

A19 / A184 Testos Junction Improvement TR010020 4.1(2) Statement of Reasons

APFP Regulation 5(2)(h)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009



Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

A19 / A184 TESTOS JUNCTION IMPROVEMENT

The A19 / A184 (Testos Junction Improvement) Development Consent Order 2017

STATEMENT OF REASONS

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1 INTRODUCTION

- 1.1.1 This Statement of Reasons (“the Statement”) relates to an application (“the Application”) made by Highways England (“the Applicant”) to the Planning Inspectorate acting on behalf of the Secretary of State for Transport, under Section 37 of the Planning Act 2008 (“the Act”).
- 1.1.2 The Application is for the A19/A184 (Testos Junction Improvement) Development Consent Order (“DCO”) which would grant powers to upgrade and improve the existing junction layout to a grade separated configuration. The proposed development is referred to in this Statement as “the Scheme”. A description of the Scheme is contained in chapter 2.5 of the Environmental Statement (document reference TR010020/APP/6.1).
- 1.1.3 The National Policy Statement for National Networks (the “NN NPS”) was designated by the Secretary of State for Transport on 14 January 2015. The designated NN NPS states that the Government’s strategic policy objective is to deliver improvements in capacity, connectivity and resilience on the national road network to support a prosperous and competitive economy and to improve overall quality of life. This is reflected in the objectives of the Scheme which are primarily to reduce congestion, smooth the flow of traffic to improve journey times and make journeys more reliable and to deliver environmental improvements and mitigation where appropriate and required.
- 1.1.4 The Scheme is a Nationally Significant Infrastructure Project (“NSIP”) within section 14(1)(h) and 22(1)(b) of the Act. The Scheme is considered to be an “alteration” within the meaning of Section 22(1)(b). For further information regarding how the Scheme qualifies as a NSIP, refer to the Explanatory Memorandum (document reference TR010020/APP/3.2).
- 1.1.5 As the Scheme is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate (“PINS”), under section 37 of the Act.
- 1.1.6 This Statement has been prepared to comply with the requirements of Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the Regulations”) and with regard to *Planning Act 2008: Guidance related to procedures for compulsory acquisition* produced by the Department for Communities and Local Government dated September 2013 (“the Guidance”). The Statement is required because the DCO, if made, would confer upon the Applicant compulsory acquisition powers described in this Statement, including the power to acquire land outright, the power to acquire rights over land, the power to extinguish rights over land, and the power to occupy land temporarily for construction and maintenance purposes.
- 1.1.7 This Statement forms part of a suite of documents accompanying the Application submitted in accordance with section 55 of the Act and Regulation 5 of the Regulations and should be read in conjunction with those documents. In particular, the Applicant has submitted the following documents which relate to the compulsory acquisition and temporary possession powers sought to enable delivery of the Scheme:

- this Statement;
- the draft DCO (document reference TR010020/APP/3.1);
- a statement to explain how the Scheme will be funded (“the Funding Statement”) (document reference TR010020/APP/4.2);
- plans showing the extent of land over which it is proposed to exercise compulsory powers (“the Land Plans”) (document reference TR010020/APP/2.3); and
- a Book of Reference (“BOR”) containing details of the land subject to compulsory acquisition powers, including the names and addresses of all known parties who may have an interest in the land and be affected by the proposed acquisition (document reference TR010020/APP/4.3).

1.1.8 The land to which this Statement relates is the land which is proposed to be subject to the compulsory acquisition powers that are sought in the DCO (the “**Land**”). The Land is shown on the Land Plans (document reference TR010020/APP/2.3) and the works for which the Land is required are shown on the Works Plans (document reference TR010020/APP/2.4). In addition to the information provided in this Statement, short textual descriptions of each numbered plot shown on the Land Plans (document reference TR010020/APP/2.3), together with details of ownership, are set out in the Book of Reference (document reference TR010020/APP/4.3).

1.1.9 This Statement sets out the reasons for the inclusion of compulsory powers within the DCO. It explains that it is necessary to include compulsory powers within the DCO so that the Applicant can acquire the land required for the construction of the Scheme that is not already in its possession. It also explains why compulsory powers are necessary to enable the Applicant to use land temporarily, and acquire or extinguish rights over land in order to be able to construct the Scheme in a way that minimises the costs to the Applicant (and hence the public purse) and the impacts on affected landowners. Given the public benefits of the Scheme, there is a compelling case in the public interest for the powers for the realisation of those benefits and the proportionate nature of the powers requested. This compelling case is evidenced further in the wider documentation comprising the Application. The conclusion of this Statement, therefore, is that the grant of the compulsory powers requested would be lawful under all applicable legal regimes.

2 SCOPE OF THE COMPULSORY ACQUISITION POWERS

- 2.1.1 Section 122 of the Act provides that an order granting development consent may include provisions authorising compulsory acquisition of land. To the extent that this is sought, the decision maker (i.e. the Secretary of State) in respect of the Application must be satisfied that the land is:
- (i) required for the development;
 - (ii) required to facilitate or is incidental to the development; or
 - (iii) the land is replacement land which is to be given in exchange for the order land under section 131 or 132;
- 2.1.2 In addition, section 122(3) of the Act requires the decision maker to be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in a DCO. The way in which the Scheme meets these conditions is considered in Chapter 5 of this Statement.
- 2.1.3 In addition to powers of compulsory acquisition, section 120 of the Act provides that a DCO may make provision relating to, or to matters ancillary to, the development in respect of which a DCO is sought. The matters in respect of which provision may be made includes (but is not expressly limited to) the matters listed in Schedule 5 to the Act, including:
- (a) the acquisition of land, compulsorily or by agreement (paragraph 1);
 - (b) the creation, suspension or extinguishment of, or interference with, interests in or rights over land, compulsorily or by agreement (paragraph 2);
 - (c) the abrogation or modification of agreements relating to land (paragraph 3); and
 - (d) the payment of compensation (paragraph 36).

Principal Powers

- 2.1.4 Part 5 of the draft DCO provides compulsory powers in relation to the Land. These include the following rights and powers:
- (a) compulsory acquisition of land (Article 20 of the draft DCO);
 - (b) compulsory acquisition of rights and restrictive covenants (Article 23 of the draft DCO);
 - (c) private rights over land (Article 24 of the draft DCO);
 - (d) acquisition of subsoil or airspace only (Article 27 of the draft DCO);
 - (e) rights under or over streets (Article 28 of the draft DCO);
 - (f) temporary use of land for carrying out the authorised development (Article 29 of the draft DCO); and
 - (g) temporary use of land for maintaining the authorised development (Article 30 of the draft DCO).

2.1.5 A more detailed explanation of the compulsory powers the Applicant would benefit from under the DCO is included within the Explanatory Memorandum (document reference TR010020/APP/3.2) at paragraphs 5.59 – 5.95.

Other rights and powers

2.1.6 The draft DCO also confers other rights and powers on the Applicant that may interfere with property rights and private interests. These additional powers are:

- (a) Article 12: Temporary stopping up and restriction of use of streets;
- (b) Article 13: Permanent stopping up and restriction of use of streets and private means of access;
- (c) Article 18: Protective work to buildings;
- (d) Article 19: Authority to survey and investigate the land;
- (e) Article 31: Statutory undertakers, and Schedule 9;
- (f) Article 32: Apparatus and rights of statutory undertakers in stopped up streets;
- (g) Article 34: Felling or lopping of trees and removal of hedgerows.

2.1.7 In each case (for both the principal powers and the other powers) the owner of the land, or the interest or right in the land, may be entitled to compensation: persons suffering a loss due to the exercise of the foregoing compulsory powers may be entitled to compensation. Any dispute in respect of the compensation payable is to be determined by the Lands Chamber of the Upper Tribunal.

3 DESCRIPTION OF THE LAND SUBJECT TO COMPULSORY ACQUISITION

- 3.1.1 This section describes the Land (as defined above in paragraph 1.1.8). The Land is shown on the Land Plans (document reference TR010020/APP/2.3) along with a colour-coded representation of the proposed usage i.e. permanent land acquisition, temporary land acquisition, or temporary land acquisition with permanent rights to be created. In addition to this Statement, short textual descriptions, together with details of ownership, for each of the numbered plots are provided in the BOR (document reference TR010020/APP/4.3).
- 3.1.2 The Scheme boundary containing the Land encloses 67.8 hectares. The Scheme requires 30.4 hectares of land permanently (freehold to be acquired where not already held by the Applicant), the temporary possession alone of 22 hectares and the temporary possession of 15.4 hectares of land over which permanent rights will also be acquired. It should be noted that 18.3 hectares of the land to be acquired or used permanently is land contained within the existing highway boundary.
- 3.1.3 The Applicant has taken the approach (followed on other Highways England schemes) of seeking powers of compulsory purchase (or rights of use) in respect of all plots of land required for the Scheme even where it already holds an interest or presumes it holds an interest in the land. This approach has been taken to ensure that it has the right to acquire the interests it needs in all of the Land, even where an unknown or unregistered owner later asserts an interest in land which the Applicant believes it owns and clearing the title would be necessary.
- 3.1.4 Moreover, the area of temporary possession and permanent rights ensures the deliverability of service utility diversion works where required (see paragraph 3.1.21 for further details on services affected by the Scheme).
- 3.1.5 A description of the Land together with key features and characteristics of the surrounding landscape can be found in Chapter 2 of the Environmental Statement (document reference TR010020/APP/6.1).

Location

- 3.1.6 The location of the Scheme in its wider geographical context is shown on the Location Plan (document reference TR010020/APP/2.1). The section of the A19 trunk road subject to the proposed development is approximately 2.0km in length.
- 3.1.7 The Scheme is located entirely within the local authority of South Tyneside Council; however, the southern extent of the Scheme is located approximately 250m from the Sunderland City Council boundary.
- 3.1.8 The A19 forms part of an orbital route of the Tyneside conurbation. This consists of the A1 Gateshead/Newcastle Western Bypass, the A194, the A184 and the A19. The south eastern section of this route is formed by the A184 and A19 through Testos roundabout, which is located approximately 4.2km south of the Tyne Tunnel entry at Jarrow.

- 3.1.9 To the northern end, but outside of the geographical area the Application relates to, are the residential communities of Hedworth and Boldon Colliery. West Boldon lies to the east of Testos roundabout, adjacent to the A184. To the south east of Testos roundabout lies the residential community of Town End Farm, which is located within the authority of Sunderland City Council.

Existing Land Use

- 3.1.10 This section of the Statement details the existing usage for the Land.
- 3.1.11 The majority (approximately 59%) of the Land is used for agricultural purposes; this is generally constrained to the western side of the A19 and, in particular, to the southwest of Testos roundabout. There is an area of agricultural land located to the east of the A19 and south of Boldon substation.
- 3.1.12 Mount Pleasant Marsh, a designated Local Wildlife Site, is located to the southeast of Testos roundabout and is occupied by a National Grid Substation (Boldon substation); an area of this land is also used for educational purposes by South Tyneside Groundwork Trust. There are a number of electrical pylons associated with the substation within the Land; the majority of these pylons are situated to the southwest and northwest of Testos roundabout.
- 3.1.13 Boldon Lake, a designated Local Wildlife Site, occupies the southern area of Boldon Business Park and is located to the northeast of Testos roundabout.
- 3.1.14 A significant amount of the Land is occupied by the existing A19 and A184 highways (approximately 27%) (the junction and roads to be altered).
- 3.1.15 There are a number of non-motorised users (NMU) facilities within the Land including bridleways, footpaths and cycle tracks.
- 3.1.16 The River Don passes beneath the A19 via a corrugated steel/brick arch culvert approximately 960m to the south of Testos roundabout.

Surrounding Area

- 3.1.17 This section of the Statement details the existing usage for areas of land outside of the DCO boundary.
- 3.1.18 Boldon Business Park (BBP) is located in the northeast quadrant of Testos roundabout and runs adjacent to the A19.
- 3.1.19 The wider surrounding area is predominantly agricultural in nature, interspersed with residential communities. The A19/A184 Testos junction is situated in a generally rural corridor located between Gateshead, Jarrow and Sunderland.
- 3.1.20 A Nissan manufacturing plant is located to the southwest of Downhill Lane junction, within the local authority boundary of Sunderland City Council.

Utility Services

- 3.1.21 A number of existing utility services are located in the surrounding area that would be affected by the Scheme. The relevant major utility diversions are summarised below and have been defined as specific works within the development listed within Schedule 1 of the Development Consent Order

(document reference TR010020/APP/3.1). Locations of these works can be viewed on the Works Plans (document reference TR010020/APP/2.4).

- **Work No.9** – the diversions of 5 no. electric cables and associated auxiliary cables and apparatus, located to the southwest of Testos roundabout;
- **Work No.24** – the diversion of a Northumbrian Water Group pipeline;
- **Work No.25** – the diversion of British Telecommunications cables; and
- **Work No.26** – the diversion of a Northern Gas Networks pipeline.

3.1.22 It is noted that for many of the diversion works listed above, the exact scope of works is still to be fully determined. Contact has been established with all relevant third parties and in certain instances feasibility studies and/or conceptual designs are currently underway to confirm the works required. The Applicant has taken the proportionate view of the land that would be reasonably required to undertake any diversionary or protection works in order to ensure that the Scheme is deliverable.

Public Rights of Way

3.1.23 The public rights of way, detailed in the table below, have been identified as being permanently affected by the Scheme. Existing public rights of way, and the alterations proposed to the network as part of the Scheme, are shown on the Streets, Rights of Way and Access Plans (document reference TR010020/APP/2.5).

Name	Classification	Responsible Authority
A19(T)	Trunk road	Highways England
A184(T)	Trunk road	Highways England
A184	Non-trunk road	South Tyneside Council
West Pastures	Local Road	South Tyneside Council
Bridleway B46	Public Right of Way	South Tyneside Council
Bridleway B28	Public Right of Way	South Tyneside Council
Footpath B27	Public Right of Way	South Tyneside Council
Cycleway B1298	Public Right of Way	South Tyneside Council

3.1.24 There is, in addition to the highways listed above, a bus stop located southwest of the Testos roundabout and a paved public right of way on the north side of the A184(T) that continues east, crosses Testos roundabout, runs parallel to the north side of the A184 and ties into Cycleway B1298.

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4 PURPOSE FOR WHICH THE COMPULSORY ACQUISITION POWERS ARE SOUGHT

- 4.1.1 The purpose of the compulsory acquisition powers in the DCO is to enable the Applicant to construct, operate, and maintain the Scheme.
- 4.1.2 The specific purposes for which each parcel of Land subject to compulsory acquisition powers is required are set out in Tables 1, 2 and 3 below. The first column of these tables uses the parcel numbers as shown on the Land Plans (document reference TR010020/APP/2.3) and used in the BOR (document reference TR010020/APP/4.3). The second column in the tables refers to the work numbers as shown on the Works Plans (document reference TR010020/APP/2.4) and as described in Schedule 1 of the DCO.
- 4.1.3 The tables should be read in conjunction with Schedule 1 to the draft DCO which sets out the development which, if the DCO were made by the Secretary of State, would be authorised by the DCO. As such, Schedule 1 provides detailed descriptions of each of the numbered works shown on the Works Plans.
- 4.1.4 Table 1 (below) lists all of the land that is to be acquired outright. The purpose for acquiring this land is to enable the Applicant to construct the permanent works on the land and other elements described in Table 1.
- 4.1.5 Schedule 5 of the DCO lists the land over which specific rights are to be acquired or created. The rights to be acquired or created are necessary for the purposes of constructing the works and the maintenance of the works thereafter, ensuring the finished Scheme fulfils its highway functions.
- 4.1.6 Schedule 7 of the DCO lists the land of which the Applicant would take temporary possession. The specific purposes for which this land will be used are stated in the schedule. The purpose of using such land is to provide essential works sites, compounds, storage areas, space to carry out utility diversions and access routes for site traffic. The temporary use of this land is essential to the construction works that form part of the Scheme.
- 4.1.7 Several plots are required to be used temporarily, and rights over them will also be required. Such plots feature in both Tables 2. The plots which are required to be used temporarily only (i.e. without rights over them) are shown in Table 3.
- 4.1.8 The power to extinguish existing rights over the Land ensures that such rights that would interfere with the construction and operation of the Scheme can be extinguished.
- 4.1.9 The powers to acquire or use subsoil or airspace only is included for flexibility as it would allow the Applicant to minimise its costs and / or the impact on landowners by acquiring subsoil or airspace only where it is possible to do so and still deliver the Scheme, leaving landowners in possession of the valuable part of their land.
- 4.1.10 The powers to use land temporarily for carrying out the authorised development ensures that appropriate work sites, working space and means of access will be available for use during the construction period and provides space for mitigation and any other permanent works. This temporary power minimises the impact on

landowners by ensuring that the Applicant does not have to acquire land it only requires temporarily.

- 4.1.11 The powers to use land temporarily for maintaining the authorised development ensures that the land is available for maintenance works during a five-year maintenance period following completion of the scheme. This is in the public interest as it ensures it is possible to maintain the Scheme and the public benefits it will deliver. Temporary powers are sought for this purpose as permanent powers would entail an excessive impact on landowners.

Table 1: Permanent acquisition of land

Permanent acquisition of land	
Plot No.	Purpose for which land is required
1/1a	Work No.1 – the construction of a cantilever gantry, or similar signage, adjacent to Downhill Lane junction
1/1b	Work No. 2 - Traffic management and ancillary highway works
1/1c	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.3 – the construction of the southbound A19 on-slip Work No.4 – the construction of a cycletrack adjacent to Downhill Lane junction Work No.5 – the construction of the northbound link road Work No.7 – the construction of the southbound link road
1/1d	Work No.5 – the construction of the northbound link road and ancillary highway works
1/1e	Work No. 2 - Traffic management and ancillary highway works
1/1f	Work No. 4 - Traffic management and ancillary works
1/1g	Work No.5 – the construction of the northbound link road
1/1h	Work No.5 – the construction of the northbound link road
1/1i	Work No.5 – the construction of the northbound link road
1/1j	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.3 – the construction of the southbound A19 on-slip Work No.5 – the construction of the northbound link road Work No.7 – the construction of the southbound link road
1/1k	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.3 – the construction of the southbound A19 on-slip Work No.5 – the construction of the northbound link road Work No.7 – the construction of the southbound link road Work No.8 – the construction of the northbound A19 off-slip
1/1l	Work No.4 – the construction of a cycletrack adjacent to Downhill Lane junction Work No.7 – the construction of the southbound link road
1/1m	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.8 – the construction of the northbound A19 off-slip
1/1n	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.3 – the construction of the southbound A19 on-slip Work No.8 – the construction of the northbound A19 off-slip
1/1o	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.3 – the construction of the southbound A19 on-slip Work No.7 – the construction of the southbound link road
1/1p	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.8 – the construction of the northbound A19 off-slip
1/2a	Work No. 2 - Traffic management and ancillary highway works
1/2b	Work No.4 – the construction of a cycletrack adjacent to Downhill Lane junction Work No.6 – the construction and realignment of a section of the B46 bridleway
1/3a	Work No.4 – the construction of a cycletrack adjacent to Downhill Lane junction Work No.6 – the construction and realignment of a section of the B46 bridleway Work No.7 – the construction of the southbound link road

Permanent acquisition of land	
Plot No.	Purpose for which land is required
1/4a	<p>Work No.5 – the construction of the northbound link road Work No.8 – the construction of the northbound A19 off-slip Work No.9 – the diversion of 5 no. electricity cables and associated auxiliary cables and apparatus Ancillary highway works and environmental mitigation works associated with the numbered works.</p>
1/4b	<p>Work No.3 – the construction of the southbound A19 on-slip Work No.7 – the construction of the southbound link road Work No.10 – the construction of the southern drainage attenuation pond and associated outfall and private mean of access Environmental mitigation works associated with the numbered works.</p>
1/5c	<p>Work No.5 – the construction of the northbound link road Work No.9 – the diversion of 5 no. electricity cables and associated auxiliary cables and apparatus Ancillary highway works associated with the numbered works.</p>
1/6c	<p>Work No.5 – the construction of the northbound link road Work No.9 – the diversion of 5 no. electricity cables and associated auxiliary cables and apparatus Ancillary highway works associated with the numbered works.</p>
1/7a	<p>Work No.5 – the construction of the northbound link road Work No.8 – the construction of the northbound A19 off-slip Work No.9 – the diversion of 5 no. electricity cables and associated auxiliary cables and apparatus</p>
1/7e	<p>Work No.2 – the construction and realignment of the A19 dual carriageway Work No.5 – the construction of the northbound link road Work No.8 – the construction of the northbound A19 off-slip Work No.9 – the diversion of 5 no. electricity cables and associated auxiliary cables and apparatus</p>
1/9a	<p>Work No.3 – the construction of the southbound A19 on-slip Work No.7 – the construction of the southbound link road Work No.10 – the construction of the southern drainage attenuation pond and associated outfall and private mean of access</p>
2/1e	<p>Work No.2 – the construction and realignment of the A19 dual carriageway Work No.5 – the construction of the northbound link road Work No.8 – the construction of the northbound A19 off-slip Work No.9 – diversion of 5 no. electricity cables and associated auxiliary cables and apparatus Work No.15 – the construction of a footpath, linking Testos roundabout with the B27 footpath</p>
2/2g	<p>Work No.2 – the construction and realignment of the A19 dual carriageway Work No.5 – the construction of the northbound link road Work No.14 – the construction of a bridleway between West Pastures and the B46 bridleway Work No.15 – the construction of a footpath, linking Testos roundabout with the B27 footpath Work No.21 – the construction of a bus stop access Work No.24 – the diversion of a water pipeline</p>
2/2i	<p>Work No.2 – the construction and realignment of the A19 dual carriageway Work No.19 – the construction and improvement of a non-segregated footway and cycletrack Work No.25 – the diversion of a telecommunications cable Work No.26 – the diversion of a gas pipeline Work No.27 – the stopping up of the B28 bridleway including demolition of the bridleway bridge Work No.28 – the construction of the northbound A19 on-slip Work No.30 – the construction of the northern drainage attenuation pond and private means of access Environmental mitigation works associated with the numbered works.</p>
2/3a	<p>Work No.2 – the construction and realignment of the A19 dual carriageway Work No.9 – the diversion of 5 no. electricity cables and associated auxiliary cables and apparatus</p>

Permanent acquisition of land	
Plot No.	Purpose for which land is required
2/3b	<p>Work No.2 – the construction and realignment of the A19 dual carriageway</p> <p>Work No.3 – the construction of the southbound A19 on-slip</p> <p>Work No.7 – the construction of the southbound link road</p> <p>Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus</p>
2/3c	<p>Work No.2 – the construction and realignment of the A19 dual carriageway</p> <p>Work No.3 – the construction of the southbound A19 on-slip</p> <p>Work No.7 – the construction of the southbound link road</p> <p>Work No.14 – the construction of a bridleway between West Pastures and the B46 bridleway</p> <p>Work No.24 – the diversion of a water pipeline</p>
2/3d	<p>Work No.2 – the construction and realignment of the A19 dual carriageway</p>
2/3e	<p>Work No.2 – the construction and realignment of the A19 dual carriageway</p> <p>Work No.14 – the construction of a bridleway between West Pastures and the B46 bridleway</p>
2/3f	<p>Work No.2 – the construction and realignment of the A19 dual carriageway</p> <p>Work No.5 – the construction of the northbound link road</p> <p>Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus</p> <p>Work No.14 – the construction of a bridleway between West Pastures and the B46 bridleway</p> <p>Work No.18 – the construction and improvement of a segregated footway and cycletrack</p> <p>Work No.19 – the construction and improvement of a non-segregated footway and cycletrack</p> <p>Work No.20 – the construction of a pedestrian crossing facility</p> <p>Work No.21 – the construction of a bus stop access</p> <p>Work No.22 – the realignment of Testos roundabout and associated A184(T) and A184 entry/exit arms</p> <p>Work No.24 – the diversion of a water pipeline</p> <p>Work No.25 – the diversion of a telecommunications cable</p> <p>Work No.26 – the diversion of a gas pipeline</p> <p>Work No.27 – the stopping up of the B28 bridleway including demolition of the bridleway bridge</p> <p>Work No.28 – the construction of the northbound A19 on-slip</p> <p>Work No.29 – the construction of the southbound A19 off-slip</p>
2/3g	<p>Work No.14 – the construction of a bridleway between West Pastures and the B46 bridleway</p> <p>Work No.21 – the construction of a bus stop access</p> <p>Work No.22 – the realignment of Testos roundabout and associated A184(T) and A184 entry/exit arms</p> <p>Work No.24 – the diversion of a water pipeline</p>
2/3h	<p>Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus</p> <p>Work No.20 – the construction of a pedestrian crossing facility</p> <p>Work No.22 – the realignment of Testos roundabout and associated A184(T) and A184 entry/exit arms</p> <p>Work No.24 – the diversion of a water pipeline</p> <p>Work No.26 – the diversion of a gas pipeline</p>
2/3j	<p>Work No.19 – the construction and improvement of a non-segregated footway and cycletrack</p>
2/4a	<p>Work No.7 – the construction of the southbound link road</p>
2/4e	<p>Work No.3 – the construction of the southbound A19 on-slip</p> <p>Work No.7 – the construction of the southbound link road</p> <p>Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus</p> <p>Work No.13 – the construction and upgrade of the B27 footpath to a bridleway</p>
2/5b	<p>Work No.2 – the construction and realignment of the A19 dual carriageway</p> <p>Work No.3 – the construction of the southbound A19 on-slip</p> <p>Work No.14 – the construction of a bridleway between West Pastures and the B46 bridleway</p> <p>Work No.17 – the construction of a footway adjacent to the A184</p> <p>Work No.22 – the realignment of Testos roundabout and associated A184(T) and A184 entry/exit arms</p> <p>Work No.24 – the diversion of a water pipeline</p>
2/5d	<p>Work No.22 – the alteration and realignment of Testos roundabout, including A184(T) and A184 links</p>
2/5e	<p>Work No.18 – the construction of an improved segregated footway and cycletrack</p>

Permanent acquisition of land	
Plot No.	Purpose for which land is required
2/5f	Work No.18 – the construction of an improved segregated footway and cycletrack Work No.25 – the diversion of telecommunications cable
2/6a	Work No.13 – the construction and upgrade of the B27 footpath to a bridleway
2/6d	Work No.3 – the construction of the southbound A19 on-slip Work No.7 – the construction of the southbound link road Work No.13 – the construction and upgrade of the B27 footpath to a bridleway Work No.14 – the construction of a bridleway between West Pastures and the B46 bridleway Work No.17 – the construction of a footway adjacent to the A184
2/7b	Work No.14 – the construction of a bridleway between West Pastures and the B46 bridleway
2/8	Work No.17 – the construction of a footway adjacent to the A184 Work No.18 – the construction of an improved segregated footway and cycletrack Work No.22 – the realignment of Testos roundabout and associated A184(T) and A184 entry/exit arms
2/9a	Work No.18 – the construction of an improved segregated footway and cycleway
3/1a	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.28 – the construction of the northbound A19 on-slip Work No.29 – the construction of the southbound A19 off-slip Traffic Management and ancillary works associated with the numbered works.
3/2a	Work No.2 – the construction and realignment of the A19 dual carriageway Work No.28 – the construction of the northbound A19 on-slip Work No.30 – the construction of the northern drainage attenuation pond and private means of access Environmental mitigation works associated with the numbered works.

Table 2: Temporary possession of land with rights to be created

Temporary acquisition of land with rights to be created		
Plot No.	Right(s) to be created	Work No. and Purpose for which land is required
1/2c	To construct, operate, access and maintain an attenuation pond outfall	Work No.10 – the construction of the southern drainage attenuation pond and associated outfall and private mean of access
1/2d	To construct, operate, access and maintain a private means of access	Work No.11 – the construction of a private means of access running parallel to the B46 bridleway
1/3b	To construct, operate, access and maintain an attenuation pond outfall	Work No.10 – the construction of the southern drainage attenuation pond and associated outfall and private mean of access
1/5b	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
1/6b	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
1/7b	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
1/7f	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
1/8	To construct, operate, access and maintain an attenuation pond outfall	Work No.10 – the construction of the southern drainage attenuation pond and associated outfall
1/9d	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
2/1d	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
2/2a	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus

Temporary acquisition of land with rights to be created		
Plot No.	Right(s) to be created	Work No. and Purpose for which land is required
2/2c	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
2/2h	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
2/2k	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
2/4c	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
2/4f	To construct, operate, access and maintain a private means of access	Work No.11 – the construction of a private means of access running parallel to the B46 bridleway
2/4g	To construct, operate, access and maintain a private means of access	Work No.11 – the construction of a private means of access running parallel to the B46 bridleway
2/5a	To construct, operate, access and maintain a private means of access	Work No.11 – the construction of a private means of access running parallel to the B46 bridleway
2/5c	To construct, operate, access and maintain a private means of access	Work No.11 – the construction of a private means of access running parallel to the B46 bridleway
2/6c	To construct, operate, access and maintain electric cables, equipment and apparatus	Work No.9 – the diversion of 5 no. electricity cables and associated cables and apparatus
	To construct, operate, access and maintain a water pipeline	Work No.16 – the construction of a perimeter security fence at West Boldon substation Work No.24 – the diversion of a water pipeline
2/9c	To construct, operate, access and maintain a telecommunications cable	Work No.25 – the diversion of a telecommunications cable
	To construct, operate, access and maintain a gas pipeline	Work No.26 – the diversion of a gas pipeline

Table 3: Temporary possession of land only

Temporary possession of land only	
Plot No.	Purpose for which land is required
1/5a	All Works - required to provide an area for construction material storage, construction access and storage of plant
1/6a	All Works - required to provide an area for construction material storage, construction access and storage of plant
1/7c	All Works - required to provide an area for construction material storage, construction access and storage of plant
1/7d	Work No.12 – improved private means of access
1/7g	All Works - required to provide an area for construction material storage, construction access and storage of plant
1/9b	All Works - required to provide an area for construction material storage, construction access and storage of plant
1/9c	All Works - required to provide an area for construction material storage, construction access and storage of plant
2/1a	Work No.12 – improved private means of access
2/1b	All Works - required to provide an area for construction material storage, construction access and storage of plant
2/1c	Work No.12 – improved private means of access

Temporary possession of land only	
Plot No.	Purpose for which land is required
2/2b	All Works - required to provide an area for construction material storage, construction access and storage of plant
2/2d	All Works - required to provide an area for construction material storage, construction access and storage of plant
2/2e	All Works - required to provide an area for construction material storage, construction access and storage of plant
2/2f	Work No. 31 - required for the provision of the main site compound and to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste
2/2j	Work No.27 – the stopping up of the B28 bridleway including demolition of the bridleway bridge
2/2l	All Works - required to provide an area for construction material storage, construction access and storage of plant
2/3i	Work No. 31 - required for site access to main construction compound.
2/3k	Work No. 31 - required for site access to main construction compound.
2/4b	All Works - required to provide an area for construction material storage, construction access and storage of plant
2/4d	All Works - required to provide an area for construction material storage, construction access and storage of plant
2/5g	Work No.27 – the stopping up of the B28 bridleway including demolition of the bridleway bridge
2/6b	Work No.16 – the construction of a perimeter security fence at West Boldon substation
2/6e	Work No.16 – the construction of a perimeter security fence at West Boldon substation
2/6f	Work No.17 – the construction of a footway adjacent to the A184. Land required as a temporary construction working area
2/7a	Work No. 31 - required for site access to main construction compound.
2/9b	Work No.18 – the construction of an improved segregated footway and cycleway. Land required as a temporary construction working area; and Work No.23 – required for environmental mitigation works at Boldon Lake
2/9d	All Works – required for site access
2/9e	Work No.27 – the stopping up of the B28 bridleway including demolition of the bridleway bridge
3/2b	All Works - required to provide an area for construction material storage, construction access and storage of plant

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5 JUSTIFICATION FOR POWERS OF COMPULSORY ACQUISITION

The matters to which the decision maker must have regard

- 5.1.1 Section 122 of the Act provides that a DCO that includes compulsory acquisition powers may only be granted if the conditions in section 122(2) and 122(3) of the Act are met. The conditions are:-
- at section 122(2), that the land is required for the development to which the DCO relates, or is required to facilitate or is incidental to the development, or is replacement land that is to be given in exchange under section 131 and 132 of the Act; and
 - at section 122(3), that there is a compelling case in the public interest for inclusion of powers of compulsory acquisition in the DCO.
- 5.1.2 In respect of the section 122(2) condition, the Guidance makes it clear (at paragraph 11 and following) that the decision maker must be in no doubt as to the purposes for which any land is to be compulsorily acquired, in particular:
- in respect of land required for a Scheme for which development consent is sought, the Applicant must be able to demonstrate that the land is needed and the Secretary of State must be satisfied that the land which is proposed to be acquired is no more than reasonably required for the purposes of the development.
 - in respect of land required to facilitate or that is incidental to the proposed development, the Secretary of State must be satisfied that the purpose for which that land is being acquired could only be achieved to a satisfactory standard if the land in question is compulsorily acquired, and the land to be taken is no more than is reasonably necessary for that purpose and is proportionate.
 - in respect of any land that is replacement land which is proposed to be given in exchange under sections 131 or 132 of the Act, the Secretary of State will need to be satisfied that the compulsory acquisition is needed for replacement land, that no more land is being taken that is reasonably necessary for that purpose, and that what is proposed is proportionate.
- 5.1.3 In respect of the section 122(3) condition, the Guidance makes is clear at paragraphs 12 and 13 that the Secretary of State must be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily. The Secretary of State must be persuaded that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 5.1.4 Paragraphs 8 to 10 of the Guidance set out a number of general considerations that the Applicant must, in justifying an order that authorises compulsory acquisition, demonstrate to the satisfaction of the Secretary of State. These are as follows:
- that all reasonable alternatives to compulsory acquisition (including modifications to the development) have been explored;
 - that the proposed interference with the rights of those with an interest in the Land is for a legitimate purpose and is necessary and proportionate;

- that the Applicant has a clear idea of how the land which it is proposing to acquire will be used;
- that there is a reasonable prospect of the requisite funds becoming available; and
- that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.

5.1.5 The Applicant considers that this and information elsewhere in the Application documents, particularly the Planning Statement (document reference TR010020/APP/7.1), demonstrates that any interference with rights is for a legitimate purpose, both prima facie and under the Act. The Applicant has also identified specific purposes as to how the Land will be used.

Requirement for the DCO Land (section 122(2))

5.1.6 This section sets out the factors that the Applicant considers to demonstrate that the conditions in section 122, and the considerations set out in the Guidance are satisfied.

5.1.7 As described in Chapter 4 of this Statement, the Land is required for (or facilitates, or is incidental to) the purposes of the DCO. The Application is supported by Land Plans (document reference TR010020/APP/2.3) and Works Plans (document reference TR010020/APP/2.4). The location of the Works on the Works Plans demonstrates and justifies that the Land as shown on the Land Plans is required in order for the Scheme to be constructed; without the Land the Scheme cannot be delivered.

5.1.8 Where possible, the Applicant intends to acquire the Land by agreement and is currently engaged in discussions with landowners and occupiers; however, the compulsory acquisition powers over the Land are required to ensure that the Scheme can be delivered in the event that acquisition of the Land via agreement does not prove possible.

5.1.9 The compulsory acquisition powers are also required as a means of overriding existing rights and interests in or over the Land, as well as creating new rights over the Land and granting the right to take temporary possession of the Land.

Compelling Case in the Public Interest (section 122(3))

5.1.10 The A19 is a major strategic route in the region and forms part of an orbital route of the Tyneside conurbation. The A19/A184 Testos junction currently suffers severe congestion, particularly during the morning and evening peak hours, which is further exacerbated by the shift change patterns at the nearby Nissan car manufacturing plant.

5.1.11 The NN NPS sets out the Government's policy against which the Secretary of State will make decisions on applications for development consent for NSIPs on the strategic road and rail networks. It therefore has effect in relation to development of the description to which the Application relates. Accordingly, in deciding the Application, the Secretary of State must have regard to the NN NPS,

and the Application must be decided in accordance with it, as required by sections 104(2) and (3) of the Act.

- 5.1.12 The objectives of the Scheme, which align with those stated in the NN NPS, are to reduce the traffic congestion, improve journey time reliability and improve safety for road users and the local community. Additionally, the Scheme represents an opportunity to stimulate economic growth in the region by supporting the demand of future traffic growth resulting from existing and future developments, most notably the proposed Internationally Advanced Manufacturing Park (IAMP).
- 5.1.13 Paragraph 2.2 of the NN NPS states that there is a "critical need" to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. It goes on to state that improvements may also be required to address the impact of the national networks on quality of life and environmental factors.
- 5.1.14 The Planning Statement (document reference TR010020/APP/7.1) demonstrates that there is a very strong and compelling case in the public interest for the DCO to be made, utilising local, regional and national policy as the relevant evidence base. In particular, Annex A of the Planning Statement sets out an extensive case for the Scheme on the basis of the NN NPS. As the Planning Statement provides an extensive review of these matters and so they are not repeated here.
- 5.1.15 More particularly, the powers of compulsory acquisition are proportionate as:
- (a) they are no more than are necessary for delivery of the Scheme (see paragraph 5.1.22 below);
 - (b) in respect of the Land, no larger in extent than is necessary for delivery of the Scheme and all land to be subject to compulsory acquisition has an identified purpose in delivering the Scheme, as provided in tables in Chapter 4 of this Statement;
 - (c) there are no alternatives to the Scheme that would reduce the amount of land that is to be subject to powers of compulsory acquisition (see paragraph 5.1.19 below)
 - (d) the inclusion of powers of compulsory acquisition in the DCO at the outset (i.e. at Application) is appropriate for a Scheme such as this, as provided for at paragraph 25 of the Guidance and described at paragraph 5.1.19 of this Statement.
- 5.1.16 It follows that there is a similarly compelling case in the public interest to include the compulsory powers being applied for.

Need for Power to Override Rights and Easements

- 5.1.17 Existing rights and easements that affect the Land are listed in part 3 of the BOR (document reference TR010020/APP/4.3), to the extent that they are known. The Applicant is seeking powers in the DCO to override rights and easements. Without such provision the beneficiaries of these rights might seek to enforce them by injunction. The risk that beneficiaries might be successful in such action

means that it is necessary to provide that the rights of those affected be changed to a right to compensation. This would be for injurious affection, and is an accepted measure of compensation payable under the Compensation Code.

- 5.1.18 Given that the Land is the only location that this Scheme can be carried out (as the A19 is already constructed and in operation, and the Scheme is an improvement to the A19), and given the availability of compensation for injurious affection under the provisions of the Compensation Code, it is necessary and appropriate for the DCO to contain provisions specifically and expressly authorising the benefit of those restrictions to be overridden. In addition, the Scheme will address the need for improved national networks as per the NN NPS. Accordingly, any interference with rights occasioned by the Scheme will be for a legitimate and proportionate purpose.

Case for the Scheme and alternatives considered

- 5.1.19 As explained in detail in Chapter 3 of the Consultation Report (document reference TR010020/APP/5.1), Chapter 3 of the Environmental Statement (document reference TR010020/APP/6.1), and Chapter 3 of the Planning Statement (document reference TR010020/APP/7.1), the Applicant has explored further alternative options for the Scheme and has selected the most appropriate option. None of the alternative options would obviate the need for compulsory acquisition. The online improvement proposed by the Scheme ensures that the need to compulsorily acquire land is kept to a minimum and the land that is proposed to be acquired is no more than is reasonably required for its construction, occupancy, mitigation and ongoing maintenance.
- 5.1.20 The Scheme commenced in 2002 following the Tyneside Area Multi-Modal Study (TAMMS) which highlighted the need for improvement to the A19/A184 Testos roundabout. Several options were developed and consulted on from March – June 2009 in order for the views of local residents, businesses and other key stakeholders to be taken into consideration. Following the public consultation, a Preferred Option was identified but never announced as funding for the Scheme was rescinded following the 2010 Spending Review. The Scheme recommenced in 2014 following the Government's announcement of £36 billion of planned investment into infrastructure for 2014-2015. The previously identified Preferred Option was subsequently announced by the Secretary of State in June 2014 in the Preferred Route Announcement (PRA).
- 5.1.21 Since the PRA was made, the proposed improvements have been further developed and two Statutory Consultations have taken place: one during October 2014 – November 2014 and the other during January 2017 – March 2017. The approach to, and results of, these consultations are explained in more detail in the Consultation Report (document reference TR010020/APP/5.1).
- 5.1.22 The scope of the compulsory powers has been carefully drawn to limit the powers to what is necessary. No more land is affected than necessary. Where only temporary occupation is required, powers of acquisition have not been applied for. Accordingly the impact on landowners is minimised and does not outweigh the public interest in granting the compulsory powers so that the public benefits of the Scheme can be delivered.

- 5.1.23 Further information related to the objectives of the Scheme and the case for the Scheme itself, can be found in Planning Statement (document reference TR010020/APP/7.1). This document comprehensively sets out how the Scheme meets the objectives of local, regional and national policy and so these matters are not repeated here.

Compensation

- 5.1.24 Compulsory acquisition powers require that the compensation paid to the owners of the interests in the Land represents a fair, open market value. The rules governing compulsory acquisition require that compensation for acquisition of land or an interest in land must represent the market value as unaffected by the proposed development, together with further amounts such as occupier's loss payments in some cases. As a result, the Applicant will be required to pay a fair, open market price for the land and rights it acquires, without taking advantages of any reduction caused by the existing of the Scheme.
- 5.1.25 In the event of compensation not being agreed, a judicial process applies. Compensation disputes would be decided by the Upper Tribunal (Lands Chamber), with a right of appeal to the Court of Appeal. The same applies to compensation for loss or damage, payable in respect of the additional compulsory acquisition powers described in section 2 of this Statement.
- 5.1.26 The compulsory acquisition procedure accordingly provides certainty of outcome (the land or rights required for the Scheme to be delivered will be acquired), certainty of liability to compensation or price to be received, and fairness of outcome via the recourse to the judicial process in the absence of agreement. This benefits all parties.
- 5.1.27 The compulsory acquisition of the Land is currently estimated to cost £6.7m. In accordance with paragraph 9 of the Guidance, it is important to demonstrate that there is a degree of certainty for requisite funds being available, and that the lack of funds will not be an impediment to the delivery of the Scheme.

Funding

- 5.1.28 As detailed in the Funding Statement (document reference TR010020/APP/4.2), provided under Regulation 5(2)(h) of the Regulations, the Scheme will be funded entirely by the Department for Transport. The A19/A184 Testos junction improvement scheme is intrinsically linked with the A19 Downhill Lane junction improvement scheme, which is located approximately 1km to the south. The two schemes are being designed and constructed together, but will have separate applications for Development Consent. The schemes have a joint cost range estimate of £108.2m to £191.91m, with a most likely estimate being £133.97m; this figure includes the estimated cost for the compulsory acquisition of the Land. The current central most likely cost estimate for the Testos junction improvement element is £79.8m.
- 5.1.29 The document 'Investing in Britain's Future', published by HM Treasury in June 2013, stated at Appendix A (Table A.3) that the Government was committed to funding the Scheme subject to value for money and deliverability. In 2015, the Government confirmed that it had committed £50-£100m to the Scheme.

- 5.1.30 Accordingly, the Applicant considers that the decision maker can be satisfied of the Applicant's ability to secure funding for the Scheme and that the requisite funds for payment of any compensation will be available at the appropriate time. Public money must be spent on a prudent basis, achieving value for money. This will only be possible if the acquisition of the land interests required for the Scheme is backed by compulsory acquisition powers.

Summary

- 5.1.31 This Statement and the other application documents, including the Planning Statement (document reference TR010020/APP/7.1), demonstrate that there is a very strong and compelling case in the public interest for the Scheme to be delivered. It follows that there is a similarly compelling case in the public interest to include the compulsory acquisition powers sought by the Applicant in the DCO. The exercise of the compulsory acquisition powers that are sought is shown throughout this Statement to be necessary and proportionate to the extent that interference with private land and rights is required.

6 COMMUNICATIONS WITH LANDOWNERS

- 6.1.1 All owners, occupiers and others with an interest in land identified through diligent inquiry have been consulted on the proposals for the Scheme. These parties are identified in the BOR (document reference TR010020/APP/4.3). Details of the pre-application consultation process are provided in the Consultation Report (document reference TR010020/APP/5.1).
- 6.1.2 Such persons with an interest in the Land, as defined by section 44 of the Act, are required under section 42 of the Act to be identified through diligent inquiry and consulted on a proposed application for development consent.
- 6.1.3 The methods of communication that were used as part of the diligent inquiry process are summarised below:
- Requisition of Title Information: the title documents for properties and land that would be subject to compulsory acquisition were acquired through a Scheme-wide search of the Index Map held by the Land Registry. The title documents were used to identify the category 1 and 2 interests for the purposes of section 44(1) and section 44(2) of the Act.
 - Land Interest Questionnaires: questionnaires were issued to each landowner, whose land would be subject to compulsory acquisition, requesting the confirmation of known land interests or any other relevant information.
 - District Valuer Services (DVS) input: discussions were held with a district valuer to identify persons within 'Category 3' for the purposes of section 44(4) of the Act, who might have a claim as defined by section 44(6) of the Act.
 - Site notice / investigations: where no questionnaire response was received and /or it was not possible to identify land interests from other sources.
 - Web-based research: to verify details or identify interests where land was unregistered or it was not possible to identify land interests from other sources.
- 6.1.4 Land already owned by the Applicant has been included within the DCO. This is to ensure that any known or unknown third party rights that exist over such land do not impede the construction and implementation of the Scheme.
- 6.1.5 The Applicant is aware of the requirement, noted in paragraph 25 of the Guidance, to seek to acquire land by negotiation wherever practicable. It recognises that the authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. As discussed in the previous chapter of this Statement, discussions are ongoing with landowners and occupiers, but powers of compulsory acquisition over the Land are required to ensure that the Scheme can be delivered in the event that it does not prove possible to acquire the Land by agreement.
- 6.1.6 The Applicant is under a duty to acquire land at best value and so acquisition by agreement is unlikely to occur in all cases or in any event within sufficient time to ensure that the programme for the construction of the Scheme is met. The Applicant has therefore included compulsory powers in the DCO from the outset. This is in line with the Guidance, which at paragraph 25 acknowledges that this is appropriate for long linear schemes like this one, because it is necessary to

acquire a large number of plots and it is not practical to acquire all of them by agreement.

- 6.1.7 Compulsory acquisition powers serve the important function of ensuring that the compensation paid to the land interests affected represents a fair, open market value. This benefits both the Applicant as the acquiring authority and all those to whom compensation may be payable. The rules governing compulsory acquisition require that compensation for acquisition of land or an interest in land must represent the market value as unaffected by the proposed development, together with further amounts such as occupier's loss payments in some cases. As a result, the Applicant will be required to pay a fair, open market price for the land and rights it acquires, without taking advantage of any reduction caused by the existence of the Scheme.

7 IMPACTS ON STATUTORY UNDERTAKERS

7.1.1 Various statutory undertakers and other similar bodies have a right to keep equipment (in connection with their undertaking) on, in or over the Land. Statutory undertakers that are known to have equipment on, in or over the Land are included in the BOR (document reference TR010020/APP/4.3).

7.1.2 Section 127 of the Act applies to land acquired by statutory undertakers for the purposes of their undertaking, and places restrictions on the compulsory acquisition of such land where a representation is made by a statutory undertaker in relation to a DCO application and is not withdrawn by the close of the examination of that application. The draft DCO includes provision to authorise the compulsory acquisition of land and rights held by statutory undertakers for the purposes of their undertaking.

Compulsory acquisition of land owned by statutory undertakers

7.1.3 Section 127(2) provides that a development consent order may include provisions authorising the compulsory acquisition of statutory undertakers land only to the extent that the Secretary of State is satisfied of the matters set out in subsection 127(3), which are that the nature and situation of the statutory undertakers land are such that:

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

Compulsory acquisition of rights owned by statutory undertakers

7.1.4 Section 127(5) provides that a development consent order may include provisions authorising the compulsory acquisition of a right over statutory undertakers land by a creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection 127(6), which are that the nature and situation of the land are such that:

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

7.1.5 The Applicant recognises that where section 127 applies to land or rights which are required to be acquired to enable the delivery of the Scheme, and the statutory undertaker that owns such land or rights makes a representation to the Secretary of State in relation to the draft development consent order and does not withdraw that representation before the completion of the examination into the application, the Applicant will be required to seek confirmation that the Secretary of State is satisfied of the matters set out in subsections 127(3) and/or 127(6) as appropriate.

7.1.6 The Applicant is in consultation with all of the statutory undertakers affected by the Scheme and is aiming to address any issues that have been raised by them to date and to reach an agreed position through negotiations. Protective provisions for statutory undertakes have been included in the draft DCO and are forming part of the negotiations. As such, the Applicant expects to achieve an agreed and satisfactory position with each of the statutory undertakers prior to the close of the examination period.

7.1.7 However, should any representations from statutory undertakers remain outstanding before completion of the examination, the Applicant considers that the tests set out subsections 127(3) and/or 127(6) (as appropriate) can be demonstrated.

Statutory undertakers' land proposed to be acquired in connection with the Scheme

7.1.8 The draft DCO proposes to compulsorily acquire land from one statutory undertaker, National Grid Plc; specifically plots 2/6a, 2/6b, 2/6c, 2/6d, 2/6e and 2/6f. Further information on these plots can be found in the BOR (document reference TR0100/APP/4.3).

7.1.9 The Works for which these plots are required is detailed on the Works Plans (document reference TR010020/APP/2.4) and described in Schedule 1 (Authorised Development) of the Development Consent Order.

Interference with the apparatus of statutory undertakers

7.1.10 Section 138 of the Act applies if a development consent order authorises the acquisition of land (compulsorily or by agreement) and:

- there subsists over the land a relevant right; or
- there is on, under or over the land relevant apparatus.

7.1.11 For the purposes of section 138:

- as defined by section 138(2); a 'relevant right' means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking
- as defined by section 138(3); 'relevant apparatus' means apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or electronic communications apparatus kept installed for the purposes of an electronic communications code network.

7.1.12 A development consent order may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the development consent order relates (section 138(4) of the Act).

7.1.13 The draft DCO includes provision to authorise necessary interference by the Applicant with the apparatus of statutory undertakers, in connection with the delivery of the Scheme, as detailed in the following paragraphs.

- 7.1.14 A number of existing utility services are located in the area and would be affected by the Scheme. The location of these works is shown on the Works Plans (document reference TR010020/APP/2.4) and defined as specific works within Schedule 1 (Authorised Development) of the development consent order. The relevant major utilities are summarised below:
- Work No.9 (Northern Powergrid cable diversions)
 - Work No.24 (Northumbrian Water Group pipeline diversion).
 - Work No.25 (BT cable diversions)
 - Work No.26 (Northern Gas Networks pipeline diversion)
- 7.1.15 The Applicant proposes to acquire and provide new permanent rights over land for the benefit of the relevant utility company and the carrying out of their undertakings, in such cases where existing rights have been extinguished or interfered with.
- 7.1.16 For the avoidance of doubt, the Applicant will continue to negotiate with statutory undertakers to ensure that their interests are not significantly adversely affected by the exercise of powers of compulsory acquisition.

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8 HUMAN RIGHTS

8.1.1 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights (“the Convention”). The Convention includes provisions in the form of Articles, the aim of which is to protect the right of the individual.

8.1.2 The following articles of the Convention are relevant to the determination as to whether the DCO should be made so as to include powers of compulsory acquisition:-

- Article 6 entitles those affected by the powers sought in a DCO to a fair and public hearing by an independent and impartial tribunal.
- Article 8 protects the right of the individual to respect for his or her private and family life, his home and his correspondence. A public authority cannot interfere with these interests unless interference is in accordance with the law and is necessary in the interests of, inter alia, national security, public safety or the economic well-being of the country;
- Article 1 of the First Protocol protects the right of everyone to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws. As with Article 8, any interference with possessions must be proportionate and in determining whether a particular measure is proportionate a fair balance must be struck between the public benefit sought and the interference with the rights in question.

8.1.3 The DCO has the potential to interfere with the human rights of persons who own property in the Land. Such interference is lawful provided:-

- the statutory procedures for obtaining the DCO are followed to ensure a fair hearing; and
- there is a compelling case in the public interest for the inclusion of compulsory powers in the DCO to ensure that any interference is justified by the public benefit that would be delivered by the Scheme, taking the provisions for compensation into account.

Compliance with the Convention and the Human Rights Act 1998

8.1.4 The Applicant has considered the potential infringement of convention rights in consequence of the compulsory acquisition powers included with the DCO. The land to be acquired for the Scheme has been kept to a minimum and the Scheme is designed to minimise interference with the peaceful enjoyment of a person’s possessions under article 1 of the First Protocol of the Human Rights Act.

8.1.5 The Applicant considers that there would be very significant public benefit arising from the grant of development consent, as demonstrated in the Planning Statement (document reference TR010020/APP/7.1). That benefit can only be realised if the development consent is accompanied by the grant of powers of compulsory acquisition. The public interest can only be safeguarded by the acquisition of the necessary land and the acquisition powers would not place a disproportionate burden on the affected land owners.

- 8.1.6 These significant public benefits justify the effects of the DCO upon affected persons. As the compulsory powers are necessary to deliver the Scheme, they would not be a disproportionate interference with their Article 8 and Article 1 of the First Protocol rights. In addition, those affected by compulsory acquisition powers will be entitled to compensation and the Applicant has the resources to pay such compensation, as demonstrated by the Funding Statement (document reference TR010020/APP/4.2). This includes the beneficiaries of restrictive covenants and other rights overridden by the exercise of powers in the DCO who would be capable of making claims under section 10 of the Compulsory Purchase Act 1965.
- 8.1.7 In relation to Article 6, there has been an opportunity for those affected to make representations on the Application. In addition to the publicity and wider consultation on the Application and in accordance with Part 5 of the Act, the Applicant consulted the persons set out in sections 42 to 44 of the Act. This included known owners and occupiers of the Land and those who might make claims either under section 10 of the Compulsory Purchase Act 1965 or section 152(3) of the Act in respect of injurious affection, or under Part 1 of the Land Compensation Act 1973.
- 8.1.8 Furthermore, representations can be made by way of objections to the Application in response to any notice given under section 56 of the Act, the examination of the Application by the examining authority, any written representations procedure which the examining authority decides to hold and, in particular, any compulsory acquisition hearing under section 92 of the Act, which any party who is having land acquired may cause to take place.
- 8.1.9 Should the DCO be made, a person aggrieved may challenge the DCO by judicial review in the High Court if they consider that the grounds for doing so are made out pursuant to section 118 of the Act. In relation to disputes about compensation, affected persons have the right to apply to the Upper Tribunal (Lands Chamber), an independent tribunal.
- 8.1.10 For the above reasons, any infringement of convention rights of those whose interests are affected by the inclusion of powers of compulsory acquisition is in the public interest and lawful under national and European law, and it would be appropriate and proportionate to make the DCO, including the grant of compulsory acquisition powers.

9 SPECIAL CONSIDERATION

Crown Land

- 9.1.1 The Applicant is not seeking to acquire any Crown Land. A Crown interest will arise from any Crown entity, which may include not just the Crown Estate, but can also include other government entities/departments. A Crown interest may be listed as a Category 1, 2 or 3 interest in the BOR (document reference TR010020/APP/4.3).
- 9.1.2 Plots 1/6a, 1/6b and 1/6c are land which is subject to escheat. This is a unique status for property where, in this instance, property has remained vested in a company on dissolution, has become bona vacantia, then been disclaimed by the Treasury Solicitor where it became subject to escheat and fell to be dealt with by the Crown Estate.
- 9.1.3 The Applicant has not included these plots in Part 4 of the BOR (document reference TR010020/APP/4.3) as the Crown Estate has previously confirmed that they do not consider this land to constitute Crown Land for the purposes of the Act. We are liaising with the Crown Estate to confirm that this is their position in respect of any identified land in the Land subject to escheat. They have confirmed that they do not consider the land in Plots 1/6a, 1/6b and 1/6c to be owned by them. Accordingly, this land will not be subject to same limitations in respect of compulsory acquisition rights and no land affected by the Scheme is considered to be Crown land.
- 9.1.4 Previously, land that was owned by the Secretary of State for Transport was classified as Crown Land. This would have included a significant amount of the Land. However, as a result of the creation of Highways England and the transfer of land formerly owned by the Secretary of State for Transport to Highways England, the land in question no longer constitutes Crown Land. This is because Highways England is a Strategic Highways Company and not an Executive Agency of the Department for Transport. Highways England does not hold land on behalf of the Crown, nor is it an 'appropriate Crown authority' for the purpose of the Act.

Special Category Land – Open Space etc.

- 9.1.5 Sections 131 and 132 of the Act make provision for special parliamentary procedure to apply where a development consent order authorises the compulsory acquisition of land, or rights over land, forming part of a common or open space. Specifically:
- Section 131 applies where an application is made for a development consent order authorising the compulsory acquisition of land forming part of a common or open space.
 - Section 132 applies where an application is made for a development consent order authorising the compulsory acquisition of a right over land forming part of common or open space, by the creation of a new right over land.

- 9.1.6 The Applicant is satisfied that, in respect of this Scheme, there is no special category land pursuant to section 131 and 132 of the Act. Accordingly, the draft DCO does not include provision for the compulsory acquisition of land to which the provisions of the Act relating to special category land apply.

10 SUMMARY AND CONCLUSION

- 10.1.1 For the reasons set out above, the Applicant believes that it is necessary, proportionate and justifiable for the DCO to contain compulsory acquisition powers relating to the Land required to construct the Scheme. The Scheme would deliver significant public benefits which would outweigh the impact on those persons affected by compulsory powers; therefore, there is a compelling case in the public interest for the Applicant to be granted these powers.
- 10.1.2 Chapter 2 describes the scope of the compulsory acquisition powers that are being sought over the Land.
- 10.1.3 Chapter 3 describes the extent and usage of the land that would be subject to compulsory acquisition and also land within the surrounding area.
- 10.1.4 Chapters 4 and 5 describe the purpose for which compulsory acquisition powers are sought and provide justification for the inclusion of these powers within the DCO.
- 10.1.5 Chapter 6 describes the communication and engagement undertaken with persons who have interests, rights and potential relevant claims under section 44(6) of the Act.
- 10.1.6 Chapter 7 considers the impact of the Scheme and the compulsory acquisition powers sought in the DCO on statutory undertakers.
- 10.1.7 Chapter 8 explains how an individual's human rights are protected under the Human Rights Act 1998 and how the Scheme complies with this legislation.
- 10.1.8 Chapter 9 outlines special considerations in respect of Crown Land and "special category land" and explains why these will not be engaged.
- 10.1.9 In conclusion, the tests in section 122 of the Act are met and there is a compelling case in the public interest for the compulsory acquisition of the Land.