



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

A19 / A184 Testo's Junction Alteration

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

Rynd Smith LLB MA MRTPI FRSA

21 June 2018

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ERRATA SHEET – A19 / A184 Testo’s Junction Alteration - Ref TR010020

Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport, dated 21 June 2018

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
31	3.3.15	“ It was published during the reporting period...”	“ A consultation upon it was published during the reporting period...”
76	4.12.29	“ This supplement was published after the closure of the Examination...”	“ A consultation on the content of this supplement was published after the closure of the Examination...”
76	4.12.32	“As AQP2017 supplement was not available during the Examination but has now been published, the SoS may wish to consult the parties on specific measures for the Leam Lane / Lindisfarne Roundabout, Jarrow AQMA (if any) that the supplement may contain.”	“As AQP2017 supplement was not available during the Examination but a consultation upon it has now been published, the SoS may wish to consult the parties on specific measures for the Leam Lane / Lindisfarne Roundabout, Jarrow AQMA (if any) that the consultation may contain.”
77	4.12.35	“However, as a supplement to the AQP2017 was published after the closure of the Examination, the SoS may wish to consult the parties on this and take it into account in the decision.”	“However, as a consultation on a supplement to the AQP2017 was published after the closure of the Examination, the SoS may wish to consult the parties on this and take it into account in the decision.”
126	6.2.1	“However, as a supplement to the Air Quality Plan for NO ₂ , DEFRA (2017) has been published following the closure of the Examination, the SoS may wish to consult the parties on this and take it into	“However, as a consultation on a supplement to the Air Quality Plan for NO ₂ , DEFRA (2017) has been published following the closure of the Examination, the SoS may wish to consult the parties

		account in the decision.”	on this and take it into account in the decision.”
176	9.3.1	“Following the decision in the case of Client Earth No.3, a revised Air Quality Plan has been published (Section 4.12) and consultation with the parties upon it may be beneficial.”	“Following the decision in the case of Client Earth No.3, <u>a consultation on the content of</u> a revised Air Quality Plan has been published (Section 4.12) and consultation with the parties upon it may be beneficial.”

OVERVIEW

File Ref: TR010020

The application, dated 14 July 2017, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on the same date.

The Applicant is Highways England.

The application was accepted for Examination on 10 August 2017.

The Examination of the application began on 14 November 2017 and was completed on 26 March 2018.

The development proposed comprises replacement of the existing at-grade roundabout junction between the A184 and the A19 (Testo's Junction) with a grade-separated junction. This necessitates raising the A19 mainline above ground on embankments and / or overbridge(s) to carry it over the existing roundabout. The new raised section of the A19 mainline would be slightly to the west of its existing alignment, to accommodate a widened roundabout, whilst retaining parts of the existing A19 southbound carriageway for the provision of new slip roads. Access to and from the A19 Downhill Lane Junction (1km to the south) would be via Testo's roundabout and new parallel link roads connecting the two junctions would be provided. Associated development includes the realignment of pedestrian, cycle and bridleway layouts, drainage works and the diversion of utilities.

Summary of Recommendation:

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

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APPENDIX B:	EXAMINATION LIBRARY	B(I)
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APPENDIX C:	LIST OF ABBREVIATIONS	C(I)
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APPENDIX D:	THE RECOMMENDED DCO	D(I)
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1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for the A19 / A184 Testo's Junction Alteration Project¹ (the Proposed Development) under file reference TR010020 was submitted by Highways England (the Applicant) to the Planning Inspectorate on 14 July 2017 under section (s)31 of the Planning Act 2008 (PA2008) [APP-003]² and accepted for Examination under s55 of PA2008 on 10 August 2017 [PD-001].

1.1.2. The Proposed Development comprises:

- Upgrading the existing at-grade A19 / A184 Testo's Junction to a grade-separated configuration with embankments and a single flyover bridge or underbridges carrying the A19 mainline across the roundabout intersection.
- Providing new parallel frontage link roads between the Testo's Junction and the existing Downhill Lane Junction to the south.
- Widening the existing roundabout at Testo's Junction to accommodate the combination of new connector roads (slips) and frontage roads.
- Accommodation and diversion of existing utility installations at and near the Testo's Junction.
- Accommodation and diversion of pedestrian, cycle and bridle routes, including the removal of an existing bridleway overbridge.
- Reconfiguration of highway drainage works.

1.1.3. The Application Form [APP-003] characterises the application as an alteration for the purposes of s22(1)(b) of PA2008 and so, although much of the document set refers to the application as relating to an improvement project, this Report refers to the Proposed Development as an alteration project, as that provides the best and closest description of the proposal under the PA2008.

1.1.4. The location of the Proposed Development is shown in the Location Plan [APP-004], which remained unchanged throughout the Examination. The site lies in the Metropolitan Borough of South Tyneside in the ceremonial county of Tyne and Wear and is located wholly within England.

1.1.5. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the then Department of Communities

¹ As applied for, the Application was the 'A19 / A184 Testo's Junction Improvement Project', but for reasons set out fully in Chapter 8 of this Report, the ExA recommends that it should be known as the A19 / A184 Testo's Junction Alteration Project.

² References to documents in the Examination Library for this Report are enclosed in square brackets [] and hyperlinked to the original electronic documents held online. A full index to the Examination Library can be found in Appendix B.

and Local Government (DCLG)³ in their decision to accept the application for Examination in accordance with s55 of PA2008 [\[PD-001\]](#)[\[PD-002\]](#).

1.1.6. On this basis, the Planning Inspectorate under delegation from the SoS agreed with the Applicant's view stated in the Application Form [\[APP-003\]](#) that the proposed development is an NSIP for the following reasons. It is an alteration to the strategic highway where the speed limit is expected to be 50mph or greater. It is wholly within England and by Highways England – a strategic highways authority. It is on land extending to 67.8ha (over 12.5ha), and for these reasons taken together requires development consent in accordance with s31 of PA2008. The Proposed Development meets the definition of an NSIP set out in ss14(1)(h), 22(1)(b), 22(3)(a), (b) and (c) and 22(4) of PA2008. Nothing has arisen in Examination to change that view.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 14 September 2017, Rynd Smith was appointed as the Examining Authority (ExA) for the application under ss78 and 79 of PA2008 [\[PD-004\]](#).

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. The persons involved in the Examination were:

- Persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP.
- Affected Persons (APs) who were affected by a Compulsory Acquisition (CA) and / or temporary possession (TP) proposal made as part of the application and objected to it at any stage in the Examination.
- One 'Other Person', International Advanced Manufacturing Park (IAMP) LLP, was invited to participate in the Examination pursuant to its request to do so⁴.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 14 November 2017 and concluded on 26 March 2018. As the ExA had foreshadowed to all parties at the Preliminary Meeting (PM) and throughout the Examination, there having been no contentious representations received at Deadline (D)7 and all necessary information was to hand, the Examination was closed before the end of the maximum statutory Examination period on 14 May 2018.

³ The Department of Communities and Local Government (DCLG) has been replaced by the Ministry of Housing, Communities and Local Government (MHCLG). However, in this Report, decisions made and documents published prior to this change are referred to as having been made or published by DCLG.

⁴ See also paragraph 1.4.39.

1.4.2. The principal components of and events around the Examination are summarised below. Appendix A, Examination Events provides a full description of Examination timescales, dates and events.

The Preliminary Meeting

1.4.3. On 17 October 2017, the ExA wrote to all IPs and Statutory Parties⁵ under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (the Rule 6 Letter) [\[PD-005\]](#), inviting them to the PM and an early Issue Specific Hearing (ISH) into the draft Development Consent Order (dDCO), outlining:

- the arrangements and agenda for the PM;
- notification of Issue Specific Hearing 1 (ISH1) into the dDCO to be held in the early stage of the Examination;
- the agenda for ISH1;
- the Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- availability of RRs and application documents; and
- preliminary Procedural Decisions.

1.4.4. The preliminary Procedural Decisions set out in the Rule 6 Letter [\[PD-005\]](#) (at Annex G) related to matters that were confined to Examination procedure. They were set out at this early stage so that, subject to discussion at the PM, it was possible to commence certain Examination procedures (including an early hearing, early submission of Written Representations (WRs), comments on WRs and on RRs) earlier within the Examination than would be the case if such decisions were not communicated until after the PM. No attendee at the PM raised any objection to these decisions and on that basis they were implemented and complied with. There is no need to reiterate them here.

1.4.5. The PM took place on 14 November 2017 at the Quality Hotel, Boldon, adjacent to the application site. An audio recording [\[EV-003\]](#) and a note of the meeting [\[EV-002\]](#) were published on the project page of the National Infrastructure Planning website⁶.

1.4.6. The Procedural Decisions and the Examination Timetable took full account of matters raised at the PM. These were communicated in the Rule 8 Letter [\[PD-006\]](#), dated 22 November 2017.

Key Procedural Decisions

1.4.7. Given the approach taken in the Rule 6 Letter, the Rule 8 Letter in large part confirmed the preliminary Procedural Decisions. Again, these decisions related to matters that were confined to the procedure of the Examination, did not bear on the merits of the Proposed Development,

⁵ At this stage, no Other Persons had been identified as participants in the Examination.

⁶ <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-a184-testos-junction-improvement/>

were not matters of contention and were generally complied with by the Applicant, relevant IPs and Other Persons. The procedural decisions can be obtained from the Rule 8 Letter [\[PD-006\]](#) and so there is no need to reiterate them here, beyond a brief reference to the ExA's decision to invite the participation of IAMP LLP as an Other Person, referred to in paragraph 1.3.1 above and paragraph 1.4.39 below.

- 1.4.8. It is however necessary to refer to a separate Procedural Decision that was made on 24 November 2017 [\[PD-008\]](#). In circumstances where the Applicant had submitted information including an Addendum to the ES (the AES) [AS-003 to AS-014]⁷, the Applicant was required to publicise this material and notify the same persons as they would following the Acceptance of the application about it and then afford those persons an opportunity to make representations on its content. Any such additional submissions were to be reported to the ExA by Deadline (D)3. The purpose of this decision was to provide any such persons with an opportunity to raise any issues that they saw as arising from this material within the Examination. This decision is reported on further in Section 2.3 of this Report.

Site Inspections

- 1.4.9. Site Inspections are held in Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.10. Where matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) can be held. Two USIs were held:
- USI1, was held on 18 September 2017 to view the application site in the context of the A19 and surrounding road network and settlement pattern and also viewing other nearby major highways and development proposals (including the IAMP site) [\[EV-001\]](#); and
 - USI2, was held on 13 November 2017 to view the land requirements of the Proposed Development in more detail, from public rights of way [\[EV-006\]](#).
- 1.4.11. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and / or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held. No requests were made from any IP to hold an ASI, however one ASI was held:
- ASI1, was held on 16 January 2018 to enable the ExA to view private land managed on behalf of National Grid Electricity Transmission (NGET) by Groundwork South Tyneside and Newcastle Trust

⁷ The submitted documents are individually hyperlinked in the Examination Library (Appendix B) (under references [AS-003 to 014] inclusive).

(Groundwork STAN), prospectively affected by the Proposed Development [\[EV-007\]](#).

1.4.12. The ExA has had regard to the information and impressions obtained during site inspections in all relevant sections of this Report.

Hearing Processes

1.4.13. Hearings are held in Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
 - where APs affected by CA and / or TP proposals request to be heard at a Compulsory Acquisition Hearing (CAH) (s92 of PA2008); and / or
 - where IPs request to be heard at an Open Floor Hearing (OFH) (s93 of PA2008).
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear, generally at ISHs (s91 of PA2008).

1.4.14. The ExA held a CAH, an OFH and a number of ISHs to ensure the thorough examination of the issues raised by the Application (as set out in the IAPI), RRs, WRs, comments on these and in all subsequent representations.

1.4.15. The PM and ISH1 were held at the Quality Hotel, Boldon, a location in close proximity to the Proposed Development. However, it having become apparent that the land on which the hotel was located made its owner into a prospective AP (as a Category 3 Person in the Book of Reference (BoR) [\[REP5-013\]](#)), all but one of the subsequent hearings (the OFH) were held elsewhere: at the Royal Station Hotel in central Newcastle upon Tyne. This was a location some 14km to the west of the Proposed Development site but convenient for regional access by the road, National Rail, Metro and bus networks, in circumstances where most active participants in the examination were local government, government and corporate entities with no particular need to be heard adjacent to the Proposed Development site.

1.4.16. ISHs were held on the subject matter of the dDCO as follows:

- ISH1, 15 November 2017 (the Agenda and a schedule of issues and questions can be found at Annex E to the Rule 6 Letter [\[PD-005\]](#) and audio recordings are available [\[EV-004\]](#) [\[EV-005\]](#));
- ISH3, 19 January 2018 (the Agenda can be found at Annex D to the notification of Agendas for January Hearings [\[EV-009\]](#) and an audio recording is available [\[EV-015\]](#)); and
- ISH5, 1 March 2018 (the Agenda can be found at [\[EV-019\]](#), a schedule of issues and questions at [\[EV-018\]](#) and audio recordings are available [\[EV-021\]](#)[\[EV-022\]](#)).

- 1.4.17. ISHs were held on other individual subject matters as follows:
- ISH2, 17 January 2018 on environmental issues (the Agenda can be found at Annex B to the notification of Agendas for January Hearings [\[EV-009\]](#) and audio recordings are available [\[EV-011\]](#)[\[EV-012\]](#)); and
 - ISH4, 28 February 2018 on outstanding issues in the Examination (the Agenda can be found at [\[EV-019\]](#), a table of issues and questions at [\[EV-017\]](#) and an audio recording is available [\[EV-020\]](#)).
- 1.4.18. A CAH was held on 18 January 2018 (the Agenda can be found at Annex C to the notification of Agendas for January Hearings [\[EV-009\]](#) and an audio recording is available [\[EV-014\]](#)). All APs were provided with an opportunity to be heard, but none requested to be heard. This hearing examined the Applicants case for CA and / or TP in its entirety. Time was reserved in the Examination Timetable for a second CAH on 1 March 2018, but, on the basis that there were no requests to be heard from APs and that examination of the Applicant's case for CA and TP had been completed on 18 January 2018, this second hearing did not proceed.
- 1.4.19. An OFH was held at the Quality Hotel, Boldon, on the evening of 16 January 2018 (the Agenda can be found at Annex A to the notification of Agendas for January Hearings [\[EV-009\]](#) and an audio recording is available [\[EV-010\]](#)). All IPs and APs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise. The issue recorded at paragraph 1.4.15 above notwithstanding, the hearing location at the Quality Hotel in Boldon was retained for this hearing, in response to an oral and additional written submission made following the PM by Denis Gilhespy [\[AS-022\]](#) that local residents (IPs / APs) should not be compelled to attend an OFH in Newcastle upon Tyne. It should be recorded that no representative of the Quality Hotel's ownership sought to participate in the hearing in any way.
- 1.4.20. The conduct of ISH4 and ISH5 on 28 February and 1 March 2018 require a remark in relation to weather conditions. The Meteorological Office issued "amber" severe weather warnings for snow on those days and there was heavy snowfall overnight and into the morning of 1 March.
- 1.4.21. No-one who wished to attend ISH4 on 28 February was unable to attend and that hearing proceeded as normal. In respect of ISH5 on 1 March, South Tyneside Council (STC), the host local authority, was unable to attend. The Applicant attended as normal. It was decided to proceed with ISH5 on the basis that the combination of a detailed agenda and an audio recording (referenced above), the provision of a published Action List [\[EV-023\]](#) flagging matters for the attention of STC, and D5 on 8 March 2018 for the submission of a record of oral submissions in writing would in combination enable STC to be fully aware of what transpired in their absence and to make submissions to address any matters that they may have wished to address orally.

Written Processes

- 1.4.22. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising

from the Examination. All of this material is recorded in the Examination Library (Appendix B) and published online. For this reason, this Report does not contain extensive summaries of documents and representations, although full regard has been had to them in all reasoning and conclusions. All important and relevant matters arising from them have been considered.

1.4.23. Key written sources are set out further below.

Relevant Representations

1.4.24. Twelve Relevant Representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-012]⁸. All RRs have been fully considered by the ExA. The issues that they raise are identified and considered throughout this Report.

Written Representations

1.4.25. The Applicant, IPs and one Other Person were provided with opportunities to:

- make written representations (WRs) (D1);
- comment on WRs made by the Applicant and other IPs (D2 and D3);
- written submission of oral cases made by the Applicant and other IPs at hearings (D3 and D5); and
- comment on other documents including:
 - comments on any submission made by the Applicant and other IPs (D4 to D7);
 - ExA observations on the dDCO at ISH5 (D5);
 - updated Statements of Common Ground (SoCGs) and any other updated documents submitted by the Applicant (D6); and
 - the Applicant's final preferred dDCO (D7).

1.4.26. All WRs and all further written submissions are individually referenced in the Examination Library. The ExA has considered all WRs and other written submissions made and the issues that they raise are considered in Chapters 4, 5, 7 and 8 of this Report.

Written Questions

1.4.27. The ExA asked one round of written examination questions (ExQ). ExQ1 [\[PD-007\]](#) was published on 22 November 2017.

1.4.28. The Examination Timetable reserved time for the publication of ExQ2 on 15 February 2018. As matters eventuated, at ISH2 on 17 January 2018 the Applicant requested and it was agreed to defer the submission of responses on cumulative and in-combination assessment with another nearby highway alteration project (the Downhill Lane Junction Project)

⁸ The RRs are available in the Examination Library (Appendix B). Where they are referred to individually in the text, they are hyperlinked.

and on the drainage scheme and compliance with the Water Framework Directive (WFD). These had been due at D3 on 25 January 2018, but deferral until D4 on 6 February 2018 was agreed.

- 1.4.29. As a consequence of this decision, only a very limited period of time was left between receipt of D4 submissions and the time at which ExQ2 would have had to be finalised. Instead of publishing ExQ2, it was decided to proceed with the ISH4 reserved in the timetable for 28 February 2018. The agenda and questions for that hearing took full account of all D4 submissions. There were no other matters that required to be addressed in ExQ2 and so, in accordance with the flexibility provided by the Examination Timetable they were not issued.
- 1.4.30. No requests for further information were issued under Rule 17 of the EPR. Nor were there any amendments to the Examination Timetable made under Rule 8(3) of the EPR: the Examination proceeded throughout as provided for in the Rule 8 Letter [\[PD-006\]](#).
- 1.4.31. All responses to written questions have been fully considered and taken into account in all relevant Chapters of this Report.

Local Impact Report

- 1.4.32. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 of PA2008.
- 1.4.33. One LIR was received from STC, the host local authority [\[REP2-006\]](#). The LIR has been taken fully into account in all relevant Chapters of this Report and a description of its content and role in decision-making can be found in Chapter 4 of this Report.

Statements of Common Ground

- 1.4.34. By the end of the Examination, the following bodies had concluded Statements of Common Ground (SoCGs) with the Applicant:

- STC [\[REP3-011\]](#);
- Environment Agency (EA) [\[REP4-006\]](#); and
- Natural England (NE) [\[REP5-015\]](#).

These SoCGs are signed by both parties. They replace earlier drafts that were submitted to the Examination.

- 1.4.35. A draft SoCG between the Applicant and NGET [\[REP1-012\]](#) was submitted at D1. However, following a complete settlement of the position between the Applicant and NGET and the withdrawal of NGET's submissions [\[REP4-001\]](#), despite the fact that the SoCG was never withdrawn, it was never finalised and has been in effect superseded. There is no need for the SoS to have regard to this SoCG.
- 1.4.36. The signed SoCG(s) recorded in paragraph 1.4.34 above have been taken fully into consideration in all relevant Chapters of this Report.

Report on the Implications for European Sites

- 1.4.37. The Examination Timetable had reserved time for the publication of a Report on the Implications for European Sites (RIES) by the ExA and for comments upon it by D5. However, by mid-January 2018 it had become apparent that the Proposed Development raised only the most limited of matters relevant to Habitats Regulations Assessment (HRA) that would have been the subject of a RIES. The flexible provisions of the timetable were used to dispense with the publication of this document and remaining questions were raised orally at ISH4.

ExA Commentary on the Draft Development Consent Order

- 1.4.38. Similarly, the Examination Timetable had reserved time for the publication of a commentary on the dDCO by the ExA and for comments on it by D5. As a consequence of the decision to proceed with ISH5, outstanding ExA commentary on the dDCO was placed onto the agenda [\[EV-019\]](#) and schedule of issues and questions for that hearing [\[EV-018\]](#), to which written responses could be made by any IP at D5. As a consequence, there was no need for a separate written commentary on the dDCO and one was not published.

Requests to Join and Leave the Examination

- 1.4.39. The following persons who were not already IPs requested that the ExA should enable them to join the Examination at or after the PM:
- IAMP LLP was not an existing IP or an AP but attended the PM. IAMP LLP requested to participate as an Other Person. The ExA agreed to invite it to participate in the Examination because it was as affected by the Proposed Development and because it had particular expertise or evidence that was necessary to inform the Examination. This decision was taken because whilst IAMP LLP had not made a RR, it was the joint special delivery vehicle formed by STC and Sunderland City Council (SCC) to prepare an Action Area Plan and promote the development of the International Advanced Manufacturing Park at Downhill Lane, close to the application site.
 - Groundwork STAN was not an existing IP (not having made a RR) but attended the PM. Groundwork STAN manages land owned by NGET at West Boldon Lodge in association with West Boldon Sub-station. It provides biodiversity and environmental education outcomes, and runs a substantial environmental education centre. A RR from NGET [\[RR-008\]](#) objected to the Proposed Development amongst other reasons because of its prospective effect on the Groundwork STAN facility and biodiversity management. At the PM, the ExA stated willingness to invite participation by Groundwork STAN as an Other Person. However, having investigated the nature of the relationship between Groundwork STAN and NGET, it became apparent that Groundwork STAN was listed in the BoR [\[REP5-013\]](#) as a Category 1 Person and had been notified as such, so was already an AP. It continued to participate in the Examination on that basis.
- 1.4.40. During the Examination, as a consequence of discussion between IPs / APs and the Applicant, DLA Piper, Solicitors for NGET made a submission

on 25 January 2018 [\[REP4-001\]](#) confirming that NGET had no outstanding issue with or objection to the dDCO and confirming its withdrawal of its RR and WR. It did not withdraw its draft SoCG with the Applicant, but stated '*for the avoidance of doubt, there is therefore no need to update the [SoCG] going forward.*'

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

- 1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.5.2. The most recent relevant law is found in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations). The 2017 EIA Regulations revoke the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the 2009 EIA Regulations), subject to transitional provisions. The Applicant maintained that the transitional provisions applied to the Application and hence had complied with relevant provisions of the 2009 EIA Regulations in the pre-application period.
- 1.5.3. There are procedural differences between the 2017 EIA Regulations and the 2009 EIA Regulations. In circumstances where the 2009 EIA Regulations were complied with but the transitional provisions were held not to apply, there could be aspects of the 2017 EIA Regulations that might not be complied with. To exclude that possibility, the effect of the 2017 EIA Regulations transitional provisions, related ExA questions and submissions in response to them are considered in Chapter 4 of this Report. For reasons recorded there, the transitional provisions are considered to apply and hence that Application remains subject to the 2009 EIA Regulations. All other reasoning in this Report proceeds on that basis.
- 1.5.4. In July 2014, the Applicant submitted a Scoping Report to the SoS⁹. In September 2014, the Planning Inspectorate provided a Scoping Opinion [\[APP-044\]](#). Therefore, in accordance with Regulation 4(2)(a) of the 2009 EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an Environmental Statement (ES). The ES comprises a Main Report [\[APP-018\]](#), supported by separate figures, Appendices and a non-technical summary [\[APP-019 to 039\]](#)¹⁰.
- 1.5.5. On 11 October 2017 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the 2009 EIA Regulations had been complied with [\[OD-002\]](#).

⁹ [The A19 Testos Junction Improvement: EIA Scoping Report](#), Highways England (July 2014)

¹⁰ The ES documents are individually hyperlinked in the Examination Library (Appendix B) (under references [\[APP-019 to 039\]](#) inclusive), and relevant individual documents are hyperlinked as required in the body of this Report

1.5.6. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4 of this Report.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided [\[APP-045\]](#).

1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this Report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. By the end of the Examination, the following bodies had entered into formal undertakings, obligations and / or agreements with the Applicant that are important and relevant considerations for the SoS.

- DLA Piper, Solicitors for NGET wrote to the ExA on 25 January 2018 confirming that NGET had entered into a side agreement with the Applicant which was sufficient to address all remaining issues raised by NGET. It followed that NGET withdrew its previous request for protective provisions, its RR and WR [\[REP4-001\]\[AS-023\]](#). The content of the agreement is confidential between the Applicant and NGET and so, beyond noting that it has procured the withdrawal of submissions and accepting that no additional protective provisions for NGET are required, no weight is placed upon content of the agreement that has not been put into the Examination.
- In their SoCG [\[REP3-011\]](#) at paragraph 3.1.12, the Applicant and STC record discussions in relation to Art 10(1) and (2) of the dDCO (Street Works). They agreed there that *'any street to be constructed, altered or diverted is to be maintained by the local highway / street authority, unless otherwise agreed between the parties'*. They also agreed that the Applicant *'will be responsible for any latent defects which might arise in the first 12 months following the completion'*. This commitment was intended to be set out in a side agreement between the Applicant and STC, avoiding the need for amendments to the dDCO on this matter. STC wrote to the ExA on 26 March 2018 [\[REP7-001\]](#) confirming that it had entered into this side agreement with the Applicant, the contents of which were also confidential.

1.7.2. The existence of these agreements has been taken into account by the ExA in all relevant Chapters of this Report. However, as noted above, in circumstances where the content of agreements is confidential, no regard can be had and no weight placed upon their content. They stand only as evidence that matters that were in contention at the start of the Examination are now no longer in contention.

1.8. OTHER CONSENTS

1.8.1. The Consents and Agreements Position Statement [\[APP-012\]](#) identified the following consents that the Proposed Development has obtained or must obtain, in addition to Development Consent under PA2008. These are recorded below.

- Trade effluent consent (for temporary buildings foul waste) (Water Industry Act 1991).
- Mobile plant licences for crushing operations or site permits if not using a subcontractor with their own mobile licences (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2010).
- Exemptions for operations such as U1 (import of waste for use in construction) and T15 (crushing of aerosols to minimise hazardous waste) (if exemption limits can be met) (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2010).
- Environmental Permit for waste operations (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2010).
- Section 61 consent (if requested by STC) (Control of Pollution Act 1974).
- Water abstraction licence (if need to remove more than 20m³/day) (Water Resources Act 1991 (as amended by the Water Act 2003), Environment Act 1995, The Water Resources (Abstraction and Impounding) Regulations 2006).
- Use of pesticides within 8m of a watercourse (e.g. if a species such as Himalayan Balsam is found at a headwall location and requires to be sprayed) (Control of Pesticides Regulations 1986, as amended).
- Notification to EA of Japanese Knotweed removal or burial (Waste (England and Wales) Regulations 2011)
- CL:aire¹¹ Materials Management Plan.
- Environmental Standard Rules Permit (Flood Risk Activity) to construct an outfall on a Main River (The Environmental Permitting (England and Wales) Regulations 2016 S.I. 2016/1154).
- Land Drainage Consent to culvert an Ordinary Watercourse (Section 23 of The Land Drainage Act 1991).

1.8.2. Paragraph 3.1.4 of the Consents and Agreements Position Statement [\[APP-012\]](#) identifies that all of these consents are outstanding because they:

'are largely dependent on finalisation of the detailed design, the detailed construction site set up and methodologies, and discussions with stakeholders (e.g. [the Environment Agency] EA and Local Authority). These are not sufficiently developed at this stage to confirm the requirements and therefore it is not practicable to include them within the DCO.'

¹¹ CL:AIRE is an independent practice accreditation body that promotes sustainable remediation of contaminated land and groundwater. It has developed a Code of Practice to laying down a consistent process to enable the reuse of excavated material without it being classified as waste. A CL:aire Materials Management Plan is a compliant plan which demonstrates how that code is to be met.

1.8.3. All outstanding consents recorded above have been considered. The Applicant has submitted that these relate to matters that cannot be consented until the finalisation of detailed design and the discharge of relevant requirements in the DCO. Without prejudice to the exercise of discretion by future decision-makers, the ExA has agreed with the Applicant and concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant the Application.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination.
- **Chapter 5** considers effects on European Sites and Habitats Regulations Assessment (HRA).
- **Chapter 6** sets out the balance of planning considerations arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 7** sets out the ExA's examination of CA and TP proposals.
- **Chapter 8** considers the implications of the matters arising from the preceding chapters for the DCO.
- **Chapter 9** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – Examination Events.
- **Appendix B** – Examination Library.
- **Appendix C** – List of Abbreviations.
- **Appendix D** – the Recommended DCO.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The Applicant submitted an application under section (s)37 of the Planning Act 20018 (as amended) (PA2008) for an order granting development consent for what was described as the 'A19 / A184 Testos Junction Improvement' [\[APP-001\]](#)[\[APP-002\]](#)[\[APP-003\]](#). The Applicant is appointed and licensed by the Secretary of State for the Department for Transport (SoST) as the strategic highways company for England. It is responsible for operating, maintaining and improving the strategic road network in England on behalf of the SoST.

2.1.2. Chapter 2 of the Environmental Statement (ES) [\[APP-018\]](#) provides a full description of the Proposed Development, which in summary terms comprises:

- changing the existing at-grade A19 / A184 Testo's roundabout in South Tyneside into a grade-separated configuration in which the A19 mainline would be carried over the junction and A19 users would no longer have to access the roundabout;
- widening the Testo's roundabout to incorporate new slip roads or on off ramps between the junction and the A19 mainline;
- providing new link-roads between Testo's Junction and the adjacent A19 Downhill Lane Junction (DLJ) to the south, parallel to the A19 mainline;
- accommodating and amending non-motorised user facilities such as footpaths, cycle ways and public rights of way (PRoW); and
- accommodating and amending utility infrastructure facilities crossing and adjacent to the proposed works area.

ES Figure 2.2 [\[APP-020\]](#) provides a schematic diagram identifying and locating the primary design components of the Proposed Development.

2.1.3. One key element of the application as submitted that requires to be recorded at the outset is that it provides for two potential options for the carriage of the A19 mainline over the existing Testo's intersection. These are not intended as alternatives in the sense that the Development Consent Order (DCO) would provide for one or the other: rather the Applicant is intending to reserve maximum design and construction flexibility into the post approval stage, with the construction partner / undertaker benefitting from the flexibility to adopt which ever proves to be the best design option in cost terms in due course.

- **Option 1** consists of the formation of a fill embankment across the roundabout, with two underbridges, one for each side of the roundabout. This is also referred to as the 'underbridges' option.⁸

- **Option 2** consists of the construction of a single flyover bridge across the roundabout. This is also referred to as the ‘flyover bridge’ option.¹²

These are given separate consideration as required in the remainder of this report, as they have different effects in some respects, particularly in relation to noise, landscape and visual impacts.

2.2. THE PROPOSED DEVELOPMENT SITE AND SETTING

The Existing Junction, Highway Land and the Additional Land Requirement

- 2.2.1. The site of the Proposed Development consists of existing highway land occupied by the existing A19 and A184 mainlines around their intersection at the Testo’s roundabout, together with additional land directly adjacent to those mainlines. The best record and explanation of the site and setting can be found in the Location Plan [\[APP-004\]](#), Scheme Layout Plan [\[APP-005\]](#) and in more detail in the Land Plans (Revision 1) [\[AS-004\]](#).
- 2.2.2. The proposed extent of works to the A19 mainline would be approximately 1km to the north (to the northern-most extent of Boldon Business Park to the west and the village of Hedworth to the east) and 1km to the south of the existing Testo’s intersection (to the existing A19 DLJ). The reason for the extent of the works to the A19 mainline to the north and south is that as the proposal includes carrying the mainline over the existing at-grade junction, it will need to be raised onto an embankment over a distance sufficient to ensure a satisfactory gradient.
- 2.2.3. The proposed extent of works to the A184 mainline would be approximately 600m to the west (to the West Pastures lane junction) and 400m to the east of the existing Testo’s intersection (to the existing B1298 roundabout at Boldon). No level or gradient changes are proposed to the A184.
- 2.2.4. The centre of the existing A19 Testo’s roundabout includes a small wooded area where trees would need to be removed to enable the proposed development to proceed. The wide central reservation of the existing A184 alignment west to the existing A19 Testo’s roundabout contains areas of low woodland and scrub adjacent to the roundabout, which are also affected by the Proposed Development to some extent and subject to vegetation removal.
- 2.2.5. Over and above the land within the existing A19 and A184 mainlines’, the Proposed Development requires additional land. In broad terms this

¹² The options are referred to variously in the Application documents. **Option 1** is referred to as the underbridges option (TR010020/APP/23.3(A) [\[AS-006\]](#) and in the ES at figure 2.3 as the two-bridge option [\[APP-020\]](#). **Option 2** is referred to as the flyover bridge (TR010020/APP/23.3(B)) [\[AS-006\]](#) and in the ES at figure 2.6 as the single-bridge option [\[APP-020\]](#).

additional land is to provide for widening the existing Testo's roundabout, enabling the addition of on and off ramps (slips) once the A19 mainline passes over the junction, and to enable the provision of the proposed new frontage link roads between the Testo's intersection and DLJ to the south. Some additional land is also required for drainage and other ancillary facilities and this is located both east and west of the existing A19 alignment. However, the majority of the additional land sought and all proposed to be used for highway development is to the west of the existing A19 alignment.

- 2.2.6. A key consideration in the location of the additional land requirement broadly to the west of the existing A19 mainline has been the need to minimise effects on existing land uses, built development, landscape screening, vegetation and natural environment interest on land to the east.

The Development Setting: Land to the East

- 2.2.7. North of the existing Testo's intersection, land to the east of the A19 alignment comprises the established Boldon Business Park, a substantial mixed use light industrial and leisure development, including manufacturing and distribution floorspace, together with a hotel and (east of the B1298) a larger leisure complex with a multi-screen cinema complex, restaurants and a public house. The western boundary of the business park to the A19 is formed by a belt of established woodland, which serves a substantial function in providing landscape enclosure and screening for the A19 from both the Business Park and residential areas in the villages of Boldon Colliery and West Boldon further to the north and east. The Proposed Development avoids the developed area and avoids the need to remove much vegetation from its woodland enclosure.
- 2.2.8. The southern boundary of Boldon Business Park to the A184 is formed by additional established woodland and a substantial water feature, Boldon Lake, which is also identified and protected in the development plan as a Local Wildlife Site (LWS). This woodland encloses and screens the existing intersection and also provides an attractive landscape setting and enclosure for the business park. Again, the Proposed Development avoids the land-take from the woodland, lake and associated LWS. Environmental enhancement works are proposed to the Boldon Lake LWS.
- 2.2.9. South of the existing intersection for some 350m and east to the B1298 roundabout, land to the east of the A19 mainline comprises the West Boldon Electricity Substation operated by National Grid Electricity Transmission (NGET) and associated transmission system alignments. This is adjoined by a distribution system offtake operated by Northern Powergrid, together with a number of distribution system alignment termini. Within the NGET ownership, this site is also surrounded by non-operational land which comprises a wetland immediately to the south of the A184, Mount Pleasant Marsh, also designated as a LWS, and then by established woodland subject to Tree Preservation Orders (TPOs), largely enclosing and screening the electricity substation.

- 2.2.10. The non-operational land associated with the NGET facility is managed by Groundwork South Tyneside and Newcastle Trust (Groundwork STAN), which manages it to enhance its natural environment values and uses it to provide environmental education. The Groundwork STAN facilities include a large environmental education centre building (West Boldon Lodge), a network of nature trails through the woodland and wetland areas, and 'outdoor classrooms' where participants can engage in relevant activities.
- 2.2.11. A small amount of land-take to accommodate the south bound frontage road to DLJ and hence some vegetation removal is proposed at the boundary between the woodland enclosing the substation and the A19 mainline. Minor temporary clearance for fencing and electricity network alterations are also proposed. However, the decision to locate the main land-take to the west of the A19 mainline has enabled the woodland surrounding the substation to retain its landscape enclosing function. Impacts on the substation and related infrastructure have also been minimised and the continued use of the environmental education centre has been provided for. Environmental enhancement works are proposed to the Mount Pleasant Marsh LWS and the woodlands subject to TPOs and other land managed by Groundwork STAN.
- 2.2.12. South of the West Boldon Electricity Substation site, the A19 mainline is bordered by green field agricultural land. Here the Proposed Development does include a small amount of land take and vegetation removal on the eastern side, to accommodate part of the proposed southbound frontage road, a new southern balancing pond (attenuation pond 1) as part of drainage works and to realign a PRoW approaching the DLJ from the north.

**The Development Setting and Additional Land:
Land to the West**

- 2.2.13. Having identified that the Applicant's design strategy has been led by landscape, land-use and natural environment impact avoidance and mitigation to the east of the A19 mainline, it follows that where additional land is required, it is proposed to be taken from the west of the existing A19 alignment, both to the north and the south of the existing Testo's roundabout.
- 2.2.14. West of the existing A19 mainline and north of the existing Testo's junction, the existing alignment is abutted by green field agricultural land for approximately one kilometre (the extent of the works area) until the mainline reaches residential development abutting Fieldway in the village of Hedworth. The main additional land-take for the proposed works is from agricultural land at West House Farm, land adjacent to West House Farmhouse and an Enterprise Car Hire depot north of the A184 (the former Testo's garage site). This land would mainly be used to realign the north and southbound carriageways of the A19 and to provide the new northbound slip (on ramp). The new southbound slip (off ramp) would be located on land largely within the existing southbound carriageway of the A19. Land would also be taken for a new northern

balancing pond (attenuation pond 2) as part of drainage works, and to provide new planting areas for landscape screening to the west.

- 2.2.15. The existing bridleway overbridge connecting Boldon Business Park to West House Farm some 250m north of the existing Testo's roundabout would need to be removed, and the approach embankment on its western flank would need to be removed also. These works are required because the existing overbridge is too narrow to accommodate both new on and off ramps in addition to the altered A19 mainline. The embankment carrying the A19 mainline over the intersection will also be at a height such that the deck of the existing overbridge would be too low. The overbridge is not proposed to be replaced in situ: the PRoW is proposed to be permanently closed and pedestrian, cycle and horse traffic diverted to pass under the new A19, parallel with the A184.
- 2.2.16. The potentially adverse effects of works on the operation of West House Farm as a business and on the amenity of the residents in West House Farm House (a sensitive receptor) were noted during site inspections. The possible use of the PRoW connecting West House Farm to Boldon Business Park was also identified as an examination issue.
- 2.2.17. South of the existing Testo's Junction and north of DLJ, the existing alignment is again abutted by green field agricultural land surrounding Elliscope Farm and Make-Me-Rich Farm. Here, the majority of the land-take provides for a proposed new north bound frontage road between DLJ and the A184, together with a north bound slip (off ramp) and part of the realigned northbound mainline of the A19 approaching the Testo's roundabout. Provision is also made for new planting for landscape screening to the west.
- 2.2.18. Rights over land and temporary possession are sought over a substantial area of land immediately to the south west of existing Testo's Junction and east of West Pastures lane. This land enables the Applicant to manage the accommodation of a number of electricity distribution network alignments and to provide a main construction compound for the works. The proximity between this land and a sensitive receptor, the Traveller site at West Pastures lane, was also noted during the USIs and raised as an examination issue.
- 2.2.19. Because the Proposed Development extends the land required for the A19 onto land to the west of the existing mainline both to the north and south of the junction, mature hedge and boundary trees abutting the existing A19 mainline to the west will be lost throughout the extent of the works area, from DLJ northwards to the edge of the residential area at Hedworth.
- 2.2.20. ES Figure 2.1 [\[APP-020\]](#) provides a summary identification of the land requirement for the Proposed Development, the land within the Proposed Development that falls within the existing highway boundary, and the location of the proposed development in relation to the local features identified in paragraphs 2.2.12 to 2.2.19. The updated Environmental Masterplan [\[REP5-005\]](#) provides the best summary of existing landscape

enclosure, vegetation to be retained and removed and management proposals in relation to LWSs.

The Wider Local and Sub Regional Setting

- 2.2.21. ES Figure 1 [\[APP-019\]](#) locates the Proposed Development site in its sub-regional setting. This section records matters arising from that location plan, together with matters identified in the Accompanied Site Inspection (ASI) [\[EV-007\]](#) and Unaccompanied Site Inspections (USIs) [\[EV-001\]](#) [\[EV-006\]](#).
- 2.2.22. The A19 is a major north-south strategic highway which connects the A1 at Seaton Burn via the Tyne Tunnel to Sunderland, crossing the Wear and then passing south between Stockton and Middlesbrough to Thirsk, where the dual carriageway Thirsk bypass A168 reconnects it to the A1(M) at Dishforth. (The remaining A19 alignment to the south of Thirsk remains as a largely single carriageway connection onwards from Thirsk, via York city centre to Doncaster.)
- 2.2.23. The dual carriageway section of the A19 north of Thirsk forms a parallel alternative route to the A1 / A1(M), whilst also more directly linking the major port and manufacturing areas of north east England, connecting Tyne and Wear to Cleveland via County Durham.
- 2.2.24. More locally, the A19 in Tyne and Wear is one of several strategic highways which provide orbital route options around the Newcastle-upon-Tyne and Gateshead conurbation. It also forms part of a network of highways linking inland to coastal settlements and peripheral settlements to major urban centres in what is of the nature of a poly-centric region. It connects South Shields and Jarrow (South Tyneside) in the north with the new town of Washington (City of Sunderland) in the south. It provides the strategic highway connection for the Nissan Motor Manufacturing UK Ltd (NMUK) Sunderland plant (via the DLJ intersection immediately to the south of the Testo's intersection).
- 2.2.25. The A184 to the Testo's intersection, together with the A19 and A1231, form the main east-west highway connection between Sunderland in the east and Newcastle-upon-Tyne and Gateshead in the west. East of the Testo's junction, the A184 forms a more local route, connecting the villages of West and East Boldon to the A1018 and Sunderland City Centre.
- 2.2.26. Whilst the site of the proposed development lies wholly within the South Tyneside Council (STC) area, the boundary of the Sunderland County Council (SCC) lies only shortly to the south of DLJ.
- 2.2.27. The site of the Proposed Development is the only remaining at-grade intersection on the dual carriageway A19 alignment between the River Wear and River Tyne.

2.3. THE APPLICATION AS EXAMINED

2.3.1. Changes to the key application documents, including the wording of the proposed DCO, were submitted between Acceptance and the start of the Examination (Pre-Examination) and during the Examination. The changes sought to address points raised in advice pursuant to s51 of PA2008 after Acceptance, in Relevant Representations (RRs), Written Representations (WRs) and other submissions by Interested Parties (IPs) and in written examination questions (ExQ) [\[PD-007\]](#); and to reflect improved information and changes arising during the Examination. These included matters such as clarity and / or discrepancies within the draft DCO (dDCO) and other environmental matters.

Changes before the Preliminary Meeting

2.3.2. Following advice issued after Acceptance by the Planning Inspectorate on 10 August 2017 pursuant to s51 of PA2008 [\[PD-003\]](#), on 5 October 2017 the Applicant wrote [\[AS-001\]](#) to indicate its intention to make a number of changes before the Examination commenced. In summary terms these were:

- following recommended diligence and to ensure the best possible record of affected land and interests in land, amendments to the Land Plans, Book of Reference (BoR) and Statement of Reasons (SoR);
- following advice, amended presentation of levels relative to chainage on the Highways Engineering Drawings, to ensure that the vertical effects of the Proposed Development could more easily be appreciated;
- following advice, amended cut points on Engineering Sections and Highways Engineering Drawings to harmonise these with the cut points on sheets 1 to 3 of the Land Plans and the Works Plans;
- an updated dDCO; and
- an electronic copy of the Environmental Master Plan, as whilst this had been submitted to the Planning Inspectorate in hard copy, an electronic copy was not provided. This was provided immediately and is recorded in the Examination Library as [\[APP-053\]](#).

2.3.3. The Applicant also raised the possible need to submit what it referred to as '*further environmental information*'. This related to changes to the noise modelling reported upon in the submitted ES, in large part to address the need to consider the acoustic effects of Option 2 (the flyover bridge option) in addition to Option 1 (the underbridge option) and to ensure that the inclusion of a concrete central barrier on the A19 mainline was taken into account (the original assessment had been on the basis of a metal central barrier, a construction technique which the Applicant no longer proposes to use).

2.3.4. Further to this correspondence, the Applicant submitted updated, revised and / or additional information prior to the Preliminary Meeting (PM), including:

- updated Land Plans (Rev 1) [\[AS-004\]](#);

- updated Works Plans (providing greater clarity on Limits of Deviation and overlaying the plot boundaries from the Land Plans) [\[AS-005\]](#);
- updated Engineering Sections and Highways Engineering Drawings [\[AS-006\]](#);
- an updated dDCO Version 1 (clean [\[AS-007\]](#) and tracked [\[AS-008\]](#));
- an updated SoR Version 1 (clean [\[AS-009\]](#) and tracked [\[AS-010\]](#));
- an updated BoR Version 1 (clean [\[AS-011\]](#) and tracked [\[AS-012\]](#)); and
- an Application Document Tracker [\[AS-003\]](#). This was updated as the Examination progressed, with the latest version submitted at D5 [\[REP5-003\]](#).

2.3.5. The information submitted included what at that point (31 October 2017 [\[AS-002\]](#)) the Applicant characterised as '*other environmental information*' to address the points raised in paragraph 2.3.3 above, in the form of an Addendum to the Environmental Statement (AES) . This consisted of two volumes, AES1 [\[AS-013\]](#) and AES2 [\[AS-014\]](#), a more detailed breakdown of the content of which are provided in paragraph 4.8.5 of this Report.

2.3.6. The Applicant was clear that in submitting the AES, it did not intend to provide '*further information*' pursuant to Regulation 17 of the EIA Regulations.

2.3.7. In the light of oral submissions made at the PM, the ExA considered whether any of the information submitted prior to the PM constituted a material change to the application as applied for and concluded that none of it did. It concluded that the changes were of a minor and non-material nature that could be taken into account as required by IPs and other persons participating in the Examination, without any procedural defect.

2.3.8. However, it was important to ensure that the same procedural opportunities were provided to persons notified of the Acceptance of the application, but who had not become involved in the Examination either as IPs or other persons. For this reason, a Procedural Decision was made on 24 November 2017 [\[PD-008\]](#) that the Applicant was required to:

- notify such persons about the updated documents and AES and where they could be obtained;
- provide notifications of the non-statutory consultation in local newspapers and at sites in close proximity to the project;
- provide at least 28 days for the receipt of comments on these documents; and
- provide a report transmitting any comments received regarding these matters to the ExA by Deadline (D)3.

2.3.9. The Applicant's Report on Non Statutory Consultation [\[REP3-018\]](#) submitted at D3 discharged this procedural decision. This document recorded the steps taken to consult on the updated documents and the AES, and the outcome of that consultation. The consultation was carried in full accordance with the Procedural Decision [\[PD-008\]](#). Four representations were received as a consequence of the consultation, from the Ministry of Defence, Historic England (HE), Public Health England and

Natural England (NE) (at [\[REP3-018\]](#), Appendix D), but none raised any issues of substance.

- 2.3.10. No additional issues arose from the responses in the Report on Non Statutory Consultation [\[REP3-018\]](#) that required to be taken into account in the Examination.

Changes in Examination

- 2.3.11. In addition to changes before the PM, as is normal during Nationally Significant Infrastructure Project (NSIP) examinations, a number of changes / amendments were made to application documents as the Examination progressed. The most up-to-date versions of such documents, taking into account ongoing diligence in respect of land and property information, all relevant issues raised in Relevant Representations (RRs), Written Representations (WRs), in written questions and responses to them and in oral submissions at hearings were submitted at Deadline (D)5:

- the Works Plans [\[REP5-004\]](#);
- the Environmental Master Plan [\[REP5-005\]](#);
- the draft DCO (dDCO), Rev 5 (clean [\[REP5-006\]](#) and tracked [\[REP5-007\]](#));
- the Explanatory Memorandum (EM), Rev 3 (clean [\[REP5-008\]](#) and tracked [\[REP5-009\]](#));
- the SoR, Rev 2 (clean [\[REP5-011\]](#) and tracked [\[REP5-012\]](#)); and
- the BoR, Rev 2 (clean [\[REP5-013\]](#) and tracked [\[REP5-014\]](#));

- 2.3.12. The ExA considers whether these amended documents amount to a change to the application sufficient to require it to be considered as a new application in Chapter 3 (Section 3.11) below.

2.4. RELEVANT PLANNING HISTORY

- 2.4.1. In Section 2.5 below, reference is made to the International Advanced Manufacturing Park (IAMP) proposal. It is relevant to know that this forms a north-western extension to an existing major industrial area containing extensive advanced manufacturing-related floorspace. The dominant land use in this area is a motor manufacturing facility located on an approximately 323ha site, owned and operated by NMUK.
- 2.4.2. Following the conclusion of an inward investment agreement between the United Kingdom (UK) government and the parent Nissan company in 1984, the NMUK motor manufacturing plant was developed on the former Sunderland Airfield (RAF Unsworth). This site was chosen due to its connection to the highway network via the A19 and A1231 with connections to the A1(M), proximity to import-export port facilities on the Tyne and Wear rivers and to Newcastle airport. Large scale motor manufacturing has occurred at this site for more than thirty years.
- 2.4.3. When demand for product from the NMUK plant is high, it operates a 3 shift, 24 hour working pattern. It currently employs in the region of 6,500 people. The travel to work area for the plant and the effect on trip decisions of its shift pattern are significant factors driving local use of the

A19 main line and the Testo's and DLJ intersections. The plant is also a major contributor to demand on local roads and for non-motorised transport (walking and cycling facilities) in the area (ES Chapter 13 [\[APP-018\]](#) [\[APP-028\]](#)).

2.5. OTHER STRATEGIC PROJECTS AND PROPOSALS

- 2.5.1. The Application as submitted acknowledged the relationship between it and two nearby strategic projects and proposals:
- The A19 DLJ project; and
 - The IAMP proposal, located on land to the south west of the existing Downhill Lane over-bridge.
- 2.5.2. The DLJ project is a strategic highways proposal under development by Highways England. At the close of this Examination it was intended to be the subject of a further DCO application that, subject to submission and acceptance, would be in examination during the reporting and decision-making periods for this Proposed Development.
- 2.5.3. In summary terms, the DLJ project amounts to a junction upgrade for the A19 intersection immediately abutting the Proposed Development to the south. The DLJ project would replace the current single over-bridge grade separated intersection between the A19 and Downhill Lane with a double over-bridge grade separated roundabout junction. The DLJ would form the primary means of access between the A19 and the IAMP proposal, which is further described below.
- 2.5.4. IAMP is a proposal to develop an approximately 150ha site west of the A19 mainline, north of the existing Nissan Sunderland manufacturing plant and west of DLJ. The proposal aims to enable growth in automotive and advanced manufacturing, providing for in the region of 392,000 m² of additional manufacturing floorspace, anticipated to create in the region of 7,850 additional jobs. Jointly promoted by IAMP LLP, a special delivery vehicle representing SCC and STC, an Action Area Plan (AAP) has been prepared for the proposal [\[REP2-006\]](#) (at paragraphs 4.9 – 10) and [\[REP4-003\]](#) (from page 18).
- 2.5.5. The Applicant has recorded a significant physical and temporal interrelationship between the Proposed Development, the DLJ project and IAMP in a document entitled 'Interrelation with Downhill Lane Junction and International Advanced Manufacturing Park' [\[APP-051\]](#). At Issue Specific Hearing 2 (ISH2) on Environmental Matters (Action Point 6 [\[EV-013\]](#)) the ExA requested the Applicant to work with IAMP LLP and to ensure that this document remained 'live' throughout the Examination, to be substituted with updated versions as necessary to reflect any changes in the IAMP proposals or delivery process. The most recent version of it can be found in the document 'Interrelation with Downhill Lane Junction, A1 Birtley to Coalhouse and International Advanced Manufacturing Park' [\[REP2-015\]](#) (clean) and [\[REP2-016\]](#) (tracked changes) submitted at D2. Appendix A (Location Plan) locates the site of the Proposed Development relative to the DLJ project site and the IAMP site. Appendix B sets out the proposed timelines for delivery of the Proposed Development relative to

the DLJ project and IAMP. Appendix C shows the application site for the Proposed Development, relative to the proposed project boundaries for DLJ and IAMP.

- 2.5.6. Assuming that both DLJ and IAMP are delivered in line with currently anticipated project timescales, DLJ would be delivered within the timescale for the Proposed Development, commencing later, but concluding earlier than it. The Application proposes that in addition to a physical conjunction and a temporal overlap, there may also be circumstances in which DLJ would share facilities for which consent is sought in this Application. Impacts could arise from DLJ that would give rise to cumulative and in-combination effects on common receptors. The inter-relationships between these two projects is therefore an important and relevant planning issue to which the ExA gave considerable attention during the Examination and these are addressed in more detail in Chapter 4, as set out further below.
- 2.5.7. The IAMP AAP is part of the statutory development plan. It underwent its public examination pursuant to the Planning and Compulsory Purchase Act 2004 (as amended) (PCPA) in April 2017, with an Inspector's report submitted to STC and SCC in November 2017. Both Councils resolved to adopt the AAP on 30 November 2017 [\[REP2-015\]](#) (at paragraph 1.7.1).
- 2.5.8. IAMP is currently proposed to be delivered in two phases, described as IAMP ONE and IAMP TWO¹³.
- IAMP1 ONE consists of a section of the IAMP site north of the A1290 extending to some 50ha [\[REP2-015\]](#) (at paragraph 1.7.2); and
 - IAMP1 TWO consists of the balance of the land proposed for development within the IAMP AAP [\[REP2-015\]](#) (at paragraph 1.7.3).
- 2.5.9. IAMP ONE is being pursued as an application for planning permission under the Town and Country Planning Act 1990 (as amended) (TCPA1990), made to Sunderland City Council (SCC) under reference 18/00092/HE4. At the time the Examination closed, the application for IAMP ONE had not been determined. However, it is possible that a decision could be made during the reporting or decision-making periods for this Application.
- 2.5.10. IAMP TWO is intended to be the subject of an application for development consent for uses which fall within the Infrastructure Planning (Business or Commercial Projects) Regulations 2013 and pursuant to a direction made by the then SoS CLG under s35 of PA2008, as amended on 4 December 2017. The PA2008 application for development consent has not yet been submitted and so in timing terms is now unable to be decided before this Application has been decided.

¹³ A public domain document identifying the land comprising IAMP 1 and IAMP 2 can be found on the [National Infrastructure Planning Portal](#).

- 2.5.11. At ISH2, the ExA investigated the degree to which IAMP delivery and the splitting of this into phases would affect or be affected by the Proposed Development. Following discussion at the hearing, it placed an action on IAMP LLP (ExA Action Point 5 [EV-013]) to refer to their traffic consulting team to advise on the implications of the split for Proposed Development. The following response was provided by IAMP [\[REP3-001\]](#):
- IAMP ONE can be delivered without mitigation works on the Strategic Road Network. IAMP ONE will manage the operations of its occupiers to ensure that shift-periods are off-set by one hour from those used by Nissan, until such time that improvements to the A19 junctions at Testo's and Downhill Lane junctions are complete.
 - The off-setting of shift patterns from Nissan would not be sufficient to mitigate the operational impact of IAMP TWO. The improvements planned by Highways England at the A19 / A184 Testo's Junction and A19 / A1290 Downhill Lane Junction therefore need to be delivered to ensure that the road network operates in a satisfactory manner once IAMP TWO is open.
- 2.5.12. There were no concerns expressed by the Applicant or any other IP in relation to the position reported above in respect of IAMP ONE. If planning permission is granted for IAMP ONE, the absence of impact on the strategic road network would depend upon the imposition of a planning condition by SCC to limit any shift periods to ensure off-setting from the existing shift patterns used by Nissan. This is a matter addressed in Section 4.11 of this report. In timescale terms, IAMP ONE is expected to be delivered in tandem with the Proposed Development.
- 2.5.13. In relation to IAMP TWO, it was not a matter of dispute between the Applicant, STC and IAMP LLP that the changes to the strategic highway network in the combination of the Proposed Development and DLJ would be required to address the effects of the IAMP TWO development [\[REP2-015\]](#) [\[REP3-001\]](#) (ExA Action Point 5 [\[EV-013\]](#)). As the IAMP TWO development is not currently programmed to be consented until after this Application has been decided or delivered until after the Proposed Development has been constructed, detailed consideration of its effects and requirements relating to its effects on the strategic highway network are a matter for the examination of the DLJ and IAMP DCO Examinations in due course.
- 2.5.14. The detailed planning, traffic and EIA implications of the interrelationship between the Proposed Development, DLJ and IAMP are considered further in Chapter 4 of this Report. Content can be found in Sections 4.10 (Transport and Traffic Effects), 4.11 (Other Strategic Projects and Proposals) 4.12 (Air Quality & Emissions), 4.17 (Noise and Vibration), 4.18 (Social and Economic Effects), and 4.19 (Water Environment).
- 2.5.15. In addition to DLJ and IAMP, the ExA also considered whether there could be a significant interrelationship between the Proposed Development and a further strategic highways project, an upgrade of the Birtley to Coalhouse sections of the A1 Newcastle upon Tyne bypass between junction 65 (the A1(M) / A194(M) Birtley intersection) and junction 67 (the Coalhouse intersection), located approximately 5 miles west of the

Proposed Development (the Birtley to Coalhouse project). The Birtley to Coalhouse project would add an additional lane to the existing A1 (moving from a two lane to a three lane dual carriageway) and a replacement to the existing Allerdene railway bridge, for which online and offline options are under investigation.

- 2.5.16. STC raised the need to address the possible inter-relationship of works between the Birtley to Coalhouse project and the Proposed Development and DLJ in its Local Impact Report (LIR) [REP2-006] at paragraph 7.65¹⁴. This was a matter that was also addressed by the Applicant in its 'Interrelationship Document' [REP2-015], which was amended at D2 to take account of the effects of the Birtley to Coalhouse project. The ExA put questions to the Applicant about the Birtley to Coalhouse project at ISH2 (audio recordings [EV-011][EV-012]), to which the Applicant responded [REP3-013] (paragraphs 5.6-7), confirming that traffic modelling predicted no significant interface between it and the Proposed Development.
- 2.5.17. This evidence was not challenged by STC or any other IP. There was a potential construction period overlap with the Proposed Development of three months in 2020 (at which point DLJ would be anticipated to be complete). However, it was anticipated that the Applicant's internal review of major projects and maintenance activities would prevent conflicts arising. No other potential cumulative or in-combination effects arose or became apparent in Examination.
- 2.5.18. The inter-relationship between the Proposed Development taken cumulatively and in combination with the DLJ project and the Birtley to Coalhouse project is not one that that requires any further formal coordination beyond the Applicant's compliance with the highways duty of co-operation placed upon it under s5 of the Infrastructure Act 2015. This requires it to co-operate so far as is reasonably practicable with bodies including STC in its capacity as a highway authority.

¹⁴ STC referred to its expectation in respect of the Proposed Development, DLJ and the Birtley to Coalhouse project that the Applicant should '*adopt a proactive approach with all parties through its Network Management Duty to ensure that disruption is kept to a minimum.*' The ExA notes that the 'Network Management Duty' is a duty on local traffic authorities, arising from s16 of the Traffic Management Act 2004. It is not applicable to the Applicant. However, the Applicant has a similar duty under s5 of the Infrastructure Act 2015.

3. LEGAL AND POLICY CONTEXT

3.1. THE PLANNING ACT 2008

- 3.1.1. The Planning Act 2008 (PA2008) provides different decision-making processes for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) has been designated (section (s)104) and where there is no designated NPS (s105). Paragraph 1.1.5 and 1.1.6 above identify that the Application is for NSIP development. For reasons expanded upon in paragraph 3.2.1 below, this is an application to which s104 is applicable because it is subject to policy in a designated NPS.
- 3.1.2. Section 104(3) of PA2008 requires that the Secretary of State (SoS) must decide an application for development consent in accordance with any relevant NPS, except to the extent that the SoS is satisfied that, in summary doing so:
- would lead to the United Kingdom (UK) being in breach of its international obligations;
 - would lead to the SoS being in breach of any duty imposed on him under any enactment;
 - would be unlawful under any enactment;
 - the adverse impact of the proposed development would outweigh its benefits; or
 - fail to comply with any prescribed condition for deciding the application otherwise than in accordance with the NPS.
- 3.1.3. Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, the matters set out include:
- any relevant NPSs;
 - any Local Impact Report (LIR);
 - certain prescribed matters (which in respect of this application are referred to in Section 3.4); and
 - any other matters the SoS considers are both important and relevant to the decision.
- 3.1.4. The remainder of this Chapter addresses the identification and application of a relevant NPS, the LIR and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.2. NATIONAL POLICY STATEMENT

- 3.2.1. The National Networks National Policy Statement (NNNPS) has been designated as the NPS for roads for which the SoS for Transport (SoST) is the highway authority and remains in force. It is relevant to this Application because the Proposed Development comprises the construction and alteration of a highway where the speed limit for any class of vehicle is expected to be 50 miles per hour (mph) or greater, the area of development exceeds 12.5ha and Highways England is the highway authority. The scheme is therefore a NSIP, and the NPS provides the primary basis for decisions by the SoS.

3.2.2. The NNNPS sets out the need for and Government's policies to deliver, development of NSIPs on the national road network in England. It also provides planning guidance for such projects and the basis for the examination by the Examining Authority (ExA) and decisions by the SoS, covering a range of relevant topics including:

- Air Quality;
- Carbon Emissions;
- Biodiversity and ecological conservation;
- Waste management;
- Dust, odour, artificial light and related emissions;
- Flood risk;
- Land instability;
- The historic environment;
- Landscape and visual impacts;
- Land use effects;
- Noise and vibration;
- Impacts on transport networks; and
- Water quality and resources.

All of these matters are addressed in detailed terms and with references to individual paragraphs in the NNNPS in Chapter 4 of this Report below.

3.2.3. The NNNPS also states that applicable policies from the relevant Development Plan can be important and relevant matters. These are identified here and addressed further in Chapter 4.

3.2.4. Given the relationship between the Proposed Development and elements of the national electricity network, Chapter 4 addresses whether the NPS for Electricity Networks Infrastructure (EN-5) is relevant, but for reasons set out there concludes that it is not.

3.3. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union

3.3.1. The UK is in the process of negotiating departure from the European Union, which is intended to come into effect on 29 March 2019 (exit day). Following exit day, but subject to negotiation, there is intended to be a further implementation period of up to two years in which the UK will abide by all relevant European law and procedure.

3.3.2. At the time this Examination closed, the European Union (Withdrawal) Bill was before Parliament. Clauses of the Bill provided that, subject to defined exceptions, European Union law which was extant up to exit day will remain in force and be incorporated into UK law. Although these matters are not yet settled (in terms of the outcome of negotiations or the passage of legislation), this Report has been drafted on the basis that relevant European Union law (primarily environmental law) will remain in force at the point when the SoS decides this Application.

The Habitats Directive

- 3.3.3. The Habitats Directive (92/43/EEC) forms a cornerstone of Europe's nature conservation policy. It is built around two pillars: a network of protected sites, and a system of species protection.
- 3.3.4. Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 ecological network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.

The Birds Directive

- 3.3.5. The Birds Directive (2009/147/EC) is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. All SPAs form part of the Natura 2000 ecological network.

The Habitats Regulations

- 3.3.6. The Conservation of Habitats and Species Regulations 2017 are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these regulations are referred to as Habitats Regulations Assessment (HRA).
- 3.3.7. These directives and regulations are relevant to this Application in view of the presence of the Northumbria Coast Ramsar Site, the Northumbria Coast SPA, and the Durham Coast SAC, all in the region of 5km distant from the Proposed Development site. Chapter 5 gives further detailed consideration to these matters.

The Water Framework Directive (WFD)

- 3.3.8. Directive 2000/60/EC establishing a framework for Community action in the field of water policy (the Water Framework Directive or WFD) includes objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It provides for the production of River Basin Management Plans to provide for the sustainable management of rivers.
- 3.3.9. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- 3.3.10. The WFD is relevant to the application as the scheme is located within the Northumbria River Basin Management Plan prepared by the Environment Agency (EA) and includes proposals for water abstraction and drainage that all affect that catchment.

The Air Quality Directive (AQD)

- 3.3.11. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values (LV) are exceeded for ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and mono-nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give direct statutory effect to the AQD.
- 3.3.12. The UK Air Quality Strategy establishes the UK framework for air quality improvements¹⁵. The UK Air Quality Strategy establishes a long-term vision for improving air quality in the UK and offers options to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities. Leam Lane / Lindisfarne Roundabout, Jarrow is one of two AQMAs in South Tyneside for which an Air Quality Management Plan has been prepared. It lies approximately 1.8km to the north of the Proposed Development and relates to a roundabout intersection between the A194(M) / A194 and the A19.
- 3.3.13. As a consequence of decisions taken over a number of years to broadly promote the growth of diesel vehicles as a proportion of national fleets, combined with a divergence between regulatory and real environment outcomes in the testing of emissions from diesel vehicles, a number of European countries including the UK now experience issues with the achievement of NO₂ LV compliance. The environmental non-governmental organisation ClientEarth has brought various proceedings against the UK Government for breaching the AQD. Successive judgments by the Supreme Court¹⁶ have ordered the SoS for Environment, Food and Rural Affairs (SoS EFRA) to prepare new air quality plans to achieve NO₂ LV compliance as soon as possible.
- 3.3.14. A revised draft 'Air Quality Plan for NO₂' in response to this litigation was published by DEFRA on 26 July 2017¹⁷ (AQP2017). This contains a Zone Plan for Tyneside¹⁸. However, a High Court Order was made on 21 February 2018¹⁹ (ClientEarth No 3), providing that whilst the AQP2017

¹⁵ [The Air Quality Strategy for England, Scotland, Wales and Northern Ireland](#) (Defra, 2007)

¹⁶ R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers (ClientEarth No 1) and R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers (ClientEarth No 2)

¹⁷ [Air quality plan for nitrogen dioxide \(NO₂\) in the UK](#), DEFRA (2017)

¹⁸ [Air Quality Plan for tackling roadside nitrogen dioxide concentrations in Tyneside](#) (UK Zone 5), DEFRA (2017)

¹⁹ [R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers](#) (ClientEarth No 3)

remains in force, it and its supporting Zone Plans are unlawful because they do not contain measures sufficient to ensure substantive compliance with the AQD in 45 local authority areas, of which South Tyneside Council area is one. Nor do they include the information necessary to demonstrate compliance with Schedule 8 of the Air Quality Standards Regulations 2010 in respect of these 45 local authority areas.

- 3.3.15. The remedy required is the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. At the time of closure of the Examination, this supplement had not yet been produced. It was published during the reporting period, but, as is normal for NSIP Reports, this Report does not take into account matters that arose after the conclusion of the Examination.
- 3.3.16. The ExA's understanding informed by responses to questions put to the Applicant and South Tyneside Council (STC) is that the Leam Lane / Lindisfarne Roundabout, Jarrow AQMA is currently achieving its NO₂ LV and, as such, is not likely to be a local authority area for which specific additional compliance measures will have to be provided in the AQP2017 supplement. However, this is a matter that cannot be prejudged. The planning merits consequences of this are addressed in Chapter 4 below.

3.4. OTHER RELEVANT LEGAL PROVISIONS

United Nations Environment Programme (UNEP) Convention on Biological Diversity 1992

- 3.4.1. The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.4.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the UNEP Convention on Biological Diversity 1992 has been taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The UK EIA and transboundary assessment processes referred to below satisfy with regard to impacts on biodiversity the requirements of Article 14 of the Convention (Impact Assessment and Minimizing Adverse Impacts).
- 3.4.3. This is of relevance to the biodiversity and ecological considerations and landscape and visual impact which are discussed in Chapter 4 of this report.

The Wildlife and Countryside Act 1981

- 3.4.4. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). In England, these sites are identified for their flora, fauna, geological or physiographical interest by Natural England

(NE). WACA1981 contains measures for the protection and management of SSSIs.

- 3.4.5. WACA1981 is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV containing miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from NE.
- 3.4.6. The Act is relevant to the application in view of the sites and species identified in the Environmental Statement (ES) [APP-018 to APP-039]. Relevant considerations are discussed in Chapter 4 of this Report.

Natural Environment and Rural Communities Act 2006

- 3.4.7. The Natural Environment and Rural Communities Act 2006 (NERCA2006) makes provisions for bodies concerned with the natural environment and rural communities, in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the conservation of biodiversity (the biodiversity duty). In complying with the biodiversity duty, regard must be had to the UNEP Convention on Biological Diversity of 1992. The Act also requires that, as respects England, the SoS must publish a list of the living organisms and types of habitat which in the SoS's opinion are of principal importance for conserving biodiversity. The ExA has had regard to NERCA2006 and the biodiversity duty in all relevant sections of Chapters 4 and 5 of this Report.

The UK Biodiversity Action Plan

- 3.4.8. Priority habitats and species are listed in the UK Biodiversity Action Plan. The plan is relevant to the Application in view of the biodiversity and ecological considerations discussed in Chapters 4 and 5 of this Report.

Other Natural Environment Legislation

- 3.4.9. The following additional legislation contains relevant provisions that must be met and are considered in this Report:
- Weeds Act 1959;
 - Protection of Badgers Act 1992;
 - The Environment Act 1995;
 - Wild Mammals (Protection) Act 1996;
 - The Hedgerows Regulations 1997; and
 - Countryside and Rights of Way Act 2000.

Marine Legislation and Policy

- 3.4.10. NSIP Examinations and Recommendation Reports for decision more often than not identify the Marine and Coastal Access Act 2009, the Marine Policy Statement and Marine Plans as being statutory considerations. However, having had regard to the application documents and evidence submitted during the Examination, the ExA has considered whether the

Proposed Development could affect the coastal or marine environment in a manner sufficient to invoke this body of legislation and policy. It is clear that it cannot and no further consideration has been given to marine legislation and policy in this Report.

Climate Change

- 3.4.11. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. This duty has been addressed throughout Chapter 4 of this Report.
- 3.4.12. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets, and these have been taken into account as relevant in Chapter 4 of this Report.

The Public Sector Equality Duty

- 3.4.13. The Equalities Act 2010 established a duty (the public sector equality duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making.

The Historic Built Environment

- 3.4.14. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses in Chapter 4 of this Report, and the SoS must also have regard to this in making their decision.

3.5. MADE DEVELOPMENT CONSENT ORDERS

- 3.5.1. The Applicant made reference to a number of precedents in made Orders and related approvals (an Order made under other legislation and approval granted by an Act of Parliament). References were made in the final version of the Explanatory Memorandum (EM) [\[REP5-008\]](#) (clean) [\[REP5-009\]](#) (tracked changes) and in the Applicant's response to questions on matters of precedent (Response to Matters, Issues and Questions in Issue Specific Hearing 1 (ISH1) [\[REP1-016\]](#), response to the first written questions (ExQ1) [\[REP2-009\]](#), written summary of case put orally at Issue Specific Hearing 3 (ISH3) [\[REP3-015\]](#) and written summary of case put orally at Issue Specific Hearing 5 (ISH5) [\[REP5-017\]](#)).
- 3.5.2. This section identifies the made Orders and other approvals considered in this Report. However, the Applicant's overarching approach to 'precedent' became an issue in the Examination. This issue is addressed in Chapter 4 and, to the extent that it bears on the detailed drafting of the draft Development Consent Order (dDCO), in Chapter 8.

3.5.3. The following made Orders were specifically referred to and have been taken into account in detailed terms:

- A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014
- A19 / A1058 Coast Road (Junction Improvement) Order 2016
- A14 Cambridge to Huntingdon Improvement Order 2016
- M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016
- M20 Junction 10a Development Consent Order 2017

3.5.4. The Applicant also stated that it relied upon the body of made highway DCOs where the Highways Agency or a Local Highway Authority were the applicants. These have been referred to in general terms, but detailed consideration of particular forms of drafting have been limited to circumstances where the Applicant identified a specific as distinct from a general source.

3.5.5. The following precedent development approvals outwith PA2008 were also cited to the ExA by the Applicant and have been considered:

- High Speed Rail (London – West Midlands) Act 2017
- London Overground (Barking Riverside Extension) Order 2017

The Applicant additionally referred to the establishment of precedent over time through Orders granted under the Transport and Works Act 1992 (TWAOs) although the Examination was not referred specifically to individual Orders to demonstrate this point.

3.6. TRANSBOUNDARY EFFECTS

3.6.1. The project is of local and regional impact. A transboundary screening under Regulation 24 of the 2009 EIA Regulations [\[OD-001\]](#) was undertaken on behalf of the SoS on 5 January 2015 following the Applicant's request for an Environmental Impact Assessment (EIA) Scoping Opinion. The transboundary screening was repeated on 1 February 2018, whilst the Examination was in process. No significant affects were identified at either screening which could impact on another European Economic Area member state in terms of extent, magnitude, probability, duration, frequency or reversibility. The regulation 24 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. No mechanisms whereby any conceivable transboundary effects could occur emerged.

3.7. OTHER RELEVANT POLICY STATEMENTS

3.7.1. The other policies that give rise to important and relevant considerations for the SoS include the following:

*National policies*²⁰

- Road Investment Strategy (RIS) (2015 – 2020) (November 2016), Department for Transport (DfT)
- National Infrastructure Delivery Plan (2016), HM Treasury
- Investing in Britain's Future (June 2013), HM Treasury
- Action for Roads: A network for the 21st century (July 2013), HM Treasury
- Department for Transport Single Departmental Plan 2015 – 2020 (February 2015), DfT
- Highways England Delivery Plan (2015-2020), Highways England
- Birds of Conservation Concern (2015), Joint Nature Conservation Committee (JNCC)

*Regional policies*²¹

- North East Strategic Economic Plan, March 2014, NE LEP;
- Tyne and Wear Local Transport Plan (LTP3) (2011 – 2021), TW ITA²²;
- NECA Regional Transport Plan (in draft); and
- Durham Local Biodiversity Action Plan (LBAP)²³.

*Local policies*²⁴

- South Tyneside Strategy 2017-2020, STC; and
- South Tyneside Highway Asset Management Plan 2015-2019.

Local Policy

3.7.2. STC drew attention in its Deadline (D)3 submission [\[REP3-003\]](#) to the following policy documents, making clear that it considered the Proposed Development to comply with them:

- The Council Strategy 2017 - 2020 [\[REP3-004\]](#); and
- The Highway Asset Management Plan 2015 – 2019 [\[REP3-005\]](#).

3.8. THE NATIONAL PLANNING POLICY FRAMEWORK

3.8.1. The National Planning Policy Framework (NPPF) and its accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied, for the particular purposes of making Development Plans and deciding applications for planning permission and related determinations under

²⁰ Policies raised and referred to by the Applicant in its Planning Statement [\[APP-049\]](#) (at section 5) or in relevant sections of the ES [\[APP-018\]](#)

²¹ Policies raised and referred to by STC in its LIR [\[REP2-006\]](#) (at section 5).

²² The former Tyne and Wear Integrated Transport Authority (ITA) acted on behalf of six LTP Partners – the Tyne and Wear local authorities and 'Nexus', the Passenger Transport Executive. The responsibilities of the ITA passed to North East Combined Authority (NECA) from April 2014.

²³ Policy referred to in the ES [\[APP-018\]](#).

²⁴ Policies raised and referred to by STC in its LIR [\[REP2-006\]](#) (at section 5) and D3 WRs [\[REP3-002\]](#), [\[REP3-004\]](#) and [\[REP3-005\]](#)

the Town and Country Planning Act 1990 (as amended) (TCPA1990). NPPF paragraph 3 makes clear that it is not a source of individual or project-specific policy for NSIP decision-making.

- 3.8.2. Paragraphs 1.17 to 1.20 of the NNNPS further describe the relationship between the NPPF and the NNNPS. In summary, these paragraphs provide:
- The NPPF may be an important and relevant consideration in decisions on NSIPs, but only to the extent relevant to a particular project.
 - The NPPF is not intended to contain specific policies for individual NSIPs where particular considerations can apply. The NNNPS performs that function.
 - The NPPF provides a framework within which responses to individual project effects can be considered, but that in relation to particular tests or standards to be met, these are normally derived from the NNNPS.

NPPF policies have been considered in respect of all planning issues addressed in Chapter 4. They are drawn out there only where they identify different or additional considerations from those arising from NNNPS.

- 3.8.3. On 5 March 2018, the SoS for Housing, Communities and Local Government (SoS HCLG) published a consultation on a draft revised NPPF²⁵. The consultation remained open until 10 May 2018. Paragraph 4 of the consultation draft revised NPPF refers to the relationship between the NPPF, NPSs and NSIPs. It leaves the intention of current NPPF paragraph 3 unchanged. Beyond paragraph 4, the consultation draft makes only one further reference to NPSs (at paragraph 105(e)). None of the references to NPSs or NSIPs in the consultation in any manner qualify the detailed content of the NNNPS.

- 3.8.4. Having taken the NPPF consultation into account, the ExA has concluded that NNNPS paragraphs 1.17 to 1.20 are currently intended to remain as a complete statement of the relationship between the two documents which the consultation does not propose to change. It follows that the NPPF consultation does not propose any material amendment to the policy context for this Application that needs to be taken into account.

- 3.8.5. If by the time the SoST decides this application, the SoS HCLG has not made a revised NPPF, all considerations arising from the NPPF are set out in this Report. If having taken the consultation process into account, the SoS HCLG decides to make a revised NPPF before this application is decided, it is possible that policies could be included that are not addressed in this Report because they would have emerged after the closure of the Examination. In those circumstances, the SoST will need to consider whether any revised NPPF policies bearing on strategic highways require to be taken into account in addition to the policy matters already

²⁵ MHCLG consultation paper: [Draft Revised National Planning Policy Framework](#)

addressed in this Report. If so, it will be necessary for the SoST to consider whether or not to consult the Applicant and IPs on any NPPF changes at that point.

3.9. LOCAL IMPACT REPORT

3.9.1. STC provided a LIR [\[REP2-006\]](#).

3.9.2. No LIRs were received from any neighbouring local authorities. However, correspondence from Sunderland City Council (SCC) (the immediate neighbouring local authority to the south) was appended to the STC LIR (Appendix A).

3.9.3. The content of the LIR is considered in Chapter 4 of this Report.

3.10. THE DEVELOPMENT PLAN

3.10.1. STC drew attention to the development plan in force in its LIR [\[REP2-006\]](#), the constituent documents of which were recorded in Appendix B as:

- The Core Strategy and Key Diagram (adopted June 2017) of which the following objectives and policies were relevant:
 - Objectives 1, 2, 3, 7, 10, 12, 13, 14 and 16;
 - Policy ST1 Spatial Strategy for South Tyneside, particularly limb C;
 - Policy ST2 Sustainable Urban Living;
 - Policy A1 Improving Accessibility, in particular limb B;
 - Policy EA1 Local Character and Distinctiveness;
 - Policy EA3 Biodiversity and Geodiversity;
 - Policy EA5 Environmental Protection; and
 - Policy EA6 Planning for Waste.
- Development Management Policies (adopted December 2011) of which the following objectives and policies were relevant:
 - Policy DM1 Management of Development; and
 - Policy DM6 Heritage Assets and Archaeology.
- Site-Specific Allocations and Proposals Map (adopted April 2012) of which the following objectives and policies were relevant:
 - Policy SA2 Improving Physical Accessibility and Transport Infrastructure, in particular limb I) xxiii) that safeguards land to enable grade-separation of the A19 at Testo's Junction; and
 - Policy SA7 Green Infrastructure and Recreational Opportunities.
- The IAMP Area Action Plan (adopted 30 November 2017).

3.10.2. Copies of the relevant policies were requested by the ExA. STC provided them under cover of its D4 submission [\[REP4-003\]](#). Section 4.5 of this Report considers the relationship between the Proposed Development and the Development Plan.

3.10.3. In addition to the policies identified in the STC LIR, the Applicant [\[APP-049\]](#) has referred to the following development plan documents (DPD)s:

- STC draft replacement Local Plan.
- STC Proposals Map (locating land within the Order Limits subject to the following policy designations):
 - Green Belt: Core Strategy policy EA1, Development Management policies DM5, DM7 and DM8; and Site-specific Allocations policies SA4, SA7, SA10 and SA11.
 - The Great North Forest: Core Strategy policy EA1, Development Management policies DM7 and DM8; and Site-specific Allocations policies SA4, SA7, SA10 and SA11.
 - LWSs: (Baldon Lake, east of the A19 and north of the A184 and Mount Pleasant Marsh east of the Testo's Junction and south of the A184), Core Strategy policies EA1 and EA3; Development Management policies DM7 and DM8.
 - Wildlife Corridor: Core Strategy Policy EA3 and Development Management Policy DM7.
- Specific support and safeguarding for the Proposed Development:
 - Core Strategy Policy A1 and Site specific Allocation policy SA1.
- SCC documents (other than IAMP):
 - Unitary Development Plan (UDP) 1998;
 - UDP Alteration No 2 (2007);
 - Draft Core Strategy (programmed for adoption in June 2018); and
 - Draft Site Allocations Plan (programmed for adoption in May 2019).
- Minerals and waste plan documents:
 - Joint Local Aggregates Assessment (JLAA) for County Durham, Northumberland and Tyne and Wear.

3.10.4. It should be noted that none of the SCC DPDs are directly applicable to the Proposed Development as the administrative boundary between South Tyneside and Sunderland lies approximately 200m south of site. STC has not prepared its own minerals and waste plan. SCC deals with minerals and waste matters in its UDP. The JLAA is not an adopted DPD, but rather provides the evidence base for minerals planning in the joint planning area.

3.11. THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

3.11.1. The ExA has remained aware throughout the Examination of the need to consider whether changes to the application documents have changed it to a point where it became a different application and whether the SoST would have power therefore under s114 of PA2008 to make a DCO having regard to the development consent applied for.

- 3.11.2. 'Planning Act 2008: Guidance for the examination of applications for development consent' (March 2015), provides guidance at paragraphs 109 to 115 in relation to changing an application post Acceptance²⁶. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made²⁷.
- 3.11.3. Having considered this context throughout the Examination, it is clear that the changes to the application (primarily consisting of minor changes to the application, a review of these within the framework provided by the ES and technical revisions to the DCO as applied for), have not resulted in any significant change to that which was applied for. The changes taken into account in reaching this conclusion are documented in Section 2.3 of this Report above.
- 3.11.4. It follows that the SoST has the power to make the DCO as recommended in Chapter 8 and provided in Appendix D to this report.

²⁶ [Planning Act 2008: Guidance for the examination of applications for development consent](#), DCLG (2015)

²⁷ [Correspondence from Bob Neill MP, Parliamentary Under Secretary of State to Sir Michael Pitt, Chair, Infrastructure Planning Commission](#), DCLG (28 November 2011).

4. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. As required by section (s)88 of the Planning Act (PA2008) and the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) Rule 5, the ExA made an Initial Assessment of Principal Issues (IAPI) arising from the application within 21 days of the day after receipt of the s58 certificate of compliance [\[OD-002\]](#) (s56 notice) under the PA2008 provided by the Applicant. The issues identified in that initial assessment were as follows:

- Air quality and emissions;
- Biodiversity, ecology and the natural environment;
- Compulsory Acquisition (CA), Temporary Possession (TP) and other land or rights considerations;
- The draft Development Consent Order (dDCO);
- Electricity and other utility infrastructure;
- Landscape and visual impact;
- Noise and vibration;
- Other strategic projects and proposals;
- Socio-economic effects;
- Transportation and traffic; and
- Water environment.

4.1.2. 'Applicable law and policy' was not identified as a topic in the IAPI, as it must be considered by the Examining Authority (ExA) at all times. It provided the framework within which the Examination was conducted and is summarised in Chapter 3 of this Report above.

4.1.3. The IAPI was provided to all recipients within the Rule 6 Letter [\[PD-005, Annex B\]](#) and discussed at the Preliminary Meeting (PM) [\[EV-002\]\[EV-003\]](#).

4.1.4. At the PM, the Applicant questioned whether it was appropriate for implications for European Sites to be retained as a component of the biodiversity issue, when a Habitat Regulation Assessment (HRA) report had been submitted indicating the absence of any significant effects on such sites. It was clarified by the ExA that any conclusion on HRA would be a matter of judgment in the light of the application documents, submissions from the Applicant and other Interested Parties (IPs) and relevant evidence provided during the Examination. On that basis HRA has remained as an examination matter and is addressed in Chapter 5 of this report.

4.1.5. IAMP LLP, the joint special delivery vehicle for the International Advanced Manufacturing Park (IAMP) attended the PM. It was clarified by the ExA that consideration of other strategic projects and proposals would include consideration of the IAMP proposals.

4.1.6. No other matters were raised at the PM that required amendment to the IAPI.

- 4.1.7. Following the PM, after further consideration of the application documents, of the site context from the first Unaccompanied Site Inspection (USI1) [EV-001] and the views of Historic England (HE) in their Relevant Representation (RR) [\[RR-003\]](#), the historic environment was introduced as a further examination issue.
- 4.1.8. The remainder of this Chapter addresses the planning issues from the IAPI between Sections 4.10 and 4.20, with the addition of the following Sections:
- a Section (4.15) considering the historic environment; and
 - for completeness, a Section (4.20) addressing other relevant matters that arose during the Examination.
- 4.1.9. The planning issues have then been re-ordered from the alphabetic order in which they are traditionally set down in an IAPI, into a logical order, driven by interplay between the following factors:
- their importance to the decision; and
 - their temporal or contingency relationships with other topics.
- It follows that the planning issues are dealt with in this Chapter in the following order:
- Transportation and traffic;
 - Other strategic projects and proposals;
 - Air quality and emissions;
 - Biodiversity, ecology and the natural environment;
 - Electricity and other utility infrastructure;
 - Landscape and visual impact;
 - Noise and vibration;
 - Socio-economic effects;
 - Water environment; and
 - Other considerations.
- 4.1.10. CA, TP and other land or rights considerations and the detailed content of the DCO. Matters relating to CA, TP and other land or rights considerations are reported on in Chapter 7. Matters relating to the DCO are reported upon in this chapter within the framework of the individual planning issues in relation to which they arise. The DCO is reported on in Chapter 8 of this Report.
- 4.1.11. In addition to the planning issues, this Chapter also addresses the following topics arising from the conduct of the Examination as follows:
- issues arising in written and oral submissions;
 - issues arising in the Local Impact Report (LIR);
 - conformity with the applicable National Policy Statement (NPS);
 - conformity with the development plan;
 - the application and consideration of other legislation and policies (including the WFD);
 - consideration of previously made DCOs;
 - Environmental Impact Assessment (EIA); and
 - HRA.

4.1.12. Having set out responses to these matters in broad terms between Sections 4.2 to 4.9 of this Report, the planning issues identified in paragraph 4.1.9 above and the matters of detail arising from them are considered in Sections 4.10 to 4.20 of this Report.

4.2. ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS

Introduction

4.2.1. This is an application in respect of which there was a substantial level of local support and only very limited levels of community concern or objection. Those objections that did arise related largely to matters of detail in mitigation, or suggestions of alternative approaches that the Applicant could have considered. There were no over-arching representations suggesting that the Proposed Development was fundamentally inappropriate in policy terms or that development consent should be refused.

4.2.2. Two issues of note flowed from this during the Examination period:

- the Applicant largely maintained its focus on the 'finessing' of the Proposed Development in the light of relevant policy, making clear that, where possible, final resolutions with relevant IPs were achieved and documented in Statement of Common Grounds (SoCGs) or legal agreements; and
- much of the work of the ExA proceeded after the fashion of an 'audit', probing and testing the Application documents to ensure that, low levels of community concern notwithstanding, the Proposed Development did address all relevant legislative and policy requirements and was capable of receiving a positive recommendation in this report.

Relevant Representations (RRs)

4.2.3. The issues arising from RRs can be characterised as follows:

- Support for the Proposed Development from a local resident (Ms Dianne Snowdon [\[RR-001\]](#)), local authorities (Gateshead Council [\[RR-007\]](#), South Tyneside Council (STC) [\[RR-011\]](#) and Sunderland City Council (SCC) [\[RR-012\]](#), and the North East Combined Authority (NECA) [\[RR-010\]](#)) in terms of the need for action;
 - to address traffic congestion on the existing junction;
 - to address the effects of predicted traffic growth;
 - to improve local and regional transport connectivity and links to and between local industry and regional ports and airports; and
 - to support local and regional economic development, jobs and growth, particularly at the Nissan Motor Manufacturing United Kingdom Ltd (NMUK), IAMP and related sites.
- Government agencies, public and local authorities wishing to ensure:
 - the interests of the historic and cultural environment are addressed and mitigations properly secured (Historic England (HE) [\[RR-003\]](#)) with a slight concern that they had not been;

- relevant environmental and emissions standards are met and controls imposed or complied with (Environment Agency (EA) [\[RR-006\]](#)), with reference to flood risk, water quality, the WFD and the River Don River Basin Management Plan (RBMB) and Environmental Permitting;
 - the interests of biodiversity and the natural environment are addressed and mitigations properly secured (Natural England (NE) [\[RR-009\]](#) and EA [\[RR-006\]](#));
 - the needs of non-motorised users (NMUs) are met (Gateshead Council [\[RR-007\]](#)); and
 - the effects of the Proposed Development on the coalfield (and vice versa) are understood (the Coal Authority) [\[RR-005\]](#)).
- National Grid Electricity Transmission (NGET) [\[RR-008\]](#) wished to ensure that the operational needs of its nearby West Boldon substation and its associated transmission and distribution connections are addressed, whilst also ensuring that natural environment management and environmental education delivered on its land by Groundwork South Tyneside and Newcastle Trust (Groundwork STAN) can be sustained. Objections to CA and TP proposals over operational and environmentally managed land were submitted. This representation was withdrawn before the end of the Examination following the conclusion of a commercial side agreement between the Applicant and NGET [\[REP4-001\]](#).
 - A local resident and farmer (Mr Dennis Gilhespy [\[RR-002\]](#)) expressed concerns about the approach taken to public rights of way (PRoW) diversions for NMUs.
 - Royal Mail [\[RR-004\]](#) expressed concern to ensure that design and delivery planning did not impose undue delays on national logistics providers.

These issues are all addressed in the remaining sections of this report.

Written Representations (WRs)

- 4.2.4. The WRs amplify the position of IPs and, to the extent that this was not accomplished in RRs, set out the positions of Affected Persons (APs) and Other Persons.
- 4.2.5. Only three WRs addressed the first of these functions by amplifying the position of IPs. At Deadline (D)1, WRs of this nature were received only from STC [\[REP1-002\]](#), NGET [\[REP1-003\]](#) (withdrawn) and EA [\[REP1-004\]](#). The EA submission provided substantial clarifying detail including raising concerns about the relationship between the Proposed Development and the Downhill Lane junction (DLJ) project for EIA purposes and expressing concerns about the approach taken by the Applicant to Water Framework Directive (WFD) compliance. With the exception of these, no new issues were raised in addition to those arising from RRs and summarised above.
- 4.2.6. Groundwork STAN requested to become an IP consequent on its standing as an AP. It made a WR at D1 [\[REP1-005\]](#) setting out its position as land manager and environmental education and services provider for NGET on

the Boldon Substation site. This built on issues raised in the NGET RR [RR-008] but raised no new issues.

4.2.7. IAMP LLP was invited to participate as an Other Person and took the opportunity provided by D1 [\[REP1-001\]](#) to set out its support for the Application and willingness to engage in the Examination.

4.2.8. The content of all WRs are addressed in this Chapter in relation to relevant planning issues.

Oral representations

4.2.9. Given the broad local support for the Proposed Development, the great majority of oral submissions responded to the ExA's oral questions, which in turn were driven by the requirement to test the application against relevant legislative and policy requirements. Responses to ExA questions are dealt with in relevant sections of this Chapter below. Again, few new issues were raised.

4.2.10. Mention should be made of the following oral submissions:

- IAMP LLP attended Issue Specific Hearing (ISH)2 to clarify the relationship between the Proposed Development and the IAMP proposals, including the status of the IAMP Action Area Plan (AAP) and the proposed phasing of IAMP into IAMP ONE (an application for planning permission pursuant to Town and Country Planning Act 1990 (TCPA1990)) and IAMP TWO (anticipated to proceed as an Nationally Significant Infrastructure Project (NSIP)) [EV. Information about a legal challenge to the IAMP AAP Policy T1 was provided [\[REP3-001\]](#).
- STC attended ISH1, 2 and 3, ensuring that ExA questions relevant to the LIR and its role as relevant local planning authority could be addressed.
- Mr Dennis Gilhespy attended the Open Floor Hearing (OFH). He did not object to the Proposed Development but provided clarifying submissions and responses to ExA questions in relation to the effect of the works on his business and dwelling, matters relevant to CA and TP of land and to human rights considerations.
- Mr Tom Cleary attended the OFH. He did not object to the Proposed Development but provided clarifying submissions in relation to the effect of the works on the West Pastures lane Traveller community, matters relevant to CA and TP of land and to human rights considerations.

Conclusion on Issues Arising From Submissions

4.2.11. All remaining issues arising from both written and oral submissions have been taken into account by the ExA.

- Matters arising from submissions have been carried forward and are addressed as necessary in Sections 4.10 to 4.20 and in Chapters 7 and 8 of this Report.

4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORT

Introduction

4.3.1. This section addresses issues arising from the STC LIR [\[REP2-006\]](#).

LIR Issues

4.3.2. The LIR divides its appraisal into the following issues framework, the content of which in turn has been considered in this Report in the locations identified below.

- The Proposed Development and its local context (see Chapters 1 and 2 of this Report).
- Appraisal against the development plan (see Section 4.5 of this Report).
- Appraisal against other relevant policy documents, including:

National policies

- National Networks National Policy Statement (NNNPS) (see Section 4.4);
- National Planning Policy Framework (NPPF) (see section 4.6);

Regional policies

- North East Strategic Economic Plan (see section 4.6);
- Tyne and Wear Local Transport Plan (see section 4.6);
- North East Combined Authority (NECA) Regional Transport Plan (see section 4.6);

Local policies

- South Tyneside Strategy 2017-2020 (see section 4.6); and
 - South Tyneside Highway Asset Management Plan 2015-2019 (see section 4.6).
- Other relevant considerations (set out below).
 - Local impacts assessment:
 - economic growth and transportation (see sections 4.10 and 4.18);
 - noise and vibration (see section 4.17);
 - geology, soil and ground conditions (see section 4.20);
 - materials (see section 4.20);
 - air quality (see section 4.12);
 - landscape and visual impacts (see section 4.16);
 - archaeology and cultural heritage (see section 4.15);
 - ecological and nature conservation (see section 4.13);
 - road drainage and water quality (see section 4.19);
 - construction traffic (see section 4.10); and
 - road safety (see section 4.10 and 4.18).
 - The dDCO (individual topics are dealt with in this Chapter as above and Chapter 8 for drafting points).

Where relevant considerations arising from the LIR are identified as bearing on a particular Chapter or Section of this Report, they are dealt with there.

- 4.3.3. The 'other relevant considerations' that STC identifies in the LIR (at section 6) include that funding has also been secured for other complementary improvements within the A19 corridor which taken together with the Proposed Development will significantly reduce congestion, enhance accessibility and support jobs and growth. These include:
- The A19 / A194 / A1300 Lindisfarne Corridor improvements: additional lanes on the approach to the strategic road network constructed in July 2017. These improvements in part address air quality issues discussed in Section 4.12 of this Report;
 - The A19 / A185 junction improvements at Jarrow provided following the construction of the New Tyne Crossing, due to be constructed from early 2018 (also in part relevant to air quality issues discussed in Section 4.12 of this Report);
 - The proposed DLJ project improvements; and
 - The IAMP proposals.
- 4.3.4. The LIR identifies and balances a range of positive, neutral and negative impacts arising from the Proposed Development. In over-arching terms, STC identifies that the *'delivery of junction improvement works at this location has been an ambition of the Council for a number of years'* (paragraph 9.3). It considers the planning balance to be positive and finds that there are no negative impacts that are *'so significant as to lead to the Council to object to the principle of the scheme'* (paragraph 9.5).
- 4.3.5. The LIR (at paragraph 9.5) indicates that STC has worked closely with the Applicant to ensure that the dDCO sets out adequate requirements to provide appropriate delivery standards and that identified negative impacts are, as far as possible, addressed (see Chapter 8 of this Report). It should be noted that by the end of the Examination at D7, STC had no outstanding concerns in respect of the dDCO [\[REP7-001\]](#).
- 4.3.6. In summary the LIR states (paragraph 9.6) that:
- '[t]he Council welcomes this development which will significantly improve traffic flows at this key junction, relieving congestion and improving accessibility to, from and within the Borough adding to the attractiveness of living and working in the Borough, improving access to new economic development and housing locations. It is in accordance with national and local planning policy.'*
- 4.3.7. Finally, whilst there is no LIR from SCC, the STC LIR indicates close liaison between these two adjoining local authorities. STC and SCC 'share' the A19 alignment in this location, with the boundary dissecting the IAMP site. They are jointly responsible for the IAMP development proposals and the IAMP AAP which are benefitted by a combination of the Proposed Development with the proposed DLJ project.

- 4.3.8. The LIR (Appendix A) contains a supporting statement and letter from SCC on that basis.

Conclusion on LIR Issues

- 4.3.9. All remaining issues arising from the LIR have been taken into account.
- The overarching support of host local authority STC and the neighbouring local authority SCC have been noted and taken into account.
 - Detailed LIR analysis is carried forward and addressed in the relevant Chapters and sections of this Report identified above to ensure that they are considered as required by the SoST.

4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS

Introduction

- 4.4.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with the relevant NPS, identified in Chapter 3 above as being the NNNPS. It also addresses the relationship between the Proposed Development and NPS EN-5 (Electricity Networks Infrastructure) in respect of electricity transmission works for which the dDCO includes powers.

National Networks National Policy Statement (NNNPS)

- 4.4.2. The Applicant analysed the performance of the Proposed Development against relevant policy in the NNNPS within its Planning Statement [\[APP-049\]](#). This documents sets out the need for the Proposed Development within the framework provided by NNNPS and the Road Investment Strategy (2015-2020) (RIS). The Proposed Development is needed to address congestion and safety issues at what is the last remaining at grade intersection on the A19 strategic alignment between the A1 at Dishworth and the Tyne Tunnel ([\[APP-049\]](#), sections 2.1 and 2.4). It would improve network resilience, journey times and journey time reliability. The project also seeks to respond to forecast traffic growth, maintain the reliability of the local road network and to support wider growth in the local and regional economy.
- 4.4.3. The Planning Statement compares the objectives of the Proposed Development with the vision and strategic objectives of the NNNPS ([\[APP-049\]](#), Table 5.1). It concludes that the Proposed Development is one which will meet the overarching summary of need tests set out at the start of NNNPS Chapter 2. Its development will support the development of a national strategic road network that:
- has the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs;
 - supports and improve journey quality, reliability and safety;
 - supports the delivery of environmental goals and the move to a low carbon economy; and
 - join up our communities and link effectively to each other.

4.4.4. Without making judgments about the detailed application of individual policy tests, paragraphs 5.1 to 5.3 of STC LIR [\[REP2-006\]](#) identifies that the Proposed Development broadly complies with the NNNPS. Other local authorities engaged (NECA, SCC and Gateshead Council) identified no concerns about NNNPS compliance. Nor was high level NNNPS compliance (in terms of need or the high level performance of the Proposed Development against policy) raised by any other IPs or APs.

Electricity Networks and NPS EN-5

4.4.5. The Proposed Development does affect the electricity transmission and distribution systems, including substation apparatus at West Boldon and associated alignment connections. Elements of the West Boldon apparatus (above ground electricity lines whose nominal voltage is expected to be 132kV or above, together with associated infrastructure) would, if consented today, be NSIP development.

4.4.6. Work No.9 is the only work in the dDCO for the Proposed Development that directly affects electricity network infrastructure. It consists of '*the diversion of 5 no. electric cables routes and associated auxiliary cables and apparatus*' [\[REP5-006\]](#). Having reviewed those routes in USI2 [\[EV-006\]](#) and received no written submissions to the contrary, it is clear that they form part of the distribution system and fall below the NSIP threshold.

4.4.7. The maintenance of electricity network operational integrity is an important and relevant consideration addressed in Section 4.14 of this Report. No suggestion was made that NPS EN-5 was a directly relevant source of policy. However, for the avoidance of doubt, with regard to the effects of the Proposed Development on electricity networks infrastructure, NPS EN-5 policy is designed to inform a decision-maker considering a proposal for a new electricity network development. It says little to assist a decision-maker to consider the effects of another form of development on an existing electricity network use. Nor is it relevant to a decision relating to electricity infrastructure that does not meet the NSIP threshold.

Conclusion on NPS Policy

4.4.8. Taking all relevant documents and policies into account, the ExA concludes as follows:

- No instances of NNNPS non-compliance were identified by IPs or APs.
- The Proposed Development generally conforms to high-level policy in NNNPS.
- The compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NNNPS paragraphs, and this analysis is carried out in sections 4.10 to 4.20 below.
- The application affects electricity network infrastructure below the NSIP threshold and NPS EN-5 is not a relevant consideration.

4.5. CONFORMITY WITH THE DEVELOPMENT PLAN

Introduction

- 4.5.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with relevant Development Plan policies.

Relevant Development Plan Policies

- 4.5.2. Section 3.10 of this Report identifies the development plan documents (DPDs) and individual policies which were identified by the Applicant in its Planning Statement [\[APP-049\]](#) and the host local authority STC in its LIR [\[REP2-006\]](#) as relevant to the assessment of the Proposed Development. In response to ExA questions at ISH2 [\[EV-011\]](#) [\[EV-012\]](#) a subsequent submission from STC at D4 [\[REP4-003\]](#) provided the ExA with the text of relevant policies.
- 4.5.3. Section 5.3 of the Planning Statement [\[APP-049\]](#) identifies that the Proposed Development is broadly compliant with relevant STC development plan policies. Specific policy matters to which further consideration is provided are as follows:
- Green Belt (in Section 4.18);
 - the Great North Forest (in Section 4.18);
 - designated Local Wildlife Sites (LWSs) (in Section 4.13);
 - a designated Wildlife Corridor (in Section 4.13); and
 - the safeguarding of land for the Proposed Development (in Sections 4.10 and 4.18).
- 4.5.4. The Applicant highlights how individual design elements of the Proposed Development and mitigation proposed in the Register of Environmental Actions and Commitments (REAC) [\[APP-030\]](#) (at Appendix 1.2) ensures that all relevant policies will be met.
- 4.5.5. The Applicant [\[APP-049\]](#) (section 5.3) also identifies applicable SCC development plan policies and the planning framework and evidence base for minerals and waste and identifies no issues of non-compliance.
- 4.5.6. Paragraph 5.1 to 5.3 of STC LIR [\[REP2-006\]](#) does not identify any overarching instance of non-compliance with the Development Plan. Paragraph 4.10 concludes that '*[t]he project would be supported by local planning policies, notwithstanding its location in the green belt and, in particular; following the recent adoption of the IAMP Area Action Plan that identifies the strategic importance of the delivery of these proposed junction improvements...*' Green Belt is an individual issue addressed in Section 4.18.
- 4.5.7. It should be noted that none of NECA, SCC or Gateshead Council identified any matters of non-compliance with the Development Plan. There were no issues with plan compliance identified by any other IP or AP. Nor were any compliance issues raised in relation to minerals and waste planning policies. For this reason, whilst the ExA has considered those policies and agrees generally that they are complied with, they are not considered in detail in the remainder of this report.

- 4.5.8. The Development Plan documents and policies identified in the LIR have been reviewed by the ExA. There are multiple instances of clear policy support for the Proposed Development (in relation to the promotion of the A19 Growth Corridor, the IAMP development and the safeguarding of land to enable grade separation by 2026). There are no instances of unaddressed policy conflict (the relevant requirements of all environmental protection, water quality, biodiversity conservation, landscape and archaeology policies are met).
- 4.5.9. A particular issues that requires to be reported to the SoS in relation to the applicability of and conformity with development plan policies relates to a legal challenge to the IAMP AAP as adopted on 30 November 2017. At ISH2, IAMP LLP referred to a legal challenge having been made to an aspect of the decision to adopt: concerning paragraph A(ii) to Policy T1 of the IAMP AAP.
- 4.5.10. Additional information on the status and effect of the legal challenge was sought (ExA Action Point 4) [\[EV-013\]](#) and this was provided by IAMP at D3 [\[REP3-001\]](#). The response provided at that time made clear that the policy subject to challenge relates to a new vehicular over-bridge crossing the A19 south of DLJ and connecting the IAMP site to the local road network east of the A19 mainline. IAMP LLP provided the view that on this basis, even if paragraph A(ii) to Policy T1 were to be quashed, there would be no material effect on the strategic road network or on the Proposed Development. The Applicant concurred with this position and no concerns were raised by any other IPs.
- 4.5.11. On that basis, it is clear that whatever the outcome of the legal challenge to paragraph A(ii) to Policy T1 of the IAMP AAP, this will not need to be taken further into account by the SoS in a decision on this application, as the presence or absence of a policy seeking an overbridge connection to the local road network will not materially affect the strategic assets under consideration here.
- 4.5.12. There are no issues arising from Development Plan policies that conflict with relevant policy directions arising from NNNPS. Whilst NNNPS is of course the primary source of policy for a decision under PA2008, Development Plan policies are important and relevant considerations. None of them indicate against the directions set in NNNPS and so it follows that effect can be given to all relevant Development Plan policies in a manner which reinforces and adds local flavour and detail to NNNPS compliance.
- 4.5.13. For completeness it should be noted that the Examination was not referred to any plan policies from Neighbourhood Plans.

Conclusion on the Development Plan

- 4.5.14. Taking all relevant Development Plan documents and policies into account, the ExA concludes as follows:
- The Proposed Development generally conforms with the Development Plan.

- It benefits from specific policy support in terms of its role in fostering accessibility and economic growth in a growth corridor. The land required for the proposal has been the subject of a safeguarding policy.
- Other policies relating to environmental protection, water quality, biodiversity conservation, landscape and archaeology policies are met.
- There are no conflicts between NNNPS and the Development Plan, so Development Plan policy can be fully met by a decision that is in accordance with NNNPS.
- Whilst the IAMP AAP has been made subject to a legal challenge, the scope of that challenge is limited, and it has no implications for the SoS' decision in this Application.
- The ExA has not been referred to any relevant policies arising from Neighbourhood Plans.

4.6. APPLICATION OF OTHER POLICIES

Introduction

- 4.6.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with other relevant sources of policy.

Other relevant policies

- 4.6.2. The other policies that give rise to important and relevant considerations for the SoS include policies raised and referred to by STC in its LIR [\[REP2-006\]](#) (at section 5).

Regional policies

- North East Strategic Economic Plan, March 2014, NE LEP;
- Tyne and Wear Local Transport Plan (LTP3) (2011 – 2021), TW ITA²⁸; and
- NECA Regional Transport Plan (in draft).

The North East Strategic Economic Plan identifies the Testo's roundabout as a known bottleneck requiring capacity improvement. LTP3 also identifies that improvements at the Testo's roundabout are required to respond to road safety and congestion issues. The NECA Regional Transport Plan will integrate policy from the LEP and the regional authorities and investment in and improvement of the A19 corridor is intended to remain as a strategic focus.

Local policies

- South Tyneside Strategy 2017-2020, STC; and
- South Tyneside Highway Asset Management Plan 2015-2019.

²⁸ The former Tyne and Wear Integrated Transport Authority (ITA) acted on behalf of six LTP Partners – the Tyne and Wear local authorities and 'Nexus', the Passenger Transport Executive. The responsibilities of the ITA passed to North East Combined Authority (NECA) from April 2014.

The South Tyneside Strategy identifies improving connectivity in the A19 corridor as an important focus for jobs and growth in the local area. Both local strategies identify action to improve the Testo's Junction as a high priority. The STC LIR [\[REP2-006\]](#) states that STC considers the Proposed Development to be supported by both strategies.

- 4.6.3. It should be noted that none of NECA, SCC or Gateshead Council identified any matters of non-compliance with any of these policies. Nor were any issues identified by any other IP or AP.
- 4.6.4. These policy sources are relevant. In high-level terms the Proposed Development complies with them and / or supports their objectives.
- 4.6.5. Nothing arising from these policies has been found that conflicts with relevant policy directions arising from NNNPS. Whilst NNNPS is the primary source of policy for a decision under PA2008, other local policies are capable of being important and relevant considerations. None of them indicate against the directions set in NNNPS and so it follows that effect can be given to all relevant policies.

Conclusion on Other Policies

- 4.6.6. Taking all relevant documents and policies into account, the ExA concludes as follows:
- The Proposed Development generally conforms with other relevant policies discussed above.
 - There are no conflicts between NNNPS and other relevant policies and those policies will be met by a decision that is in accordance with NNNPS.

4.7. CONSIDERATION OF PREVIOUSLY MADE DCOs

Introduction

- 4.7.1. This Section responds to the approach taken by the Applicant, referring to previously made DCOs when drafting the DCO for the Proposed Development. In particular, it addresses the issue of 'precedent' and explains how the content of precedent made Orders has been taken into account.
- 4.7.2. Section 3.5 of this Report above identifies the made Orders that have been referred to the ExA by the Applicant and Chapter 8 below applies the approach outlined here to particular drafting in the dDCO.

Approach to precedent Made Orders

- 4.7.3. The examination of this application was distinguished by two factors bearing on the ExA's consideration of previously made DCOs in respect of which the examination approach and reasoning needs to be explained, in order that the SoS can take previously made DCOs into account and accord appropriate weight to them.
- The Applicant placed substantial reliance on the existence of precedent from similarly drafted made DCOs listed in Section 3.5

above as providing the basis and justification for the adoption of drafting in the dDCO applied for in this Proposed Development.

- However, questions raised during the Examination notwithstanding, the Applicant's final EM [\[REP5-008\]](#) in a number of instances did not explain how precedent practice was specifically relevant to the combination of the policy and legislative framework and the facts relevant to this application.

- 4.7.4. Given that the Applicant's approach to the consideration of precedent made Orders did not in all respects appear to conform with established NSIP Guidance, Advice Notes (ANs) and practice and that their approach in turn had implications for the examination of the dDCO and EM, that is explained here. It should be noted from the outset however that this was a technical examination issue: no IPs raised concerns about the Applicant's drafting approach or the adoption of particular content in the dDCO from precedent made Orders.
- 4.7.5. ISH1, 3 and 5 into the dDCO included detailed questions about the Applicant's understanding of the role and potential weight of precedent DCO decisions. With Chapter 8 in mind, these questions were designed to ensure that particular justifications for a number of provisions was clear.
- 4.7.6. The Applicant had made extensive reference to precedent in its drafting (see [\[REP1-016\]](#) at paragraph 2.5.2(b)) for what on its face is an excellent reason. There are a significant number of strategic highway alterations and improvements proposed in the RIS. The Applicant is seeking as far as possible a standardised set of DCO provisions for these. Where a common objective needs to be accomplished by multiple projects, it is the Applicant's preferred approach that relevant DCO drafting should as far as possible be common too.
- 4.7.7. Additionally, a number of the RIS projects address a shared highway alignment. The A19 itself is one such, where there is a precedent made Order for the A19 / A1058 Coast Road Improvement in North Tyneside, the Proposed Development and a proposal to apply for a DCO for the A19 DLJ Project in due course. This reinforces the quest for shared provisions.
- 4.7.8. As a starting point, the ExA agrees with the Applicant that the framing of a broadly consistent approach to the drafting of provisions for broadly similar strategic highway projects is a laudable aim. It holds out the prospect of saving public resources in the cost of drafting, and efficiencies through shared understandings between projects by undertakers, contractors / constructors, discharging authorities and other stakeholders.
- 4.7.9. However, where it invoked precedent, the Applicant did not always consider that it should provide a full justification for the basis of the chosen DCO drafting in the EM (beyond citing the made Order from which it was derived). The Applicant's argument by reference to the doctrine of precedent ([\[REP1-016\]](#) Q7 at page 11) was essentially that an ExA for a subsequent Examination was somehow bound or at least expected normally to accord with forms of drafting adopted by precedent decisions of the SoS to make Orders. The Applicant expressed concern at

the ExA's proposal to test the drafting of particular provisions in the dDCO, seeking a more substantial explanation and justification for these than simply that the same or similar words had been employed in a precedent made Order ([\[REP1-016\]](#) Q7 at section 2).

- 4.7.10. Relevant DCLG Guidance, 'Planning Act 2008: Guidance on the pre-application process', March 2015²⁹ is succinct to a point of brevity about the role of precedent made Orders in the drafting of a new dDCO. Paragraph 100 states:

Applicants are free to draft their Order in a manner of their choosing, subject to the conditions of the Planning Act. They may wish to draw upon previous and ongoing applications as a point of reference and other relevant guidance and advice [³⁰]. Applicants are required to submit an explanatory memorandum as part of the application pack, setting out the reasons behind the drafting of specific provisions in their Order. (ExA emphasis.)

- 4.7.11. The guidance suggests that whilst there is discretion to draw upon precedent made Orders, there is no obligation to do so. The other guidance and advice referred to by the former Department for Communities and Local Government (DCLG) are the Planning Inspectorate's AN13 and AN15.

- 4.7.12. AN13 advises on the general process of preparing a dDCO. In relation to the derivation of drafting from documents other than the Model Provisions (MPs), it notes the potential relevance of precedent decisions, including provisions from 'predecessor' regimes such as Transport and Works Act (TWA) Orders (TWAOs). However, it advises that:

Developers should though satisfy themselves that the inclusion of particular wording is appropriate and relevant in all the circumstances of a given project. The relevant precedent and the rationale for including the particular wording of a provision will need to be set out and justified in the explanatory memorandum.

- 4.7.13. AN15 relates to drafting dDCOs, providing greater detail on technical drafting approaches than AN13. It contains two directly relevant pieces of advice in paragraphs 1.1 and 15.2.

1.1 Applicants should look at made DCOs published by the same Department as will authorise their DCO to identify that Department's

²⁹ DCLG Guidance, 'Planning Act 2008: Guidance on the pre-application process', March 2015
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418009/150326_Pre-Application_Guidance.pdf

³⁰ 'Applicants should also refer to Advice Note 15 Drafting Development Consent Orders as published by the Planning Inspectorate and Advice Note 13, preparation of a draft order granting development consent and explanatory memorandum':
<http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/>

drafting preferences. Before adopting any precedents, applicants should consider carefully whether they are relevant to or remain appropriate for that particular application or proposed application.

15.2 Where applicants have derived any wording from other made DCOs they should set out in the explanatory memorandum any divergences from the quoted precedent DCO wording, giving reasons why they are proposing such wording.

- 4.7.14. Drawing this guidance together, the expectation is that an Applicant should:
- identify in the EM where there is a precedent made Order as a source of drafting for a provision in a dDCO (DCLG Guidance paragraph 100, AN13 and AN15);
 - particularly consider precedent made Orders published by the same Department to identify drafting preferences (AN15);
 - explain how it is that that the inclusion of particular precedent wording is appropriate and relevant in all the circumstances of the application in hand (AN13 and AN15); and
 - if a change is then proposed to precedent wording that is otherwise proposed to be included, the reasons for divergences from it in the application in hand should also be made clear in the EM (AN15).
- 4.7.15. By way of illustration, reference is made to the recommendation report in relation to the Wrexham Energy Centre (WEC) (the WEC Report)³¹. This considered an application for development consent for a Combined Cycle Gas Turbine generating station, which has since been made as recommended, as the Wrexham Gas Fired Generating Station Order 2017 (SI 766/2017) (the made WEC Order). That was a case in which substantial reliance was placed by the Wrexham Applicant on drafting in an individual precedent made Order where a closely related company in its group had also been the Applicant for development consent for the Meaford Energy Centre (MEC), a Combined Cycle Gas Turbine generating station of similar scale and impact, the Meaford Gas Fired Generating Station Order 2016 (SI 779/2016) (the made MEC Order). These are analogous circumstances to those in which Highways England is seeking to deliver similar highway alterations and improvements, sometimes along the same strategic road corridor.
- 4.7.16. The following paragraphs from the WEC Report explain how provisions from the precedent made MEC Order were addressed by the Wrexham Applicant and taken into account by the ExA. They provide a clear summation of practice in the application of considerations arising from precedent made Orders in NSIP decision-making. As noted in more detail below, the Secretary of State for the Department of Business, Energy and Industrial Strategy (SoS BEIS) generally agreed with the findings of the WEC Report and adopted the report's reasons.

³¹ [The WEC Report](#), ExA, 18 April 2017

8.2.1 *As a precursor to outlining the approach that I took to examining the DCO, it is necessary to record how I addressed the relationship between the DCO applied for here and the closely related Meaford Order. Owing to their need to respond to particular facts relevant only to their sites, no two DCOs are identical and that is the case here. However, this is an instance where it is reasonable for this Applicant, advancing a very similar proposal to that consented in the Meaford Order, to adopt the same drafting approach as that which commended itself to the SoS [...] at Meaford, unless there has been or is a relevant change in circumstances.*

8.2.2 *In this respect, I note that there are some significant differences between the DCO applied for here and Meaford Order. Some of these differences are necessary to adapt this DCO to the specific circumstances of its local site. Others relate to the location of this application in Wales (Meaford is in England), and to the existence of a substantial gas connection alignment that did not form part of the Meaford application. In examination, I have sought to understand the basis for these differences.*

8.2.3 *A large number of provisions nevertheless are drafted in common terms between this DCO and the Meaford Order. Where this is the case, I have reviewed whether there are any legislative or policy matters, matters arising from the individual circumstances of the application site or matters arising from the representations that I have considered that indicate against the drafting approach taken and approved by the SoS at Meaford. If there are no such matters, as a matter of consistency on two very similar proposals, I have taken the view that drafting approved by the SoS in the decision on the Meaford Order should not be changed in this DCO.*

- 4.7.17. The approach in paragraphs 8.2.1 to 8.2.3 of the WEC Report in turn is derived from the generally understood approach to the consideration of precedent decisions in the law of planning and development in England and Wales.
- 4.7.18. In summary terms, it is established law and practice that planning decisions are made within the framework of relevant legislation and policy, but must also take into account their own relevant facts, which in NSIP decision-making are matters that must be capable of being important and relevant considerations. The individual circumstances of two or more planning decisions may well be superficially similar. However, the subsequent decision is not bound always to have the same provisions and conditions as the precedent decision, except to the extent that the underlying framework of legislation, policy and the factual matrix are so similar and there is an absence of any important and relevant site-specific considerations, such that the same provisions are relevant in both sets of circumstances.
- 4.7.19. For reasons made clear in the WEC report, following examination, the ExA there accepted the proposition that the similarities between WEC and MEC were sufficiently close and the basis for similar provisions so clearly justified, that, in the absence of matters arising from legislation, policy

and the factual matrix, the drafting approach in the made MEC Order should normally be followed. Paragraph 4.3 of the SoS BEIS' WEC decision letter dated 18 July 2017³² makes clear that '*[e]xcept as indicated otherwise [...] the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendations.*' The letter contains no qualifications to the WEC Report paragraphs referred to above.

- 4.7.20. The foregoing paragraphs explain the degree to which precedent made Orders and the drafting in them can provide a justification for adopting the same or materially the same wording in subsequent dDCO. They explain how the ExA examined issues of precedent. In circumstances where the Applicant may well have considered that the basis for the drafting of certain provisions in the dDCO was being over-examined, it is provided as an explanation of the examination approach deployed and of the level of rigour in examining a dDCO that is necessitated to respond to the applicable framework of law and guidance.
- 4.7.21. What must be made clear is that this approach does not remove from a prospective Applicant preparing their dDCO the obligation to relate drafting to relevant legislation, policy and the factual matrix in the case at hand. These are considerations that should be explained in the EM. Nor does it indicate that because the same or similar words have been employed in a precedent made Order, that the ExA in an ongoing Examination should not examine the justification for those words in the dDCO. The ExA requires to be satisfied that the chosen drafting is relevant to circumstances and this may require a deeper interrogation than simply being informed that the same or similar words were employed in a precedent made Order, no matter how superficially similar its circumstances may be.
- 4.7.22. In circumstances where it has appeared to the ExA that the EM in this case has not fully addressed these expectations, the ExA has continued to inquire into the justification for a range of provisions that are identified as being derived or substantially derived from precedent Orders. As a consequence of that testing process, in all but a small number of instances, it is clear that the proposed drafting based on precedent is justified. Where the ExA was unable to reach this conclusion on an individual drafting point, this was put to the Applicant in the schedule of matters and questions for ISH5 on 1 March 2018 [\[EV-018\]](#), the final hearing into the DCO. The Applicant was provided with a full opportunity to respond to such observations both orally and in writing at D5 [\[REP5-017\]](#), and to present its preferred dDCO [\[REP5-006\]](#) in the light of its response.

³² [WEC Decision Letter](#), SOS BEIS, 18 July 2017

4.7.23. Individual conclusions are reached on each of those points in Chapter 8 below.

Conclusion on Previously Made DCOs

4.7.24. Taking previously made Orders into account, the ExA concludes as follows:

- The Applicant has generally justified its proposals for the drafting of the DCO.
- Precedent made Orders have been taken fully into account.
- Individual instances where drafting has relied on precedent but has not taken full account of the particular local circumstances are dealt with in Chapter 8 below.

4.8. ENVIRONMENTAL IMPACT ASSESSMENT

Introduction

4.8.1. As is recorded in Section 1.5 of this Report and for reasons set out there, the application is EIA development. This section records the documents comprised in the ES and changes to those documents provided during the pre-examination and Examination stages. It also records the environmental management documents proposed to be used by the Applicant in tandem with DCO provisions to secure the construction and operation of the Proposed Development and the application of mitigation within the worst case parameters (the Rochdale Envelope) assessed in the ES.

4.8.2. The EIA regulations applicable to NSIPs changed in May 2017 prior to the submission of the application on 14 July 2017. This section records consideration of the application of transitional provisions and sets out conclusions on their application.

4.8.3. This Section concludes on the question of whether the submitted ES and EIA process provide an adequate basis for decision-making by the SoS.

The Submitted ES

4.8.4. An ES was provided with the application documents. The documents comprising the ES are:

ES Volume 1

- The Main Text [\[APP-018\]](#).

ES Volume 2³³

- Figures accompanying Chapter 1: Introduction [\[APP-019\]](#);
- Figures accompanying Chapter 2: The Project [\[APP-020\]](#);

³³ Not every Chapter in ES Volume 1 is supported by a document containing figures.

- Figures accompanying Chapter 3: Consideration of Alternatives [\[APP-021\]](#);
- Figures accompanying Chapter 6: Air Quality [\[APP-022\]](#);
- Figures accompanying Chapter 7: Cultural Heritage [\[APP-023\]](#);
- Figures accompanying Chapter 8: Landscape and Visual Effects [\[APP-024\]](#);
- Figures accompanying Chapter 9: Ecology and Nature Conservation [\[APP-025\]](#);
- Figures accompanying Chapter 10: Geology and Soils [\[APP-026\]](#);
- Figures accompanying Chapter 12: Noise and Vibration [\[APP-027\]](#);
- Figures accompanying Chapter 13: People and Communities [\[APP-028\]](#); and
- Figures accompanying Chapter 15: Cumulative Effects [\[APP-029\]](#).

*ES Volume 3*³⁴

- Appendices accompanying Chapter 1: Introduction [\[APP-030\]](#);
- Appendices accompanying Chapter 6: Air Quality [\[APP-031\]](#);
- Appendices accompanying Chapter 7: Cultural Heritage [\[APP-032\]](#);
- Appendices accompanying Chapter 8: Landscape and Visual Effects [\[APP-033\]](#);
- Appendices accompanying Chapter 9: Ecology and Nature Conservation [\[APP-034\]](#);
- Appendices accompanying Chapter 12: Noise and Vibration [\[APP-035\]](#);
- Appendices accompanying Chapter 13: People and Communities [\[APP-036\]](#);
- Appendices accompanying Chapter 14: Road Drainage and the Water Environment [\[APP-037\]](#);
- Appendices accompanying Chapter 15: Cumulative Effects [\[APP-038\]](#); and
- ES Non-technical Summary [\[APP-039\]](#).

Addendum to the Submitted ES

4.8.5. Following the submission and Acceptance of the application an Addendum to the ES (AES) was submitted. This consists of the following documents:

- Addendum to the Environmental Statement – Volume 1 (The Main Text) [\[AS-013\]](#) (AES1). This addendum addressed the following topics:
 - amendments to noise modelling data;
 - information on a concrete median barrier proposed to be used as opposed to steel fencing in detailed design; and
 - information on the noise impacts relating to the provision of a flyover bridge option referred to in Chapter 2 paragraph 2.1.3 as Option 2.

³⁴ Not every Chapter in ES Volume 1 is supported by a document containing appendices.

- Addendum to the Environmental Statement – Volume 3 (Appendices) [\[AS-014\]](#) (AES2).

There was no addendum to Volume 2 of the ES.

- 4.8.6. AES1 and AES2 were made the subject of a non-statutory consultation process, ensuring that any person entitled to be notified of the accepted application had an opportunity to respond to the reported changes. The non-statutory consultation process was reported to the ExA by the Applicant at D3 [\[REP3-018\]](#). No new issues were raised and there were no requests by any notified persons to participate in the Examination.
- 4.8.7. The Environmental Masterplan (Revision 0) [\[APP-053\]](#) was intended to form part of the ES, but an electronic copy was not submitted until the pre-examination period. Nevertheless, it was published in sufficient time to enable any person wishing to comment on it to include those comments in their RR. The Environmental Masterplan (Revision 0) was substituted at D5 for a revised version (Revision 1) [\[REP5-005\]](#) with minor changes to ensure that features raised in Examination as needing to be consistently recorded in the documents submitted to the SoS with the DCO were recorded.
- 4.8.8. As the changes to the Environmental Masterplan only recorded features of the Proposed Development of which IPs were already aware, they were non-material and did not require to be notified.

Environmental Management Documents

- 4.8.9. The ES is supported by the following existing and intended environmental management documents:
- REAC (ES Appendix 1.2) [\[APP-030\]](#) which in turn contains a schedule of all environmental mitigation commitments set out in the ES and an Environmental Action Plan recording how they would be implemented to deliver the necessary outcomes;
 - the outline Construction Environmental Management Plan (oCEMP) [\[APP-050\]](#);
 - following approval, the Construction Environmental Management Plan (CEMP); and
 - following completion and handover as an operational asset, the Handover Environmental Management Plan (HEMP).
- 4.8.10. The REAC is secured in the dDCO and forms part of the ES which is a certified document. It is defined in Requirement (R)1 and referred to in R4 (Construction and handover environmental management plans), R5 (Landscaping), R8 (Surface and foul water drainage) and R9 (Archaeological remains), generally providing that relevant schemes to be prepared must reflect the measures contained within it.
- 4.8.11. The oCEMP is secured in the dDCO and is a certified document. It is defined in Article (Art) 2(1).
- 4.8.12. The dDCO R4 provides that no part of the authorised development may commence until a CEMP that is substantially in accordance with the

oCEMP has been submitted to and approved by the SoS. The content of the CEMP is tied to the REAC by R4, which also provides that the CEMP must regulate the working hours for construction and include the following subject-matter plans:

- Dust, Noise and Nuisance Management Plan;
- Site Waste Management Plan;
- Environmental Control Plan: Invasive Species;
- Environmental Control Plan: General Ecology;
- Soil Management Plan;
- Surface Water Management Plan;
- COSHH³⁵ Material, Waste Storage and Refuelling Plan;
- Energy and Resource Use Management Plan;
- Materials Management Plan;
- Contaminated Land Management Plan;
- Archaeological Control Plan; and
- Pollution Prevention Plan.

R4 secures that the construction of the authorised development must be carried out in accordance with the approved CEMP.

- 4.8.13. R4 requires the CEMP to include a process for the formation of a HEMP for the operational phase of the project and requires that by the end of the construction, commissioning and handover phase, the HEMP must be developed and completed. The authorised development must then be operated and maintained in accordance with the HEMP.

The Applicable Regulations

- 4.8.14. It is necessary to be clear about the legal framework for EIA to which this Application is subject. The EIA Directive³⁶ is transposed into law for NSIPs in England and Wales by The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations), which came into force on 16 May 2017. Regulation 37 of the 2017 Regulations revokes the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the 2009 EIA Regulations), subject to transitional provisions for certain applications in Regulation 37(2). This regulation provides that the 2009 Regulations continue to apply in circumstances where the Applicant has *'requested the Secretary of State or the relevant authority to adopt a scoping opinion (as defined in the 2009 Regulations) in respect of the development to which the application relates'* before the commencement of the 2017 Regulations³⁷.
- 4.8.15. The Applicant was clear that that the EIA process undertaken and the ES submitted with the application was intended to comply with the 2009 EIA Regulations and would not be strictly compliant with the 2017 EIA

³⁵ Control of Substances Hazardous to Health

³⁶ Directive 85/337/EEC was amended three times and codified by 2011/92/EU, which has itself been amended by 2014/52/EU

³⁷ 2017 EIA Regulations, Regulation 37(2) (a)(ii)

Regulations on the points of difference between the two sets of regulations.

- 4.8.16. From the submission of the application, the Applicant has made clear its view that the 2009 EIA Regulations continue to apply. This is a matter that was important to test, as there was an argument that the person constituting the prospective Applicant who was the beneficiary of the scoping opinion (the Highways Agency, in effect the SoST) might be a different legal person to the current Applicant (Highways England). If the Highways Agency / SoST was not the same legal person as the current Applicant, then arguably the current Applicant did not request the SoS to adopt a scoping opinion before the commencement of the 2017 Regulations and so could not benefit from the transitional provisions in the 2017 EIA Regulations at Regulation 37(2).
- 4.8.17. The Highways Agency submitted a Scoping Report to the SoS under Regulation 8 of the 2009 EIA Regulations on 25 July 2014, in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [\[APP-044\]](#). To ensure that this process provided a basis for the application of the transitional provisions, at the PM the ExA requested the Applicant to provide legal submissions on these at D1 [\[REP1-017\]](#). In summary, the submissions made clear that the Highways Agency / SoST and the current Applicant were the same legal person or alternatively did not need to be as long as the project remained the same, for the following reasons:
- The Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015 at Regulation 4 provides that anything done, in the process of being done or any related enactment, instrument or document made by the Highways Agency / SoST in relation to a transferred function should be considered after transfer as if it were done or made by the current Applicant.
 - Section 15 of the Infrastructure Act 2015 made provision for the SoST to make a 'transfer scheme' in respect of property, rights and liabilities being transferred from the Highways Agency / SoST to the current Applicant. A transfer scheme was made under this power on 30 March 2015 and provides that transactions effected, things done by or in relation to the Highways Agency / SoST, references to the Highways Agency / SoST in instruments relating to transferred property, rights and liabilities and the transferred property, rights and liabilities of the Highways Agency / SoST itself are all transferred to the current Applicant as though they were done, made or owned by it.
 - A correct reading of the 2017 EIA Regulations at Regulation 3(1) clarifies that the term 'applicant' for the purposes of the regulations is defined as including 'a person who proposes to apply for such an order [a DCO]'. In turn this means that there is no requirement that the 'applicant' who acquires the scoping opinion need necessarily be the same person as the person now relying on that opinion.
 - This in turn builds on interpretation of the underlying transitional provisions in Article 3(2) of the EIA Directive which is transposed by the 2017 Regulations. These make reference to the application of

transitional provisions to 'projects' and make no reference to particular legal persons.

IPs were provided with an opportunity to comment on these submissions at D2, but no comments were received.

4.8.18. Following consideration, these submissions indicate that the person seeking the scoping opinion and the current Applicant are by operation of the Infrastructure Act 2015, Regulations and / or a transfer scheme made under it, one and the same legal person, and additionally or alternatively that the important consideration is the continuity of the project and this has been demonstrated at all times since the scoping opinion was sought.

4.8.19. It follows that the Applicant is deemed to have notified the SoS under Regulation 6(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the Project and that the transitional provisions in Regulation 37(2) of the 2017 EIA Regulations do apply to this Application, which in turn means that it has been examined it on the basis that it continues to be subject to the 2009 EIA Regulations (as amended).

An Adequate Environmental Impact Assessment Process and Environmental Statement

4.8.20. There were no submissions raising general concerns about the overall adequacy of the EIA process and the ES. Some individual submissions raise particular subject-matter related issues bearing on individual planning issues. These issues are addressed in sections 4.10 to 4.20 below as required.

4.8.21. The ES, together with the other information submitted by the Applicant during the Examination, is adequate and it meets the requirements under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (EIA Regulations 2009). Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS.

Conclusion on the Environmental Impact Assessment and the Environmental Statement

4.8.22. Taking the EIA process, the submitted ES, the Environmental Masterplan and the AES into account, The ExA concludes as follows:

- The Proposed Development is EIA development.
- Transitional provisions in the 2017 EIA Regulations apply and so the Application remains subject to the 2009 EIA Regulations as amended which the Applicant has complied with.
- The submitted ES, as augmented by the subsequent documents (the AES 1 and 2 and the Environmental Masterplan Rev 1) has provided a generally adequate assessment of the environmental effects of the Proposed Development, sufficient to describe the Rochdale Envelope for it and, as referred to within the dDCO, to secure its delivery within that envelope.

4.9. HABITATS REGULATIONS ASSESMENT

Introduction

4.9.1. This Section sets out the documents submitted to support the HRA process for this application.

Habitats Regulation Assessment Documentation

4.9.2. The application was accompanied by a HRA Report [\[APP-045\]](#). This identifies an area of search and three relevant European Sites, but it concludes that there are no likely significant effects on those sites or their qualifying features from the Proposed Development.

4.9.3. In the light of the conclusions in this report, at the PM the Applicant invited the ExA not to examine matters relevant to the effects of the Proposed Development on European Sites. However, that invitation was not accepted on the basis that where application documents identify that there are as a matter of fact some European Sites within the potential sphere of influence of the Proposed Development, it would not be appropriate for the ExA to reach a conclusion that there were no likely significant effects until it had had a full opportunity to review the conclusions of the HRA report in the light of any representations from IPs that might arise during the Examination and to raise and consider responses to ExA questions.

4.9.4. The ExA raised questions and sought advice, particularly from STC and NE, the HRA was not a matter that gave rise to any contention or disagreement with the Applicant's position by any IP at any point in the Examination.

Conclusion on the Habitats Regulation Assessment

4.9.5. As is normal for NSIP Recommendation Reports, even though there is little of substance relevant to the SoS' consideration of HRA, a separate Chapter 5 has been retained in which those issues are set out.

- Consideration of and conclusions on HRA are reserved to Chapter 5 of this Report.
- There are no matters germane to HRA that require to be considered as part of the reasoning in respect of planning issues set out in this Chapter.

4.10. TRANSPORTATION AND TRAFFIC

Introduction

4.10.1. This section addresses the transportation and traffic case for the proposed development.

The Applicant's Case

4.10.2. The Applicant sets out its case for the development in the Transport Assessment Report [\[APP-052\]](#). Relevant content is also found in the ES [\[APP-018\]](#) at Chapter 2 (The Scheme) (Sections 2.2 – 2.5 and 2.8). The Planning Statement [\[APP-049\]](#) at Sections 2 – 5 also addresses the need

for the Proposed Development, its objectives, the options considered, the economic case and conformity with relevant policy. A summary of oral submissions on the traffic case for the scheme made at ISH2 [\[REP3-013\]](#) has also been provided by the Applicant.

- 4.10.3. The Proposed Development is proposed to replace the last remaining at-grade junction on the A19 between the A1 at Dishworth and the Tyne Tunnel with a configuration in which the A19 mainline runs freely across the intersection. The need for improvement in this location was initially identified in 2002, in the Tyneside Area Multi-Modal Study. This study identified the need for improvements to the A1 and A19 alignments, including the construction of a second Tyne Tunnel.
- 4.10.4. The Testo's intersection has been a longstanding source of congestion and delay. Interim signalisation in 2001 led to a reduction in accident rates, but has not resolved delay issues. Usage of the intersection has continued to trend upwards. Following the opening of the second Tyne Tunnel in 2011, annual average weekday traffic (AAWT) on the crossing has risen from 35,000 vehicles per day (vpd) to 50,000 vpd and a related rise in the use of the A19 alignment through the Testo's intersection has also taken place ([\[APP-049\]](#) at Section 2), driving a case for alteration to address congestion and delay.
- 4.10.5. The objectives of the proposed development can be summarised as follows:
- Improve journey times on this route of strategic national importance;
 - Improve network resilience and journey time reliability;
 - Improve safety;
 - Maintain access for local traffic whilst improving the conditions for strategic traffic;
 - Facilitate future economic growth; and
 - Avoid, mitigate and compensate for potential impacts upon the built and natural environment and identify opportunities to provide a long term and sustainable benefit to the environment with the overall objective to minimise the impacts on the environment. ([\[APP-018\]](#) at Chapter 2)
- 4.10.6. The Planning Statement ([\[APP-049\]](#) at Section 5) and the Traffic Assessment Report [\[APP-052\]](#) taken together measure the performance of the Proposed Development against NNNPS vision and strategic objectives. No issues of non-compliance are found.
- 4.10.7. The Proposed Development has been designed to address underlying national traffic growth, growth anticipated on the A19 alignment utilising the Tyne Tunnels, the existing needs arising from industrial areas including NMUK south of DLJ and needs arising from IAMP, whilst delivering against all of the project objectives. With reference to existing traffic flows and queues at the intersection shown in the Transport Assessment Report [\[APP-052\]](#) (paragraphs 1.9.2 to 7), peak hour growth in alignment use due to the second Tyne Tunnel has been between 19 and 28%. There has been peak hour growth of 50% on the A19 northbound in the AM peak period.

- 4.10.8. The effects of recent traffic growth lead to queues of 250m or more reported at all legs of the intersection during AM and PM peak hours, and average delays of over 4 minutes, suggesting that the intersection cannot accommodate any of the projected additional traffic growth to 2036, when a further 37% peak flow increase over the base case has been modelled. Taking account of the modelled increase to 2036, with the Proposed Development in place, the average peak hour delay is anticipated to fall from over 4 minutes to 45 seconds. Peak flows using the roundabout itself are predicted to have decreased by more than 25% from base case by 2036 ([\[REP3-013\]](#) at Section 3).
- 4.10.9. Section 4 of the Planning Statement [\[APP-049\]](#) sets out the economic case. The evaluation has been carried out over a standard 60 year period using standard DfT guidelines. Core components of economic benefit arise from the aggregate of reduced travel times, improved access for businesses and reduced vehicle operating costs. With a portfolio of related benefits taken into account, the adjusted benefit cost ratio (BCR) for the scheme is 3.69, which is high.
- 4.10.10. The Proposed Development is included in the RIS 2015-2020³⁸.

Planning Issues

- 4.10.11. There were no representations raising concerns with the transportation and traffic case for the Proposed Development. Representations made that addressed transportation and traffic generally viewed the Proposed Development as leading to positive benefits.
- 4.10.12. NECA [\[RR-010\]](#) identified the Testo's intersection as a vital component of the regional strategic road network. It fully identified with the Applicant's traffic and transport case, as did STC (the host local authority). SCC [\[RR-012\]](#) called for effective integrated management of construction traffic impacts between the Proposed Development, DLJ, A1 Coalhouse to Birtley, NMUK and IAMP.
- 4.10.13. The STC LIR [\[REP2-006\]](#) (at section 7) identifies that the construction of the Proposed Development will create '*negative*' impacts due to construction traffic and capacity restrictions. Whilst the draft CTMP is not yet finalised, STC is of the view that R10 in the dDCO secures adequate mitigation measures to manage construction traffic. In relation to highway capacity during the works, whilst this would be maintained at most times, there will be phases of lane and carriageway closures. Coordination with neighbouring local authorities and the effective communication of diversion proposals and routes will be key to effective mitigation. Coordination by the undertaker will be necessary to ensure that the effects of nearby projects including DLJ and A1 Coalhouse to Birtley are adequately contained. The creation of a 'traffic management forum' that will enable the input of the local authorities and major

³⁸ [Road Investment Strategy: for the 2015/16 – 2019/20 Road Period](#), DfT (2015) at page 32.

highway users to be taken into account once the schemes are in development is supported.

- 4.10.14. STC in its LIR [\[REP2-006\]](#) (at section 7) identifies that the Proposed Development in operation will generate '*positive*' impacts in transportation terms, ensuring enhanced performance - reduced congestion and delays and free flow of traffic on the A19, with at least equal to current performance on the local road network.
- 4.10.15. In terms of road safety, the STC LIR [\[REP2-006\]](#) (at section 7) concludes a neutral impact. That being said, the LIR identifies positive operational safety benefits for users of the A19 mainline and for NMUs in general. STC supported the Applicant's proposal to provide it with an active role in the road safety audit of the Proposed Development. Other matters (the relationship with the local road network, handovers to the local road network and the process for 'snagging' and defect remediation on transferred assets and works were still subject to discussions between the Applicant and STC when the LIR was submitted. These matters became the subject of a commercial side agreement between the Applicant and STC confirmed as concluded on 26 March 2018 [\[REP7-001\]](#).

Policy Considerations

- 4.10.16. NNNPS identifies an overarching need for development of the strategic road network which addresses existing congestion points and addresses the forecast rise in road traffic of 30% from 2014 to 2030 (paragraph 2.3).
- 4.10.17. Paragraphs 2.12 to 2.14 of the NNNPS highlights the importance of the strategic road network. Paragraph 2.13 states that it:
- '...provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals. It provides a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment. A well-functioning Strategic Road Network is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies.'*
- 4.10.18. Whilst maintenance, asset management, demand management and modal shift all have a role to play in adapting the strategic road network to meet the underlying growth in demand, NNNPS paragraph 2.23 identifies that specific network improvements will be a necessary part of addressing the identified need. Relevant enhancements supported in policy terms include:
- junction improvements [and] new slip roads [...] to address congestion and improve performance and resilience at junctions, which are a major source of congestion; [and]
 - improvements to trunk roads, in particular [...] additional lanes on existing dual carriageways to increase capacity and to improve performance and resilience.

- 4.10.19. Paragraph 2.24 highlights that policy favours integrated solutions to specific local issues, rather than simply meeting unconstrained traffic growth in a generic sense.
- 4.10.20. NNNPS paragraph 5.211 to 212 make clear that the SoS must consider impacts on the local transport network and local transport policies, including those in local plans. However, the NNNPS is intended to prevail unless a legislated exception arising from PA2008 s104(4) – (8) applies.

Other Strategic Projects: DLJ and IAMP

- 4.10.21. Consideration of the relationship between the Proposed Development, DLJ and IAMP including for EIA and HRA purposes is set out in Section 4.11 of this Report.

ExA Consideration

- 4.10.22. The ExA has considered the Applicant's case for the Proposed Development Transport Assessment Report [\[APP-052\]](#), ES [\[APP-018\]](#) Chapter 2 (The Scheme) (Sections 2.2 – 2.5 and 2.8), the Planning Statement [\[APP-049\]](#) at Sections 2 – 5 and the Applicant's written summary of case made orally at ISH2 submitted for D3 [\[REP3-013\]](#).
- 4.10.23. The performance of the Proposed Development has been reviewed against all relevant policy. There were no objections to the transportation and traffic case. Key local stakeholders including STC, SCC and NECA view the achievement of the transport and traffic benefits of the Proposed Development as being of significant importance.
- 4.10.24. The only element of concern raised by IPs related to the possible interactions between the construction stages of the Proposed Development with the DLJ and A1 Birtley to Coalhouse projects. The Applicant has offered to take the views of key local stakeholders including the local authorities and major employers into account, to ensure that traffic disruptions due to works across multiple projects are kept to a minimum. The mechanisms proposed to achieve this by the Applicant (the draft CTMP with a formal requirement to consult STC before submission to the SoS as secured by R10) are sufficient to address these concerns and no additional measures are recommended.
- 4.10.25. The traffic and transportation effects of the Proposed Development have been assessed in a manner that broadly complies with applicable NNNPS policy. The assessment identified an existing congestion issue that the Proposed Development will address. The Proposed Development will also address modelled traffic growth arising from national trends, local and regional growth.
- 4.10.26. The Proposed Development will deliver a high BCR.

Conclusion on Transportation and Traffic

- 4.10.27. Taking all relevant documents and policies into account, the ExA concludes as follows:

- The transport and traffic effects of the Proposed Development during construction (including potential cumulative effects with other projects) will be negative.
- However, all reasonable steps to minimise these have been taken by the Applicant and a CTMP is secured in R10 of the dDCO.
- The transport and traffic effects of the Proposed Development during operation will be positive.

4.11. OTHER STRATEGIC PROJECTS AND PROPOSALS

Introduction

4.11.1. Section 2.5 of this Report identifies the other strategic projects and proposals considered during the Examination. These are:

- A strategic highway proposal by the Applicant to upgrade the DLJ immediately to the south of the Proposed Development.
- The IAMP AAP for land north of the existing Nissan facility, adjacent to DLJ to the west of the A19 mainline, an associated planning application under TCPA 1990 (IAMP ONE) and a proposed DCO application under PA2008 (IAMP2), collectively described as IAMP.
- A strategic highway proposal by the Applicant to upgrade the A1 Birtley to Coalhouse section to the west of the Proposed Development.

Planning Considerations

4.11.2. This section addresses the relationship between those projects and between them and the Proposed Development, cumulatively and in-combination. It addresses the question of cumulative and in-combination impact assessment for EIA and HRA purposes, linking to Chapter 5 below in its discussion of matters relevant to HRA.

4.11.3. The relationship between the Proposed Development, DLJ and IAMP also gives rise to traffic and transportation matters and to individual matters that are dealt with under the following planning assessments in this chapter as follows:

- Section 4.12 (Air Quality & Emissions);
- Section 4.17 (Noise and Vibration);
- Section 4.18 (Social and Economic Effects); and
- Section 4.19 (Water Environment).

4.11.4. In addition to DLJ and IAMP, the ExA has considered whether the Applicant's strategic highway project upgrading the A1 between the Birtley and Coalhouse intersections (the Birtley to Coalhouse project) is one that gives rise to any material effects on the Proposed Development, or whether the Proposed Development gives rise to any effects on the Birtley to Coalhouse project. The Applicant assisted this process by revising the submitted Inter-relationship report [\[APP-051\]](#) that had considered the Proposed Development with DLJ to also include the Birtley to Coalhouse project. The revised Inter-relationship report [\[REP2-015\]](#) and track change version [\[REP2-016\]](#) was submitted at D2.

- 4.11.5. A full description of the Birtley to Coalhouse project is set out in Section 2.5 of this Report, together with an explanation of the approach taken to the examination of the interrelationship between it and the Proposed Development. The interrelationship between these projects have been adequately characterised for EIA and HRA purposes and here are no significant interrelationships between it and the Proposed Development that require to be the subject of formal control or security in the DCO.

Policy Considerations

- 4.11.6. NNNPS at paragraph 4.43 identifies that the SoS should consider cumulative effects in both benefit and adverse impact terms. Consideration should be given to the '*the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits*'. It should also be given to '*potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.*'
- 4.11.7. NNNPS Paragraphs 4.15 to 4.20 emphasise the need for an ES to carry out an effective assessment of cumulative effects for EIA purposes. Paragraph 4.55 identifies the need for an assessment of cumulative effects for pollution control purposes and similar policy statements are made in respect of water environment effects (paragraph 5.223) (see Section 4.19 of this Report) and health effects (paragraph 4.82) (see Section 4.20 of this Report).

Interrelationship with the DLJ project

- 4.11.8. A cumulative impact assessment was undertaken at ES [\[APP-018\]](#) Chapter 15. This was augmented by the revised report into the Interrelationship with DLJ, A1 Birtley to Coalhouse and IAMP [\[REP2-015\]](#), submitted at D2.
- 4.11.9. All relevant assessments were of either minor or no significant impact, on the basis of which, no mitigation was proposed to manage the DLJ inter-relationship in the ES. Of most direct note, the transport model for the Proposed Development and DLJ was the same, so the ES and the Preliminary Environmental Information Report (PEIR) for DLJ are based on the same traffic and transport assumptions. The highway designs of the Proposed Development and DLJ have been developed to complement each other, but both can be delivered independently of one another. As a consequence, if DLJ were not to be delivered, there would be no change required to the design of the Proposed Development.
- 4.11.10. At ISH2, the Applicant made oral submissions referring to the potential joint utilisation of TP land in the Proposed Development to deliver works for the Proposed Development and DLJ in tandem. The main construction compound for the Proposed Development was proposed to be jointly used. The ExA raised questions about the extent of this joint utilisation and whether it had been formally considered in the cumulative or in-combination impact assessments. The Applicant's initial submissions

were that it had not been so assessed and did not need to be or even could not be, as DLJ was a separate proposal.

- 4.11.11. However, on consideration of policy and law relevant to cumulative impact assessment, the Applicant agreed that it was necessary to carry out such an assessment and to report on whether it led to any material changes to the assessment contained in the ES and the DLJ PEIR.
- 4.11.12. A Note on Cumulative Effects Assessment [\[REP4-0071\]](#) was submitted by the Applicant at D4. Section 5 considers the joint use of the construction compound. Detailed analyses were provided for the topics of Air Quality, Landscape and Visual and Noise and Vibration and these are referred to in the relevant sections of this Chapter. However, each of these assessments identified that whilst there would be some additive utilisation associated with the joint use, none of that was of an order to materially change any of the impact conclusions in the ES.
- 4.11.13. There were no submissions from any IPs or Other Person suggesting that any of this analysis was in error.

Interrelationship with IAMP

- 4.11.14. The Inter-relationship with IAMP has been considered to the extent possible, having regard to the fact that the detailed design and hence effects of development on the IAMP site is not yet known. To the extent that is possible, using planning assumptions from the IAMP AAP, the Applicant has taken IAMP effects into account in the design assumptions for the Proposed Development. There were no submissions from other IPs or Other Person suggesting that any of this analysis was in error.

Conclusion on Other Strategic Projects and Proposals

- 4.11.15. Taking all relevant documents and policies into account, the ExA concludes as follows:
- All relevant interrelationships between the Proposed Development and DLJ have been considered, to the extent that these are known. No significant adverse cumulative effects have been disclosed.
 - All relevant interrelationships between the Proposed Development and IAMP have been considered, to the extent that these are known. No significant adverse cumulative effects have been disclosed.
 - There are no significant interrelationships between the Birtley to Coalhouse strategic highway upgrade project and the Proposed Development.
 - NNNPS policy requirements in relation to cumulative and in-combination assessment for EIA purposes have been met.

4.12. AIR QUALITY AND RELATED EMISSIONS

Introduction

- 4.12.1. This section addresses the following effects:
- carbon emissions and climate change considerations;

- Nitrogen Oxide (NO_x) and particulate emissions;
- local air quality;
- construction emissions with a bearing on air quality including dust; and
- artificial light emissions.

Light emissions might appear to be an inappropriate topic for analysis in section which otherwise broadly addresses atmospheric and air quality issues. However, light emissions are addressed in NNNPS within a policy framework that also addresses dust, odour, smoke and steam, and so to this extent they do have a natural home here.

The Applicant's Case

- 4.12.2. The Applicant acknowledged in ES Chapter 6 (Air Quality) [\[APP-018\]](#) that fugitive dust emissions from construction works have the potential to adversely affect sensitive receptors within 200m of construction areas and haul roads. There are 331 residential and 2 commercial receptors within this distance of the works sites.
- 4.12.3. However, with the measures proposed in the oCEMP in place, the Applicant took the view that there would be no significant residual fugitive dust impacts.
- 4.12.4. The Applicant also acknowledged that, common with receptors adjacent to most major road corridors, receptors adjacent to the A19 are potentially exposed to operational air pollution concentrations from road traffic. A detailed air quality assessment was been carried out and is documented in the ES at Chapter 6 [\[APP-018\]](#). The assessment used forecast traffic data to model future air quality outcomes in relation to three main dimensions:
- local residents / human receptors;
 - the natural environment; and
 - wider / global carbon and climate considerations.
- 4.12.5. Baseline and modelled effects on receptors including residential properties, hospitals and schools have been undertaken. Air quality effects examined include fugitive dust emissions during construction and operational emissions including NO_x and NO₂, PM₁₀ and CO₂. The outcome of the assessment suggested that no sensitive receptors are predicted to experience an exceedance of relevant air quality objectives. The majority of receptors are predicted to experience a negligible change in concentration, and would remain well below the relevant AQD LVs.
- 4.12.6. This conclusion takes account of the designation of an AQMA to the north of the proposed development but within the study area, at Leam Lane / Lindisfarne Roundabout.
- 4.12.7. No local operational air quality mitigation is proposed because none is required.

- 4.12.8. In terms of global climate impacts, the Proposed Development is anticipated to give rise to a minor increase in emissions, which have been included in the scheme BCR as a cost.
- 4.12.9. The assessment method called for consideration of nature conservation sites designated at international and European level which are sensitive to nitrogen deposition. However, there were no such sites located within the air quality study area. Again, no operational mitigation is proposed because none is required.
- 4.12.10. The proposed single flyover and underbridge options do not affect any of the air quality conclusions in the ES.
- 4.12.11. Turning finally to light emissions, these are considered in the ES [\[APP-018\]](#) at Chapter 8 (Landscape). There, the maintenance of materials stockpiles and soil bunds at the westernmost edge of the works areas until the end of the works period is proposed as a means of containing visual impacts, including light emissions during construction. Existing and future operational light emissions effects are not significantly different.

Planning Issues

- 4.12.12. There were no representations raising concerns with the air quality or related emissions case for the Proposed Development. Nor were any issues raised in relation to light emissions.
- 4.12.13. Representations made that addressed transportation and traffic generally viewed the Proposed Development as leading to positive benefits.
- 4.12.14. Section 7 of STC LIR [\[REP2-006\]](#) identified that there will be air quality impacts during construction, raising fugitive dust emissions as being of greatest concern. However, STC was content that a dust management plan as proposed in the Construction Environmental Management Plan (CEMP) would provide adequate mitigation.
- 4.12.15. Section 7 of STC LIR [\[REP2-006\]](#) identifies that operational air quality effects are expected to be '*not adverse*' and '*neutral*'. STC supported the ES air quality assessment methodology. Significantly, it agreed that the Proposed Development would not result in any exceedances of the NO₂ air quality objective for Air Quality Directive (2008/50/EU) (AQD) purposes.

Policy Considerations

- 4.12.16. NNNPS paragraphs 3.6 to 3.8 consider the contribution of national networks development to the meeting of legally binding carbon targets relevant to climate change and related emissions targets (such as for NO_x and particulates). Paragraphs 3.7 and 3.8 make clear that the development of ultra-low emission vehicles (ULEVs) including pure electric vehicles is anticipated to reach mass market volumes in the coming decade and that the effect of this technological shift is likely to be such that strategic highway development will amount to below 0.1% of average annual carbon emissions allowed in the fourth carbon budget.

Similarly, any increase in NO_x or PM₁₀ emissions consequent on strategic road network investment is anticipated to be more than offset by the effects of stricter vehicle emission standards and proportionate rises in ULEVs and pure electric vehicles in the national fleet.

- 4.12.17. NNNPS paragraph 5.17 turns to the more local design implications of carbon emissions. Whilst the national carbon reduction strategy must be met, an increase in carbon emissions from an individual proposal is of itself not considered likely to adversely affect the emissions trajectory and form a reason for refusal, *'unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets.'*
- 4.12.18. NNNPS paragraphs 4.36 to 4.47 identify that the siting and design of national networks development should ensure that new infrastructure responds to and accommodates the potential effects of climate change using the latest UK Climate Projections. The effects of this policy are considered in more detailed terms in sections addressing biodiversity, landscape and the water environment.
- 4.12.19. NNNPS paragraphs 5.3 to 5.4 turn to local air quality effects. Paragraph 5.4 identifies that UK legislated ambient air quality objectives and ambient concentration limit values (LVs) for the main pollutants in the AQD should be met. Paragraph 5.10 makes clear that the SoS should consider air quality effects over a wide catchment. Effects within or adjacent to a designated Air Quality Management Area (AQMA) should be considered with particular care. Adverse local air quality impacts are a matter of substantial weight (paragraph 5.12) and can provide a reason for refusal of consent if, after mitigation, a proposal results in an area that is currently reported as compliant with the AQD becoming non-compliant, or adversely affects the ability of a non-compliant area to achieve compliance within the most recent reported timescales.
- 4.12.20. NNNPS paragraph 2.16 identifies that congestion causes *'environmental problems, with more emissions per vehicle and greater problems of blight and intrusion for people nearby...'* suggesting that there can be relevant air quality benefits from solutions that reduce congestion and increase the free flow of traffic.

Other Strategic Projects: DLJ and IAMP

- 4.12.21. In relation to cumulative effects during construction, the Applicant intends that DLJ would be constructed within the proposed construction period for the Proposed Development [\[REP2-015\]](#) (Appendix B). Oral representations from the Applicant at ISH2 were made, highlighting that elements of DLJ construction would be served from land subject to TP for the Proposed Development. Cumulative air quality effects between DLJ and the Proposed Development were considered further in documentation [\[REP4-007\]](#) and at ISH4.
- 4.12.22. The Applicant responded to this process, concluding in paragraph 5.3 of its Note on Cumulative Effects Assessment [\[REP4-007\]](#) that whilst shared

use of the main construction compound by DLJ and the Proposed Development would lead to a small number of additional Heavy Duty Vehicle (HDV) movements, there would be no material change in overall air quality including fugitive dust emissions experienced by sensitive receptors and hence no need for any alteration to the mitigation provided for in the CEMP.

- 4.12.23. A more general consideration of the relationship between the Proposed Development, DLJ and IAMP including for EIA and HRA purposes is set out in Section 4.11 of this Report above.

ExA Consideration

- 4.12.24. The ExA agrees with the Applicant and STC that fugitive dust during construction has the most potential adverse air quality impact on sensitive receptors. The oCEMP [[APP-050](#)] makes provision for dust control through a number of management plans:
- a Dust, Noise and Nuisance Management Plan;
 - a Soil Management Plan; and
 - a Materials Management Plan.
- 4.12.25. These in turn are secured in R4. R10 secures a CTMP, which, to the extent that it manages the movement of vehicles from haul roads, will also provide a relevant means to manage fugitive dust emissions.
- 4.12.26. The ExA is content that the combination of the measures proposed in these plans will mitigate fugitive dust emissions to an acceptable level.
- 4.12.27. Even though operational air quality and emissions matters were not raised as an adverse consideration in submissions, they were subject to test in the Examination, to satisfy the ExA that relevant policy tests in NNNPS and LVs established in the AQD would be met.
- 4.12.28. Starting with global and climate change considerations, it is important to note the position taken in NNNPS, that in a context in which traffic-related emissions are expected to continue to fall, there are only very limited circumstances in which a highway proposal will lead to material adverse change in CO₂ emissions, on a scale that bear on the achievement of the statutory carbon budget. This scheme is not of sufficient scale to have such an effect. Its immediate carbon impact has been taken into account within the BCR in the normal way and is NNNPS compliant.
- 4.12.29. Turning then to regional and local air quality impacts, in paragraphs 3.3.16 to 3.3.18 of this Report, the current position in relation to compliance with the AQD is noted. This has been subject to ongoing litigation against the UK government in the case of [Client Earth No.3](#)³⁹. The 2017 draft 'Air Quality Plan for NO₂' in response to this litigation was

³⁹ [R oao Client Earth v SoS EFRA, SoST and Welsh Ministers](#) (ClientEarth No 3)

published by DEFRA on 26 July 2017⁴⁰ (AQP2017) and whilst this contains a Zone Plan for Tyneside, this may need to be amended as a consequence of the judgment, which requires the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. This supplement was published after the closure of the Examination and so has not been considered in this report.

4.12.30. The ES did not identify any adverse effects leading to non-compliance with LVs or requiring mitigation measures in the Leam Lane / Lindisfarne Roundabout, Jarrow AQMA, which is the only AQMA in the air quality study area. The ExA raised questions with the Applicant and STC about effects on this AQMA in the light of the Client Earth litigation. The Applicant [\[REP5-002\]](#) informed the ExA that this area is currently achieving its NO₂ LV and, as such, it is clear that this is not likely to be a local authority area for which specific additional compliance measures will have to be provided in the AQP2017 supplement. The Applicant concluded (at paragraph 6.7) that:

- *[it] does not consider that the judgment affects the assessments or conclusions provided for Scheme. There are no significant adverse effects, including no new exceedances, no exceedances made worse and no Air Quality Management Areas with significant adverse effects. There are, therefore, no implications for the Scheme from an environmental perspective as the assessment has shown that the Scheme would not affect the ability of the local authority to achieve compliance with air quality targets.*

4.12.31. STC agreed with this assessment [\[REP6-001\]](#).

4.12.32. However, as recorded in Chapter 3 above, this is a matter that, pending sight of the the AQP2017 supplement, cannot be prejudged. As AQP2017 supplement was not available during the Examination but has now been published, the SoS may wish to consult the parties on specific measures for the Leam Lane / Lindisfarne Roundabout, Jarrow AQMA (if any) that the supplement may contain. The SoS may then wish to take any such measures into account in their decision. The ExA **recommends** accordingly.

4.12.33. Turning finally to light emissions, measures more generally proposed to mitigate construction-related visual impacts will have the effect of limiting direct light emissions to sensitive human and natural environmental receptors at night. This effect is adequately controlled, again through the oCEMP Materials Management Plan secured in R4.

4.12.34. Given submissions on the possible joint use of works areas in the Proposed Development to support works at DLJ, the ExA gave careful consideration to the degree to which this might lead to cumulative effects that had not been assessed in the ES, both in terms of fugitive dust and

⁴⁰ [Air quality plan for nitrogen dioxide \(NO₂\) in the UK](#), DEFRA (2017)

light emissions. However, having considered the Applicant's response to ExA questions at ISH2 and 3 on this point [\[REP4-007\]](#), it is clear that the proposed joint use will not materially change any of the conclusions reached in the ES.

Conclusion on Air Quality and Emissions

4.12.35. Taking all relevant documents and policies into account, The ExA concludes as follows:

- The construction phase will give rise to fugitive dust impacts that will be negative, but these have been mitigated to the extent required and the mitigation is secured.
- The AQMA at Leam Lane / Lindisfarne Roundabout to the north of the Proposed Development site is in compliance and the Proposed Development will not drive it out of compliance in the operational phase.
- However, as a supplement to the AQP2017 was published after the closure of the Examination, the SoS may wish to consult the parties on this and take it into account in the decision.
- Relevant AQD LVs will continue to be met in the operational phase and there are no other local or regional operational air quality impacts that require secured mitigation. This is a neutral consideration.
- Turning to the interrelationship between the Proposed Development and DLJ in construction, the Applicant has proposed to make some joint use of construction facilities, but the ExA is satisfied that this will not lead to any material change to the air quality or light effects assessed in the ES. This is a neutral consideration.

4.13. BIODIVERSITY, ECOLOGY AND THE NATURAL ENVIRONMENT

Introduction

4.13.1. This section considers the effect of the Proposed Development on biodiversity, ecology and the natural environment. Within scope are the following considerations:

- internationally, nationally (Site of Special Scientific Interests (SSSIs)) and locally protected habitats (including designated LWSs);
- ancient woodlands and protected trees;
- protected species; and
- geological significance.

The Applicant's Case

4.13.2. ES Chapter 9 [\[APP-018\]](#) addresses ecology and nature conservation issues. The assessment starting point was to deliver accordance with Design Manual for Roads and Bridges (DMRB), as updated by IAN 130/10. Relevant information is also provided in the following reports:

- Assessment of Nature Conservation Effects [\[APP-042\]](#) (although this document has limited content, having been prepared to satisfy Regulation 5(2)(m) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP), it cross refers to the ES);

- Wintering Bird Report [\[APP-046\]](#);
- Barn Owl Report [APP-047]⁴¹; and
- Badger Report [APP-048]⁴².

4.13.3. ES Chapter 10 [\[APP-018\]](#) addresses geology and soils.

General Approach

4.13.4. The ES has reviewed the following potential impacts on biodiversity issues, in terms of their effect on individual habitats and species and on habitats and species cumulatively and in-combination:

- direct habitat loss through land-take (including CA and TP requirements);
- severance or fragmentation of existing areas of habitat;
- direct mortality;
- indirect effects of environmental pollution via road drainage (including temporary haul roads), run-off and spray from construction traffic;
- disturbance / indirect effects caused by increased vehicle / plant movements lighting, noise, dust emissions, or pollution;
- cumulative effects of the proposals taken together with other developments occurring in the area at the same time or before / after the construction of this proposals; and
- the combined effects on a particular habitat or species of several different aspects of the proposals.

4.13.5. Additionally, the following potential impacts arising from the operational phase have also been assessed:

- changes in hydrology (groundwater, volume and / or quality of surface water runoff, road salt etc);
- increased noise levels;
- changes to air quality resulting from vehicular emissions (in particular, lead, zinc, PMs, NOx, NO₂);
- lighting and visual disturbance;
- longer term fragmentation / severance issues;
- mortality from road vehicles; and
- accidental spillages on the road.

Detailed records and assessments of impacts can be found in ES Appendix 9.3 [\[APP-043\]](#).

4.13.6. The Applicant addresses Options 1 and 2 (the two bridge and single bridge options in the ES Chapter 9 [\[APP-018, para 9.1.8\]](#) as follows:

⁴¹ Doc No B0140301/OD/197. This report contains confidential data and is not hyperlinked. It is only available on request to the Planning Inspectorate by those who have a legitimate need to view the information.

⁴² Doc No B0140300/OD/192. This report contains confidential data and is only available as described in the previous footnote.

Consideration has been given to the two different options for carrying the A19 over the roundabout at [Testo's] Junction. It is considered that as the difference in design is confined [to] the interior of an existing highway roundabout, where there are no sensitive ecological receptors, there would be no significant difference in ecological impact. All the assessments presented in this chapter are considered equally valid for both options.

Habitats

- 4.13.7. A 2km study area has been adopted within which to identify and assess biodiversity impacts. The following assets were identified:

Statutorily designated sites

- No SSSIs or other relevant nationally designated sites are directly affected by the Proposed Development.
- West Farm Meadow SSSI (NZ358621) is 1.91km from the nearest extent of the Proposed Development and was included in the indirect impact assessment.

Locally / non-statutorily designated sites

- ES Table 9.4 identifies 28 LWS within the 2km study area.
- Boldon Lake LWS is directly affected by works.
- Mount Pleasant Marsh LWS is directly affected by works.
- River Don LWS is directly affected as a destination for run-off.
- The works also affect a designated local wildlife corridor.

- 4.13.8. West Farm Meadow SSSI has been assessed as having no significant residual impact from construction or operation on any impact criteria, subject to the implementation of fuels, chemicals and construction materials storage mechanisms provided for in the CEMP. R4 provides for this to include a Soil Management Plan, a COSHH Material, Waste Storage and Refuelling Plan, a Surface Water Management Plan and a Materials Management Plan and drainage provisions in the HEMP.

- 4.13.9. The LWSs have also been assessed as having no significant residual impact from construction or operation on any impact criteria, subject to the implementation of the same measures proposed for the SSSI, and additionally (to address direct impacts):

- Broad-leaved woodland planting west of the A19 would mitigate loss from Mount Pleasant Marsh LWS.
- Habitat management to address current deterioration through lack of formal management would mitigate the loss of grassland / marshy grassland at Boldon Lake LWS.

- 4.13.10. A habitats survey was carried out and identified 25 habitat types using JNCC criteria. ES Table 9.5 identifies that a number of these are habitats of principal importance (NERCA2006, s41) and these and some additional habitats are identified as important in the Durham LBAP. 21ha of habitats would be on land lost to CA (permanent land-take) and 36ha would be affected by TP. The widening of the A19 as proposed has been assessed as providing an increased physical barrier to fauna movement.

- 4.13.11. An important hedgerows survey was carried out and identified only one such hedgerow, which is not directly impacted. 3.2km of permanent hedgerow loss and 2.8km of temporary loss would be caused by the Proposed Development. Approximately 2.3km of hedgerow replanting is proposed and this is proposed to be species rich to provide mitigation and enhancement. No significant residual impact on hedgerows in operation has been assessed.
- 4.13.12. A wildlife corridor (STC Development Management Policy DM7) is affected by the Proposed Development. Priority habitat creation as shown in the Environmental Masterplan is proposed to mitigate the effect on this designation.

Species

- 4.13.13. Desktop evaluations and field surveys have been undertaken within the 2km study area for the following species / species groups:

- Amphibians;
- Breeding birds;
- Wintering birds;
- Barn owl;
- Badger;
- Bats;
- Water vole;
- Otter; and
- Invertebrates.

- 4.13.14. Residual species impacts of relevance were for Amphibians – Common Toad: slight adverse due to direct mortality, severance and fragmentation in the construction and operational stages. No other significant residual species impacts were recorded.

- 4.13.15. An invasive plant species survey has also been undertaken and used to inform management measures designed to ensure that these are not inadvertently propagated or dispersed during works.

Geology

- 4.13.16. ES Chapter 10 [\[APP-018\]](#) addresses geology and soils.
- 4.13.17. ES paragraph 10.5.19 records that there are no nationally or regionally designated geological or geomorphological sites within the study area. No impacts on designated geological sites are identified or assessed.
- 4.13.18. The Applicant concludes at ES paragraph 10.1.5 that there are no significant geological features that would be affected by the difference between Option 1 and Option 2 (the two bridge and single bridge options).

Mitigation Summary

- 4.13.19. The Applicant proposes the following mitigation measures, secured in the REAC [\[APP-030\]](#) (Appendix 1.2):

- replacing the lost habitat which will include 12 hectares of grassland, woodland, scrub and tree planting;
- timing of construction works to avoid the most sensitive times of year;
- relocating / displacement of relevant protected species before the start of works to move them from the area of the proposals;
- landscape planting designed to discourage barn owls from hunting within the road corridor;
- minimising night time working;
- pollution control measures to prevent damage and degradation to habitats and through run-off;
- directional lighting to avoid illumination of habitats; and
- an invasive species management plan.

4.13.20. R4 requires the CEMP to reflect measures in the REAC and to include the following management plans relevant to natural environment mitigation:

- Environmental Control Plan: Invasive Species;
- Environmental Control Plan: General Ecology;
- Surface Water Management Plan;
- COSHH Material, Waste Storage and Refuelling Plan;
- Materials Management Plan; and
- Pollution Prevention Plan.

4.13.21. R5 provides that landscaping (which includes habitat replacement measures and landscape planting) must reflect the mitigation measures set out in the REAC [\[APP-030\]](#) (Appendix 1.2) be based on the illustrative Environmental Masterplan (Rev 1) [\[REP5-005\]](#).

4.13.22. R7 provides that a final protected species survey (for European Protected Species and Nationally Protected Species) must be carried out before the commencement of development. Works must stop and a scheme of protection and mitigation must be prepared if any European Protected Species or Nationally Protected Species is found during construction, in consultation with NE. R8 provides for a surface and foul water drainage plan reflecting the provisions in the REAC must be approved before the commencement of development.

Planning Issues

4.13.23. From the outset, NE has been clear that the Proposed Development does not raise significant matters of concern in relation to natural environment assets within its remit. It's observations in it's RR can be summarised as follows:

- the project is unlikely to have a significant impact on West Farm Meadows Site of Special Scientific Interest (SSSI); and
- the project site currently supports habitats of negligible ecological interest and all protected species issues (including any licensing requirements under the Habitats Regulations or the 1981 Act) are addressed by the proposed dDCO requirements.

NE considers that the mitigation measures in ES Chapter 9 [\[APP-018\]](#) will have a positive effect on the natural environment by providing

appropriate mitigation provision concerning protected species. It seeks security for mitigation proposals through a requirement in the DCO, if the Proposed Development gains development consent.

- 4.13.24. The Applicant has concluded a SoCG with NE, the latest version of which was signed on 7 March 2018 [\[REP5-015\]](#). This identifies that there are no outstanding matters that are not agreed between NE and the Applicant.
- 4.13.25. EA raised biodiversity as a matter of concern in its RR [\[RR-006\]](#). However, in clarifying its concerns in its WR [\[REP1-004\]](#) at D1, the EA did not raise any specific biodiversity issues, beyond those relevant to the achievement of WFD compliance and a substantial improvement in water quality and ecology of the River Don and its catchment. Those matters are addressed in Section 4.19 (The Water Environment) below.
- 4.13.26. The Applicant has concluded a SoCG with EA, the latest version of which was signed on 30 January 2018 [\[REP4-006\]](#). This identifies that there are no outstanding biodiversity matters that are not agreed between EA and the Applicant.
- 4.13.27. NGET [\[RR-008\]](#) [\[REP1-003\]](#) and Groundwork STAN [\[REP1-005\]](#) [\[REP2-002\]](#) were initially concerned that the effects of land-take, vegetation removal and fencing on non-operational land at West Boldon Substation would adversely affect the nature conservation value of that land, some of which is within the Mount Pleasant Marsh LWS. Both bodies were anxious to ensure continuity of the natural environment management and environmental education work undertaken on this land by Groundwork STAN. As the Examination progressed, both bodies became content that the Applicant had taken sufficient steps to mitigate any adverse effects and objections on these points were withdrawn by NGET [\[REP4-001\]](#) and placed out of contention by Groundwork STAN [\[REP3-021\]](#).
- 4.13.28. Section 7 of the STC LIR [\[REP2-006\]](#) identifies that appropriate survey methodologies for protected species have been identified and that surveys to date have accurately characterised the natural environment assets of the area. It identifies that it is broadly content with the proposed mitigation and its security. However, given the nature of the impacted assets, including LWSs, trees protected by TPOs, sensitive habitats including wetlands, woodlands, scrub, semi-improved grassland, species rich hedgerows, watercourses and ditches and the time taken for mitigation measures to mature, the STC LIR does identify the effect of the Proposed Development on the natural environment as 'negative'. This position was not withdrawn in the SoCG between the Applicant and STC [\[REP3-011\]](#).
- 4.13.29. Geological significance is assessed separately by STC, which found no significant impacts [\[REP2-006\]](#).

Policy Considerations

- 4.13.30. NNNPS paragraphs 5.24 to 5.35 identify the biodiversity considerations to which the SoS must have regard. Paragraphs 5.36 to 5.38 consider biodiversity mitigation.
- 4.13.31. Paragraph 5.20 identifies the Natural Environment White Paper as an important and relevant consideration, together with the need to move progressively from net biodiversity loss to net gain. Paragraph 5.23 requires the Applicant to *'show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.'*
- 4.13.32. Paragraphs from 5.26 to 5.31 explain how the Proposed Development should respond to the site protection system, from international via nationally to regionally and locally designated sites. Paragraph 5.31 makes clear that regionally and locally protected sites (including LWSs) should receive due consideration but, given the need for national networks infrastructure, will not in themselves provide a basis for refusing an application for development consent.
- 4.13.33. Paragraphs 5.34 and 5.35 explain the approach to be taken to protected species, which should be protected from the adverse effects of development. Requirements and planning obligations should be used to secure the necessary levels of investigation and protective action. Development consent should be refused where harm would result, *'unless the benefits of the development (including need) clearly outweigh that harm.'*
- 4.13.34. Paragraphs 5.36 to 5.38 identify that appropriate construction and operational mitigations taking account of observations by and agreements with NE should be provided and secured.

ExA Response

- 4.13.35. Having reviewed the ES, the ExA is satisfied that the Applicant has undertaken a thorough and rigorous characterisation of the natural environment and geological assets affected by the Proposed Development, both directly and indirectly. The significance of those assets and the significance of effects upon them have been consistently assessed and mitigation measures designed where necessary.
- 4.13.36. Measures have been taken to manage indirect impacts on West Farm Meadow SSSI. Any impact on this site has no significant residual impact and so is a neutral consideration.
- 4.13.37. Measures have been taken to manage direct impacts on Mount Pleasant Marsh, Boldon Lake and River Don LWS. There will be no significant residual impact over time. The STC LIR [\[REP2-006\]](#) and SoCG with the Applicant [\[REP2-017\]](#) both make clear the Council's view that there will be short term adverse effects on the Mount Pleasant Marsh and Boldon Lake LWSs as mitigation measures including site management, tree and scrub planting will take time to mature. There will also be an effect on a

designated wildlife corridor (STC Development Plan Policy DM10). However, to the extent that there are short term adverse effects, they have been minimised to the extent reasonably feasible. The benefits of the development (including need) clearly outweigh the harm caused by these short term effects.

- 4.13.38. Effects on the natural environment management and environmental education measures delivered by Groundwork STAN on non-operational land owned by NGET at West Boldon Substation have been considered. The Applicant has taken sufficient steps to minimise and then mitigate the harm done to the work carried on by Groundwork STAN [\[REP3-021\]](#).
- 4.13.39. There are slight adverse residual fragmentation, severance and direct mortality impacts for the Common Toad. This is not a matter of outstanding concern to NE or STC. Further to NNNPS paragraphs 5.34 to 5.35, these have been minimised to the extent reasonably feasible. The benefits of the development (including need) clearly outweigh the specific individual harm caused by these effects.
- 4.13.40. There are no geological conservation impacts.
- 4.13.41. The approaches to impact mitigation set out in the REAC, the oCEMP and secured in the dDCO have been considered. The measures proposed are adequate to ensure that NNNPS and development plan policy for the natural and geological environment are met.

Conclusion on Biodiversity, Ecology and the Natural Environment

- 4.13.42. Taking all relevant documents and policies into account, The ExA concludes as follows:
- There are indirect impacts on one nationally designated site (West Farm Meadow SSSI) but these are effectively mitigated.
 - There are direct impacts on three LWSs, but these are effectively mitigated in the medium to long term.
 - There will be land-take in the construction phase, but this has been minimised and mitigation includes substantial grassland, woodland, scrub and tree planting to offset habitat loss.
 - There will be slight adverse effects for the Common Toad, but the benefits of the development (including need) clearly outweigh that harm.
 - In relation to geological significance, there are no impacts on any designated sites.

4.14. ELECTRICITY AND OTHER UTILITY INFRASTRUCTURE

Introduction

- 4.14.1. This section considers the effect of the Proposed Development on the following utility infrastructure:
- West Boldon electricity substation apparatus operated by NGET (the transmission system operator) and Northern Powergrid (the distribution system operator);

- a NGET electricity transmission alignment connecting to it;
- a number of electricity distribution system alignments connecting to it;
- a water main;
- a gas main; and
- telecommunications cables.

The Applicant's Case

- 4.14.2. The Proposed Development passes closely adjacent to (to the west of) West Boldon Substation. The location of this facility with its mature woodland screening and its substantial array of transmission and distribution system connections formed an initial siting constraint for the Proposed Development. In large part, the location of the substation and the design response to it explains why the majority of additional land-take required for the proposed development is to the west of the existing A19 mainline. The substation site has to the greatest feasible extent been avoided. This in turn has meant that the direct impacts upon it are limited and capable of mitigation.
- 4.14.3. Paragraph 2.7.5 and Section 2.11 of ES Chapter 2 [\[APP-018\]](#) paragraph identifies that construction of the proposed development will require the diversion of overhead electricity cables (distribution system alignments en route to connect with West Boldon substation). In addition to these diversions, a water main, a gas main and some telecommunications cables will also need to be diverted. The main elements of all diversionary routes are proposed to be underground, passing beneath the Testo's intersection. The relevant statutory undertakers would be commissioned to undertake the diversionary works.
- 4.14.4. The Order Land includes the TP of sufficient land for the diversionary works and the CA of rights associated with the passage of diverted infrastructures and the siting of associated apparatus.
- 4.14.5. In addition to these diversions the Proposed Development does impact directly on the West Boldon substation site itself. However, the main effects are limited to a small element of land-take for frontage and slip road construction, associated tree clearance and fencing in the woodland enclosure. The primary effects of these works are addressed in section 4.13 above, as they relate to trees subject to TPOs, impacts on a designated LWS and impacts on land managed by Groundwork STAN for nature conservation and environmental education. (Groundwork STAN manages non-operational land within the substation perimeter for these purposes under an agreement with NGET.)
- 4.14.6. The two bridge and single bridge options do not change methods or effects and so are not relevant to assessment of these impacts.

Planning Issues

- 4.14.7. NGET (the transmission system operator) initially objected to the effects on its operational land, effects on its apparatus, effects on non-operational land managed on its behalf by Groundwork STAN, to CA and

to TP associated with the Proposed Development. As a consequence of negotiations undertaken during the examination, a legal agreement between the applicant and NGET was entered into. NGET was content that this agreement together with protective provisions in the dDCO, were sufficient to protect its interests. Its objection was withdrawn [\[REP4-001\]](#).

- 4.14.8. Effects on its apparatus notwithstanding, Northern Powergrid (the distribution system operator) did not participate in the Examination.
- 4.14.9. Northern Gas Networks operates a pipeline in the Testo's Junction area, but did not make a RR. It corresponded with the Planning Inspectorate during the Examination and was offered the opportunity to participate if it so wished. However, on undertaking internal diligence it discovered that it had been fully consulted on the proposed works during the pre-application period and had indicated satisfaction with the proposed approach [\[AS-024\]](#) [\[AS-025\]](#). On that basis it did not request to participate.
- 4.14.10. There were no representations in relation to effects on water or telecommunications infrastructure located in the Testo's Junction area.
- 4.14.11. The STC LIR [\[REP2-006\]](#) does not directly address the effects of the proposed development on utility infrastructure or diversions.

Policy Considerations

- 4.14.12. NNNPS paragraphs 4.28 to 4.35 consider good design, which amongst other concepts includes sensitive siting (paragraph 4.34). Paragraphs 5.162 to 5.185 address the effects of the Proposed Development on other land uses, again emphasising that sensitive siting and layout can be used to minimise direct effects on existing land uses (paragraph 5.179).
- 4.14.13. NNNPS does not directly engage with and consider the means by which a national network project should respond and adapt its design to accommodate pre-existing national energy infrastructure, including electricity and gas transmission and distribution assets.

ExA Response

- 4.14.14. Having considered the electricity networks and other infrastructure matters raised, it is clear that they have all been satisfactorily addressed.
- 4.14.15. In relation to electricity infrastructure, NGET has withdrawn its representations. It has done so on the basis of the conclusion of a legal agreement between it and the Applicant, together with the inclusion of protective provisions in the dDCO. The content of the legal agreement cannot be reported to the SoS, as the parties did not agree to share it with the Examination. However, to the extent that NGET is now content and no issues relevant to NNNPS or other policy compliance are raised, the matters originally raised by NGET do not require to be investigated any further. Northern Powergrid also has affected apparatus, but did not

make a RR. The impacts on Northern Powergrid have been appropriately managed and its interests are also protected in the proposed protective provisions.

4.14.16. In relation to gas infrastructure, the interests of Northern Gas Networks are equivalently adequately protected.

4.14.17. Proposals in relation to water and telecommunications infrastructure give rise to no outstanding concerns.

Conclusion on Electricity and Other Utility Infrastructure

4.14.18. Taking all relevant documents and policies into account, the ExA concludes as follows:

- As a consequence of a legal agreement entered into between the Applicant and NGET and the protective provisions proposed to be included in the dDCO, impacts on electricity and other utility infrastructure have been appropriately managed.
- Effects on electricity and other utility infrastructure are a neutral consideration.

4.15. HISTORIC ENVIRONMENT

Introduction

4.15.1. Historic environment considerations were not a major issue raised in representations. They were not included in the IAPI [\[PD-005\]](#) (Annex B). However, on reviewing the RR from HE [\[RR-003\]](#) there were residual questions that the ExA considered should be explored in the Examination and these are addressed here, together with advice from STC in its LIR [\[REP2-006\]](#).

The Applicant's Case

4.15.2. ES Chapter 7 [\[APP-018\]](#) addresses cultural heritage issues, including impacts on extant built heritage assets, archaeological and historic landscape impacts. There is an Assessment of Historic Environmental Effects [\[APP-043\]](#), but this has been provided as a procedural document to satisfy Regulation 5(2)(m) of the APFP and cross refers to the ES.

4.15.3. ES Table 7.4 [\[APP-018\] \(Chapter 7\)](#) itemises impacts on assets of known archaeological significance. It identifies no impacts on designated sites and the value of the known sites as being in one instance low (Asset 11, ridge and furrow) and in all other instances negligible. The potential for unknown archaeological remains to be affected is assessed as low but nevertheless present. R4 requires the CEMP to contain an Archaeological Control Plan to be prepared prior to commencement. R9 requires an archaeological written scheme of investigation (WSI) to be prepared prior to commencement.

4.15.4. Table 7.7 itemises asset significance, effects, mitigation and residual impacts on all extant built cultural assets affected by the Proposed Development. In the great majority of instances, the table concludes that

there is either no change to the asset or that the magnitude of any change is negligible prior to consideration of mitigation.

- 4.15.5. Specific mention must be made of the statutorily listed building (Grade II*) and high value asset Scot's House (Asset 21) where a minor impact on setting before mitigation is recorded during construction. Temporary screening of the setting during construction with an earth bund is proposed and the residual impact is then assessed as 'no change'. Once the Proposed Development is operational, relevant mitigation for Scot's House consists of returning the bunded land to open agricultural land.
- 4.15.6. Operational mitigation is additionally proposed for the following receptors:
- West House (Asset 12) (landscape planting);
 - Make-Me-Rich Farm (Asset 43) (landscape planting);
 - The Quadrus Centre (Asset 67) (ecological habitat enhancement is proposed as the site is within a LWS);
 - Historic landscape features (HLT1, 2, 3 and 5)(landscape planting).
- 4.15.7. The effect of all proposed built asset mitigation is to return impact levels in respect of all assets to a maximum of negligible and to reduce all residual effects to 'neutral'. The mitigations are identified in the REAC [\[APP-030\]](#) (Appendix 1.2), which R4 requires to be reflected in the CEMP.
- 4.15.8. The two bridge and single bridge options do not affect the assessed impacts or mitigations.

Planning Issues

- 4.15.9. HE considers that the Proposed Development '*would not harm those aspects of the historic environment within our statutory remit*' [\[REP2-001\]](#). It does not directly adversely affect the fabric of any extant historic built environment assets: listed buildings, conservation areas or scheduled ancient monuments.
- 4.15.10. In terms of setting, it is significantly remote from any such assets and again has only limited effects. The STC LIR [\[REP2-006\]](#) (at section 7) identified that temporary impacts on the setting of Scott's House (a Grade II listed building) during construction could be adequately managed by temporary screening. No other impacts on settings during construction were drawn to the ExA's attention by STC and none became apparent from site inspections.
- 4.15.11. In common with any project involving substantial earth movement and ground works in a rural setting, there is a potential for the discovery of unknown archaeological assets during construction. In relation to archaeology, the STC LIR [\[REP2-006\]](#) (at section 7) identifies that it is content with the methodology employed by the Applicant to assess impacts (including the impacts due to effects on unknown archaeological assets). STC was also content with the mitigation measures proposed to ensure that archaeological impacts during construction were well-managed.

- 4.15.12. Having reviewed the RR from HE [\[RR-003\]](#), it suggested without identifying specific concerns that possible opportunities to enhance historic assets may have been missed. The ExA addressed this issue in ExQ1 [\[PD-007\]](#) (Q1.6A.2). The ExA also considered whether the proposed process for the identification and management of effects on the historic environment and particularly unknown historic assets (primarily potential archaeological assets) was appropriate and appropriately secured in the dDCO (Q1.6A.1). By D2, HE [\[REP2-001\]](#) had responded that it was content that the proposed development would do no harm to aspects of the historic environment within its statutory remit. It was also satisfied that opportunities to provide positive enhancement of the historic environment were limited in this location given the nature and location of the Proposed Development and the context of the existing environment. The fact that the Application did not propose any enhancement measures was no longer of concern to it. HE played no further role in the examination.
- 4.15.13. Section 7 of the STC LIR [\[REP2-006\]](#) identifies that operational impacts will be limited. Longer range views to and from listed buildings and their settings would in its view be adequately managed by the measures identified in the CEMP and the REAC.
- 4.15.14. Taking construction and operation effects together, the STC LIR concludes that historic environment impacts are '*neutral*'.

Policy Considerations

- 4.15.15. NNNPS paragraphs 5.128 to 5.142 identify the historic environment decision-making considerations to be taken into account by the SoS.
- 4.15.16. Paragraph 5.130 refers to the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets. Paragraph 5.142 identifies the need for a process to ensure that as yet undiscovered archaeological assets are (if found) appropriately managed and treated if discovered during construction.

ExA Response

- 4.15.17. Matters raised in HE representations and in the STC LIR have been investigated and extensive site inspections have been undertaken. The residual impacts identified in ES [\[APP-018\]](#) (Chapter 7) have been reviewed.
- 4.15.18. There will be an impact of moderate or slight significance on the setting of the statutorily listed Scot's House prior to mitigation. Because this is during construction, it is temporary in nature and mitigation through visual screening during construction is proposed, reducing the residual effect to one of neutral significance. It is clear that the significance of this asset is being adequately responded to during construction and, most importantly that its enduring value will be sustained in the operational phase.

- 4.15.19. The most substantial historic environment planning issue is the potential for the disclosure of unknown archaeological interest during construction. The measures proposed in the REAC, the CEMP, R4 and R9 (including the preparation of a WSI) are best practice measures which respond well to NNNPS paragraph 5.142.
- 4.15.20. On the basis of the evidence and the proposed mitigation as secured via the REAC, the CEMP and the dDCO, all impacts have been addressed in a manner that complies with NNNPS and the development plan.

Conclusion on the Historic Environment

- 4.15.21. Taking all relevant documents and policies into account, The ExA concludes as follows:
- Impacts on the historic environment have been appropriately assessed and mitigated and are capable of being managed as part of the dDCO requirements.
 - Effects on the historic environment are a neutral consideration.

4.16. LANDSCAPE AND VISUAL IMPACT

Introduction

- 4.16.1. This section addresses the landscape and visual effects of the Proposed Development.

The Applicant's Case

- 4.16.2. ES Chapter 8 [\[APP-018\]](#) considers landscape and visual impacts.
- 4.16.3. The Applicant acknowledges that there would be adverse landscape effects during construction and in the opening year. This would predominantly be caused by the loss of vegetation on and around the Testo's Junction and along the A19 corridor to the north and south, including on the western side of Mount Pleasant Marsh Local Wildlife Site (LWS) and associated Tree Preservation Orders (TPO).
- 4.16.4. Trees (including some protected by TPOs) would also be lost due to woodland thinning within Mount Pleasant Marsh LWS to accommodate the burying of overhead power lines and installation of a security fence for the West Boldon Environmental Education Centre operated by Groundwork STAN.
- 4.16.5. Temporary stockpiling of material within fields to the west would have significant short term effects (during construction and the opening year) on close-range views from receptors near the West Pastures lane Traveller Site, footpath B29, Scot's House East Wing and Flat 5 in Mansion House (part of the Scot's House complex)). There would also be significant effects on receptors to the north (West House Farmhouse), east (Boldon Lake LWS, Boldon Business Park and Downhill Lane) and south (Make-Me-Rich-Farm) due to construction works and temporary soil stockpiling.

- 4.16.6. The stopping up of PRowS either temporarily during construction or permanently would deny access to views from these routes (footpath B27, footpath B28 and bridleway B46). In the opening year, slightly altered views would become available from reopened routes or from new alternative routes. Views from within the West Boldon Environmental Education Centre western outdoor teaching area would be significantly changed during construction due to being relocated to the opposite side of the site. In the opening year, the teaching area would be returned to the western side where there would be a change in views due to new security fencing, reduced vegetation and views towards new embankments along the A19 corridor.
- 4.16.7. Turning to the operational stage, the Applicant considers that the removal of temporary construction activity and storage areas would result in a decrease in adverse landscape and visual effects. However, the introduction of a raised carriageway would make part of the A19 more visually prominent in close to mid-range views. This would be mitigated by the provision of linear tree and shrub planting along the road boundary, woodland planting and habitat creation to the north-western edge of the Proposed Development and around balancing ponds, and the replacement of boundary vegetation lost on the edge of Boldon Lake LWS and Boldon Business Park.
- 4.16.8. Landscape and visual effects would be reduced or offset over time. The Applicant refers to a 'future year' (fifteen years after opening) at which point the maturity of landscape mitigation planting should have significantly offset the adverse landscape and visual effects at the start of the operational phase (year one). This is in accordance with industry standard methodologies including the Guidelines for Landscape and Visual Impact Assessment Third Edition (GLVIA3).
- 4.16.9. Landscape mitigation is provided for in the oCEMP [\[APP-050\]](#) and shown spatially on the most recent version of the Illustrative Environmental Masterplan [\[REP5-005\]](#). R5 requires landscape mitigation to be delivered in accordance with a landscape scheme submitted prior to commencement. This scheme must reflect the mitigation measures in the REAC and must be based on the Illustrative Environmental Masterplan.
- 4.16.10. The landscape and visual effects of the two bridge and underbridge options have been considered and are concluded to lead to only the most limited of differences, on the basis that only a small number of visual receptors have direct views of the bridge location.

Planning Issues

- 4.16.11. This was an issue that did not give rise to concerns in RRs or WRs.
- 4.16.12. The STC LIR in Section 7 [\[REP2-006\]](#) identifies that STC is content with the landscape assessment methodology employed and baseline assessments recorded in the ES Chapter 8 [\[APP-018\]](#). Similarly, it accepts that the viewpoints and visual receptors considered in the visual assessment were also appropriate. STC was clear that there will be a negative impact in landscape and visual terms. Short term impacts would

arise in construction due to vegetation removal, soil and rock movement and the stockpiling of materials.

- 4.16.13. Once the Proposed Development was in operation, STC considered that whilst landscape and visual impacts would still be adverse, the impacts would reduce on an annual basis as the proposed tree planting matures.

Policy Considerations

- 4.16.14. NNNPS makes clear that the identification and management of landscape impacts will normally be a local matter, responding to the site and setting of the Proposed Development (paragraph 5.149). Paragraphs 5.156 and 5.157 make clear that different considerations apply to proposals within or affecting nationally designated areas as compared with those that are outside and do not affect such designations. The SoS must consider whether a project has been carefully designed in landscape impact terms, taking siting, operational element design and mitigation measures into account. Harm should be minimised, but local landscape designations should not be used in themselves as reasons to refuse consent.
- 4.16.15. Paragraph 5.158 considers visual impact and asks the SoS to consider whether visual effects on sensitive receptors including local residents, outweigh the benefits of the development.
- 4.16.16. Paragraphs 5.150 – 5.161 set out mitigation considerations.

Other Strategic Projects: DLJ and IAMP

- 4.16.17. In relation to cumulative effects during construction, the Applicant intends that DLJ would be constructed within the proposed construction period for the Proposed Development [\[REP2-015\]](#) (Appendix B). The Applicant also made clear at ISH2 [\[EV-011\]](#) [\[EV-012\]](#) (audio recordings) that elements of DLJ construction would be served from land subject to TP for the Proposed Development. For these reasons, cumulative landscape and visual effects between DLJ and the Proposed Development were explored further in documentation [\[REP4-007\]](#) and at ISH4 [\[EV-020\]](#). The ExA agrees the Applicant's conclusion from paragraph 5.8 of its Note on Cumulative Effects Assessment [\[REP4-007\]](#) that shared use of the main construction compound by DLJ and the Proposed Development would not lead to any change to its primary landscape and visual impacts. It would still require to be lit during night-time, seven days per week, throughout the works period. There would therefore be no need for any alteration to the mitigation provided for in the CEMP.
- 4.16.18. In relation to operational conditions, whilst the residual landscape and visual effects of the Proposed Development and DLJ together are likely to form part of the setting for any development at IAMP, any specific mitigation of the cumulative effect (if any) is something that will best be addressed through the IAMP approvals process, the detailed design for which is not yet known, and is in any event out with the scope of the Proposed Development.

- 4.16.19. A more general consideration of the relationship between the Proposed Development, DLJ and IAMP including EIA and HRA purposes is set out in Section 4.11 of this Report.

ExA Response

- 4.16.20. There will be a series of adverse landscape and visual impacts due to construction which, when taken together amount to a substantial impact. Whilst these impacts can be managed through the careful construction management, particularly in relation to the siting of soil and materials stockpiles, screening and lighting design in the construction compound, there is a limit to the extent to which any major construction programme can be delivered without residual adverse effects.
- 4.16.21. On the basis that no nationally designated landscapes are impacted, the proposed mitigation is appropriate and that NNNPS policy has been complied with.
- 4.16.22. Turning to the operational phase, overall effects will be negative initially, but the maturation of landscape planting will result in the effects of the Proposed Development moving from adverse towards neutrality over time.
- 4.16.23. The mitigation measures contained in the oCEMP [\[APP-050\]](#) and shown spatially on the most recent version of the Illustrative Environmental Masterplan [\[REP5-005\]](#) are appropriate. R5 secures the preparation of a landscape scheme prior to commencement that must reflect the mitigation measures in the REAC and be based on the illustrative environmental masterplan.
- 4.16.24. In Chapter 8 of this Report, the ExA recommends a minor consequential change to the drafting of R5. As currently drafted, it does not refer to the most recent version of the Illustrative Environmental Masterplan submitted at D5. (This was updated to ensure that it correctly recorded key elements of the proposed drainage works.) Further, as the Illustrative Environmental Masterplan was originally intended to be part of the ES but was omitted from the Application submission, and has then been updated, its latest version is a separate document from the ES. For this reason, the ExA also recommends a change to Schedule 10, identifying it as a document to be certified in its own right, distinct from the ES.

Conclusion on Landscape and Visual Impact

- 4.16.25. Taking all relevant documents and policies into account, the ExA concludes as follows:
- The Proposed Development will lead to adverse landscape and visual impacts in terms of construction and operation, but this effect is justifiable, mitigated appropriately and so is policy compliant.
 - Initially adverse impacts during operation will trend towards neutrality as landscape mitigation matures.

4.17. NOISE AND VIBRATION

Introduction

4.17.1. This section addresses the noise and vibration effects of the Proposed Development.

The Applicant's Case

4.17.2. ES Chapter 12 [\[APP-018\]](#) considers noise and vibration. However, following submission of the Application, a review of the ES identified errors in the original analysis of Chapter 12. These related to two issues:

- The noise modelling had not correctly taken into account the two possible designs to carrying the A19 mainline over the Testo's intersection, the two bridge Option 1 and single flyover bridge Option 2. Additional modelling was provided on the single flyover Option 2.
- It had been determined that in accordance with a HE commitment to upgrade all key non-motorway routes to meet Expressway standards, the median of the proposed mainline was required to be modelled with a concrete barrier. As the original modelling had assumed a steel barrier, additional modelling was also provided on the intended concrete barrier.

The updated modelling was reported on in AES1 [\[AS-013\]](#) and AES2 [\[AS-014\]](#). Chapter 12 in AES1 should be read in substitution for ES Chapter 12 [\[APP-018\]](#), which it replaces.

4.17.3. Section 4.8 of this Report records the approach taken to publicity and consultation for AES1 and AES2. It is sufficient to summarise here that no new planning issues arose as a consequence of this publicity and consultation.

4.17.4. AES1 [\[AS-013\]](#) at paragraph 1.7.22 concludes in the light of the additional modelling that there are no significant changes in the impacts of the Proposed Development from those identified in the original ES Chapter 12. Nor were there any submissions that raised concerns about this conclusion.

4.17.5. Chapter 12 in AES1 identifies that there are a considerable number of residential properties and other noise sensitive receptors located in close proximity to the existing A19 and A184.

4.17.6. The sensitive receptors currently experience high levels of noise, with road traffic noise from the A19 and A184 being the major component.

4.17.7. A construction project of the nature of that proposed could result in significant noise impacts. The predicted worst case construction noise levels indicate the potential for significant adverse effects at sensitive receptor locations close to the Order land. Mitigation measures are proposed to control these.

4.17.8. The following mitigation measures are out in the REAC and secured through the CEMP and R4:

- adherence to working hours of 07:30–18:00 Mondays to Fridays and 08:00–13:00 on Saturday except in defined exceptional circumstances; and
- preparation before commencement of a Dust, Noise and Nuisance Management Plan.

These will limit the times of day at which noise and vibration is experienced at sensitive receptors and will also enable the implementation of a range of other mitigations measures including bunding and screening.

- 4.17.9. A CTMP is required to be prepared before commencement under R10 and this will include measures to reduce construction traffic related noise.
- 4.17.10. No significant adverse effects due to construction vibration are predicted.
- 4.17.11. The Applicant acknowledges in AES1 [\[AS-013\]](#), (Chapter 12) that, *“despite this, it is possible that some residents will experience significant construction noise levels for short durations. Perceptible vibration due to soil compaction activity is a possibility on occasion at those few properties closest to the Scheme. The levels of vibration would be perceptible to residents and could lead to complaint.”* The Applicant aims to ensure that prior warning and explanation is provided to residents in relation to all such periods and that impacts are then experienced only for a short duration.
- 4.17.12. During operation, the Applicant highlights the beneficial effects of the Proposed Development [\[AS-013\]](#). Reductions in operational noise are predicted for large numbers of properties close to the existing A19, as a result of the proposed Low Noise Road Surfacing.
- 4.17.13. The Applicant observes in AES1 Chapter 12 [\[AS-013\]](#) as follows:

For the single bridge option, in the short term, the number of sensitive receptors that would experience a perceptible decrease in noise level (779) outweighs those that would experience a perceptible increase (2) in noise level. In addition, the number of receptors likely to experience potential significant beneficial effects (38 in the short-term (daytime)) outweighs the number of potentially significant adverse impacts (none in the short-term (daytime)). It is therefore considered that the overall impact of the Scheme can be considered to be beneficial in the short term. In the long-term, no properties are showing perceptible noise increases or decreases; therefore, the overall impact of the Scheme can be considered neutral in the long-term.

For the two-bridge option, in the short term, the number of sensitive receptors that would experience a perceptible decrease in noise level (799) outweighs those that would experience a perceptible increase (1) in noise level. In addition, the number of receptors likely to experience potential significant beneficial effects (38 in the short-term (daytime)) outweighs the number of potentially significant adverse impacts (none in the short-term (daytime)). It is therefore considered that the overall impact of the Scheme can be considered to be beneficial in the short

term. In the long-term, no properties are showing perceptible noise increases or decreases; therefore, the overall impact of the Scheme can be considered neutral in the long-term.

- 4.17.14. The introduction of a concrete median barrier to Expressway standards does not materially affect the noise impact conclusions of the ES.

Planning Issues

- 4.17.15. Section 7 of STC LIR [\[REP2-006\]](#) identifies that noise and vibration impacts are neutral considerations. STC expresses concern at the prospect for adverse noise and vibration effects on nearby residential receptors in construction, but considers that the CEMP and REAC proposals as follows are sufficient to address these concerns:
- Construction times restricted to between the hours of 07:30 and 18:00 hours Monday to Friday and 08:00 to 13:00 hours on a Saturday and at no time on a Sunday or Bank Holiday.
 - Exceptions secured operating times should be agreed in consultation with the STC and any mitigation measures implemented prior to being put into practice. Justification for operating outside the permitted times, details of the proposed operating times and details of activity together with mitigation measures and predicted noise readings at noise sensitive housing should be submitted to the Local Authority.
 - Construction noise monitoring should be carried out at agreed intervals, when a new activity is occurring or whenever there is out of hours work. Monitoring should also be carried out within 48 hours of notification of a complaint, with levels measured at nearest noise sensitive receptor to the activity.
 - If complaints are received with regard to vibration it would be expected that vibration monitoring would be carried out within 48 hours of notification.
 - Noise or vibration monitoring data must be available to an authorised officer of the Council within 48 hours of request.

STC consider noise and vibration to have neutral impacts.

- 4.17.16. Whilst operational noise is not raised as a major consideration in the STC LIR [\[REP2-006\]](#), 6 months post-completion noise monitoring of the improved junction is sought to validate predictions from the noise modelling reported in the ES and provide a basis for any other noise management action that might be required (LIR paragraph 7.15).
- 4.17.17. As a consequence of site inspections USI1 [EV-001] and USI2 [EV-006], notwithstanding the lack of formal objections on noise and vibration related grounds, The ExA investigated noise impacts on the closest and potentially most impacted receptors during construction. West House Farmhouse is the most significantly adversely affected residential receptor in construction noise terms. For this reason, Mr Dennis Gilhespy was asked whether he had any concerns about the provision of adequate residential amenity. He raised no concerns about noise and vibration and was content with the scheme as proposed [\[REP2-003\]](#).

Policy Considerations

- 4.17.18. Noise considerations are set out in NNNPS paragraphs 5.193 to 5.196. Mitigation is considered in paragraphs 5.197 to 5.200.
- 4.17.19. Relevant statutory requirements and the relevant sections of the Noise Policy Statement for England, NPPF and PPG on noise should be met in both the construction and operational stage. Requirements to secure noise performance (paragraph 5.196) and mitigation (paragraph 5.197) should be considered, but measures should be proportionate. Appropriate measures can include containment, noise reducing materials, layout changes and administrative measures including noise and working hours limits.
- 4.17.20. Noise mitigation through increased dwelling insulation and ventilation measures pursuant to the Noise Insulation Regulations and the potential scope for compensation should be considered. *'In extreme cases, the applicant may consider it appropriate to provide noise mitigation through the compulsory acquisition of affected properties in order to gain consent for what might otherwise be unacceptable development.'* (Paragraph 5.199.)

Other Strategic Projects: DLJ and IAMP

- 4.17.21. In relation to cumulative effects during construction, the Applicant intended that DLJ would be constructed within the proposed construction period for the Proposed Development [\[REP2-015\]](#) (Appendix B). The Applicant stated at ISH2 that elements of DLJ construction would be served from land subject to TP for the Proposed Development. For these reasons, the ExA reviewed cumulative noise effects between DLJ and the Proposed Development further in documentation [\[REP4-007\]](#) and at ISH4. The ExA agrees with the Applicant's conclusion from paragraph 5.11 of its Note on Cumulative Effects Assessment [\[REP4-007\]](#) that whilst shared use of the main construction compound by DLJ and the Proposed Development would lead to a small number of additional HDV movements, there would be no material change in overall noise impacts experienced by sensitive receptors and hence no need for any alteration to the mitigation provided for in the CEMP.
- 4.17.22. In relation to operational conditions, both the ES and AES1 Chapter 12 make clear that all noise and vibration modelling in the intervention scenario ('do something') have taken additional development in the area into account which includes the effects of both DLJ and IAMP. On the basis that this still results in a net positive operational impact, the ExA agrees with the conclusion at AES1 paragraph 12.11.4 that it is *'very unlikely that any adverse cumulative impacts would occur'*.
- 4.17.23. A more general consideration of the relationship between the Proposed Development, DLJ and IAMP including for EIA and HRA purposes is set out in Section 4.11 of this Report.

ExA Response

4.17.24. The noise and vibration impacts of construction will be appropriately mitigated. The CEMP secured by R4 must be in accordance with the oCEMP and must contain the following plans that are relevant to noise and vibration management:

- a Dust, Noise and Nuisance Management Plan;
- a Soil Management Plan (relevant to compaction); and
- a Materials Management Plan (relevant to HDV movements).

R4 also supports noise and vibration control by stipulating form working hours as 07:30–18:00 Mondays to Fridays and 08:00–13:00 on Saturday. Appendix G to the oCEMP (Noise Control Plan) [\[APP-050\]](#) is in outline form at present, but it broadly addresses the measures sought by STC in its LIR. On that basis, noting that R4 requires consultation with the relevant planning authority (STC) prior to submission to the SoS, the STCs requirements can be met without a need for any further changes to the documentation at this stage.

4.17.25. R10 also provides for a CTMP which is relevant to the management of construction vehicle traffic noise.

4.17.26. On balance, noting the view in the STC LIR, construction will have negative impacts in noise and vibration terms. However, these impacts will be managed in a manner that fully complies with NNNPS policy.

4.17.27. Due to the design response to noise, the operational development is likely to offer benefits against the noise climate of the current configuration of the A19 and A184 at Testo's intersection. In its LIR, STC requested post construction / operational noise monitoring. The REAC Part 2 (Environmental Action Plan) at A7 [\[APP-050\]](#) does not include a formal commitment to post-construction noise monitoring. In circumstances where the operational noise effect of the Proposed Development is predicted to be positive and the submitted evidence supports that conclusion, a requirement for post-construction noise monitoring is not required.

Conclusion on Noise and Vibration

4.17.28. Taking all relevant documents and policies into account, the ExA concludes as follows:

- The Proposed Development will lead to adverse impacts in terms of construction noise and vibration but this is justifiable, mitigated appropriately and so is policy compliant.
- Design improvements to the A19 and A184 will mean that the operational effects of noise on surrounding sensitive receptors will on balance be positive.

4.18. SOCIAL, ECONOMIC AND LAND-USE EFFECTS

Introduction

- 4.18.1. This section addresses a combination of the economic and broader land use effects of the proposed development. Topics analysed here include:
- effects on connectivity, including the connections provided directly by the Proposed Development and as a consequence of its linkages with the local road network;
 - effects on PRowS;
 - economic development effects;
 - logistics industry effects;
 - agricultural effects;
 - effects on Green Belt; and
 - the Great North Forest.

The Applicant's Case

- 4.18.2. The Applicant's general case in relation to the socio-economic effects of the Proposed Development can be found in the ES [\[APP-018\]](#) at Chapter 2 (the Scheme), Chapter 13 (People and Communities). Relevant content is also found at Chapter 4 (Consultation) and Chapter 15 (Cumulative Effects). The Transport Assessment Report (TAR) [\[APP-052\]](#), the Planning Statement [\[APP-049\]](#) (in relation to land use issues) and the Inter-relationship Statement [\[REP2-015\]](#) (in relation to cumulative assessment with other major projects) are also relevant.
- 4.18.3. The Applicant's responses to RRs [\[REP1-015\]](#) and comments on WRs [\[REP2-018\]](#) also address relevant matters.

Connectivity

- 4.18.4. The Applicant's general connectivity case is set out in the ES Chapter 2 [\[APP-018\]](#) and in the TAR [\[APP-052\]](#). The scheme objectives include the following of relevance to improved connectivity:
- improve journey times on this route of strategic national importance;
 - improve network resilience and journey time reliability; and
 - maintain access for local traffic whilst improving the conditions for strategic traffic.
- 4.18.5. A clear case has been made that the Proposed Development design delivers against these objectives and there are no objections or evidence which indicate otherwise. It follows that the Proposed Development will enhance local, regional and national connectivity.
- 4.18.6. Turning to matters of detail raised in submissions, in relation to Mr Dennis Gilhespys request [\[RR-002\]](#) to move the bus stops on the A184 from their current location to a new location beside the entrance to West Pastures lane, the Applicant has stated that the existing bus stops are not affected by the Proposed Development and so there is no need for them to be moved. A westward move would increase the distance between these bus stops and their users resident in Boldon, east of the A19 mainline. The Applicant stated that it was unaware of any safety

concerns arising from the existing bus stop locations. It did not propose to move them.

- 4.18.7. The two bridge and the single bridge options make no difference to the connectivity provided by the Proposed Development.

Economic development

- 4.18.8. Chapters 1, 2 and 13 of the ES [\[APP-018\]](#) identify that congestion and delays at the existing Testo's Junction inhibits economic growth in the area. Remedying that is a primary purpose of the Proposed Development, an objective of which is to facilitate future economic growth.

- 4.18.9. A positive economic benefit during construction is considered likely (ES, Section 13.6), with construction expenditure leading to a mid-range economic stimulus of £82m, £43m of which would relate to employment spend on local labour with a multiplier applied. This benefit would be substantially greater than minor adverse local economic effects due to commuter disruption during construction.

- 4.18.10. In operation, ES Chapter 13 identifies that effects on the economy and employment are expected to be positive and no mitigation is required. The ES does not provide a detailed evaluation of wider economic benefits expected to flow from the Proposed Development, but paragraphs 13.9.26 and 13.9.27 state the following:

13.9.26 The wider benefits of the Scheme justifying its construction are not assessed in depth within the EIA but would include benefits of increased access to labour markets and supply chains for local businesses, and increased access to employment and retail for local residents. These would be expected to be beneficial contributions to the local region during the operation of the Scheme; however, as the Scheme is primarily online and is improving existing access rather than opening up new access, the overall effect in this regard may be modest.

13.9.27 These economic benefits would be especially pertinent for the deprived areas of the local study area such as at the north and south ends of the Scheme, as well as the local region in general.

- 4.18.11. A clear case has been made that the Proposed Development delivers against this objective and there are no objections or evidence which indicate otherwise. It follows that the Proposed Development could deliver local and regional economic benefits.

- 4.18.12. Beyond possible differences in capital cost, the two bridge and the single bridge options make no difference to the economic benefits provided by the Proposed Development.

Logistics

- 4.18.13. Phasing of proposed construction is considered in Chapter 2 of the ES [\[APP-018\]](#) at Section 2.14. The inter-relationship between the Proposed Development and other major projects with highway network

implications is considered in the Applicant's report entitled Interrelationship with DLJ, A1 Birtley to Coalhouse and IAMP [\[REP2-015\]](#) (the Inter-relationships Report).

4.18.14. In relation to concerns expressed by BNP Paribas Real Estate on behalf of Royal Mail Group Limited (Royal Mail) [\[RR-004\]](#), the Applicant made clear that it had considered and would continue to monitor and ensure project delivery in combination with DLJ, A1 Birtley to Coalhouse and IAMP [\[REP2-015\]](#) would not cause undue delays to logistics users of the strategic highway network. It had set a target to maximise land availability, to ensure that it does not fall below 97% in any one year. The submission of a CTMP to the SoS to ensure that this is delivered is secured in R10. Full closures will occur at off-peak times.

4.18.15. The Applicant is already liaising with STC and major road users / stakeholders to inform the development of the CTMP secured under R10 and was content to involve Royal Mail as a stakeholder in this process.

NMUs and PRowS

4.18.16. The TAR [\[APP-052\]](#) at Section 2.2 describes the interventions to the PRow network and the infrastructure proposed to be provided to the address the needs of non-motorised users (NMUs). The proposed PRow changes are shown on the Streets, Rights of Way and Access Plans [\[APP-008\]](#). The impact of the NMU proposals is assessed in section 3.5 of the TAR. The Applicant responds to issues raised in RRs in its response to Relevant Representations [\[REP1-015\]](#).

4.18.17. The Applicant's starting point is to acknowledge that whilst the works will necessitate alterations to the PRow network and that the NMU experience will change, all relevant connectivity will be restored with equal or enhanced provision than that currently in place. Bridleway B28 linking Boldon Business Park to the Testo's garage site (Enterprise Car Hire) will be stopped-up, as the rise in the level of the A19 Mainline combined with widening makes it impossible to retain an overbridge in the current location. However, no harm will be caused by that closure, as there will be new provision between points 2/32 and 2/20 (north of the A184) and 2/19 to 2/33 (south of the A184) [\[APP-008\]](#) that will meet the same needs, enable NMUs to cross the A19 mainline.

4.18.18. The provision of an A19 flyover bridge or a pair of underbridges will ensure that NMUs crossing the current mainline will do so beneath the bridge / bridges, in a reduced traffic environment.

4.18.19. In relation to an objection from Mr Dennis Gilhespy [\[RR-002\]](#) to the position of a proposed new bridleway south of the A184 between points 2/19 and 2/14 on the Streets, Rights of Way and Access Plans, the Applicant notes that an objection has been raised, but relies on the fact that the proposed bridleway arrangement was selected following public consultation including with members of the Local Access Forum (representing local PRow users) and with STC.

- 4.18.20. In relation to objections from Gateshead Council [\[RR-007\]](#) raising concerns about the PRoW on the north side of the A184 extending west from West Pastures lane to Whitemare Pool, whilst the Applicant noted the request for improvements, this PRoW is outside the red line boundary of the Proposed Development and unaffected by it. It was investigating scope for cycling / shared use related improvements via a separate regional fund.
- 4.18.21. The Applicant confirmed that all NMU crossings interfacing with vehicular traffic would be designed to comply with DMRB and would be signal controlled to ensure the safety of users.

Agriculture

- 4.18.22. Chapter 10 (Geology and Soils) of the ES [\[APP-018\]](#) identifies that the Proposed Development will result effects to 31ha of agricultural land subject to TP and the permanent loss of 11ha of land for highway works. The largest loss of land to an individual farm is 8% of land area (ES Section 13.6), experienced by West House Farm, the only agricultural business represented by an IP.
- 4.18.23. The 11ha to be permanently lost is in Grade 3b. On this basis, the Applicant highlights that this is not a loss of best and most versatile land and that little weight should be given to it in policy terms. A much larger area of land is required for temporary works, the extent of which is largely driven by factors such as the location of other utility infrastructures that require to be diverted (see Section 4.14). Here the Applicant acknowledges an adverse impact in the short term but also observes that this is an impact that cannot be avoided.
- 4.18.24. The Applicant aims to ensure that works and soils are managed to enable the temporarily used areas to be progressively returned to agricultural use following the removal of construction plant and materials and the return of stored soil. Accommodation works for farm drainage systems would aim to minimise harm to adjacent land and restored land would be re-drained. This work would be carried out within the framework of a surface water management plan and a soil management plan in the CEMP, secured under R4.
- 4.18.25. There are no proposals for the demolition of farm buildings, plant or dwellings.
- 4.18.26. The Applicant notes the significant effects of the Proposed Development on the agricultural business of Mr Dennis Gilhespy at West House Farm. A substantial area of land would be taken permanently from the farm. A further substantial area of land would be taken temporarily, in close proximity to the farm dwelling and buildings. The Applicant has worked closely with Mr Gilhespy to minimise disruption and adverse effects on his farm business and evidences this work in a letter of comfort [\[REP3-019\]](#), key elements of which include an undertaking not to use TP land between West House Farmhouse and the main farm buildings in a manner that would obscure visual surveillance of the buildings from the farmhouse and to seek Mr Gilhespy's consent before acquiring or using

land relevant to the maintenance of the farm buildings and the land drainage system.

Green Belt

- 4.18.27. The Applicant acknowledges in its Planning Statement [\[APP-049\]](#) that the Proposed Development is located in the Green Belt, but highlights that the great majority of the Order Land is also allocated and shown on the STC Proposals Map as a specific proposal to safeguard land for the upgrading of the Testo's intersection. The Planning Statement does not address whether the Proposed Development is or is not '*inappropriate development*' in the Green Belt. Nor does it set out a '*very special circumstances*' case for the approval of the proposed development should it be '*inappropriate development*' in the Green Belt. Planning Statement paragraph 5.3.25 and the NNNPS compliance table at paragraph 5.170-171 provide:
- further clarification of linear infrastructure and its impact upon Green Belt land and implied acceptance in principle where schemes are identified in planning and transport policy.
 - There is no open space land within the Scheme boundary as explained in the Statement of Reasons [\[REP5-011\]](#).

The Great North Forest

- 4.18.28. Paragraph 5.3.21 of the Planning Statement [\[APP-049\]](#) identifies that the Great North Forest proposal is now inactive. It records that STC do not propose to continue this proposal in the emerging Local Plan and on that basis, the Applicant had taken no particular action to respond to it.

Planning Issues

Connectivity

- 4.18.29. Section 7 of STC LIR [\[REP2-006\]](#) identifies that the Proposed Development will significantly improve local and regional connectivity and better connect existing and proposed development to the national network.
- 4.18.30. IAMP [\[REP1-001\]](#) indicated its support for the Proposed Development and the connectivity that would be provided to existing businesses in the area and to IAMP itself.
- 4.18.31. NECA [\[RR-010\]](#) identifies that the A19 is one of the region's main trade arteries, linking the Port of Tyne with key distributors including NMUK. The Proposed Development would have a positive impact on the transportation of goods, benefitting the regional economy. It will particularly improve the flow of traffic and goods to and from the Port of Sunderland (the UK's second largest municipal port).
- 4.18.32. SCC [\[RR-012\]](#) considers the Proposed Development to be acceptable, subject to ongoing liaison on cumulative effects and delivery arrangements.

- 4.18.33. STC [\[RR-011\]](#) makes clear its strong support for the connectivity benefits of the proposed development, observing that:

The A19 corridor is defined as an economic artery, enabling people and goods to be transported from one place to another. From an economic growth perspective, the A19 highway network needs to be free-flowing in order to make trips more reliable.

The preferred scheme indicated in the DCO submission will significantly improve traffic movements on the strategic road network and will increase accessibility into the proposed cross-boundary International Advanced Manufacturing Park (IAMP) development within Sunderland and South Tyneside.

- 4.18.34. Ms Dianne Snowdon [\[RR-001\]](#) supported the Proposed Development, considering that it would be beneficial to commuters.
- 4.18.35. Mr Dennis Gilhespy [\[RR-002\]](#) considered that bus stops on the A184 west of the A19 should be moved westwards, to the entrance with West Pastures lane to make them safer to access for children.

Economic development

- 4.18.36. Ms Dianne Snowdon [\[RR-001\]](#) supported the Proposed Development, considering that it would benefit the economy.
- 4.18.37. IAMP [\[REP1-001\]](#) indicated its support for the contribution that the Proposed Development would make to the regional economy and to IAMP as an economic development proposal.
- 4.18.38. Section 7 of the STC LIR [\[REP2-006\]](#) identifies that the delivery of the proposed development is a strongly supported component of local economic strategies and is expected to support jobs and economic growth, particularly in association with the IAMP proposal.
- 4.18.39. NECA [\[RR-010\]](#) identifies that a designated enterprise zone adjacent to the NMUK site is served by the A19, which connects it to Ports and Newcastle Airport. The Proposed Development will facilitate better access to the enterprise zone from the north. It will be important to the success of IAMP, that will drive new investment and jobs in the region.

Logistics

- 4.18.40. BNP Paribas Real Estate on behalf of Royal Mail Group Limited (Royal Mail) [\[RR-004\]](#) expressed what has become a standing concern by Royal Mail about NSIPs affecting the strategic highway network. It was concerned about the effects that the Proposed Development other major projects on the ability of Royal Mail to make timely deliveries. Royal Mail sought the preparation of a CTMP, taking cumulative impacts into account and providing measures to avoid impacts on major road users. Royal Mail sought consultation on the preparation of relevant plans (including the CTMP, the CEMP and on the discharge of relevant DCO requirements).

NMUs and PRowS

- 4.18.41. Mr Dennis Gilhespy [\[RR-002\]](#) objected to the proposed new bridleway between points 2/19 and 2/14 on the Streets, Rights of Way and Access Plans [\[APP-008\]](#) considering instead that the existing footpath between points 2/26 and 2/20 could be upgraded to perform that function.
- 4.18.42. On USI1 [\[EV-001\]](#) the ExA noticed that the existing PRow B28 was proposed to be stopped up between points 2/23 and 2/34 on the Streets, Rights of Way and Access Plans [\[APP-008\]](#). This route connects Boldon Business Park to the former Testo's Garage site (the Enterprise Car Hire depot). It passes across the existing A19 alignment on an overbridge that is proposed to be demolished to accommodate the raised level of the new mainline. The PRow passes through West House Farm. On that basis, the ExA asked Mr Gilhespy for his views on the proposed closure and whether he made any use of the PRow and overbridge in association with his business. At D2 [\[REP2-003\]](#), Mr Gilhespy confirmed that the overbridge had not been used for farm business since the 1970s and that the farm had no need for the retention of the PRow. Access through the farm by members of the public using the PRow had caused 'issues' in the past and *'its removal will benefit the farm.'*
- 4.18.43. Gateshead Council expressed the following concerns about proposed PRow changes affecting NMUs:
- The submitted TAR at paragraph 2.2.3 (2nd bullet point) states that the scheme will enhance NMU facilities and connectivity by providing *"...a new cycleway/footway along the north side of A184 from opposite West Pastures lane to [Testo's] Junction ..."* Gateshead Council highlighted that the existing footway along the north side of A184 from White Mare Pool Junction to the proposed improvement would need to be designated as a Shared Use Path and where necessary improved.
 - The TAR at paragraph 2.2.3 (3rd bullet point) states that the scheme will provide *"...an upgraded pedestrian/cyclist crossing of the A19 north of [Testo's] Junction..."* The Scheme Layout Plan Rev 0 does not indicate the type of crossing to be provided. The current crossings are signal controlled and it would be considered detrimental to highway safety if they were downgraded to uncontrolled crossings. Whilst the volume of traffic on these legs will be reduced by the scheme, the speed of traffic is likely to increase.
 - The TAR at paragraph 2.2.3 (5th bullet point) states that the scheme will provide *"...a new signalised crossing over the A184 west of [Testo's] Roundabout, to provide safer access to the bus-stop..."* However the The Scheme Layout Plan Rev 0 does not show this crossing as signal controlled. Also the proximity of the new footway and crossing point to the roundabout and the westbound A184 gives some concern from a highway safety perspective.
- 4.18.44. Section 7 of the STC LIR [\[REP2-006\]](#) accepted that NMUs would experience a clearer and safer environment as a consequence of the alterations to the PRow network proposed by the Applicant. STC did not share the concerns raised by Gateshead Council.

Agriculture

- 4.18.45. In response to ExQ1 Mr Gilhespy at D2 [\[REP2-003\]](#), advised that the land and buildings at West House Farm are used for arable farming and an associated HGV (heavy goods vehicle) haulage business with one vehicle registered with the Vehicle and Operator Services Agency (now the Driver and Vehicle Standards Agency). He farms the land as an Agricultural Holdings Act tenant, a condition of which requires him to live in the farmhouse on the land. It will be important to him that the Applicant facilitates the continuation of his business. Access to his farm house and farm buildings will need to be maintained at all times because it is *'essential to the day to day working of my farm.'*

Green Belt

- 4.18.46. Section 7 of the STC LIR [\[REP2-006\]](#) makes only the most limited of references to the Green Belt status of the Proposed Development site, providing the over-arching observation that *'[t]he project would be supported by local planning policies, notwithstanding its location in the [G]reen [B]elt'*.
- 4.18.47. There were no representations suggesting that the Proposed Development was *'inappropriate development'* in the Green Belt or that it was contrary to Green Belt policy.

The Great North Forest

- 4.18.48. There were no representations addressing the relationship between the Proposed Development and the Great North Forest.

Policy Considerations

- 4.18.49. In establishing the need case for improvements to the strategic roads network, NNNPS refers specifically to the way in which the network *'provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals. It provides a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment. A well-functioning Strategic Road Network is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies.'* (paragraph 2.13). This is particularly relevant given the location of the Proposed Development as part of the network connecting the Tyne, Wear and Tees ports to Newcastle airport, connecting the populations of Newcastle-upon-Tyne, South Tyneside and Sunderland to each other and to the Tees conurbation. The Proposed Development also connects the Sunderland advanced / automotive manufacturing precinct (including the NMUK plant) to these facilities and populations.
- 4.18.50. Paragraph 2.16 identifies the adverse effects of traffic congestion on the strategic road network as follows:
- *constraining existing economic activity as well as economic growth, by increasing costs to businesses, damaging their competitiveness and*

making it harder for them to access export markets. Businesses regularly consider access to good roads and other transport connections as key criteria in making decisions about where to locate [;]

- *leading to a marked deterioration in the experience of road users. For some, particularly those with time-pressured journeys, congestion can cause frustration and stress, as well as inconvenience, reducing quality of life[; and]*
- *constraining job opportunities as workers have more difficulty accessing labour markets.*

4.18.51. NNNPS paragraphs 5.173 to 178 consider land-use effects. It is a key consideration that conflicts with the development plan should be taken carefully into account (paragraph 5.173), but equally important to observe that there are no such conflicts in this case.

4.18.52. NNNPS paragraph 5.168 identifies the need to understand the effect of the Proposed Development on agriculture and to avoid or minimise land take from the best and most versatile agricultural land.

4.18.53. NNNPS paragraphs 5.175 and 5.180 to 185 consider green infrastructure, which in these terms also includes PRowS. Paragraph 5.185 states that existing PRowS can be extinguished if the SoS is satisfied that an alternative has been or will be provided or is not required.

4.18.54. The STC Proposals Map (2012) [\[REP4-003\]](#) identifies that the site of the Proposed Development falls within the Green Belt. Green Belt land is subject to the following Development Plan policies:

- Core Strategy policy EA1;
- Development Management policies DM5, DM7, DM8, and
- Site Allocations policies SA4, SA7, SA10 and SA11.

With the exception of the policy DM5, the same policies also support the development of the Great North Forest, to revitalise 96 square miles of urban fringe countryside in Tyne & Wear and County Durham.

4.18.55. In addition to its Green Belt designation, most of the Proposed Development site is also identified as a specific proposal on the STC Proposals Map (2012). Land is shown as allocated for the upgrading of the Testo's intersection and subject to the following policies:

- Core Strategy Policy A1; and
- Site Allocation policy SA1.

4.18.56. NNNPS paragraph 5.178 addresses development in the Green Belt in the following terms.

When located in the Green Belt national networks infrastructure projects may comprise inappropriate development. Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances. The Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not

exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt, when considering any application for such development

Inappropriate development in the Green Belt for the purposes of NNNPS takes the same meaning as it does in the NPPF.

4.18.57. The NPPF describes the Green Belt and inappropriate development within it.

80. Green Belt serves five purposes:

- *to check the unrestricted sprawl of large built-up areas;*
- *to prevent neighbouring towns merging into one another;*
- *to assist in safeguarding the countryside from encroachment;*
- *to preserve the setting and special character of historic towns; and*
- *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. [...]*

87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. [...]

90. Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are: [...]

- *local transport infrastructure which can demonstrate a requirement for a Green Belt location; [...]*

Other Strategic Projects: DLJ and IAMP

4.18.58. The ExA reviewed the Inter-relationships Report [\[REP2-015\]](#) and observes that no significant adverse cumulative social or economic effects are identified.

4.18.59. A more general consideration of the relationship between the Proposed Development, DLJ and IAMP including EIA and HRA purposes is set out in Section 4.11 of this Report.

ExA Response

Connectivity

4.18.60. The Applicant's case that the Proposed Development will substantially enhance connectivity on the local, regional and national road networks is

accepted. It is not a matter of dispute that the Proposed Development will support the better connection of key local businesses and prospective business areas including NMUK, the Sunderland Enterprise Zone and IAMP with related manufacturing development, the Tyne, Wear and Tees Ports and Newcastle Airport.

4.18.61. These are substantial benefits and they should be accorded significant weight: there are no representations that disagree with this position. Connectivity issues raised in submissions are minor, limited to the operation of the public transport network through the Proposed Development.

4.18.62. In relation to the proposal from Mr Gilhespy that the bus stops on the A184 west of the A19 mainline should be relocated further west, the Applicant's evidence that there is no need for this change and that it would make the bus stops further away from pedestrian users in West Boldon is preferred and this requested change is not supported.

Economic development

4.18.63. Applicant's case that the Proposed Development will provide substantial support for the economic development of the local area and the region is accepted. This case has been strongly reinforced by evidence from NECA, STC and SCC. Whilst objecting in relation to PRow issues, Gateshead Council also indicated its overarching support for the Proposed Development. Evidence from IAMP indicates that the Proposed Development will positively reinforce the case for major employment development there, contributing to the enhanced economic wellbeing of the local area and the region.

4.18.64. It is not a matter of dispute that the Proposed Development will have substantial and weighty economic benefits and these should be taken into account.

Logistics

4.18.65. The Applicant's case that it has and will continue to use reasonable endeavours and consult with stakeholders to minimise the effects of the Proposed Development on logistics users of the strategic highway network is accepted. The cumulative effects of works for the Proposed Development with works for other major projects have been adequately taken into account. The Applicant is willing to add Royal Mail to its list of consultees on the development of the CTMP. On that basis, logistics sector impacts have been adequately assessed and provided for and no changes are required.

NMUs and PRowS

4.18.66. Having undertaken USIs in which the ExA inspected the existing and proposed PRow network on foot, the generality of the Applicant's case that the proposed PRow design serves the needs of NMUs is accepted. The Proposed Development will improve the NMU user experience and safety. The closure of Bridleway B27 is justified and an equivalent or

better east-west PRoW linkage will be provided by an enhanced route along the north side of the A184.

- 4.18.67. In relation to NMU changes requested by Mr Gilhespy, the Applicant's evidence that the NMU design shown in Streets, Rights of Way and Access Plans [\[APP-008\]](#) is one that has been widely consulted and that a bridleway located south of the A184 is a proposal that has not been objected to by other stakeholders is accepted. It is not necessary to make the change requested by Mr Gilhespy.
- 4.18.68. In relation to the NMU changes requested by Gateshead Council, the PRoW of direct concern to it (from West Pastures lane to Whitemare Pool on the north side of the A184) is not within the scope of or affected by the Proposed Development. No case has been made for change to this route as a consequence of the effects of the Proposed Development on its users. It is not necessary to make this requested change.
- 4.18.69. Gateshead Council has expressed concerns that relevant drawings do not show signal controls where the new PRoW network will cross vehicular connections (entry and exit ramps) to the new A19 mainline. The Applicant has provided assurances within their responses to RRs [\[REP1-015\]](#) that it is their intention that all such crossings would comply with DMRB safety requirements and should be signalised.
- 4.18.70. The Highway Engineering Drawings and the Streets, Rights of Way and Access Plans [\[APP-008\]](#) do not record these crossings as signalised on either drawing set. Whilst the Applicant's intention is not doubted, it is important that a key NMU safety feature is not forgotten and for this reason the ExA **recommends** that during the decision period, the Secretary of State might request the Applicant to prepare and submit a new Revision 1 of the Streets, Rights of Way and Access Plans which adds the note 'signalised PRoW crossing' (or a symbol with that note in the key) at the following points on Sheet 2:
- 2/26 PRoW crossing A19 northbound slip (on-ramp);
 - 2/28 PRoW crossing A19 southbound slip (off-ramp);
 - 2/8 PRoW crossing A19 southbound slip (on-ramp) and DLJ connector;
 - 2/35 PRoW crossing A19 northbound slip (off-ramp) and DLJ connector;
 - 2/16 PRoW crossing A184 westbound exit; and
 - 2/22 PRoW crossing A184 eastbound entrance.
- 4.18.71. No other IPs need to be consulted on the content of such a revision. The revision does not change the Proposed Development from that which the Applicant already intended to construct. It merely ensures that there is security for that intention.
- 4.18.72. Once a new Revision 1 of the Streets, Rights of Way and Access Plans have been submitted to the satisfaction of the SoS, it will be necessary to ensure that this and not the current Revision 0 plans become a certified document. This matter is addressed further in Chapter 8 (draft DCO and related matters) of this report.

Agriculture

- 4.18.73. The Applicant's case that the permanent take of agricultural land has been minimised is accepted. Because the land to be permanently taken is not best and most versatile land, this permanent loss is not a weighty consideration in policy terms.
- 4.18.74. The extent of TP land loss to agriculture is substantial. Again however, the land-take is necessary (the extensive programme of infrastructure diversions is a key driver here) and has been minimised.
- 4.18.75. The surface water management plan and a soil management plan provided for in the CEMP and secured under R4 will minimise damage to adjacent agricultural land and will ensure that TP land is placed into a condition supporting its return to agricultural production, ensuring only very limited enduring effects.
- 4.18.76. The ExA specifically enquired into the effects of the proposed development on Mr Gilhespy's farm business, given the apparently substantial and disruptive effects upon it. These affects are being managed by the Applicant as well as they can be. Positive dialogue between the Applicant and Mr Gilhespy evidenced at the OFH and the absence of detailed agricultural impact objections from Mr Gilhespy support this position. Whilst the individual effects of the proposed development on him will be adverse and potentially severe during the construction phase, the Applicant is doing all that it reasonably can to manage and minimise these impacts. No changes are proposed.

Green Belt

- 4.18.77. In circumstances where the proposed development is in the Green Belt, the ExA has given careful consideration to whether it harms the purposes of Green Belt designation and might be said to be *'inappropriate development'*. The Applicant has set out its view that Proposed Development does not breach Green Belt policy because it is proposed to be delivered on Order Land which largely benefits from allocation in a Development Plan proposal that supports the upgrade of the Testo's intersection. The Applicant has not provided a *'very special circumstances'* case to support the SoS' consideration of consent, if he should determine that the Proposed Development is *'inappropriate development'* in the Green Belt.
- 4.18.78. NNNPS policy in paragraph 5.178 has been taken into account, together with NPPF paragraphs 80, 87, 88 and 90 and STC Core Strategy Policy A1 and EA1 with relevant Development Management and Site Allocations policies referred to above. The Development Plan proposal support provided for the Proposed Development through a site allocation establishes that it is *'local transport infrastructure which can demonstrate a requirement for a Green Belt location'* (NPPF paragraph 90). Because this is the case, the Proposed Development is not inappropriate development in the Green Belt provided that it preserves the openness of the Green Belt and does not conflict with the purposes of including land in Green Belt.

- 4.18.79. In terms of impacts on openness, the Proposed Development will not have a significant effect. The A19 will be raised above grade but will remain close to its existing alignment. The location of major land-take to the west enables existing mature woodland to the east of the A19 mainline largely to be retained and the effect of this will be to ensure that the landscape enclosure of the alignment is not significantly reduced in the short term. In the medium to long term, proposed and secured landscape planting will result in a re-integration of the alignment into the local landscape. As a consequence, the openness of the Green Belt will not be harmed by the proposed development in the operational phase.
- 4.18.80. Turning to the purposes of including land in the Green Belt, the location of the A19 mainline provides a hard edge to the settlements of West Boldon and Boldon Colliery and so does serve to check the unrestricted sprawl of large built-up areas onto land to the east and to prevent neighbouring towns merging into one another. This boundary effect will be enhanced. By reinforcing a hard urban boundary, the Proposed Development will assist in safeguarding the countryside from urban encroachment. By providing greater connectivity to the national road network for urban land served by the A19 mainline, the Proposed Development will also assist in urban regeneration, by encouraging the recycling of derelict and other urban land served by the A19 that is not in the Green Belt. The Proposed Development does not preserve the setting and special character of a historic town, because there is no such town within its immediate setting.
- 4.18.81. Taking the purposes of including land in the Green Belt together, it is clear that the Proposed Development reinforces and supports four out of five of those purposes and does not detract from the fifth purpose.
- 4.18.82. Drawing these matters together, it is clear that the Proposed Development leaves openness unharmed and broadly reinforces the Green Belt purposes. On the basis that the proposed development is also allocated and so is '*local transport infrastructure which can demonstrate a requirement for a Green Belt location*', it is clear that it is not inappropriate development. It follows that the SoS does not need to consider a '*very special circumstances*' case for approval.

The Great North Forest

- 4.18.83. The Applicant's assertion in its Planning Statement [\[APP-049\]](#) at paragraph 5.3.21 that the Great North Forest proposal is moribund and is not proposed to be carried forward into the new STC Local Plan is relevant. There were no submissions countering this view and so it is not necessary to address the relationship between the Proposed Development and the Great North Forest.

Conclusion on Socio-economic Effects

- 4.18.84. Taking all relevant documents and policies into account, the ExA concludes as follows:

- There are substantial and weighty connectivity benefits from the Proposed Development.
- There are substantial and weighty economic benefits from the Proposed Development.
- In broad terms the proposed PRow changes are well designed, but changes to the Streets, Rights of Way and Access Plans Sheet 2 should be made before certification to annotate locations where PRow network is proposed to cross motorised traffic to show that signalised crossings will be used.
- In general terms, agricultural effects have been well managed. The individual effects of the proposed development on the farm business of Mr Dennis Gilhsepy will be adverse and severe during construction, but an effective and business-like working relationship between him and the Applicant holds out every prospect of effects being minimised to the extent that they reasonably can be.
- The Proposed Development is in the Green Belt, but for Development Plan and NPPF purposes is local transport infrastructure which can demonstrate a requirement for its location and does not harm openness or the purposes of Green Belt Designation. For these reasons it is not inappropriate development and the SoS can consider approval without a very special circumstances case having been made out.
- Because the proposal is moribund, there is no need to assess the impact of the Proposed Development on the Great North Forest.
- On balance, the social, economic and land-use effects of the Proposed Development are substantially positive, due to the substantial enhanced connectivity and economic development benefits, which significantly outweigh an unavoidable adverse impact on agriculture.

4.19. WATER ENVIRONMENT

Introduction

4.19.1. This Section of the report addresses two aspects of the water environment:

- flood risk; and
- water quality and resources.

The Applicant's Case

4.19.2. ES Chapter 14 [\[APP-018\]](#) examines road drainage and the water environment. ES Appendix 14.1 contains a Highways Agency (now Highways England) Water Risk Assessment Tool (HAWRAT) assessment and 14.2 a Flood Risk Assessment (FRA) [\[APP-037\]](#). A separate FRA Report [\[APP-041\]](#) has been provided to meet the requirements of APFP Regulation 5(2)(e) but this does not include any substantive material.

4.19.3. The FRA concludes that the risk from fluvial flooding (from the River Don) is low overall. The majority of the Proposed Development is located in Flood Zone 1. However, some of the Proposed Development would be located in Flood Zones 2 and 3. The Sequential Test is considered to be passed because this development involves improvements to an existing

highway and there are no alternative sites in an area of lower flood risk are available for this development.

- 4.19.4. The FRA records that the Exception Test is required as a small proportion of the development lies in Flood Zone 3 where it crosses the River Don. The Exception Test is considered to be passed for the Scheme because the junction improvements will contribute to the regional and local economy by providing an improved link to the Tyne Tunnel and Newcastle and mitigation measures have been incorporated to protect against flooding to the development and elsewhere.
- 4.19.5. Groundwater vulnerability is assessed in the ES as low and there are no nearby groundwater abstraction points.
- 4.19.6. Construction stage mitigation is required to ensure that construction does not result in increased sediment loads in run-off, other contamination (due to materials storage, fuels and spillage) and diversion of overland flows.
- 4.19.7. Operational stage mitigation is proposed to include a new Sustainable drainage system (SuDS) drainage scheme that will introduce two attenuation ponds that will improve pollution control and the quality of discharges.
- 4.19.8. There is no significant difference between the underbridges and the single flyover bridge options in water environment effects terms.

Planning Issues

- 4.19.9. EA [\[REP1-004\]](#) had reviewed the FRA submitted with the application. It considered the document to comply with relevant NPPF and PPG requirements and to provide an accurate assessment of flood risk. It considered that the operational elements of the Proposed Development would have a negligible impact on flood risk. The sequential and exception tests had been considered and management measures proposed should ensure no increase in flood risk downstream from the Proposed Development. An Environmental Permit for flood risk activity in relation to works near the River Don would be required.
- 4.19.10. EA expressed concerns during the Examination that it remained unclear that the proposed utilisation of HAWRAT would adequately control the risk of pollutants and accidental spills reaching the Don catchment. This in turn suggested that there was scope for the Proposed Development causing a possible failure to meet relevant objectives in the Northumbria River Basin Management Plan which in turn could potentially lead to compliance issues with the WFD.
- 4.19.11. This was a concern that related to interconnectivity between the drainage scheme proposed for the Testo's intersection and that for the DLJ project, noting that detail on the latter was not yet available.
- 4.19.12. Section 7 of the STC LIR [\[REP2-006\]](#) identifies drainage and water quality considerations as leading to a '*positive*' impact of the Proposed

Development during both the construction and operational stages of the project. STC supports CEMP and REAC proposals for the early development of temporary and permanent drainage systems for the A19 / A184 to reduce the risks of pollution to the water environment and appropriately manage flood risks. In this respect, STC expects that the submission of a scheme to discharge R8 mitigate impacts in terms of both flooding and water quality, improving the quality of discharges to the River Don from the current road drainage system and reducing flood risk downstream due to the inclusion of balancing ponds to control discharges.

- 4.19.13. During discussion of the water environment management measures in ISH4, it became apparent that some proposed works associated with discharges to the River Don and hence to WFD implementation were not fully recorded in spatial terms. The ExA suggested that the Illustrative Environmental Masterplan might be amended to provide a firm spatial location for these works. The Applicant within their covering letter [\[REP5-002\]](#) (at paragraph 6.4) agreed and subsequently submitted a revised Environmental Masterplan (Version 1) [\[REP5-005\]](#) at D5.

Policy Considerations

- 4.19.14. NNNPS provides policy relevant to decision-making about flood risk and related drainage considerations in paragraphs 5.98 to 5.109. Policy relating to mitigation is set in paragraphs 5.110 to 5.115 and these include promotion of measures including SuDS, suggesting amongst other techniques the use of basins and ponds to hold excess water after rain to enable controlled discharge, ensuring that '*[t]he surface water drainage arrangements [are] such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect.*'(NNNPS paragraph 5.113.)
- 4.19.15. NNNPS provides policy relevant to water quality and resources in paragraphs 5.224 to 5.227. Policy relating to mitigation is set in paragraphs 5.228 to 5.231. NNNPS highlights that activities that give rise to discharges to the water environment during both construction and operation are subject to pollution control and so subject to further general policy consideration in paragraphs 4.48 to 4.56.
- 4.19.16. These policies are relevant because the Proposed Development includes proposals for discharge to the River Don catchment. Paragraph 4.225 identifies the importance of managing impacts that could have an adverse effect of the achievement of WFD objectives with the aim of avoiding any deterioration to the ecological status of watercourses. Paragraph 4.226 requires the SoS to be satisfied that the Proposed Development has had regard to the relevant provisions of the River Basin Management Plan and WFD requirements. It follows that the River Basin Management Plan for the Don catchment to achieve a WFD objective of good ecological status by 2021 is a key consideration.
- 4.19.17. Any EA concerns about water quality / resource considerations must be considered. The SoS must be satisfied that 'all reasonable steps have

been taken by the Applicant and the [EA] to try to resolve the concerns, and that the [EA] is satisfied with the outcome.' (NNNPS paragraph 5.227).

- 4.19.18. Mitigation measures (paragraph 5.229 and 5.230) which might be employed for construction include designated areas for storage and unloading can be codified in a CEMP. Where SuDS are proposed for the operational stage, the most sustainable solution recognising feasibility should be employed and conventional drainage solutions may form part of the overall package if required to address site constraints.
- 4.19.19. Flood risk due to coastal change is not a relevant consideration for this application.

Other Strategic Projects: DLJ and IAMP

- 4.19.20. EA raised concerns at ISH3 that cumulative drainage impacts from the Proposed Development together with DLJ might lead to deterioration in the environmental status of the River Don catchment and to a breach of the WFD. However, at D4 the Applicant submitted a Note on Cumulative Effects Assessment [\[REP4-007\]](#) prepared in discussion with the EA, demonstrating (at section 6) with reference to the DLJ PEIR how the relationship between the two projects would be managed and concluding that compliance with the WFD would be achieved. EA was reassured on this point and concluded a SoCG [\[REP4-006\]](#) in which this issue was removed from contention.
- 4.19.21. A more general consideration of the relationship between the Proposed Development, DLJ and IAMP including EIA and HRA purposes is set out in Section 4.11 of this Report.

ExA Response

- 4.19.22. The Applicant has provided and effectively responded to data on flood risk and the Proposed Development is policy compliant in flood risk terms.
- 4.19.23. Construction contamination risks have been identified and appropriately managed.
- 4.19.24. In the context of oral evidence provided at ISH3 and the subsequent work on cumulative effects and WFD compliance, the Applicant has demonstrated that WFD compliance will be achieved and that cumulative effects with DLJ will not prevent that compliance. As part of this process, the Applicant agreed to submit a revised Illustrative Environmental Masterplan to provide a firm spatial location for relevant drainage system works [\[REP5-002\]](#) (paragraph 6.4) and as a consequence, a revised Revision 1 of the plan was submitted at D5 [\[REP5-005\]](#). The original Illustrative Environmental Masterplan was intended to be a certified document by way of being an Appendix to the ES, but was omitted from the original Application submission (a matter that was remedied before the PM with the submission of the intended document [\[APP-053\]](#) (Revision 0)). However, as the more recent Revision 1 [\[REP5-005\]](#) is now

a different document, it becomes necessary to ensure that it is submitted for certification in its own right, that a reference to it in the DCO at R5(2) is amended and that Schedule 10 is updated to reference it as a certified document in its own right. The ExA **recommends** accordingly.

- 4.19.25. HAWRAT is an acceptable means of assessing the water environment effects of the Proposed Development. When applied, it demonstrates WFD and relevant NNNPS policy compliance.
- 4.19.26. The REAC sets out relevant mitigation measures.
- 4.19.27. Further to R4, relevant measures which must reflect the REAC will be secured in the CEMP, which must include the following documents of relevance to the control of impacts in the Don catchment:
- a Dust, Noise and Nuisance Management Plan;
 - a Site Waste Management Plan;
 - a Environmental Control Plan: Invasive Species;
 - a Soil Management Plan;
 - a Surface Water Management Plan;
 - a COSHH Material, Waste Storage and Refuelling Plan;
 - a Materials Management Plan;
 - a Contaminated Land Management Plan; and
 - a Pollution Prevention Plan.
- 4.19.28. R6 secures a response to contaminated land or groundwater found during development. Any such discovery must be reported to the SoS and a risk assessment must be undertaken in consultation with the relevant planning authority and EA. Any remediation plan approved by the SoS must also be subject to consultation with the relevant planning authority and EA. This mechanism will ensure that unforeseen contamination will not lead to adverse outcomes and WFD non-compliance in the River Don catchment.
- 4.19.29. R8 secures a surface and foul water drainage scheme that must be submitted to the SoS before commencement. Mitigation measures and reflecting the REAC and means of pollution control must be included with scheme. Again, this mechanism will ensure that drainage effects will not lead to adverse outcomes and WFD non-compliance in the River Don catchment.
- 4.19.30. The proposed development will replace the existing A19 drainage system with a new system, designed to apply SuDS. Taken in the round, this replacement will lead to an improvement in the operational effects of the Proposed Development when compared with the effects of the existing drainage arrangements. This is a positive effect of the Proposed Development.

Conclusion on the Water Environment

- 4.19.31. Taking all relevant documents and policies into account, the ExA concludes as follows:

- The Proposed Development is policy compliant in relation to flood risk.
- Discharges from the Proposed Development to the River Don catchment will meet the WFD and are therefore policy compliant.
- Improvements to the existing A19 drainage system mean that the water environment effects of the Proposed Development are positive overall.

4.20. OTHER POLICY TOPICS AND IMPORTANT AND RELEVANT CONSIDERATIONS

Introduction

4.20.1. This Section of the report addresses remaining policy topics and important and relevant considerations that need to be taken into account in the planning balance, including:

- geology, soils and land instability;
- materials sourcing and waste management
- human health; and
- all other legislative and policy considerations drawn to the ExA's attention.

Geology, soils and land stability

4.20.2. Geology and soils considerations are relevant matters. They are addressed in the Application documents, particularly in the ES at Chapter 10 [\[APP-018\]](#).

4.20.3. Matters relating to the movement of soil and rock during construction with reference to receptor impacts have been addressed in sections dealing with noise, air quality and dust. Geological conservation is addressed in the section on biodiversity, ecology and the natural environment. Soil quality as an agricultural consideration is addressed in the section of social and economic considerations.

4.20.4. There is scope for works to discover currently unknown land contamination, a matter raised by EA. However, in its SoCG [\[REP4-006\]](#) with the Applicant, EA states at paragraph 3.1.4 that ES Chapter 10 adequately assesses the potential for this and that R6 in the dDCO will ensure that it is dealt with in a satisfactory manner. The STC LIR [\[REP2-006\]](#) (paragraph 7.22) identifies that STC is also content with this position and identifies geology and related impacts as a '*neutral*' consideration.

4.20.5. The Proposed Development site falls within a defined coalfield area and passes beside Boldon Colliery, historically a mining village. Given the history and extent of deep coal mining in Tyne and Wear, an important and relevant issue that requires to be noted in this report is that the Coal Authority [\[RR-005\]](#) does not consider that the Proposed Development requires any specific consideration of ground instability issues arising from coal mining legacy. This position was not disputed by any other IP.

- 4.20.6. There were no other representations that raised important and relevant considerations bearing on geology, soils and land stability that have not been addressed elsewhere in this Report.
- 4.20.7. NNNPS addresses land stability in paragraphs 5.117 to 5.119. Soil contamination is not specifically addressed. These policy considerations arising from the NNNPS are all appropriately addressed and require no changes to the dDCO.

Materials sourcing and waste management

- 4.20.8. Materials sourcing and waste management are relevant matters. They are addressed in the Application documents, particularly in the ES at Chapter 11 [\[APP-018\]](#).
- 4.20.9. Representations from EA raised issues in respect of both materials sourcing and waste management in construction. The CEMP will largely address these, although they will also fall within the remit of other consents including:
- the CL:aire Materials Management Plan (MMP);
 - mobile plant licences or site permits for crushing operations; and
 - relevant consents and / or exemptions for waste operations import and crushing of wastes within the scope of the Environmental Permitting regime.

The EA SoCG [\[REP4-006\]](#) raises no remaining issues in respect of compliance with materials sourcing or waste management and states that the dDCO contains adequate provisions.

- 4.20.10. The STC LIR [\[REP2-006\]](#) (at section 7) identifies that, subject to production of a materials management plan (the MMP identified above) and a site waste management plan within the framework provided by the CEMP and the REAC, the effects of materials storage and waste management of site will be 'neutral'. The construction traffic management plan (CTMP) would address materials and waste transportation-related issues. STC raised no proposals for changes to the dDCO to address these issues.
- 4.20.11. NNNPS addresses waste in paragraphs 5.43 to 5.45. Waste policy considerations arising from NNNPS are all appropriately addressed and require no changes to the dDCO.

Human health

- 4.20.12. Human health is a relevant matter. There were no indications in the application documents (including the ES) of any residual adverse effect of the Proposed Development on human health. Nor were any concerns raised in representations.
- 4.20.13. The ExA has considered whether the Proposed Development might give rise to any material adverse effects on human health and has concluded that it does not. It follows that there are no proposals for changes to the dDCO to address this issue.

Other policies

- 4.20.14. All other legislative and policy considerations drawn to the ExA's attention in the course of the Examination have been considered. However, none give rise to any issues that require to be taken into account in a manner which affects the considerations drawn out in the remainder of this Chapter, the planning balance set out in Chapter 6 or the provisions of the DCO addressed in Chapter 8.

ExA Response and Conclusion on other important and relevant considerations

- 4.20.15. Taking all other relevant documents and policies drawn to the ExA's attention into account, no other matters have arisen which affect the identification in Sections 4.1 to 4.19 above of the planning matters that require to be balanced by the SoS or taken into account in the DCO decision.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION

- 5.1.1. This chapter of the Report sets out the analysis, findings and conclusions relevant to Habitats Regulation Assessment (HRA) and will assist the Secretary of State for Transport (SoST) as the competent authority in performing their duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended) ('the Habitats Directive'), as transposed in the United Kingdom (UK) through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 5.1.2. The applicable regulations in respect of HRA at the time when the Development Consent Order (DCO) application was submitted were the Conservation of Habitats and Species Regulations 2010 (as amended), and the 2017 Habitats Regulations (revoking the 2010 regulations) into force on 30 November 2017, during the course of the Examination. It is the 2017 Habitats Regulations under which the application for development consent must be considered in the context of these regulations.
- 5.1.3. Consent for the proposed development may only be granted if, having assessed the potential adverse effects of the proposed development on European sites, the competent authority considers it passes the relevant tests in the Habitats Regulations.
- 5.1.4. The SoST is the competent authority for the purposes of the Habitats Directive and Habitats Regulations for energy applications submitted under the Planning Act 2008 (PA2008). The ExA has considered throughout the examination process the need to ensure that the SoST has an adequate basis of information from which to carry out their duties as competent authority, informed by and compliant with the policy set out in the Overarching National Policy Statement (NPS) for Energy (EN-1) paragraph 5.3.9 (including making an appropriate assessment, if required).

5.2. HRA IMPLICATIONS OF THE PROJECT

- 5.2.1. The Applicant submitted a HRA Report with the application [\[APP-045\]](#).
- 5.2.2. The HRA Report records a 30km radius search from the boundary of the Proposed Development for European sites and likely significant effects upon these. It identifies (at page 5 and Appendix A, Figure 2) the spatial relationship between the site of the Proposed Development and three relevant European sites:
- Northumbria Coast Ramsar Site;
 - Northumbria Coast Special Protection Area (SPA); and
 - Durham Coast Special Area of Conservation (SAC).

All three sites are located on the coastline, from Harton in the north, southwards to Roker, forming the coastal margin of Marsden Bay.

5.2.3. The qualifying features of the Northumbria Coast Ramsar and SPA are avian:

- breeding Little tern *Sterna albifrons*;
- migratory (overwintering) Purple sandpiper *Calidris maritima*; and
- Turnstone *Arenaria interpres*.

The qualifying feature of the Durham Coast SAC is the only UK example of magnesian limestone vegetated sea cliff. The closest approach between the Proposed Development and any European site is 7km.

5.2.4. The Design Manual for Roads and Bridges (DMRB) Volume 11 Section 4 suggests that when screening highways projects for HRA purposes, consideration should be given to:

- any European site within 2km of a route corridor or project boundary;
- any European site within 30km of a route corridor or project boundary where bats are a qualifying feature; and
- any waterbody in the same catchment if the project crosses a designated river.

5.2.5. None of these factors apply to the sites identified in the HRA report. Particularly it should be recorded that there are no European Sites with bats as a qualifying feature within 30km of the Proposed Development.

5.2.6. None of the qualifying features of the European sites considered in the HRA report have any identified vector or interface with the Proposed Development, either directly, or by way of any projected emissions such as noise, air quality or drainage effects. The Applicant does not identify the need for any mitigation measures and the conclusions in the HRA report are not reliant on any such measures. Instead, the Applicant rules out pathways of effects on the basis of the localised nature of the works and the relative distances between the Proposed Development and the identified European sites.

5.2.7. Natural England (NE) (the relevant Statutory Nature Conservation Body) made a Relevant Representation (RR) [\[RR-009\]](#) which recorded its view that there would be no likely significant effect on any European site. This view was reiterated in its draft Statement of Common Ground (SoCG) with the Applicant [\[REP1-014\]](#) at paragraphs 3.1.2 and 3.1.3. NE did not raise any further concerns during the Examination. The ExA specifically asked IPs in its first written questions (ExQ1) [\[PD-007\]](#), (ExQ1.2.2) whether there were any disagreements with the Applicant's HRA report conclusions and none were raised. Matters raised by South Tyneside Council (STC) and Groundwork South Tyneside and Newcastle Trust (Groundwork STAN) are addressed in the biodiversity section of Chapter 4 above, but it is important to record here that none of these related to effects on the qualifying features of European Sites. No other HRA-relevant issues were raised by any other Interested Parties.

5.3. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

5.3.1. Having given careful consideration to all relevant evidence and tested the position on HRA in written questions, the ExA is satisfied that there are no Likely Significant Effects of the Proposed Development on any European sites or their qualifying features.

5.4. HRA CONCLUSIONS

5.4.1. The ExA concludes as follows in relation to the HRA process:

- There are no likely significant effects of the Proposed Development on any European Sites or their qualifying features.
- No mitigation relevant to HRA has been proposed and none is required.
- No HRA-relevant matters require security in the DCO.
- The Proposed Development can proceed without an Appropriate Assessment being undertaken by the SoST.

6. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

6.1.1. The designated National Networks National Policy Statement (NNNPS) provides the primary basis for making decisions on development consent applications for national networks Nationally Significant Infrastructure Projects (NSIP) in England by the Secretary of State (SoS). Conclusions on the case for development consent set out in the application are therefore reached within the context of the policies contained in the NNNPS. However, as indicated in Chapters 3 and 4, in reaching the conclusions set out in this Chapter, the ExA has taken all other relevant law and policy into account.

6.2. THE PLANNING BALANCE

6.2.1. ExA conclusions on the effects of the Proposed Development and its performance against relevant policy and legislation are summarised below, drawing on the analysis of planning considerations in Chapter 4 and Habitats Regulation Assessment (HRA) in Chapter 5 above.

The main issues

- The overarching support of host local authority South Tyneside Council (STC) and the neighbouring local authority Sunderland City Council (SCC) should be noted and taken into account, alongside that of the North East Combined Authority (NECA).
- There were no submissions opposing the Proposed Development in principle.
- The few objections were limited to matters of individual or site specific interest or were resolved during Examination
- For this reason, much of the Examination was focussed on a technical review of the application documents within the policy and legislative framework rather than consideration of objections.

Policy

- No instances of NNNPS non-compliance were identified by Interested Parties (IPs) or Affected Person (APs).
- The Proposed Development generally conforms to high-level policy in NNNPS and to relevant policy detail set out further below.
- The Application affects electricity network infrastructure below the NSIP threshold and National Policy Statement (NPS) EN-5 is not a relevant consideration.
- The Proposed Development generally conforms with the Development Plan.
- It benefits from specific Development Plan policy support in terms of its role in fostering accessibility and economic growth in a growth corridor. The land required for the proposal has been the subject of a safeguarding policy in the plan.
- Other policies relating to environmental protection, water quality, biodiversity conservation, landscape and archaeology policies are met.

- There are no conflicts between NNNPS and the Development Plan, so Development Plan policy will be fully met by a decision that is in accordance with NNNPS.
- Whilst the International Advanced Manufacturing Park (IAMP) Action Area Plan (AAP) has been made subject to a legal challenge, the scope of that challenge is limited, and it has no implications for the SoS' decision in this Application.
- The ExA has not been referred to any relevant policies arising from any Neighbourhood Plans.
- The Proposed Development generally conforms with all other relevant policies identified in Chapter 3 and referred to in Chapter 4 of this Report.
- There are no conflicts between NNNPS and other relevant policies and those policies will be met by a decision that is in accordance with NNNPS.

Consideration of other DCOs

- The Applicant has generally justified its proposals for the drafting of the Development Consent Order (DCO).
- Precedent made Orders have been taken fully into account.
- Individual instances where drafting has relied on precedent but has not taken full account of the particular local circumstances are dealt with in Chapter 8 below.

EIA considerations

- The Proposed Development is Environmental Impact Assessment (EIA) development.
- Transitional provisions in the 2017 EIA Regulations apply and so the application remains subject to the 2009 EIA Regulations as amended, which have been complied with by the Applicant.
- The submitted Environmental Statement (ES), as augmented by the subsequent documents (the Addendum to the Environmental Statement (AES) 1 and 2 and the Environmental Masterplan Rev 1) has provided an adequate assessment of the environmental effects of the Proposed Development, sufficient to describe the Rochdale Envelope for it and, as referred to within the draft Development Consent Order (dDCO), to secure its delivery within that envelope.

HRA considerations

- There were no matters germane to HRA that required to be considered as part of the reasoning in respect of planning issues in Chapter 4 of this Report.
- There are no likely significant effects of the Proposed Development on any European Sites or their qualifying features.
- No HRA-relevant compensatory measures have been provided, because none are required.
- The Proposed Development can proceed without an Appropriate Assessment being undertaken by the SoS.

Transportation and traffic

- The transport and traffic effects of the Proposed Development during construction (including potential cumulative effects with other projects) will be negative.
- However, all reasonable steps to minimise these have been taken by the Applicant and a Construction Transport Management Plan (CTMP) is secured in R10 of the dDCO.
- The transport and traffic effects of the Proposed Development during operation will be positive.

Other strategic projects and proposals

- All relevant interrelationships between the Proposed Development and Downhill Lane Junction (DLJ) have been considered, to the extent that these are known. No significant adverse cumulative effects have been disclosed.
- All relevant interrelationships between the Proposed Development and IAMP have been considered, to the extent that these are known. No significant adverse cumulative effects have been disclosed.
- There are no significant interrelationships between the Birtley to Coalhouse strategic highway upgrade project and the Proposed Development.
- NNNPS policy requirements in relation to cumulative and in-combination assessment for EIA purposes have been met.

Air quality

- The construction phase will give rise to fugitive dust impacts, a negative impact, but these have been mitigated to the extent required and the mitigation is secured.
- The Air Quality Management Area (AQMA) at Leam Lane / Lindisfarne Roundabout to the north of the Proposed Development site is in compliance and the Proposed Development will not drive it out of compliance in the operational phase.
- However, as a supplement to the Air Quality Plan for NO₂, DEFRA (2017) has been published following the closure of the Examination, the SoS may wish to consult the parties on this and take it into account in the decision.
- Relevant Air Quality Directive (AQD) Limit Values (LVs) will continue to be met in the operational phase and there are no other local or regional operational air quality impacts that require secured mitigation. This is a neutral consideration.
- Turning to the interrelationship between the Proposed Development and DLJ in construction, the Applicant's proposal to make some joint use of construction facilities has been considered, but the ExA is satisfied that this will not lead to any material change to the air quality or light effects assessed in the ES. This is a neutral consideration.

Biodiversity, ecology and the natural environment

- There are indirect impacts on one nationally designated site (West Farm Meadow Site of Special Scientific Interest (SSSI)) but these are effectively mitigated.
- There are direct impacts on three Local Wildlife Sites (LWSs), but these are effectively mitigated in the medium to long term.
- There will be significant land-take, but this has been minimised and mitigation includes substantial grassland, woodland, scrub and tree planting to offset habitat loss.
- There will be slight adverse effects for the Common Toad, but the benefits of the development (including need) clearly outweigh that harm.
- In relation to geological significance, there are no impacts on any designated sites.

Electricity and other utility infrastructure

- As a consequence of a legal agreement entered into between the Applicant and National Grid Electricity Transmission (NGET) and the protective provisions proposed to be included in the dDCO, impacts on electricity and other utility infrastructure have been appropriately managed.
- Effects on electricity and other utility infrastructure are a neutral consideration.

Historic environment

- Impacts on the historic environment have been appropriately managed.
- Effects on the historic environment are a neutral consideration.

Landscape and visual impact

- The Proposed Development will lead to adverse impacts in terms of construction landscape and visual impact but this is justifiable, mitigated appropriately and so is policy compliant.
- The Proposed Development will lead to adverse impacts in terms of operational landscape and visual impact but this is justifiable, mitigated appropriately and so is policy compliant.
- Operational adverse impacts will trend towards neutrality as landscape mitigation matures.

Noise and vibration

- The Proposed Development will lead to adverse impacts in terms of construction noise and vibration but this is justifiable, mitigated appropriately and so is policy compliant.
- Design improvements to the A19 and A184 will mean that the operational effects of noise on surrounding sensitive receptors will on balance be positive.

Social, economic and land use impacts

- There are substantial and weighty connectivity benefits arising from the Proposed Development.
- There are substantial and weighty economic benefits arising from the Proposed Development.
- In broad terms the proposed Public Right of Way (PRoW) changes are well designed, but changes to the Streets, Rights of Way and Access Plans Sheet 2 should be made before certification to annotate locations where PRoW network is proposed to cross motorised traffic, to show that signalised crossings will be used.
- In general terms, agricultural effects have been well managed. The individual effects of the proposed development on the farm business of Mr Dennis Gilhsepy will be adverse and severe during construction, but an effective and business-like working relationship between him and the Applicant holds out every prospect of effects being minimised to the extent that they reasonably can be.
- The Proposed Development is in the Green Belt, but for Development Plan and National Planning Policy Framework (NPPF) purposes is local transport infrastructure which can demonstrate a requirement for its location and does not harm openness or the purposes of Green Belt designation. For these reasons it is not inappropriate development and the SoS can consider approval without a very special circumstances case having been made out.
- Because the proposal is moribund, there is no need to assess the impact of the Proposed Development on the Great North Forest.
- On balance, the social, economic and land-use effects of the Proposed Development are substantially positive, due to the substantial enhanced connectivity and economic development benefits, which significantly outweigh an unavoidable adverse impact on agriculture.

Water environment

- The Proposed Development is policy compliant in relation to flood risk.
- Discharges from the Proposed Development to the River Don catchment will meet the Water Framework Directive and are therefore policy compliant.
- Improvements to the existing A19 drainage system mean that the water environment effects of the Proposed Development are positive overall.

Other considerations

- There are no other policy matters or important and relevant considerations that affect the planning balance.

6.2.2. The NNNPS paragraph 4.2 advises that, subject to the provisions of s104 of the PA2008, the starting point for the determination of an application for a national networks NSIP is a presumption in favour of development.

6.2.3. In reaching conclusions on the case for the Proposed Development, the ExA had regard to the NNNPS as the relevant NPS, the NPPF, the LIR and all other matters which it considers are both important and relevant to the SoS's decision. It has further considered whether the determination

of this application in accordance with the relevant NPS would lead the UK to be in breach of any of its international obligations where relevant. The ExA concludes that, in all respects, this will not be the case.

6.2.4. Bringing the above conclusions together, the ExA notes the Government's strong policy support for schemes that seek to deliver a well-functioning Strategic Road Network. The A19 / A184 Teston's Junction alteration will assist in delivering this policy.

6.2.5. The potential adverse impacts of the Proposed Development and the concerns raised by those who made submissions on the application have been considered. There will be some harmful effects as detailed above. However, many of these will be limited to the construction period and temporary. All are mitigated as far as possible through controls secured through the recommended dDCO. All harmful effects are within the scope envisaged in NNNPS as still being policy compliant.

6.2.6. All the impacts identified above fall to be considered together in the context of the Proposed Development as a whole. In particular, this consideration should be undertaken alongside the identified benefits of the Proposed Development in relation to the Strategic Road Network and to meeting network need identified in the NNNPS and in regional and local strategies. Substantial weight is attached to these benefits.

6.3. OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT

6.3.1. In the ExA's judgement, the strategic benefits of the Proposed Development: addressing existing and predicted congestion at a key intersection, improving user experience of the A19 corridor and enhancing connectivity and economic benefits in the region, are such that they outweigh the impacts that identified above in relation to the construction and operation of the Proposed Development.

6.3.2. The potential harm is substantially outweighed by the benefits of the Proposed Development in meeting Government policy as set out in the NNNPS.

6.3.3. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.

6.3.4. The ExA therefore concludes that, for the reasons set out in the preceding chapters and summarised above, development consent should be granted. This conclusion applies to both the Option 1 (two bridge) and Option 2 (single flyover bridge) proposals, which in all material respects are no different in impact terms.

7. COMPULSORY ACQUISITION AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The application subject to Examination included proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land. This Chapter records the Examination of those proposals and related issues.

7.2. LEGISLATIVE REQUIREMENTS

7.2.1. CA powers can only be granted if the conditions set out in sections (s)122 and s123 of Planning Act 2008 (PA2008), together with relevant guidance in "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the Former Department for Communities and Local Government (DCLG) CA Guidance are met.

7.2.2. Section 122(2) of PA2008 requires that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate⁴³.

7.2.3. Section 122(3) of PA2008 requires that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.

7.2.4. Section 123 of PA2008 requires that one of three procedural conditions in subsections (2) to (4) must be met by the application proposal, namely:

- 2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
- 3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.
- 4) The condition is that the prescribed procedure has been followed in relation to the land.

It should be stated from the outset that the condition in sub-section (2) is met.

7.2.5. A number of general considerations also have to be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must have been explored;
- the Applicant must have a clear idea of how it intends to use the land subject to CA powers;

⁴³ DCLG CA Guidance

- the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

These matters were tested in the Examination and are reported on further below.

7.2.6. Further to Part 1 of Schedule 5 to PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated DCLG CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land.

7.2.7. Reference must be made to prospective legislated changes to the TP system applicable within England and Wales. The Neighbourhood Planning Act 2017 (NPA2017) has been enacted and contains provisions which amount to a codification of new TP practice. In recognition of the greater extent to which TP is being sought by scheme promoters and of the extended durations for which TP can be sought, the provisions in general terms provide for enhancements to the rights of APs subject to TP, with a view to ensuring that they have equivalent or proportionate rights to notice and to relevant compensation to those already available to APs subject to CA. However, as of the closure of this Examination, the relevant provisions had not commenced. The ExA examined the question of how the pending status of these provisions should be responded to and this issue is addressed in Sections 7.5 and 7.6 of this Report.

7.2.8. All relevant legislation and guidance is taken into account in the reasoning below and relevant conclusions are drawn at the end of this Chapter in relation to both CA and TP.

7.3. THE REQUEST FOR CA AND TP POWERS

7.3.1. The application draft Development Consent Order (dDCO) Revision 0 [\[APP-010\]](#) and all subsequent versions submitted by the Applicant up to the latest dDCO Revision 5 submitted at Deadline (D)5 [\[REP5-006\]](#) include provisions intended to authorise CA of both land and rights. Powers for the temporary possession TP of land were also sought.

7.3.2. On this basis, the application was accompanied by a Book of Reference (BoR) [\[APP-015\]](#), Land Plans [\[APP-006\]](#), a Statement of Reasons (SoR) [\[APP-013\]](#) and a Funding Statement (FS) [\[APP-014\]](#). Taken together, these documents set out the land and rights sought by the Applicant together with the reasons for their requirement and the basis under which compensation would be funded. As is normal, the Examination and due diligence processes led to changes to some of this documentation. By the close of the Examination, the most up-to date versions were as follows:

- BoR (Revision 2) submitted at D5 [\[REP5-013\]](#);
- Land Plans (Revision 1) submitted before the Preliminary Meeting (PM) to address s51 advice [\[AS-004\]](#);
- SoR (Revision 2) submitted at D5 [\[REP5-011\]](#); and
- FS (Revision 0) submitted at Acceptance [\[APP-014\]](#).

7.3.3. These documents taken together form the basis of the analysis in this Chapter. References to the BoR and the Land Plans in this Chapter from this point should be read as references to the latest revisions cited above. It should be particularly noted that all Land Plan plot references employed in this Chapter are correct as per the most recently submitted Land Plans (Revision 1) [\[AS-004\]](#).

7.3.4. Land over which CA and / or TP powers are sought is referred to in this Chapter as the Order land.

7.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

7.4.1. The purposes for which the CA and TP powers are required are set out in the BoR [\[REP5-013\]](#) and SoR [\[REP5-011\]](#).

7.4.2. In general terms, CA is sought for land that would be required permanently - for construction and operation of the main proposal, the A19 and A184 alterations at and around the Testo's intersection and for associated drainage works. CA of rights is sought for the accommodation and alteration of electricity transmission and distribution system alignments and other infrastructure crossing the Order Land and for access to facilities requiring maintenance such as drainage system balancing ponds.

7.4.3. TP is sought for time-limited processes associated with construction, including plant storage, lay down, materials and soil storage, adaption works to other infrastructures, a main construction compound, construction access and the installation of temporary site fencing. It should be noted that pursuant to Article (Art) 29(1)(a) to (d), TP can be taken of land intended to form part of the operational highway. The purpose of these provisions is to enable works to commence in advance of the precise finalisation of the boundary of the CA land, which in turn enables the Applicant to ensure that in all cases it minimises CA land-take, only taking that land that is required to form part of the operational highway. The effect of this approach will be that in a few instances, slightly less land than that identified for CA in the BoR may in the end need to be made subject to CA.

7.4.4. A key issue of relevance to the consideration of the CA and TP proposals in the Application is that the Applicant proposes to use elements of the TP land for purposes associated with the construction of a separate project, the Downhill Lane Junction (DLJ) alteration.

7.5. EXAMINATION OF THE CA AND TP CASE

7.5.1. The examination of the application included consideration of all submitted written material relevant to CA and TP. The Applicant was asked about the justification for the powers sought. A Compulsory Acquisition Hearing

(CAH) was held together with unaccompanied and accompanied inspections of land subject to CA and TP requests. These processes are described below.

Written process

- 7.5.2. There was only one Relevant Representation (RR) which on its face appeared to state an objection to the CA or TP request in the application or to the effects of it:
- National Grid Electricity Transmission (NGET) made a RR [\[RR-008\]](#) objecting to all CA and TP affecting its operational land and land in the management of Groundwork South Tyneside and Newcastle Trust (Groundwork STAN) and so NGET's Written Representations (WRs) and the Applicant's responses to them are relevant to consideration of CA and TP matters.
 - Groundwork STAN did not make a RR and became an Interested Party (IP) consequent upon its status as an AP following a request at the PM and so Groundwork STAN's WR [\[REP1-005\]](#) and the Applicant's comment upon it [\[REP2-018\]](#) (at page 3) are also relevant to consideration of CA and TP.
- 7.5.3. There were no other RRs that raised objections to CA and or TP and no other submissions raised objections as the examination proceeded. Nevertheless, the ExA has considered the CA and TP proposals in their entirety.
- 7.5.4. The ExA's first written questions (ExQ1) included questions relevant to CA and TP [\[PD-007\]](#), (Matter 1.3), which can be summarised as addressing the following issues:
- Whether any National Trust land is engaged?
 - Whether PA2008 ss131 or 132 in respect of commons or open spaces etc is engaged?
 - Whether ongoing diligence had identified any Crown Land vested in the Crown Estate and / or any relevant Ministers or public authorities meaning that consent pursuant to PA2008 s135 might be required?
 - The state of play on diligence around land and rights documents, including whether any new APs had emerged and any new prospective objections had been raised.
 - Questions about individual plots and groups of plots including West Boldon Lodge and Substation (the NGET / Groundwork STAN land) and the Traveller site on West Pastures lane.
- 7.5.5. Additionally ExQ1 requested the Applicant to establish and maintain an ongoing system recording the outcome of its land and rights diligence, up to the end of the Examination and to provide updated documents as necessary to respond to any changes.
- Monitoring tables were provided at D2 within the Applicant's responses to ExQ1 [\[RE2-009\]](#), where they can be found as:
 - Table - ExQ1.3.3(1)(Crown Land);
 - Table - ExQ1.3.4(1) (CA and TP Objections);

- Table - ExQ1.3.5(1) and ExQ1.3.6(1) (Statutory Undertakers).

There were no responses to or changes to these tables and so the conclusions that they record have been drawn into the CA and TP conclusions of this Report.

- The Land Plans submitted with the Application [APP-006] were amended once during the pre-Examination period [AS-004] (Land Plans – Revision 1). It is necessary to record that the changes included in Revision 1 did not change the extent of land sought for CA and/ or TP. They were limited to the addition of a better key and descriptions that had been sought in s51 PA2008 advice from the Planning Inspectorate to the Applicant [PD-003], to ensure consistency of terms between the Land Plans and other CA and TP documents and that APs were able to identify their land and the effects upon it with ease. No further changes were made during the Examination. It follows that the Land Plans - Revision 1 [AS-004] are the plans that the ExA has considered in reaching the conclusions in this Report.
- A revised SoR ([REP5-011] clean, [REP5-012] tracked) and BoR ([REP5-013] clean, [REP5-014] tracked) taking account of diligence revisions and matters raised in Examination were submitted at D5 and are the basis for the CA and TP conclusions in this Report.

Hearings

- 7.5.6. A CAH [EV-009] (Annex C) was held as set out from paragraph 1.4.13 of this Report. The hearing was used to orally examine the Applicant's underlying case for CA, to test whether relevant legislative and policy requirements that arise irrespective of any objections to CA and TP had been met. There were no requests to be heard at a CAH by anyone other than the Applicant. Nevertheless, the ExA provided an opportunity for APs wishing to be heard on CA and or TP matters to attend the CAH and state their case: none attended that hearing. On that basis, it was not necessary to hold the second CAH reserved in the examination timetable and that second hearing was cancelled.
- 7.5.7. In addition to oral submissions at the CAH, written submissions from Mr Dennis Gilhespy of West House Farm, Boldon have been taken into account, in particular his RR [RR-002], his response to ExQ1 [REP2-003], his additional submission [AS-022] accepted at the ExA's discretion and his oral representation made at the Open Floor Hearing (OFH) [EV-010] held on 16 January 2018 [EV-009] (Annex A) [EV-010]. An oral representation from Mr Tom Cleary was made at the OFH [EV-010], who stated that he represented a Traveller community resident at West Pastures lane and this too has been considered. For these purposes it is important to record that Mr Gilhespy was an AP and the status of Mr Cleary (addressed further below) was such that he should be accorded a hearing on CA and / or TP matters if needs be. However, neither raised any objection to CA or TP that required to be taken forward to a second CAH.
- 7.5.8. Following the conclusion of the CAH, there was one remaining matter of relevance to DCO provisions for CA and TP in relation to the NPA2017 on

which needed to be put to the Applicant. This was addressed at Issue Specific Hearing (ISH) 5 into the dDCO [\[EV-018\]](#) (Question 4)].

Site Inspections

- 7.5.9. Two unaccompanied site inspections (USIs) [\[EV-001\]](#) [\[EV-006\]](#) enabled the ExA to view the great majority of land subject to CA and TP requests from the adjacent public highway and from public rights of way (PRoW) across or adjacent to it.
- USI1 [\[EV-001\]](#) focussed on the land north of the existing A184 and west of the existing A19, including at West House Farm and Farmhouse and all land to the west of the existing A19 between Boldon Colliery and Downhill, much of which was accessible by PRoWs
 - USI2 [\[EV-006\]](#) focussed on land south of the existing A184 and west of the existing A19. Particular attention was paid to land between the A19 and West Pastures lane proposed for use as a site construction compound and a nearby Traveller site that was referred to in the OFH by Mr Tom Cleary and ExQ1.3.8 [\[PD-007\]](#) (BoR Part 1 Plot 2/7a) was inspected.
- 7.5.10. At the accompanied site inspection (ASI) [\[EV-007\]](#) land under the control of NGET, Northern Powergrid and Groundwork STAN surrounding the West Boldon Lodge and Sub-station site was viewed. At that point there was an outstanding objection from NGET relevant to CA and TP.
- 7.5.11. Taken together, the two USIs and the one ASI provided the ExA with an understanding of the location and condition of all of the plots proposed to be subject to CA and TP powers.

7.6. CONSIDERATION OF CA AND TP ISSUES

- 7.6.1. This section sets out the Applicant's general case for CA and TP. It does not record responses from objectors to the Applicant's case as none were made in either oral or written submissions: the CA and TP examination in this respect was confined to a technical review of the Applicant's case against relevant legislation and policy by the ExA.
- 7.6.2. It then records the consideration of limited remaining aspects of the cases for the CA and / or TP of individual parcels of land or rights that are relevant to be considered for decision-making purposes, including the consideration of land and rights in respect of which by the end of the Examination there was no formal outstanding objection.
- 7.6.3. Finally, this section considers a range of technical matters relevant to CA and TP, including statutory undertakers and protective provisions, Crown land considerations, the availability of funds for compensation and human rights considerations.

THE APPLICANT'S CASE

- 7.6.4. The Applicant set out its summarised case for CA and TP at the CAH [\[REP3-014\]](#).

7.6.5. The SoR (currently [\[REP5-011\]](#)) sets out the requirement for the land and the Planning Statement [\[APP-049\]](#) provides a justification for the Proposed Development against the NNNPS and other relevant national and local policies. It is the Applicant's case that the need case for the development has been made out.

7.6.6. The Applicant then addressed tests in the DCLG guidance as follows:

- Reasonable alternatives to CA and TP have been explored.
- The Applicant has a clear idea of how they intend to use the land.
- The proposed acquisition is legitimate, proportionate and necessary and there is a compelling case in the public interest.

Reasonable alternatives to CA and TP have been explored

7.6.7. The Applicant has given extensive consideration to possible alternatives to the Proposed Development in Environmental Statement (ES) Chapter 3 [\[APP-018\]](#) [\[APP-021\]](#), both in terms of a range of different design configurations for the junction upgrade and in terms of detailed delivery alternatives for the currently proposed configuration. The Consultation Report outlines how engagement with stakeholders on these options has occurred.

7.6.8. The early design appraisal in 2004 (ES section 3.2 [\[APP-018\]](#) and Figure 3.1 [\[APP-021\]](#)) considered the following options:

- Option 1, an online grade separation proposal in which no parallel frontage roads would connect the Testo's and DLJ intersections.
- Option 2 would provide grade separation by elevating the A184.
- Option 3 would provide an offline grade separation by raising the A19 mainline on a route to the west of the current junction and parallel frontage roads would connect the Testo's Junction and DLJ intersections.
- Option 4 would divert the A19 northbound mainline in a curve, connecting it to the westbound A184.

7.6.9. Options 2 and 4 were discounted as not meeting regional transport objectives and posing unresolved environmental impact and deliverability concerns. Option 3 would deliver similar functionality to the current Proposed Development but with a significantly greater land requirement. It was a high cost option.

7.6.10. Option 1 was identified as the preferred option in October 2004. A value engineering process then suggested scaling this back to provide an improved at-grade intersection. Whilst this reduced option offered substantial cost savings it could not deliver the same portfolio of benefits (critically including safety) that would flow from a grade-separated option and so it was not developed.

7.6.11. A new design appraisal was undertaken in 2009. In addition to the current design configuration, referred to as Option A, consideration was given to two offline upgrades in which the A19 mainline would be deviated to the west of West House Farm and a new intersection created approximately on the current alignment of West Pastures Lane (Options

B and C) [\[APP-021\]](#) (figure 3.2). Options B and C have considerably greater land requirements than Option A, on which the current Proposed Development is based. They have not been proceeded with.

7.6.12. It was a starting point assumption in the 2009 appraisal that a key means of reducing congestion at the Testo's intersection and on the A19 mainline would be to provide separately for traffic accessing NMUK and related industrial land south of DLJ. Instead of using the A19 mainline between Testo's and DLJ as it does at present, all three 2009 design options proposed that this traffic would be served off-line and hence that the demand for 'one junction' movements along the A19 mainline between DLJ and Testo's and hence for conflict between through and local traffic would be significantly reduced.

7.6.13. In all three of the 2009 options, frontage road connections between Testo's and DLJ were proposed to be provided and land for these roads forms an additional element of land requirement for each of these options when they are compared with the more minimal Option 1 that was preferred in 2004. On the basis that all options under appraisal in 2009 contain this design assumption and additional land requirement, the current design configuration based on Option A delivers the functionality sought with the lowest land requirement.

7.6.14. The Applicant has engaged with APs and in a number of cases has reached advanced stages of negotiation with a view to voluntary agreements as addressed in the CA Negotiation Status Report [\[REP3-020\]](#) submitted at D3. However, it has also taken the view from DCLG Guidance paragraph 25, that on a linear scheme with a requirement for a large number of plots it is not always practicable to reach agreement and avoid CA on each plot. It is equally the case that if a voluntary agreement in respect of just one plot in a linear scheme were to fail, the effect could be to delay or derail the entire scheme. This in turn makes a case for the retention of 'backstop' CA powers over all plots, regardless of the progress made in negotiations.

7.6.15. DCO Art 29(1)(a)(ii) enables the Applicant to take TP of the Order Land and finally to CA only that land that is precisely determined as being required. This enables detailed design to make the final land-take as efficient as possible. It is an approach that has been widely used in linear infrastructure projects.

The Applicant has a clear idea of how they intend to use the land

7.6.16. The SoR (currently [\[REP5-011\]](#)) records what each plot is to be used for. The Land Plans (Revision 1) [\[AS-004\]](#) show the location of each plot and whether it is for the CA of land, rights over land or TP.

The proposed acquisition is legitimate, proportionate and necessary and there is a compelling case in the public interest

7.6.17. The Applicant sets out four reasons why the CA and TP of land for the Proposed Development is legitimate, proportionate, necessary and which in its view demonstrated that there is a compelling case in the public

interest for the proposed acquisition ([\[REP3-014\]](#) at paragraph 4). These are extracted in full below.

- i. The Scheme will improve journey times, network resilience and journey time reliability primarily by altering the existing roundabout Testo's Junction and replacing it with a grade separated junction allowing the A19 to run freely over the top of the A184 and reducing congestion on the roundabout. The Scheme further builds resilience for future population growth.*
- ii. The Scheme will improve safety by reducing the accident rate at the Testo's Junction. As set out more fully in Section 4 of the Planning Statement, the monetary benefits of reducing accidents is equivalent to just over £10 million.*
- iii. The Scheme maintains access for local traffic whilst improving the conditions for strategic traffic. The Scheme has been designed to ensure the minimal impact on local access routes and, indeed, increases connectivity for local residents who use the NMU routes. Section 4 of the Planning Statement sets out that the monetised benefits to vehicles users from improved traffic flow is equivalent to £97.0 million.*
- iv. The Scheme will help support economic development objectives for the locality and wider North East Region and will provide improved physical linkages between existing and planned employment sites, educational facilities and local communities, a number of which are amongst the most deprived areas in the country.*

Minimisation of the need for land and rights

- 7.6.18. On the basis that frontage lane connections between Testo's and DLJ are required, the Proposed Development as currently configured has the lowest requirement for the CA of land to form the highway of all the options considered.
- 7.6.19. There are additional CA requirements for rights and TP requirements for land. These support the provision of a main construction compound, plant and materials storage and provide working areas for the diversion of utility infrastructures (electricity, gas, water and telecommunications). The land sought for these has been minimised.
- 7.6.20. As is recorded in paragraph 7.4.3 above, Art 29 (1) (a) to (d) provides for the TP of land intended to form part of the operational highway and for works to commence on this land. This ensures that the final extent of land subject to CA can be minimised, with regard to the precise extent of land required to form the operational highway in due course.

Shared facilities with Downhill Lane Junction (DLJ)

- 7.6.21. At both the CAH and ISH3 into the dDCO the ExA sought to understand how much of the land sought for CA and TP was justified with reference to its shared use to deliver the DLJ development. A key concern was that if elements of the land case rested on a justification that the land was required to support the development of DLJ, it was possible that the land requirement for the Proposed Development was an over-acquisition. If

that were to be the case, then relevant tests in the DCLG Guidance may not have been met and the land requirement may not have been minimised.

- 7.6.22. The Applicant in their written summary of case put orally at the CAH [\[REP3-014\]](#) responded to ExA questions (from paragraph 3.6) by making clear that there was a need for each plot in the CA and TP request, based on the configuration of the Proposed Development alone, for construction and operation. No extra land was being sought in this CA and TP request to meet the needs of DLJ. If DLJ were not to proceed, the Applicant would still require the full extent of the current CA and TP request to deliver the Proposed Development.
- 7.6.23. The Applicant explained the position as being that as the DLJ development was close to the Proposed Development and works would be undertaken within the construction period for the Proposed Development, it made sense for there to be some sharing of facilities in the construction compound and on other land justified as being for construction-related uses. Examples provided related to staff occupying demountable office premises. The Applicant estimated that a shared office might contain 75 staff delivering Testo's with an additional 12 delivering DLJ, but that no additional office footprint would be required. Equivalently, shared plant might be stored on land sought within the Testo's CA and TP request, and deployed in works on both projects, but there was still a land requirement to stable the plant.
- 7.6.24. The sharing of construction facilities between the two projects was in itself a means of mitigating the land take and impacts of both schemes, and so its beneficial effects should be noted.

INDIVIDUAL CA AND TP OBJECTIONS AND ISSUES

- 7.6.25. In ExQ1 [\[PD-007\]](#) (Matter 1.3), a process for logging outstanding objections relevant to CA and TP was established. The Applicant's response to ExQ1 [\[REP2-009\]](#) at D2 and its monitoring table ExQ1.3.4(1) (CA and TP Objections), ExQ1.3.5(1) and ExQ1.3.6(1) (Statutory Undertakers) identified that there was one AP viewed as having outstanding objections to CA and / or TP. This was NGET in respect of land and rights at West Boldon Substation. That objection as originally submitted was also expressed as being on behalf of its tenant / land manager Groundwork STAN. Progress on and matters arising from this objection are addressed below in two parts, dealing initially with the RR from NGET and then dealing separately with the interests of and WRs from Groundwork STAN.
- 7.6.26. There were no other written objections to CA and / or TP. That being said, having identified issues bearing on land and property rights (and possible effects on these) that might also engage human rights considerations relevant to two further interests (Mr Dennis Gilhespy and West House Farm and Farmhouse, and the Traveller Community on West Pastures lane), consideration of and responses to these persons are recorded in this section.

West Boldon Substation: NGET interests

Location: Primarily West Boldon Substation but transmission alignments and associated apparatus are also affected.

Interests

Freeholder: CA and TP of Plots 2/6a, b, c, d, e and f, 2/8

Rights: in respect of easements and private rights to be extinguished over plots 1/1d, 1/1i, 1/1k, 1/4a, 1/4b, 1/5a, 1/5b, 1/5c, 1/6a, 1/6b, 1/6c, 1/7a, 1/7b, 1/7c, 1/7d, 1/7e, 1/7f, 1/7g, 1/8, 1/9a, 1/9b, 1/9c, 1/9d, 2/1a, 2/1b, 2/1c, 2/1d, 2/1e, 2/4a, 2/4b, 2/4c, 2/4d, 2/4e, 2/4f, 2/5g, 2/9a, 2/9b, 2/9c, 2/9d, 2/9e.

Status: statutory undertaker, objection to CA and TP withdrawn by end of Examination.

- 7.6.27. NGET has 90 references in the BoR, 7 of which relate to Category 1 interests in Part 1 recorded above, 81 of which relate to Category 2 interests in Part 1 which for succinctness are not recorded here, one of which refers to NGET as a Category 3 person in Part 2 (ditto) and one of which refers to rights extinguishments on plots recorded in Part 3 and above.
- 7.6.28. NGET operates the West Boldon Substation, adjacent to the Proposed Development. It also operates a transmission system connection to the substation. The Applicant seeks the permanent acquisition of a small amount of land from the substation site to provide for the highway together with the permanent acquisition of rights associated with the diversion of infrastructure connecting to the substation and TP of land for access, fencing and related purposes.
- 7.6.29. In addition to operational land and infrastructure, NGET controls non-operational land that is subject to CA and TP. Largely mature woodland and wetland, this serves to control public access to the site, provides substantial landscape and visual screening for the operational apparatus and, under an agreement with Groundwork STAN, hosts an environmental education centre at Boldon Lodge, outdoor classrooms, nature trails and areas managed for biodiversity.
- 7.6.30. At the outset of the Examination, NGET objected strongly to CA and TP in relation to operational land and infrastructure and to non-operational land managed by Groundwork STAN [\[RR-008\]](#) [\[REP1-003\]](#) (see further below). However, negotiations with the Applicant proceeded during the Examination. As a consequence of these, NGET did not request to be heard at the CAH. By D4, NGET and the Applicant had concluded a commercial side agreement [\[REP4-001\]](#), following which it confirmed the withdrawal of all representations [\[AS-023\]](#).
- 7.6.31. Northern Powergrid (a statutory undertaker) shares the West Boldon Substation site with NGET. It has its own operational compound and also has affected distribution system alignments connected to it that are affected by the Proposed Development. However, it did not object to CA or TP at any point.

- 7.6.32. On the basis of this evidence, the ExA concludes that there are no outstanding objections to CA and/ or TP affecting statutory undertaker interests or the operational land at West Boldon Substation.

West Boldon Lodge: Groundwork STAN interests

Location: West Boldon Lodge and non-operational land at West Boldon Substation.

Interests

Leaseholder: in respect of Plots 2/6a, b, c, d, e and f.

Rights: in respect of access over plots MGAR1, MGAR2 and MGAR3.

Status: no objection to CA and TP, but representations not withdrawn.

- 7.6.33. Groundwork STAN manages the non-operational land at West Boldon Substation pursuant to agreements with NGET. They manage the land for nature conservation and operate an environmental education centre. Groundwork STAN is not a party to the commercial side agreement [\[REP4-001\]](#) between the Applicant and NGET and has not withdrawn its representations. However, it has confirmed that it has no outstanding concerns with the Applicant's proposals on land subject to CA and / or TP [\[REP3-021\]](#). The SoS can be assured that it has no CA and or TP concerns.

Mr Dennis Gilhespy

Location: West House Farm and Farmhouse.

Interests

Leaseholder: CA and TP of Plots 2/2e, f, g, h, i, j, k and l, 3/2a and b.

Rights: CA of rights in respect of Plots 2/2h and k.

Status: no formal objection to CA and TP subject to a letter of comfort, but representations not withdrawn.

- 7.6.34. The BoR Part 1 [\[REP5-013\]](#) records Mr Dennis Gilhespy in Category 1 as leaseholder from the Church Commissioners of England. His lease relates to land and buildings at West House Farm on which he carries out a farming and haulage business. He is resident on the land in West House Farmhouse. The Applicant seeks to acquire land as follows:

- permanently via CA to form parts of the highway and a drainage system balancing pond on the A19 alignment;
- permanently via CA to form parts of the highway on the A184 alignment;
- to acquire permanent rights via CA with TP in relation to the management of electric cables and related apparatus crossing the Testos junction;
- to take TP of land including (north of the A184) for the provision of access, for construction materials and plant storage, and (south of the A184) to provide access to and part of the main construction compound.

The location and extent of the land proposed to be taken will have a substantial impact on Mr Gilhespy's business.

- 7.6.35. Mr Gilhespy holds a protected agricultural tenancy, as a condition of which he is required to remain resident on the land. The Applicant has facilitated this by ensuring that whilst West House Farmhouse is surrounded by land proposed to be taken by CA and TP, it would not be taken (and this is noted in yellow on the Land Plan [\[AS-004\]](#) (Sheet 2) to that effect and so is secured). However, this in turn raises amenity issues consequent on his need to remain resident whilst major works proceed around his home that have been examined separately and are considered in Chapter 4 above. A related issue examined in Chapter 4 is the closure of Bridleway B28. This forms his access and currently includes an overbridge crossing the A19 to Boldon Business Park, which is proposed to be removed.
- 7.6.36. At the PM, Mr Gilhespy objected to attending a hearing in Newcastle upon Tyne. On that basis, the ExA made arrangements for any matters relevant to CA and TP that he might wish to raise to be addressed at the OFH at the Quality Hotel Boldon, closely adjacent to his home. He attended the OFH.
- 7.6.37. At the OFH, Mr Gilhespy made clear that he had discussed the accommodation of his business and domestic requirements during construction with the Applicant. He considered that it had in most instances done all that it reasonably could to ensure that whilst the disruptions caused by works would be substantial, his concerns were addressed. His remaining concerns related to ensuring that the Applicant did not station materials or plant on land subject to TP between his home and his main farm buildings: he wished to retain visual surveillance of the buildings from his home. He wished to ensure that land proposed for CA adjacent to his farm buildings and adjacent to an existing drainage ditch would not be used or acquired in a way that would obstruct maintenance to the buildings or the ditch.
- 7.6.38. The Applicant explained that it had discussed these issues with Mr Gilhespy and had offered accommodations in respect of its acquisition and use of elements of the land. On this basis, Mr Gilhespy was content and did not object to CA and / or TP. Further to an ExA proposal that these accommodations needed to be documented, the Applicant indicated its preference not to amend the DCO but provided Mr Gilhespy with a letter of comfort at D3 [\[REP3-019\]](#), recording the outcome of its discussions and agreement with him. Mr Gilhespy agreed to this approach. It was clear from the OFH that Mr Gilhespy and the Applicant had been in substantial discussion outside the framework of the Examination and that a considerable mutual respect and trust had been generated.
- 7.6.39. Mr Gilhespy's representations were not withdrawn. However, his oral submissions at the OFH made clear that as a consequence of discussions with the Applicant he had no outstanding objection to CA and / or TP. He made no subsequent objection or comment on the letter of comfort provided by the Applicant. The ExA has considered whether the undertakings offered in the letter of comfort ought to be secured in the dDCO, but on balance, given Mr Gilhespy's apparent satisfaction with

them, together with the business flexibility that they preserve for both him and the Applicant, that the level of certainty provided to him is sufficient. On this basis, the ExA concludes that Mr Gilhespy's concerns about CA and TP have been adequately addressed by the Applicant.

The Cleary Family

Location: Traveller site, West Pastures lane.

Interests

Freeholder (inferred): TP of Plot 2/7a

Rights: none affected.

Status: no formal objection to CA and TP, oral representation from Mr Tom Cleary at OFH.

- 7.6.40. The BoR Part 1 [\[REP5-013\]](#) records Mr Edward James Cleary in Category 1 as owner by inference to the half-width (*ad medium filum*) of a section of West Pastures lane which the Applicant seeks to use for access to its proposed construction compound. Mr Edward James Cleary is also listed in BoR Part 2 as a Category 3 person.
- 7.6.41. The Examination had no direct contact from Mr Edward James Cleary. However, USI2 [\[EV-006\]](#) identified that the land in his ownership frontaging West Pastures lane and by virtue of which he was considered to be a Category 1 person was apparently in active use as a Traveller site. This Traveller site would be directly adjacent to the proposed construction compound. Access from the A184 to the Traveller site is via West Pastures lane, part of which forms Plot 2/7a on the Land Plans (Revision 1) [\[AS-004\]](#), shown in the dDCO [\[REP5-008\]](#) at Schedule 7 (Art 29) as subject to TP and required for site access.
- 7.6.42. On that basis, ExQ1 [\[PD-007\]](#) included question 1.3.8 which sought to understand the nature of the interests and rights in land (if any) held by Mr Edward James Cleary and by any other occupants of the Traveller site and whether these might be affected by the Proposed Development. The Applicant's response [\[REP2-009\]](#) was that there was no direct effect as the occupied Traveller site itself lay outside the red line boundary of the Proposed Development. It's response went on to record as follows:
- The occupiers of the caravan site do not have a registerable interest apparent at the Land Registry and would, therefore, not have the same interest in respect of the subsoil [as the landowner Mr Edward James Cleary in a half-width of West Pastures lane].*
- The Applicant does not consider that the occupiers of the site would classify as a Category 1, 2 or 3 person and they have, therefore, not been included in the Book of Reference.*
- 7.6.43. When the OFH was held, Mr Tom Cleary attended as a representative of the West Pastures lane Traveller community. In the circumstances, whilst it appeared that he was not an AP or an IP, ExA discretion to hear him was exercised as the human rights of the West Pastures lane Traveller community required that their possible interests and the degree to which the Proposed Development might affect them should be understood. It

followed that they should be accorded a hearing, including into matters relevant to CA and TP, if these were raised.

- 7.6.44. As matters turned out, Mr Cleary did not raise any matters on behalf of the Traveller community that were CA and / or TP objections. It is nevertheless necessary that his involvement is recorded here so that it is placed beyond doubt that it has been taken fully into account. This in turn provides the basis for a conclusion that the Applicant's observations about the exclusion of the Traveller community (other than the landowner Mr Edward James Cleary) from the BoR were lawful and appropriate and that there are no CA and / or TP matters arising from the location of the Traveller community that require to be taken into account by the SoS.

SPECIAL LAND AND RIGHTS PROVISIONS

- 7.6.45. The ExA asked the Applicant to undertake ongoing diligence throughout the Examination and to flag up if any class of land and AP benefiting from any of the special land and rights provisions in PA2008 came within scope.
- 7.6.46. The Applicant's response to ExQ1 [\[REP2-009\]](#) at D2 and its monitoring tables ExQ1.3.5(1) and ExQ1.3.6(1) (Statutory Undertakers) identified persons that were statutory undertakers affected by CA and / or TP proposals and prospectively within the remit of s127 of PA2008.
- 7.6.47. Following the withdrawal of representations by solicitors for NGET on 25 January 2018 [\[REP4-001\]](#) as clarified on 13 February 2018 [\[AS-023\]](#), there were no statutory undertaker objections to CA and / or TP. It follows that the CA and / or TP proposals do not adversely affect the land, rights or apparatus of statutory undertakers. There is no land in respect of which the SoS is required to have regard to the provisions of s127(2) or (5).
- 7.6.48. The Applicant's response to ExQ1 [\[REP2-009\]](#) at D2 Q1.3.1 confirmed that there are no CA proposals affecting National Trust Land within the remit of s130 of PA2008.
- 7.6.49. The Applicant's response to ExQ1 [\[REP2-009\]](#) at D2 Q1.3.2 confirmed that there are no CA proposals affecting commons, open spaces and related land within the remit of s131 or s132 of PA2008.
- 7.6.50. By D5, whilst diligence had been undertaken, there were no changes to any of the information addressed in this section of the Report and so no new need to take any additional information into account. On that basis, the ExA concludes as follows:
- There are no special land considerations (arising under PA2008 ss 127, 130, 131 or 132) that the SoS needs to take into account.

CROWN LAND

- 7.6.51. For the avoidance of doubt, it should be recorded that land in the existing highway subject to CA of which the Highways England Company (the Applicant) is recorded as the owner and occupier is not Crown land.
- 7.6.52. The application version of the BoR [\[APP-015\]](#) Part 4 (which specifies the owner of any Crown interest in the land which is proposed to be used for the purposes of the order for which application is being made) identified no Crown land. The Applicant's response to ExQ1 [\[REP2-009\]](#) at D2 ExQ1.3.3(1)(Crown Land) confirmed that the CA and TP proposals affect no Crown Land for the purposes of s135 of PA2008. The ExA placed the Applicant under an ongoing obligation to identify and record any Crown land that might be disclosed by diligence undertaken throughout the Examination. By D5, whilst diligence had been undertaken, Part 4 of the BoR [\[REP5-013\]](#) remained empty.
- 7.6.53. At ISH1 [\[PD-005\]](#), (Table 1 to Annex E – Question 52) the ExA examined the drafting of dDCO Art 40 (Crown Rights) (an Article which for the avoidance of doubt on this point was subsequently removed as being unnecessary and is not in the recommended DCO (rDCO)). The Applicant's response to an ExA question on this point [\[REP1-016\]](#) drew attention to the fact that BoR Part 1 contains plots 1/6a, 1/6b and 1/6c at Make-Me-Rich Farm, recorded as owned by the Crown Estate Commissioners. The ExA explored the status of these plots in the hearing and was advised that these had passed to the Crown in *bona vacantia* by virtue of being part of an unclaimed estate, as distinct from being Crown Land.
- 7.6.54. In its confirmation of oral submissions provided at ISH1 provided in writing at D1 [\[REP1-016\]](#), the Applicant referred the ExA (in Appendix 2) to correspondence dated 16 August 2017 from Burgess Salmon LLP, solicitors to the Crown Estate. This correspondence explains that plots 1/6a to 1/6c are held in *escheat*. It further explains that where land is held in *escheat*, the Crown does not take any action '*which might be construed as an act of management, possession or ownership in relation to such property, since to do so might incur upon it liabilities with which the property is, or may become, encumbered.*' The reason for this long-standing approach is that the Crown Estate does not accept that it (and by extension the public purse) should become a guarantor of last resort for liabilities arising from unclaimed estates where persons had failed financially and left potentially onerous property-related obligations in their wake.
- 7.6.55. The correspondence made clear that as a consequence of this position, the Crown Estate does not consider the *escheat* land recorded in Part 1 of the BoR to be Crown land for the purposes of PA2008 and nor does the Crown Estate have any remit to consent to the acquisition of any interest in such land under s135. On that basis, the ExA concludes as follows:
- The CA and TP proposals in the Application do not affect any Crown Land.

- Land shown in the BoR as held in *escheat* by the Crown Estate cannot be the subject of any consent provided by the Crown.
- The Crown does not need to provide consent under s135 of PA2008.

AVAILABILITY AND ADEQUACY OF FUNDS

- 7.6.56. The Applicant is Highways England, a strategic highways company appointed by the Department for Transport (DfT) under the Infrastructure Act 2015 (IA2015). It is responsible for the operation, maintenance of and improvements to the strategic road network in England on behalf of Secretary of State for Transport (SoST). It receives funding from the DfT for all aspects of committed strategic highway schemes.
- 7.6.57. The Applicant submitted a FS [\[APP-014\]](#) with the application. This makes clear that the Proposed Development has been publicly committed to by the Government on the following occasions:
- Investing in Britain's Future, June 2013, where a commitment is set out at Annex A, Table A4.
 - The Road Investment Strategy (RIS), December 2014, where the Proposed Development is committed to as a funded scheme (pages 29-30, Appendix B and pages 32-33, Appendix C). The RIS is a statutory strategy under IA2015. It commits over £15 billion in Government funding to be invested in major roads between 2015-16 and 2020-21.
 - Highways England Delivery Plan 2015-2020, March 2015, where commitments can be found at Appendix D, Major Improvements Investment Plan Scheme Schedule 2015-20, and Appendix E, the Highways England Delivery Plan 2016-17.
- 7.6.58. The FS [\[APP-014\]](#) (para 2.1.5) states that the effect of these commitments 'demonstrate that the Scheme will be fully funded by the Department for Transport and consequently the Scheme is not dependent on funding contributions from other parties'.
- 7.6.59. No IPs raised concerns about the FS.
- 7.6.60. The FS has been examined. It is clear that the funding commitments for the Proposed Development are such that, if consented, there will be funds for the payment of compensation liabilities for CA and / or TP and for any blight claims.
- 7.6.61. The standing of the Applicant for funding purposes has been accepted by the SoS in previous NSIP decisions⁴⁴. Relevant Orders have been made without particular steps being taken to secure funding in the DCO, on the basis that as a publicly funded organisation delivering a publicly committed project, the Applicant will be able to draw on public funds to

⁴⁴ See M20 Junction 10A [Decision and RR](#); and A14 Cambridge to Huntingdon Improvement Scheme [Decision and RR](#).

meet project costs, compensation liabilities and any blight costs. On that basis no changes to the FS have been requested. It remains as originally submitted and has not been updated. Nor has the ExA proposed any amendments to the DCO or the procurement of any other methods of funding security.

7.6.62. Consistent with previous SoS decisions on Orders relating to Highways England and having regard to DCLG Guidance⁴⁵ in respect of the adequacy and security of financial resources, the ExA is satisfied that funding is available and find as follows:

- There are adequate funds for CA and TP compensation and no additional or special steps are required to secure or guarantee those funds.

HUMAN RIGHTS ACT (1998) CONSIDERATIONS

7.6.63. Article 1 of the First Protocol (the right to peaceful enjoyment of property) is engaged. Having considered all representations, it is clear that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.

7.6.64. Article 6 entitles APs to a fair and public hearing of their objections and is engaged. The provision of a CAH and (specifically noting the wishes of Mr Dennis Gilhespy not to be heard in Newcastle upon Tyne) an OFH at which CA issues might also be raised has enabled any AP who wished to be heard to be heard fully, fairly and in public.

7.6.65. Article 8 relating to the right of the individual to '*respect for his private and family life, his home ...*' is engaged with reference to the situation of Mr Dennis Gilhespy as described above. His written and oral representations have been taken into account. The same article is also engaged with reference to the situation of the landowner and residents in the Traveller community at West Pastures lane. The oral representations from Mr Tom Cleary representing that community have been taken into account. In relation to both persons and circumstances, it is clear that the proposed interference is in accordance with the law, is proportionate and is necessary in the interests of the economic wellbeing of the country. The ExA concludes that:

- CA and TP for the Proposed Development can be delivered in a manner in full accord with all relevant human rights considerations.

7.7. CONCLUSIONS

7.7.1. General conclusions on the CA and TP case are set out here, together with those conclusions arising from individual detailed cases and technical considerations set out above.

⁴⁵ [Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land](#), DCLG, September 2013 at paragraphs 17 and 18.

- 7.7.2. For reasons broadly articulated in Chapter 4 and section 7.6 above, it is clear that the Applicant has undertaken a thorough evaluation of siting options for the Proposed Development. This has included a thorough evaluation of alternatives to the Proposed Development. There is no basis for an alternative siting or design option for the Proposed Development that would change the location of or reduce the amount of land required for delivery, whilst still delivering the same traffic and related transport and economic benefits that the project aims to deliver. The provisions of Art 29 as proposed will enable the final revision and minimisation of land required for CA. In this respect, it is clear that the CA proposals have been optimised.
- 7.7.3. The ExA has reviewed the proposed use of land for incorporation into the highway and consider that this justifies the requirements for the CA of land. The ExA has reviewed the proposed temporary use of land and the CA of rights to accommodate and adapt other infrastructures (mainly electricity transmission and distribution alignments and associated apparatus) and agree that this justifies the CA of rights and TP of land for works. The needs for construction access, support, storage and the need for a main construction compound justify the TP of the remaining land sought.
- 7.7.4. The ExA has given careful consideration to the overlap of both land requirement and delivery timing between DLJ and the Proposed Development. On balance, it is clear that the proposed shared use of some land subject to TP in the Order Land for activities relevant to both projects is of a very limited nature and effect. There is as the Applicant's case describes, the potential for some efficiency in the delivery of both DLJ and the Proposed Development through the shared use of some services and facilities provided on the Order Land. However, the Applicant's case has also demonstrated that the possible sharing of a small number of services and facilities does not enable a reduction in the original land requirement for the Proposed Development, should DLJ not proceed to the timescale that was anticipated in the evidence placed before the ExA. It is important to record that there was no rebuttal of the Applicant's position on any of the relevant evidence on this point by any other IPs.
- 7.7.5. On this basis, a limited additional use of TP land for DLJ purposes does not amount to an 'over-possession' of land in this case. The Applicant has made a need case for the land that it proposes to take in order to deliver the proposed Development. It is clear that this case still holds good and the same extent of land would be required for TP, even in circumstances in which DLJ did not proceed.
- 7.7.6. The land sought for the highway alteration and subject to CA is land that is required for the purposes of s122 (2)(a) of PA2008 and meets the test set out in that section. The land proposed to be taken is required to facilitate or be incidental to the development, as either carriageways, a minimum necessary median, shoulders, verges and (where necessary) batters, or to enable safe enclosure and the drainage of the Proposed Development. In respect of land subject to CA for the development, the

land to be taken is no more than is reasonably required and the proposed land-take is proportionate.

7.7.7. Turning to the question of a compelling case in the public interest to acquire the land (s122(3) of PA2008), The ExA has taken into account the Applicant's case for CA and TP, as informed by its evidence on the traffic, transport and economic case for the Proposed Development as set out in Chapter 4 above. Widespread support for the Proposed Development and the absence of concerns or objections from IPs or APs relevant to CA and / or TP have been taken into account too.

7.7.8. The ExA has considered whether the public benefit in delivering the Proposed Development would outweigh the private loss. In undertaking this task, the general absence of or settlement of objections aside, it is fair to conclude that there are a small number of nevertheless potentially substantial individual private losses (and indeed some associated public or community losses) that flow from the CA and TP required by Proposed Development.

7.7.9. In this regard, conclusions on the individual cases reported on in section 7.6 above are set out first.

- On the **West Boldon Substation** site relevant to cases made by NGET and Groundwork STAN, disruption will be caused to the transmission and distribution system operators and to their apparatus. There will be some loss of enclosing vegetation that performs an important landscape and visual impact mitigation function for these facilities. Wetland and woodland managed charitably for nature conservation and education will be disturbed and ongoing educational activities disrupted during the construction period. These are to some extent public or community as well as private losses, given the statutory undertaker and charitable roles of the APs concerned. However, these effects are more than outweighed by the substantial public benefits of the Proposed Development in traffic, transportation and economic terms. The Applicant has invested substantial effort at the initial siting and design stage to avoid land take on this site and then to minimise and as far as possible to mitigate the effects of the land take that is proposed. The withdrawal of the NGET objection provides a clear demonstration that that body considers that its interests are now adequately protected. The residual concerns of Groundwork STAN do not amount to a case against CA and / or TP.
- With regard to **West House Farm and Farmhouse** and effects on the business and home of Mr Dennis Gilhespy, these are inevitably substantial at the personal level. Given the siting and design decisions to avoid and mitigate the adverse effects of land-take on the Substation site to the east of the existing Testo's intersection, the additional land requirement for the highway and drainage and the greatest extent of TP land for construction (including providing for a construction compound) has to be taken to the west. Given the physical space requirement for a junction overbridge and new north

western access ramp for the A19, the CA land-take has nevertheless been minimised. The TP of a substantial area of land and the CA of rights to the west is inevitably required to manage the existing electricity alignments approaching the Substation from this direction. This all adds up to substantial harm to Mr Gilhespy's individual interests - as his farm and dwelling are located in what becomes the focus of acquisition and construction activity. However, given the generally constrained nature of the terrain traversed by the A19, no alternative route could have avoided the private loss that he will experience without causing at least equivalent or potentially greater loss to other private persons. The substantial public benefit of the Proposed Development in traffic, transportation and economic terms will more than outweigh the individual private loss occasioned to Mr Gilhespy. Other, broader elements of impact to Mr Gilhespy are addressed in the consideration of human rights above, but none offset this conclusion.

- With regard to the **West Pastures lane Traveller site**, this is a location where there will be significant adverse amenity affects due to proximity to the main construction compound. However, there is no CA and the adverse effects of TP will be limited to the need to share access with construction traffic moving to and from the proposed construction compound along West Pastures lane. The substantial public benefit of the Proposed Development in traffic, transportation and economic terms more than outweigh the individual private loss occasioned to Mr Edward James Cleary as the owner of a half-width of the lane. As the lane is already a public highway, whilst the nature of its use will change and intensify, Mr Cleary's losses are of a limited nature. Other, broader elements of impact to the wider community using this site are addressed in the consideration of human rights above, but none offset this conclusion.

7.7.10. Having considered individual cases, all remaining elements of the Applicant's CA and TP case have then been considered in the round. The ExA remains satisfied that for all remaining land about which there have been no formal objections and in respect of which specific individual matters have not been identified for detailed examination and reporting, the public benefit in delivering the Proposed Development would outweigh the private loss.

7.7.11. For the purposes of s122(3) of PA2008 The ExA concludes that:

- the development for which the land is sought would be in accordance with national policy as set out in NNNPS and development consent should be granted;
- the NNNPSs identifies a national need for enhancing strategic highway network capacity of the type that is the subject of this Application;
- there is a need to secure the land and rights required to deliver the Proposed Development and to construct it within a reasonable timeframe;
- the Proposed Development represents a significant public benefit to weigh in the balance;

- the private loss to those affected has been mitigated through the selection of the land and the minimisation of the extent of the rights and interests proposed to be acquired;
- the Applicant has to the extent possible explored all reasonable alternatives to the CA of the rights and interests sought, although for a project of this nature it is reasonable that the Applicant should retain CA and TP powers in a made Order, as a guarantee against the possible failure of voluntary agreements which if left unmitigated could cause substantial timescale and delivery cost over-runs that would not be in the public interest;
- there are no alternatives which ought to be preferred; and
- secure funding is available to enable the payment of any necessary compensation and the standing of the Applicant in relation to public funds is such that there is no need for any special or additional guarantees for this funding.

7.7.12. For the purposes of s135 of PA2008, whilst there is land recorded in the BoR as in the ownership of the Crown Estate proposed to be taken by the Proposed Development, this is land held in *escheat*. The Crown Estate Commissioners have confirmed that the land is not part of the Crown Estate and cannot be Crown land for the purposes of the Act.

7.7.13. Turning to conclusions on special category land and the protections afforded to statutory undertakers:

- the Proposed Development will affect both the land and apparatus of statutory undertakers capable of being within the meaning of s127 of PA2008;
- however, there was only one CA and TP objection from a statutory undertaker (NGET) and that has been withdrawn; and
- on that basis, the SoS may make the DCO without needing to be satisfied of the matters raised by or issuing certificates for the purposes of either s127(2) or (5);
- there is no National Trust Land that engages s130 of PA2008; and
- there is no common, open space or related land that engages ss131 or 132 of PA2008.

There are no other considerations relating to special category land under PA2008 Part 7 Chapter 1 that need to be taken into account.

7.7.14. The case for CA powers requires to be based on the case for the development overall. Chapter 6 reaches the conclusion that development consent should be granted. As set out above, the CA powers sought by the Applicant are justified and should be granted because there is a compelling case in the public interest for land and interests to be compulsorily acquired and therefore the proposal would comply with PA2008 s122(3).

7.7.15. Turning finally to PA2008 s123, for reasons set out at the outset of this Chapter, the condition in subsection (2) is met and therefore the CA powers sought can be granted.

- 7.7.16. For the same reasons and based on the same evidence, it is also clear that the TP powers sought are necessary and should be granted.
- 7.7.17. It is not appropriate to apply TP powers prospectively emerging from the NPA2017 in this case, as by the closure of the Examination those powers had not yet commenced: to apply them in such circumstances would amount to a form of retroaction. APs were consulted and the project design and timescale developed on the basis of legislated TP procedure as it stood prior to the passage of NPA2017 and at the time of the closure of this Examination, this was still in force.
- 7.7.18. The Applicant's proposes to exclude the operation of the TP provisions of NPA2017 in the dDCO. This is an appropriate response to circumstances where the dDCO has been prepared and consulted upon before a commencement order for the TP provisions of NPA2017 has been made.

8. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. The application draft Development Consent Order (dDCO) (Revision 0) [\[APP-010\]](#) and an Explanatory Memorandum (EM) [\[APP-011\]](#) were submitted by the Applicant as part of the application for development consent. The EM describes the purpose of the dDCO as originally submitted, with each of its articles and schedules.

8.1.2. The application dDCO was broadly based on the Model Provisions (MPs) (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009), but departed from those clauses to draw upon drafting used in made Orders for highways development under PA2008. These are matters in respect of which the ExA undertook detailed investigations to address the absence of full reasoning in the EM, reported on below.

8.1.3. This Chapter provides an overview of the changes made to the dDCO during the Examination process, between the application dDCO and a preferred dDCO submitted by the Applicant at D5 [\[REP5-006\]](#) (Revision 5) together with a revised EM [\[REP5-008\]](#). It then considers changes made to the preferred dDCO in order to arrive at the Recommended DCO (rDCO) in Appendix D to this Report.

8.1.4. The following sections of this Chapter:

- report on the processes used to examine the dDCO and its progress through the Examination;
- address the Applicant's approach to drafting the EM and its approach to and submissions on the matter of precedent;
- report on the title of the DCO;
- report on the structure of the dDCO;
- briefly summarise changes made to the dDCO during the Examination up to Deadline (D)5 that were not the subject of contention (where, following consultation and dialogue as necessary, the Applicant and relevant Interested Parties (IPs) supported the changes);
- report in more detail on those changes that were the subject of detailed and unresolved submissions, in the large part at hearings;
- set out final changes proposed subsequent to D5, consequent on the ExA's consideration of the evidence and to address matters of drafting convention;
- address the relationship between the DCO and other consents and legal agreements; and
- address the provision of a defence against nuisance in the DCO.

8.2. THE EXAMINATION OF THE DCO

8.2.1. The ExA's review of the application versions of the draft DCO (Revision 0) [\[APP-010\]](#) and the EM [\[APP-011\]](#) commenced before the Preliminary Meeting (PM). There were a considerable number of technical and drafting matters that did not particularly bear on the interests of IPs, but

which it was desirable to address early in the Examination, before the relationship between IP issues, planning merits and the dDCO was examined in any detail.

- 8.2.2. Matters arising from the application versions of the dDCO and EM were documented during the pre-examination period, as part of preparation for the PM. As a consequence of this work, the first hearing in the expedited examination approach (described in Chapter 1 above) related to the dDCO. The Rule 6 Letter of 17 October 2017 [\[PD-005\]](#) was accompanied by notice of Issue Specific Hearing (ISH)1 on the DCO (Annex D), an Agenda (Annex E) and a Schedule of Matters and Questions for examination (Table 1 to Annex E). This provided adequate notice to the Applicant and IPs before the start of the Examination that it was intended to hold an early ISH into the DCO and provided them with detailed notice of the matters that would be raised.
- 8.2.3. Similarly, the Applicant commenced its review of the dDCO during the pre-examination stage. In response to matters raised in advice under section (s)51 of the Planning Act 2008 (PA2008) on 10 August 2017 [\[PD-003\]](#) and to its own ongoing refinement of documentation for the Proposed Development, dDCO Revision 1 [\[AS-007\]](#) (clean copy) and [\[AS-008\]](#) (tracked changes) were provided to the ExA and published before the Examination commenced
- 8.2.4. As a consequence of the initial Procedural Decisions, ISH1 was held into the dDCO on 15 November 2018 [\[EV-004\]](#)[\[EV-005\]](#) (audio recordings), on the day immediately following the PM. This hearing was based on dDCO (Revision 1) [\[AS-007\]](#).
- 8.2.5. Matters for examination arising from the DCO and progress on them were tracked throughout the Examination, using further ISHs on the DCO, held as follows:
- ISH3 [\[EV-009\]](#) Annex D and [\[EV-015\]](#) (audio recording) was held on 19 January 2018; and
 - ISH5: [\[EV-019\]](#) Annex B, [\[EV-018\]](#) Schedule of Issues and Questions for examination and [\[EV-021\]](#) [\[EV-022\]](#) (audio recordings) was held on 1 March 2018.
- 8.2.6. The Applicant updated the dDCO several times during the Examination, responding to issues raised in questions, to written representations (WRs) and as a consequence of the hearing processes. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The 'work-in-progress' versions of the dDCO submitted by the Applicant during the Examination were as follows:
- Revision 2 [\[REP1-008\]](#) (clean copy) and [\[REP1-009\]](#) (tracked changes) was submitted in response to matters raised in the DCO ISH1;
 - Revision 3 [\[REP2-010\]](#) (clean copy) and [\[REP2-011\]](#) (tracked changes) was submitted in response to matters raised in WRs and in written questions (EXQ1); and

- Revision 4 [\[REP3-008\]](#) (clean copy), [\[REP3-009\]](#) (tracked changes) and [\[REP3-010\]](#) (explanation of changes) was submitted in response to matters raised at ISH3 into the dDCO and preparatory for the final ISH5 into the dDCO.

- 8.2.7. Time was reserved in the Examination Timetable to publish a commentary on the dDCO for consultation on 15 February 2018. However, as a consequence of issues raised in oral submissions about cumulative impact assessment and Water Framework Directive (WFD) compliance in ISH2 and the possible relationship between these and the dDCO in ISH3, the Applicant requested and the ExA agreed to defer receipt of potentially relevant submissions on these topics from D3 to D4⁴⁶. As a consequence of this decision, the ExA's commentary on the dDCO was consolidated into the published Agenda for the final ISH5 into the dDCO.
- 8.2.8. By this stage in the examination it had also become clear that whilst the Applicant remained engaged and South Tyneside Council (STC) retained an interest in participating, no other IP's were showing interest in engaging with the content of the dDCO. On this basis it did not appear efficient or appropriate to publish a written consultation and to conduct a separate ISH into the dDCO as well. As there were still matters of detail to be discussed with the Applicant, the retention of the hearing was the most appropriate course of action. It followed no separate published commentary on the draft DCO was prepared because none was required in this context.
- 8.2.9. The ISH5 Agenda [\[EV-019\]](#) (Annex B) was published on 21 February 2018. It was accompanied by a detailed written Schedule of Issues and Questions for examination [\[EV-018\]](#) based on dDCO (Revision 4) [\[REP3-008\]](#). Whilst the main purpose of this schedule was to support efficient oral participation in ISH5, IPs who did not intend to attend the hearing were provided with a full opportunity to respond to it in writing by D5. In this way the Agenda performed the same function as a published commentary on the dDCO would have done and ensured that procedural fairness to all IPs was maintained.
- 8.2.10. That being said, it should be noted that the Applicant was the only party in attendance at ISH5. STC was the only IP that had indicated its desire to attend, but was unable to do so due to bad weather. For completeness, it should be noted that the STC D5 submission [\[REP5-001\]](#) confirmed that it had no outstanding concern with the content of dDCO (Revision 5). Further, with the exception of the Applicant and STC, no

⁴⁶ The submissions agreed to be deferred related to cumulative assessment with the DLJ project, joint use of facilities between the Proposed Development and DLJ and the effects of these on sensitive receptors [\[REP4-007\]](#), and the Applicant's response to EA on respect of WFD compliance in the River Don catchment [\[REP4-006\]](#). As these all had the potential to bear on the content of requirements, the ExA decided that it should not finalise a commentary on the dDCO until these documents had been received and reviewed.

IP's made written comments on the dDCO at D5. It follows that by this stage in the examination there were no outstanding comments on DCO drafting. All remaining unwithdrawn representations related to matters of principle and / or to planning merits and so are not addressed in this chapter.

- 8.2.11. On this basis, the discussion of the remaining issues of detail relevant to the dDCO is based on the Schedule of Issues and Questions for ISH5 [\[EV-018\]](#), together with the Applicant's [\[REP5-017\]](#) and STC's [\[REP5-001\]](#) responses to thereto, the Applicant's preferred dDCO (Revision 5) [\[REP5-006\]](#) (clean) [\[REP5-007\]](#) (tracked changes), and the document explaining changes made to the dDCO ('explanation of changes') [\[REP5-010\]](#). The Applicant also submitted a final revised EM [\[REP5-008\]](#) (clean) [\[REP5-009\]](#) (tracked changes). All of these documents were submitted at D5.
- 8.2.12. Unless specifically indicated otherwise, all references to provisions in the dDCO in this Chapter are based on the Applicant's preferred dDCO (Revision 5) [\[REP5-006\]](#).

8.3. THE APPROACH TO PRECEDENT

- 8.3.1. A key issue emerging in the Examination of the dDCO was the approach to be taken to precedent made Orders and the degree to which drafting in these justified the same or similar drafting in the dDCO. This matter is addressed as a planning consideration in section 4.7 above, but the reasoning there is equally applicable here and should be read directly as supporting conclusions that reached here on matters relating to precedent.
- 8.3.2. Where there are outstanding matters arising from the examination of the role of precedent made Orders, these are addressed in Section 8.6 below.

8.4. THE TITLE OF THE DCO

- 8.4.1. The DCO as applied for was proposed to be called the *A19 / A184 Testos Junction Improvement Development Consent Order* [\[APP-010\]](#).
- 8.4.2. Having observed local signage during the unaccompanied site inspection (USI)¹ on which the junction was referred to as the 'Testo's' junction, at the PM the ExA inquired of local residents as to the origin of the name and spelling. Mr Dennis Gilhespy suggested that the junction should be spelt with an apostrophe, as the name related to garage premises once owned by a Mr Testo, located on the site of the current Enterprise Car Hire Depot at West Pastures, adjacent to the A184 ([\[EV-001\]](#) at Item 2).
- 8.4.3. The Applicant undertook to investigate this issue and, as a consequence, subsequent references to the junction in its examination documentation, including in the title and all references in the dDCO were amended from 'Testos' to 'Testo's'. This change reflects the local history of the site, the local pronunciation and correct spelling of the junction name.

- 8.4.4. This change does not need to be the subject of a formal recommendation, as it was entirely uncontentious and is supported by the Applicant. Nevertheless, it will assist the SoS for this report to record why references to the Proposed Development, the name of the DCO and references to the project in the dDCO up to the end of the Examination were changed to the *A19 / A184 Testo's Junction Improvement Development Consent Order*.
- 8.4.5. A further change to the title of the DCO has been considered. In both ISH1 and ISH5, the statutory basis of the DCO within PA2008 was raised with the Applicant. The purpose of this discussion was to be clear whether the NSIP consisted of an 'improvement' or an 'alteration' for the purposes of s22 of PA2008, as the two terms are provided for differently in the statute and have different meanings.
- 8.4.6. In response to the 'Schedule of Examining Authority issues and questions relating to the draft Development Consent Order' (Table 1 to Annex E) within the Rule 6 letter [\[PD-005\]](#), the Applicant submitted their responses to the ExA questions on the dDCO at D1 [\[REP1-016\]](#). In response to question ISH1:5 (at Table 1 to Annex E, Question 5) [\[PD-005\]](#), the Applicant made clear its underlying view that that the NSIP is a highway alteration under s22(1)(b) of PA2008. This view was not objected to by any other IP. In the ExA's view, this provides the correct statutory basis for the Nationally Significant Infrastructure Project (NSIP) applied for. This view has formed the basis on which the application has been examined.
- 8.4.7. Following on from this, when the Schedule of Issues and Questions for ISH5 [\[EV-018\]](#) was issued, it contained question ISH5:3 which observed that whilst the dDCO was still titled '*The A19 / A184 Testo's Junction Improvement Development Consent Order*', there was a case for the avoidance of doubt on the s22 PA2008 point that the dDCO should instead be titled '*The A19 / A184 Testo's Junction Alteration Development Consent Order*⁴⁷'. It was put to the Applicant that for the avoidance of interpretational doubt and uncertainty, the title of the DCO should align with the statutory basis of the project that it authorised.
- 8.4.8. The Applicant did not agree. It took the view that the term 'improvement' in the title of the DCO was simply part of the title of the Order and would take its plain English meaning. In the Applicant's submission, the use of the term in the Order title would not have a great deal of bearing on the possible future interpretation of the Order. It also took the view that as the A14 Cambridge to Huntingdon and A19 / A1058 Coast Road made Orders have been approved with titles that include the term 'improvement' even though arguably they too relate in part or even wholly to an 'alteration' in PA2008 terms, there was precedent for the approach taken [\[REP5-017\]](#).

⁴⁷ ExA emphases.

- 8.4.9. The Applicant's submissions on this point have been taken carefully into consideration. On balance, and notwithstanding that previous made Orders providing for 'alterations' have contained the term 'improvement' in their titles, it remains desirable that there should be no obvious and avoidable statutory inconsistencies between the title and content of a DCO.
- 8.4.10. For this reason, the ExA **recommends** that the dDCO should be changed to delete the term 'improvement' from its title and substitute the term 'alteration'. It follows that the DCO recommended in Appendix D is entitled *The A19 / A184 Testo's Junction Alteration Development Consent Order*. This term has been adopted into the title of this Report.
- 8.4.11. There are a number of consequential amendments to the drafting of the dDCO which flow from this recommendation and these are addressed in section 8.7 below. They are recorded as contentious changes there because, whilst they are of a minor, consequential and technical nature only and do not address any point of contention between the Applicant and IPs, they nevertheless did not enjoy the Applicant's support. They should only be accepted if this recommendation is accepted.

8.5. THE STRUCTURE OF THE DCO

- 8.5.1. This section records the structure of the dDCO. The structure of the dDCO is taken from the Applicants preferred revised dDCO (Revision 5) [\[REP5-006\]](#) submitted at D5 and is as follows.

Articles

Part 1: Preliminary

- 1) Citation and commencement
- 2) Interpretation

Part 2: Principal Powers

- 3) Development consent etc. granted by the Order
- 4) Maintenance of authorised development
- 5) Maintenance of drainage works
- 6) Limits of deviation
- 7) Benefit of Order
- 8) Consent to transfer benefit of Order

Part 3: Streets

- 9) Application of the New Roads and Street Works Act 1991
- 10) Construction and maintenance of new, altered or diverted streets
- 11) Classification of roads etc.
- 12) Temporary stopping up and restriction of use of streets
- 13) Permanent stopping up and restriction of use of streets and private means of access
- 14) Access to works
- 15) Clearways
- 16) Traffic regulation

Part 4: Supplemental Powers

- 17) Discharge of water
- 18) Protective work to buildings
- 19) Authority to survey and investigate the land

Part 5: Powers of Acquisition and Possession

- 20) Compulsory acquisition of land
- 21) Compulsory acquisition of land – incorporation of the mineral code
- 22) Time limit for exercise of authority to acquire land compulsorily
- 23) Compulsory acquisition of rights and restrictive covenants
- 24) Private rights over land
- 25) Application of Compulsory Purchase Act 1965
- 26) Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- 27) Acquisition of subsoil or airspace only
- 28) Rights under or over streets
- 29) Temporary use of land for carrying out the authorised development
- 30) Temporary use of land for maintaining the authorised development
- 31) Statutory undertakers
- 32) Apparatus and rights of statutory undertakers in stopped up streets
- 33) Recovery of costs of new connections

Part 6: Operations

- 34) Felling or lopping of trees and removal of hedgerows

Part 7: Miscellaneous and General

- 35) Application of landlord and tenant law
- 36) Trees subject to tree preservation orders
- 37) Operational land for purposes of the Town and Country Planning Act 1990
- 38) Defence to proceedings in respect of statutory nuisance
- 39) Protection of interests
- 40) Certification of documents, etc.
- 41) Service of notices
- 42) Arbitration

Schedules

Schedule 1 — Authorised Development

Schedule 2 — Requirements

- Part 1 — Requirements
- Part 2 — Procedure for Discharge of Requirements

Schedule 3 — Classification of Roads, Etc.

- Part 1 — Trunk Roads
- Part 2 — Classified Roads
- Part 3 — Other Public Rights of Way

Schedule 4 — Permanent Stopping Up of Streets and Private Means of Access

- Part 1 — Public Rights of Way to be Stopped Up and for Which a Substitute is to be Provided
- Part 2 — Private Means of Access to be Stopped Up and for Which a Substitute is to be Provided
- Part 3 — Private Means of Access to be Stopped Up and for Which No Substitute is to be Provided

Schedule 5 — Land in Which Only New Rights Etc. May Be Acquired

Schedule 6 — Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights and Imposition Of Restrictive Covenants

Schedule 7 — Land of Which Temporary Possession may be Taken

Schedule 8 — Trees Subject to Tree Preservation Orders

Schedule 9 — Protective Provisions

- Part 1 — For the Protection of Electricity, Gas, Water and Sewage Undertakers
- Part 2 — For the Protection of Operators of Electronic Communications Code Networks

Schedule 10 — Documents to be Certified

8.5.2. The structure of the DCO is fit for purpose and no changes to the structure as outlined above are recommended.

8.6. UNCONTENTIOUS CHANGES DURING EXAMINATION

8.6.1. The examination of the DCO proceeded throughout the Examination period in a collaborative manner. ISH1, ISH3 and ISH5 were conducted as round table sessions between the Applicant and ExA, prior to and following which the Applicant advanced draft revisions to respond to representations, ExA questions and discussions. The Local Planning Authority (STC) participated directly in ISH1 and ISH3. It was unable to attend ISH5 for reasons set out in paragraph 8.2.10 of this report, but it raised no subsequent concerns.

8.6.2. The change process between the application dDCO up to the dDCO (Revision 5) was fully documented by the Applicant in a process that is recorded in section 8.2 of this Chapter above. A substantial number of revisions were proposed by the Applicant, but these were all to address comprehension, clarity or interpretation and to address good practice in drafting. They were not objected to by any other IP. They are not itemised here. In that respect, the dDCO (Revision 5) is the Applicant's preferred draft.

8.6.3. The ExA agrees that the aggregate of changes made up to dDCO (Revision 5) appropriately addressed all of the issues that arose in the Examination. As part of that change process, the proposed changes were reviewed against applicable National Networks National Policy Statement

(NNNPS) policy and against other important and relevant issues as identified in Chapters 3 and 4 and all are met. Mitigation that requires security in the DCO has (with the minor exceptions recorded and further discussed below) is secured by the changes.

8.6.4. By D5, there were a number of outstanding matters that the Applicant had not absorbed into its then preferred dDCO (Revision 5). These are all matters of which the Applicant was fully aware, but in respect of which it did not agree the approach suggested by the ExA in the Schedule of Issues and Questions for ISH5 and where, following round table discussion, a consensual position was not reached during Examination. These matters are addressed further in section 8.7 below. Where the ExA concludes that the Applicant’s final submissions are the preferred approach that is made clear. Where the ExA concludes that a change should be made to the Applicant’s preferred dDCO (Revision 5), the changed is recommended with supporting reasoning.

8.7. MATTERS SUBJECT TO CONTENTION

8.7.1. This section of the report addresses all outstanding matters in respect of which there was discussion between the Applicant and the ExA at ISH5 about potential changes to the preferred dDCO (Revision 5), in a tabulated format.

- **Table 1** sets out the provisions in respect of which the ExA has accepted the Applicant’s detailed submissions at ISH5 and has decided that no changes are required, for reasons.
- **Table 2** sets out the provisions in respect of which the ExA has recommended changes to the preferred dDCO (Revision 5) in the rDCO (Appendix 4), for reasons.

**Table 1
ISH5: DCO Provisions Not Recommended to be Changed**

Provision	Examination Issue	ExA Reasoning
<p>Art 6: Limits of deviation</p> <p>The inclusion of drafting which enables the SoS to approve a deviation in excess of the assessed limits.</p>	<p>The ExA expressed concern that this article as drafted did not fully address advice in paragraphs 19 to 20 of the Planning Inspectorate’s Advice Note (AN)15, in that it appeared to permit non-material changes outside the scope of the established procedure for the consideration of such changes.</p> <p>In response, the Applicant submitted that AN15 seeks to secure that non-material changes may not be</p>	<p>The Applicant’s submission is supported.</p> <p>The ExA accepts that where approvals under a DCO are in the hands of the relevant SoS and not a third entity such as the relevant planning authority, it is appropriate to provide a power for what would amount to non-material change.</p> <p>No change to this provision is recommended.</p>

Provision	Examination Issue	ExA Reasoning
	<p>authorised by persons discharging requirements or other provisions who are not the relevant SoS (and who could prospectively be circumventing the decision made by the relevant SoS). In circumstances where the relevant determination would be made by the deciding SoS, it was appropriate for a DCO to contain such a provision.</p>	
<p>Art 42: Arbitration</p> <p>Provision for arbitration by a person appointed by the President of the Institution of Civil Engineers</p>	<p>It has become general DCO drafting practice that arbitration provisions provide for arbitration by a person appointed by the relevant SoS. This is because arbitration in such circumstances is a public law and public interest function. It has not always been clear that relevant professional institutions are both willing and possessed of appointees with appropriate competences to discharge this type of obligation.</p> <p>The Applicant highlighted that the provision proposed here was well precedented in Highways and TWAO Orders, that the President of the Institution of Civil Engineers remained an appropriate appointee, and in circumstances where most Requirements are discharged by the SoS (an approach which is not widely used in DCOs more generally), it is important that the SoS should not also be the appointee of any arbitrator.</p>	<p>The Applicant's submission is supported.</p> <p>The ExA accepts that a clear justification has been made for the retention of arbitration appointment by the President of the Institution of Civil Engineers as that body is appropriately competent and a separate arbitration process is justified where the SoS discharges most Requirements. No change to this provision is recommended.</p>

Provision	Examination Issue	ExA Reasoning
	This submission was not opposed.	
<p>Sch 2: Part 1 – Requirements R1: Interpretation</p> <p>The definition of the Handover Environmental Management Plan (HEMP)</p>	<p>The function and content of the HEMP is only defined and specified in the DCO in very outline terms and the SoS is not required to agree the final HEMP.</p> <p>The Applicant highlighted that, post construction, the upgraded section of the A19 is proposed to be managed and maintained entirely consistently with the surrounding strategic highway network for which there is no equivalent to the HEMP. There was no special justification for an individual statutory HEMP for this short section of highway alone and the imposition of one would generate additional compliance routines and costs not found on the adjacent highway network and not justified.</p> <p>This submission was not opposed.</p>	<p>The Applicant's submission is supported.</p> <p>The ExA does not recommend any change to the definition of the HEMP to increase the level of specification for its content. It is sufficient for operational management and maintenance to be delivered using the same control regime as applies to the surrounding strategic highway network.</p>
<p>R4: Construction and handover environmental management plans</p> <p>The approval process for the HEMP</p>	See R1	<p>The Applicant's submission is supported.</p> <p>The ExA does not recommend any change to require a draft HEMP to be submitted to the SoS for approval.</p>
<p>Sch 2: Part 2 Procedures for Discharge of Requirements R13: Applications made under requirements</p>	<p>The ExA examined guillotine provisions for applications to the SoS made under the requirements.</p> <p>The Applicant demonstrated that equivalently drafted 'guillotine' procedures had been included in the made A14 Cambridge to</p>	<p>The Applicant's submission is supported.</p> <p>The ExA does not recommend any change to the proposed 'guillotine' provisions for the discharge of Requirements by the SoS in R13.</p>

Provision	Examination Issue	ExA Reasoning
	<p>Huntingdon Improvement Scheme Order 2016 and subsequently in the made M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 had in all cases worked well.</p> <p>Correspondence from DfT to the Applicant dated 9 June 2016 [REP5-017] (Appendix 1) was provided, evidencing agreement to a normal service level in which requirement determinations would be dealt with by DfT officers within five working days.</p>	

Table 2
ISH5: DCO Provisions Recommended to be Changed

Provision	Examination Issue	Recommendation
<p>Art 1: Citation and commencement</p> <p>Delete the term '<i>Improvement</i>' from the citation title and replace it with '<i>Alteration</i>'</p>	<p>The DCO [REP5-005] provides for what is defined in PA2008 s22 as an 'alteration' of the highway. It is proposed that its title which as submitted referred to 'improvement', and all related references should be changed accordingly.</p> <p>The Applicant does not support this course of action.</p>	<p>The ExA recommends this change to ensure clarity of interpretation and consistency between the works authorised in the DCO and the relevant NSIP definition in PA2008.</p>
<p>Art 2: Interpretation</p> <p>Definition of the ES</p> <p>The definition of the environmental statement should be changed as follows:</p> <p><i>"environmental statement" means the documents of that description submitted with the application for this Order and certified</i></p>	<p>The definition of the ES in DCO [REP5-006] defines the ES as 'the document of that description submitted with the application for this Order'. However, there have been changes to elements of the ES since the application was made: the addendum to the ES: AES1 [AS-013] and AES2 [AS-014]; and a revised Environmental</p>	<p>The ExA recommends this change to ensure that the definition of the ES in Art 2 does not exclude reference to and certification of documents recording the changes to it during the Examination.</p>

Provision	Examination Issue	Recommendation
<p><i>as the environmental statement by the Secretary of State for the purposes of this Order...'</i></p>	<p>Masterplan [REP5-005], the definition requires amendment to enable these to be taken into account.</p> <p>This is a necessary technical change, flowing from post-submissions changes to the ES. It was not opposed by the Applicant or any other IP, but neither did the Applicant itself propose the change.</p>	
<p>Art 6: Limits of deviation</p> <p>The drafting should be amended as follows:</p> <p><i>'would not give rise to any materially new or materially worse <u>adverse-different</u> environmental effects...'</i></p>	<p>A formulation with the same underlying intention as "<i>materially new or materially worse adverse environmental effects</i>" is one that is used in a number of other provisions in the dDCO, but the drafting is not consistent.</p> <p>The Applicant's preferred draft DCO did not take the opportunity to move to consistent drafting.</p>	<p>All such references in the same DCO should be drafted in a common, clear and simple manner. The form of drafting employed in Sch1 at lettered work (o): "<i>which do not give rise to any materially new or materially different environmental effects</i>" has been taken as the basis for the recommended changes as the being the clearest and simplest drafting, from which to revise all other similar provisions.</p> <p>The ExA recommends this change to ensure that all references to such effects are consistent.</p>
<p>Art 25: Application of Part 1 of the Compulsory Purchase Act 1965</p> <p>Delete the term '<i>Improvement</i>' and replace it with '<i>Alteration</i>'</p>	<p>As Art 1. This provision includes references in Art 25 (1)(a)(ii) and (2) amending s4A(1) and s22(2) of the Compulsory Purchase Act 1965 and in Art 25(3) amending Schedule 2A, Part 4 – '<i>Interpretation</i>' of the Compulsory Purchase Act 1965 at paragraph 30 where references to '<i>Improvement</i>' also need to be replaced with references to '<i>Alteration</i>'.</p> <p>The Applicant does not support this amendment.</p>	<p>As Art 1.</p>

Provision	Examination Issue	Recommendation
<p>Art 26: Application of the Compulsory Purchase (Vesting Declarations) Act 1981</p> <p>Delete the term '<i>Improvement</i>' and replace it with '<i>Alteration</i>'</p>	<p>As Art 1. This provision includes references in Art 26 (6)(b) amending s5B(1) of the Compulsory Purchase (Vesting Declarations) Act 1981 to delete the term '<i>Improvement</i>' from the referenced Order title and replace it with the term '<i>Alteration</i>'.</p> <p>The Applicant does not support this amendment.</p>	<p>As Art 1.</p>
<p>Sch 1: Authorised Development</p> <p>The drafting of lettered work (m) should be amended as follows:</p> <p><i>'establishment of site construction compounds (other than the main site compound Work No.31), storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences; [.]'</i></p>	<p>Further to discussions between the Applicant and the ExA, it was agreed that the nature of prospective emissions from the main site compound were such that it should become a numbered work, ensuring that its location was secured on the Works Plan. This change was necessary to ensure that locationally specific mitigation proposed and assessed in the ES remained relevant to the use of the main site compound and the effects experienced by nearby sensitive receptors. This change is also beneficial in TP terms. It evidences and secures a case for land to be subject to TP for purposes related to the main site compound where that land is not permanently required for the operational highway</p> <p>Having agreed this change in the DCO [REP5-006], the Applicant did not change the drafting of lettered work (m), which has the effect of providing a generic power for the undertaker to establish and use site construction compounds anywhere in</p>	<p>The ExA recommends this change to ensure that the generic power for the undertaker to establish and use site construction compounds anywhere in the Order land is not used to relocate the main site compound from the location where land was sought for it and the location from which relevant emissions have been assessed in the ES.</p>

Provision	Examination Issue	Recommendation
	the Order land. This power could have the effect of circumventing the inclusion of the main site compound as a numbered work.	
<p>Sch 2: Part 1 Requirements R3: Detailed design</p> <p>The drafting should be amended as follows:</p> <p><i>'would not give rise to any materially new or materially worse adverse different environmental effects...'</i></p>	<p>As Art 6.</p> <p>The Applicant's preferred draft DCO did not take the opportunity to move to consistent drafting.</p>	<p>As Art 6.</p>
<p>R5: Landscaping</p> <p>R5(2) should be amended as follows:</p> <p><i>'The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement (application document TR010020/APP/6.3) (application document TR010020 2.7(1) Revision 1).'</i></p>	<p>The requirement refers to the environmental masterplan. This was revised by the Applicant during the examination to provide better spatial security for elements of the drainage system – particularly the location of outfalls. As such the requirement must now refer to the revised masterplan submitted to the Examination, which is now a separate document to the ES.</p>	<p>The ExA recommends this change to ensure that reference is made to the latest version of the environmental masterplan.</p>
<p>R8: Surface and foul water drainage</p> <p>The drafting should be changed as follows:</p> <p><i>'would not give rise to any materially new or materially worse adverse different environmental effects...'</i></p>	<p>As Art 6.</p> <p>The Applicant's preferred draft DCO did not take the opportunity to move to consistent drafting.</p>	<p>As Art 6.</p>
<p>Sch 2: Part 2 Procedures for Discharge of Requirements R13: Applications made under</p>	<p>As Art 6.</p> <p>The Applicant's preferred draft DCO did not take the opportunity to move to consistent drafting.</p>	<p>As Art 6.</p>

Provision	Examination Issue	Recommendation
<p>requirements</p> <p>R13 should be amended as follows:</p> <p><i>'would not give rise to any materially new or materially worse different environmental effects...'</i></p>		
<p>Sch 6 Paragraph 3</p> <p>Delete the term <i>'Improvement'</i> and replace it with <i>'Alteration'</i></p>	<p>As Art 1. This provision includes references in Paragraph 3(2) amending s5A(5A)(b) of the 1961 Act to delete the term <i>'Improvement'</i> from the referenced Order title and replace it with the term <i>'Alteration'</i></p> <p>The Applicant does not support this amendment.</p>	<p>As Art 1.</p>
<p>Sch 10</p>		
<p>The Book of Reference</p> <p>Amend the table in Sch10 to refer to Revision 2 of the BoR as a document to be certified.</p>	<p>Further to ongoing diligence throughout the examination, at D5 the Applicant submitted BoR (Revision 2) [REP5-013] and this is now the latest BoR. For this reason, column 2 of the table should contain the updated document reference <i>'TR010020/APP/4.3(2)'</i> and column 3 of the table should be amended to delete <i>'1'</i> and add <i>'2'</i>.</p>	<p>The ExA recommends this change to ensure that the latest version of the BoR becomes a certified document.</p>
<p>The Environmental Statement: Core ES Documents</p> <p>Amend the table in Sch10 to add four additional entries, ensuring that each Core volume of the ES becomes a document to be certified.</p>	<p>The table in Sch10 in the Applicant's preferred draft DCO refers to the ES and its supporting volumes (ten volumes in total) as a single document with a single version control and document reference number. This is a very large amount of material to form a single certified document. If certified in this form, normal disciplines of document referencing and version control will not be</p>	<p>The ExA recommends that the ES Core Documents should be submitted to the SoS for certification in four volumes, each set out in the table to Sch10 in four lines as follows:</p> <ol style="list-style-type: none"> 1. Environmental Statement – Volume 1, TR010020/APP/6.1, Revision 0 [APP-018]; 2. Environmental Statement – Volume 2: The Figures,

Provision	Examination Issue	Recommendation
	<p>maintained. It will be equally difficult for those responsible for the receipt and certification process to verify that they have received the correct documents or for subsequent readers to be sure that they are reading the certified documents. There would be undue scope for uncertainty and error as a consequence.</p> <p>As a printed document, the ES itself consists of four Core volumes (6.1 to 6.4). As electronically submitted to the Planning Inspectorate, volumes 6.2 and 6.3 had been further subdivided into twenty individual electronic files or sub-documents. Whilst this process facilitated access to their content using online systems, as a consequence, all but two of the resultant sub-documents are not individually referenced or subject to version control because they are essentially an excerpt from a parent document, rather than a document in their own right. It is not necessary to individually reference each of these twenty sub-documents, as to do so would result in over-complex and burdensome additions to the table in Schedule 10.</p> <p>For these reasons, the best way forward appears</p>	<p>TR010020/APP/6.2, Revision 2 (consisting of [APP-019] together with sub-documents [APP-020], [APP-021], [APP-022], [APP-023], [APP-024], [APP-025], [APP-026], [APP-027], [APP-028], and [APP-029] submitted as a single document);</p> <p>3. Environmental Statement – Volume 3: The Appendices, TR010020/APP/6.3, Revision 2 consisting of [APP-030] together with sub-documents [APP-031], [APP-032], [APP-033], [APP-034], [APP-035], [APP-036], [APP-037] and [APP-038] submitted as a single document); and</p> <p>4. Environmental Statement – Volume 4: Non-Technical Summary, TR010020/APP/6.4⁴⁸ [APP-039].</p>

⁴⁸ ES Volume 4 as submitted to the Planning Inspectorate does not have a revision number.

Provision	Examination Issue	Recommendation
	to be to certify the ES Core Documents based on the submitted printed volumes, which are individually referenced and version controlled.	
<p>The Environmental Statement: Supporting ES Documents</p> <p>Amend the table in Sch10 to add six additional entries, ensuring that each supporting volume of the ES becomes a document to be certified.</p>	<p>In addition to the 4 ES Core volumes, the ES is supported by six further volumes, each of which is individually titled, referenced and subject to version control (Volumes 6.5 to 6.10). For reasons set out above in relation to the ES Core volumes, it is not appropriate that these supporting volumes should be submitted for certification as a single document, either with or separately from the ES.</p>	<p>The ExA recommends that the ES Supporting Documents should be submitted to the SoS for certification in six volumes, each set out in the table to Sch10 in six lines as follows:</p> <ol style="list-style-type: none"> 1. Statement relating to Statutory Nuisances, TR010020/APP/6.5, Revision 0 [APP-040]; 2. Flood Risk Assessment, TR010020/APP/6.6, Revision 0 [APP-041]; 3. Assessment of Nature Conservation Effects, TR010020/APP/6.7, Revision 0 [APP-042]; 4. Assessment of Historic Environmental Effects, TR010020/APP/6.8, Revision 0 [APP-043]; 5. Scoping Opinion, TR010020/APP/6.9⁴⁹ [APP-044]; and 6. Habitat Regulation Assessment, TR010020/APP/6.10, Revision 0 [APP-045].
<p>The Environmental Statement: Addendum to the Environmental Statement (AES)</p>	<p>As submitted to the Planning Inspectorate, the Addendum to the Environmental Statement (AES) consists of two volumes.⁵⁰</p>	<p>The ExA recommends that the AES should be submitted to the SoS for certification in two volumes, each set out in the table to Sch10 in two</p>

⁴⁹ The Scoping Opinion as submitted to the Planning Inspectorate does not have a revision number.

⁵⁰ The volume structure of the AES mirrors that of the ES. It does not have a volume 2 because no changes were made to that Volume of the ES.

Provision	Examination Issue	Recommendation
Amend the table in Sch10 to add two additional entries, ensuring that each volume of the AES becomes a document to be certified.		lines as follows: 1. 6.11 Addendum 1 to the ES - Vol. 1 [AS-013] ; and 2. 6.11 Addendum 1 to the ES - Vol. 3 [AS-014] .
<p>The Works Plans</p> <p>Amend the entry for the Works Plans in the table in Schedule 10 to refer to the revised Works Plans.</p>	Further to the reasoning underlying the recommendation above in relation to Schedule 1 and the lettered work (m), the Works Plans were amended at D5 [REP5-004] to include reference to and show the location of the main construction compound as Work No.31.	The ExA recommends that the Revised Works Plans should be submitted to the SoS for certification, requiring an amendment to the existing Works Plans table entry as follows: <ul style="list-style-type: none"> ▪ column 2 of the table should be amended to include the revised document reference 'TRO10020/APP/2.4(2)' and ▪ column 3 of the table should be amended to delete '1' and add '2'
<p>The Streets, Rights of Way and Access Plans</p> <p>Amendments to the Streets, Rights of Way and Access Plans should be prepared and submitted to the SoS for certification and the entry for these plans in the table in Schedule 10 should be amended to refer to the revised plans.</p>	To secure the Applicant's proposals for signalised PRow crossings, as explained in section 4.18 above (Socio-Economic Effects: PRows and NMUs), before submission of these plans for certification, the Applicant should amend them to add a note ' <i>signalised PRow crossing</i> ' (or a symbol with that note in the key) tagged to the following points on Sheet 2: <ul style="list-style-type: none"> ▪ 2/26 PRow crossing A19 northbound slip (on-ramp); ▪ 2/28 PRow crossing A19 southbound slip (off-ramp); ▪ 2/8 PRow crossing A19 southbound slip (on-ramp) and DLJ connector; ▪ 2/35 PRow crossing A19 northbound slip (off-ramp) and DLJ connector; ▪ 2/16 PRow crossing A184 westbound exit; 	The ExA recommends that a new Revision 1 of the plans should be requested from the Applicant and submitted to the SoS before approval to give effect to this change. Assuming the Revision 1 Plans to be to the satisfaction of the SoS, Sch10 will then need to be amended to ensure that the Revision 1 Plans become the certified document. For this reason, column 3 of the table should be amended to delete '0' and add '1'

Provision	Examination Issue	Recommendation
	and <ul style="list-style-type: none"> 2/22 PRow crossing A184 eastbound entrance. 	
<p>Environmental Masterplan</p> <p>Amend the table in Sch10 to refer to the latest version of the Environmental Masterplan</p>	<p>A new Environmental Masterplan was submitted by the Applicant at D5 [REP5-005]. As this is a separate document in its own right, it needs to be included as a document to be certified.</p>	<p>For reasons set out in sections 4.16 (Landscape and Visual Impact) and 4.19 (Water Environment) and in the recommendation on R5 (Landscape) above, a new line should be added to the table in Sch 10 as follows:</p> <ul style="list-style-type: none"> column 1 should read 'Environmental Masterplan – Regulation 5(2)(a)', column 2 should read '<i>TR010020 2.7(1)</i>' and column 3 should read '<i>1</i>'
<p>DCO Explanatory Note and Rear Cover Sheet</p> <p>Delete the term '<i>Improvement</i>' and replace it with '<i>Alteration</i>'</p>	<p>As Art 1. This drafting includes reference to the term '<i>Improvement</i>' that need to be replaced with the term '<i>Alteration</i>'.</p>	<p>As Art 1</p>

8.7.2. The rDCO in Appendix 4 contains textual changes to give effect to all recommended changes itemised in Table 2.

8.8. LEGAL AGREEMENTS AND OTHER CONSENTS

8.8.1. There are no planning obligations pursuant to TCPA1990 or equivalent undertakings or agreements of which the SoS needs to be aware or to take into account in the decision.

8.8.2. NGET confirmed at D4 [\[REP4-001\]](#) that it had concluded a commercial agreement with the Applicant addressing the protection of its interests as transmission system operator. On that basis, it confirmed that it no longer objected to the Proposed Development or sought changes to the dDCO. Specifically, it no longer sought protective provisions. The agreement is confidential between the Applicant and NGET. To the extent that it has not been put into the Examination it is not possible to report on its merits or effects or ascribe any weight to it. The SoS should however note that it has been made and that it has had the effect of resolving outstanding concerns between NGET and the Applicant.

8.8.3. Similarly, STC sought a commercial agreement with the Applicant to address the transfer and maintenance of assets affected by the project

but intended to form part of the local highway or PRow network. STC confirmed at D7 [\[REP7-001\]](#) that this agreement had been concluded. Again, to the extent that it has not been put into the Examination it is not possible to report on its merits or effects or ascribe any weight to it. The SoS should however note that it has been made and that it has had the effect of resolving outstanding concerns in relation to local highway and PRow assets between STC and the Applicant.

- 8.8.4. Section 1.8 of this Report records the other consents to which the Proposed Development is subject, in addition to the need for a DCO. These implications of these consents have been considered throughout the Examination. Without prejudice to the exercise of discretion by other decision-makers, there are no obvious impediments to the delivery of the Proposed Development arising from these consents. Nor are there any additional matters arising from or relating to these consents which indicate against the grant of the DCO or for which the DCO should additionally provide.

8.9. NUISANCE

- 8.9.1. Art 38 of the Applicant's preferred dDCO (Revision 5) [\[REP5-006\]](#) proposes to provide a defence to proceedings in respect of statutory nuisance.
- 8.9.2. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP) regulation 5(2)(f) requires that an application must be accompanied by... *'a statement whether the proposal engaged one or more of the matters set out in section 79(1) [...] of the Environmental Protection Act 1990 [EPA1990] and, if so, how the applicant proposes to mitigate or limit them.'* This obligation has been discharged in the Statement of Statutory Nuisance (SSN) submitted with the application [\[APP-040\]](#). The SSN remains as submitted with the Application and did not require to be updated in the Examination.
- 8.9.3. The SSN reviews the scope of statutory nuisance potentially arising from the Proposed Development. It identifies the potentially engaged areas of statutory nuisance as follows:
- dust arising on business premises (s79(1)(d) EPA1990);
 - artificial light from premises (s79(1)(fb) EPA1990);
 - noise emitted from premises (s79(1)(g) EPA1990); or
 - noise emitted from or caused by a vehicle, machinery or equipment in a street or (s79(1)(ga) EPA1990).

In relation to s79(1)(ga) EPA1990 it should be noted that this provision is not relevant to operational traffic noise. It does apply to noise arising from construction vehicles, machinery and equipment.

- 8.9.4. It should be noted that the content of proposed Art 38 and the SSN did not become matters of contention in any written or oral submissions during the Examination. The remainder of this Section relies on consideration of the Application documents before the ExA in the light of relevant NNNPS policy, found in paragraphs 4.57 to 4.59 (in respect of

statutory nuisance generally), to paragraphs 5.87 and 5.88 (in respect of dust and artificial light emissions) and 5.193 to 5.196 (in respect of noise).

- 8.9.5. Having reviewed the SSN, the ExA agrees that the Applicant has appropriately identified the scope of potential nuisance sources from the construction and operation of the Proposed Development. The Applicant has provided appropriate mitigation for foreseeable nuisance types and secured this in the DCO, via the requirements and references to the ES and Construction Environmental Management Plan (CEMP).
- 8.9.6. The SSN concludes that with the proposed and secured mitigation, the relevant statutory nuisances will not occur. Whilst the ExA does not fully accept that proposition (as experience of major project construction demonstrates that even in the best planned and governed projects some unforeseen exceedances can occasionally occur), it is clear that the risk of these nuisances occurring has been reduced to the extent reasonably feasible and will be negligible.
- 8.9.7. The defence to proceedings in respect of statutory nuisance in Art 38 is of a type that is commonly provided for nationally significant infrastructure projects (NSIPs). The EM [\[REP5-008\]](#) identifies that the drafting in this case is based on Art 38 in the made M4 Smart Motorway Order. This in an instance in which a similarly worded provision serving a similar purpose and from a similar made Order provides a sound basis on which to prepare this element of the dDCO.
- 8.9.8. Necessary steps to reduce the risk of nuisance events have been taken and the proposed provision in Art 38 is not a buffer against the consequences of poor practice. It is an appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs. Having had regard to NNNPS paragraphs 4.57 to 4.59, 5.87 and 5.88 and 5.193 to 5.196 in the light of the information in the SSN and the mitigation security provided in the DCO, the ExA recommends the proposed defence provision without changes.

8.10. CONCLUSIONS ON THE DCO

- 8.10.1. The ExA has considered all iterations of the dDCO as provided by the Applicant, from the application version Revision 0 to Revision 5 and considered the degree to which the final preferred dDCO (Revision 5) [\[REP5-006\]](#) has addressed outstanding matters. A number of matters in respect of which correcting changes are required to the final preferred dDCO (Revision 5) are the subject of recommendations in this Chapter. They are also included in the rDCO in Appendix D of this Report. The rDCO also includes a number of minor changes from the Applicant's preferred dDCO (Revision 5), to reflect current statutory instrument drafting conventions.
- 8.10.2. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this report fully into account, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix D.

9. SUMMARY OF FINDINGS AND CONCLUSIONS

9.1. INTRODUCTION

9.1.1. This Chapter summarises the ExA's conclusions arising from the Report as a whole and sets out the primary recommendation to the Secretary of State (SoS).

9.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

9.2.1. In relation to section (s)104 of Planning Act 2008 (PA2008) the ExA concludes in summary that:

- making the recommended draft Development Consent Order (dDCO) would be in accordance with the National Networks National Policy Statement (NNNPS), any relevant development plans and other relevant policy, all of which have been taken into account in this report;
- matters arising from the Local Impact Report from South Tyneside Council have been taken into account;
- whilst the SoS is the competent authority under the Habitats Regulations and will make the definitive assessment, the proposal would not be likely to have significant effects on European sites, species or habitats and this finding has been taken into account in reaching the recommendation;
- in regard to all other matters and representations received, there are no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- with the mitigation⁵¹ proposed through the recommended dDCO, there are no adverse impacts arising from the Proposed Development that would outweigh its benefits; and
- there is no reason to indicate that the application should be decided other than in accordance with the relevant National Policy Statement, NNNPS.

⁵¹ In the case of People Over Wind & Peter Sweetman v Coillte Teoranta (ECJ C-323/17) (People Over Wind), the European Court of Justice considered whether, or in what circumstances, mitigation measures can be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive. It found that 'Article 6(3) of the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.' The ExA has concluded in this report that there are no likely significant effects on any European site. This conclusion has been reached without any mitigation in respect of effects being proposed (because there were no such effects). On that basis, the SoS can make a decision on the recommendation in this report without giving further consideration to the People Over Wind decision of the ECJ.

- 9.2.2. The ExA has considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights required in order to implement the Proposed Development. The only formal objection to CA and TP has been withdrawn. The CA and TP powers requested are necessary to enable the Applicant to complete the Proposed Development. In addition, there is a compelling case in the public interest, the Applicant has a clear idea of how it intends to use the land, and funds are available for the implementation.
- 9.2.3. The ExA has had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Art 8, and interference in the peaceful enjoyment of possessions in contravention of Art 1 of the First Protocol of the Human Rights Act 1998.
- 9.2.4. However, with the weight of national policy in favour of the Proposed Development, the wider public interest qualifies any interference with the human rights of the owners and residential occupiers affected by CA and TP of lands. The interference in their human rights would be proportionate and justified in the public interest.
- 9.2.5. The ExA has had regard to the Public Sector Equality Duty (PSED). The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there is no breach of the PSED.
- 9.2.6. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. The Proposed Development affects but does preserve a listed building (Scot's House), its setting and features.
- 9.2.7. With the changes to the recommended DCO proposed in Appendix D to this Report, the Proposed Development meets the tests in s104 of PA2008.

9.3. RECOMMENDATION

- 9.3.1. Findings and conclusions on important and relevant matters are set out in this report under s83 of the PA2008. In considering the recommendations the SoS may wish to satisfy themselves on the following point:
- Following the decision in the case of Client Earth No.3, a revised Air Quality Plan has been published (Section 4.12) and consultation with the parties upon it may be beneficial.
- 9.3.2. Subject to the above, the SoS for Transport is recommended to make the A19 / A184 Testo's Junction Alteration Order in the form attached at Appendix D to this report.

APPENDICES

APPENDIX A: EXAMINATION EVENTS

APPENDIX A: EXAMINATION EVENTS

The table below lists the main events occurring during the Examination and the main Procedural Decisions taken by the Examining Authority (ExA).

Item	Matters	Due Dates
1	Preliminary Meeting (PM)	Tuesday 14 November 2017
2	Issue Specific Hearing 1 (ISH1) Topic: 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) 	Wednesday 22 November 2017
4	Procedural Decision Regarding the Applicant's proposed non-material changes to the application.	Friday 24 November 2017
5	Deadline 1 (D1) 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 RRs 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; • response to any further information requested by the ExA for this deadline • post-hearing submissions from ISH1 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 ISH; • 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. 	Tuesday 28 November 2017

APPENDIX A: EXAMINATION EVENTS

6	<p>Deadline 2 (D2)</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 ExQ1; • comments on any additional information/submissions received by D1; and • responses to any further information requested by the ExA for this deadline. 	<p>Monday 18 December 2017</p>
7	<p>Accompanied Site Inspection (ASI)</p>	<p>Tuesday 16 January 2018</p>
8	<p>Open Floor Hearing (OFH)</p>	<p>Tuesday 16 January 2018 (Evening)</p>
9	<p>Issue Specific Hearing 2 (ISH2)</p> <p>Topics: the Interrelationship of major proposals in the Area, Environmental & Landscape/Visual Issues and any Legal matters.</p>	<p>Wednesday 17 January 2018</p>
10	<p>Compulsory Acquisition Hearing 1 (CAH1)</p>	<p>Thursday 18 January 2018</p>
11	<p>Issue Specific Hearing 3 (ISH3)</p> <p>Topic: the dDCO</p>	<p>Friday 19 January 2018</p>
12	<p>Deadline 3 (D3)</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 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>

APPENDIX A: EXAMINATION EVENTS

13	<p>Deadline 4 (D4)</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>
14	<p>Issue Specific Hearing 4 (ISH4)</p> <p>Topic: Any outstanding issues</p>	<p>Wednesday 28 February 2018</p>
15	<p>Issue Specific Hearing (ISH5)</p> <p>Topic: the dDCO</p>	<p>Thursday 1 March 2018</p>
16	<p>Deadline 5 (D5)</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 • 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>
17	<p>Deadline 6 (D6)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • comments on any revised/ updated SoCGs; • the Applicant’s Final Preferred DCO with 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>
18	<p>Deadline 7 (D7)</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>
19	<p>Close of Examination</p>	<p>Monday 26 March 2018</p>

APPENDIX A: EXAMINATION EVENTS

Note:

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 PM and therefore as per Annex C of the Rule 8 letter the A19/A184 Testo's Junction Alteration project was intended to close on **14 May 2018**.

The ExA may however, close the examination before the end of the six month period if he is satisfied that all relevant matters have been addressed and discussed. The ExA concluded that all matters were addressed and therefore issued the section 99 notice to close the Examination on **26 March 2018**, shortly after Deadline 7.

APPENDIX B: EXAMINATION LIBRARY

Appendix B - Examination Library

TR010020 – A19 / A184 Testos Junction Improvement	
Examination Library - Index	
Category	Reference
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
Representations – by Deadline	
Deadline 1:	REP1-xxx
Deadline 2:	REP2-xxx
Deadline 3:	REP3-xxx
Deadline 4:	REP4-xxx

Deadline 5:	REP5-xxx
Deadline 6:	REP6-xxx
Deadline 7:	REP7-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

TR010020 – A19 / A184 Testos Junction Improvement**Examination Library****Application Documents**

APP-001	Highways England 1.1 Introduction to the Application
APP-002	Highways England 1.2 Covering Letter and Compliance with S.55 checklist
APP-003	Highways England 1.3 Application Form for the A19/A184 Testos Junction Improvement scheme
APP-004	Highways England 2.1 Location Plan
APP-005	Highways England 2.2 Scheme Layout Plan
APP-006	Highways England 2.3 Land Plans
APP-007	Highways England 2.4 Works Plans
APP-008	Highways England 2.5 Streets, Rights of Way and Access Plans
APP-009	Highways England 2.6 Engineer Drawings and Sections
APP-010	Highways England 3.1 Draft Development Consent Order
APP-011	Highways England 3.2 Explanatory Memorandum to Draft Development Consent Order
APP-012	Highways England 3.3 Consents and Agreements Position Statement
APP-013	Highways England 4.1 Statement of Reasons
APP-014	Highways England 4.2 Funding Statement
APP-015	Highways England 4.3 Book of Reference (Parts 1-5)
APP-016	Highways England

	5.1 Consultation Report - Main Text
APP-017	Highways England 5.2 Consultation Report - Appendices
APP-018	Highways England 6.1 Environmental Statement - Main Text
APP-019	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 1
APP-020	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 2
APP-021	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 3
APP-022	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 6
APP-023	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 7
APP-024	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 8
APP-025	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 9
APP-026	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 10
APP-027	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 12
APP-028	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 13
APP-029	Highways England 6.2 Environmental Statement - Figures accompanying Chapter 15
APP-030	Highways England 6.3 Environmental Statement - Appendices accompanying Chapter 1
APP-031	Highways England 6.3 Environmental Statement - Appendices accompanying Chapter 6
APP-032	Highways England 6.3 Environmental Statement - Appendices accompanying Chapter 7
APP-033	Highways England

	6.3 Environmental Statement - Appendices accompanying Chapter 8
APP-034	Highways England 6.3 Environmental Statement - Appendices accompanying Chapter 9
APP-035	Highways England 6.3 Environmental Statement - Appendices Chapter 12
APP-036	Highways England 6.3 Environmental Statement - Appendices Chapter 13
APP-037	Highways England 6.3 Environmental Statement - Appendices Chapter 14
APP-038	Highways England 6.3 Environmental Statement - Appendices Chapter 15
APP-039	Highways England 6.4 Environmental Statement - Non-Technical Summary
APP-040	Highways England 6.5 Statement on Statutory Nuisances
APP-041	Highways England 6.6 Flood Risk Assessment
APP-042	Highways England 6.7 Assessment of Nature Conservation Effects
APP-043	Highways England 6.8 Assessment of Historic Environmental Effects
APP-044	Highways England 6.9 Environmental Impact Assessment Scoping Opinion
APP-045	Highways England 6.10 Habitat Regulation Assessment
APP-046	Highways England Wintering Bird Report
APP-047	Highways England Barn Owl Report (confidential)
APP-048	Highways England Badger Report (confidential)
APP-049	Highways England 7.1 Planning Statement including NNNPS Accordance Table
APP-050	Highways England

	7.2 Outline Construction Environmental Management Plan
APP-051	Highways England 7.3 Interrelationship with Downhill Lane junction and International Advanced Manufacturing Park
APP-052	Highways England 7.4 Transport Assessment Report
APP-053	Highways England Environmental Masterplan
Adequacy of Consultation Responses	
AoC-001	South Tyneside Council Adequacy of Consultation Representation
AoC-002	Newcastle City Council Adequacy of Consultation Representation
Relevant Representations	
RR-001	Dianne Snowdon
RR-002	Dennis Gilhespy
RR-003	Historic England
RR-004	BNP Paribas Real Estate (BNP Paribas Real Estate) on behalf of Royal Mail Group Limited
RR-005	The Coal Authority
RR-006	Environment Agency
RR-007	Gateshead Council
RR-008	National Grid
RR-009	Natural England
RR-010	North East Combined Authority
RR-011	South Tyneside Council
RR-012	Sunderland City Council
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application

PD-002	Section 55 Checklist
PD-003	Section 51 Advice to Applicant 10 August 2017
PD-004	Notice of the Appointment of Examining Authority
PD-005	Rule 6 Letter
PD-006	Rule 8 Letter
PD-007	First Written Questions
PD-008	Notification of Procedural Decision Regarding the Applicant's proposed non-material changes to the application. 24 November 2017
PD-009	Notification of Hearings on 28 February and 1 March 2018
PD-010	Section 99 Letter Notification of Completion of ExA Examination
Additional Submissions	
AS-001	Highways England Response to s51 advice issued by PINS following Acceptance. Published on 9 October 2017
AS-002	Highways England 31 October 2017 Letter to PINs regarding updated documents and further information
AS-003	Highways England 1.4 Application Document Tracker
AS-004	Highways England 2.3 Land Plans - Revision 1
AS-005	Highways England 2.4 Works Plans - Revision 1
AS-006	Highways England 2.6 Engineering Drawings and Sections - Revision 1
AS-007	Highways England 3.1 Draft Development Consent Order (Clean)
AS-008	Highways England 3.1 Draft Development Consent Order (Tracked Changes)
AS-009	Highways England 4.1 Statement of Reasons (Clean) - Revision 1

AS-010	Highways England 4.1 Statement of Reasons (Tracked Changes) - Revision 1
AS-011	Highways England 4.3 Book of Reference (Clean) - Revision 1
AS-012	Highways England 4.3 Book of Reference (Tracked Changes) - Revision 1
AS-013	Highways England 6.11 Addendum 1 to the ES - Vol. 1
AS-014	Highways England 6.11 Addendum 1 to the ES - Vol. 3
AS-015	Highways England Response to Rule 6 Letter
AS-016	South Tyneside Council Response to Rule 6 Letter
AS-017	National Grid Electricity Transmission Plc Response to Rule 6 Letter
AS-018	IAMP Response to Rule 6 Letter
AS-019	Highways England Response to Rule 6 Letter - Joint statement with National Grid
AS-020	National Grid Response to Rule 6 Letter - Email regarding joint statement with Highways England
AS-021	Highways England Response to Rule 6 Letter - Further Email
AS-022	D W Gilhespy Additional Submission - Accepted at the discretion of the Examining Authority
AS-023	National Grid Electricity Transmission Plc Additional Submission - Accepted at the discretion of the Examining Authority
AS-024	Northern Gas Networks Additional Submission - Accepted at the discretion of the Examining Authority
AS-025	Northern Gas Networks

	Additional Submission - Accepted at the discretion of the Examining Authority
AS-026	South Tyneside Council Additional Submission - Accepted at the discretion of the Examining Authority
Events and Hearings	
Preliminary Meeting – 14 November 2017	
EV-002	Preliminary Meeting Note
EV-003	Recording of Preliminary Meeting
Unaccompanied Site Visits	
EV-001	Note of Unaccompanied Site Inspection – 18 September 2017
EV-006	Note of Unaccompanied Site Inspection – 13 November 2017
Accompanied Site Visits and Hearings	
EV-004	Recording of Issue Specific Hearing 1 on draft DCO - Part 1 Held on 15 November 2017
EV-005	Recording of Issue Specific Hearing 1 on draft DCO - Part 2 Held on 15 November 2017
EV-007	Accompanied Site Inspection Notification and Itinerary Letter dated 7 December 2017
EV-008	Highways England Notice for January 2018 hearings
EV-009	Agendas for Hearings in January 2018 Notification by ExA of Agendas to inform the Open Floor Hearing, Issue Specific Hearings and Compulsory Acquisition Hearings to be held in January 2018
EV-010	Recording of Open Floor Hearing Held on 16 January 2018
EV-011	Recording of Issue Specific Hearing 2 on Environmental Issues - Part 1 Held on 17 January 2018
EV-012	Recording of Issue Specific Hearing 2 on Environmental Issues - Part 2 Held on 17 January 2018

EV-013	Action Points from Issue Specific Hearing 2 on Environmental Matters held on 17 January 2018
EV-014	Recording of Compulsory Acquisition Hearing Held on 18 January 2018
EV-015	Recording of Issue Specific Hearing 3 on draft DCO Held on 19 January 2018
EV-016	Highways England Notice for 28 February and 1 March 2018 hearings
EV-017	Examining Authority's Table of Issues and Questions for ISH 4 Table of Issues and Questions for Issue Specific Hearing 4 into Any Outstanding Matters
EV-018	Examining Authority's Schedule of Issues and Questions for ISH 5 Schedule of Issues and Questions for Issue Specific Hearing 5 into the draft Development Consent Order
EV-019	Agendas for Issue Specific Hearing 4 and 5 Notification by ExA of Agendas to inform the Issue Specific Hearings to be held on 28 February and 1 March 2018
EV-020	Recording of Issue Specific Hearing 4 on any Outstanding Matters Held on 28 February 2018
EV-021	Recording of Issue Specific Hearing 5 on draft DCO - Part 1 Held on 1 March 2018
EV-022	Recording of Issue Specific Hearing 5 on draft DCO - Part 2 Held on 1 March 2018
EV-023	Action Points from Issue Specific Hearing 4 and Issue Specific Hearing 5 ISHs held on 28 February and 1 March 2018

Representations

Deadline 1 – 28 November 2017

- Comments on any updates to Application Documents submitted by the Applicant before or at the PM
- Comments on Relevant Representations (RRs)
- Summaries of all RRs exceeding 1500 words
- Written Representations (WRs) by all Interested Parties (IPs)
- Summaries of all WRs exceeding 1500 words
- 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)
- Notification of wish to speak at a Compulsory Acquisition Hearing (CAH)
- Notification of wish to speak at an Open Floor Hearing (OFH)

	<ul style="list-style-type: none"> • Statements of Common Ground (SoCG) requested by ExA • Response to any further information requested by the ExA for this deadline • Post-hearing submissions including written submissions of oral cases 	<ul style="list-style-type: none"> • Provision of suggested locations and justifications for site inspections for consideration by the ExA • Notification of wish to attend an Accompanied Site Inspection (ASI) • Notification of wish to have future correspondence received electronically
REP1-001	IAMP Response to Rule 8 Letter	
REP1-002	South Tyneside Council Response to Rule 8 Letter	
REP1-003	National Grid Written Representation	
REP1-004	Environment Agency Written Representation	
REP1-005	Groundwork STAN Written Representation	
REP1-006	Highways England Deadline 1 Submission Cover Letter	
REP1-007	Highways England 1.4(1) Application Document Tracker	
REP1-008	Highways England 3.1(2) Draft Development Consent Order (Clean)	
REP1-009	Highways England 3.1(2) Draft Development Consent Order (Tracked Changes)	
REP1-010	Highways England 3.2(1) Explanatory Memorandum (Clean)	
REP1-011	Highways England 3.2(1) Explanatory Memorandum (Tracked Changes)	
REP1-012	Highways England 7.5 Statement of Common Ground - National Grid	
REP1-013	Highways England 7.6 Statement of Common Ground - Environment Agency	
REP1-014	Highways England 7.7 Statement of Common Ground - Natural England	
REP1-015	Highways England	

	7.8 Responses to Relevant Representations
REP1-016	Highways England 7.9 Responses to ExA questions on the dDCO
REP1-017	Highways England 7.10 Legal submissions on the applicability of the 2009 EIA Regulations
Deadline 2 – 18 December 2017	
<ul style="list-style-type: none"> • Comments on WRs • Comments on any SoCGs • Local Impact Reports (LIR) from any Local Authorities • Comments on any additional information/submissions received by D1 • Responses to ExA's Written Questions (ExQ1) • Responses to any further information requested by the ExA for this deadline 	
REP2-001	Historic England Response to ExA First Written Questions
REP2-002	Groundwork STAN Response to ExA First Written Questions and other comments
REP2-003	Dennis Gilhespy Response to ExA First Written Questions
Late Responses	
REP2-004	South Tyneside Council <u>Deadline 2 covering letter</u>
REP2-005	South Tyneside Council <u>Response to ExA First Written Questions</u>
REP2-006	South Tyneside Council <u>Local Impact Report</u>
REP2-007	Highways England <u>Deadline 2 submission cover letter</u>
REP2-008	Highways England 1.4(2) Application Document Tracker
REP2-009	Highways England <u>Response to ExA First Written Questions</u>
REP2-010	Highways England <u>3.1(3) Draft Development Consent Order (Clean)</u>
REP2-011	Highways England

	<u>3.1(3) Draft Development Consent Order (Tracked Changes)</u>
REP2-012	<u>Highways England</u> <u>3.2(2) Explanatory Memorandum (Clean)</u>
REP2-013	<u>Highways England</u> <u>3.2(2) Explanatory Memorandum (Tracked Changes)</u>
REP2-014	<u>Highways England</u> <u>3.4 Changes made to draft DCO for Deadline 2</u>
REP2-015	<u>Highways England</u> <u>7.3(1) Interrelationship with DLJ, A1 Birtley to Coalhouse and IAMP (Clean)</u>
REP2-016	<u>Highways England</u> <u>7.3(1) Interrelationship with DLJ, A1 Birtley to Coalhouse and IAMP (Tracked Changes)</u>
REP2-017	<u>Highways England</u> <u>7.11 Statement of Common Ground - South Tyneside Council</u>
REP2-018	<u>Highways England</u> <u>7.12 Comments on Written Representations</u>
<p>Deadline 3 – 25 January 2018</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 	
REP3-001	<u>IAMP</u> Response to ISH2 Action Points
REP3-002	<u>South Tyneside Council</u> Covering Letter
REP3-003	<u>South Tyneside Council</u> Comments on responses to ExA's Written Questions
REP3-004	<u>South Tyneside Council</u> South Tyneside Council Strategy Document
REP3-005	<u>South Tyneside Council</u> South Tyneside Council Highways Asset Management Plan
REP3-006	<u>Highways England</u> Covering Letter
REP3-007	<u>Highways England</u>

	1.4(3) Application Document Tracker
REP3-008	Highways England 3.1(4) Draft Development Consent Order (Clean)
REP3-009	Highways England 3.1(4) Draft Development Consent Order (Tracked Changes)
REP3-010	Highways England 3.5 Document explaining changes made to the dDCO for Deadline 3
REP3-011	Highways England 7.11(1) Statement of Common Ground - South Tyneside Council
REP3-012	Highways England 7.14 Written Submission of case put orally at the OFH on 16 January 2018
REP3-013	Highways England 7.15 Written Submission of case put orally at ISH2 on 17 January 2018
REP3-014	Highways England 7.16 Written Submission of case put orally at CAH on 18 January 2018
REP3-015	Highways England 7.17 Written Summary of case put orally at ISH3 on 19 January 2018
REP3-016	Highways England 7.18 Comments on South Tyneside Council's Local Impact Report
REP3-017	Highways England 7.19 Comments on Responses to ExA's First Written Questions
REP3-018	Highways England 7.20 Report on the Non-Statutory Consultation
REP3-019	Highways England 7.21 Letter of Comfort from the Applicant to Mr Gilhespy
REP3-020	Highways England 7.22 Compulsory Acquisition Negotiation Status Report
Late Responses	
REP3-021	Groundwork STAN Late Deadline 3 Submission accepted at the discretion of the Examining Authority

Deadline 4 – 6 February 2018

- Comments on the Applicant's revised dDCO
- Comments on any revised/updated SoCGs (if any)

- Comments on any additional information/submissions received by D3
- Responses to any further information requested by the ExA for this deadline

REP4-001	National Grid Electricity Transmission Plc Letter confirming agreement with Highways England
REP4-002	South Tyneside Council Response to Deadline 4
REP4-003	South Tyneside Council Local Planning Policy Extracts
REP4-004	Highways England Covering Letter for Deadline 4
REP4-005	Highways England 1.4(4) Application Document Tracker
REP4-006	Highways England 7.6(1) Statement of Common Ground - Environment Agency
REP4-007	Highways England 7.23 Note on Cumulative Effects Assessment
REP4-008	Historic England Response to Deadline 4

Deadline 5 – 8 March 2018

- Post-hearing submissions including written submissions of oral cases
- Any revised/ updated SoCGs

- Comments on any additional information/ submissions received by D4
- Responses to any further information requested by the ExA for this deadline

REP5-001	South Tyneside Council Response to Deadline 5
REP5-002	Highways England Deadline 5 submission cover letter
REP5-003	Highways England 1.4(5) Application Document Tracker
REP5-004	Highways England 2.4(2) Works Plans

REP5-005	Highways England 2.7(1) Environmental Masterplan
REP5-006	Highways England 3.1(5) Draft Development Consent Order (Clean)
REP5-007	Highways England 3.1(5) Draft Development Consent Order (Tracked Changes)
REP5-008	Highways England 3.2(3) Explanatory Memorandum (Clean)
REP5-009	Highways England 3.2(3) Explanatory Memorandum (Tracked Changes)
REP5-010	Highways England 3.6 Document explaining changes made to dDCO for Deadline 5
REP5-011	Highways England 4.1(2) Statement of Reasons (Clean)
REP5-012	Highways England 4.1(2) Statement of Reasons (Tracked Changes)
REP5-013	Highways England 4.3(2) Book of Reference (Clean)
REP5-014	Highways England 4.3(2) Book of Reference (Tracked Changes)
REP5-015	Highways England 7.7(1) Statement of Common Ground - Natural England
REP5-016	Highways England 7.24 Written Submission of case put orally at ISH4
REP5-017	Highways England 7.25 Written Submission of case put orally at ISH5
<p>Deadline 6 – 15 March 2018</p> <ul style="list-style-type: none"> • Comments on any revised/ updated SoCGs • The Applicant's Final Preferred DCO in the SI template validation report • Comments on any additional information/ submissions received by D5 • Responses to any further information requested by the ExA for this deadline 	
REP6-001	South Tyneside Council Response to Deadline 6
REP6-002	Highways England Response to Deadline 6

Deadline 7 – 26 March 2018	
<ul style="list-style-type: none"> • Comments on the Applicant’s Final Preferred DCO • Comments on any additional information/submissions received by D6 • Responses to any further information requested by the ExA for this deadline 	
REP7-001	South Tyneside Council Response to Deadline 7
REP7-002	Highways England Response to Deadline 7
Other Documents	
OD-001	Transboundary Screening Matrix
OD-002	Highways England S56, 59 and Reg 13 Certificates

APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
2009 EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)
2017 EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
AAP	Action Area Plan
AES (number)	Addendum to the Environmental Statement with a volume number
AN (number)	Planning Inspectorate's Advice Notes
AP	Affected Person
APFP	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
AQD	Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe
AQMA	Air Quality Management Area
AQP2017	Air Quality Plan for NO ₂ , DEFRA (2017)
Art	Article
ASI	Accompanied Site Inspection
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CEMP	Construction Environmental Management Plan
CTMP	Construction Transport Management Plan
D (number)	Deadline, with a number referring to a specific deadline identified in the Examination Timetable
DCLG	Former Department for Communities and Local Government, re-organised to form Ministry of Housing, Communities and Local Government (MHCLG) in January 2018. References to documents (eg Examination Guidance) or decisions taken by the former department are referred to using the abbreviation DCLG.
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DLJ	Downhill Lane Junction
DMRB	Design Manual for Roads and Bridges
DPD	Development plan documents
EA	Environment Agency
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ (number)	Written examination questions by the ExA
FRA	Flood Risk Assessment

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
FS	Funding Statement
Groundwork STAN	Groundwork South Tyneside and Newcastle Trust
ha	hectare
HAWRAT	Highways Agency (now Highways England) Water Risk Assessment Tool
HDV	Heavy Duty Vehicle
HEMP	Handover Environmental Management Plan
HGV	Heavy Goods Vehicle
HE	Historic England
HRA	Habitats Regulations Assessment
IAMP	International Advanced Manufacturing Park
IAMP LLP	A joint venture special delivery vehicle formed by SCC and STC to promote an AAP to deliver the IAMP development
IAPI	Initial Assessment of Principal Issues
IP	Interested Party
ISH (number)	Issue Specific Hearing and where followed by a number, the number is a reference to a specific ISH on a date in the examination timetable
ITA	Tyne and Wear Integrated Transport Authority
JLAA	Joint Local Aggregates Assessment for County Durham, Northumberland and Tyne and Wear
JNCC	Joint Nature Conservation Committee
km	kilometre
LEP	Local Economic Partnership
LIR	Local Impact Report
LLP	Limited Liability Partnership
LTP3	Tyne and Wear Local Transport Plan (3)
LV	Limit value(s) – a regulatory limit expressed as a value above which a regulated substance should not be found in the environment and triggering action for pollution control
LWS	Local Wildlife Sites
m	metre
made Order	A statutory Order providing development consent made by the relevant SoS under PA2008, use of this term signifies a reference to a DCO that has been decided
MEC	Meaford Energy Centre
MHCLG	Ministry of Housing, Communities and Local Government
MMP	Materials Management Plan
MPs	Model Provisions
MP	Member of Parliament
mph	miles per hour
NE	Natural England
NECA	North East Combined Authority
NE LEP	North East Local Enterprise Partnership
NERCA2006	Natural Environment and Rural Communities Act 2006
NGET	National Grid Electricity Transmission

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
NMUs	Non-motorised users of the road and PRoW network
NMUK	Nissan Motor Manufacturing United Kingdom Ltd
NNNPS	National Networks National Policy Statement
NO ₂	Nitrogen Dioxide
NOx	Nitrogen Oxide
NPA2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
oCEMP	Outline Construction Environmental Management Plan
OFH	Open Floor Hearing
PA2008	Planning Act 2008 (as amended)
PM	Preliminary Meeting
PPG	Planning Policy Guidance accompanying the NPPF
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R	Requirement
rDCO	recommended Development Consent Order
REAC	Register of Environmental Actions and Commitments (ES Appendix 1.2)
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy (2015 – 2020)
RR	Relevant Representation
s (number)	Section of a statute and when followed by a number, a particular section number from a named statute
SAC	Special Area of Conservation
SCC	Sunderland City Council
Sch	Schedule
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoS BEIS	... for Business, Energy and Industrial Strategy
SoS CLG	... for Communities and Local Government (to Jan 2018)
SoS EFRA	... for Environment, Food and Rural Affairs
SoS HCLG	... for Housing, Communities and Local Government (from Jan 2018)
SoST	... for Transport
SPA	Special Protection Area
SSN	Statement of Statutory Nuisance
SSSI	Site of Special Scientific Interest
STC	South Tyneside Council
SuDS	Sustainable drainage system
TAR	Transport Assessment Report
TCPA1990	Town and Country Planning Act 1990
TP	Temporary Possession
TPO	Tree Preservation Order
TW ITA	Former Tyne and Wear Integrated Transport Authority
TWAO	Transport and Works Act 1992

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
UK	United Kingdom
ULEVs	Ultra-low emission vehicles
UNEP	United Nations Environment Programme
USI (number)	Unaccompanied Site Inspection and where followed by a number, the number is a reference to a USI on a particular date.
WACA1981	The Wildlife and Countryside Act 1981
WEC	Wrexham Energy Centre
WFD	Water Framework Directive
WR	Written Representation
WSI	Written Scheme of Investigation (archaeology)

APPENDIX D: THE RECOMMENDED DCO

201[8] No.

INFRASTRUCTURE PLANNING

**The A19/A184 Testo's Junction Alteration Development
Consent Order 201[]**

Made - - - - 201[]

Coming into force - - 201[]

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

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 22, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the A19/A184 Testo’s Junction Alteration Development Consent Order 201[] and comes into force on [] 201[].

Interpretation

2.—(1) In this Order—

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

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

-
- (a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.
- (b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1980 Act which are not relevant to this Order.
- (e) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

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

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

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

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

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

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

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

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

“authorised development” means the development described in Schedule 1 (authorised development) or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

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

“British Telecommunications PLC” means the company registered in England and Wales, company number 01800000, whose registered address is 81 Newgate Street, London EC1A 7AJ);

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

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

“CEMP” means the construction environmental management plan;

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

“electronic transmission” means a communication transmitted—

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

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

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- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) to the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections J(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) to the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 (c. 50) and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.
- (c) 1984 c. 27.
- (d) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (f) 2008 c. 29.
- (g) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

“the engineering drawings and sections” means the drawings and sections listed in Schedule 10 (documents to be certified) and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“environmental statement” means the document of that description certified as the environmental statement by the Secretary of State for the purposes of this Order;

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

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

“the land plans” means the plans listed in Schedule 10 (documents to be certified) and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation);

“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;

“Northern Gas Networks Limited” means the company registered in England and Wales, company number 05167070, whose registered address is 1100 Century Way, Thorpe Park Business Park, Colton, Leeds LS15 8TU;

“Northern Powergrid Limited” means the company registered in England and Wales, company number 03271033 whose registered address is Lloyds Court, 78 Grey Street, Newcastle Upon Tyne NE1 6AF;

“Northumbrian Water Limited” means the company registered in England and Wales, company number 2366703, whose registered office address is Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ;

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

“the Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“the outline CEMP” means the document of that description submitted with the application for this Order and certified as the outline CEMP by the Secretary of State for the purposes of this Order;

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

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

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

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“streets, rights of way and access plans” means the plans listed in Schedule 10 (documents to be certified) and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order;

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

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

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

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

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

“undertaker” means Highways England Company Limited (Company No. 09346363) of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

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

“the works plans” means the plans listed in Schedule 10 (documents to be certified) and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

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

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

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

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

(7) The provisions of the Neighbourhood Planning Act 2017^(a), insofar as they relate to temporary possession of land under articles 29 and 30 of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 30(11), any maintenance of any part of the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

(3) Nothing in this Order prevents the carrying out of operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements immediately upon this Order coming into force.

(a) 2017 c. 20.

Maintenance of authorised development

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

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991.

Limits of deviation

6. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 0.25 metres upwards or 0.25 metres downwards,

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

7.—(1) Subject to paragraph (2) and article 8 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which 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.

Consent to transfer benefit of Order

8.—(1) Subject to paragraph (4), the undertaker may—

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

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

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

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

- (a) Northern Powergrid Limited for the purposes of undertaking Work No.9;
- (b) Northumbrian Water Limited for the purposes of undertaking Work No.24;
- (c) British Telecommunications PLC (or a related or subsidiary company) for the purposes of undertaking Work No.25; and
- (d) Northern Gas Networks Limited for the purposes of undertaking Work No.26.

PART 3 STREETS

Application of the New Roads and Street Works Act 1991

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

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

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

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

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

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(a) Section 64 was amended by Schedule 17 to the Local Government Act 1965 (c. 51) and Schedule 9 to the 1991 Act.
 (b) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35 and 46 of the Criminal Justice Act 1982 (c. 48).
 (c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
 (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).
 (e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).
 (g) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).

- (5) The provisions of the 1991 Act **(a)** referred to in paragraph (4) are—
section 54 (advance notice of certain works) **(b)**, subject to paragraph (6);
section 55 (notice of starting date of works) **(c)**, subject to paragraph (6);
section 57 (notice of emergency works) **(d)**;
section 59 (general duty of street authority to co-ordinate works) **(e)**;
section 60 (general duty of undertakers to co-operate);
section 68 (facilities to be afforded to street authority);
section 69 (works likely to affect other apparatus in the street);
section 75 (inspection fees);
section 76 (liability for cost of temporary traffic regulation); and
section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways);
- (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; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

10.—(1) Any street (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

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

(3) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker.

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

(a) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(b) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).

(c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).

(d) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).

(e) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

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

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

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

Classification of roads etc.

11.—(1) On the date on which the authorised development is completed and open for traffic—

- (a) the roads described in columns (1) and (2) of Part 1 of Schedule 3 (classification of roads, etc.) will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads;
- (b) the road described in columns (1) and (2) of Part 2 of Schedule 3 (classification of roads, etc.) is to be classified as the A184 and is to be:
 - (i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
 - (ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,
 - (iii) as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act; and
- (c) the public rights of way described in Part 3 of Schedule 3 (classification of roads, etc.) will be of the types described in column (1) to the extent described in column (2).

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

Temporary stopping up and restriction of use of streets

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

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

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

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

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

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Permanent stopping up and restriction of use of streets and private means of access

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

(2) No street or private means of access specified in column (1) of Parts 1 and 2 of Schedule 4 is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in column (1) of Part 3 of Schedule 4 is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

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

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

(5) Where a street or private means of access has been stopped up under this article—

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

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

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

Clearways

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

(2) Nothing in paragraph (1) may apply—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the persons control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

Traffic regulation

16.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

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

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

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

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

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

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

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

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

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

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

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

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

(b) 2004 c. 18.

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

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

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

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

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

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016^(a).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991^(b) have the same meaning as in that Act.

(a) S.I. 2016/1154.

(b) 1991 c. 57.

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

Protective work to buildings

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

(2) Protective works may be carried out—

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

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

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

(8) Where—

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

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

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

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

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

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

Authority to survey and investigate the land

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

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

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

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

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the surveyor investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within a highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.

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

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

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

that authority will be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION AND POSSESSION

Compulsory acquisition of land

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.

(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights and restrictive covenants) and paragraph (8) of article 29 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

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

Time limit for exercise of authority to acquire land compulsorily

22.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and restrictive covenants

23.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(4) Subject to section 8 of the 1965 Act (other provisions as to divided land), as modified by Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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

(a) 1981 c. 67.

Private rights over land

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

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

whichever is the earlier.

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

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights over or the imposition of the restrictive covenant or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of Part 1 of the Compulsory Purchase Act 1965

25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act is modified as follows—

- (a) in section 4A(1) (extension of time limit during challenge)(a)—
 - (i) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (ii) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the A19/A184 Testo’s Junction Alteration Development Consent Order 201[]”.

(2) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (time limit for exercise of authority to acquire land compulsorily) of the A19/A184 Testo’s Junction Alteration Development Consent Order 201[]”.

(3) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective work to buildings), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the A19/A184 Testo’s Junction Alteration Development Consent Order 201[]”.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

(2) The 1981 Act, as so applied, has effect with the modifications set out in this article.

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

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) Omit section 5 (earliest date for execution of declaration)(b).

(5) Omit section 5A (which provides a time limit for the execution of a general vesting declaration)(c).

(6) In section 5B(1) (extension of time limit during challenge)(d)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the A19/A184 Testo’s Junction Alteration Development Consent Order 201[]”.

(a) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(b) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(c) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(d) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(7) In section 6 (notices after execution of declaration) for subsection (1)(b)(a) there is substituted—

“(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”

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

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(c), omit paragraph 1(2).

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

Acquisition of subsoil or airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

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

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

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

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

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

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

(a) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(b) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(c) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

Temporary use of land for carrying out the authorised development

29.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 7, or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

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

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment

in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights and restrictive covenants); or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only).

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

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

Temporary use of land for maintaining the authorised development

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

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

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

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

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

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

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

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

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—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over any Order land belonging to statutory undertakers;
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 of the 1991 Act; and
- (b) article 32 of this Order (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

32.—(1) Where a street is stopped up under article 13 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

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

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case

may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

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

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

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

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

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

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

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker 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.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

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

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

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

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997^(b) and includes important hedgerows.

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

35.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

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

(b) S.I. 1997/1160.

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Trees subject to tree preservation orders

36.—(1) The undertaker may fell or lop any tree described in Schedule 8 (Trees subject to tree preservation orders) or cut back its roots or undertake such other works if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Operational land for purposes of the Town and Country Planning Act 1990

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

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

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

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

39. Schedule 9 (protective provisions) to the Order has effect.

Certification of documents, etc.

40.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

Service of notices

41.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(a) 1978 c. 30.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

42. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by the Secretary of State for Transport

Date

Signed
Title
Department

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administration area of South Tyneside

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development as defined in section 115 of the 2008, comprising:

Work No.1 — The construction of a new cantilever gantry, or similar signage, adjacent to the northbound A19 off-slip at Downhill Lane junction, including foundation works, fencing, electrical connections and strengthening works.

Work No.2 — The construction of a new section of the A19 dual carriageway approximately 2,085m in length over the Testo's roundabout, including associated embankments, cuttings, landscaping, drainage facilities, roadside furniture, gantries and signage, structural crossings, and strengthening works, commencing at the existing A19 at Downhill Lane junction and tying into the existing A19 approximately 835m north of Testo's 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.

Work No.3 — The construction of a new southbound A19 on-slip approximately 1,050m in length that originates at Testo's roundabout (Work No.22) and ties into the new A19 dual carriageway (Work No.2), as shown between points 2/9 on Sheet 2 and 1/4 on Sheet 1 of the Streets, Rights of Way and Access Plans, and associated works including embankments, cuttings, drainage facilities, roadside furniture, signage, electrical connections and strengthening.

Work No.4 — The construction of a new cycle-track approximately 265m in length between Bridleway B46 adjacent to Downhill Lane junction, as shown between points 1/3 and 1/8 on Sheet 1 of the Streets, Rights of Way and Access Plans, including embankments, cuttings, alterations to existing pavements and kerbs, roadside furniture and signage.

Work No.5 — The construction of a new northbound link road approximately 1,035m in length tying into the existing Downhill Lane junction on-slip and terminating at the realigned Testo's roundabout (Work No.22), as shown between points 1/2 on Sheet 1 and 2/13 on Sheet 2 of the Streets, Rights of Way and Access Plans, including embankments, cuttings, alterations to existing pavements and kerbs, drainage facilities, roadside furniture, signage, electrical connections and strengthening works.

Work No.6 — The construction and realignment of a section of the B46 bridleway approximately 90m in length, as shown between points 1/7 and 1/9 on Sheet 1 of the Streets, Rights of Way and Access Plans, including embankments, cuttings, alterations to existing pavements and kerbs, roadside furniture and signage.

Work No.7 — The construction of a new southbound link road approximately 815m in length that diverges from the new A19 southbound on-slip (Work No.3) and ties into the existing A19 southbound off-slip at Downhill Lane junction, as shown between points 2/3 on Sheet 2 and 1/5 on Sheet 1 of the Streets, Rights of Way and Access Plans, including embankments, cuttings, alterations to existing pavements and kerbs, drainage facilities, roadside furniture, roadside signage, electrical connections and strengthening works.

Work No.8 — The construction of a new northbound A19 off-slip approximately 430m in length that diverges from the A19 dual carriageway (Work No.2) and merges with the northbound link road (Work No.5), as shown between points 1/6 on Sheet 1 and 2/13 on Sheet 2 of the Streets, Rights of Way and Access Plans, including embankments, cuttings, alterations to existing pavements and kerbs, roadside furniture, signage, electrical connections and strengthening works.

Work No.9 — The diversion of 5 no. electric cables routes and associated auxiliary cables and apparatus to the southwest of Testo's roundabout including excavation.

Work No.10 — The construction of a drainage attenuation pond and pipe outfall into the River Don adjacent to the southbound link road (Work No.7), including a private means of access as shown between points 1/10 and 1/11 on Sheet 1 of the Streets, Rights of Way and Access Plans including excavations, embankments, cuttings and fencing.

Work No.11 — The construction of a new private means of access that runs parallel to the existing B46 Bridleway commencing at A184/Abingdon Way roundabout and terminating south of Work No.13, as shown between points 1/13 on Sheet 1 and 2/12 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.12 — Improvement to existing private means of access linking land north of Elliscrope Farm to land west of the A19, as shown between points 1/12 on Sheet 1 and 2/1 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.13 — The upgrade of the existing B27 footpath east of the A19 and south of West Boldon substation to a bridleway, commencing at the existing B46 bridleway and tying into new bridleway facility (Work No.14) to the southeast of Testo's roundabout, as shown between points 2/2 and 2/5 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.14 — The construction of a new bridleway approximately 875m in length that links the upgraded bridleway to the south of West Boldon substation (Work No.13) with West Pastures, including crossing facilities on the south side of Testo's roundabout, as shown between points 2/5 and 2/19 of Sheet 2 of the Streets, Rights of Way and Access Plans (crossing facilities are provided on the south side of Testo's roundabout between points 2/8 and 2/14).

Work No.15 — The construction of a new footpath approximately 240m in length commencing at the existing B27 footpath west of the new northbound link road (Work No.5) and tying into the new bridleway facility to the southwest of Testo's roundabout (Work No.14), as shown between points 2/6 and 2/14 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.16 — The construction of a perimeter security fence at West Boldon substation.

Work No.17 — The construction of a new footway approximately 400m in length on the south side of the A184 Newcastle Road, commencing at the A184/Abingdon Way roundabout and tying into the new bridleway/crossing facilities on the southeast side of Testo's roundabout (Work No.14), as shown between points 2/8 and 2/33 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.18 — The construction of a widened and improved segregated footway/cycle-track approximately 345m in length on the north side of the A184 Newcastle Road, commencing at the new crossing facilities on the north side of Testo's roundabout (Work No.19) and tying into existing facilities at Abingdon Way, as shown between points 2/28 and 2/32 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.19 — The construction of an improved section of non-segregated footway/cycle track approximately 615m in length on the north side of the A184(T) and tying into the improved section of segregated footway/cycle track (Work No.18) on the north side of the A184 Newcastle Road, as shown between points 2/20 and 2/28 on Sheet 2 of the Streets, Rights of Way and Access Plans (crossing facilities are provided on the north side of Testo's roundabout between points 2/26 and 2/28).

Work No.20 — The construction of a pedestrian crossing facility that links the bridleway on the south side of the A184(T) (Work No.14) with the non-segregated footway/cycle track on the north side of the A184(T) (Work No.19), as shown between points 2/16 and 2/22 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.21 — The construction of a new footway approximately 175m in length to serve as a bus stop access, commencing at the bridleway/crossing facilities to the southwest of Testo's

roundabout (Work No.14) and tying into the existing footway approximately 175m west of Testo's roundabout, as shown between points 2/18 and 2/35 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.22 — The alteration and realignment of Testo's roundabout to accommodate the new entry/exit links of the A184(T), A184 and Works Nos. 3, 5, 28 and 29.

Work No.23 — Environmental mitigation works at Boldon Lake.

Work No.24 — The diversion of a Northumbrian Water Limited pipeline approximately 210m in length including excavations.

Work No.25 — The diversion of British Telecommunications cables approximately 210m in length including excavations.

Work No.26 — The diversion of a Northern Gas Networks Limited pipeline approximately 400m in length including excavations.

Work No.27 — The stopping up of the B28 bridleway from A184(T) and Burford Way including the demolition to the bridleway bridge across the A19, as shown between points 2/23 and 2/34 on Sheet 2 of the Streets, Rights of Way and Access Plans.

Work No.28 — The construction of a new northbound A19 on-slip approximately 870m in length, commencing at the realigned Testo's roundabout (Work No.22) and tying into the new A19 dual carriageway (Work No.2), as shown between points 2/25 on Sheet 2 and 3/3 on Sheet 3 of the Streets, Rights of Way and Access Plans including embankments, cuttings, roadside furniture, signage, electrical connections and strengthening works.

Work No.29 — The construction of a new southbound A19 off-slip approximately 720m in length, commencing at the new A19 dual carriageway (Work No.2) and tying into the realigned Testo's roundabout (Work No.22), as shown between points 3/2 on Sheet 3 and 2/29 on Sheet 2 of the Streets, Rights of Way and Access Plans including embankments, cuttings, roadside furniture, signage, electrical connections and strengthening works.

Work No.30 — The construction of a drainage attenuation pond adjacent to the northbound on-slip (Work No.28) discharging into the existing highway drainage network, and a new private means of access, as shown between points 2/27 on Sheet 2 and 3/1 on Sheet 3 of the Streets, Rights of Way and Access Plans including excavations, embankments, cuttings and fencing.

Work No.31 — The main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste.

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

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;

- (f) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
- (g) works to alter the course of, or otherwise interfere with a watercourse;
- (h) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) works to place, alter, remove or maintain road furniture;
- (k) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);
- (l) the felling of trees and hedgerows;
- (m) establishment of site construction compounds (other than the main site compound Work No.31), storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;
- (n) the provisions of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (o) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a);

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

“HEMP” means the handover environmental management plan;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England or any equivalent replacement published for that document;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(c); and

“REAC” means the register of environmental actions and commitments (Appendix 1.2 of the environmental statement, application document TR010020/APP/6.3).

Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Detailed design

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 engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(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 the undertaker must make those amended details available in electronic form for inspection by members of the public.

(a) 1990 c. 43 as amended by section 86(2) of the Water Act 2003 c. 37.
(b) S.I. 2010/490 to which there are amendments not relevant to this Order.
(c) 1981 c. 69.

Construction and handover environmental management plans

4.—(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the outline CEMP, 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.

(2) The CEMP must be written in accordance with ISO14001 and must—

- (a) reflect the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to working hours of 07:30–18:00 Mondays to Fridays and 08:00–13:00 on Saturday except for—
 - (i) night-time closures for bridge demolition and installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) junction tie-in works;
 - (iv) removal of overhead power lines;
 - (v) overnight traffic management measures;
 - (vi) cases of emergency; and
 - (vii) as otherwise agreed by the local authority in advance;
- (d) include the following management plans—
 - (i) Dust, Noise and Nuisance Management Plan;
 - (ii) Site Waste Management Plan;
 - (iii) Environmental Control Plan: Invasive Species;
 - (iv) Environmental Control Plan: General Ecology;
 - (v) Soil Management Plan;
 - (vi) Surface Water Management Plan;
 - (vii) COSHH Material, Waste Storage and Refuelling Plan;
 - (viii) Energy and Resource Use Management Plan;
 - (ix) Materials Management Plan;
 - (x) Contaminated Land Management Plan;
 - (xi) Archaeological Control Plan;
 - (xii) Pollution Prevention Plan.

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(4) A HEMP must be developed and completed by the end of the construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(5) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and

- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.
- (6) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the environmental masterplan (application document TR010020 2.7(1) Revision 1).

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels; and
- (e) implementation timetables for all landscaping works.

(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

Contaminated land and groundwater

6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines 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, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

Protected species

7.—(1) No part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation with Natural England, and under any necessary licences.

Surface and foul water drainage

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 mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

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 relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(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 as soon as reasonably practicable from the date they are identified.

(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 of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority.

(6) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority.

Traffic management

10.—(1) No part of the authorised development is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be constructed in accordance with the traffic management plan referred to in sub-paragraph (1).

Amendments to approved details

11. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing.

Fencing

12. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

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—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 14; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification at the end of that period).

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and

- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

14.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 13 (applications made under requirements) and in this paragraph.

Register of requirements

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.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

16. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Articles 11 and 15

CLASSIFICATION OF ROADS, ETC.

PART 1

TRUNK ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
A19(T)	Between points 1/1 on Sheet 1 and 3/4 on Sheet 3 of the Streets, Rights of Way and Access Plans
Northbound Link Road	Between points 1/2 on Sheet 1 and 2/13 on Sheet 2 of the Streets, Rights of Way and Access Plans
Northbound Off-slip	Between points 1/6 on Sheet 1 and 2/13 on Sheet 2 of the Streets, Rights of Way and Access Plans
Southbound Link Road	Between points 2/3 on Sheet 2 and 1/5 on Sheet 1 of the Streets, Rights of Way and Access Plans
Southbound On-slip	Between points 2/9 on Sheet 2 and 1/4 on Sheet 1 of the Streets, Rights of Way and Access Plans
A184 circulatory carriageway at Testo's roundabout	Entire circulatory carriageway at point 2/10 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
A184(T) westbound	Between points 2/15 and 2/17 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
A184 (T) eastbound	Between points 2/21 and 2/24 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Northbound On-slip	Between points 2/25 on Sheet 2 and 3/3 on Sheet 3 of the Streets, Rights of Way and Access Plans
Southbound Off-slip	Between points 3/2 on Sheet 3 and 2/29 on Sheet 2 of the Streets, Rights of Way and Access Plans

PART 2

CLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
A184 eastbound	Between points 2/30 and 2/31 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
A184 westbound	Between points 2/31 and 2/11 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans

PART 3
OTHER PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Cycle track	Between points 1/3 and 1/8 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Bridleway (including crossing facilities on the south side of the A184 circulatory carriageway)	Between points 2/2 and 2/19 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans; crossing facilities are located between points 2/8 and 2/14
Footpath	Between points 2/6 and 2/14 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Footway	Between points 2/8 and 2/33 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Non-segregated footway/cycle track (including crossing facilities on the north side of the A184 circulatory carriageway)	Between points 2/20 and 2/28 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans; crossing facilities are located between points 2/26 and 2/28
Segregated footway/cycle track	Between points 2/28 and 2/32 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Footway (including crossing facilities over the A184(T))	Between points 2/16 and 2/22 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Footway	Between points 2/35 and 2/18 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans

SCHEDULE 4

Article 13

PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

PART 1

PUBLIC RIGHTS OF WAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
The stopping up of public right of way B46	From point 1/7 to 1/8 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	Work No.6
The stopping up of public right of way B27	From point 2/5 to 2/6 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	Work Nos. 13, 14 and 15
The stopping up of public right of way B28	From point 2/23 to 2/34 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	Work Nos. 14, 17, 18, 19 and 20

PART 2

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted</i>
Private means of access adjacent to the east of the A19	At point 2/3 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	Work No.11

PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
Private means of access (gate) adjacent to the west of the A19	At point 2/4 as shown on Sheet 2 of the Streets, Rights of Way and Access Plans

SCHEDULE 5

Article 23(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
Land Plans – Sheet 1	
1/2c, 1/3b, 1/8	To construct, operate, access and maintain an attenuation pond pipe outfall (Work No.10).
1/2d	To construct, operate, access and maintain a private means of access (Work No.11).
1/5b, 1/6b, 1/7b, 1/7f, 1/9d	To construct, operate, access and maintain electric cables, equipment and apparatus (Work No.9).
Land Plans – Sheet 2	
2/1d, 2/2a, 2/2c, 2/2h, 2/2k, 2/4c	To construct, operate, access and maintain electric cables, equipment and apparatus (Work No.9).
2/4f, 2/4g, 2/5a, 2/5c	To construct, operate, access and maintain a private means of access (Work No.11).
2/6c	To construct, operate, access and maintain electric cables, equipment and apparatus (Work No.9). To construct, operate, access and maintain a diverted water pipeline (Work No.24).
2/9c	To construct, operate, access and maintain an existing telecommunications cable (Work No.25). To construct, operate, access and maintain an existing gas pipeline (Work No.26).

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND IMPOSITION OF RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land, subject to the modifications set out in this Schedule.

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973^(a) has effect subject to the modifications set out in sub-paragraphs (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limiting paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
 - (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) to the A19/A184 Testo’s Junction Alteration Development Consent Order 201[]) to acquire an interest in the land; and
 - (c) the acquiring authority enters on and takes possession of that land,
- the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of the 1965 Act

4. The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(a) 1973 c. 26.

(2) Without limiting sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

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

10. For Schedule 2A of the 1965 Act substitute—

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

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 7

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/2c, 1/3b, 1/8	Required for construction of an attenuation pond and pipe outfall.	Work No.10
1/2d	Required to provide a new private means of access.	Work No.11
1/5a, 1/6a, 1/7c, 1/7g, 1/9b, 1/9c	Required to provide an area for construction material storage, construction access and storage of plant.	All Works
1/5b, 1/6b, 1/7b, 1/7f, 1/9d	Required for the diversion of electric cables and associated auxiliary cables; required to provide an area for construction material storage, construction access and storage of plant.	All Works
1/7d	Required to provide an improved private means of access.	Work No.12
Land Plans – Sheet 2		
2/1a, 2/1c	Required to provide an improved private means of access.	Work No.12
2/1b, 2/2b, 2/2d, 2/2e, 2/2l, 2/4b, 2/4d	Required to provide an area for construction material storage, construction access and storage of plant.	All Works
2/2a, 2/2k	Required for the diversion of electric cables and associated auxiliary cables.	Work No.9□
2/1d, 2/2c, 2/2h, 2/4c	Required for the diversion of electric cables and associated auxiliary cables; required to provide an area for construction material storage, construction access and storage of plant.	All Works
2/2f	Required for the provision of the main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste.	All Works
2/2j, 2/5g, 2/9e	Required for the stopping up of the B28 Bridleway and the demolition of the bridleway bridge.	Work No.27
2/3i, 2/3k, 2/7a, 2/9d	Required for site access.	All Works
2/4f, 2/4g, 2/5a, 2/5c	Required to construct a new private means of access.	Work No.11
2/6b, 2/6e	Required to provide a working area during the construction of a perimeter security fence.	Work No.16
2/6c	Required for the diversion of electric cables and associated auxiliary cables, for construction of a perimeter security fence, and	Work No.9 Work No.16 Work No.24

<i>(1)</i> <i>Plot Reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	for the diversion of a water pipeline.	
2/6f	Required to provide a construction working area.	Work No.17
2/9b	Required for environmental mitigation works and a construction working area.	Work No.23 Work No.18
2/9c	Required for the diversion of a telecommunications cable and for the diversion of a gas pipeline.	Work No.25 Work No.26
Land Plans – Sheet 3		
3/2b	Required to provide an area for construction material storage, construction access and storage of plant.	All Works

SCHEDULE 8

Article 36

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>TPO reference</i>
Multiple species (group TPO)	Felling	Work Nos. 11, 13 and 16	TPO206
Multiple species (group TPO)	Felling	Work Nos. 3, 7, 9, 14 and 16	TPO208

SCHEDULE 9

Articles 31 and 39

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

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

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and

(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(c) 1991 c. 56.

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 13 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

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

Removal of apparatus

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

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

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

Retained apparatus

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

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

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

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

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

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

Expenses and costs

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

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its

intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

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

Cooperation

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

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(b) of that code;

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

(a) 2003 c. 21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003 (2003 c. 21).

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

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

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

16. The exercise of the powers conferred by article 31 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984^(b).

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

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

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

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

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

(a) See section 106.

(b) 1984 c. 12.

SCHEDULE 10

Article 40

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of Reference	TR010020/APP/4.3(2)	2
Environmental Statement – Volume 1	TR010020/APP/6.1	0
Environmental Statement – Volume 2: The Figures	TR010020/APP/6.2	2
Environmental Statement – Volume 3: The Appendices	TR010020/APP/6.3	2
Environmental Statement – Volume 4: Non-Technical Summary	TR010020/APP/6.4	-
Statement relating to Statutory Nuisances	TR010020/APP/6.5	0
Flood Risk Assessment	TR010020/APP/6.6	0
Assessment of Nature Conservation Effects	TR010020/APP/6.7	0
Assessment of Historic Environmental Effects	TR010020/APP/6.8	0
Scoping Opinion	TR010020/APP/6.9	-
Habitat Regulation Assessment	TR010020/APP/6.10	0
Addendum 1 to the Environmental Statement – Volume 1	TR010020/APP/6.11	0
Addendum 1 to the Environmental Statement – Volume 3	TR010020/APP/6.11	0
Outline CEMP	TR010020/APP/7.2	0
Location Plan – Regulation 5(2)(o)	TR010020/APP/2.1	0
Scheme Layout Plan – Regulation 5(2)(o)	TR010020/APP/2.2	0
Land Plans – Regulation 5(4)	TR010020/APP/2.3(1)	1
Works Plans – Regulation 5(4)	TR010020/APP/2.4(2)	2
Streets, Rights of Way and Access Plans – Regulation 5(4)	TR010020/APP/2.5	1
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010020/APP/2.6(1)	1
Environmental Masterplan – Regulation 5(2)(a)	TR010020 2.7(1)	1

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to alter the junction of the A19 and A184 at Testo's Junction, near West Boldon in South Tyneside and carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the outline CEMP mentioned in this Order and certified in accordance with article 40 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT.