

A19 Downhill Lane Junction Improvement

Scheme Number: TR010024

7.19 Written Submission of Applicant's case put orally at Compulsory Acquisition Hearing on 17th October 2019

Rule 8(1)(k)
Planning Act 2008
Infrastructure Planning (Examination Procedure)
Rules 2010

Infrastructure Planning

Planning Act 2008

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

A19 DOWNHILL LANE JUNCTION IMPROVEMENT

The A19 Downhill Lane Junction Development Consent Order 202[]

**WRITTEN SUBMISSION OF APPLICANT'S CASE PUT ORALLY AT
COMPULSORY ACQUISITION HEARING ON 17TH OCTOBER 2019**

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A19 DOWNHILL LANE JUNCTION SCHEME

WRITTEN SUBMISSION OF APPLICANT'S CASE PUT ORALLY AT COMPULSORY ACQUISITION HEARING ON 17TH OCTOBER 2019

1 Introduction

- 1.1 This document summarises the case put by Highways England (**the Applicant**) in relation to the A19 Downhill Lane junction scheme (**the Scheme**) at the Compulsory Acquisition Hearing (**CAH**) took place at the Mercure George Washington Hotel, Newcastle Upon Tyne, NE37 1PH on 17 October 2019, at 10:00.
- 1.2 In what follows, the Applicant's submissions on the points raised follow the agenda for the CAH as set out in the Examining Authority's (**ExA**) agenda published on the Planning Inspectorate website on the 8 October 2019.
- 1.3 Where, during the hearing, the Applicant committed to consider an issue further and provide a written update, these are embedded at the relevant part of this document under the heading "post hearing note".

Compulsory Acquisition Hearing

2 Agenda Item 1 – Welcome, introduction and arrangements

- 2.1 Tom Henderson (**TH**), Partner at BDB Pitmans LLP (**BDBP**), introduced himself as lead advocate for the Applicant. He noted that he would be assisted by Mustafa Latif-Aramesh (**MLA**), Senior Associate at BDBP, on questions related to compulsory acquisition provisions and the draft Development Consent Order (**dDCO**).
- 2.2 TH was also accompanied by the following members of the team for the Applicant, to be called upon if required:
 - 2.2.1 Tom Howard, Senior Project Manager, Highways England; and
 - 2.2.2 Phil Emison (**PE**), Senior DCO Lead and Project Manager, Costain.

3 Agenda Item 2 – the Applicant's case for Compulsory Acquisition and Temporary Possession

Agenda item 2(a) To review the statutory and policy tests relevant to CA and/ or TP under the PA2008 and DCLG Guidance.

- 3.1 TH noted the starting point is Section 122 of the PA 2008 under which the Secretary of State is permitted to authorise compulsory acquisition if the land: is required for the development to which the consent relates, or is required to facilitate it, or is incidental to the development.

- 3.2 Section 122 further provides that there must be a compelling case in the public interest for compulsory acquisition.
- 3.3 The compulsory acquisition guidance issued by DCLG expands on these statutory test and sets out a number of “general considerations” for justifying the compulsory acquisition of land. For the purposes of the hearing, TH distilled the statutory and policy tests into five key headings:
- 3.4 Firstly, the Applicant should be able to demonstrate that “*Reasonable alternatives to compulsory acquisition have been explored.*” TH explained that Chapter 3 of the Consultation Report (TR010024/APP/5.1) and Chapter 3 of the Planning Statement (**PS**) set the history of the Scheme in detail – in particular the options considered and the reasons for their rejection over the preferred option.
- 3.5 None of the alternative options would obviate the need for compulsory acquisition. Moreover, the improvements are proposed to be carried out predominantly online (as opposed to offline) thereby maximising land already in the Applicant’s ownership and further minimising the need for compulsory acquisition. The scope of the compulsory powers has been carefully drawn to limit the powers to what is necessary. No more land is affected than necessary.
- 3.6 In this context, the TH would refer to the Response to ExQ1.4.11 and ExQ 1.4.12 in the Applicant’s Responses to the ExA’s Written Questions [TR010024/APP/7.13; REP2-014] which sets out the process the Applicant followed in ensuring that alternatives were considered, and land take was minimised. In summary:
- 3.6.1 The first part of the process involved identifying possible options for improvements at Downhill Lane junction. The Applicant considered a wide range of options and 6 were shortlisted to be taken through a more detailed environmental assessment and technical appraisal;
- 3.6.2 The Applicant also considered the effect on the Testo’s scheme, including whether the Downhill Lane junction proposals would require major changes to the Testo’s design, resulting in additional work, cost and delays to delivering the improvements.
- 3.6.3 It was evident that the discounted options would require, on the whole, significantly more land acquisition than the design submitted in this DCO application.
- 3.6.4 In relation to a proportionality test for individual plots, during review of the land requirements for the Scheme, over the course of two workshops, each plot was reviewed individually based on a consideration of the practical permanent and temporary requirements, set against the individual impacts that would occur at the local level.
- 3.7 The Applicant has included powers in the DCO so that the Applicant can, in the first instance, temporarily use the order land pursuant to Article 29(1)(a)(ii) and then acquire only what is required subsequently. This will ensure that should there be scope to reduce the land take following detailed design of the Scheme this mechanism can be used.
- 3.8 Secondly, DCLG guidance also requires that “*The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire.*” TH stated Annex A of the Statement of Reasons (**SoR**)

sets out the justification for the acquisition or temporary use for each plot. The Land Plans show which land needs to be acquired permanently or be subject to temporary use.

- 3.9 In addition, TH explained that the Applicant has provided further information in Appendix D of its Responses to the ExA's Written Questions [TR010024/APP/7.13; REP2-014] which provides more information on the temporary use of particular plots.
- 3.10 Thirdly DCLG guidance provides that applications "*Should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.*" TH said that the Funding Statement sets out how the Scheme has the requisite funds including government commitments to fund the scheme as set out in the Road Investment Strategy (RIS). The Applicant would refer to its response to ExQ1.4.3 which confirms adequate funding is in place for the Scheme, including for land compensation.

[*Post-hearing note: the Applicant has provided an updated Funding Statement for Deadline 3 which reflects the updated capital cost figure for the Scheme. This does not affect any of the responses, or the security of the commitments provided.*]

- 3.11 Fourthly, DCLG guidance requires the compulsory acquisition to be for purposes which are *legitimate, necessary and proportionate*. An interference with human rights can only be justified in such circumstances. TH stated that the comments made in relation to reasonable alternatives show that the Scheme is proportionate, and that human rights considerations are addressed under agenda item (b).
- 3.12 Fifthly, there must be a *compelling case* in the public interest.
- 3.13 TH stated that the Applicant has set out its case for compulsory acquisition, and the need for the scheme more generally, in the suite of application documents. Broadly, the SoR sets out why each plot is required and both the SoR and the PS set out the need for the Scheme as against the relevant national policies and local policies.
- 3.14 TH also referred to the Applicant's response to ExQ1.4.9 which sets out more specific and comprehensive cross-references to the application documents and where a compelling case is shown.
- 3.15 TH summarised the six broad reasons why there is a compelling case in the public interest for the Scheme:
- 3.15.1 The Scheme will improve journey times and reduce congestion and delay at Downhill Lane Junction in the morning and afternoon peak periods leading to a significant decrease in lost productive time and subsequent increase in business user and transport service provider benefits. The combined monetised value of these benefits is forecast to be £30 million.
- 3.15.2 The Scheme will improve safety by reducing the accident rate at the Junction due to a safer highways configuration. An assessment of the accident cost savings was undertaken in accordance with WebTAG. Total accident benefits generated by the Scheme over the 60-year assessment period amount to £1.69million.

- 3.15.3 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.
- 3.15.4 The Scheme will help support economic development in the surrounding area and is designed to accommodate predicted growth, including IAMP.
- 3.15.5 The Scheme will provide improved connectivity for users travelling from the north and Testo's roundabout (i.e. the residential areas of West and East Boldon, Fellgate and Hedworth) and from Town End Farm to the Nissan Plant, and would provide full segregation for NMU and vehicular traffic along the route. Compared to the existing provision this provides improved safety for NMU users.
- 3.15.6 The Scheme is expressly supported by the Road Investment Strategy and IAMP Area Action Plan and is in accordance with the National Networks National Policy Statement.

Agenda item 2(b): To review human rights considerations

- 3.16 TH stated that the Applicant has considered the potential infringement of convention rights as a result of the compulsory acquisition powers proposed in the dDCO. TH referred to the Applicant's response to ExQ1.4.12 which sets out how the land requirements of the Scheme have been balanced with the interference with human rights and where further information is contained with the application documents. The human rights case can be summarised as follows:
 - 3.16.1 The land to be acquired for the Scheme has been kept to a minimum and the Schemes designed to minimise interference with the peaceful enjoyment of a person's possessions under article 1 of the First Protocol of the Human Rights Act.
 - 3.16.2 The Applicant considers that there would be very significant public benefit arising from the grant of development consent for the reasons given. That benefit can only be realised if the development consent is accompanied by the grant of powers of compulsory acquisition.
 - 3.16.3 As the compulsory powers are necessary to deliver the Scheme and these benefits, they would not be a disproportionate interference with their Article 8 rights to a person's home, and Article 1 of the First Protocol rights.
 - 3.16.4 In addition, those affected by compulsory acquisition powers will be entitled to compensation and the Applicant has the resources to pay such compensation, as demonstrated by the Funding Statement.
 - 3.16.5 In relation to Article 6 and what is a right to a fair trial applies more widely than formal trials, there has been an opportunity for those affected to make representations on and object to the Scheme.
 - 3.16.6 There has been extensive consultation on the Scheme as set out in the Consultation Report. This consultation has included known owners and occupiers of the land and those who might make claims either under section 10 of the Compulsory Purchase Act 1965 or section

152(3) of the Planning Act 2008 in respect of injurious affection, or under Part 1 of the Land Compensation Act 1973.

Agenda item 2(c) To consider the structure and content of the Book of Reference

- 3.17 MLA highlighted that Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 states that an application under the Planning Act 2008 must be accompanied by a Book of Reference (**BoR**) where applicable. MLA affirmed that the BoR for the Scheme has been prepared in accordance with the 2009 Regulations and guidance issued by DCLG.
- 3.18 As regards the structure, in accordance with Regulation 7 of the 2009 Regulations, Part 1 contains the names and addresses of each person with Categories 1 and 2 as set out in section 57 (i.e., owners, lessees, tenants and those interested in the land or those who have the power to sell and convey or release the land respectively).
- 3.19 Part 2 contains the names and addresses for service of each person within Category 3 as set out in section 57 (i.e., those people with relevant claims). Part 3 contains the name of all those with easements and other private rights which it is proposed to interfere with.
- 3.20 Part 4 is blank as there is no Crown land on the Scheme, as is Part 5 because there is no acquisition of land that would be subject special parliamentary procedure or which is special category or replacement land. MLA noted that there was land subject to escheat in the Scheme boundary but this was not Crown land for the purposes of the Planning Act 2008 (see further the Applicant's response to ExQ1.4.15 and Appendix E in the Applicant's Responses to ExA Written Questions [TR010024/APP/7.13; REP2-014]).
- 3.21 As regards the content and methodology, MLA explained that the Applicant has followed the standard procedure and used due diligence to identify the aforementioned interests. In relation to Category 1 and 2 persons:
- 3.21.1 Land Registry information was collated to identify owners, tenants and occupiers.
- 3.21.2 Land interest questionnaires were issued to landowners whose land would be subject to compulsory acquisition requesting confirmation of known land interests.
- 3.21.3 Site notices and investigations were carried out where no response was received.
- 3.21.4 A desktop search was carried out to verify details or identify interests where land was unregistered, or it was not possible to identify land interests from other sources.
- 3.22 In relation to Category 3 persons, MLA said that the Applicant had engaged a District Valuer who carried out an assessment of the boundary that would be affected by the Scheme and may have relevant claims. A cautious approach was taken in demarcating this boundary to ensure that all those with relevant claims were identified. This boundary was then used to collate information from the Land Registry.
- 3.23 MLA said that the Applicant had undertaken as part of its ongoing diligent inquiry a recent review of updated information from the Land Registry and can confirm that: plot 1/5a to 1/5b (previously owned

by Wingdale Investments) and that plot 1/9a and 1/9b (previously half-width assumed interest in favour of the Crown Estate – these plots are land subject to escheat) had been acquired by IAMP LLP. The Applicant would be providing an updated BoR at Deadline 3 which would set out the changes as a result of the updated information. This would not affect the fact that the Applicant had discharged its consultation requirements, but would provide an accurate reflection of the land ownership.

Agenda item 2(d): To consider the structure and content of the Funding Statement

- 3.24 MLA noted Regulation 5(2)(h) of the 2009 Regulations requires a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded. MLA highlighted that the Funding Statement for the Scheme follows precedent and sets out the commitments both from the Applicant and Government funding for the Scheme. The appendices to the Funding Statement are extracts showing Government and the Applicant's funding commitments.
- 3.25 MLA said that the most likely cost estimate for the Scheme as presented in the Funding Statement was £48 million. This estimate included an allowance for the payment of compensation for the compulsory acquisition of land, which takes into account potential claims under Part 1 of the Land Compensation Act 1973 (c.26), Section 10 of the Compulsory Purchase Act 1965, and section 152(3) of the Planning Act 2008.

[Post hearing note: the cost estimate has been updated, see post hearing note above]

- 3.26 The Government published its Road Investment Strategy (**RIS**) on 1 December 2014 which is underpinned by Infrastructure Act 2015. The RIS provides certainty of Government funding with over £15 billion to be invested in major roads between 2015/16 and 2020/21. MLA stated that the Applicant has put the funding for the Scheme into its "Delivery Plan 2015-2020", which was published in March 2015. The Government and Applicant's commitments set out above demonstrate that the Scheme will be fully funded by the Department for Transport and consequently the Scheme is not dependant on funding contributions from other parties.

Agenda item 2(e): To consider the structure and content of the Statement of Reasons.

- 3.27 MLA noted Regulation 5(2)(h) of the 2009 Regulations requires a SoR. The SoR for the Scheme follows precedent and sets out a description of the Scheme, the need for and benefits of the Scheme and how land interests have been identified and the compulsory powers. MLA explained that the SoR sets out the Applicant's case for compulsory acquisition, in particular that there is a compelling case in the public interest.

Further submissions made by the Applicant concerning the dDCO

- 3.28 The ExA asked a question relating to Temporary Possession (**TP**) and Article 29 of the dDCO. TH confirmed the dDCO would allow TP over all of the plots in the Scheme boundary including those that were subject to full acquisition of the freehold. As explained in the SoR, this would enable the Applicant to reduce land take where possible – i.e. by allowing temporary possession in the first instance, with acquisition coming at a later stage.

- 3.29 TH referred to the Applicant's response to Question 29 in Appendix 1 of the Written Submission of Applicant's Case at ISH1 & OFH1 and responses to ExA's question on the dDCO [TR010024/APP/7.8; REP1-010] which sets out comprehensively the Applicant's view in relation to Article 23.
- 3.30 In relation to Article 29(9) and the power to impose rights in respect of land proposed to be used temporarily, TH referred to the Applicant's response to Question 32 in Appendix 1 of the Written Submission of Applicant's Case at ISH1 & OFH1 and responses to ExA's questions on the dDCO. TH added the Applicant has complied with its obligation to carry out diligent inquiry to understand the nature of the land and rights ownership across the Scheme boundary and to ascertain rights that need to be re-provided over the temporary land.
- 3.31 TH submitted that is the current drafting is both precedented and reasonable: it is impossible, notwithstanding diligent inquiry, to be definitive as to what latent rights may exist across or beneath land, until construction has begun. If there is a need to provide an interest (e.g. because an unknown pipe is discovered, e.g. a drain or utilities connection), then the Applicant could be held to ransom, which would be an excessive cost and an impediment. The provision therefore ensures sufficient flexibility in the delivery of the Scheme should an unknown asset be discovered. TH noted the power under Article 29(9) is not intended to be exercised, but the Applicant does not want to enter into the construction phase without it. TH further noted that the Applicant's undertaking of the purpose of the power was to re-provide a right which it may have affected through the use of the temporary possession powers / works.
- 3.32 The Applicant's understanding was that such circumstances had come to pass on previous schemes. TH did not have an example to hand, but this could be explored and reported to the ExA. TH said this provision was not novel to this Scheme, but common in "made" DCOs.

[Post-hearing note: the Applicant would refer to the following "made" precedents in the table below, where the same drafting approach was taken to the temporary possession powers. The applicant has made enquiries but has not been able to identify a specific example where an unknown right had been identified in temporary land.]

Order	Equivalent provision (as per Article 29(9) in Scheme dDCO)
The A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016	Article 28(8)
The A19/A184 Testo's Junction Alteration Development Consent Order 2018	Article 29(9)
The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016	Article 28(8)
The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016	Article 30(8)
The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014	Article 26(8)
The A160/A180 (Port of Immingham Improvement) Development Consent Order 2015	Article 28(8)

The M20 Junction 10a Development Consent Order 2017	Article 31(8)
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- 3.33 In relation to Article 20, TH explained that difference between the wording in the dDCO and the equivalent provision of the made Testo's Order (**TO**) (which included a provision limiting the imposition of rights) was because the Testo's scheme included land over which new third party rights were to be acquired. For completeness, TH stated that in the TO there was "blue land" which denoted the acquisition of permanent rights known to be required for utility diversions.
- 3.34 In relation to the drafting of article 29(9), the ExA asked how this related to the compelling case of public interest, and whether the Applicant had considered the effect upon individuals to create unspecified rights at some unknown point in time. TH said that the compelling case was based on, in addition to the matters set out above, the Scheme being a nationally significant infrastructure project which required a proportional degree of flexibility without excessive costs. Despite it not being possible to identify a right, there is a public interest in the Scheme have the flexibility to be delivered at a good value to the public purse.
- 3.35 The applicant was asked to clarify how the provisions which prevent the acquisition of the temporary land operate. TH summarised the full set of provisions: Article 20(1) is the general power of acquisition, subject to Article 20(2), which states power is subject to article 29, the temporary possession power. Article 29(1)(a)(i) refers to specific parcels of land identified as subject to temporary possession at Schedule 6. Article 29(9) confirms that the undertaker may not compulsorily acquire Schedule 6 land (subject to the residual power to acquire right as explained directly above).
- 3.36 The ExA highlighted that the Funding Statement does not separate the compulsory acquisition costs from the Scheme costs as a whole. MLA said that the Applicant's position across its Nationally Significant Infrastructure Projects (**NSIPs**) is not to provide the figure as it is commercially sensitive with respect to land owner negotiations. MLA noted that DCLG guidance needs certainty for land and compensation payment, which is reflected at 2.1.2 of the Funding Statement, and the Applicant's response to ExQ1.4.3 [TR010024/APP/7.13; REP2-014].
- 3.37 MLA clarified there is no conflict between the Applicant's response to ExQ1.4.8 (which concerns the temporary use of the Testo's construction compound and Plot 1/14a and 1/14b) and the response to Question 29 in the Applicant's ISH1 submissions, which concerned the acquisition of permanent rights.

4 Agenda Item 3 – Site-Specific Issues

Hellens Land Ltd (Hellens)

- 4.1 TH noted the responses given by Hellens Land Ltd (see the Applicant's response to relevant representations [TR010024/APP/7.7; REP1-009] (at page 3) and the Applicant's response to written representations [TR010024/APP/7.14; REP2-015] (at page 11 to 15).
- 4.2 TH noted that Hellens Land has interests in three plots in the Scheme boundary and the Applicant intends to compulsory acquire two of these three plots: Plot 1/7a – as explained in Annex A, this is required in connection with Works No. 6, 8, 9 and 10; and Plot 1/7c, which is required in connection with Works No. 12 and 13.

- 4.3 The Applicant intends to temporarily take possession of the third plot, Plot 1/7b, which is required for: construction material storage and storage of plant and access for Works No. 8, 9 and 11. This plot will be used to construct a temporary link road for traffic to access Washington Road and the southbound A19 during phase 1B and 2 as described in section 2.15 of the Environmental Statement. This is explained in detail in the Annex D of the Applicant's Responses to the ExA's Written Questions [TR010024/APP/7.13; REP2-014].
- 4.4 TH said that the Applicant has engaged with Hellens Land Ltd throughout the development of the Scheme and referenced responses to both statutory and non-statutory consultation as described in paragraphs 4.11.12, Table 4.12, 7.2.23 and Table 7-1 of the Consultation Report. The Applicant had met with representatives for Hellens and the Natrass family, the landowners, on a number of occasions during the pre-application stages of the Scheme. In these meetings the Applicant has presented details of the Scheme which have included the preliminary design, programme and temporary land requirements of the Scheme. The Applicant has also described the DCO process and potential mechanisms for the acquisition and temporary possession of land within the DCO boundary.
- 4.5 TH explained that these discussions resulted in some changes to the preliminary design and a reduction in the permanent Scheme footprint in the earlier stages of Scheme development. The most notable change was to revise the preliminary drainage design, relocating Pond 6 from plot 1/7a to plot 1/7c.
- 4.6 TH noted that Hellens has requested a right in respect of a drainage connection on Plot 1/7c, the purpose of which would be to connect to a prospective development on land to the south of Downhill Lane. TH referred to the Applicant's response to this issue contained in its response to the written representations [TR010024/APP/7.14; REP2-015].
- 4.7 TH summarised that the Applicant does not have an objection in principle to the grant of this right provided it has obtained approval from South Tyneside Council (**STC**), to whom the land would be transferred to permanently in their capacity as local highway authority. To that end, TH explained that the Applicant has taken steps to discuss the matter with STC. The Applicant now understands that STC objects in principle to the transfer of this land being subject to a drainage right to potential future development.
- 4.8 TH noted that the land is proposed to be transferred to STC in connection with highway adoption under Article 10 of the DCO, it has to be transferred to their reasonable satisfaction. For that reason, the Applicant has concluded that it is unable to guarantee to Hellens that it can make provision for the creation of a drainage right. TH submitted that the Applicant does not consider it can reasonably oppose that position given STC's statutory function as local highways authority.
- 4.9 TH informed the ExA that the parties have explored a potential solution to this issue which may allow Hellens to secure the drainage connection it is seeking. This would involve a strip of plot 1/7c being taken temporarily, rather than permanently, meaning it would revert to the landowner (the Natrass family). TH noted that technical assessments are required on this proposal (both by the Applicant and Hellens) and so this remained a potential solution, rather than a confirmed solution. TH committed that the Applicant will provide an update by Deadline 3.

[Post-hearing note: please see the Applicant's cover letter for Deadline 3, which sets out an update on the position with Hellens.]

- 4.10 TH said that the Applicant hoped a resolution could be found, but if this were not the case, it did not affect the compelling case in the public interest for the use of Plot 1/7c on the basis that:
- 4.10.1 there is a need for the Scheme as acknowledged in national and local level policy;
 - 4.10.2 Hellens' development is not supported by local plan policy and no planning application had been made; and
 - 4.10.3 nothing in the DCO prevents Hellens' planning application being submitted, with the acquisition of the drainage right being secured at a future stage by agreement with the local highway authority.
- 4.11 TH reiterated that the parties are seeking a settled position. In response to oral submissions made by Hellens, TH said that the decision to move the pond was not a recent change but the result of pre-application discussions. TH further noted that there was no inconsistency in the Applicant's approach concerning powers to acquire rights. In this case the Applicant was having to take into account STC's views given the local highway authority approval dunciton under Article 10(10).
- 4.12 In response to queries on the integrated NMU solution (i.e. the option presented by the Applicant earlier in the examination process), TH confirmed that it is no longer part of the Scheme application.
- 4.13 TH clarified what would happen if the integrated NMU solution did not come forward at a later stage, and whether there would be an option for Hellens to repurchase the land. TH said that from the Applicant's perspective, one of the reasons for considering the integrated NMU solution was to reduce the cost of the Scheme. In the same vein, given the Applicant is a public body using public funds, it would have no desire to acquire more land than is needed. However, it is difficult to say how this matter will manifest itself in future. How any integrated NMU solution would be implemented, and the effect on landowners, would have to be considered as part of any future post-consent mechanism utilised to secure the provision of the integrated NMU solution.

IAMP LLP

- 4.14 The Applicant and IAMP LLP have been undertaking a process to explore the overlaps between the footprint of IAMP TWO and the Scheme, in order to provide assurance that there is no inconsistency between the Scheme and IAMP's proposed land assembly. The outcome of this process would be reported to the ExA through the Statement of Common Ground (**SoCG**). TH emphasised that this was nearly complete, and there are no significant impediments to concluding this.
- 4.15 Mark Reynolds (**MR**) for IAMP LLP agreed and said that they were working closely with the Applicant. MR stated that some land has recently changed hands due to IAMP acquiring new plots.
- 4.16 TH noted that the SoCG would have to be approved by the IAMP LLP board on or around 11 November for governance reasons, and for this reason the Applicant and IAMP LLP were anticipating its submission shortly thereafter.

Town End Farm Partnership (TEFP)

- 4.17 TH stated that the Applicant has been in negotiation with TEFPP throughout the process, and that the joint statement submitted to the ExA confirms that TEFPP are content with the proposed use of its land and extent of compulsory acquisition powers. For that reason, TEFPP were not present, but negotiations would continue to secure those land parcels in due course.

5 Agenda item 4 - Site-specific representations by any other APs in attendance

- 5.1 No comments were raised by the Applicant on this point.

6 Agenda item 5 – Statutory Undertakers' Land Issues

- 6.1 The ExA stated that only National Grid submitted a relevant representation. Paragraph 4.3.3 and 4.3.4 of the Relevant Representations set out the apparatus concerned.
- 6.2 In response to the ExA query on how this relates to Article 32, MLA said that Article 32 sets out that the undertaker may compulsorily acquire land belong to statutory undertakers, and extinguish rights or reposition apparatus within Order limits. The dDCO contains protective provisions which would be engaged where a statutory undertaker's apparatus is affected by the works. The second part of those relate to communication providers which reflect that the works carried out is in the pink land are within the Applicant's power to grant any new rights.
- 6.3 MLA clarified that the Applicant has, as part of the statutory and non-statutory consultations, engaged with statutory undertakers. The Applicant provided the relevant statutory undertakers with copy of the dDCO prior to submission and received no comments or concerns. MLA stated that as part of the statutory consultations, the statutory undertakers confirmed the position of their apparatus. PE confirmed that there was an ongoing relationship with Northern Powergrid because of the Testo's scheme, and the Applicant had engaged with BT Group on the location of their apparatus. PE further noted that IAMP ONE works may obviate the need for any diversionary works to the BT Group cable.
- 6.4 In response to the ExA's query on whether section 138 applied in relation to National Grid, MLA emphasised that National Grid does not own any land, rights in land or assets within the Scheme boundary. It is on this basis that section 138 is not relevant for the purposes of the Scheme, and this position is agreed by both parties as reflected in the Joint statement (AS-026).

7 Agenda item 6 – Review of issues and matters arising

- 7.1 TH summarised the actions arising:
- 7.1.1 the Applicant would provide precedents of when residual powers in relation to securing rights over TP land have been used before [***post-hearing note: provided above***];
 - 7.1.2 an update on the drainage connection issue concerning Hellens land by Deadline 3;
 - 7.1.3 updated BoR to be submitted by the applicant by Deadline 3; and

7.1.4 it is anticipated that the Statement of Common Ground between the Applicant and IAMP would be submitted no later than Deadline 5.

8 Agenda Item 7 – Next steps

8.1 No comments were raised by the Applicant on this point.

[Post-hearing note: since the matters referred to at CAH1 and summarised above concern progress on negotiations to acquire interests in land, the Applicant has appended to this note an updated version of Annex B to the Statement of Reasons which can be found below in Appendix A.]

Appendix [A] to Written Summary of Oral Evidence for CAH1

Update to Annex B of the Statement of Reasons (TR010024/APP/4.1 / APP-015) and Annex B of the Applicant's Responses to ExA Written Questions (TR010024/APP/7.13 / REP2-014)

The Applicant would note that as AP/IP References Numbers have not been produced / provided, this column was excluded from the table below. The Applicant is willing to provide such references should the ExA require further clarity. In addition, as there were no other documents referred to, the "Other Doc. Ref. No" column has not been included.

Obj No:	Name/Organisation (and Land Agents Name (if applicable)):	RR Ref No	WW Ref	Type of Interest:	Permanent/Temporary/Rights to be acquired:	Plot(s):	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
1/1	Highways England Company Limited	N/A	N/A	Part 1 (Category 1 – Owner)	(a) Permanent (b) Rights to be acquired	(a) 1/1a, 1/1b, 1/1c, 1/1d, 1/1e, 1/1f, 1/1g, 1/1h, 1/1i, 1/1j, 1/1k, 1/1l, 1/1m, 1/1n, 1/1o, 1/1p, 1/1q, 1/1r, 1/1s, 1/1t, 1/1u, 1/1v (b) 1/1w	(a) Y (b) N	Highways England have confirmed that they have no issue with the compulsory acquisition and temporary possession of their interests.
1/2	Sunderland City Council	AS-008	REP1-017 REP1-018	Part 1 (Category 1 – Owner)	(a) Permanent (b) Temporary	(c) 1/2a, 1/2b, 1/2g (d) 1/2c, 1/2d, 1/2e, 1/2f	(c) Y (d) N	No objection submitted. Sunderland City Council have confirmed that they have no issue with the compulsory acquisition and temporary possession of their interests. Discussions ongoing.
1/3	Jawid Iqbal, Peter Razaq and Ian Marley (Town End Farm Partnership) Contact: Peter Razaq Town End Farm Partnership Agent: Colliers International	RR-005	N/A	Part 1 (Category 1 – Owner)	(a) Permanent (b) Temporary	(a) 1/3b, 1/3c (b) 1/3a	(a) Y (b) N	HE representatives have met the landowners and their planning consultant on a number of occasions to discuss the proposals and potential land use from their interest. Several matters have been resolved/clarified to the satisfaction of the landowner. The landowners are also in discussions with Sunderland City Council and IAMP LLP regarding future development plans for their land. Consequently, discussions are ongoing. HE's District Valuer has recently met with TEF and their property advisor to progress land negotiations. A joint position statement was submitted to the ExA on 15 th October 2019.

Obj No:	Name/Organisation (and Land Agents Name (if applicable)):	RR Ref No	WW Ref	Type of Interest:	Permanent/Temporary/Rights to be acquired:	Plot(s):	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
1/4	<i>Dianne Talbot</i> <i>Agent:</i> <i>Youngs RPS</i>	<i>N/A</i>	<i>N/A</i>	<i>Part 1 (Category 1 – Owner)</i>	<i>(a) Permanent (b) Temporary</i>	<i>(a) 1/4b, 1/4c (b) 1/4a</i>	<i>(a) Y (b) N</i>	<i>No objection submitted. HE representatives have met with the land agents on a number of occasions and most recently with the landowner to discuss HE proposals. The landowner and agent are also in discussions with IAMP LLP who are trying to acquire the entirety of the landholdings in this location. HE's District Valuer met the agent and had provisionally agreed terms to acquire lands and settle compensation claim in full however, HE understand that legal completion has recently taken place and the freehold interest is now with IAMP LLP. HE will seek confirmation from Land Registry records as they become available. ..</i>
1/5	<i>IAMP LLP</i> <i>Agent:</i> <i>BNP Paribas</i>	<i>N/A</i>	<i>N/A</i>	<i>Part 1 (Category 1 – Owner)</i>	<i>(a) Permanent (b) Temporary</i>	<i>(a) 1/5a (b) 1/5b</i>	<i>(a) Y (b) N</i>	<i>IAMP LLP acquired this plot from Wingdale Investments NV post application, prior to the start of the Examination period of the Scheme. The Applicant can now confirm the acquisition following a review of updated information from the Land Registry for Deadline 3. IAMP LLP have confirmed that they have no issue with the compulsory acquisition of their interests. Regular discussions have taken place with IAMP LLP and their agent regarding land matters. For further information please refer to the SoCG between HE and IAMP LLP (Application document reference: TR010024/APP/7.10) and Interrelationship document (Application document reference: TR010024/APP/7.3).</i>

Obj No:	Name/Organisation (and Land Agents Name (if applicable)):	RR Ref No	WW Ref	Type of Interest:	Permanent/Temporary/Rights to be acquired:	Plot(s):	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
1/6	<i>Gentoo Group Ltd</i>	<i>N/A</i>	<i>N/A</i>	<i>Part 1 (Category 1 – Owner)</i>	<i>Temporary</i>	<i>1/6</i>	<i>N</i>	<i>No objection submitted. Gentoo have confirmed that they have no issue with the temporary possession of their interests. Discussions ongoing.</i>
1/7	<i>Joan Natrass and Paul Natrass</i> <i>Contact: Hellens Land Limited</i> <i>Agent: Youngs RPS</i>	<i>RR-008</i>	<i>REP1-019</i>	<i>Part 1 (Category 1 – Owner)</i>	<i>(a) Permanent (b) Temporary</i>	<i>(a) 1/7a, 1/7c, 1/7e (b) 1/7b, 1/7d</i>	<i>(a) Y (b) N</i>	<i>HE representatives have met the landowners and their planning consultant on a number of occasions to discuss the proposals and potential land use from their interest. Several matters have been resolved/clarified to the satisfaction of the landowner. HE have made several amendments to their design resulting in a reduction of the permanent land required. HE's District Valuer has met with the agent representing the landowner to progress land negotiations. An update on negotiations is provided in the cover letter for Deadline 3, and a further update will be submitted at the earliest opportunity.</i>
1/8	<i>IAMP LLP</i> <i>Agent: BNP Paribas</i>	<i>RR-003</i>	<i>REP1-023</i>	<i>Part 1 (Category 1 – Owner)</i>	<i>Permanent</i>	<i>1/8</i>	<i>Y</i>	<i>No objection submitted. IAMP LLP have confirmed that they have no issue with the compulsory acquisition of their interests. Regular discussions have taken place with IAMP LLP and their agent with regard to land matters. For further information please refer to the SoCG between HE and IAMP LLP (Application document reference: TR010024/APP/X.X) and interrelationship document (Application Document Reference: TR010024/APP/7.3).</i>

Obj No:	Name/Organisation (and Land Agents Name (if applicable)):	RR Ref No	WW Ref	Type of Interest:	Permanent/Temporary/Rights to be acquired:	Plot(s):	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
1/9	IAMP LLP Agent: BNP Paribas	N/A	N/A	Part 1 (Category 1 – Owner)	Permanent	1/9a, 1/9b	Y	IAMP LLP acquired this plot from the Crown Estate post application, prior to the start of the Examination period for the Scheme. The Applicant can now confirm the acquisition following a review of updated information from the Land Registry for Deadline 3. IAMP LLP have confirmed that they have no issue with the compulsory acquisition of their interests. Regular discussions have taken place with IAMP LLP and their agent regarding land matters. For further information please refer to the SoCG between HE and IAMP LLP (Application document reference: TR010024/APP/7.10) and Interrelationship document (Application document reference: TR010024/APP/7.3).
1/10	South Tyneside Council	AS-007	REP1-015 REP1-016	Part 1 (Category 1 – Owner)	(a) Permanent (b) Temporary (c) Rights to be acquired	(a) 1/10a, 1/10b, 1/10c, 1/10d, 1/10e, 1/10g (b) 1/10f, 1/10h, 1/10i (c) 1/10j	(a) Y (b) N (c) N	No objection submitted. South Tyneside Council have confirmed that they have no issue with the compulsory acquisition, acquisition of rights and temporary possession over their interests. Discussions ongoing.

Obj No:	Name/Organisation (and Land Agents Name (if applicable)):	RR Ref No	WW Ref	Type of Interest:	Permanent/Temporary/Rights to be acquired:	Plot(s):	Compulsory Acquisition (Y/N):	Status of objection and negotiations with land interest:
1/11	<i>Marilyn Margaret Jacobson</i> <i>Contact:</i> <i>Brett Jacobson</i>	N/A	N/A	<i>Part 1 (Category 1 – Owner)</i>	<i>Temporary</i>	1/11	N	<i>No objection submitted.</i> <i>The Jacobson family have not raised any issues with the temporary possession of their interests.</i> <i>Limited engagement to date regarding the Scheme specifically, however the HE District Valuer has been in regular contact with the landowner regarding the voluntary acquisition of land for the Testo's scheme.</i> <i>The HE District Valuer has been in recent contact with Mr Jacobson who has confirmed that the landowner has no issue with the temporary possession of their interest.</i>
1/12	<i>The Church Commissioners for England</i> <i>Agent:</i> <i>Savills</i>	N/A	N/A	<i>Part 1 (Category 1 – Owner)</i>	<i>Temporary</i>	1/12a, 1/12b	N	<i>No objection submitted.</i> <i>The Church Commissioners for England have not raised any issues with the temporary possession of their interests.</i> <i>Limited engagement to date regarding the Scheme specifically, however the HE District Valuer is in regular contact with the landowners agent regarding other HE schemes inc. Testo's.</i>
1/13	<i>Christopher Grieveson</i> <i>Solicitor:</i> <i>Hathaways</i>	N/A	N/A	<i>Part 1 (Category 1 – Owner)</i>	<i>(a) Permanent</i> <i>(b) Rights to be acquired</i>	<i>(a) 1/13a</i> <i>(b) 1/13b</i>	<i>(a) Y</i> <i>(b) N</i>	<i>No objection submitted.</i> <i>Discussions with Mr Grieveson confirmed that there is no issue with the effect on his land interests under the Scheme as the land is not currently used by Mr Grieveson for any particular purpose.</i> <i>Pending further confirmation and investigation of title / ownership</i>

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1/14	<i>Davinder Singh Kandola</i> <i>Agent: Youngs RPS</i>	RR-004	N/A	<i>Part 1 (Category 1 – Owner)</i>	<i>Temporary</i>	<i>1/14a, 1/14b</i>	<i>N</i>	<i>HE representatives have met with the land agents on a number of occasions to discuss HE’s proposals. The agent has confirmed that the landowner has no issue with the temporary possession of their interest.</i>
1/15	<i>Peter John Tate</i> <i>Agent: Youngs RPS</i>	N/A	N/A	<i>Part 1 (Category 1 – Owner)</i>	<i>Temporary</i>	<i>1/15a, 1/15b</i>	<i>N</i>	<i>No objection submitted. The landowner has not raised any issues with the temporary possession of their interests. Limited engagement to date regarding the Scheme specifically, however the HE District Valuer has been in regular contact with the landowner regarding the voluntary acquisition of land for the Testo’s scheme.</i>
2/1	<i>Edward James Cleary</i> <i>Contact: Tom Cleary West Pastures Caravan Site</i>	N/A	N/A	<i>Part 1 (Category 1 – Owner)</i>	<i>Temporary</i>	<i>2/1</i>	<i>N</i>	<i>No objection submitted. The landowner has not raised any issues with the temporary possession of this assumed interest.</i>
2/2	<i>The Church Commissioners for England</i> <i>Agent: Savills</i>			<i>Part 1 (Category 1 – Owner)</i>	<i>Temporary</i>	<i>2/2a, 2/2b</i>	<i>N</i>	<i>The Church Commissioners for England have not raised any issues with the temporary possession of their interests for the Scheme. The HE District Valuer is in regular contact with the landowners agent at this time regarding the temporary possession of these plots for the works associated with the Testo’s scheme.</i>