differing also from the made Order for the A14 (see Art 44 of that Order) or the A19/A1058 Coast Road (see Art 42, incorporating a process under ss78 and 79 of the Town and Country Planning Act 1990 (as amended)), this dDCO appears to lack provision in terms for 'appeals' or associated dispute resolutions arising from the determinations under provisions and the discharge of requirements.</p> <ul style="list-style-type: none"> • The Applicant is asked to confirm whether this is the case. • If there are provisions intended to provide what amounts to an appeal function, the Applicant is asked to identify and explain these.

Q No.	Part of DCO	Drafting example (where relevant)	Question
			<ul style="list-style-type: none"> If there are no such provisions, the Applicant is invited to consider whether there ought to be, and whether they should be in the form of an article (as per the A14 made Order or equivalent), in the form of a requirement, or in another form. <p>Reference to this issue is also made in Q54 (Art 43) and Q76 (Schedule 2 Part 2).</p> <p>In contrast with many made Orders for non-highways NSIPs, where obligations are typically placed on the 'relevant planning authority' (the local planning authority(ies) for the application site), this dDCO provides the generality of obligations to make determinations and to discharge requirements on the SoS. The ExA notes that the made A14 Order takes broadly the same approach as this dDCO. However, that might be argued to be an order for a much larger proposal in relation to which resource considerations and / or the balance between local and national interests should favour the national interest.</p> <ul style="list-style-type: none"> Is it clear that the SoS is the appropriate body for such determinations and discharges in this dDCO? Has the balance of these duties been discussed with South Tyneside Council and does the approach in this draft enjoy the support of that authority?
10.	General: signature of the dDCO	<p style="text-align: right;"><i>'Natasha Kopala Head of the Transport and Works Act Orders Unit Department for Transport'</i></p>	<p>The Applicant is requested to supply subsequent versions of the dDCO with the name and function of the signatory removed and replaced as follows:</p> <p style="text-align: right;"><i>Signed</i> Title Department</p> <p>A completed signature block is added to a DCO at the time of the Secretary of State's decision to grant development consent by making the Order. For the avoidance of possible confusion with a</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
			made Order, a dDCO does not normally contain a completed signature block.
11.	Preamble		<p>Preamble: the Examination process</p> <p>The Applicant is asked to draft the Preamble to the next version of the dDCO to confirm that the Examination is being carried out by a single appointed person, by removing the square brackets from the second paragraph.</p>
12.	Art 2(1)	<i>“cycle track” has the same meaning as in the 1980 Act as if the words “or without” were omitted and includes part of a cycle track;</i>	<p>Article 2: Interpretation</p> <p>(Highways Act 1980)</p> <p>The effect of this amendment to the 1980 Act definition is to exclude ‘pure’ cycle tracks, i.e. those on which there is no right of way on foot.</p> <ul style="list-style-type: none"> • Why is that considered necessary in this particular case? • Are all cycle tracks intended to be subject to this definition appropriate to be what amounts to shared surface facilities?
13.	Art 2(1)	<i>“the engineering drawings and sections” means the drawings and sections listed in Part 1 of <u>Schedule 10 (plans)</u> and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order</i>	<p>Please amend the drafting to read:</p> <p><i>Schedule 10 (documents to be certified)”</i></p>
14.	Art 2(1)	<i>“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act and “highway” includes part of a highway</i>	<p>(Highways Act 1980)</p> <p>The definition of highway in s328(1) of the 1980 Act states that <i>“...“highway” means the whole or a part of a highway other than a ferry or waterway”.</i></p> <ul style="list-style-type: none"> • Why is it necessary to include the reference to ‘part of a highway’ in the dDCO definition?

Q No.	Part of DCO	Drafting example (where relevant)	Question
15.	A rt 2(1)	<i>“the land plans” means the plans listed in Part 2 of Schedule 10 (plans) and certified as the land plans by the Secretary of State for the purposes of this Order, and references to a particular land plan must be construed accordingly</i>	<p>Please amend the drafting to read:</p> <p><i>Schedule 10 (documents to be certified)</i></p> <p><i>...references to a particular land plan <u>are to be construed accordingly</u>?</i></p>
16.	A rt 2(1)	<i>“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;</i>	<p>The EM [APP-011] does not mention this definition, which appears to be more extensive than the ordinary meaning of ‘maintain’ in most made Orders. In particular inclusion of ‘adjust’ and ‘alter’ appears to enable changes to such scheme as may be approved, under the guise of maintenance works that may go beyond the Rochdale envelope. The drafting appears to be derived from the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 and has also been employed in the made Order for the A14.</p> <ul style="list-style-type: none"> • Noting that this drafting has been employed in highways made DCOs but that it is wider than definitions typically deemed acceptable to other Secretaries of State and there is no explanation of the need for this approach in the EM, the Applicant is asked why this drafting is justified? • Notwithstanding previous use of this definition, is it necessary to augment it to clarify that actions construed as maintenance remain within the Rochdale envelope as specified and assessed in certified plans and documents? • A broad definition of “maintain” can be justified where the Rochdale envelope for maintenance activities is well defined, with reference to clear explanations in the Environmental Statement (ES). Whilst the specifics of this will remain a matter for examination in written questions or at a later hearing, consideration should be given to the potential compound effect of a broad definition of “maintain” in the dDCO, combined with vagueness about maintenance activities in the ES.

Q No.	Part of DCO	Drafting example (where relevant)	Question
17.	Art 2(1)	<i>“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference</i>	<p>The definition of ‘Order land’ is relevant to the compulsory acquisition articles. The land plans show the outer envelope of the development by a red line, described in the Key as the ‘Limits of land to be acquired or used permanently or temporarily’. A possible interpretation of the effect of this is that the whole of the land within the red line is susceptible to compulsory acquisition under Art 20 (although this is expressed to be subject to Art 23(2) and Art 29(8)²), those sub-paragraphs only relate to parts of the Order land as described respectively in Schedules 5 and 7 so that all other Order land could in principle be acquired compulsorily.</p> <ul style="list-style-type: none"> • Can the Applicant justify this approach, by reference to the Statement of Reasons? • Could the definition be more succinctly expressed as <i>“Order land” means the land shown on the land plans which is within the Order limits, and described in the book of reference?</i>
18.	Art 2(1)	<i>“the Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the <u>lands plans</u> and works plans within which the authorised development may be carried out</i>	<p>Please amend the drafting to read: <i>land plans</i></p> <p>Can the Applicant confirm that the ‘Limits of land to be acquired or used permanently or temporarily’ are intended to be – and are – identical on the works and land plans?</p>
19.	Art 2(1)	<i>“statutory undertaker” means any statutory undertaker for the purposes of s127(8) of the 2008 Act;</i>	Is it necessary to define the term “statutory undertaker” in a manner already provided for in PA2008 (the parent legislation to the dDCO)?

² Should this reference be to Art 29(9)?

Q No.	Part of DCO	Drafting example (where relevant)	Question
20.	Art 2(1)	<i>“streets, rights of way and access plans” means the plans listed in Part 3 of <u>Schedule 10 (plans)</u> and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order, and references to a particular streets, rights of way and access plan <u>must be construed accordingly</u></i>	<p>Please amend the drafting to read:</p> <p><i>Schedule 10 (documents to be certified)</i></p> <p><i>...rights of way and access plan <u>are to be construed accordingly</u></i></p>
21.	Art 2(1)	<i>“the works plans” means the plans listed in Part 4 of <u>Schedule 1 (plans)</u> and certified as the works plans by the Secretary of State for the purposes of this Order, and references to a particular works plan <u>must be construed accordingly</u>.</i>	<p>Please amend the drafting to read:</p> <p><i>Schedule 10 (documents to be certified)</i></p> <p><i>...references to a particular works plan <u>are to be construed accordingly</u></i></p>
22.	Art 3(2)	<i>(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.</i>	<p>Article 3: Development consent</p> <p>The explanation in paragraph 5.11 of the EM [APP-011] is noted, as is the use of an equivalent provision in other made highways DCOs. However, the Applicant is requested to:</p> <ul style="list-style-type: none"> • provide further explanation as to why this general, vague and extensive provision is necessary and justified <u>for this particular project</u>; • Provide examples of particular enactments that the Applicant considers may otherwise interfere with the operation of the dDCO; • explain in particular why it should apply to land outside the Order limits; and • explain how far outside the Order limits it would apply, noting that the term ‘adjacent’ is undefined? • Is there an argument that for certainty, this provision should only apply to land within the Order limits?

Q No.	Part of DCO	Drafting example (where relevant)	Question
23.	Art 6		<p>Article 6: Limits of deviation</p> <p>The lateral limits of deviation are shown coloured pink on the works plans, and appear to provide an envelope within which a number of works may be carried out (see e.g. Works Plan 1 of 3 [APP-007]), rather than providing limits of deviation for individual works.</p> <ul style="list-style-type: none"> • Is this interpretation correct? • Given the difference in purpose and effect between the individual works, is this approach sufficiently precise?
24.	Art 6		<p>The vertical limits of deviation are defined as 0.25m upwards or downwards. It is noted that the made Order for the A14 includes a similar provision but with a limit of 0.5m.</p> <ul style="list-style-type: none"> • Is it possible to define the vertical limits of deviation to the level of precision proposed within this dDCO; and • could the precise definition proposed here have the effect of triggering a large number of references to the Secretary of State for authorisation which arguably may not be necessary?
25.	Art 7(2)	<p><i>(2) Paragraph (1) does not apply to <u>the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.</u></i></p>	<p>Article 7: Benefit of Order</p> <p>Although a similarly drafted provision was used in the made Order for the A14, this provision seems imprecise. Is it possible to itemise or otherwise clearly identify the works to which sub-paragraph 7(1) will not apply, and identify the individuals or organisations for whose benefit the consent would expressly be granted in each case?</p>
26.	Art 8(4)	<p><i>(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to—</i></p> <p><i>(a) Northern Powergrid Limited for the purposes of undertaking Work No.9;</i></p> <p><i>(b) <u>Northumbrian Water Limited</u> for the purposes of undertaking Work No.24;</i></p>	<p>Article 8: Consent to transfer benefit of Order</p> <p>Please amend the drafting to read:</p> <p><i>Northumbrian Water Ltd</i> (see definition in Art 2(1))</p> <p>(Alternatively, the definition in Art 2(1) and in Schedule 1 Work No.24 could be amended to the form used in this provision. There may be a consistency argument in favour of applying the same</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
			approach to Northern Powergrid Limited – see Q4 above.)
27.	Art 9(7)(b)	<p><i>(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—</i> <i>(b) means that the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act;</i></p>	<p>Article 9: Application of the 1991 Act (New Roads and Street Works Act 1991) The EM [APP-011] says that under this provision “<i>Highways England will not be under the duties that apply to a “street authority” for the purposes of the 1991 Act by virtue of being responsible for the maintenance of a street under article 10.</i> Can the Applicant explain:</p> <ul style="list-style-type: none"> • why it considers that it should not be subject to those duties; and • whether any other authority would be under those duties; and • the consequences if no authority was under those duties?
28.	Art 10(1)	<p><i>10.—(1) Any street (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.</i></p>	<p>Article 10: Construction and maintenance of new, altered or diverted streets (New Roads and Street Works Act 1991) ‘Street’ has a wide definition under Art 2(1) and s48 of the 1991 Act and is not limited to highways.</p> <ul style="list-style-type: none"> • Can the Applicant confirm whether any non-highway streets are to be constructed under this Order; • if so, why should they become maintainable by the highway authority; and • if not, would it not be more appropriate to refer to ‘highway’ rather than ‘street’ in this article? • Is it reasonable for the highway authority to be responsible for maintenance of a newly constructed highway on its completion, rather than after a defined period to allow for any faults to be attended to?

Q No.	Part of DCO	Drafting example (where relevant)	Question
29.	Art 13		<p>Article 13: Permanent stopping up and restriction of use of streets and private means of access</p> <p>This article is drafted to deal in the same way with stopping-up of both streets and private means of access. In those cases where a substitute is to be provided, the article provides that this is to be done to the reasonable satisfaction of the street authority.</p> <ul style="list-style-type: none"> • However, is the street authority the appropriate body to adjudicate in relation to private means of access, or should the adjudication be by the owner of that access or another person? • If the street authority is not the appropriate body to adjudicate, what person is appropriate to hold this power?
30.	A13(6)	<p><i>(6) Any person who suffers loss by the suspension or extinguishment of any <u>private right of way</u> under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</i></p>	<p>This article only provides for compensation for loss of a private right of way. There is no provision for compensation for loss of a private means of access. Although A13(4) limits the situations in which a private means of access can be stopped-up where no substitute is provided, one of the conditions is that there is another reasonably convenient access. The situation can be envisaged where, although there is such an alternative access that is reasonably convenient, nonetheless the loss of the (more) convenient access would detrimentally affect the owner (and potentially involve human rights considerations).</p> <ul style="list-style-type: none"> • Should the compensation provision be extended to stopping-up of private means of access?

Q No.	Part of DCO	Drafting example (where relevant)	Question
31.	Art 15		<p>Article 15: Clearways</p> <p>This article imposes waiting restrictions which would otherwise require an Order under the Road Traffic Regulation Act (a TRO). There are specific consultation and publicity requirements for such orders. The EM [APP-011] indicates that the consultation and publicity requirements for this dDCO application are considered to be a more than adequate substitute for those requirements. However, the dDCO application consultation and publicity are less focussed than an express consultation on a TRO.</p> <ul style="list-style-type: none"> • Is the Applicant able to point to any elements of the consultation and publicity for the dDCO application that would draw consultee's attention to the Clearway proposals? • If not, can the Applicant suggest measures that might reasonably be taken during this examination to ensure that entities that might have expected to be consulted on a TRO are aware of and have responded to the Clearway proposals in the dDCO?
32.	Art 15(1)	<p><i>15—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic, save as provided in paragraph (2), no person may cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.</i></p>	<p>(Road Traffic Regulation Act 1984)</p> <p>The Clearway prohibitions in the dDCO would take effect as if made by order under the 1984 Act (see Art 15(4)).</p> <ul style="list-style-type: none"> • Is the intention to make non-compliance an offence, as with a Clearway order under the 1984 Act? • The article makes no provision for signage. Can the Applicant indicate how Clearway signage is provided for under the dDCO? • If the dDCO does not provide for Clearway signage, how will persons subject to the prohibition be made aware of it, and how will that be secured? • The EM [APP-011] points out that wording of this nature has been included in the made Order for the A19/A1058. What approach was taken or is intended to be taken to the provision of Clearway signage under that DCO?

Q No.	Part of DCO	Drafting example (where relevant)	Question
33.	Art 16(3)	<p>(3) <i>The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.</i></p>	<p>Article 16: Traffic regulation</p> <p>The EM [APP-011] explains that <i>“The purpose of this article is to provide Highways England with powers to make traffic regulation orders in relation to roads for which it is not the highway authority, so that it can implement traffic management measures (e.g. restrictions on the use of roads) necessary to construct the authorised development”</i>. The power is expressed to come into operation 12 months before the opening of the authorised development for public use.</p> <ul style="list-style-type: none"> • Can the Applicant explain the timescales involved and in particular whether the date of opening is inevitably known 12 months in advance? • If the date of opening might not be precisely known 12 months in advance, would there be another more certain means of specifying when this power may be exercised?
34.	Art 16(8)	<p>(8) <i>Before exercising the powers of paragraph (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.</i></p>	<p>This gives wide discretion to the undertaker.</p> <ul style="list-style-type: none"> • Should the article specify particular persons as well as “such persons as [the undertaker] considers necessary and appropriate to consult”? • In particular, as any prohibition or restriction will take effect as a TRO (see Art 16(6)) should equivalent consultation and publicity to that for a TRO be required?

Q No.	Part of DCO	Drafting example (where relevant)	Question
35.	Art 18(2)(b)	<i>(b) after the completion of that part of the authorised development in the vicinity of the building <u>at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.</u></i>	<p>Article 18: Protective work to buildings</p> <p>This provision would allow entry into buildings to carry out protective works as of right (albeit on notice) under A18(4) up to 5 years after the road is open for use. The EM [APP-011] indicates that this wording has been used in other DCOs. However, initial site inspections using the Works Plans [APP-007] suggest that there are only limited circumstances in which this power might be required.</p> <ul style="list-style-type: none"> • Can the Applicant explain why in this particular case it is considered necessary to both hold and then to retain a power of entry as of right for such a long period after the opening of the road scheme?
36.	Art 20(1)	<i>20.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.</i>	<p>Article 20: Compulsory acquisition of land</p> <p>See previous comment about the definition of the 'Order land' in Art 2(1).</p>
37.	Art 23(2)	<i>(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or <u>the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.</u></i>	<p>Article 23: Compulsory acquisition of rights and restrictive covenants</p> <p>The purposes specified in Schedule 5 are all to "construct, operate, access and maintain" various specified works. On the face of it, such purposes do not require the imposition of restrictive covenants.</p> <ul style="list-style-type: none"> • Can the Applicant explain how restrictive covenants are to be used to achieve those purposes? • If they are not required, is the power to impose them necessary?

Q No.	Part of DCO	Drafting example (where relevant)	Question
38.	Art 24(3)	<p>(3) <i>Subject to the provisions of this article, all private rights over land owned by the undertaker which, <u>being within the limits of land which may be acquired or used shown on the land plans</u>, are required for the purposes of this Order are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.</i></p>	<p>Article 24: Private rights over land</p> <p>The land plans refer to “<i>within the limits of land to be acquired or used permanently or temporarily</i>”.</p> <ul style="list-style-type: none"> • Is what is intended here more succinctly stated as “<i>all private rights over land owned by the undertaker which, <u>being within the Order limits</u>, are required for the purposes of this Order</i>”? • What is the relevance of the phrase “<i>are required for the purposes of this Order</i>” in any event; the purpose of the provision is presumably to clear private rights from the title of land owned by the undertaker, in which case the phrase is confusing?
39.	Art 24(5)	<p>(5) <i>Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act</i></p>	<p>(The Land Compensation Act 1961)</p> <p>PA2008 s152 contains a self-contained code for compensation in situations where there is no right to claim in nuisance. PA2008 s152(8) precludes a DCO from including a provision the effect of which is to modify the application of the previous sub-sections.</p> <ul style="list-style-type: none"> • As PA2008 s152 does not mention the 1961 Act, Art 24(5) appears to have an effect that runs counter to the preclusion in PA2008 s152(8). Can the Applicant please explain how Art 24(5) will operate with reference to this preclusion? • Can the Applicant explain why (unlike other references in the dDCO to the resolution of disputes under the 1961 Act) in this case reference is also made to s152?

Q No.	Part of DCO	Drafting example (where relevant)	Question
40.	Art 25(1)(a)(ii)	(ii) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 22 <u>of the</u> (time limit for exercise of authority to acquire land compulsorily) of the A19/A184 Testos Junction Improvement Development Consent Order 201[]”.	<p>Article 25: Application of Part 1 of the 1965 Act (The Compulsory Purchase Act 1965) Please amend the drafting to read:</p> <p><i>...article 22 of the (time limit for exercise of authority to acquire land compulsorily) of the A19/A184...</i></p> <p>See also Art 26 below.</p>
41.	Art 26(4)	(<p>Article 26: Application of the Compulsory Purchase (Vesting Declarations) Act 1981 (Compulsory Purchase (Vesting Declarations) Act 1981) Art 2(1) defines the Compulsory Purchase (Vesting Declarations) Act 1981 as “the 1981 Act”.</p> <ul style="list-style-type: none"> Given that definition, and consistent with the approach taken to the Compulsory Purchase Act 1965 in Art 25 (see above), is there an argument that this article should be entitled: <p>‘Application of the 1981 Act’</p> <p>See also the general commentary on drafting consistency above.</p>
42.	Art 26(4)	4) Section 5 (earliest date for execution of declaration) is omitted.	<p>Section 5 of the 1981 Act provides that a vesting declaration is not to be executed before the CPO comes into operation. Art 26(1) provides that the 1981 Act applies as if the dDCO was a CPO.</p> <ul style="list-style-type: none"> The EM [APP-011] does not explain why this section is to be omitted; can the Applicant please clarify?

Q No.	Part of DCO	Drafting example (where relevant)	Question
43.	Art 26(8)	<i>(8) In section 7 (constructive notice to treat) in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.</i>	<p>The effect of this sub-paragraph is to make the Land Compensation Act 1961 apply without the modifications in section 4 of the 1981 Act.</p> <ul style="list-style-type: none"> The EM [APP-011] does not explain why this section is to be omitted; can the Applicant please clarify?
44.	Art 26(9)	<i>(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).</i>	<p>Paragraph 1(2) of Schedule A1 merely appears to contain a cross-reference to section 2A of the Acquisition of Land Act 1981, without modifying that section.</p> <ul style="list-style-type: none"> The EM [APP-011] does not explain this omission; can the Applicant please clarify?
45.	Art 29(2)	<i>(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</i>	<p>Article 29: Temporary use of land for carrying out the authorised development</p> <p>In relation to land of which temporary possession (TP) is taken under Art 29(1)(a)(ii) - “any other Order land”:</p> <ul style="list-style-type: none"> should the notice be required to state the work for which TP is being taken and the anticipated date of completion of that work, so that the owners and occupiers can understand the purpose and duration of TP, having regard to Art 29(3)(b)? In the absence of a statement in the notice of the purpose for which TP was taken, how is an affected owner or occupier to ascertain when the one year period referred to in sub-paragraph (3) will end?
46.	Art 29(9)	<i>(9) The undertaker <u>may not</u> compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i)</i>	<p>Please amend the drafting to read:</p> <p><i>The undertaker <u>cannot</u> compulsorily acquire...</i></p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
47.	Art 30(3)	<i>(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</i>	<p>Article 30: Temporary use of land for maintaining the authorised development</p> <p>As for Art 29(2) above:</p> <ul style="list-style-type: none"> • should the notice be required to state the work for which TP is being taken and the anticipated date of completion of those works so that the owner may have some idea of the purpose and duration of TP?
48.	Art 31(1)	<p><i>31.—(1) Subject to the provisions of Schedule 9 (protective provisions), article 23 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—</i></p> <p><i>(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, <u>the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used permanently or temporarily and described in the book of reference;</u></i></p> <p><i>(b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over the Order land.</i></p>	<p>Article 31: Statutory undertakers</p> <p>Would this provision be more simply phrased as: <i>....any Order land belonging to statutory undertakers;</i> (as with Art 31(1)(b)) and having regard to the definition of 'Order land'?)</p>
49.	Art 32(8)	<p><i>(8) In this article—</i></p> <p>...</p> <p><i>“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003</i></p>	<p>Article 32: Apparatus and rights of statutory undertakers in stopped-up streets (Highways Act 1980)</p> <p>The definition of 'statutory utility' in the 1980 Act excludes some statutory undertakers that one would expect to be protected by this provision, e.g. electricity, water and gas undertakers. (These were included in the 1980 Act definition as originally enacted but have been removed by subsequent amendments to s329 of that Act). The EM [APP-011] does not address this.</p> <ul style="list-style-type: none"> • Why is this limited definition appropriate in the circumstances of this case?

Q No.	Part of DCO	Drafting example (where relevant)	Question
50.	Art 33(4)	<p>33.—(1) Where any apparatus of a <u>public utility undertaker</u> or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.</p> <p>....</p> <p>(4) In this paragraph—</p> <p>.....</p> <p>“<u>public utility undertaker</u>” has the same meaning as in the 1980 Act</p>	<p>Article 33: Recovery of costs of new connections (Highways Act 1980)</p> <p>The definition of “public utility undertaker” in the 1980 Act is limited to an undertaking for the supply of gas or hydraulic power. (This has come about pursuant to amendments to s329 of that Act). The EM [APP-011] does not address this.</p> <ul style="list-style-type: none"> • Why is this article limited to the consequences of removal of connections to gas or hydraulic power? • What provision is made for the consequences of removal of connections to other services?
51.	Art 34 and Art 36		<p>Article 34: Felling and lopping of trees and removal of hedgerows</p> <p>Article 36: Trees subject to Tree Preservation Orders</p> <p>Please identify whether and if so by which provisions any mitigation associated with the exercise of powers to fell or lop trees or remove hedgerows granted in Art 34 or to fell or lop any trees subject to a Tree Preservation Order (TPO) are secured?</p>
52.	Art 40		<p>Article 40: Crown rights</p> <p>Can the Applicant provide evidence from correspondence that the form of this article been agreed by the Crown Estate in relation to this particular project?</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
53.	Art 41		<p>Article 41: Certification of plans Art 41(1) (a) to (g) lists documents and plans that are required to be submitted to the SoS for certification. This task is also undertaken more fully and with reference to precise titles, document / drawing numbers and version numbers in Schedule 10.</p> <ul style="list-style-type: none"> Is there an argument that Art 41 should be re-drafted to refer only to 'copies of documents identified in Schedule 10' and that all relevant documents would then be itemised fully in Schedule 10.
54.	Art 43	<p><i>...to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.</i></p>	<p>Article 43: Arbitration There appears to be no process in terms for 'appeals' relating to discharge decisions and related determinations on requirements (see also Q9 and Q76 (Schedule 2, Part 2)).</p> <ul style="list-style-type: none"> Are such disputes intended to be resolved under Art 43 and if so does it contain sufficient provision? <p>Whilst it is noted that recent highways made Orders have included a provision enabling appointment of an arbitrator by the President of the Institution of Civil Engineers, it has now become well established practice in DCOs more generally for the appointment of arbitrators to be by the SoS and not by the President of a professional body. The reason for this change has been to recognise that arbitration under a DCO is a public law and public interest function that falls within the remit of and accountability to the SoS responsible for the DCO, rather than within the sectoral interest of a professional body.</p> <ul style="list-style-type: none"> Should reference to the appointing function of the President of the Institution of Civil Engineers be substituted for reference to the SoS?

Q No.	Part of DCO	Drafting example (where relevant)	Question
55.	Schedule 1	<p><i>A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and <u>associated development</u> as defined in section 115 of the 2008, comprising:</i></p>	<p>Schedule 1: Authorised Development The EM [APP-011] paragraph 3.5 identifies Work Nos 4, 9, 11-21 and 23-27 as associated development within the meaning of the DCLG guidance. Should they be separately identified as such in this Schedule?</p>
56.	Schedule 1	<p><i>‘Work No.2 — The construction of a new section of the A19 dual carriageway approximately 2,085m in length over the Testos roundabout, including associated embankments, structures, gantries and roadside furniture, and commencing at the existing A19 at Downhill Lane junction and tying into the existing A19 approximately 835m north of Testos roundabout, as shown between points 1/1 on Sheet 1 and 3/4 on Sheet 3 of the Streets, Rights of Way and Access Plans.’</i></p>	<p>The works described as Work No.2 are the primary constituent element of the development for which consent is sought. The description in Schedule 1 is summarised and at a very high level, broad in scope and description and lacking in detail. Some of its breadth and lack of detail might be argued to lead to vagueness and potential uncertainty about the extent and effects of these works and to concerns about whether they are adequately secured within their assessed Rochdale envelope.</p> <ul style="list-style-type: none"> • With reference to Q57 below, are there ways in which works elements currently set out as ‘lettered works’ could be incorporated into the description of Work No.2 in a manner that would make its description more precise and certain?
57.	Schedule 1		<p>In addition to numbered works, Schedule 1 (Authorised development) contains a variety of unspecified yet potentially substantial development and works in items (a) – (p) (the ‘lettered works’), many of which may impinge on the functions of other authorities or in respect of which there may arguably need to be a greater specification of location and extent on the Works Plans [APP-007].</p> <p>For example:</p> <ul style="list-style-type: none"> • The lettered works described at (a) enable substantial alterations to streets that would otherwise be controlled by the street authority. The locations of these works are not specified. There appears to be no requirement for prior consultation with or consent by such authorities for lettered works (a). • The lettered works described at (d) and (o) to a large degree

Q No.	Part of DCO	Drafting example (where relevant)	Question
			<p>consist of the physical components of the numbered works that relate to the formation of the altered highway and arguably should be included within the relevant numbered works by better description.</p> <ul style="list-style-type: none"> • The lettered works described at (n) and (p) to a large degree comprise preparatory and supporting works that in other made DCOs have been described as numbered works and shown on a Works Plan. • Is this extensive list of categories of lettered works sufficiently certain and justified, as it may imply uncertainty as to the extent, location and effect of what is being permitted by the dDCO? • Could these lettered works be included within the relevant numbered works or become additional numbered works shown on the Works Plans [APP-007]? • Are there any circumstances in which any further consultation with or consent by relevant authorities should be sought before any of the lettered works are implemented?
58.	Schedule 2		<p>Schedule 2: Part 1: Requirements A number of requirements (but see below in Q60) refer to matters being agreed by the SoS 'following consultation with the relevant planning authority <u>on matters related to its functions</u>'. This provision appears to limit the power of the Secretary of State to undertake such consultation as he may consider necessary and appropriate.</p> <ul style="list-style-type: none"> • Would the operation of any requirement be harmed by removal of the words 'on matters related to its functions' in respect of a duty or power in the SoS to consult any public authority?

Q No.	Part of DCO	Drafting example (where relevant)	Question
59.	Schedule 2, R1	<i>“HEMP” means the handover environmental management plan, to be developed towards the end of the construction of the authorised development which is to contain—</i>	<p>References in this provision to the ‘HEMP’ refer to what is more usually termed an Operations (or Operational) Environmental Management Plan (or OEMP) and might be better understood if that term were employed and also if it were the subject of a requirement providing specifically for it. (It may also be preferable to set this term out in full, as it is not widely used elsewhere in the dDCO (see Q61 below)).</p> <p>“[T]owards the end of the construction” is vague.</p> <ul style="list-style-type: none"> • Should a more precise term be used to trigger production of the HEMP (or an equivalent document) and what might that be? • Should the HEMP (or an equivalent document) be defined in a manner that obliges it to provide a greater measure of content conformity with the CEMP and / or to continue to deliver those commitments in the REAC that require oversight or active management in the operational phase? • Generally, the dDCO contains no procedure for consultation on or approval of the HEMP (or an equivalent document). Should a procedure be defined?
60.	Schedule 2, R3(1)	<i>3.—(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the works engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any <u>materially new or materially worse adverse environmental effects</u> in comparison with those reported in the environmental statement.</i>	<p>Whilst the ExA is aware that similar drafting was employed in the made A14 Order, good DCO drafting practice more generally has been to ensure that changes to engineering drawings and sections would not give rise to any <u>materially new or materially different</u> environmental effects. If such effects arise then arguably, the made DCO needs to be subject to a material change process and an Amendment Order.</p> <ul style="list-style-type: none"> • Are any further changes to this drafting warranted to ensure that this drafting is not interpreted as a ‘tail-piece’, authorising what should otherwise need to be the subject of a material change to a made DCO that would need an Amendment Order in due course?

Q No.	Part of DCO	Drafting example (where relevant)	Question
61.	Schedule 2, R3(2)	<p><i>(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and <u>the undertaker must make those amended details available in electronic form for inspection by members of the public.</u></i></p>	<p>Assuming that any elements of the Engineering Drawings and Sections [APP-009] are changed:</p> <ul style="list-style-type: none"> • How will public inspection of amended plans be provided for and achieved, including how members of the public will be made aware of how to inspect the amended plans? • How does the operation of this requirement relate to the register of requirements provided for in R15 (and see Q75 below)? • Could R15 be amended to address the matters raised here? <p>See also Q84 below, in relation to the location for inspection of hard copy documents, which is currently provided to be in Guildford, Surrey.</p>
62.	Schedule 2, R4	<p><i>4.—(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the outline CEMP (Application Document TR010020/APP/7.2) for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority to the extent that it relates to matters relevant to its function.</i></p> <p><i>(2) The CEMP must reflect the mitigation measures set out in the REAC.</i></p> <p><i>(3) The construction of the authorised development must be carried out in accordance with the approved CEMP.</i></p> <p><i>(4) The authorised development must be operated and maintained in accordance with the HEMP.</i></p>	<p>This requirement provides the basis and security for the preparation of the CEMP and links its content to the outline CEMP. Whilst mitigation measures are tied to the REAC to some extent, there is less specification about the content of the CEMP or particular environmental outcomes that it must deliver than is typically the case in other made Orders. For example, R3 in the made A19 / A1058 Coast Road Order relating to the CEMP for that project closely specifies the working hours for construction, the environmental features, topics and the mitigation measures to be addressed in the CEMP. It provides significantly greater security for CEMP content and works and environmental outcomes than does this draft. Questions about the need for and scope of security for individual outcomes will need to be discussed in later written questions and hearings, once the content of WRs is known. However, the Applicant is placed on notice of and requested to give preliminary consideration to the following questions:</p> <ul style="list-style-type: none"> • Are there any particular environmental features, performance measures or standards that are of such importance that they should be individually specified in this or another requirement? • How do the subject-matters of R5 – R9 inclusive relate to the

Q No.	Part of DCO	Drafting example (where relevant)	Question
			<p>CEMP and would a more specific connection between those requirements and the CEMP be justified?</p> <ul style="list-style-type: none"> • Should the subject matter content of the CEMP be specified in this or another requirement? • Should the CEMP be required to deliver the mitigation measures set out in the REAC to the extent of being 'substantially in accordance with' the REAC? <p>Q59 above seeks observations on the possible need for additional provision in requirements to define process around the content, making and operation of the HEMP (or an equivalent document) and to regulate its relationship with the ES, the CEMP and the REAC.</p> <p>Apart from the definition in R1 (as to which see Q59), this is the only other mention of the HEMP in the dDCO.</p> <ul style="list-style-type: none"> • Should this or another provision be additionally drafted to address the matters raised in Q59?
63.	Schedule 2, R5(2)	<i>(2) The landscaping scheme must reflect the mitigation measures set out in the REAC.</i>	<p>Is the linkage between the landscaping scheme and the 'mitigation measures' in the REAC sufficiently certain and clear?.</p> <ul style="list-style-type: none"> • Can the relevant REAC provisions relating to landscaping be more precisely identified in this sub-paragraph? • Also, might this be a place where the most up-to-date version of the Environmental Master Plan (EMP) might be referred to and performance to meet it secured? (If not, would it be appropriate to perform this function elsewhere?)
64.	Schedule 2, R6(2)	<i>(2) Where <u>the undertaker determines</u> that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, <u>following consultation with the relevant planning authority on</u></i>	<p>There are a number of issues that arise in relation to this requirement.</p> <ul style="list-style-type: none"> • Should "contaminated land" be defined as in e.g. Schedule 2, R1 of the A14 Cambridge to Huntingdon Improvement Order 2016? • There is a divergence of approach to this issue between the made A14 Order and the made A19/A1058 Order. The made A14 Order

Q No.	Part of DCO	Drafting example (where relevant)	Question
		<i>matters related to its function and the Environment Agency.</i>	<p>takes the same broad approach as this draft, in which the undertaker is the arbiter of whether remediation is required. In the made A19/A1058 Order at R7. The relevant planning authority was the arbiter. What is the reason for the difference in approach?</p> <ul style="list-style-type: none"> • Is it appropriate that the undertaker should be the arbiter as to whether remediation is required (also bearing in mind that the benefit of the order may in principle be transferred to another body under A7)? • Where unexpected contamination is found, what action should be taken? Should works on that part of the development cease until a remediation scheme has been agreed and is ready for implementation?
65.	Schedule 2, R7		Has this requirement been agreed with Natural England?
66.	Schedule 2, R7(1)	<i>7.—(1) No part of the authorised development is to commence until for that part final preconstruction survey work has been carried out to establish whether <u>European or nationally protected species</u> are present on <u>any of the land affected by the relevant works</u>, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.</i>	<p>There are a number of issues that arise in relation to this requirement.</p> <ul style="list-style-type: none"> • “...<i>European protected species or nationally protected species are present...</i>” Is it necessary to be clear that this secures pre-construction surveys over and above the survey work carried out to inform the ES? • “nationally protected species” should be defined as in e.g. Schedule 2, R1 of the A14 Cambridge to Huntingdon Improvement Order 2016 • “...<i>any of the land affected, or likely to be affected, by any part of the relevant works...</i>” as in the A14 Cambridge to Huntingdon Improvement Order 2016?

Q No.	Part of DCO	Drafting example (where relevant)	Question
67.	Schedule 2, R7(2)(b)	<p><i>(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—</i></p> <p><i>(a) a protected species is shown to be present, or where there is reasonable likelihood of it being present;</i></p> <p><i>(b) a likely significant effect is identified which was not previously identified in the environmental statement; and.....</i></p>	<p>Is the reference to ‘a likely significant effect’ sufficiently clear and precise, or should further clarification be provided?</p>
68.	Schedule 2, R8(1)	<p><i>8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the <u>mitigation measures set out in the REAC</u> including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant <u>planning authority on matters related to its function.</u></i></p>	<p>The phrase ‘mitigation measures’ is vague and uncertain.</p> <ul style="list-style-type: none"> • Can the relevant REAC provisions relating to this issue be more precisely identified in this paragraph? • Whilst this is a matter which may be addressed more properly in written questions, is this a location where the drainage strategy mentioned in the ES [APP-018] (at para 14.6.9) might be secured?
69.	Schedule 2, R9(1)	<p><i>9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the <u>relevant mitigation measures set out in the REAC</u>, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant <u>planning authority on matters related to its function.</u></i></p>	<p>The phrase ‘mitigation measures’ is vague and uncertain.</p> <ul style="list-style-type: none"> • Can the relevant REAC provisions relating to this issue be more precisely identified in this sub-paragraph?

Q No.	Part of DCO	Drafting example (where relevant)	Question
70.	Schedule 2, R9(4)&(5)	<p><i>(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority within a period of 14 days from the date they are identified.</i></p> <p><i>(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date they are identified unless otherwise agreed in writing by the relevant planning authority.</i></p>	<p>There is scope in this drafting for works that affect archaeological remains to be undertaken before the relevant planning authority has determined whether or not any additional investigations are warranted.</p> <ul style="list-style-type: none"> • Should the period within which construction operations are precluded (sub-paragraph (5)) be longer than that allowed for the LPA to be notified (sub-paragraph (4)), so that it has an opportunity to respond before construction recommences?
71.	Schedule 2, R11	<p><i>11. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to <u>include any amendments that may subsequently be approved in writing.</u></i></p>	<p>There are a number of issues that arise in relation to this requirement.</p> <ul style="list-style-type: none"> • “...include any amendments that may subsequently be approved in writing under the terms of the relevant requirement”? • There should be a restriction on amendments to ensure that they do not give rise to matters not considered in the ES. Although there is such a restriction in R3, R11 would also apply to other approved details (e.g. R8) • The requirement should be extended to include approved schemes as well as approved details?
72.	Schedule 2, R12	<p><i>12. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the <u>undertaker’s Manual of Contract Documents for Highway Works</u> except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.</i></p>	<p>There following issues arise in relation to this requirement.</p> <ul style="list-style-type: none"> • “...<u>Highways England’s Manual of Contract Documents for Highway Works...</u>”? (Or has this been formally re-issued by the Applicant?) • Should this document be a certified document?

Q No.	Part of DCO	Drafting example (where relevant)	Question
73.	Schedule 2, R13(1)	<i>13.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval requirement by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—</i>	This provision appears to impose a ‘guillotine’ on the SoS, having regard to sub-paragraphs (2) and (particularly) (3), which could in principle provide for a deemed consent to a proposal that gave rise to materially worse environmental effects than reported in the ES.
74.	Schedule 2, R15 and R16		<p>Schedule 2: Part 2: Procedure for Discharge of Requirements</p> <p>These two requirements do not appear to relate to the ‘Procedure for discharge of requirements’ which is the heading of Part 2 of the Schedule.</p> <ul style="list-style-type: none"> • Should they be included in Part 1? (However, see also Q76 below.)
75.	Schedule 2, R15	<i>15.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.</i>	<p>An electronic register of requirements is proposed.</p> <ul style="list-style-type: none"> • How is the public to be made aware of the existence of the register and how to access it? • See also Q61 above and Q84 below, in relation to notice of and the location for inspection of hard copy documents, which is currently provided to be in Guildford, Surrey.
76.	Schedule 2 Discharge, related determinations and appeals on requirements		<p>See general drafting points above in Q9. See also Q74. It is not clear that Part 2 as currently drafted provides a sufficiently clear distinction between operational requirements (set out in Part 1) and procedural requirements (set out in Part 2). A considerable number of made Orders do not seek to make this distinction.</p> <ul style="list-style-type: none"> • The clarity and future interpretation of the Order may be better served by consolidating Part 1 and Part 2 into a single unified schedule. <p>Part 2 would appear to be a possible home for any provisions dealing with appeals on the discharge of requirements and related determinations (see also Q9 and Q54 (Art 43)).</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
			<ul style="list-style-type: none"> • If such provision has been made elsewhere, the Applicant is requested to identify it and explain its operation. • If such provision has not been made elsewhere, will it be sufficient that any disputes are dealt with under Art 43 (Arbitration) or is a specific provision required?
77.	Schedules 3 and 4		These schedules have yet to be reviewed in detail, pending completion of site inspections and the consideration of relevant and written representations.
78.	Schedule 5		<p>Land in which only New Rights Etc. may be Acquired</p> <ul style="list-style-type: none"> • The effect of Art 23 and the identification of this land and rights will be a subject matter for a Compulsory Acquisition Hearing (CAH) in due course.
79.	Schedule 6		<p>Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights</p> <ul style="list-style-type: none"> • The title of this Schedule should reflect that it also deals with the imposition of restrictive covenants? • Can the Applicant provide a detailed explanation of the application of this Schedule (and justification for its terms), as no explanation is given in the EM [APP-011] • The provisions as explained will be a subject matter for a Compulsory Acquisition Hearing (CAH) in due course.
80.	Schedule 7		<p>Land of which Temporary Possession may be Taken</p> <ul style="list-style-type: none"> • The effect of Art 29 and the identification of this land will be a subject matter for a Compulsory Acquisition Hearing (CAH) in due course.
81.	Schedule 8		<p>Trees Subject to Tree Preservation Orders</p> <ul style="list-style-type: none"> • Should there be a plan to be certified identifying the land subject to Art 36 and to this schedule?

Q No.	Part of DCO	Drafting example (where relevant)	Question
82.	Schedule 9		<p>Protective and Related Provisions</p> <ul style="list-style-type: none"> • Are there any entities of whom the Applicant is aware (other than the prospective beneficiaries of Parts 1 and 2) that are seeking the incorporation of additional protective provisions in the dDCO? • Are the provisions of Part 1 (for the protection of electricity ... undertakers) sufficient to address the relationship between the proposed development and the existing use and development and operational requirements of NGET in relation to the West Boldon Sub-station? • Are any particular provisions likely to be necessary to address the relationship between the proposed development and proposed works to the A19 at Downhill Lane? • Are any particular provisions likely to be necessary to address the relationship between the proposed development and the International Advance Manufacturing Park (IAMP) proposal on land adjacent to Downhill Lane?
83.	Schedule 10		<p>Documents to be Certified</p> <ul style="list-style-type: none"> • Is there an argument that Schedule 10 should contain a complete statement of the documents to be certified and that the overlap that is current found between its function and the function of Art 41 should be clarified? • If this approach was taken, reference to the plans and documents at Art 41(1) (a) to (g) would be removed from the article in favour of a complete record of certified documents being provided in this schedule. • It would be desirable that the documents comprising the Environmental Statement (ES) are recorded in Schedule 10 individually, and with reference to the most recent versions available.

Q No.	Part of DCO	Drafting example (where relevant)	Question
84.	Explanatory Note		<p>Inspection location</p> <ul style="list-style-type: none"> • The Explanatory Note to the dDCO suggests that copies of the made Order and certified plans and documents would in due course be able to be inspected in hard copy at Highways England offices at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ. • It is normal for such documentation to be made available for hard copy inspection in a location within reasonable travelling distance of the proposed development. A location in Surrey is not within reasonable travelling distance. The Applicant is invited to suggest an alternative location that is more reasonably accessible to stakeholders in the North East. • If an electronic means of document inspection is proposed and intended to be the main means of inspection for stakeholders in the North East, should this be mentioned in the Explanatory Note? (See also Q61 and Q75 above.)

Availability of Relevant Representations and Examination documents

All application and Examination documents including Relevant Representations are available free of charge on the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/North%20East/A19--A184-Testos-Junction-Improvement/>

Documents can be viewed electronically via the National Infrastructure website at the following locations. Please note that you may need to bring a form of ID to use the computer at these locations.

Electronic Deposit Locations:

Library/ Address		Opening Hours	
East Boldon Library Boker Lane East Boldon NE36 0RY Telephone: 0191 424 7853 Free access to computers for Library members, or £1 charge per 20 minutes.		Monday – 09-30 to 17-00 Tuesday – 09-30 to 19-00 Wednesday – Closed Thursday – 09-30 to 19-00 Friday – 09-30 to 17-00 Saturday, Sunday and Bank Holidays – Closed	
Boldon Lane Library Boldon Lane South Shields NE34 0LZ Telephone: 0191 456 2852 Free access to computers for Library members, or £1 charge per 20 minutes.		Monday – 09-30 to 17-00 Tuesday – 09-30 to 17-00 Wednesday – 09-30 to 19-00 Thursday – Closed Friday – 09-30 to 17-00 Saturday, Sunday and Bank Holidays – Closed	
Printing Costs		Black and White	Colour
A4		10p	50p
A3		Not available	

Hard Copy Deposit Locations:

Only the Applicant's application documents as submitted to the Planning Inspectorate for Acceptance will be available at the locations listed below. These documents will be available at these locations until the date the Secretary of State issues a decision on the application.

If you wish to view documents received during the Examination, please visit the Electronic deposit locations listed above.

Library/ Address	Opening Hours	
<p>The Word Library</p> <p>The Word 45 Market Place South Shields NE33 1DX</p> <p>Telephone 0191 4427 1818</p>	<p>Monday to Thursday – 09-00 to 19-00</p> <p>Friday – 09-00 to 17-00</p> <p>Saturday, Sunday and Bank Holidays – 10-00 to 16-00</p>	
Copying Costs	Black and White	Colour
A4	10p	Not Available
A3	20p	Not Available
<p>Bunny Hill Customer Service Centre</p> <p>Community Cafe Hylton Lane Sunderland SR5 4BW</p> <p>Telephone 0191 520 5555</p>	<p>Monday to Friday – 08-30 to 17-00</p> <p>Closed Bank Holidays</p>	
Copying Costs	No photocopying available at this facility.	
<p>Highways England</p> <p>Lateral 8 City Walk Leeds LS11 9AT</p> <p>Telephone 0300 470 4418</p>	<p>Monday to Friday – 09-00 to 17-00</p> <p>Closed Bank Holidays</p>	
Copying Costs	Photocopying can be provided for most of the documents (with the exception of the ES Volumes) free of charge, upon request.	

Procedural Decisions made by the Examining Authority (ExA)

The Examining Authority (ExA) has made the following procedural decisions under Section 89(3) of the PA2008:

1. Draft Examination Timetable: Deadline for Submission of comments on Relevant Representations (RR)

I have made a procedural decision to seek comments on Relevant Representations (RRs) by **Tuesday 28 November 2017 (Deadline 1 (D1))**. The RRs were published by 13 October 2017 and so there is sufficient time for them to have been read and responded to by the deadline I propose to set.

2. Draft Examination Timetable: Deadline for Submission of Written Representations (WRs)

I have made a procedural decision to seek Written Representations (WRs) by **Tuesday 28 November 2017 (D1)**. WRs provide Interested Parties (IPs) with the opportunity to amplify and provide evidence for the matters set out in their RRs.

For the purposes of Rule 10(2) of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (the EPR), the 'period of 21 days' with reference to which I must provide notice for the submission of WRs commences on 17 October 2017. This is a date before the start of the Examination, however as the deadline for submission of WRs as set for 28 November 2017 is more than the statutory requirement of 21 days notice, I am satisfied that IPs have been permitted sufficient time in which to draft and submit WRs.

By providing early notice, I am ensuring that all IPs will have a reasonable time period in which to draft their WRs, before the deadline for submission.

3. Draft Examination Timetable: Deadline for the Provision of Summaries of Representations Exceeding 1500 Words

My procedural decisions (1) and (2) above also seek the early submission of summaries pertaining to RRs and WRs exceeding 1500 words. It is normal for ExAs to request that summaries are provided of RRs, comments to RRs and WRs, where these original representations exceed 1500 words in length. I have therefore also made a procedural decision to request the submission of summaries by **Tuesday 28 November 2017 (D1)**.

4. Draft Examination Timetable: Deadline for Notification by Statutory Parties, or certain Local Authorities³ of their Wish to be Considered as an IP

I have made a procedural decision that, in order to facilitate a timely start to the examination, Statutory Parties and certain Local Authorities¹ must have decided whether they wish to be considered as an IP and notified the Planning Inspectorate of their decision by **Tuesday 28 November 2017 (D1)**.

Note:

If persons attending the Preliminary Meeting (PM) seek additional time to be provided for in any of my procedural decisions made above (1 to 4) for good reasons, I will consider the reasons for any such requests before I decide whether to confirm these decisions. I will provide oral advice on my concluded decisions before the close of the PM.

5. Notice of an Issue Specific Hearing into the draft Development Consent Order (ISH1) and notice of intention to attend

I have made a procedural decision to commence oral examination of the draft Development Consent Order (dDCO) by holding my first Issue Specific Hearing (ISH1) the day after the Preliminary Meeting (PM) on 15 November 2017. **Annex D** above provides notice of this decision.

For the purposes of Rule 13(1) and (6) of the EPR, the periods of not less than 21 days with reference to which I must provide notice of a hearing and the Applicant must publicly notify and advertise the hearing arrangements must commence no later than **Tuesday 24 October 2017**. This is a date before the start of the Examination, but it ensures that the required statutory 21 days' notice period has been provided for this hearing.

In light of this ISH commencing shortly after the PM, I have also decided that any person intending to participate in this ISH must notify the Case Manager of their intention to attend by **7 November 2017**, as advised in **Annex D** above.

6. Requests for Site inspections, Nomination of Sites and Notice of Intention to Attend an Accompanied Site Inspection (ASI)

The Applicant, IPs and other persons will be provided with an opportunity to provide comments to me on the approach that I should take to site inspections at the PM. Subject to this discussion, they are invited to nominate sites that I should inspect, the features that I should observe there and whether the inspection should be on an accompanied or an unaccompanied basis, by **Tuesday 28 November 2017 (D1)**.

³ a Local Authority without direct responsibility in the proposed development area.

Site inspections can be carried out on an accompanied or an unaccompanied basis. In principle, inspections need to be carried out on an accompanied basis in the following circumstances:

- where the land is private and consent is required for the ExA to enter it;
- where there are health and safety or other regulatory considerations that require any visitor to a location to be accompanied; and / or
- where there are particular features that an IP wishes to ensure are pointed out to the ExA.

Where these considerations do not apply, it will normally be appropriate for a site inspection to be carried out by the ExA on an unaccompanied basis.

I have already commenced site inspections. I held a first Unaccompanied Site Inspection (USI1) on 18 September 2017. I have documented this in a note which can be viewed at the following link:

<http://infrastructure.planninginspectorate.gov.uk/document/TR010020-000266>

Before identifying the need for and making nominations about locations for site inspections, the Applicant, IPs and other persons are requested to review the actions recorded in this note.

Before agreeing to hold site inspections at particular locations, I will consider the degree to which it is necessary to visit a site that has been nominated for an inspection to inform me about the application. I may decide not to visit nominated locations where I have already visited the location or I consider that it is not necessary to see the features to be observed there. I may decide not to hold an Accompanied Site Inspection (ASI) if all relevant features can be observed and understood from locations in the public domain on an Unaccompanied Site Inspection (USI).

Provisional arrangements for ASIs are included in the Examination Timetable, but these will only proceed should it appear that such inspections are necessary.

7. Statements of Common Ground (SoCG)

In relation to some of the principal issues identified in **Annex B**, I would be assisted by the preparation of SoCGs between the applicant and certain interested parties. The draft timetable for the examination therefore provides a deadline for submission of SoCGs.

The aim of a SoCG is to agree factual information and to inform the ExA and all other parties by identifying where there is agreement and where the differences lie at an early stage in the examination process. It should provide a focus and save time by identifying matters which are not in dispute or need not be the subject of further evidence. It can also usefully state where and why there may be disagreement about the interpretation and relevance of the information. The reasons for the differences and

interpretation of the implications of a difference can then be expanded in the evidence. Unless otherwise stated or agreed, the SoCG should be agreed between the applicant and the other relevant interested party or parties, and submitted by the applicant.

SoCGs are requested to be prepared by:

A: The Applicant and South Tyneside Council to include:

- Development Consent Order (DCO)
- Economic and Social impacts
- Environmental Impact Assessment, including issues related to:
 - The adequacy of the assessment of its potential impacts
 - Cumulative effects
 - Noise & Vibration, Construction, operational and decommissioning noise and vibration effects including upon the living conditions of local residents
- Habitats, Ecology and Nature Conservation
- Landscape and Visual Impact
- Transport and Traffic including:
 - Effects on motorised road traffic
 - Effects on the Public Right of Way (PRoW) network and on cyclists, pedestrians and riders

B: The Applicant and Natural England (NE) to include:

- Development Consent Order (DCO)
- Habitats, Ecology and Nature Conservation, including issues related to:
 - Protected sites
 - Protected species
 - European sites and features relevant to Habitat Regulations Assessment (HRA)
 - The need for and means of securing mitigation actions

C: The Applicant, the Environment Agency (EA) (and the lead flood authority) to include:

- Development Consent Order (DCO)
- Environmental issues, including issues related to:
 - Water environment effects, including abstraction and discharge
 - Drainage
 - Flooding

D: The Applicant, National Grid Electricity Transmission (NGET) (and any relevant distribution network operator(s) (DNOs)) to include:

- Mitigation of the effects of the project on the transmission system
- Mitigation of the effects of the project on the distribution system
- Effects within operational land containing West Boldon Lodge Sub-station

- Effects on the nature conservation values of NGET non-operational land adjacent to the West Boldon Lodge Sub-station

SoCGs should cover the following topics where relevant:

- Methodology for environmental impact assessment including assessment of cumulative effects
- Data collection methods
- Baseline data
- Data/statistical analysis, approach to modelling and presentation of results (including forecast methodologies)
- Full expression of expert judgements and assumptions
- Identification and sensitivity of relevant features and quantification of potential impact
- Likely effects (direct and indirect) on special interest features of sites designated or notified for any nature conservation purpose
- Feasible and deliverable mitigation and method for securing such mitigation within the DCO

8. Post-submission application documents

Following the acceptance of the application, the Applicant submitted correspondence to the Planning Inspectorate on 5 October 2017 [AS-001] (the letter of 5 October). The letter of 5 October has been published and can be viewed here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010020/TR010020-000261-Outline%20Response%20from%20Applicant%20on%20s51%20Advice.pdf>

The letter of 5 October indicates that the Applicant intends to provide the following revised documents to address matters raised in advice provided by the Planning Inspectorate under PA2008 s51 on 10 August 2017 [PD-003], by 31 October 2017:

- revised Land Plans;
- a revised Book of Reference (BoR);
- a revised Statement of Reasons (SoR);
- revised Works Plans;
- revised Highways Engineering Drawings; and
- a revised draft Development Consent Order.

The revised documents and any associated documents submitted by the Applicant will be published on the National Infrastructure Planning website (see address in **Annex F**) as soon as reasonably possible after their receipt.

The letter of 5 October also indicates that the Applicant additionally wishes to provide other information as follows:

- an electronic copy of the Environmental Master Plan (EMP) [APP-053]; and

- information that the Applicant describes as 'further environmental information', but which I will refer to as 'other environmental information'.

The electronic copy of the EMP

An electronic copy of the EMP [APP-053] was submitted to the Planning Inspectorate by the Applicant on 5 October 2017. A hard copy version of the EMP was provided with the submitted application and was part of the document set that was accepted for examination. On that basis, I am content that the electronic copy of the EMP was omitted from the document set as an oversight and is not a new document or a change to the application. However, the EMP may not have been seen by those IPs relying on the electronic document set. For this reason, it has been published on the website and is available there to be viewed by IPs with immediate effect. A copy can be viewed here:

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010020/TR010020-000262-HE514495-JAC-ELS-MULTI-DR-L-0001_0.pdf

Other environmental information

In relation to information described as 'further environmental information' which the Applicant proposes to submit, it is relevant to record that this is not 'further information' for the purposes of Regulation 17 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations). It could only be such information if I had determined pursuant to Regulation 17(2)(b) of the EIA Regulations that the Environmental Statement (ES) submitted with the application should contain further information. I have made no such determination. I will not reach any formal view on the status of or procedural approach to this information until it has been submitted, I have considered its content and I have sought views upon the procedural approach to be taken to it at the PM. Until those events have occurred, I will refer to the Applicant's intent to submit 'other environmental information', in order to clearly distinguish it from the term 'further information' submitted for the purposes of Regulation 17 of the EIA Regulations.

The Applicant has undertaken to submit this 'other information' to the Planning Inspectorate by 31 October 2017. This and any other associated documents submitted by the Applicant will be published on the National Infrastructure Planning website (see address in **Annex F**) as soon as reasonably possible after their receipt.

Interested parties are asked to submit any comments they may have on the electronic EMP (which is already available) and on any of the revised documents or the other environmental information proposed to be submitted by 31 October 2017, by **Tuesday 28 November 2017 (D1)**.

I will consider procedural questions arising from the submission of these documents by the Applicant at the PM at Agenda Item 5 (see **Annex A**).