



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

A19 Downhill Lane Junction Scheme

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority
Kevin Gleeson BA MCD MRTPI

17 April 2020

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OVERVIEW

File Ref: TR010024

The application, dated 25 January 2019, 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 22 February 2019.

The Examination of the application began on 13 August 2019 and was completed on 17 January 2020.

The Proposed Development comprises the construction of a new bridge spanning the A19 south of the existing junction bridge. The new bridge and the existing bridge will be used to form a grade separated roundabout junction layout above the A19. This necessitates the realignment of the existing northbound and southbound A19 slip roads to tie in with the new roundabout layout. The slip roads north of the junction will serve as link roads between Downhill Lane Junction and the improvements to the A19 Testo's junction which are currently being implemented. The slip roads south of the junction will continue to provide direct access to and from the A19. The Proposed Development would also incorporate the realignment of the A1290, Downhill Lane (West), Downhill Lane (East) and Washington Road (East) to accommodate the new junction layout. A segregated non-motorised user facility featuring a dedicated overbridge for walkers, cyclists, horse riders and wheelchair users to the south of the junction would also form part of the proposed development.

Summary of Recommendation:

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

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1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for the A19 Downhill Lane Junction Scheme (the Proposed Development) under file reference TR010024 was submitted by Highways England (the Applicant) to the Planning Inspectorate on 25 January 2019 under section (s)37 of the Planning Act 2008 (PA2008) [APP-003]¹. The application was accepted for Examination under s55 of PA2008 on 22 February 2019 [PD-001].

1.1.2. The Proposed Development is described in the Introduction to the Application [APP-001] (para 2.1.1) as comprising:

- The construction of a new bridge spanning the A19 south of the existing junction bridge. The new bridge and the existing bridge will be used to form a grade separated roundabout junction layout above the A19.
- The realignment of the existing northbound and southbound A19 slip roads to tie in with the new roundabout layout. The slip roads north of the junction will serve as link roads between Downhill Lane Junction and the proposed Testo's junction. The slip roads south of the junction will continue to provide direct access to and from the A19.
- The realignment of the A1290, Downhill Lane (West), Downhill Lane (East) and Washington Road (East) local roads to suit the new junction layout.
- The construction of a segregated non-motorised user facility featuring a dedicated overbridge for walkers, cyclists, horse riders and wheelchair users to the south of the junction.

1.1.3. In Appendix 1 to a letter dated 24 July 2019 [AS-016] the Applicant indicated that it wished to change the name of the project from the A19 Downhill Lane Improvement Scheme to the A19 Downhill Lane Junction Scheme. The Applicant also proposed a change to the title of the Development Consent Order (DCO) from '*The A19 (Downhill Lane Junction Improvement) Development Consent Order 202[]*' to '*The A19 Downhill Lane Junction Development Consent Order 202[]*' [AS-018].

1.1.4. The location of the Proposed Development is shown in the Location Plan [APP-005], which remained unchanged throughout the Examination. The site lies within the Metropolitan Borough of South Tyneside and the City of Sunderland.

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 Ministry of Housing Communities and

¹ References to documents in the Examination Library for this Report are enclosed in square brackets []. A full index to the Examination Library can be found in Appendix B.

Local Government (MHCLG) in its decision to accept the application for Examination in accordance with s55 of PA2008 [PD-001] [PD-003].

- 1.1.6. Under delegation from the SoS, the Planning Inspectorate 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 because it involves raising an existing highway and improving it (in accordance with the definition of "alteration" in s235(1) of PA2008). It is also a highway where the speed limit is expected to be 50 mph or greater. It is wholly within England and is promoted by HE, a strategic highways authority. It is on land extending to 30.68 hectares (ha), thereby exceeding the area threshold of 12.5 ha. For these reasons taken together development consent is required in accordance with s31 of PA2008. Consequently, the Proposed Development meets the definition of an NSIP as set out in sections (ss)14(1)(h), 22(1)(b), 22(3)(a), (b) and (c) and 22(4) of PA2008.
- 1.1.7. The Applicant is appointed and licensed by the SoS for Transport (SoST) as the strategic highways company for England. It is responsible for maintaining and improving the strategic road network (SRN) in England on behalf of the SoST. The network comprises England's motorways and all-purpose trunk roads and the existing A19 is part of the trunk road network for which the Applicant is responsible. Following construction of the Proposed Development the Applicant would be responsible for operating, maintaining and improving the new route of the A19 [APP-001].

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 8 March 2019, Kevin Gleeson was appointed by the SoS as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [PD-002].

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 a Temporary Possession (TP) proposal made as part of the application and objected to the powers during the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.4.1. The Examination began on 13 August 2019. I indicated at the Preliminary Meeting (PM) and throughout the Examination, that should I consider that all relevant matters had been addressed, I would close the Examination before the end of the six-month statutory Examination period on 13 February 2020. I closed the Examination on 17 January 2020 having decided that all relevant matters had been addressed.

- 1.4.2. The principal components of, and events around, the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A, Examination Events.

The Preliminary Meeting

- 1.4.3. On 12 July 2019, I wrote to all IPs and Statutory Parties under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (the Rule 6 Letter) [PD-004], inviting them to the PM, an early Issue Specific Hearing (ISH) into the draft DCO (dDCO) and an Open Floor Hearing (OFH) outlining:

- the arrangements and agenda for the PM;
- notification of, and an agenda for, ISH1 into the dDCO;
- notification of, and an agenda for, OFH1;
- 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-004] (at Annex G) related to matters that were confined to Examination procedures. They were set out at this early stage so that, subject to discussion at the PM, it was possible to commence certain Examination procedures 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.

- 1.4.5. The PM took place on 13 August 2019 at the Clarion Hotel, Boldon, close to the application site. An audio recording [EV-001] and a note of the meeting [EV-001a] were published on the project page of the Planning Inspectorate National Infrastructure website².

Key Procedural Decisions

- 1.4.6. On 21 August 2019 I wrote to all IPs, Statutory Parties under Rule 8 of the EPR (the Rule 8 Letter) [PD-005]. This finalised the Examination Timetable and set out further Procedural Decisions following from it, together with my initial Written Questions (ExQ1) [PD-006], Statements of Common Ground (SoCG), Local Impact Reports (LIRs), the Habitats Regulations Assessment (HRA) and the Accompanied Site Inspection (ASI). The Rule 8 Letter largely confirmed the preliminary Procedural Decisions and related to matters that were confined to the procedure of the Examination.

- 1.4.7. It is necessary to refer to one Procedural Decision that was made in the Rule 8 Letter [PD-005]. Prior to the PM the Applicant had submitted proposals to provide an integrated Non-Motorised User (NMU) route

² <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-downhill-lane-junction-improvement/?ipcsection=overview>

including an Addendum to the Environmental Statement (ES) [AS-022] and other supporting information including a revised dDCO [AS-018] (tracked changes) and [AS-019] (clean). My Procedural Decision was not to accept the documents at that stage but to require the Applicant to publicise the material. I required the Applicant to notify the same persons as they would following the acceptance of the application about the amended proposals and then afford those persons an opportunity to make representations on its content. Any such additional submissions were to be submitted to the Examination by Deadline (D)². This was to provide any such persons with an opportunity to raise any issues arising from this material within the Examination. This matter is reported on further in Section 2.3 of this Report.

- 1.4.8. On 12 November 2019 I confirmed in writing [PD-007] to all IPs a change to the Examination Timetable on the basis that further hearings were not required (see paragraph 1.4.17 below). On 20 December 2019 I again wrote to all IPs to advise of a further Procedural Decision in respect of a request for further information and changes to the Examination Timetable [PD-010].

Site Inspections

- 1.4.9. Site Inspections are held in PA2008 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) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and / or there are legitimate requests made to accompany an inspection, an ASI is held.
- 1.4.11. I held the following USIs:
- USI1 on 12 August 2019 to view the application site in the context of the A19 and surrounding road network, the neighbouring settlement pattern and other nearby major highways and development proposals (including the International Advanced Manufacturing Park (IAMP) site) and the A19 / A184 Testo's Junction Alteration scheme [EV-001b];
 - USI2 on 15 October 2019 to observe traffic movements in the vicinity of the Proposed Development during the morning peak period [EV-015].

A site note providing a record of each USI can be found in the Examination Library under the above references.

- 1.4.12. Following a request from IAMP Limited Liability Partnership (IAMP LLP), the promoter of IAMP, to attend an ASI, I undertook ASI1 on 15 October 2019 to enable me to view land in the immediate vicinity of the Proposed Development. This took place in the presence of the Applicant, South Tyneside Council (STC), Sunderland City Council (SCC), IAMP LLP and

Gentoo Homes, an AP. Notification of the ASI, together with the itinerary for the inspection, was published on 1 October 2019 [EV-005] and the itinerary was adhered to during the inspection. This enabled me to access land and features relevant to the consideration of the application and its effects. A note of the ASI was published [EV-016].

- 1.4.13. I have had regard to the information and impressions obtained during all of the site inspections in all relevant sections of this Report.

Hearing Processes

- 1.4.14. Hearings are held in PA2008 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 object and request to be heard at a Compulsory Acquisition Hearing (CAH) (s92 of PA2008); and / or
 - where IPs request to be heard at an 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).

- 1.4.15. I held hearings under s91, s92 and s93 of PA2008 to ensure the thorough examination of the issues raised by the application as follows:

- An ISH into the dDCO was held on 13 August 2019 (ISH1) (the Agenda can be found at Annex E to the Rule 6 Letter [PD-004] and audio recordings are available [EV-002] [EV-003]);
- An OFH was held in the evening of 13 August 2019 (OFH1) (the Agenda can be found at Annex F to the Rule 6 Letter 2019 [PD-004] and an audio recording is available [EV-004]);
- A second OFH was held in the evening of 15 October 2019 (OFH2) (the Agenda was published on the project website on 7 October [EV-007] and an audio recording is available [EV-010]);
- An ISH on the Interrelationship of Major Proposals in the Area, Environmental & Landscape / Visual Issues and Transport Matters was held on 16 October 2019 (ISH2) (the Agenda can be found at [EV-008] and audio recordings are available [EV-011] [EV-012]);
- A CAH was held on 17 October 2019 (the Agenda can be found at [EV-006]) and an audio recording is available [EV-013]; and
- ISH3 into the dDCO was held on 17 October 2019 (the Agenda can be found at [EV-009] and an audio recording is available [EV-014]).

- 1.4.16. The PM, ISH1 and OFH1 were held at the Clarion Hotel, Boldon, a location in close proximity to the Proposed Development. However, due to the unavailability of the Clarion Hotel on the required dates, all of the subsequent hearings were held at the George Washington Hotel, Washington. This was a location approximately 7km to the west of the Proposed Development site and considered acceptable as the majority of

active participants in the Examination were local government and corporate entities with no particular need for the Examination to be adjacent to the Proposed Development site.

- 1.4.17. Time was reserved in the Examination Timetable for a further ISH (ISH4) on outstanding matters on 10 December 2019, a third ISH focused on the dDCO (ISH5) on 11 December and a second CAH on 11 December. On the basis that there were no requests for a further CAH from APs and that examination of the Applicant's case for CA and TP had been completed the second CAH hearing did not proceed and I also confirmed in writing on 12 November 2019 [PD-007] to all IPs that the further hearings were not required. This matter is addressed further at paragraph 7.5.10 below.
- 1.4.18. The Examination was closed at 11.59pm on 17 January 2020. This was communicated to IPs in my letter of 20 January 2020 [PD-011].

Written Processes

- 1.4.19. 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.
- 1.4.20. Key written sources are set out further below.

Relevant Representations

- 1.4.21. The registration of IPs began on 6 March and originally ended on 16 April 2019. On 23 May the Applicant wrote to the Planning Inspectorate to confirm that a number of persons were not provided with s56 notices and therefore a further period to register with the submission of a RR was provided between 28 May and 28 June. In total 12 RRs were received by the Planning Inspectorate [RR-001 to RR-012]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. I have fully considered all RRs and the issues that they raise are identified and considered throughout this Report.

Written Representations and Other Examination Documents

- 1.4.22. The Applicant and IPs were provided with opportunities to:
- make Written Representations (WRs) (D1);
 - comment on WRs made by IPs (D2);
 - summarise their oral submissions in writing (D1, D2 and D3);
 - make other written submissions requested or accepted by the ExA; and
 - comment on other documents including:

- o any submission made by the Applicant and other IPs (D4 to D9);
- o my observations on the dDCO (D5);
- o updated SoCGs and any other updated documents submitted by the Applicant (D6); and
- o the Applicant's final preferred dDCO (D7).

1.4.23. I have fully considered all WRs and other Examination documents, and the issues that they raise are considered in Chapters 4, 5, 7 and 8 of this Report.

Local Impact Report

1.4.24. An 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 PA2008.

1.4.25. I received one LIR, being a joint submission from STC and SCC, the host local authorities [REP2-021]. The LIR has been taken fully into account in all relevant Chapters of this Report and a description of its content can be found in Chapter 4 of this Report.

Statements of Common Ground

1.4.26. A SoCG is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them.

1.4.27. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

- Natural England (NE) [REP2-012];
- Environment Agency (EA) [AS-029];
- IAMP LLP [REP5-015] and
- STC / SCC [REP5-018].

1.4.28. All of these SoCG are signed by each relevant party. They replace earlier drafts that were submitted to the Examination. I have fully taken into consideration the completed SoCGs in all relevant Chapters of this Report.

Written Questions

1.4.29. I undertook two rounds of written examination questions:

- Initial Written Questions (ExQ1) [PD-006] were provided alongside the Rule 8 Letter [PD-005], dated 21 August 2019; and
- Further Written Questions (ExQ2) [PD-009] were issued on 19 November 2019.

1.4.30. A request for further information under Rule 17 of the EPR was issued on 20 December 2019 [PD-010]. This sought answers to a number of questions relating to the Applicant's response to ExQ2 at D5 [REP5-016]. Comments were sought by 7 January 2020 and the Applicant's response was provided at D8 [REP8-001 to REP8-003].

- 1.4.31. At this point I would highlight one matter which was the subject of written questions, as well as discussion in Examination hearings, between the Applicant and myself. This is the issue of the temporary use of land for carrying out the Proposed Development and the powers sought through Article 29(9) and Schedule 7 (land of which TP may be taken) of the dDCO [APP-011] (Schedule 6 of the Recommended DCO). It is addressed specifically in paragraph 7.6.73, paragraphs 8.4.19 to 8.4.26 and paragraph 8.5.1 below and is the only matter on which, in my Recommended DCO, I proposed a substantive change to the Applicant's final dDCO [REP5-007].
- 1.4.32. All responses to my written questions and the Rule 17 request have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.33. There were no requests to join the Examination by persons who were not already IPs at or after the PM.
- 1.4.34. No persons wrote to me to formally record the settlement of their issues and the withdrawal of their representations.

Report on the Implications for European Sites

- 1.4.35. 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, in my letter of 12 November 2019 [PD-007]. I noted that after giving careful consideration to all relevant evidence it was not necessary to issue a RIES.

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 as a result of the Scoping Report being submitted to the Planning Inspectorate prior to 16 May 2017. As a consequence, it concluded that it had complied with relevant provisions of the 2009 EIA Regulations in the pre-application period.
- 1.5.3. For the reasons set out in Chapter 4, the transitional provisions are considered to apply and hence the Application remains subject to the 2009 EIA Regulations. All other reasoning in this Report proceeds on that basis.

- 1.5.4. In June 2017, the Planning Inspectorate provided a Scoping Opinion [APP-048]. 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 ES [APP-020 to APP-043].
- 1.5.5. On 3 July 2019 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.
- 1.5.6. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4 of this Report. The potential environmental effects have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicant.

1.6. HABITATS REGULATIONS ASSESSMENT

- 1.6.1. The Proposed Development is development for which a HRA Report has been provided [APP-049].
- 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 Applicant had entered into a side agreement with STC and SCC containing information relating to the future maintenance of assets to be transferred to the respective local authorities upon the satisfactory completion of the Proposed Development. This was a matter on which I asked questions of the relevant parties (ExQ2.1.2) with the Applicant [REP5-016], SCC [REP5-019] and STC [REP5-021] all responding. At D6 the Applicant confirmed [REP6-001] that the side agreement had been completed. This is an important and relevant consideration for the SoS.
- 1.7.2. I have taken account of this agreement in all relevant Chapters of this Report. However, as the agreement is confidential, no regard can be had, and no weight placed upon its content. It stands only of evidence that a matter in contention at the start of the Examination is no longer outstanding.

1.8. OTHER CONSENTS

- 1.8.1. In addition to the consents required under PA2008 the Applicant identified in the Consents and Agreements Position Statement [APP-013] that the following permits consents and agreements may also need to be sought separately from the DCO:

- Trade effluent consent (e.g. for welfare facilities) (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 the Local Authority (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 Himalayan Balsam is found at a headwall location and requires to be sprayed) (Control of Pesticides Regulations 1986, as amended);
- CL:aire³ Materials Management Plan;
- Consents required under the Highways Act 1980 in respect of construction works (e.g. crane oversail licences, hoarding licences, etc);
- Land Drainage Consent from the Local Flood Authority; South Tyneside Council or Sunderland City Council, to authorise drainage works in connection with a ditch (Section 30 of The Land Drainage Act 1991); and
- 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] identified that these permits, consents and agreements were *'largely dependent on finalisation of the detailed design, the detailed construction site set up and methodologies, and discussions with stakeholders (e.g. 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.'*

1.8.3. In relation to the outstanding consents recorded above, I have considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, have

³ 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.

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** provides an outline of the legal and policy context applicable to consideration of the application.
- **Chapter 4** sets out the planning issues that arose from the application and during the Examination.
- **Chapter 5** considers the effects on European Sites and 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 my 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 my recommendation to the SoST.

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 s37 of PA2008 for an order granting development consent for the provision of the proposed A19 Downhill Lane Junction Scheme.
- 2.1.2. Section 2.7 of the ES [APP-020] provides a full description of the Proposed Development, which involves upgrading the A19 Downhill Lane Junction from a signalised priority, grade separated junction with a single bridge crossing to a two bridge, grade separated, signalised roundabout junction with a full circulatory carriageway across the mainline A19.
- 2.1.3. The location of the Proposed Development is described as being located on the A19 dual carriageway at Downhill Lane Junction [APP-003]. The A19 is the main strategic highway route to the Tyne Tunnel and a key trade link to the Port of Tyne and the Port of Sunderland. The Applicant, Highways England, is responsible for the maintenance and improvement of the trunk road and motorway network in England [APP-020] (paragraph 2.3.1).
- 2.1.4. The application as originally submitted comprised the following:
- Introduction to the application [APP-001];
 - Covering letter and compliance with s55 checklist [APP-002];
 - Application form [APP-003];
 - Application document tracker [APP-004];
 - Location plan and scheme layout plan [APP-005 and APP-006];
 - Land plans [APP-007];
 - Works plans [APP-008];
 - Streets, rights of way and access plans [APP-009];
 - Engineering drawings and sections [APP-010];
 - Draft DCO, Explanatory Memorandum (EM), consents and agreements position statement, and DCO validation report [APP-011- APP-014];
 - Statement of Reasons (SoR), Funding Statement (FS) and Book of Reference (BoR) [APP-015 to APP-017];
 - Consultation report and appendices [APP-018 to APP-019];
 - The ES, figures, appendices and Non-Technical Summary (NTS) [APP-020 to APP-043];
 - Statement on statutory nuisances [APP-044];
 - Flood Risk Assessment (FRA) [APP-045];
 - Assessment of nature conservation effects [APP-046];
 - Assessment of historic environment effects [APP-047];
 - EIA Scoping Opinion [APP-048];
 - HRA [APP-049];
 - Planning statement including National Networks National Policy Statement (NNNPS) accordance table [APP-050];
 - Outline Construction Environmental Management Plan (CEMP) [APP-051];

- Interrelationship with Testo's Junction, A1 Birtley to Coalhouse Scheme and International Advanced Manufacturing Park (the Interrelationship Document (IRD)) [APP-052];
- Transport Assessment (TA) [APP-053]; and
- Revised plans, drawings and sections for the A19 / A184 Testo's Junction Alteration Scheme [APP-054].

2.2. THE PROPOSED DEVELOPMENT SITE AND SETTING

- 2.2.1. The A19 is a strategic route running from the A1 at Doncaster to north of Newcastle, linking the Tyne and Wear conurbation with Teesside. It forms part of a Tyneside eastern orbital route, which crosses the River Tyne via the Tyne Tunnel and meets the A1 again at Seaton Burn Interchange.
- 2.2.2. As described in section 2.4 of the ES [APP-020] Downhill Lane junction is located in South Tyneside, approximately 5 km south of the Tyne Tunnel entrance. The junction lies in a narrow belt of countryside that separates the urban areas of South Tyneside and Sunderland. The A19 / A184 Testo's junction is approximately 1.2 km to the north while the A19 / A1231 junction is approximately 2.6 km south of Downhill Lane junction.
- 2.2.3. Outside of the highway boundary, most of the land required to build the scheme is agricultural, mainly in arable use. Most of the surrounding landscape comprises rectilinear fields divided by hedgerows, whilst there are small blocks of woodland in surrounding area. To the east, the ground rises to the Boldon Hills.
- 2.2.4. There are adjacent residential areas, particularly at Town End Farm, which is a dense residential area approximately 350 m to the south-east of the junction while beyond can be found the areas of Downhill, Hylton Red House, Hylton Castle Estate and Castletown. Make-Me-Rich Farm properties lie approximately 100 m to the west of the A19 and approximately 300 m north of Downhill Lane junction. Access to the farm is from Downhill Lane (West). The Chalet and Usworth Cottages are located approximately 850 m to the south-west of Downhill Lane junction. Community facilities and commercial properties to be found locally include the North East Land, Sea and Air Museum, located to the north of Washington Road (West), approximately 1 km south of Downhill Lane junction, and the Three Horse Shoes pub (now converted to a restaurant called Rustica). The Gateshead College Skills Academy lies to the east of the A1290 and to the north of the Nissan Motor Manufacturing UK Ltd (NMUK) plant which is approximately 1 km south of Downhill Lane junction.
- 2.2.5. The River Don passes beneath the A19 in a long culvert, just north of Downhill Lane junction, flowing from west to east. Most of the River Don corridor is designated as part of several Local Wildlife Sites (LWSs). Make-Me-Rich Meadow LWS lies adjacent to the River Don and to Downhill Lane junction to the east, while East Hylton Bridge LWS lies adjacent to the River Don, west of Downhill Lane junction. The River Wear is approximately 3 km to the south of Downhill Lane junction.

- 2.2.6. Scot's House, a historic Grade II* Listed Building, lies approximately 1.8 km to the north-west of Downhill Lane junction, adjacent to the A184. It sits within landscaped grounds, surrounded by mature trees while several subsidiary buildings in the complex are Grade II Listed Buildings. Another group of Grade II Listed Buildings are located 750 – 840 m north-east of Downhill Lane junction, adjacent to Downhill Lane around Downhill House.
- 2.2.7. Downhill Lane, either side of the A19, forms part of a popular recreational cycling and horse-riding route. In addition, Bridleway B46 runs southwards from the West Boldon area to meet Downhill Lane at Downhill Lane junction. It is understood that the junction is busy with non-motorised traffic throughout the year, particularly with cycle commuters crossing the junction to reach the NMUK plant.
- 2.2.8. Located to the west of the A1290 is the IAMP ONE development. This is the first phase of an advanced manufacturing development and associated highways and car parks. It is currently being developed and is anticipated to be operational in 2020. Further background to the IAMP development is provided in paragraphs 2.4.8 – 2.4.11 below.
- 2.2.9. Construction is also currently underway at the A19 / A184 Testo's junction. The Testo's scheme involves raising the A19 to an elevation of 7.5 m above ground level over an enlarged roundabout. Traffic on the A19 mainline would flow freely above the roundabout, while traffic using the A184 would still use the roundabout. Further background to the Testo's development is provided in paragraph 2.4.4 – 2.4.7 below.
- 2.2.10. As set out in section 5.5 of the Planning Statement [APP-050], the area between the A19 / A184 Testo's junction and the A19 Downhill Lane junction is within the Green Belt. To the east of the A19 this maintains the open character between West Boldon and Town End Farm, thereby extending south of the Downhill Lane junction. To the west of the A19 the Green Belt extends as far north as Felgate. Through the IAMP Area Action Plan (AAP) (see paragraph 3.11.5 below) land to the west of the junction has been removed from the Green Belt to facilitate the IAMP development although the Proposed Development remains within the Green Belt. Green Belt matters are dealt with in section 4.17 below.

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 the acceptance of the application and the start of the Examination and during the Examination. The changes sought to address points raised in advice pursuant to s51 of PA2008 after acceptance, in RR, WRs and other submissions by IPs and in written examination questions (ExQ1 and ExQ2) [PD-006 and PD-009]. Changes were also made to reflect improved information and changes arising during the Examination. These included matters such as clarity and / or discrepancies within the dDCO and other environmental matters.

Principal Works

- 2.3.2. Section 2.7 of the ES [APP-020] describes how a new overbridge would be constructed immediately to the south of the existing A19 overbridge with the existing Downhill Lane bridge retained to form part of the circulatory carriageway. The existing northbound and southbound A19 slip roads would be realigned to tie in with the new circulatory junction layout with the slip roads south of the junction continuing to provide direct access to and from the A19. The existing slip roads north of the junction would be modified to tie in with the A19 / A184 Testo's junction scheme link roads. The A1290, Downhill Lane (East) and Washington Road (East) local roads would be re-aligned to accommodate the new circulatory junction layout.
- 2.3.3. The junction of Downhill Lane (West) and the A1290 would be modified to create a left-in and left-out junction and would also require the realignment of the access road and private means of access for the properties at Make-Me-Rich Farm.
- 2.3.4. A new NMU route would be constructed, to link B46 with the A1290. This would provide full segregation of vehicular and NMU traffic to the point where this links with the existing provision along the A1290. The new NMU route would include an NMU bridge across the A19. The scheme includes a signalised crossing for NMU users at Follingsby Lane which would tie in with the IAMP One's provision of a green corridor. The Proposed Development would also involve the construction of three new attenuation (drainage) ponds.
- 2.3.5. The main design components of the Proposed Development are shown in the scheme layout in ES Illustration 2.1 [APP-020] and reproduced as an application document [APP-006].

Changes Before the Preliminary Meeting

- 2.3.6. The Planning Inspectorate issued advice on 22 February 2019 after the acceptance of the application, pursuant to s51 of PA2008 [PD-001]. In response to this advice, on 5 March 2019 the Applicant set out a number of changes it wished to make before the Examination commenced [AS-006]. The documents submitted were:
- Application Document Tracker - Section 51 Response Document [AS-001];
 - Draft Development Consent Order - Section 51 Response Document [AS-002];
 - Draft Development Consent Order (Tracked Changes) - Section 51 Response Document [AS-003];
 - Explanatory Memorandum - Section 51 Response Document [AS-004];
 - Explanatory Memorandum (Tracked Changes) - Section 51 Response Document [AS-005]; and
 - Letter in response to the Planning Inspectorate's Letter of 5 March 2019 - Section 51 Response Document [AS-006].

- 2.3.7. The changes to the dDCO and EM largely related to the removal of Schedule 5 reflecting the fact that that there was no land in which the Applicant was seeking to acquire rights only.
- 2.3.8. On 18 April the Applicant submitted an updated BoR [AS-010] along with Certificates of Compliance in respect of s56, s59 of PA2008 and Regulation 13 of the 2009 EIA Regulations [OD-002].
- 2.3.9. On 24 July 2019 the Applicant responded to the ExA's Rule 6 Letter [PD-004] with a number of additional documents as follows:
- Additional Submission - Clarification to Town End Farm Partnership Relevant Representation [AS-015];
 - Additional Submission - Covering letter [AS-016];
 - Additional Submissions - Application Document Tracker [AS-017];
 - Additional Submission - Draft Development Consent Order (Tracked Changes) [AS-018];
 - Additional Submission - Draft Development Consent Order [AS-19];
 - Additional Submission - Explanatory Memorandum (Tracked Changes) [AS-020];
 - Additional Submission - Explanatory Memorandum [AS-021];
 - Additional Submission - ES Addendum assessing the environmental effects of a potential variation to NMU provision [AS-022];
 - Additional Submission - Updated Interrelationship with Testo's Junction, A1 Birtley to Coalhouse Scheme and IAMP (Tracked Changes) [AS-023];
 - Additional Submission - Updated Interrelationship with Testo's Junction, A1 Birtley to Coalhouse Scheme and IAMP [AS-024]; and
 - Additional Submission - Application Document Errata [AS-025].
- 2.3.10. The main change to the Proposed Development included in these submissions was the introduction of a proposed NMU solution which was integrated with the proposed IAMP TWO development (see paragraph 2.4.10 below), provided that consent for IAMP TWO had been granted. The proposals necessitated a number of documents to be updated including an Addendum to the ES and an amended dDCO and EM while other documents clarified details of the application.

Changes in Examination

- 2.3.11. In addition to changes before the PM, as is normal during 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 RRs, WRs, in written questions (ExQ1 and ExQ2) and responses to them and in oral submissions at hearings were submitted at D5:
- Land Plans (Rev 1) [REP5-003];
 - Streets, Rights of Way and Access Plans (Rev 1) [REP5-004];
 - Draft DCO (Rev 6) (tracked changes [REP5-006] and clean [REP5-007]);

- Explanatory Memorandum (EM) (Rev5) (tracked changes [REP5-008] and clean [REP5-009]);
- DCO Validation Report (Rev 2) [REP5-010];
- BoR (Rev 5) (tracked changes [REP5-011] and clean [REP5-012]); and
- Revised Plans, Drawings and Sections for the A19/A184 Testo's Junction Alteration Scheme (Rev 1) (tracked changes [REP5-013] and clean [REP5-014]).

2.3.12. At D1 the Applicant confirmed that following my queries at ISH1, and having considered further the information currently available, it would not progress the integrated NMU provision which had been introduced during the period between acceptance and the Preliminary Meeting.

2.4. OTHER STRATEGIC PROJECTS AND PROPOSALS INCLUDING RELEVANT PLANNING HISTORY

2.4.1. The Application as submitted acknowledged the relationship between the Proposed Development and three nearby strategic projects and proposals:

- The A19 / A184 Testo's Junction Alteration (the Testo's Scheme);
- The IAMP proposals (IAMP ONE and IAMP TWO); and
- The A1 Birtley to Coalhouse Improvement Scheme.

2.4.2. The Applicant submitted the document '*Interrelationship with Testo's Junction, A1 Birtley to Coalhouse Scheme and International Advanced Manufacturing Park*' (IRD) as part of the original application [APP-052]. It was intended to provide a summary of the interrelationship between the strategic projects and other HE schemes being promoted in the region. The IRD had previously been submitted as part of the Testo's Scheme application for development consent. The document was updated prior to the Examination [AS-024] (clean) and [AS-023] (tracked changes). A further revised version was submitted at D3 [REP3-018] (clean) and [REP3-019] (tracked changes).

2.4.3. The IRD recognises that Downhill Lane junction provides access from the trunk road network to the NMUK plant, other existing manufacturing areas within the locality and the IAMP development. To accommodate the anticipated traffic growth at this location, the A19 Downhill Lane junction proposal was identified in the Road Investment Strategy (RIS1)⁴ to provide significantly enhanced capacity at the junction. The RIS promotes the improvement of highway infrastructure in the vicinity of the junction to solve current congestion issues, unlock economic growth and support existing businesses in the locality.

⁴ After the close of the Examination the Government published its second Road Investment Strategy (RIS2) covering the financial years 2020/21 to 2024/25. This identified the A19 Downhill Lane project as 'Committed for RE2 - construction of this project is expected to start by 1 April 2025'.

The A19 / A184 Testo's Junction Alteration

- 2.4.4. The IRD recognises that there is severe congestion at the Testo's roundabout at peak times. The Testo's Scheme which secured development consent in September 2018 and is currently being implemented, will improve the junction by raising the A19 on a flyover and building new slip roads to connect it to the A184 via the Testo's roundabout.
- 2.4.5. The close proximity of two proposed grade-separated junctions at Testo's and Downhill Lane junctions would mean that they would not be able to safely accommodate a full suite of slip roads, as would be conventional with grade-separated junctions. Therefore, the Testo's Scheme proposals for the existing northbound on-slip road from Downhill Lane junction to the A19 and southbound off-slip road from the A19 to Downhill Lane junction to be reconfigured. These slip roads will be extended north to form new link roads running parallel to the A19 on either side, between the Downhill Lane and Testo's junctions.
- 2.4.6. Traffic travelling north from Downhill Lane junction would first travel to Testo's junction using the link road, and then join the A19 via the northbound slip road from Testo's roundabout. Traffic travelling from the north to Downhill Lane junction would leave the A19 at Testo's junction and use the southbound link road. The northbound link road would have two lanes and the southbound link road will have one lane, increasing to two lanes on the approach to Downhill Lane junction.
- 2.4.7. HE considered the feasibility of combining the Testo's junction improvements with the Proposed Development to minimise disruption to road users and provide cost efficiencies. Options to improve Downhill Lane junction were assessed and reviewed for compatibility with the preferred route option for Testo's junction to understand what effect the changes at Downhill Lane junction might present. Following a review, it was decided that the design and construction of the two schemes should be carried out together, but with separate DCO applications made for each junction improvement. This was because the Downhill Lane junction proposals were at an earlier stage of development than the Testo's Scheme and would have caused further delay to the delivery of the Testo's improvements if a single DCO application were taken forward. In addition, the Testo's construction programme has a longer overall duration than that for Downhill Lane.

The IAMP Proposals

- 2.4.8. The IAMP development, introduced in paragraph 2.2.8 above, is proposed to attract advanced manufacturing businesses to the area, with a particular focus on the automotive supply chain (given the proximity to the NMUK plant). IAMP LLP, established by STC and SCC aims to progress and deliver IAMP with the site straddling the boundary between the two authorities on a 150 ha site either side of the A1290 to the west of the A19 and Downhill Lane junction. To accommodate the projected growth in the automotive and advanced manufacturing sectors, IAMP LLP

is proposing to provide approximately 390,000 sqm of manufacturing floor space.

- 2.4.9. The SoS designated the IAMP as nationally significant in September 2015, bringing it within the consenting regime of PA2008. The announcements by NMUK in relation to new model production at Sunderland required an early phase of development (IAMP ONE) which commenced during Summer 2018, to enable buildings to be available for occupation by automotive suppliers during 2019. To address this and other project changes since the original direction in September 2015, IAMP LLP applied to the SoS for a variation of the 2015 direction. The SoS agreed to the variation, enabling IAMP ONE to be progressed with planning permission granted under the Town and Country Planning Act, 1990 (TCPA1990) in May 2018. IAMP ONE comprises the erection of nine light general industrial and storage and distribution units with ancillary office and research and development floorspace within the southern part of the IAMP area. The plans include a new link road from the A1290, associated car parking, service yards, access, landscaping and drainage ponds.
- 2.4.10. The project of national significance to be promoted through PA2008 is now referred to as IAMP TWO. It encompasses the larger IAMP area to support the remaining two-thirds of the total IAMP masterplan proposals. An application for development consent under PA2008 for IAMP TWO is being prepared.
- 2.4.11. The IRD states that the IAMP scheme has been progressed in close liaison with NMUK, in relation to the design of the site but also the commercial demand and timing of investment at IAMP. One of the key end user groups for IAMP will be the expanding automotive supply base associated with NMUK and other automotive manufacturers in the UK. The design has also sought to ensure that, during construction and operation, impacts on the existing NMUK plant are mitigated to avoid delays to production, logistics and the movement of completed goods through the SRN and to the Port of Tyne. This has involved extensive dialogue between HE, NMUK, IAMP LLP and the two local authorities STC and SCC, to discuss and reach agreement on the key principles of the Testo's and Downhill Lane schemes and the internal highway network on the IAMP site.

The A1 Birtley to Coalhouse Improvement Scheme

- 2.4.12. The A1 Birtley to Coalhouse Improvement scheme will provide additional capacity by widening the A1 to four lanes between junction 65 and 67 on the southbound carriageway and three lanes with an additional lane to help manage traffic joining and leaving the A1 between junctions on the northbound carriageway. Most of the work will take place within the highway boundary, although some additional land will be required alongside the A1 at certain points to enable HE to create additional lanes.
- 2.4.13. HE submitted an application under PA2008 for the A1 Birtley to Coalhouse Improvement Scheme on 14 August 2019. The application

was accepted for Examination on 10 September 2019. The Preliminary Meeting for the project was held on 21 January 2020 and the Examination will close no later than 21 July 2020.

- 2.4.14. The IRD indicates that based on the current HE Delivery Plan, there is a limited overlap between the A19 Downhill Lane junction scheme construction programme and that for the A1 Birtley to Coalhouse Improvement Scheme, particularly activities which affect the flow of traffic on the SRN. HE will monitor this interrelationship as the programmes for the four strategic projects develop.

Scheme Timings

- 2.4.15. The latest version of the IRD [REP3-018] provides updated scheme timings. For the A19 Downhill Lane Junction scheme the latest planned start of works date was identified as December 2020 with completion of main site construction activities and scheme opening for traffic anticipated by 2022.
- 2.4.16. Mobilisation for the Testo's Scheme commenced in January 2019 with completion of the main site construction activities and scheme opening for traffic anticipated by July 2021.
- 2.4.17. Construction of IAMP ONE started on site in June 2018. In terms of the DCO for IAMP TWO, the DCO submission is expected in quarter 1 2020. The IRD indicates that subject to the timing of the DCO process and the issuing of consent it is intended that IAMP TWO works would start on site in summer 2021, with the strategic infrastructure (roads, utilities, landscaping) requiring a two-year construction period.
- 2.4.18. For the A1 Birtley to Coalhouse Improvement Scheme, in line with the announcement in RIS1, and the most recent Delivery Plan 2019-2020, start of works is committed to begin between 2020 and 2025.
- 2.4.19. Impacts could arise from the IRD projects that would give rise to cumulative and in-combination effects on common receptors. The inter-relationships between these projects is therefore an important and relevant planning issue to which I gave considerable attention during the Examination and these matters are addressed in more detail in Chapter 4, as set out further below.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

- 3.1.1. This Chapter sets out the relevant legal and policy context for the application. I have taken this into account in the Examination of the Proposed Development and in presenting findings and making recommendations to the SoS.
- 3.1.2. The legal and policy context, as understood by the Applicant, is described in Section 5 of the Planning Statement [APP-050]. This sets out a high-level assessment of the Proposed Development's conformity with national and local planning policies. National level planning policy documents or transport policy and programmes of relevance to the scheme are discussed including the NNNPS. Appendix A of the Planning Statement provides an assessment of the scheme's strategic alignment and conformity with individual paragraphs of the NNNPS. Its conformity with the development plan documents of STC and SCC is also described. Individual chapters of the ES provide specific background relating to particular topics.
- 3.1.3. The LIR [REP2-021] jointly prepared by STC and SCC sets out the local authorities' position with regard to development plan policies.

3.2. THE PLANNING ACT 2008

- 3.2.1. As the Proposed Development is an NSIP, consent under s31 of PA2008 is required. Under s37 of PA2008, an order granting development consent may only be made if application for it is made (through the Planning Inspectorate) to the SoS.
- 3.2.2. Section 104 of PA2008 applies to the Proposed Development because it is:
- 'in relation to an application for an order granting development consent [where] a national policy statement has effect in relation to development of the description to which the application relates'.*
- 3.2.3. Section 104(3) of PA2008 requires the SoS to decide an application for development consent in accordance with any relevant National Policy Statement (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.

3.2.4. Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, these include:

- any relevant NPS which has effect in relation to development of the description to which the application relates;
- any LIR (within the meaning given by s60(3) of PA2008) submitted to the SoS before the specified deadline for submission;
- the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;
- any matters prescribed in relation to the development of the description to which the application relates; and
- any other matters which the SoS considers are both important and relevant to the decision.

3.2.5. The remainder of this Chapter addresses the application of relevant NPS and the LIR and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.3. NATIONAL POLICY STATEMENT

3.3.1. The NNNPS has been designated as the NPS for roads for which the SoS is the highway authority. 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 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.

3.3.2. 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.

3.3.3. 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.

3.4. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union

- 3.4.1. The UK left the European Union (EU) as a member state on 31 January 2020, after the close of the Examination. The European Union (Withdrawal Agreement) Act of January 2020 gives effect to the transition arrangements until the 31 December 2020. This provides for EU law to be retained as UK law and also to bring into effect obligations which may come in to force during the transition period.
- 3.4.2. This report has been prepared on the basis of retained law and references in it to European terms such as Habitats have also been retained for consistency with the examination documents. It will be a matter for the SoS to satisfy themselves as to the position on retained law and obligations at the point of the decision.

The Birds Directive

- 3.4.3. Council Directive 2009/147/EC on the conservation of wild birds (the Birds Directive) is a European nature conservation legislative measure for the protection for all wild bird species naturally occurring in the EU. The Birds Directive places great emphasis on the protection of habitats for endangered as well as migratory species. 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 Directive

- 3.4.4. Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) is a European nature conservation legislative measure. Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the Directive. SACs form part of the Natura 2000 ecological network. All species listed in the annexes are identified as European Protected Species.

The Habitats Regulations

- 3.4.5. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) 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 HRA.
- 3.4.6. 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 within approximately 6.5 km of the Proposed Development site. Chapter 5 gives further detailed consideration to these matters.

The Air Quality Directive

- 3.4.7. Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive) requires Member States to assess ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂), oxides of nitrogen (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene, carbon monoxide and ozone. The Air Quality Directive aims to protect human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollutants. It sets legally binding concentration-based limit values (LVs) as well as target values to be achieved for the main air pollutants and establishes control actions where these are exceeded. It is transposed into UK statute through the Air Quality Standards Regulations, 2010 made under the Environment Act 1995 (EA1995).

The UK Air Quality Strategy

- 3.4.8. EA1995 established a requirement for the production of an Air Quality Strategy (AQS) for improving ambient air quality. The AQS establishes a long-term vision for improving air quality and offers options to reduce the risk to health and the environment from air pollution. It sets UK air quality standards and objectives for the pollutants in the Air Quality Standards Regulations.
- 3.4.9. Individual plans prepared beneath the AQS 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 Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities aimed at reducing levels of the relevant pollutant.
- 3.4.10. 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. NSIP proposals giving rise to air emissions from significant changes to the volume or location of vehicle movements may have implications for the achievement of NO₂ LV compliance.
- 3.4.11. The environmental non-governmental organisation ClientEarth has brought various proceedings against the UK Government for breaching the AQD. Successive judgments by the Supreme Court⁵ 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.

⁵ 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).

- 3.4.12. A revised draft 'Air Quality Plan for NO₂' in response to this litigation was published by Department for Environment, Food and Rural Affairs (DEFRA) on 26 July 2017⁶ (AQP2017). This refers to Zone Plans for action in a large number of localities⁷. However, a High Court Order was made on 21 February 2018⁸ (ClientEarth No 3), providing that whilst the AQP2017 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 a number of local authority areas.
- 3.4.13. The remedy required was the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. Following a consultation on possible measures to be included in this supplement in identified locations in May 2018⁹, the Government published the final version of its Clean Air Strategy in January 2019¹⁰. Achieving this strategy relies on local improvements being achieved and the local requirements for this are discussed below.

The Water Framework Directive

- 3.4.14. Council Directive 2000/60/EC (as amended) establishing a framework for Community action in the field of water policy (the Water Framework Directive (WFD)) including objectives to prevent and reduce pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It also provides for the sustainable management of rivers through River Basin Management Plans.
- 3.4.15. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. This matter is addressed in the relevant sections of Chapter 4.

3.5. OTHER RELEVANT LEGAL PROVISIONS

United Nations Environment Programme Convention on Biological Diversity 1992

- 3.5.1. Responsibility for the UK contribution to the United Nations Environment Programme (UNEP) Convention on Biological Diversity lies with the DEFRA who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the UNEP Convention on Biological Diversity has to be

⁶ [Air quality plan for nitrogen dioxide \(NO₂\) in the UK](#), DEFRA (2017)

⁷ [Air Quality Plans for tackling roadside nitrogen dioxide concentrations in Tyneside](#) (UK Zone Plans), DEFRA (2017)

⁸ [R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers](#) (ClientEarth No 3)

⁹ Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations: [a consultation](#), May 2018, DEFRA and DfT

¹⁰ Clean Air Strategy, January 2019, BEIS, DEFRA, DfT, DoHSC, HM Treasury, MHCLG.

taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The provisions on EIA and transboundary matters with regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of Article 14 of the Convention (Impact Assessment and Minimising Adverse Impacts).

- 3.5.3. This is of relevance to the biodiversity and ecological considerations and landscape and visual impacts which are discussed in Chapter 4 of the Report.

The Wildlife and Countryside Act 1981

- 3.5.4. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects certain habitats and species in the UK. It provides for and protects wildlife, nature conservation, countryside protection, National Parks, and Public Rights of Way (PRoWs) including for the notification, confirmation, protection and management of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is NE.
- 3.5.5. WACA1981 contains provisions relevant to Ramsar sites, National Nature Reserves and Marine Nature Reserves. If a species protected under WACA1981 is likely to be affected by the development, a protected species licence will be required from NE. Sites protected under WACA1981 (including SSSIs) which are affected by the Proposed Development must also be considered. The effects of development on the PRoW network are also relevant.
- 3.5.6. WACA1981 is relevant to the application in view of the sites and species identified in the ES [APP-018 to APP-039]. Relevant considerations are discussed in Chapter 4 of this Report.

Natural Environment and Rural Communities Act 2006

- 3.5.7. The Natural Environment and Rural Communities Act 2006 (NERCA2006) makes provision for bodies concerned with the natural environment and rural communities, including 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 purpose of biodiversity. In complying with the biodiversity duty, regard must be had to the UNEP Convention on Biological Diversity.
- 3.5.8. I have had regard to NERCA2006 and the biodiversity duty in all relevant sections of Chapters 4 and 5 of this Report.

National Parks and Access to the Countryside Act 1949

- 3.5.9. The National Parks and Access to the Countryside Act 1949 provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty. It also establishes powers to declare National Nature Reserves and for local authorities to establish Local Nature Reserves (LNRs).

The Countryside and Rights of Way Act 2000

- 3.5.10. The Countryside and Rights of Way Act 2000 includes provisions in respect of PRoW and access to land. The Act also brought in improved provisions for the protection and management of SSSIs and other designations under the WACA1981.

Marine Legislation and Policy

- 3.5.11. NSIP Examinations and Recommendation Reports for decision often 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, I have concluded that the Proposed Development could not affect the coastal or marine environment in a manner sufficient to invoke this body of legislation and policy.

Environmental Protection Act 1990

- 3.5.12. S79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. This is discussed further in Chapter 4 of this Report.

Noise Policy Statement for England

- 3.5.13. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise.
- 3.5.14. The Explanatory Note within the NPSE provides further guidance on defining '*significant adverse effects*' and '*adverse effects*'. One such concept identifies '*Lowest Observable Adverse Effect Level (LOAEL)*', which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and No Observed Effect Level (NOEL), which is the level below which no effect can be detected.
- 3.5.15. When assessing the effects of development on noise matters, the aim should firstly be to avoid noise levels above the SOAEL, and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

Water Resources Act 1991, Flood and Water Management Act 2010, Water Act 2003 and 2014, Land Drainage Act 1991

- 3.5.16. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures, discharge and pollution, and for drainage management related to non-main rivers. The application is considered against such matters in Chapter 4 of this Report.

The Paris Agreement 2015

- 3.5.17. The Paris Agreement concluded in December 2015 with an agreement from all parties to the United Nations Framework Convention on Climate Change (UNFCCC) to the central aim: *“to keep the global temperature rise this century well below 2 degrees Celsius above pre-industrial levels, while pursuing efforts to limit the increase even further to 1.5 degrees Celsius”*. The Paris Agreement requires all parties to the agreement to make ambitious efforts to combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low carbon future. For this purpose, the parties agreed to making finance available consistent with a low greenhouse gas emissions and climate-resilient pathway.
- 3.5.18. The Paris Agreement requires all parties to put forward their best efforts through nationally determined contributions and to report regularly on their emissions and implementation efforts. Some of the key aspects of the agreement include long-term temperature goal, global peaking of greenhouse gas and climate neutrality, and mitigation. There will be a global stocktake every five years to assess the collective progress towards achieving the purpose of the agreement and to inform further individual actions by parties to the agreement.

Climate Change

- 3.5.19. 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. The Climate Change Act 2008 (CCA2008) also establishes statutory climate change projections.
- 3.5.20. The CCA2008 (as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (the 2019 Order)) established a long-term framework to tackle climate change. A key provision is the setting of legally binding targets for greenhouse gas emission reductions in the UK of at least 100% by 2050 and at least 26% by 2020, against a 1990 baseline. CCA2008 also created the Committee on Climate Change, with responsibility for setting five-year Carbon Budgets covering successive periods of emissions reduction to 2050, advising and scrutinising the UK Government’s associated climate change adaptation programmes and producing a National Adaptation Plan for the UK Government to implement.

The Public Sector Equality Duty

- 3.5.21. 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

- 3.5.22. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess in Chapter 4 of this Report, and the SoS must also have regard to this in making their decision.

Other Environmental Legislation

- 3.5.23. In addition to the legislation highlighted above, the following legislation identified in the ES have been taken into account in this Report:

- Protection of Badgers Act, 1992;
- Weeds Act, 1959;
- Wild Mammals (Protection) Act, 1996;
- Control of Pollution Act, 1974;
- Localism Act, 2011;
- Highways Act, 1980; and
- Hedgerows Regulations, 1997.

3.6. MADE DEVELOPMENT CONSENT ORDERS

- 3.6.1. The Applicant's responses to ExQ1 [REP2-014], ExQ2 [REP5-016], and ISH1 on the dDCO [REP1-010], made reference to the following made DCOs to support their position:

- The A19/A184 Testo's Junction Alteration Development Consent Order 2018;
- The A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016;
- The A14 Cambridge to Huntingdon Improvement Development Consent Order 2016;
- The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016;
- The M20 Junction 10a Development Consent Order 2017;
- The Silvertown Tunnel Order 2018;
- The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014;
- The Northampton Gateway Rail Freight Interchange Order 2019; and
- The A160 / A180 (Port of Immingham Improvement) Development Consent Order 2015.

- 3.6.2. The Applicant also cited another precedent development approval, namely the High Speed Rail (London – West Midlands) Act 2017.
- 3.6.3. I have taken all of these Orders and precedent development approvals into account in my consideration.

3.7. TRANSBOUNDARY EFFECTS

- 3.7.1. A transboundary screening under Regulation 24 of the 2009 EIA Regulations [OD-003] was undertaken on behalf of the SoS on 29 September 2017 following the Applicant's request for an EIA Scoping Opinion. No significant affects were identified which could impact on another European Economic Area member state in terms of extent, magnitude, probability, duration, frequency or reversibility.
- 3.7.2. In reaching this view the SoS has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 – Transboundary Impacts and Process). Transboundary issues consultation under Regulation 24 of the 2009 EIA Regulations was therefore not considered necessary.
- 3.7.3. The Regulation 24 duty is an ongoing duty, and on that basis, I have considered whether any facts have emerged to change this conclusion, up to the point of closure of the Examination. No mechanisms whereby any conceivable transboundary effects could occur emerged.

3.8. OTHER RELEVANT POLICY STATEMENTS

- 3.8.1. Other policies that give rise to important and relevant considerations for the SoS include the following:
- National policies¹¹
 - o National Infrastructure Delivery Plan 2016-2021 (May 2016), HM Treasury;
 - o Road Investment Strategy (RIS1) (2015 – 2020) (November 2016), Department for Transport (DfT);
 - o Action for Roads: A network for the 21st century (July 2013), HM Treasury;
 - o Department for Transport Single Departmental Plan 2015 – 2020 (February 2015), DfT; and
 - o Highways England Delivery Plan 2015-2020 (February 2015), Highways England.
 - Regional Policies¹²
 - o North East Strategic Economic Plan, (2019), North East Local Enterprise Partnership;

¹¹ Policies raised and referred to by the Applicant in its Planning Statement [APP-050] or in relevant sections of the ES [APP-020].

¹² Policies raised and referred to by STC and SCC in their LIR [REP2-021].

- o Tyne and Wear Local Transport Plan (LTP3) (2011 – 2021), Tyne and Wear Integrated Transport Authority; and
- o North East Combined Authority Regional Transport Plan.
- Local Policies¹³
 - o South Tyneside Strategy 2017-2020, STC;
 - o South Tyneside Highway Asset Management Plan;
 - o The Sunderland Strategy 2008-2025; and
 - o Sunderland Highway Asset Management Policy Statement and Strategy 2017.

3.9. THE NATIONAL PLANNING POLICY FRAMEWORK

3.9.1. The National Planning Policy Framework (the Framework) was originally published in 2012. It sets out the Government’s planning policies for England and how these are expected to be applied. It provides a framework upon which Local Planning Authorities make development plans and is also a material consideration for LPAs when making planning decisions under TCPA1990. The Framework was revised in July 2018 and is an important and relevant matter.

3.9.2. The Framework, together with the accompanying Planning Practice Guidance, contains statements of planning policy and practice and how these are expected to be applied. Paragraph 5 of the Framework states that it does not contain specific policies for nationally significant infrastructure projects. It notes that these are determined in accordance with the decision-making framework in PA2008 and relevant NPS, as well as other matters that are relevant (which may include the Framework). Paragraphs 1.17 to 1.20 of the NNNPS address the consistency of the NPS with the Framework.

3.9.3. Paragraphs 7 and 8 of the Framework state that the Government's approach to achieving sustainable development means that the planning system has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.

3.10. LOCAL IMPACT REPORTS

3.10.1. Section 104(2) of PA2008 states that in deciding an application for development consent where a NPS has effect the SoS must have regard to any LIR submitted before the deadline specified under s60(2).

3.10.2. A joint LIR prepared by STC and SCC was submitted at D2 [REP2-021]. Its content is considered in Chapter 4 of this Report. No LIRs were received from any neighbouring local authorities.

¹³ Policies raised and referred to by STC and SCC in their LIR [REP2-021] (at section 5).

3.11. THE DEVELOPMENT PLAN

3.11.1. As outlined in the Applicant's Planning Statement [APP-050] and the LIR [REP2-021], for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004, the development plan for the area of the application Site comprises the following:

South Tyneside Council Development Plan Documents

3.11.2. The South Tyneside Local Development Framework is the statutory development plan for the area and comprises the following suite of documents:

- The Core Strategy and Key Diagram (adopted June 2007) of which the following objectives and policies are relevant:
 - Objectives 1, 2, 3, 7, 10, 11, 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 are 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 are relevant:
 - Policy SA2 Improving Physical Accessibility and Transport Infrastructure; and
 - Policy SA7 Green Infrastructure and Recreational Opportunities.

Sunderland City Council Development Plan Documents

3.11.3. The statutory development plan for the City of Sunderland includes the City of Sunderland Unitary Development Plan (UDP) 1998 and Saved Policies 2007. The Applicant has identified the relevant saved policies as:

- Policy R1: Sustainable Development;
- Policy R2: Resource Utilisation;
- Policy EC1: General;
- Policy EN1: Environmental Protection;
- Policy EN5: Noise and Vibration;
- Policy EN9: Clean Environment;
- Policy EN11: Flooding;
- Policy BN1: Built Environment;

- Policy CN1: Nature Conservation;
- Policy CN3: New Development in the Green Belt;
- Policy CN15: Great North Forest;
- Policy CN16: Woodlands, trees and hedgerows;
- Policy CN17: Retention of trees;
- Policy CN18 Nature Conservation Sites;
- Policy CN23: Wildlife Corridors;
- Policy T12: Strategic Route Network;
- Policy T13: Highway Improvements;
- Policy T15: Protection of New and Existing Road Corridors;
- Policy T18: Highway Improvements;
- Policy NA29: Sunderland North (Defines the Boundary of the Green Belt); and
- Policy NA30: Road Proposals.

3.11.4. Sunderland's new Local Plan will comprise three parts: the Core Strategy and Development Plan; the Allocations and Designations Plan; and the IAMP AAP (see paragraph 3.11.5 below). The Core Strategy and Development Plan 2015-2033 was adopted by Sunderland City Council on 30 January 2020, after the close of the Examination.

International Advanced Manufacturing Park Area Action Plan

3.11.5. STC and SCC adopted the IAMP AAP in 2017. The AAP provides the planning policy to shape the development of the IAMP and requires the developer to demonstrate how IAMP will integrate with Proposed Development at Testo's junction and also at Downhill Lane junction.

Local Minerals and Waste Plans

3.11.6. STC and SCC do not have a specific Minerals and Waste Plan. STC refer to the policies within the Development Management Policies and the Core Strategy to assess compliance against minerals and waste. SCC covers Minerals and Waste in the adopted UDP.

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

3.12.1. I have remained aware throughout the Examination of the need to consider whether changes to the application 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.

3.12.2. The document entitled '*Planning Act 2008: examination of applications for development consent*', (March 2015) published by the former Department for Communities and Local Government, provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act, 2011 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 made.

- 3.12.3. Having considered this context throughout the Examination, I am content that the changes to the application, primarily consisting of technical revisions to the DCO as applied for, have not resulted in any material change to that which was applied for. I am therefore of the view that the SoST has the power to make the DCO as recommended in Chapter 8 and provided in Appendix D to this Report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. As required by s88 of PA2008 and Rule 5 of the EPR, as ExA I undertook an initial assessment of the application and of the RRs received. Annex B of the Rule 6 Letter [PD-004] set out the IAPI. The issues identified, which was not intended to imply an order of importance, were as follows:

- Air quality and emissions;
- Biodiversity, ecology and natural environment;
- CA and / or TP;
- Draft DCO;
- Economic and social effects;
- Historic environment;
- Landscape and visual effects;
- Noise and vibration;
- Other strategic projects and proposals;
- Transportation a traffic; and;
- Water environment.

4.1.2. It should also be noted that while the effects of the Proposed Development on the achievement of sustainable development including the mitigation of, and adaption to, climate change and the effects in relation to human rights and equalities duties were not listed as specific Principal Issues I have conducted all aspects of the Examination with these objectives in mind.

4.1.3. The IAPI was provided as Annex B of the Rule 6 Letter [PD-004] and was discussed at the PM [EV-001].

4.1.4. The planning issues have been reordered from the alphabetic order in which they were set out in the IAPI into an order reflecting their importance to the decision and their relationship with other topics. It follows that the planning issues are dealt with in this Chapter in the following order:

- The need for the Proposed Development;
- Transportation and traffic;
- Other strategic projects and proposals;
- Air quality and emissions;
- Biodiversity, ecology and natural environment;
- Landscape and visual effects;
- Noise and vibration;
- Water environment;
- Economic and social effects;
- Historic environment;
- Other considerations.

4.1.5. In addition to the planning issues arising from the IAPI, the remainder of this Chapter addresses other relevant matters that arose during the Examination. For each issue, the effect of the Proposed Development on that particular issue and any mitigation measures proposed are

summarised. Comments are made on matters raised in RR, WR, SoCGs and the LIR on the matters at hand. Where relevant, the Applicant's response to those comments are reported and conclusions drawn.

- 4.1.6. Matters relating to CA, TP and other land or rights considerations are dealt with in Chapter 7. Matters relating to the dDCO are addressed in this Chapter within the framework of the individual planning issues to which they relate. The DCO itself is reported on in Chapter 8 of this Report.
- 4.1.7. In addition to the planning issues, this Chapter also addresses the following topics arising from the conduct of the Examination:
- issues arising in written and oral submissions;
 - issues arising in the LIR;
 - conformity with the NPS;
 - conformity with the development plan;
 - the application and consideration of other legislation and policies;
 - EIA; and
 - HRA.
- 4.1.8. Having set out responses to these matters in broad terms between sections 4.2 to 4.8 of this Chapter, the planning issues identified in paragraph 4.1.4 above and the matters of detail arising from them are considered in Sections 4.9 to 4.19.

4.2. ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS

- 4.2.1. The application resulted in very little community concern and representations related largely to matters of detail. There were no representations suggesting that the Proposed Development was inappropriate in policy terms or that development consent should be refused.

Relevant Representations

- 4.2.2. Issues arising from RRs [RR-001 to RR-012] are as follows:
- Mr Edward Wylie [RR-001], a local resident questioned the construction impacts of the Proposed Development including the effect on access to private property and the effect of additional traffic;
 - Mr John Deighan, also a local resident sought further detail about the timing of the proposed works, the likelihood of increased traffic on Downhill Lane during construction and the implications for traffic on Downhill Lane when the scheme is operational, as well as the relationship between the A19 Downhill Lane junction proposals and the A19 Testo's Scheme [RR-002];
 - a RR on behalf of the IAMP LLP [RR-003], promoter of the IAMP scheme expressed support for the principle of the A19 Downhill Lane junction improvement. They expressed a wish to expand on topics in the IRD, providing more detail on the interface between the IAMP and Downhill Lane schemes as well as ongoing co-operation between IAMP

- LLP and HE to co-ordinate delivery of their prospective projects and mitigate impacts;
- the RR on behalf of Mr Davinder Singh Kandola, the owner of land to the north east of Downhill Lane junction, raised concerns about the proposal to take temporary possession of land [RR-004];
 - the RR for Town End Farm Development Ltd noted that discussions with the Applicant to resolve issues were ongoing [RR-005];
 - Public Health England [RR-006] noted that the ES did not identify any issues which could significantly affect public health;
 - National Grid Electricity Transmission Plc and National Grid Gas Plc [RR-007] noted that their primary concerns were to meet their statutory obligations and ensure that any development does not impact in an adverse way, noting that neither company had apparatus within the proposed Order limits;
 - Hellens Land Ltd (Hellens) [RR-008] recorded an objection to the proposed temporary and permanent land take on the basis that they were promoting the land for housing with the Proposed Development having a major impact on the early delivery of the site;
 - the EA noted that they were generally satisfied with the level of information submitted and on the whole their recommendations had been incorporated. Specifically, the EA identified matters for resolution in relation to water quality, flood risk, ground water and contaminated land, as well as environmental permitting to be addressed outside of the DCO process [RR-009];
 - in his RR [RR-010], Mr John Belshaw identified issues related to the use of the bridleway between the A184 and Downhill Lane for cyclists during construction;
 - the RR on behalf of Royal Mail Group Limited highlighted the potential for disruption to the highway network and for traffic delays to have adverse consequences on Royal Mail's operations [RR-011];
 - in their RR [RR-012] NE commented that they had been part of stakeholder consultation from the beginning of the planning process and had no further comment to make regarding the proposal.

Written Representations

- 4.2.3. Participants in the Examination were provided with the opportunity to make WRs. WRs submitted by the EA [REP1-013], NE [REP1-014], STC [REP1-015], SCC [REP1-017], Hellens [REP1-019]; IAMP LLP [REP1-023] and Mr Edward Wylie [REP1-024] amplified their earlier positions as set out in RRs and presented updated positions where possible.

Other Written Submissions

- 4.2.4. Participants were provided with an opportunity to comment on RRs at D1 with only the Applicant [REP1-009] providing a response. At D2 the Applicant commented on WRs [REP2-015] but there were no comments on WRs from any other participants. At D2 participants were also invited to respond in writing to ExQ1 [PD-006] with responses provided by the Applicant [REP2-014], the EA [REP2-017], STC [REP2-019], SCC [REP3-023] and IAMP LLP [REP2-024]. Responses to ExQ2 [PD-009] were

received from the Applicant [REP5-016], SCC [REP5-019] and STC [REP5-21] at D5.

- 4.2.5. Additional submissions accepted outside of the Examination deadlines included those received on behalf of National Grid, [AS-026], Town End Farm Developments Ltd [AS-027] and the Applicant [AS-028].
- 4.2.6. Signed SoCGs were provided throughout the Examination with a list set out in paragraph 1.4.27 of this Report. The matters raised in RRs, WRs, responses to the ExA's questions and in SoCGs have been addressed in relation to particular issues set out in sections 4.9 to 4.19 below and are taken into account in the remainder of this Report to the extent that they are important and relevant.

Oral Representations

- 4.2.7. At the PM, ISH1, ISH2 and ISH3 contributions were made by STC, SCC and IAMP LLP which demonstrated support for the Proposed Development, provided clarity or confirmation about the effects, the relationship of the Proposed Development to other projects and contributed to the evolving dDCO. At CAH1 Hellens Land Ltd explained their concerns around the CA of their land and their attempts to find an acceptable solution with the Applicant.
- 4.2.8. Mr Wylie spoke in support of the Proposed Development at OFH1 and at OFH2, commenting on the potential adverse impacts of construction and the potential effect of Brexit on the NMUK plant.
- 4.2.9. The issues raised orally are dealt with in relevant sections of this Chapter below but few new issues were raised in oral representations which were not addressed in written submissions.

4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORT

- 4.3.1. Section 104(2) of PA2008 requires the SoS to consider the contents of an LIR when making a decision on an application. The joint LIR produced by STC and SCC [REP2-021] provided information on the following matters:
- South Tyneside and Sunderland Context;
 - Details of the Proposal;
 - Relevant Development Plans;
 - Material Documents;
 - Other Relevant Considerations; and
 - Local Impacts Assessment.
- 4.3.2. The Councils assessed the local impacts arising from the Proposed Development in the following terms:
- biodiversity, ecology and natural environment – negative impact;
 - landscape and visual effects – negative impact;
 - construction traffic – negative impact;
 - air quality and emissions – neutral impact;
 - historic environment – neutral impact;

- noise and vibration - neutral impact;
- geology, soil and ground conditions – neutral impact;
- materials – neutral impact;
- economic and social effects – positive impact;
- other strategic projects and proposals – positive impact;
- transportation and traffic – positive impact;
- operational effects on motorised road traffic, traffic movements and the safety of users – positive impact;
- effects on the use of the PRoW network and on cyclists, pedestrians and horse riders – positive impact;
- water environment – positive impact; and
- road safety – positive impact.

4.3.3. In summary the LIR concluded that:

- the delivery of junction improvement works at the location had been an ambition of both Councils for a number of years linked to their aim to bring forward IAMP proposals;
- the Proposed Development would provide a means to relieve congestion at this key junction providing additional capacity for IAMP and improving the free flow of traffic on the A19;
- the Proposed Development would improve conditions for NMUs in and around the junction;
- construction would impact adversely on the local landscape, ecology and amenities in terms of noise and air quality with a temporary adverse impact on traffic movements;
- whilst there are some negative local impacts primarily during construction, none are so significant as to lead to either Council objecting to the principle of the scheme; and
- both Councils are satisfied that the impacts are capable of being appropriately controlled by Requirements within a DCO.

4.3.4. In conclusion the Councils' stated position in the LIR was that they "welcome this development which will significantly improve traffic flows at this key junction, relieving congestion and improving accessibility to and from the IAMP and supporting access to new economic development in accordance with national and local planning policy".

4.3.5. No specific comments on the LIR were submitted by the appropriate deadline, D3.

4.3.6. The Applicant, STC and SCC signed a SoCG which was submitted at D5 [REP5-018] agreeing all matters in respect of the effects of the Proposed Development, and that appropriate mitigation had been proposed and could be secured through the DCO. No matters of disagreement exist between these parties.

4.3.7. The overarching support of host local authorities, STC and SCC, has been noted and taken into account. Analysis of detailed matters raised by the LIR is addressed in the relevant Chapters and sections of this Report to ensure that they are considered as required by the SoST.

4.4. CONFORMITY WITH THE NATIONAL POLICY STATEMENT

- 4.4.1. This section assesses the conformity of the Proposed Development with the NNNPS being the relevant NPS. Prior to doing so it is appropriate to acknowledge that none of the exceptions set out in s104(3) of PA2008 (see paragraph 3.2.5 above) apply and therefore the application must be determined in accordance with any relevant NPS.
- 4.4.2. The Applicant analysed the performance of the Proposed Development against relevant policies in the NNNPS within its Planning Statement [APP-050]. This document sets out the need for the Proposed Development noting that the improvement of Downhill Lane junction was announced as part of the DfT's RIS1.
- 4.4.3. The NNNPS sets out the Government's vision to deliver national networks that meet the country's long-term needs, supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. The four strategic objectives which flow from the vision aim to deliver:
- networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs;
 - networks which support and improve journey quality, reliability and safety;
 - networks which support the delivery of environmental goals and the move to a low carbon economy; and
 - networks which join up communities and link effectively to each other.
- 4.4.4. Paragraph 2.2 of the NNNPS notes a critical need to improve national networks to address road congestion to provide safe, expeditious and resilient networks.
- 4.4.5. The Government's position (NNNPS paragraph 2.10) is that at a strategic level there is compelling need for development of the national networks - both as individual networks and as an integrated system.
- 4.4.6. As set out in paragraph 2.13, the SRN is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies. Traffic congestion which is forecast to grow fastest on the SRN is recognised as constraining the economy. Moreover, pressure on the road network is forecast to increase with economic growth, increases in population and falling costs due to fuel efficiency improvements.
- 4.4.7. Table 1 of NNNPS sets out options for addressing need, comprising maintenance and asset management, demand management and modal shift. Nevertheless, it is recognised that maintenance and asset management will not enhance capacity, tackle pressures on the network or unlock economic development. Demand management measures can make more efficient use of capacity while modal shift which aims to

encourage sustainable transport modes may not be suitable given the nature of some journeys on the SRN.

- 4.4.8. Paragraph 2.22 notes that without improving the road network it will be difficult to support further economic development and economic growth. Consequently, at a strategic level there is a compelling need for development of the national road network including through junction improvements to address congestion and improve performance and resilience Paragraph 2.24 highlights that policy is to tackle specific local issues, rather than simply meeting unconstrained traffic growth.
- 4.4.9. Table 5.1 of the Planning Statement [APP-049] assesses the conformity of the Proposed Development with the vision and strategic objectives of the NNNPS. In terms of the vision it indicates improved traffic flows with more reliable journey times which would assist in making the region more attractive for businesses to locate and would help in promoting a competitive regional economy. With regard to the strategic objectives it shows:
- reduced congestion at Downhill Lane junction supporting the operations of a key regional employer, NMUK, and providing additional capacity to support the anticipated future development of the proposed IAMP;
 - improved journey times, network resilience and journey time reliability along with improve safety while maintaining access for local traffic and improving provision for walkers, cyclists and other NMUs. The combined monetised value of reduced congestion and improved journey time benefits is forecast to be £30 million;
 - the Proposed Development would lead to only minor changes in air quality, as a result of forecast growth in traffic; and
 - a net improvement to the NMU facilities in the vicinity of the junction with a greater degree of segregation for NMUs from motorised traffic.
- 4.4.10. The Planning Statement concludes (paragraph 5.2.38) that the aims of the Proposed Development are directly in line with a range of national frameworks, including the NNNPS, and illustrate the need for the scheme on a national level.
- 4.4.11. An assessment of the Proposed Development against individual policy tests follows in section 4.9 to 4.19 of this Report. In addition, in paragraph 8.7 of the LIR [REP2-021] STC and SCC acknowledge that the Proposed Development is in accordance with national planning policy.

4.5. CONFORMITY WITH DEVELOPMENT PLANS

- 4.5.1. Section 5.4 of the Planning Statement [APP-050] identifies how the Proposed Development aligns with the objectives and policies set out in the STC and SCC development plans. It concludes that it conforms with local planning policies and objectives with respect to supporting economic development, improving facilities for sustainable modes of transport and improving the quality of everyday life for local travellers through reduced journey times, more reliable journeys and creating a safer road network. The design has sought to minimise local environmental impacts and

where appropriate, environmental mitigation is provided. Each specialist environmental Chapter of the ES [APP-020 to APP-043] also sets out the planning policies which are relevant to the assessment of the environmental topic and outlines how they have been addressed.

- 4.5.2. Section 5.5 of the Planning Statement [APP-050] provides an assessment against Green Belt objectives which is considered below in section 4.17.
- 4.5.3. Paragraph 8.6 of the LIR [REP2-021] recognises that '*whilst there will be some negative local impacts primarily during the construction of the improvement works, none are so significant as to lead to either Council to object to the principle of the scheme*'. Paragraph 8.7 then notes that the Councils welcome the Proposed Development which they consider to be '*in accordance with ... local planning policy*'.
- 4.5.4. There are instances of policy support for the Proposed Development in relation to the promotion of the A19 Growth Corridor, the IAMP development and the drive towards a strong competitive economy. Furthermore, no instances of unaddressed policy conflict have been identified. In addition, there were no issues of non-compliance with the development plan identified by any other IP or AP.
- 4.5.5. There are no issues arising from Development Plan policies that conflict with relevant policy directions arising from NNNPS. Whilst NNNPS is 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 detail to NNNPS compliance.
- 4.5.6. For completeness it should be noted that the Examination was not referred to any plan policies from Neighbourhood Plans.

4.6. APPLICATION OF OTHER POLICIES

- 4.6.1. The other policies that give rise to important and relevant considerations for the SoS include policies raised and referred to by STC and SCC in their LIR [REP2-021] (at section 5) and identified in sections 3.8 and 3.9 of this Report.

National Planning and Transport Policies

- 4.6.2. Section 3.9 above provides the context to the Framework. The Framework is explicit about the role of NPSs being the primary decision-making document for NSIPs under PA2008. It is also clear about the need for economic growth and the role planning has to play in facilitating it. The objectives underlying the Proposed Development are consistent with the Framework.
- 4.6.3. Due to the project falling partially in the Green Belt, the policies relating to the Green Belt in section 13 of the Framework are relevant. The Green Belt is considered separately at section 4.17 of this Report.

- 4.6.4. In RIS1 the Government set out its investment plan for long term investment in the road network, and particularly the strategic road network. The Downhill Lane Junction scheme aligns with the strategic vision of RIS1 and is recognised in the RIS as being a key investment on the strategic road network that the Government has committed the full anticipated funding for, provided the necessary statutory approvals are granted and the Scheme continues to demonstrate value for public money.
- 4.6.5. The National Infrastructure Delivery Plan (NIP) is clear about the link between a fit-for-purpose infrastructure network, social sustainability and a thriving economy and, therefore, the need for investment in infrastructure. The Downhill Lane junction proposals align with the key objectives of the NIP as it would address future traffic demand, create improved traffic congestion conditions, and create a safer environment for all users.
- 4.6.6. Action for Roads: A network for the 21st century, sets out Government's plans to upgrade the UK's strategic road network. As the Proposed Development increases connectivity and supports economic growth in the local area it complies with this national policy.
- 4.6.7. The Department for Transport Single Departmental Plan 2015 – 2020, identified the need to make journeys better, simpler, faster and more reliable and to support jobs, enable business growth, and bring the country closer together. The Proposed Development conforms and aligns with these objectives as it would improve connectivity and safety and reduce congestion to enable better, faster, simpler and more reliable journeys.
- 4.6.8. The Highways England Delivery Plan, 2015-2020, sets out five objectives to operate maintain and modernise the SRN. These comprise support for economic growth, establishing a safe and serviceable network, providing a more free-flowing network, improving the environment and creating an accessible and integrate network. The Supplementary Annex Delivery Plan 2017-2018 identifies major improvements planned to be delivered across the network which includes the Downhill Lane junction scheme.

Regional Policies

- 4.6.9. The North East Strategic Economic Plan (SEP), identifies the A19 corridor as a key employment location which is specifically identified as a spending priority for the region. It recognises that reducing congestion on the road network including the A19 is necessary to ensure that constraints on economic investment are relieved. The SEP seeks to ensure investment takes place in known bottlenecks including Downhill Lane junction.
- 4.6.10. LTP3 provided a vision for a fully integrated and sustainable transport network supported by goals which included promoting economic development. Whilst Downhill Lane Junction is not specifically identified, LTP3 generally supports improvement and upgrade of the A19 to respond to road safety and congestion issues.

4.6.11. The North East Combined Authority Regional Transport Plan, which is currently in draft, will eventually replace LTP3. It will promote investment in and improvement of the A19 corridor which is intended to remain as a strategic focus.

Local Policies

4.6.12. The South Tyneside Strategy, 2017-2020 promotes high levels of housing and employment. Improvements in connectivity in the A19 corridor which provides the major economic artery linking South Tyneside with the rest of the country are seen as important to facilitate jobs and growth in the local area. The South Tyneside Highway Asset Management Plan, 2015-2019 has relevance insofar as agreeing the level of collaboration for maintaining the highways network where STC is not responsible for the assets but may require certain standards of maintenance to be maintained.

4.6.13. The Sunderland Strategy, 2008-2025 aims to create an enterprising city with a strong and diverse economy. The Sunderland Highway Asset Management Policy Statement and Strategy, 2017 contributes to this vision by providing a highway network which supports business and provides access to work, schools, hospitals and leisure facilities.

4.6.14. It should be noted that no IPs or APs identified any matters of non-compliance with any of these policies.

4.6.15. Nothing arising from these policies has been found that conflicts with relevant policy directions arising from the NNNPS. Whilst the 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.

4.6.16. Accordingly, I find that the Proposed Development conforms with other relevant policies discussed above, and as there are no conflicts between NNNPS, and other relevant policies, those policies would be addressed by a decision that is in accordance with the NNNPS.

4.7. ENVIRONMENTAL IMPACT ASSESSMENT

Introduction

4.7.1. This section addresses the documents comprising the ES [APP-020 to APP-043]. During the course of the Examination the ES was amended and those changes that relate to the content of the ES are considered to constitute *'any other information'* as defined by the 2009 EIA Regulations. I have concluded that the amendments are relatively minor alterations, and that the overall environmental information submitted is sufficient for the SoS to take into consideration before making a decision in compliance with the 2009 EIA Regulations.

4.7.2. This section 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.

The Submitted ES

4.7.3. An ES was provided as part of the application submission. The documents comprising the ES can be summarised as:

- ES Volume 1 [APP-020];
- ES Figures [APP-021 to APP-031];
- ES Appendices [APP-032 to APP-042]; and
- ES Non-Technical Summary [APP-043].

Addendum to the ES

4.7.4. Following the submission and acceptance of the application amendments were made to the ES comprising the following:

- ES Addendum assessing the environmental effects of a potential variation to NMU provision [AS-022];
- Application Document Errata [AS-025]; and
- Application Document Errata (Revision 1) [REP2-009].

4.7.5. At D3 [REP3-001] the Applicant confirmed that the ES Addendum assessing a potential variation to NMU provision [AS-022] should be treated as withdrawn on the basis that the integrated NMU solution was not being promoted at that juncture.

Environmental Management Documents

4.7.6. The ES is supported by the following existing and proposed environmental management documents:

- the outline CEMP [APP-051];
- the CEMP to be approved following the making of the Order;
- the Register of Environmental Actions and Commitments (REAC) [APP-051] (Appendix D);
- the Environmental Masterplan [APP-020 (page 219)]; and
- following completion and handover as an operational asset, the Handover Environmental Management Plan (HEMP).

4.7.7. The outline CEMP [APP-051] is presented as a standalone application document. It is a certified document listed in Schedule 9 of the Order which is secured through Article 41 of the Recommended (r)DCO and defined in Article 2(1). Requirement (R)4 provides that no part of the authorised development may be commenced until a CEMP, substantially in accordance with the outline CEMP, for that part has been submitted to and approved by the SoS, following consultation with the Relevant Planning Authority (RPA). It also requires that construction of the authorised development must be carried out in accordance with the approved CEMP. R4 also provides that the CEMP must contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development and must require

adherence to specified 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;
- COSHH¹⁴ 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.

4.7.8. Appendix D of the outline CEMP comprises a REAC. As this forms part of the outline CEMP it is secured through the DCO. It is defined in R1 with R4 stating that the CEMP must reflect the mitigation measures set out in the REAC. R5 states that the landscaping scheme must reflect the mitigation measures set out in the REAC while R8 requires details of the surface and foul water drainage system to reflect the mitigation measures set out in the REAC.

4.7.9. Appendix C of the outline CEMP comprises an Environmental Masterplan which is also presented in Volume 1 of the ES [APP-020]. As both the outline CEMP and ES are certified documents the Environmental Masterplan is also secured through the DCO.

4.7.10. The HEMP is defined in R1 with R4 stating that it 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. The HEMP must address the matters set out in the approved CEMP that are relevant to the maintenance and operation of the authorised development which must then be operated and maintained in accordance with the HEMP.

The Applicable Regulations

4.7.11. As set out in section 1.5 above, the application has been submitted in accordance with the 2009 EIA Regulations rather than the 2017 EIA Regulations. Consequently, the application has been examined on the basis that it continues to be subject to the 2009 EIA Regulations (as amended).

Conclusions on the Environmental Impact Assessment and the Environmental Statement

4.7.12. During the Examination there were no submissions raising concerns about the overall adequacy of the EIA process and the ES. Individual

¹⁴ Control of Substances Hazardous to Health

submissions raising subject-specific issues bearing on individual planning issues are addressed in sections 4.9 to 4.19 below as necessary.

- 4.7.13. The ES and associated information submitted by the Applicant during the Examination have provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of the 2009 EIA Regulations. Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS.

4.8. HABITATS REGULATIONS ASSESMENT

- 4.8.1. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and is therefore subject to HRA. Consequently, the application was accompanied by an HRA Report [APP-045]. This identified an area of search and three relevant European Sites but concluded that there are no likely significant effects on those sites or their qualifying features from the Proposed Development.

- 4.8.2. 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. A separate record of considerations relevant to HRA has been set out in Chapter 5 of this Report below.

- 4.8.3. Nevertheless, I have considered all documentation relevant to HRA as required by paragraphs 4.22-4.25 of NNNPS and have taken it into account in the conclusions reached here and in the case for development consent (Chapter 6 below). There are no matters in relation to the HRA which require to be considered as part of the reasoning in respect of planning issues set out in this Chapter. Further, project design and mitigation proposals included in the ES and secured in the Recommended (r)DCO have been fully considered for HRA purposes.

4.9. THE NEED FOR THE PROPOSED DEVELOPMENT

Policy Considerations

- 4.9.1. Section 4.4 above introduces the NNNPS and demonstrates at a high level how the Proposed Development conforms with the NNNPS vision and strategic objectives. Consequently, there is no need to address those matters here. However, it is appropriate to record that NNNPS paragraph 4.26 notes that the EIA Directive¹⁵ requires an outline of the main alternatives studied by the Applicant and an indication of the main reasons for the applicant's choice, taking into account environmental effects. Paragraph 4.27 notes that all projects should be subject to an options appraisal which should consider viable modal alternatives although where projects have been subject to full options appraisal in

¹⁵ Council Directive 92/2011 on the assessment of the effects of certain public and private projects on the environment.

achieving their status within the RIS, option appraisal need not be considered by the ExA or the decision maker.

- 4.9.2. A range of other national, regional and local policy documents or programmes have relevance for the issue of need as referenced in Chapter 5 of the Planning Statement [APP-050] assessed in section 4.6 above. Nevertheless, it is appropriate to highlight here that paragraph 5.203 of the NNNPS advises applicants to have regard to policies in local plans, for example, policies on demand management being undertaken at the local level.
- 4.9.3. In terms of the need for improvements to Downhill Lane junction it is appropriate to highlight Policy STC1 of the STC Core Strategy which in establishing the Spatial Strategy for South Tyneside identifies the promotion of opportunities along the A19 Economic Growth Corridor while Policy SA2 of the Site Specific Allocations and Proposals Map promotes the improvement of physical accessibility and transport infrastructure.
- 4.9.4. SCC's UDP provides at Policy R1 for environmentally sustainable development which meets the economic and social needs of the City while through Policy EC1 the City Council will develop the City's role as a major manufacturing centre especially in relation to advanced or high technology processes. Policy T13 promotes highway improvements only where they fulfil certain criteria which includes improving the SRN.
- 4.9.5. The IAMP AAP seeks to promote a nationally important and internationally respected location for advanced manufacturing and Europeans scale supply chain industries. Section 3.7.2 of the AAP references the Downhill Lane junction scheme requiring development proposals to demonstrate how they would provide sustainable and safe connections to, and integration with, proposed improvements to the Downhill Lane and Testo's junctions on the A19.

The Applicant's Case

- 4.9.6. The Applicant set out the need for the Proposed Development in section 2 of the Planning Statement [APP-050] as well as Chapter 2 of the ES [APP-020] and the TA [APP-053] [REP3-020]. Further information was also provided in Appendix 1 of the Written Summary of Applicant's Oral Submissions at ISH2 [REP3-015].
- 4.9.7. Dealing with each of the scheme's key objectives in turn the Planning Statement [APP-050] justifies the Proposed Development as follows:
- improve journey times on this route of strategic national importance - the flow profiles of Downhill Lane junction show traffic flow peaks on the approaches caused by NMUK shift changes with significant queuing at the junction occurring during the shift changeover. The Proposed Development is seen as contributing to reduced congestion and delay in the vicinity of the junction in the AM and PM peak periods leading to a significant decrease in lost production time and subsequent increase in business user and service provider benefits;

- improve safety – it is anticipated that the Proposed Development would reduce accident rates at the junction by providing a safer highway configuration when compared with the existing situation; maintain access for local traffic whilst improving the conditions for strategic traffic – the Proposed Development improves the operation and safety of the A19 by providing significant additional capacity for the existing and anticipated growth in traffic while retaining access to neighbouring residential and employment areas;
- facilitate future economic growth – the Proposed Development has been designed to accommodate predicted future traffic growth which takes account of the IAMP proposals. As such, the Proposed Development provides an integral part of the infrastructure required to facilitate the planned strategic economic growth of the surrounding area; and
- improve provision for walkers, cyclists and other NMUs – the new NMU route would provide a greater degree of separation between vehicles and NMU traffic, thereby improving safety. The new NMU footbridge would avoid the need for NMUs to physically navigate Downhill Lane junction, improving safety and reducing severance between communities and employment areas across the A19.

4.9.8. Chapter 2 of the ES [APP-020] notes that RIS1 indicated that Downhill Lane junction would be altered to support local plans for IAMP. The Downhill Lane project formed part of HE's programme of investment in the SRN in the North-East that supports the growth agenda for the region. The scheme was initiated to reduce congestion, provide safety benefits and support growth in the local and regional economy. It also recognised the need to address the junction capacity to accommodate future development which could not be accommodated by the current layout. RIS1 also included the Testo's Scheme with the interrelationship between the schemes recognised.

4.9.9. The background to the need for the scheme as well as the options considered are addressed in Chapter 3 of the Planning Statement [APP-050]. It notes that the first stage of development of an improvement scheme for Downhill Lane junction involved identifying possible options with six identified from an initial list of 25 for more detailed environmental assessment and technical appraisal. Paragraph 3.2.4 of the Planning Statement [APP-050] describes the options with paragraph 3.3 providing an assessment of them. Options A to E were all found to provide sufficient capacity within the assessment. The options were subject to non-statutory consultation, with nearly 70% of respondents supporting Option A which was announced as the Preferred Option as it provided the greatest improvements for road users, significantly easing congestion and providing best value for money. Refinements were made to Option A through Statutory and Non-Statutory Consultation stages.

The Examination

4.9.10. The need for the Proposed Development was not questioned in any RR or WR and there was considerable support from IPs including the local

authorities in recognising the need for improvements to Downhill Lane junction, throughout the Examination.

- 4.9.11. Nevertheless, at ISH2 I questioned the Applicant's approach to the Proposed Development [EV-011] [EV-012]. My questions arose from data in the TA [APP-053] which describes, in section 1.8, the traffic flows at the existing Downhill Lane junction. Paragraphs 1.8.2 and 1.8.3 note that *"the outstanding features of the flow profiles at the Downhill Lane junction are the peaks on the approaches caused by Nissan shift changes... Significant queuing at the Downhill Lane junction during the Nissan shift change-over and [sic] occurs over short periods of time of up to 30 minutes each"*. During USI2 I observed the morning peak traffic flows at Downhill Lane junction and along the A1290.
- 4.9.12. In the Written Submission of the Applicant's Case Put Orally at ISH2 [REP3-015] [EV-011] [EV-012] the Applicant noted that the IAMP developments would also require access to the junction and would exacerbate the existing problems and shift changes. Whilst recognising the scheme objectives (section 2.7 of the Planning Statement [APP-050]) I questioned whether the Proposed Development was primarily to address existing peak hour traffic flows which might otherwise be addressed through demand management measures. Additionally, with committed / planned IAMP development and other traffic growth there would be an increase in total junction traffic during the morning peak between 06.00 and 07.00 of 60% with the Proposed Development in place in the design year (2036) compared to existing traffic flow levels. Without the Proposed Development the Applicant argued that the growth in traffic could not be accommodated and would cause extra delay.
- 4.9.13. To address future peak hour traffic flows at Downhill Lane junction operators of IAMP ONE will require their employees, to work to the same shifts as NMUK staff. Recognising that the existing operational issues at Downhill Lane junction are most apparent when NMUK shift-changes occur, through a Highways Operational Management Plan (HOMP) secured through the planning permission for IAMP ONE, the shift pattern for IAMP ONE will be off-set by one hour from those used by NMUK. This will operate in the morning and afternoon periods for a temporary phase until the improvement works at Testo's and Downhill Lane are completed.
- 4.9.14. The Applicant confirmed [REP3-015] (Appendix 1) that the Proposed Development was to support plans for IAMP and to do so, current congestion needed to be alleviated and additional capacity needed to be provided.
- 4.9.15. The Applicant also noted that in addition to serving IAMP the Proposed Development would support other economic growth including development plan objectives within the A19 corridor providing access to three primary employment areas within Sunderland, namely NMUK, Turbine Park and Hillthorn Park. Without the Proposed Development further local growth in the area would be constrained.

- 4.9.16. The Applicant confirmed [REP3-015] (Appendix 1) that the Proposed Development was designed to address peak times when demand for additional trip making associated with future economic growth is anticipated to occur recognising standard practice for highway improvement schemes to accommodate peak traffic flows in a design year (typically 15 years after scheme opening). The Proposed Development represented the best option in terms of interventions in the road network.
- 4.9.17. The Applicant also highlighted the measures within the IAMP ONE scheme which incorporates a Framework Travel Plan which will be supplemented by detailed travel plans for each unit occupier requiring measures for modal shift to reduce single car occupancy and to incentivise travel by walking, cycling and public transport. Moreover, trip rates used in the modelling for the Proposed Development take account of the effects of transport plans applying to existing businesses in the area including NMUK [REP3-015].
- 4.9.18. In their response to my question about existing travel plan commitments as a means of demand management SCC explained its position regarding engagement with NMUK and other key suppliers and large employers to support workplace travel planning [REP3-024].
- 4.9.19. During OFH2 Mr Wylie [EV-010] queried whether the Proposed Development should proceed in the light of the possible consequences and uncertainties over Brexit. In response the Applicant [REP3-015] confirmed, with respect to the reported prospect of shift pattern changes at NMUK, that these would not affect the Proposed Development. Regarding broader considerations on changes to NMUK's model production in Sunderland this had been addressed in paragraph 1.2.2 of the IRD [REP3-019]. Moreover, lost model production would in part be offset by recent growth in electric vehicle production and retained production of two other vehicle models. The announcement of the withdrawal of the night shift would result in workers transferring to the two daytime shifts. The Applicant argued that such a change would not alter the need for improvements to the Downhill Lane junction which is predicated on the 7.00am arrival for the daytime shift.

ExA Conclusion

- 4.9.20. The need for improvements at Downhill Lane junction can be demonstrated in a number of ways as set out above (paragraph 4.9.7). Action is required to relieve the existing pressures on Downhill Lane junction, particularly at peak hours. Consequently, my questioning at ISH2 sought to explore whether measures other than intervention in the road network would be appropriate. There is clear support from the local authorities and IAMP LLP for improvements to the junction in general and support for the Proposed Development in particular. What was less clear was whether demand management measures had been, and continue to be, addressed to ensure that a highway intervention incorporating physical changes to the Downhill Lane junction was necessary.

- 4.9.21. On the basis of SCC's evidence [REP3-024] I consider that demand management measures to address existing workplace traffic generation as well as future traffic generation through IAMP ONE justify improvements to Downhill Lane junction taking the form of highway improvements. Moreover, improvements to the junction are also required to facilitate future economic growth both locally and regionally. This could not be achieved through demand management measures alone.
- 4.9.22. With regard to possible uncertainties around Brexit I have not been presented with any evidence to suggest that there would not be a need to address existing or future traffic flows at Downhill Lane junction. Accordingly, I conclude that there is a need for highway improvements at Downhill Lane junction.

4.10. TRANSPORTATION AND TRAFFIC

Policy Considerations

- 4.10.1. Section 4.4 of this Report introduces the NNNPS whilst paragraphs 4.9.1-4.9.5 set out the policy consideration relating to the need for the Proposed Development. The comments on policy in this section should be read alongside those two earlier sections.
- 4.10.2. Paragraph 2.1 of the NNNPS recognises that well connected and high performing networks with sufficient capacity are vital to meet the country's long-term needs and support a prosperous economy. Paragraphs 2.2-2.4 note a critical need to improve national networks to address road congestion to provide safe, expeditious and resilient networks which addresses the forecast rise in road traffic of 30% from 2014 to 2030. Paragraph 2.6 recognises that improved and new transport links can facilitate economic growth.
- 4.10.3. Paragraphs 2.12 to 2.14 of the NNNPS highlight the importance of the SRN which provides critical links between areas enabling safe and reliable journeys and the movement of goods in support of the national and regional economies.
- 4.10.4. NNNPS paragraph 2.23 identifies that specific network improvements will be a necessary part of addressing the identified need. Enhancements include junction improvements and new slip roads to address congestion as well as improvements to trunk roads. The impact of a scheme on wider transport networks and of construction sites on the network whilst a scheme is being developed is recognised in paragraphs 5.201 to 5.218 of the NNNPS.
- 4.10.5. The SoS is required to consider impacts on the local transport network and local transport policies, including those in local plans (paragraph 5.211 of the NNNPS). Paragraphs 5.215-5.216 advise that mitigation should focus on promoting sustainable development and that where development would worsen accessibility such impacts should be mitigated so far as reasonably possible. In particular *"there is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated"*.

The Applicant's Case

- 4.10.6. The Applicant set out its case in the TA [APP-053] [REP3-021], Chapter 13 of the ES [APP-020] and the Planning Statement [APP-050]. Further information was also provided in Appendix 1 of the Written Summary of Applicants Oral Submissions at ISH2 [REP3-015]. In addition, the Proposed Development is described in Chapter 2 of the ES and section 2.3 above.
- 4.10.7. Chapter 13 of the ES [APP-020] covers the potential effects of the Proposed Development on people and communities. These include the effects on movement between communities for all transport modes which for public transport users, considered the effects on bus routes and the potential for changes to bus journey times while for vehicle travellers, the assessment considered the effects on traffic and delay times, changes to the view from the road, and changes to the level of stress experienced by drivers.
- 4.10.8. Downhill Lane junction feeds into the A1290 which in turn provides the northern access to the NMUK plant. NMUK operates on shift patterns, and as a consequence, Downhill Lane junction suffers from severe congestion at shift change times due to the concentration of arrivals and departures. Greatest congestion occurs prior to the morning shift change at 07:00 resulting in significant queuing on the A19 slip roads, causing traffic to become stationary on the nearside lane northbound resulting in a significant road safety issue. IAMP also requires access onto the A19 via Downhill Lane junction and is anticipated to exacerbate the congestion problem at shift change times.
- 4.10.9. With IAMP ONE in place, traffic flows at Downhill Lane junction would increase significantly, with a further large rise due to IAMP TWO. Without the Proposed Development the TA [REP3-021] indicates that the likelihood of accidents on the A19 would increase.
- 4.10.10. The TA [REP3-021] set out the results of the strategic modelling assessment. Various scenarios were considered for the opening year (2021), when IAMP ONE was assumed to be operational and for the design year (2036) when all of the planned local road network infrastructure required for IAMP TWO would be in place. Two different scenarios were considered for the opening year: TA1 and TA2. An operational assessment which is based on the strategic model and assessed anticipated junction performance considered the Proposed Development performance during the key morning peak hour, in more detail.
- 4.10.11. Scenario TA1 takes account of the traffic generated by the IAMP ONE development, which would be operational by 2021, and the widening of the A1290 between the IAMP northern access and Downhill Lane. A one-hour shift pattern offset would apply, reducing the IAMP ONE trip generation to negligible levels during the congested NMUK shift change period as agreed within the HOMP.

- 4.10.12. In Scenario TA1 traffic flows with and without the Proposed Development are similar as the demand is constrained by the one-hour shift pattern offset. In both cases delays at the junction would be at a level which is equivalent to that currently experienced because the flows are constrained by the single carriageway exit on the A1290 West. However, the resultant queues at the junction are contained within the slip roads due to the additional storage capacity provided by the Proposed Development thereby addressing the current road safety issue at this location.
- 4.10.13. Scenario TA2 represents a worst-case assessment in terms of traffic flows within the opening year. It includes the traffic demand associated with the IAMP ONE development and assumes that the A1290 is dualled between Downhill Lane and Cherry Blossom Way. It also assumes the removal of the one-hour shift pattern offset.
- 4.10.14. The TA [REP3-021] concluded that should the dualling of the A1290 be completed in 2022 or soon after then the Proposed Development would have sufficient capacity to cope with the traffic demand at Downhill Lane should the one-hour shift pattern offset be lifted.
- 4.10.15. The TA indicates that in Scenario TA2 traffic flows would increase due to the additional traffic generation associated with IAMP TWO. Without the Proposed Development significant delays would occur on both A19 slip roads and on Washington Road due to the limited capacity of the existing junction. With the Proposed Development in place delays would be reduced to negligible levels. Consequently, the Applicant concluded that the Proposed Development successfully accommodates the demand associated with the existing and proposed traffic and would allow the one-hour shift offset to be removed.
- 4.10.16. Scenario TA3 considers the design year of 2036 and is based on all the traffic demand from both IAMP ONE and IAMP TWO. This scenario considers the provision of all of the local road network infrastructure required in association with IAMP TWO, which is not expected to be operational until after 2026. Scenario TA3 would incorporate the dualling of the A1290 between the A19 Downhill Lane Junction and Cherry Blossom Way together with a new road bridge over the A19 approximately 400m to the south of the Downhill Lane junction, linking Washington Road to the NMUK site.
- 4.10.17. The Applicant considered Scenario TA3 to be a realistic scenario for the design year as it aligns with the scheme description within RIS1. It assumes that IAMP TWO developments would operate using the same shift patterns as NMUK and constitutes a worst-case situation in terms of traffic loading at Downhill Lane junction.
- 4.10.18. Each scenario was tested by comparing a 'Do Minimum' test without the Proposed Development to a 'Do Something' test including the Proposed Development.

- 4.10.19. The Applicant's model indicated that traffic flows are higher in the design year than in the opening year due to the operation of IAMP TWO. There is more capacity on the local road network due to the Washington Road Bridge being assumed to be open allowing an additional route to the NMUK plant and IAMP. The Proposed Development is forecast to operate well and queues on each approach would clear during each traffic signal cycle.
- 4.10.20. During construction, the Proposed Development would have temporary effects on road users, including pedestrians, cyclists and equestrians due to the diversion of key NMU routes, such as Bridleway B46 and also walkways and cycleways along Washington Road. The ES assessed these effects as significant adverse as a result of the importance of the Downhill Lane junction and surrounding roads, footpaths and cycleways as a commuter route to the NMUK plant.
- 4.10.21. Construction works would cause some short-term and limited disruption to local bus routes using Downhill Lane junction, particularly services with stops to the west of Downhill Lane junction on the A1290. Temporary relocation of bus stops would be required. The effects on journey times for public transport users would be consistent with those for other vehicular traffic.
- 4.10.22. The implementation of a Construction Traffic Management Plan (CTMP) to include the management of construction traffic during peak hours and minimise any adverse effects during construction, would assist in reducing journey times and driver stress on key journeys. Drivers travelling through the junction during the construction period would likely experience an increase in construction traffic affecting the operation of Downhill Lane junction. The presence of traffic management measures would increase journey times for drivers.
- 4.10.23. During construction the Proposed Development would be visible from the A19 mainline carriageway for drivers travelling in both directions, replacing existing views of farmland to a landscape associated with construction. However, these would be in view for a short period of time because of the speed of vehicles and would only change for a small section of the A19.
- 4.10.24. For road users there are expected to be considerable beneficial effects during the operation of the Proposed Development with regard to the improved transportation and movement between communities and facilities in the area.
- 4.10.25. Enhancements to the NMU network would provide significant long-term beneficial effects through improved safety and improved connectivity. These include the creation of two new at grade signalised crossings and a new NMU bridge across the A19.
- 4.10.26. When operational the scheme may require the permanent relocation of the north-bound bus stop on the A1290 due to the proximity with the revised Downhill Lane / A1290 junction. For those public transport

services which use the A19 mainline, the effects would be to experience minor beneficial reductions in journey time.

- 4.10.27. During operation of the Proposed Development, vehicles on the A19 and those travelling from the north are expected to experience improved journey times during peak periods. However, for some vehicle travellers travelling east to west through Downhill Lane junction, journey times are anticipated to increase. As Downhill Lane (West) would become a left in-left out only road at its junction with the A1290 when IAMP ONE is constructed, those using Downhill Lane (West) via this junction would experience a significant adverse effect on journey times.
- 4.10.28. The ES assessed journey times for 12 key journeys during the 2021 Do Minimum and 2021 Do Something morning and afternoon peaks. In seven cases drivers would be anticipated to experience significant increases in journey time even with the Proposed Development in place. Other journeys within the study area would not be significantly affected by the changes in journey times associated with the Scheme. As a result, these journey times would remain the same as those experienced in 2021 Do Minimum scenario, which represents no change (ES Table 13.24) [APP-020].
- 4.10.29. Journey time results for the 12 key journeys during the 2036 Do Minimum and 2036 Do Something morning and afternoon peaks indicate that two of the journeys would be anticipated to experience over 30% increases in journey time with the Proposed Development in place. Other journeys within the study area would not be affected substantially by the changes in journey times associated with the Proposed Development. As a result, these journey times would remain similar to those likely to be experienced in 2036 Do Minimum scenario, which represents no change (ES Table 13.26) [APP-020].
- 4.10.30. Signal re-optimisation would optimise cycle times which could improve the operation of the junction and reduce delays, especially during peak hours. However, it is unlikely that this would have a significant effect on forecast journey times. Although the effects would be adverse, there are some journeys for which there are beneficial effects.
- 4.10.31. New warning and directional signage on the approach to the Downhill Lane junction would be used to explain route changes and to direct drivers and would help reduce route uncertainty delays and driver stress for those drivers using the new road layout. It would also be constructed to modern standards, with improved geometric alignment and visibility. However, this would not significantly affect driver stress which would generally represent no change overall.
- 4.10.32. For views from the road, there would be no additional mitigation for the minor adverse environmental effect for travellers on the A19 mainline carriageway. Therefore, the residual effect would be minor adverse.

- 4.10.33. Overall the Applicant anticipated that the Proposed Development would reduce accident rates at the junction. The proposals provide a safer highways configuration when compared to the existing situation.
- 4.10.34. The Applicant summarised the TA [REP3-021] as indicating that the Proposed Development:
- meets the requirements of central government's transport objectives around economy, environment, social and public accounts;
 - aligns with national and local planning policy;
 - addresses future traffic demand and creates improved traffic congestion conditions and journey experience for motorists;
 - improves facilities for NMUs; and
 - creates a safer environment for all users. Accident rates are forecast to reduce as a result of the Proposed Development.

Examination

- 4.10.35. No representations were made which raised concerns with the transportation and traffic case for the Proposed Development.
- 4.10.36. The LIR submitted by STC and SCC [REP2-021] noted that both Councils agreed with the TA's baseline which was generated by validating 2012 data through surveys conducted between 2013 and 2015. Both Councils were satisfied with the approach taken to traffic modelling, trip generation assumptions and the traffic growth factors applied to provide additional capacity through the new junction.
- 4.10.37. The Councils also noted that the TA [REP3-021] demonstrated that on the SRN the Proposed Development would reduce delays, allow the free flow of traffic on the A19 and accommodate traffic growth directly associated with IAMP. On the local road network, the TA demonstrated that the Proposed Development would provide capacity and facilities for NMUs.
- 4.10.38. The LIR [REP2-021] noted that the Downhill Lane junction improvements along with the Testo's Scheme have a vital strategic position in the national road network serving the North East, both linking the A19 and providing access to economically significant employment destinations in the A19 corridor. The Councils anticipated that the improved accessibility throughout the A19 corridor would make employment areas more attractive to new businesses and attract further investment for improvements at existing sites.
- 4.10.39. Both Councils indicated that they were content that the proposals are in full accordance with current local plan and Strategic Economic Plan policies to improve access both to key employment corridors and residential areas.
- 4.10.40. The Councils recognised that the Proposed Development would be delivered alongside a range of other local network improvements to ensure that opportunities to improve access are maximised. Based on the improvements to traffic capacity, non-motorised user and road safety

benefits, the Council's indicated that a positive impact in terms of transportation and traffic would result.

- 4.10.41. The Councils supported alternative, segregated routes for NMUs which provide a separate safer route for pedestrians, cyclists and equestrian users. Overall, this was considered to produce a positive impact. Similarly, the impacts on the use of the PRow network was considered to be positive. The CEMP would be required to provide safe alternative routes for NMUs during construction particularly where the highway is temporarily stopped up, with appropriate diversion routes put in place and co-ordination with the Testo's Scheme seen as vital.
- 4.10.42. When complete and fully operational the Proposed Development would provide new and improved infrastructure, which the Councils considered a positive impact in terms of encouraging modal shift.

ExA Conclusion

- 4.10.43. I have considered the Applicant's case in respect of transportation and traffic as set out in the TA [APP-053] [REP3-021], Chapter 13 of the ES [APP-020] and the Planning Statement [APP-050]. Further information was also provided in Appendix 1 of the Written Summary of Applicants Oral Submissions at ISH2 [REP3-015].
- 4.10.44. There were no objections to the transportation and traffic case and the Proposed Development has been reviewed against all relevant policy. Both STC and SCC consider the achievement of the transport and traffic benefits of the Proposed Development as being of significant importance.
- 4.10.45. The only element of concern raised by IPs related to the possible interactions between the construction stages of the Proposed Development with the Testo's Scheme. The Councils have highlighted the regular Traffic Management Forum which they attend at the Applicant's invitation and which the Applicant intends to maintain to co-ordinate construction across both schemes, to ensure that traffic disruption is minimised [REP3-012]. It would also be managed through the CTMP which would be secured through R10 of the dDCO [REP5-007] and which is subject to consultation with the relevant planning authority.
- 4.10.46. 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.
- 4.10.47. The transport and traffic effects of the Proposed Development during construction 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 would be strongly positive.

4.11. OTHER STRATEGIC PROJECTS AND PROPOSALS

Policy Considerations

- 4.11.1. Section 4 of the NNNPS sets out general principles of assessment. At paragraph 4.3 it identifies that when weighing the adverse impacts of a proposed development against its benefits the SoS should take into account the *"potential benefits including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits"*. The SoS should also take account of *"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."*
- 4.11.2. NNNPS paragraphs 4.15 to 4.21 stress the need for an ES to adequately assess likely significant effects at all stages of the project and that when considering significant cumulative effects, any ES should consider how the proposal's effects would combine and interact with the effects of other development. Consideration should be given as to *"how significant cumulative effects and the interrelationship between effects might as a whole affect the environment, even though they may be acceptable when considered on an individual basis with mitigation measures in place"*. Paragraph 4.55 states that the SoS should be satisfied that *"the effects of existing sources of pollution in and around the project are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits"*.

The Applicant's Case

- 4.11.3. In section 2.4 above, the relationship of the Proposed Development to other strategic projects and proposals was described. These are the Testo's Scheme; the IAMP proposals (IAMP ONE and IAMP TWO); and the A1 Birtley to Coalhouse Improvement Scheme.
- 4.11.4. This section addresses the relationship between those projects, and between them and the Proposed Development, cumulatively and in-combination including the question of cumulative and in-combination impact assessment for EIA purposes. Of particular relevance to this consideration are Chapter 15 of the ES [APP-020] and the revised IRD [REP3-018].
- 4.11.5. The ES (Chapter 2) [APP-020] notes that changes to traffic flows are the central factor in identifying potential environmental impacts. Traffic-flow factors that affect the environment include the quantity, distribution, speed and composition of traffic.
- 4.11.6. Environmental topics which base their impact assessment on information about traffic flows on the road network comprise air quality and emissions (section 4.12); noise and vibration (section 4.15); water environment (section 4.16) and economic and social effects (section 4.17).

- 4.11.7. As described in section 4.10 above, the TA [REP3-021] and Chapter 2 of the ES [APP-020], traffic forecasts have been developed for the opening year of the Proposed Development, assumed to be 2021, and a design year (2036). The traffic forecasts examined two network development scenarios for the opening year (TA1 and TA2) whilst a third scenario was tested for the design year (TA3). All three scenarios considered the interrelationship between the Proposed Development and the IAMP ONE and IAMP TWO developments, together with other relevant developments and highway schemes. Predictions were made for both traffic flows and related environmental effects.
- 4.11.8. The potential for other developments including highway projects to have effects that act cumulatively on receptors affected by the Proposed Development and the Applicant's approach to assessing them was set out in Chapter 15 of the ES [APP-020]. Nine other developments along with proposed highway schemes were considered in the cumulative effects assessment. The ES concluded that IAMP TWO acting cumulatively with the Proposed Development would have adverse cumulative effects on visual amenity, on NMUs and residential receptors and the temporary and permanent loss of Grade 3b farmland.
- 4.11.9. The potential for individual environmental receptors to be affected in more than one way by the Proposed Development alone, on the basis of multiple topics, and for those separate effects to act cumulatively was addressed at the end of each specialist chapter within this ES [APP-020] and is covered in the appropriate section of this Report.

Interrelationship with the Testo's Scheme

- 4.11.10. As set out in section 4.10 above, the Proposed Development and the Testo's Scheme overlap physically and temporally. The physical overlap can be seen most clearly in terms of the interface between the two projects immediately to the north of the Downhill Lane junction in relation to such matters are the construction and operation of the slip roads between the junctions and proposals to modify NMU routes.
- 4.11.11. In addition, with both the Downhill Lane and Testo's junction improvement schemes expected to be under construction within the same timeframe, it would be possible for the Proposed Development to share the use of the Testo's main compound for general storage, traffic management and office based administrative purposes. However, in order to present the worst-case effects, the ES specialist Chapters 6 to 14 assumed that the Proposed Development would be a standalone development using the full temporary land-take for the Proposed Development excluding the Testo's compound. Any additional effects that may subsequently arise from the Proposed Development sharing the use of the Testo's Scheme's main site compound, including extending its use beyond completion of the Testo's Scheme, were discussed at the end of each specialist ES chapter [APP-020]. Where relevant they are considered in sections 4.12 to 4.19 of this Report.

Interrelationship with the IAMP Proposals

- 4.11.12. In terms of the IAMP developments, as clearly set out in section 4.10 above, the transport modelling which was undertaken for the Proposed Development was done taking account of a number of alternative development scenarios reflecting the physical and temporal relationships between the projects.

Interrelationship with the A1 Birtley to Coalhouse Improvement Scheme

- 4.11.13. In respect of the A1 Birtley to Coal House Improvement scheme the IRD notes that most of the topics considered in the IRD are not relevant to that scheme as it is located some distance from the other three projects. Based on the current HE Delivery Plan, there is a limited overlap between their construction programmes, particularly activities which affect the flow of traffic on the SRN.

Interrelationship with Other Schemes

- 4.11.14. In respect of other schemes, both the ES (Chapter 15) [APP-020] and the TA [REP3-021] have assessed the effects of other committed and planned developments and highway schemes in transport modelling work and in considering environmental effects. Where appropriate these are considered in the relevant section of this chapter below.

Examination

- 4.11.15. There were no submissions from any IPs suggesting that the assessment of effects in terms of other strategic schemes was incorrect. IAMP LLP, in their SoCG with the Applicant [REP5-015] raised no concerns in respect of the design, programming and construction phasing or land assembly interactions between the Proposed Development and IAMP. Agreement was reached on all matters and discussions regarding programming and construction were described as positive.
- 4.11.16. In their SoCG with the Applicant, STC and SCC [REP5-018] confirmed that they agreed with the approach taken for the TA scenarios and were content with the baseline assessments and validation undertaken. In the LIR [REP3-021] there is clear recognition of the inter-relationship between the three projects and support for them. No other potential cumulative or in-combination effects arose or became apparent during the Examination.

ExA's Conclusion

- 4.11.17. In conclusion I find that all relevant interrelationships between the Proposed Development and the Testo's Scheme have been considered, to the extent that these are known, and no significant adverse cumulative effects have arisen. The potential use of the Testo's Scheme construction compound as part of the construction of the Proposed Development is considered in relation to relevant specialist matters in the following sections.

- 4.11.18. All relevant interrelationships between the Proposed Development and IAMP ONE and IAMP TWO have been considered, to the extent that these are known, and no significant adverse cumulative effects have arisen. Similarly, there are no significant interrelationships between the Proposed Development and the A1 Birtley to Coalhouse Improvement Scheme. Likewise, no significant interrelationships between the Proposed Development and other development or highway projects have been identified and so no significant adverse cumulative effects have arisen. Finally, NNNPS policy requirements in relation to cumulative and in combination assessments for EIA purposes have been met.

4.12. AIR QUALITY AND EMISSIONS

- 4.12.1. This section addresses the following effects:

- carbon emissions and climate change considerations;
- construction emissions with a bearing on air quality including dust;
- nitrogen oxide (NO_x) and particulate (PM₁₀) emissions; and
- air quality effects during operation.

- 4.12.2. While the NNNPS includes lighting alongside a range of emissions including dust, in this Report lighting is included with landscape and visual effects which is where it is mainly addressed in the ES.

Policy Considerations

- 4.12.3. The importance of transport in meeting the Government's legally binding carbon targets and other environmental targets is highlighted in paragraph 3.6 of the NNNPS. The shift to ultra-low emission vehicles among other greener technologies and fuels is seen as having a significant role to play in reducing emissions.

- 4.12.4. Paragraph 3.8 of the NNNPS recognises that the impact of road development on aggregate levels of emissions is likely to be very small and needs to be seen in the context of significant projected reductions in carbon emissions and improvements in air quality. The annual carbon dioxide (CO₂) impacts from the delivery of proposed improvements to the SRN would be below 0.1% of average annual carbon emissions allowed in the fourth carbon budget. Similarly, aggregate air quality impacts from the SRN programme are expected to be small but increases in total PM₁₀ and NO_x emissions need to be seen in the context of projected reductions in emissions over time as a result of tighter vehicle emission standards.

- 4.12.5. The Government's legal requirement to cut greenhouse gas emissions by at least 80% by 2050 is noted in NNNPS paragraph 5.16. The 2019 Order, amends CCA2008 by revising the previous 2050 carbon target (of an 80% reduction of carbon emissions compared to 1990 levels) to a 100% reduction, i.e. a net zero carbon target. Based on this revised target the SoS may wish to consider whether the greenhouse gas emissions impact of the Proposed Development would have a material impact on the UK Government meeting its increased carbon reduction targets.

- 4.12.6. Applicants for road projects are required to provide evidence of the carbon impact and an assessment against carbon budgets. NNNPS paragraph 8.18 confirms the position that any increase in carbon emissions is not a reason to refuse development consent "*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 the Government to meet its carbon reduction targets*".
- 4.12.7. Paragraphs 4.36-4.47 of NNNPS addresses climate change adaptation noting that adaptation is necessary to deal with the potential impacts of change that are already happening. Through location, design, build and operation new development is expected to avoid increased vulnerability to the range of impacts from climate change recognising that national networks infrastructure will need to remain operational over many decades. In preparing an ES the Applicant should take account of the latest UK Climate Projections.
- 4.12.8. NNNPS paragraphs 5.3-5.15 notes that while increases in emissions of pollutants during the construction or operation of projects can result in worsening of local air quality, they can also have beneficial effects on air quality, for example through reduced congestion. It is noted that current UK legislation sets out health-based ambient air quality objectives with EU ambient concentration limit values for the main pollutants in the AQD which need to be met.
- 4.12.9. The SoS is required to consider air quality impacts over the wider area likely to be affected as well as the near vicinity of the scheme (NNNPS paragraph 5.10). In all cases the SoS must take account of the relevant statutory air quality thresholds set out in domestic and European legislation. Air quality considerations are seen as being particularly relevant where schemes are proposed within or adjacent to AQMAs. Air quality impacts must be given substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact. Consent should be refused where, after taking into account mitigation, the proposal will result in a zone / agglomeration which is currently reported as being compliant with the AQD becoming non-compliant or affects the ability of a non-compliant area to compliance within required timescales.
- 4.12.10. NNNPS paragraphs 5.81-5.89 consider the potential for the construction and operation of national networks infrastructure to create a range of emissions including dust, recognising the potential to have a detrimental impact on amenity or cause a nuisance.
- 4.12.11. NNNPS also recognises that for national networks infrastructure projects some impact on amenity for local communities is likely to be unavoidable. The SoS should be satisfied that all reasonable steps have been taken to minimise any detrimental impact on amenity from a range of emissions.

The Applicant's Case

- 4.12.12. In Chapter 6 of the ES [APP-020] the Applicant noted the potential for people living near busy roads such as the A19 to be exposed to air pollution concentrations from traffic. Changes in traffic flows associated with road improvements could result in increases in emissions from vehicle traffic and change ambient air quality concentrations.
- 4.12.13. The air quality assessment detailed in the ES [APP-020] focused on the effects of air pollution on local people and the global climate. Receptors considered were generally residential properties and the assessment covered the effect of carbon emissions at a regional scale. A study area was defined by identifying all sensitive receptors 200m from the affected road network where changes in traffic meet criteria in line with Design Manual for Roads and Bridges (DMRB) guidance¹⁶. The assessment did not include nature conservation sites designated at international and European levels because none were located in the defined study area and the inclusion of LWSs was also not necessary based on the guidance for undertaking such studies.
- 4.12.14. The assessment identified that during construction there were a number of receptors within the study area which would be directly affected by fugitive dust with potential for temporary adverse impacts. However, with best practice measures secured through the CEMP the Applicant predicted that there would be no significant effects on air quality during the construction phase of the Proposed Development.
- 4.12.15. The assessment of operational impacts identified no exceedance of the air quality objectives for any of the modelled receptors. While selected receptors were predicted to experience an imperceptible change in annual mean concentrations, they would remain within the NO₂ air quality objective. In addition, PM₁₀ concentrations were not predicted to exceed the annual mean air quality objective at any receptors in the study area
- 4.12.16. The Leam Lane / Lindisfarne Roundabout AQMA was declared by STC due to exceedances of the NO₂ air quality objective and is within the study area for the project. The STC Action Plan for the AQMA indicates that the major contribution to the observed concentrations of air quality pollutants was made by existing road traffic. There are no AQMAs for PM₁₀ within the study area or within the administrative area of STC and no AQMAs within Sunderland.
- 4.12.17. The Applicant did not consider that the Proposed Development would alter the UK's ability to comply with the AQD and overall would not lead to significant local air quality effects. As the operational air quality assessment, which includes the cumulative impacts of both the Testo's Scheme and the IAMP (ONE and TWO) developments have concluded that no exceedances of air quality objectives at sensitive locations would

¹⁶ Highways Agency (2007) DMRB Volume 11 Section 3 Part 1 (HA 207/07) Environmental assessment. Environmental assessment techniques. Air quality.

be likely with the Proposed Development in place, the air quality impacts not be significant.

- 4.12.18. The Applicant indicated that there was no government guidance for assessing the significance of the effects of individual highway schemes on regional or greenhouse gas emission, noting that the CCA2008 publishes budgets for the reduction of the emissions of greenhouse gases. The regional assessment results show small increases in NO_x, CO₂ and PM₁₀ emissions as a result of the Proposed Development with similar results for the opening and design year assessments and the increase in greenhouse gas emissions is included in the Benefit Cost Ratio (BCR) of the scheme as a financial cost. Appendix 6.7 of the ES explains how the greenhouse Transport Analysis Guidance assessment assessed the total change in emissions for carbon budget periods.
- 4.12.19. Climate change issues are also addressed in the outline CEMP [APP-051]. This recognises the need for a material efficient design and for the approved CEMP to consider methods to reduce the impact of energy use in construction, including consideration of using materials with lower embodied energy such as re-used and recycled materials and locally sourced materials. Such measures would aim to have a carbon footprint of negligible magnitude and would be secured through R3 and R4 of the dDCO.
- 4.12.20. As no significant air quality impacts were identified either during construction or operation the Applicant considered it very unlikely that changes in local air quality would combine with other environmental changes to result in more significant inter-relationship effects.

Examination

- 4.12.21. Air quality was not identified as an issue in any RR nor was the issue raised in any WR submitted at D1. The only SoCG to address air quality issues was that between the Applicant, STC and SCC [REP5-018]. This confirmed that the local authorities agreed with the methodology used in Chapter 6 of the ES and that the CEMP would include a Dust, Noise and Nuisance Management Plan which would be subject to consultation with the local authorities.
- 4.12.22. In my initial Written Questions (EXQ1) [PD-006] I sought clarification about the methodology adopted in undertaking the air quality assessment. In responding, the Applicant [REP2-014] demonstrated that none of the 55 receptors assessed for the local air quality assessments were predicted to exceed the NO₂ or PM₁₀ air quality objectives. With regard to the sizeable increases in emissions and contributions in the regional assessment the Applicant confirmed that its results indicated a 15% and 14% increase in NO_x and PM₁₀ emissions respectively, but the physical volume change was small, with small increases in NO_x, CO₂ and PM₁₀ emissions as result of the Proposed Development.

- 4.12.23. On the basis of no air quality objective exceedances at the modelled receptors, monitoring of air quality impacts during the operation of the scheme was not considered necessary by the Applicant.
- 4.12.24. In the Councils' joint LIR [REP2-021 it was confirmed that both Councils would support the formulation of a dust management plan within the CEMP and REAC. The LIR also indicated that further assessments regarding the potential exceedance of NO₂ concentrations at the Leam Lane / Lindisfarne Roundabout and between junctions on the A1231 Sunderland Highway at Washington had found projected NO₂ concentration levels to be compliant in both cases. In the latter case this followed the adoption of mitigation measures.
- 4.12.25. As a result of the assessments undertaken, both STC and SCC considered that the air quality impacts of the Proposed Development were not adverse and that the proposed and requested mitigation would reduce the impacts. Accordingly, the proposals for Downhill Lane junction are considered by the Councils to have a neutral impact on both South Tyneside and Sunderland.

Other Strategic Projects

- 4.12.26. The potential for the Proposed Development to share the use of the Testo's Scheme main compound was highlighted in paragraph 4.11.11 above. In such circumstances there would be a period where both the Testo's Scheme and the Proposed Development were using the compound, followed by a period when only the Proposed Development was using the Testo's compound.
- 4.12.27. The additional vehicle movements arising from the extended use of the Testo's Scheme compound would not cause any significant increases in fugitive dust emissions but would mean a longer duration of exposing the environment to air pollution risks from that site. However, these effects would not be significant due to the continued application of good construction practices such as the pollution control measures in the CEMP.
- 4.12.28. The reduction in temporary land-take required by the Downhill Lane junction main site compound would not change the ES assessment for the Proposed Development due to the lack of sensitive receptors near that compound. As such there would be no significant change in the air quality effects for both the Proposed Development and the Testo's Scheme as a result of the shared and extended use of the Testo's Scheme's main site compound.
- 4.12.29. The traffic modelling used for the operational air quality assessment of the Proposed Development incorporated into the future baseline, road network and traffic flow changes associated with other developments including IAMP TWO. The construction phase air quality cumulative effects of the Proposed Development with other developments would at worst be of minor adverse significance with the application of good construction dust practices.

ExA Conclusion

- 4.12.30. I am satisfied that in terms of air quality and emissions there would be no significant effects caused by the construction of the Proposed Development. The outline CEMP [APP-051] makes provision for dust control through a Dust Noise and Nuisance Management Plan which will be further developed for the approved CEMP during the detailed design stage. It will also be subject to consultation with STC and SCC. A Soil Management Plan and a Materials Management Plan, also forming part of the outline CEMP make further provision for dust control. These are secured through R4 of the dDCO. Consequently, I am content that the measures proposed in these plans will mitigate fugitive dust emissions to an acceptable level.
- 4.12.31. On the basis of no predicted air quality objective exceedances at modelled receptors and no requests for monitoring by any IP, I am satisfied that there is no need for the monitoring of air quality impacts during the operation of the Proposed Development.
- 4.12.32. As the Proposed Development would not conflict with any national or local air quality limits and would only have a very small effect on air quality, it would comply with the air quality sections of the NNNPS.
- 4.12.33. With regard to climate change considerations the NNNPS recognises that as traffic related emissions continue to fall the circumstances in which a highway proposal will lead to material adverse change to CO₂ emissions are limited in the context of the carbon budget. Moreover, the carbon impact has been taken into account within the BCR and complies with the requirements of the NNNPS. A material efficient design and measures within the approved CEMP to reduce the impact of energy use in construction, would be secured through R3 and R4 of the dDCO would also address carbon emissions. The issue of climate change resilience is also dealt with in section 4.16 below in terms of flood risk.
- 4.12.34. In terms of the regional air quality impacts small increases in emissions were identified but are unlikely to be so significant as to have a material impact on the ability of the Government to meet its carbon reduction targets.
- 4.12.35. With regard to the Leam Lane / Lindisfarne Roundabout AQMA, the further assessments which the Councils had undertaken in respect of potential exceedances of NO₂ concentrations did not result in a need for further action in terms of measures to comply with limit values.
- 4.12.36. The construction phase would result in fugitive dust impacts that would have a negative impact, but the impacts would be mitigated to an acceptable level and secured through the CEMP. During the operational phase no exceedances of the relevant air quality objectives are predicted and there are no other local or regional operational air quality impacts that require mitigation. The Leam Lane / Lindisfarne Roundabout AQMA is in compliance and the Proposed Development will not drive it out of compliance in the operational phase. Turning to the interrelationship

between the Proposed Development and Testo's Scheme during construction, the Applicant has proposed to make some joint use of construction facilities, but this will not lead to any material change to the air quality assessed in the ES. Overall, I find the impact on air quality and emissions to be neutral.

4.13. BIODIVERSITY, ECOLOGY AND THE NATURAL ENVIRONMENT

4.13.1. This section considers the effect of the Proposed Development on biodiversity, ecology and the natural environment.

4.13.2. The effects on European sites in the context of the Habitats Regulations Assessment are considered in Chapter 5 of this Report. This section examines other potential biodiversity effects of the Proposed Development.

Policy Considerations

4.13.3. NNNPS paragraphs 5.20-5.38 cover biodiversity and ecological considerations. Government policy for the natural environment within the Natural Environment White Paper sets out a vision of moving progressively from net biodiversity loss to net gain. Paragraph 5.23 indicates that *"the applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests"*.

4.13.4. The NNNPS notes (paragraph 5.25) that as a general principle, and subject to specific policies, developments should avoid significant harm to biodiversity including through mitigation and consideration of reasonable alternatives.

4.13.5. In taking decisions the SoS should ensure that appropriate weight is attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity as well as to biodiversity within the wider environment.

4.13.6. Paragraph 5.31 indicates that sites of regional and local interest including LWSs, have a fundamental role to play in meeting overall national biodiversity targets but given the need for new infrastructure they should not be used in themselves to refuse development consent.

4.13.7. Other species and habitats of importance for the conservation of biodiversity should be protected from the adverse impact of development. The NNNPS (paragraph 5.35) also advises that the SoS should refuse consents where harm would occur *"unless the benefits of the developments (including need) clearly outweigh that harm"*.

4.13.8. Mitigation measures should be identified as an integral part of the proposed development with an indication of where and how these will be secured (NNNPS paragraph 5.36). The SoS should consider what

appropriate Requirements should be attached to any consent in order to ensure that mitigation measures are delivered.

The Applicant's Case

- 4.13.9. Ecology and nature conservation are assessed in Chapter 9 of the ES [APP-020]. This identifies important ecological features in the study area including designated nature conservation sites and other important habitats. An Assessment of Nature Conservation Effects is also provided [APP-046].
- 4.13.10. The ES identified significant adverse effects of the Proposed Development to be those arising from the permanent loss, severance and fragmentation of existing habitats. These habitats would also adversely affect faunal species through direct mortality, loss of the habitat and severance of existing territories affecting movement and dispersal opportunities.
- 4.13.11. An ecological impact assessment was undertaken for a study area extending 2km from the Order limits for species records and non-statutory designated sites. International and European designated sites were identified over a wider study area generally a 5km buffer or 30km to identify European designations where bats are the qualifying feature. It identified two SSSIs, namely Hylton Castle Cutting SSSI and Wear River Bank SSSI, and two LNRs, namely the Hylton Dene LNR and Barmston Pond LNR, within the study area.
- 4.13.12. There were no sites designated for their nature conservation importance at European or international level within 2km of the Proposed Development, the nearest being 6.5km distant. No Special Area of Conservation (SAC) were identified within 30km that noted bats as one of the qualifying features. Consequently, the Applicant found that there was no pathway for adverse significant effects to occur as part of the scheme.
- 4.13.13. A total of 21 non statutory designated LWSs were identified within the study area. Broadleaf semi natural woodland habitat, being of regional value was recorded along with a range of County value habitats. No ecologically important hedgerows were identified during surveys and non-native invasive species plant species were not considered further.
- 4.13.14. The Applicant's assessment of potential impacts without mitigation indicated that because the distance to the nearest statutory designated sites was greater than 1km it was not anticipated that a pathway existed for direct or indirect effects on these sites as results of the construction or operation of the scheme. Therefore, potential impacts on statutory nature conservation sites were not addressed further in the ES.
- 4.13.15. The assessment scoped out non-statutory designated sites where there was no reasonable probable pathway for impacts to occur. Therefore, the detailed assessments concentrated on potential impacts to Make-Me-Rich Meadow LWS only, as this site being within 24 metres of the Proposed Development could be affected by indirect impacts.

- 4.13.16. The Proposed Development would result in long-term direct loss of habitats within the area of permanent works and short-term loss of habitat for temporary construction uses. This could result in increased terrestrial habitat fragmentation with the severance of habitats and linear features potentially used as wildlife corridors, across both the construction and operational phases.
- 4.13.17. Other impacts during construction and operation (ES Table 9.9) [APP-020] for amphibians, breeding and wintering birds, barn owls, bats, water voles, otters and invertebrates include some or all of the following: the permanent and / or temporary loss of suitable habitats; increased risk of direct mortality; the increased fragmentation or severance of food sources and habitats; lighting and visual disturbance, pollution or segmentation of aquatic habitats and noise (during construction).
- 4.13.18. Section 41 of the NERC places a duty of care on public authorities to protect important habitats and species and to actively seek opportunities to enhance biodiversity opportunities. An overall package of mitigation has been set out to meet the needs of all affected ecological features (ES section 9.9 [APP-020]). An Environmental Masterplan (ES page 219) [APP-020] illustrates the overall habitat creation and retention measures for the Proposed Development. This would lead to habitat creation totalling 8.76 ha which when considered alongside the area to be permanently lost (4.85 ha) would result in a net gain of 3.91 ha (ES Table 9.10) [APP-020]. This net gain would be in habitat types assessed as being of County importance or above although there would be a net loss of habitats of lower value such as amenity grassland or arable. In addition, 1.85 km of hedgerow / linear trees and shrubs would be planted representing a net gain of hedgerow / linear trees and shrub habitats.
- 4.13.19. New habitats would be managed and maintained as part of the aftercare for the Proposed Development with biodiversity as a key objective. It would compensate for the permanent habitat loss the majority of which is arable or pastoral farmland and is not currently specifically managed for a biodiversity benefit. Although there is no net gain in terms of habitat area the Applicant's view is that with the management of replacement habitats it is likely that a net gain in the quality of habitats would be achieved.
- 4.13.20. The ES outlines a range of specific mitigation measures for amphibians, breeding and wintering birds, barn owl, bats, otters and invertebrates with a monitoring regime to determine the success of the mitigation measures post construction. The monitoring / aftercare period would extend to a minimum of 5 years post construction secured through the CEMP and R4 of the dDCO [REP5-007].
- 4.13.21. The adverse effects of the Proposed Development would be mitigated through the replacement of lost habitat, the timing of construction works to avoid the most sensitive times of year, relocation and displacement of relevant protected species, landscape planting and pollution control measures. This is addressed in the CEMP which would be secured through R4 of the dDCO [REP5-007]. The creation of attenuation ponds

would provide areas of open water habitat which would be likely to have a secondary biodiversity function providing a resource for amphibians and waterfowl.

- 4.13.22. Following the implementation of mitigation there would be no significant long-term effects persisting into the operational period. The Applicant considered that some construction effects would remain significant at a local level only but would be short-term and would cease at the end of the construction period with potential specific benefits once additional enhancement measures are implemented.

Examination

- 4.13.23. NE's SoCG with the Applicant [REP2-012] agreed that no European designated sites or Ramsar wetland sites and no nationally or locally designated nature conservation sites located would be significantly affected by the Proposed Development. It also considered that no impact pathway existed for direct or indirect effects on these sites or any nationally designated conservation sites.
- 4.13.24. NE and the Applicant also agreed that the Proposed Development would not have a detrimental effect on any European protected species. Furthermore, it was agreed that mitigation procedures set out in Chapter 9 of the ES would have a positive effect on the natural environment by providing appropriate mitigation provision concerning protected species. While noting that there would be no net gain in terms of habitat area, the SoCG notes that a net gain in the quality of habitats would be achieved.
- 4.13.25. Through the SoCG NE also confirmed that it was content that the CEMP captured mitigation commitments and has the ability to adapt to changes through the REAC. Furthermore, the dDCO is recognised as having sufficient safeguards to make sure that the proposed landscaping scheme and the environmental benefits resulting from it will be delivered through R5. Other mitigation proposals in Chapter 9 of the ES would be secured by R4, R5 and R7 of the dDCO [REP5-007].
- 4.13.26. NE also accepted that the dDCO adequately makes sure that any European and nationally protected species which have not been identified during survey work but are subsequently discovered before / during construction would be protected and that the necessary licences would be obtained prior to works continuing should they be required. In addition, R7(1) of the dDCO [REP5-007] states that no construction work is to commence until final pre-construction survey work has been carried out to establish whether European or nationally protected species are present or likely to be affected by the works.
- 4.13.27. Apart from NE confirming its position in its RR [RR-012] no issues were raised by other IPs in RRs.
- 4.13.28. In response to ExQ1.3.3 [PD-006] on the reliability of desk and field surveys dating from 2014 NE commented [REP1-014] that surveys from 2014 provided a useful context but were not representative of the status of species in the area at the present time. NE therefore expected further

surveys to take place in areas where surveys have been identified previously to ensure that there were no impacts from the works. In response [REP2-014] the Applicant confirmed that further surveys had been carried out between 2017 and 2019.

- 4.13.29. In my initial Written Questions (ExQ1) [PD-006] I also asked questions in relation to surveys, the monitoring regime proposed and how it would be secured, and the potential impacts of construction traffic on ecological resources. I was content with the responses.
- 4.13.30. STC raised a concern about the temporary displacement of birds during construction (ES paragraph 4.4.11) [APP-020] indicating that the matter was not considered in the summary of residual effects. In response [REP2-014] the Applicant stated that as a stand-alone scheme the temporary displacement effects were not considered as significant and the matter was primarily related to the cumulative temporary displacement of birds during the construction of other major schemes in parallel with the Proposed Development.
- 4.13.31. In their joint LIR [REP2-021] STC and SCC stated that they were content with the methodology and baseline assessments used in the overall assessment on ecology and nature conservation. The Councils also noted that the proposed mitigation secured through the CEMP and REAC reasonably considered the construction and operational impacts of the project. Because some of the proposed mitigation would require time to establish and reach its full potential the Councils considered that the impact on biodiversity would be adverse, an issue which the Councils clarified at ISH2 [EV-011] [EV-012]. In commenting on the LIR the Applicant [REP3-012] noted that once the mitigation had been established there would be a net biodiversity gain, which was accepted by the EA in the SoCG with the Applicant [AS-029].

ExA Conclusion

- 4.13.32. In considering biodiversity, ecology and the natural environment the ES did not identify any significant effects on designated sites, protected species and habitats and other species of principal importance for the conservation of biodiversity.
- 4.13.33. The Proposed Development would result in some loss of habitats which currently provide connectivity and dispersal routes for species (faunal and floral), including arable, scrub, semi-improved grassland, species poor hedgerows, watercourses and ditches. Wildlife would be at risk of disturbance, direct mortality and pollution, as well as fragmentation and severance of their habitat.
- 4.13.34. The adverse effects of the Proposed Development would be mitigated through: the replacement of lost habitat; timing of construction works to avoid the most sensitive times of year; relocation / displacement of relevant protected species before the start of works where they have potential to be impacted; landscape planting; and pollution control measures to prevent damage to habitats. While there would be no net

gain in terms of habitat creation a net gain in the quality of habitats would be achieved, a matter acknowledged by NE.

- 4.13.35. Construction phase mitigation measures would be secured through the REAC, the CEMP and through Requirements set out within the DCO.
- 4.13.36. Some construction effects would remain significant at a local level but would be short-term and would cease at the end of the construction period. During operation, following mitigation implementation, there would be no residual significant effects. All short-term adverse effects would be minimised to the extent reasonably feasible. As a result, there would be no residual likely significant effects on any of the ecological receptors identified.
- 4.13.37. Notwithstanding the improvement in the quality of habitats there would be no net gain in habitat area and, taking account of the local authorities' assessment that the impacts on biodiversity would be adverse, I find that there would be limited harm to biodiversity and an adverse effect overall. Accordingly, in line with paragraph 5.35 of the NNNPS this must be weighed against the benefits of the Proposed Development which is done in Chapter 6.

4.14. LANDSCAPE AND VISUAL EFFECTS

Policy Considerations

- 4.14.1. Paragraph 5.149 of the NNNPS notes that landscape effects depend on the nature of the existing landscape likely to be affected and the nature of the effect likely to occur. Having regard to siting, operational and other relevant constraints, the aim should be to avoid or minimise harm to the landscape providing reasonable mitigation where possible.
- 4.14.2. At paragraph 5.156 the NNNPS recognises that outside nationally designated areas there are landscapes that may be highly valued locally and protected by local designations. While local character assessments should be given particular consideration, they should not be used in themselves as reasons to refuse consent. In taking decisions the SoS is required to consider whether the project has been designed carefully in landscape impact terms to avoid adverse effects on landscape or to minimise harm to the landscape, including by reasonable mitigation.
- 4.14.3. In paragraph 5.158 of the NNNPS the SoS is also asked to consider whether the visual effects on sensitive receptors, including local residents, outweigh the benefits of the development.
- 4.14.4. In terms of mitigation paragraphs 5.159-5.161 note that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design and landscaping schemes.

The Applicant's Case

- 4.14.5. Chapter 8 of the ES [APP-020] assesses landscape and visual effects. A comprehensive landscape and visual assessment identified landscape

effects during construction predominantly caused by loss of vegetation on and around Downhill Lane junction and along the adjoining roads of Downhill Lane, the A1290 and Washington Road. There would be a loss of woodland belt vegetation between Downhill Lane junction and Washington Road and the loss of trees, shrubs and scrub planting on the existing junction and along slip roads. Along the western edge of the A1290 and Downhill Lane (west) there would be a loss of established hedgerows and tree belts. Construction activity for the new road bridge, NMU bridge and ramps and other junction works would also adversely affect landscape character during the construction phase.

- 4.14.6. During construction there would also be adverse effects on visual receptors in close proximity to the A1290 including users of the buildings and pedestrian and cycle routes within the IAMP ONE development. Other visual receptors affected would be in Washington Road, Downhill Lane, the Downhill Lane junction area, along the north-western edge of Town End Farm and properties in Folingsby Lane (south). This would be due to the proximity of the construction site, construction activity and temporary structures including the main compound, storage piles and haul roads.
- 4.14.7. Mid to long range views would be impacted where the construction areas are visible and there would be a visual impact on views from the cycleways along the A1290 and Washington Road due to temporary redirection during construction. Views would extend to the Downhill Lane junction bridges and earthworks and the new attenuation pond to the south, resulting in very notable changes to views. For some visual receptors, construction works for Downhill Lane junction would be viewed in the context of the construction of the Testo's Scheme.
- 4.14.8. During the operational stage the landscape effects would occur due to the introduction of new junction embankments and northbound off / southbound on slip road embankments with associated earthworks at the new road bridge structure south of the existing bridge at Downhill Lane junction and along the NMU route. The creation of raised embankments would alter the topography locally.
- 4.14.9. Landscape character effects would occur due to the introduction of three new attenuation ponds to the north-east, south and south-west of Downhill Lane junction and localised changes to a tributary of the River Don as a result of creating a new outfall from one of the attenuation ponds. Effects would also occur due to changes in landform, a reduction in field size and pattern and loss of vegetation / land cover as a result of the NMU bridge and ramps being noticeable new features in the landscape.
- 4.14.10. Views likely to be particularly affected during the operational stage can be characterised as those from cycleway routes between the A1290 and Washington Road as a result of the new NMU bridge to the south of Downhill Lane junction. Views from Bridleway B46, mid-range views from the east and north due to their elevated position, vegetation loss and the presence of new junction features, attenuation ponds and the realigned

Washington Road would also be affected. In addition, views from the north-western edge of Town End Farm to the newly constructed junction and realigned Washington Road and views from the northern edge of the IAMP ONE development would be notable.

- 4.14.11. For some of these visual receptors, particularly those to the north-east of Downhill Lane junction, in the opening year, there would be an adverse effect on views due to vegetation loss and mitigation planting not being established such that the introduction of new structures would make views more open.
- 4.14.12. Bridleway B28 and Footpath B27 would be diverted as a result of the construction works associated with the Testo's Scheme, resulting in adverse views towards the new bridge structures, earthworks and lighting at Downhill Lane junction.
- 4.14.13. To address adverse effects on landscape and visual receptors, various mitigation measures were incorporated into the design of the Proposed Development and shown in the Environmental Masterplan (ES page 219) [APP-020]. Further mitigation for construction impacts includes making good all construction sites to their previous original state, retaining and protecting all existing trees and vegetation which would provide screening for views from the north and minimising the visual effects of construction activities by the phased storage of materials.
- 4.14.14. Mitigation for operational impacts would include providing tree, shrub and woodland planting, including linear tree and shrub planting and scrub planting on embankments along the new slip roads, Washington Road and the NMU route earthworks to integrate the scheme into the landscape. In addition, new habitats would be created in the vicinity of new attenuation ponds.
- 4.14.15. Adverse landscape and visual effects of the Proposed Development would occur during the construction period (2020-2021) and in the opening year (2021). They would reduce over time between opening and the design year (2036) as mitigation planting and habitat creation become established. However, the NMU bridge and ramps would remain noticeable in views such as from the north-western edge of Town End Farm and properties on Follingsby Lane (south).
- 4.14.16. For visual receptors to the north and south with mid to long range views, the construction activities and construction of the higher elements of the Proposed Development such as the NMU bridge and ramps, would be notable in the short-term. In the opening year, the removal of construction activity and temporary areas would reduce adverse effects. However, the introduction of the NMU bridge and ramps would result in part of the Proposed Development remaining visible.
- 4.14.17. The ES [APP-020] noted that during construction and operation, there were unlikely to be any interrelationship effects between landscape and visual effects and other environmental matters leading to adverse effects on landscape receptors. Changes in noise levels were considered as part

of the landscape assessment when determining effects on the tranquillity of the landscape character.

- 4.14.18. During construction, potential short-term adverse effects on visual receptors closest to the Proposed Development, as a result of the interrelationship effects between visual and noise and vibration, were not deemed to be likely assuming all best practice mitigation was adopted and suitable notification provided to residents in respect of short-term vibration effects. During operation, no significant adverse effects were anticipated on air quality or noise, so interrelationships with effects reported in other sections of this Report are not likely.

Examination

- 4.14.19. Landscape and visual matters featured little as a topic during the Examination. In its WR [REP1-014], NE confirmed that it was satisfied that there would be no impacts upon any designated landscapes as a result of the project.
- 4.14.20. In my initial Written Questions (ExQ1) [PD-006] I asked about the Applicant's methodology in respect of the landscape and visual impact assessment to which the Applicant provided acceptable clarification [REP2-015]. In relation to mitigation for landscape and visual effects the Applicant confirmed [REP2-015] that the two-year maintenance period prior to handover was a standard HE contract matter. The contractor would be liable for maintenance and the handover to HE as the maintaining authority which would provide landscaping maintenance for the remaining years secured for a five-year period post planting through R5 of the dDCO.
- 4.14.21. In their joint LIR STC and SCC [REP2-021] confirmed that they were content with the methodology and baseline assessments undertaken. Both Councils considered that the local impacts had been assessed in the landscape and visual assessment, acknowledging that the choice of viewpoints and visual receptors was representative of the area. The Councils noted the adverse impacts of the Proposed Development related to the loss of vegetation along the A19 corridor.
- 4.14.22. In terms of landscape character, the Councils recognised [REP2-021] that impacts would arise from the additional carriageway and construction of a new road bridge and NMU bridge making the A19 more prominent. Both Councils approved of the mitigation proposed through initial screening and associated tree planting along the road corridor which would mature by the design year (2036) to reduce the magnitude of the impact.
- 4.14.23. The Councils recognised that there would be short-term visual impacts due to construction work and the temporary stockpiling of material with the effects time limited. They also recognised that additional highways structures would have a visual impact but noted that there are many similar structures along the A19 corridor and on similar corridors and therefore were not an uncommon sight. On balance the Councils

considered the benefits of providing these structures to outweigh visual amenity issues.

- 4.14.24. The Councils approved of the proposed mitigation measures which would be secured through R4 of the dDCO which in turn secures the CEMP and REAC while landscaping based on the Environmental Masterplan would be secured through R5 of the dDCO [REP5-007]. Nevertheless, the Councils recognised that there would be adverse impacts resulting from the Proposed Development which they categorised as having a negative impact overall, notwithstanding that the impacts would reduce on an annual basis as the proposed tree planting matures.

Other Strategic Projects

- 4.14.25. The Testo's Scheme ES identifies a temporary adverse effect on receptors close to the location of the Testo's main site compound. Mitigation in the form of phasing soil storage was proposed to minimise disruption during the construction period. This conclusion would not be changed by the Proposed Development sharing the Testo's Scheme main compound as there would be no additional land take at the site of the Testo's main compound.
- 4.14.26. The presence of the Testo's main compound and its proposed mitigation was considered as part of the future baseline and its presence is taken into account when determining the change in views due to the construction of the Proposed Development. The ES [APP-020] provides a summary of how the effects of the Proposed Development would differ in the period when Testo's Scheme is operational, but construction of the Proposed Development was continuing. If the Testo's main compound were retained for use by the Proposed Development after Testo's scheme ceases construction, but ahead of the completion of the Proposed Development, likely effects on sensitive receptors would include:
- As construction activity for the Proposed Development continued with the presence of the Testo's main compound and haul roads, there would be a reduction in visual amenity and tranquillity to change landscape effects.
 - Visual impacts on receptors north-west of Testo's junction would be extended until the completion of the Proposed Development works.
 - Bridleway B28 and Footpath B27 would be open along their diverted routes which would also include close range views of the continued use of the Testo's main compound and haul roads.
 - The new cycleway route provided along the alignment of the A184 running through the new Testo's junction would have glimpsed views of the Testo's main site compound in views to the south from the eastern end of the route.
- 4.14.27. These adverse effects would be partly offset by the reduction in land take for the Proposed Development's main compound, north of Downhill Lane (East), if there is a shared use of the Testo's main compound. This would reduce the scale of the impact on the landscape and views of the area between the River Don and Downhill Lane (East). As a result, although the extended duration of the Testo's compound would create some

extended and new adverse visual effects, these would be temporary and partly offset by the benefits of the reduced footprint for the Scheme's main compound.

ExA Conclusion

- 4.14.28. Landscape and visual effects would be predominantly caused by loss of vegetation on and around the Downhill Lane junction and along the adjoining roads of Downhill Lane, Washington Road and the A1290. These adverse impacts would occur as a result of construction activities which would be substantial. These impacts could be managed through appropriate construction management measures, particularly in relation to the siting of soil and materials stockpiles, screening and lighting design in the construction compound but as with any major construction programme residual adverse effects would result. On the basis that no nationally designated landscapes are impacted, the proposed mitigation is appropriate and NNNPS policy has been complied with.
- 4.14.29. During to the operational phase, the ES [APP-020] indicates that the overall effects would be negative initially, but with landscape planting maturing the effects of the Proposed Development would move from adverse towards neutrality over time.
- 4.14.30. The mitigation measures contained in the CEMP [APP-051] and shown on the Environmental Masterplan [APP-020] are appropriate. The CEMP would be secured through R4, whilst R5 of the dDCO would secure the preparation of a landscape scheme that must reflect the mitigation measures in the REAC and be based on the Environmental Masterplan [APP-020].
- 4.14.31. Taking relevant documents and policies into account, I conclude that although designed carefully in landscape impact terms, the Proposed Development would lead to adverse landscape impacts in terms of construction and operation. However, this harm would be minimised by reasonable mitigation and so is compliant with the NNNPS. The Proposed Development would also result in adverse visual effects on sensitive receptors, including local residents, but such effects would similarly be minimised through appropriate design and landscaping. As landscape mitigation matures the initially adverse impacts during operation will reduce leading towards a neutral impact.

4.15. NOISE AND VIBRATION

Policy Considerations

- 4.15.1. Noise and vibration matters are set out in paragraphs 5.186 to 5.200 of the NNNPS. In addition to statutory requirements for noise, regard must be had to the relevant sections of the Noise Policy Statement for England and relevant planning policy and guidance on noise. Projects are required to demonstrate good design through the optimisation of scheme layout to minimise noise emissions including measures to reduce noise transmission.

- 4.15.2. Paragraph 5.195 states that the SoS should not grant development consent unless proposals meet aims in relation to health and quality of life in the context of Government policy on sustainable development. To ensure noise levels do not exceed those described in assessments, consideration should be given to the application of DCO requirements to specify mitigation (paragraph 5.196). Mitigation measures should be proportionate and may include containment, noise reducing materials, layout changes and administrative measures including noise and working hours limits.
- 4.15.3. 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 mitigation may need to be through the compulsory acquisition of affected properties (Paragraph 5.199).

The Applicant's Case

- 4.15.4. Noise and vibration matters were addressed in Chapter 12 of the ES [APP-020]. An assessment of the potential noise and vibration effects arising from the construction and operation of the Proposed Development was undertaken for sensitive receptors within a defined study area. This identified a number of residential properties and other noise sensitive receptors located in close proximity to Downhill Lane junction, along with other local roads. These properties already experience high levels of noise, with road traffic dominating.
- 4.15.5. As set out in the ES [APP-020], the predicted worst-case construction noise levels indicated the potential for significant effects at those properties and other sensitive receptors closest to the construction of the Proposed Development. The assessment also suggested that due to soil compaction activities, perceptible vibration would be a possibility for short periods of two to three days at properties closest to the Proposed Development but would not result in a significant effect for any receptor location considered.
- 4.15.6. A range of mitigation measures would be employed as part of the CEMP so that construction noise and vibration levels would be attenuated as far as possible. These would include: using "*best practicable means*" during all construction activities; managing the use of plant, equipment and vehicles; establishing appropriate controls for undertaking significantly noisy works and vibration-causing operations; the use of noise screens where appropriate; developing and maintaining good relations with people living and working in the vicinity of construction activities and undertaking works in accordance with approved environmental control plans (ECPs) as part of the CEMP. The majority of these measures are considered good practice measures, which local authorities would likely require as part of a "*best practice approach*". However, despite this, it is possible that significant construction noise levels would likely occur for short durations.

- 4.15.7. The ES [APP-020] predicted that one property, 39 Ferryboat Lane, would experience a potentially significant noise level increase in the design year (2036) with the Proposed Development in place with noise levels exceeding the SOAEL threshold. However, in the design year the predicted noise level was greater without the Proposed Development than with it as a result of anticipated large increase in traffic flow on the internal IAMP road network. As such, the noise level increase with the Proposed Development would be less than with the base case and therefore, the potential significant effect was discounted.
- 4.15.8. By the opening year the vast majority of receptors were predicted to experience negligible reductions in noise with a much smaller number of receptors predicted to experience negligible noise increases.
- 4.15.9. In the design year, four receptors associated with commercial offices within the IAMP ONE and TWO developments would experience perceptible noise increases. The noise increases would result from a large increase in traffic flows through the internal road network of the IAMP development. However, such increases in traffic would not be as a direct result of the Proposed Development. No receptors were predicted to experience perceptible noise decreases in the long term. Therefore, the overall effect of the Proposed Development was considered neutral in the long term.
- 4.15.10. Predicted noise levels show that, other than IAMP commercial receptors, no receptor was expected to experience noise increases of 1 dB(A) or 3 dB(A) in the design year and opening year, respectively which are the standards above which DMRB advice indicates mitigation should be applied if possible. Therefore, no further noise mitigation was proposed. Moreover, the increase in noise at the IAMP receptors does not directly result from the Proposed Development. Consequently, during the operational phase no further monitoring was proposed.
- 4.15.11. There is one Noise Important Area (NIA) within the study area although outside of the Order limits. The predicted impact of the Proposed Development demonstrates that negligible changes in noise levels would occur at the NIA generated by general traffic increases in the area rather than from the Proposed Development. Nevertheless, it is the responsibility of the Highway Authority, where feasible, to reduce noise levels for NIAs, regardless of the noise level change predicted from a proposed development. However, the Applicant concluded that it would not be practicable to provide improvements as part of the Proposed Development, because this would potentially require additional land, which could not be justified in terms of the needs of the Proposed Development or mitigation of the environmental effects of it.
- 4.15.12. Section 5.4 of the ES indicates that the operational assessment used traffic models where the future baseline includes the road network and traffic flow changes associated with other developments. Consequently, the operational noise assessment included the cumulative effects of other developments, including IAMP TWO and the Testo's Scheme.

- 4.15.13. For the construction phase the noise cumulative assessment included the operation of IAMP ONE and construction of the Testo's Scheme as part of the baseline of the Proposed Development with the effects of the Proposed Development with other developments, demonstrating at worst minor impacts on IAMP ONE workers and residential receptors at Town End Farm and Capeltown Road with the application of good construction noise practices.

Examination

- 4.15.14. In response to my initial Written Questions (ExQ1.9.5) [PD-006] the Applicant confirmed that Low Noise Road Surface (LNRS) would be installed. At ISH3 [REP3-017] it was stated that in addition to those areas where LNRS has already been used or is to be provided as part of the Testo's Scheme, LNRS would be provided on the slip roads forming part of the SRN.
- 4.15.15. The REAC does not include reference to LNRS as it would be provided in line with DMRB standards and is therefore treated as embedded mitigation. To secure LNRS for those relevant parts of the road network, at D3 the Engineering Drawings and Sections Sheet 1 of 2 (Revision 2) were amended [REP3-003] with a note confirming that "*Proposed road links subject to a speed limit greater than 75kph (47mph) will be surfaced with Low Noise Road Surfacing (LNRS)*". This would be secured through R3 of the dDCO [REP5-007] which requires that 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*".
- 4.15.16. In response to ExQ1.9.12 [PD-006] the Applicant [REP2-014] noted that only residential properties along Boston Crescent, east of the A19, and The Chalet, Follingbys Lane south, would experience significant noise impacts during construction without mitigation. The impacts would occur for variable durations during the daytime only and over 30 separate days for most receptors, with only 33 Boston Crescent at risk of significant noise effects over significantly more days. Consequently, the application of mitigation measures would either remove or reduce the duration of the noise impact, with the effect further mitigated through proactive engagement with local residents.
- 4.15.17. Responding to ExQ1.9.13 [PD-006], the Applicant indicated [REP2-014] that as no noise mitigation measures were proposed during the operational phase of the Proposed Development there was no requirement to consider the interrelationship with landscape and visual impact operational impacts. During construction, noise screens are only required as temporary short duration noise mitigation measures and therefore the impact of these on landscape and visual receptors (including consideration of interrelationship effects) was not considered a material consideration in the context of the other impacts as a result of construction operations.

- 4.15.18. No matters of concerns were raised by IPs in RRs or WRs in relation to noise and vibration.
- 4.15.19. In their joint LIR [REP2-021] and in the SoCG with the Applicant [REP5-018], STC and SCC confirmed that they approved of the noise methodology used in the ES which was suitable for the purposes of determining the noise impacts of construction vibration, construction and operational noise and were content with the baseline assessments completed. In terms of vibrations, the Proposed Development is expected to have some slight impact due to soil compaction but both Councils considered that the defined mitigation identified in the CEMP and REAC would reduce the impacts.
- 4.15.20. Both Councils expressed concern that during the construction phase the Proposed Development would result in adverse noise impacts for a number of properties in close proximity to the construction activities. Both Councils supported noise mitigation measures to minimise the local noise impact of construction works on residential receptors [REP2-021]. These related to normal hours of construction, exemptions to normal hours, noise and vibration monitoring, the approach to complaints, the use of temporary screening and post construction monitoring. On the basis of appropriate noise mitigation measures identified in the outline CEMP and REAC, the Councils indicated that the impact would be neutral.
- 4.15.21. In the SoCG [REP5-018] it was agreed between the Applicant and the local authorities that no specific noise monitoring requirements was required. Nevertheless, the parties agreed to remain in consultation regarding potential monitoring during the construction phase of the Proposed Development and the Applicant will carry out a baseline noise survey prior to the commencement of works as set out in the outline CEMP.
- 4.15.22. The SoCG [REP5-018] confirmed that exceptions to standard operating times and proposed mitigation measures would be agreed in consultation between the Applicant, STC and SCC prior to operation.
- 4.15.23. With respect to interrelationship effects, the ES [APP-020] recorded that no significant long-term noise and vibration impacts have been identified. Therefore, it was very unlikely that any adverse interrelationship effects would occur with other environmental changes. Similarly, during construction the only potential residual significant effect was related to a worst-case short duration noise impact. Therefore, it was determined that there would be no likely significant interrelationship effects with other discipline environmental effects.

Other Strategic Projects

- 4.15.24. The potential shared use of the Testo's Scheme main compound by the Proposed Development would not change the footprint of the Testo's main compound, but there would be a slight increase in the number of Heavy Duty Vehicle (HDV) movements as a result of the combined use. Nevertheless, the majority of the HDV movements would be associated

with the Proposed Development. Therefore, any increase in noise effects on sensitive receptors close to the Testo's Scheme were not anticipated to be a significant change compared with those assessed as part of the Testo's Scheme ES.

- 4.15.25. Though the extended use of the Testo's Scheme main compound would mean any noise effects emanating from it continuing for a longer period, these would not be significant due to continued application of good construction practices and the reduction of construction activity in the Testo's compound to mainly low noise activities.
- 4.15.26. The reduction in the temporary land take required by the Downhill Lane Scheme main site compound would not change the Proposed Development ES assessment due to the lack of sensitive receptors near the Downhill Lane junction main compound.
- 4.15.27. Therefore, there would be no significant change in the noise effects described in both the Proposed Development ES and the Testo's Scheme ES as a result of the shared and extended use of the Testo's main compound.

ExA Conclusion

- 4.15.28. During the construction phase noise and vibration impacts will be appropriately mitigated through the operation of the CEMP although it is still possible that some residents would experience significant noise for short durations. The CEMP must be in accordance with the outline CEMP which sets out that a number of ECPs will be prepared to ensure that the construction related mitigation measures set out in the REAC are successfully implemented.
- 4.15.29. A Dust, Noise and Nuisance Management Plan is provided at Appendix G, a Soil Management Plan (relevant to compaction) at Appendix K and a Materials Management Plan (relevant to HDV movements) at Appendix O of the outline CEMP [APP-051]. All have relevance to noise and vibration management. These are provided as draft ECPs and will be developed further during the detailed design and construction planning stage.
- 4.15.30. The CEMP would be secured by R4 of the dDCO [REP5-007]. While R4 requires consultation with the relevant planning authority prior to submission to the SoS, STC and SCC have endorsed the Applicant's mitigation measures for noise and vibration matters through the SoCG [REP5-018]. R4 also provides further support for noise and vibration control through limiting normal working hours of 07:30–18:00 Mondays to Fridays and 08:00–13:00 on Saturday.
- 4.15.31. R10 also provides for a CTMP to be submitted to and approved by the SoS following consultation with the relevant planning authority. This also has relevance to the management of construction vehicle traffic noise.
- 4.15.32. Having regard to the views of STC and SCC in the LIR [RE2-021], I conclude that 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.

4.15.33. In the opening year the majority of receptors would be expected to experience a negligible reduction in noise while in the design year noise increases would be largely imperceptible such that the overall effect of the Proposed Development would be neutral. In line with DMRB standards LNRS would be provided on the SRN where it has not already been provided or is to be provided as part of the Testo's Scheme and would be secured through R3 of the dDCO. STC and SCC agreed that post construction / operational noise monitoring was not necessary and therefore a requirement for post-construction noise monitoring is not required.

4.15.34. In summary I conclude that the Proposed Development would lead to adverse impacts in terms of construction noise and vibration, but this would be mitigated as far as possible and so would meet the relevant aims of Government policy and guidance in relation to noise and vibration, while the operational effects of noise on surrounding sensitive receptors will on balance be neutral.

4.16. WATER ENVIRONMENT

Policy Considerations

4.16.1. NNNPS policy relevant to flood risk is set out in paragraphs 5.90 to 5.115. Paragraph 5.100 confirms that for construction work which has drainage implications approval of the project's drainage system will form part of any development consent while provision should also be made for the adoption and maintenance of any sustainable drainage systems (SuDS). The SoS should expect that reasonable steps have been taken to avoid, limit and reduce the risk of flooding to the proposed infrastructure (paragraph 5.101).

4.16.2. Measures to address surface water drainage management include sustainable drainage systems, vegetation to help slow runoff, and basins and ponds to allow controlled discharge. NNNPS paragraph 5.113 advises that the volumes and peak flow rates of surface water leaving the site should be *"no greater than the rates prior to the proposed project, unless specific off-site arrangements are made and result in the same net effect."*

4.16.3. Advice relevant to water quality and resources is provided at paragraphs 5.219 to 5.231 of the NNNPS. Paragraph 5.219 notes that infrastructure development can have adverse effects on the water environment, including groundwater and inland surface water. During both construction and operation, it can lead to increased demand for water, involve discharges to water and cause adverse ecological effects resulting from physical modifications to the water environment.

4.16.4. Paragraph 5.224 notes that activities that discharge to the water environment are subject to pollution control while paragraph 5.225 identifies the importance of managing impacts that could have an

adverse effect of the achievement of WFD objectives. The SoS should also be satisfied that a proposal has had regard to the River Basin Management Plans and WFD requirements (NNNPS paragraph 5.226).

- 4.16.5. The SoS must be satisfied that all reasonable steps have been taken by the Applicant and the EA to resolve any concerns about water quality / resources and that the EA is satisfied with the outcome (NNNPS paragraph 5.227).
- 4.16.6. Water quality resources mitigation advice indicates that construction mitigation can be codified in a construction management plan. For the operational stage, the most sustainable solution should be promoted where feasible and conventional drainage solutions may form part of the overall package if required to address site constraints (paragraphs 5.228 to 5.231).
- 4.16.7. Paragraph 5.231 notes that the risk of impacts on the water environment can be reduced through careful design to facilitate adherence to good pollution control practice.
- 4.16.8. Paragraphs 4.36-4.47 of NNNPS deal with climate change adaptation with paragraph 4.38 highlighting the need to deal with the potential impacts with new development planned to avoid increased vulnerability to the range of impacts arising from climate change.

The Applicant's Case

- 4.16.9. Chapter 14 of the ES [APP-020] addresses road drainage and the water environment. It is supported by three appendices [APP-041] namely Appendix 14.1: Results from the routine run-off and spillage risk, Appendix 14.2: Flood risk assessment, and Appendix 14.3: Water Framework Directive assessment. Appendix 14.1 is a Highways Agency (now Highways England) Water Risk Assessment Tool (HAWRAT).
- 4.16.10. The drainage design aimed to improve protection of local watercourses, recognising that the existing drainage locally does not meet modern standards in relation to either flood risk or protection from pollution. The proposed drainage would generally follow existing drainage patterns, utilising two existing outfalls, discharging indirectly to the River Wear.
- 4.16.11. The Proposed Development would also include changes to the existing outfall arrangement for two of the catchment areas. The first, Outfall 6, to a tributary of the River Don would be removed, with a new outfall constructed close to the existing outfall, and the second, Outfall 4 to the River Don would be removed with the drainage for this catchment discharging via an outfall forming part of the Testo's Scheme.
- 4.16.12. The northern, eastern and central section of the Proposed Development's carriageway and roundabout would discharge into the River Don to the north-east of Downhill Lane junction. Three new attenuation ponds, located to the north-east of the existing junction, to the east of the A1290 and adjacent to the Washington Road footbridge, would be constructed to slow down the rate that surface water run-off would flow

into the drainage system, the River Don and indirectly into the River Wear. One of the ponds would provide attenuation for catchment areas from both the Downhill Lane and Testo's junction schemes and would be constructed as part of the Testo's Scheme.

- 4.16.13. The run-off from the central-western section of the Proposed Development would partly drain indirectly into the River Don through existing arrangements with the remaining run-off draining into the River Wear. Run-off from the southern section of the Proposed Development would drain into a new attenuation pond south-east of Downhill Lane junction. The routine run-off from the new NMU route would be managed using an appropriate SuDS technique. The preferred method would be determined through design development secured through R3 of the dDCO [REP5-007]. The attenuation ponds would also provide additional water quality improvements and increased biodiversity.
- 4.16.14. The Flood Risk Assessment (FRA) [APP-045] records that the Proposed Development is located in Flood Zone 1 although the northern section is located immediately adjacent to Flood Zones 2 and 3. The Sequential Test was considered to be passed because the improvement works would be to an existing road, so cannot be located in an area of lower flood risk. No application of the Exception Test was required. Embedded mitigation would mean the existing surface water flood risk would not be increased and that the increased impermeable area and formal drainage of some permeable areas would not increase risk in receiving watercourses or drainage networks.
- 4.16.15. Nevertheless, the FRA [APP-045] noted that future updates to EA Flood Zones were expected to increase the extent of Flood Zones 2 and 3 and bring a small area of proposed tree planting into Flood Zone 2.
- 4.16.16. The FRA [APP-045] together with Chapter 14 of the ES [APP-020] set out how the Proposed Development takes account of predicted impacts of climate change. The preliminary drainage system, including attenuation, includes a 20 % increase to rainfall intensity to allow for climate change in accordance with DMRB guidance. A 40 % increase to rainfall scenario would be modelled at the detailed design stage as a sensitivity check with a view to understanding and managing any significant effect from the Proposed Development where practicable.
- 4.16.17. The ES assessment [AS-020] concluded that there would be no likely residual effects to flood risk or water quality, with potential for moderate beneficial effects to water quality during operation. The Proposed Development was also found to be compliant under the WFD and would be unlikely to result in the deterioration or prevention of an improvement in the overall WFD status of the River Don or any downstream water bodies.
- 4.16.18. During construction, contractors would operate to best practice standards to make sure impacts on the surrounding water environment would be limited. Measures to control the risk of pollution during construction

would be implemented through the CEMP which would include a surface water management plan.

- 4.16.19. Some run-off would be discharged into a section of the River Don that forms part of Make-Me-Rich Meadow LWS. Due to the introduction of attenuation storage and additional treatment prior to discharge, the improved water quality associated with highways run-off into the River Don is likely to have a beneficial effect on surrounding ecology.
- 4.16.20. The geomorphological assessment indicated that with implementation of the proposed mitigation, which focuses on minimising geomorphological impacts related to flow patterns, a worst-case assessment concludes that there may be slight adverse residual effects during the construction and operation of the Proposed Development.

The Examination

- 4.16.21. In their RR [RR-009] the EA commented that with regard to the potential impacts on surface water quality they were satisfied with the details covered in ES Chapter 14. They welcomed the WFD Compliance Assessment (Appendix 14.3) and the results from the HAWRAT assessment (Appendix 14.1) which showed that the revised road network drainage would have a minor positive effect in water quality discharge from Downhill Lane junction to the River Don and River Wear.
- 4.16.22. The Applicant's response [REP1-009] to the EA's RR highlighted how a link could be made between water quality and the Government's 25 Year Plan for the Environment with the indicative Environmental Masterplan illustrating the key mitigation measures identified in the ES [APP-020]. These included overall habitat creation and retention and improved habitat quality / diversity to improve flood protection and water quality. A review requested by the EA to ascertain whether removal of Outfall 4 would support the WFD, to reduce the extent of hard bank structures along the River Don concluded that Outfall 4 could not be removed because it would involve a large temporary loss of vegetation and river habitat disturbance for minimal gain.
- 4.16.23. The EA [RR-009] were also satisfied with the details related to ground water and land contamination that may impact controlled waters noting that the highways authority had the primary responsibility to control the discharge of highways run-off and provide adequate pollution prevention techniques.
- 4.16.24. In the SoCG between the Applicant and the EA [AS-029] it was agreed that the FRA and WFD compliance assessment had been carried out using a methodology appropriate to the scale and nature of the Proposed Development. The assessments took account of recent reports issued by the EA with respect to the River Don catchment and clarifications on new flood risk mapping by IAMP LLP.
- 4.16.25. The SoCG also agreed that use of the HAWRAT, to predict the risk of potential impacts of the Proposed Development on potentially sensitive water receptors, was an acceptable method of assessment for the

Proposed Development and that the subsequent post-mitigation assessment (step 3), demonstrated that the Proposed Development was compliant with the WFD and the NNNPS. During construction there would be no likely adverse residual effects associated with water quality and during construction and operation there would be no likely adverse residual effects associated with the WFD status of the River Don, River Wear or any downstream water bodies.

- 4.16.26. As confirmed in their LIR [REP2-021] both STC and SCC supported the methodology adopted and the baseline assessments undertaken for the Road Drainage and Water Environment assessments.
- 4.16.27. Both Councils welcomed the measures set out in the outline CEMP and REAC as a means to reduce the risk of pollution to the water environment during construction given the direct connections with the watercourses, and to address future maintenance.
- 4.16.28. R8 of the dDCO [REP5-007] was also welcomed by both Councils. This requires the submission and approval of a surface and foul water drainage system, reflecting the mitigation measures set out in the REAC including the means of pollution control. The Councils welcomed the submission of a scheme that would mitigate impacts on flooding / water quality to improve water quality discharge from the current road drainage system.
- 4.16.29. STC and SCC agreed that following the implementation of the mitigation measures set out in the CEMP and REAC, the Proposed Development would have positive residual effects on drainage and water quality.

Other Strategic Projects

- 4.16.30. Should the Proposed Development share use of the main compound with the Testo's Scheme this would result in a reduced footprint and minor beneficial changes in pollution risks to agricultural land near to the River Don. These changes would not alter the Testo's Scheme's residual effects.
- 4.16.31. The Applicant and EA agreed [AS-029] that an integrated drainage strategy for the Proposed Development, the Testo's Scheme and IAMP developments, would have no significant cumulative impacts during operation and a minor adverse cumulative effect on land drainage and flood risk during construction.
- 4.16.32. The SoCG [AS-029] also confirmed that changes to NMU provision proposed in Appendix 1.2 of the ES [APP-032] (Review of environmental effects associated with removing rights to create B46 diversion under the Testo's Scheme DCO) would have a beneficial effect on the water environment from the small reduction in the extent of construction works over the A19 River Don and adjacent floodplain, compared with those effects set out in the ES for the Testo's Scheme.

ExA's Conclusions

- 4.16.33. The Proposed Development would replace elements of the existing A19 drainage system with a new system, designed to apply SuDS. This replacement would improve the operational effects of the Proposed Development and therefore has a positive effect.
- 4.16.34. The Applicant has demonstrated that both during construction and operation the Proposed Development is policy compliant in flood risk terms and has demonstrated how an allowance has been made for climate change within the design.
- 4.16.35. During construction there would be no adverse effects on water quality and all effects on surface water quality would be neutral to moderate beneficial during operation.
- 4.16.36. The WFD assessment has shown that the Proposed Development is compliant under the WFD, and that cumulative effects will not undermine that compliance. The works would be unlikely to result in the deterioration or prevention of an improvement in the overall WFD status of the River Don or any downstream water bodies.
- 4.16.37. With the implementation of the proposed mitigation, which focuses on minimising geomorphological impacts, a worst-case assessment concludes that there may be minor adverse residual effects during the construction and operation of the Proposed Development.
- 4.16.38. R4 of the dDCO [REP5-007] sets out that a CEMP, substantially in accordance with the outline CEMP [APP-051], must reflect the measures in the REAC [APP-032] and must include a range of management plans of relevance to the control of impacts on the water environment.
- 4.16.39. R6 of the dDCO [REP5-007] requires that any discovery of contaminated land or groundwater found during construction of the authorised development must be subject to a risk assessment and if necessary, the preparation of a remediation plan. This would ensure that unforeseen contamination will not lead to adverse outcomes and WFD non-compliance.
- 4.16.40. A surface and foul water drainage system reflecting the mitigation measures set out in the REAC must be submitted to the SoS before commencement as required by R8. This mechanism will ensure that drainage effects will not lead to adverse effects and WFD non-compliance.
- 4.16.41. In summary the Proposed Development is policy compliant in relation to flood risk and takes account of predicted impacts of climate change. Discharges from the Proposed Development to the River Don catchment would meet the WFD and are therefore policy compliant. Following improvements to the existing drainage system the effects of the Proposed Development on the water environment would be positive overall.

4.17. ECONOMIC AND SOCIAL EFFECTS

- 4.17.1. This section considers the economic, social and broad land use effects of the Proposed Development. Matters which are addressed include economic development effects, agricultural effects, community effects, effects on PRoWs and effects on Green Belt. Matters relating to PRoW are also addressed in section 4.10 Transportation and Traffic.

Policy Considerations

- 4.17.2. Paragraphs 5.162-5.185 of the NNNPS address land use including open space, green infrastructure and Green Belt. The Applicant is required to identify any effects of replacing an existing development or use of the site with the proposed project and the effects of precluding a new development or use proposed in the development plan. NNNPS paragraph 5.168 identifies the need to take account of the economic and other benefits, and to avoid or minimise land take, from the best and most versatile agricultural land. Impacts on soil quality should also be minimised. Any conflicts with the development plan should be taken carefully into account (paragraph 5.173).
- 4.17.3. Green infrastructure is considered in NNNPS paragraphs 5.175 and 5.180 to 5.185 noting that such networks should normally be protected from development and where possible strengthened by or integrated within it. Paragraphs 5.184 and 5.185 recognise that PRoWs are important recreational facilities for walkers, cyclists and equestrians and in considering revisions to an existing PRoW consideration needs to be given to the use, character, attractiveness and convenience of the right of way. Existing PRoWs can be extinguished if the SoS is satisfied that an alternative has been or will be provided or is not required.
- 4.17.4. NNNPS paragraph 5.178 addresses development in the Green Belt reflecting the position in paragraphs 143 and 144 of the Framework including the principle that substantial weight is given to any harm to the Green Belt. The NNNPS notes that 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, noting that the SoS 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. Paragraph 5.178 concludes that *"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"*.
- 4.17.5. Paragraph 146 of the Framework sets out that *"certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These [include]: c) local transport infrastructure which can demonstrate a requirement for a Green Belt location."*

- 4.17.6. The Planning Statement [APP-050] states that the Green Belt boundary for STC and SCC is defined through a combination of the STC 2012 Policy Map, the SCC Unitary Development Plan and the IAMP AAP. The effect of the IAMP AAP is to partially remove land from the Green Belt and to supersede boundaries shown on the STC Policy Map and the SCC Unitary Development Plan. Nevertheless, the Downhill Lane junction proposals are largely within the Green Belt.
- 4.17.7. The IAMP AAP Proposals Map indicates the broad location of the "A19 and Local Road Improvements to the A19" with reference made to Policy T1 which addresses highway infrastructure needs and indicates the broad location of improvements to the A19 on the Policies Map. In addition, the STC Site Specific Allocations also shows a broad alignment for upgrading the A19 Junctions.

The Applicant's Case

- 4.17.8. Chapter 13 of the ES [APP-020] covers the potential effects of the Proposed Development on people and communities in the vicinity of the Proposed Development. These include occupiers of agricultural community and development land, owners and users of private property, users of community facilities, and stakeholder groups within the local area. The effects of the Proposed Development on the local economy was also considered. Chapters 2 (The Scheme) and 15 (Cumulative Effects Assessment) along with the TA [REP3-020] and the Planning Statement [APP-050] are also particularly relevant to this issue.

Economic Development

- 4.17.9. The construction of the Proposed Development is expected to lead to the temporary creation of approximately 109 jobs which is particularly beneficial being located in an area with an unemployment rate above the national average. The ES [APP-020] also indicates that a permanently improved local transport network would benefit both the local and regional economies in terms of job creation and expenditure and by supporting long-term employment development west of Downhill Lane junction.
- 4.17.10. The Planning Statement [APP-050] confirms that the assessment and monetisation of the anticipated economic benefits associated with the Proposed Development was undertaken in accordance with DfT guidelines. The BCR contains all costs and benefits that are routinely quantified within economic assessments of transport schemes and the benefits associated with journey time reliability, as well as those defined as wider economic benefits.
- 4.17.11. The Proposed Development would have a significant beneficial effect on commuters and other users as a result of reduced congestions, improved journey times and associated reduced vehicle operating costs. This in turn reduces driver stress, increases productive time and business user and transport service benefits [APP-050].

- 4.17.12. Travel time disbenefits however, arise as some traffic re-routes away from the congested A19 / A1231 interchange onto alternative routes within Sunderland. This rerouting causes additional delay to traffic that is not using the Proposed Development. After accounting for the impacts of delays during construction the combined monetised value of these benefits is forecast to be £30 million.
- 4.17.13. A quantitative assessment of environmental benefits predicted the monetised value of the noise, air quality and CO₂ emissions to be £0.10 million, £0.001 million and -£1.15 million respectively.
- 4.17.14. Total accident benefits generated by the Proposed Development over the 60-year assessment period amount to £1.69million according to the Planning Statement [APP-050]. The Proposed Development would lead to a small overall increase in total accidents and total casualties in both the opening and design years but a very small reduction in fatal and serious fatalities, which would provide a positive level of benefit.
- 4.17.15. During construction a number of commercial properties would be adversely affected as a result of diversions and roads closures. The businesses of IAMP ONE, the Three Horseshoes Pub (now Rustica) and the NMUK plant would all suffer some disruption which could be mitigated through the CTMP. When the Proposed Development is operational, access would be improved for IAMP ONE, with no impact on Rustica and NMUK would experience a small beneficial impact.
- 4.17.16. Measures in the CTMP, secured through R10 of the dDCO, would minimise or avoid the effects of construction on businesses in the vicinity of the construction activities. These could include restrictions on the routes of construction traffic and careful timing / design of diversions and / or temporary road closures.

Agricultural Effects

- 4.17.17. Most of the permanent land take required for the Proposed Development, outside of the current highway boundary is currently in agricultural use. This farmland is of moderate quality and comprises parts of three farm businesses and five other agricultural land holdings. The effects may be long-term, such as permanent loss of land, or short-term such as temporary uses of land or disruption to access during the construction period.
- 4.17.18. The permanent loss of 5.83 ha of Grade 3b agricultural land would be unavoidable and could be subject to CA procedures under the dDCO if agreement cannot be reached with landowners. A Soil Management Plan, forming part of the CEMP, would provide for the sustainable use of soil resources where possible, including the restoration to agricultural use of approximately 12.45 ha of temporarily used agricultural land, and the sustainable use of any surplus topsoil produced by the construction process.
- 4.17.19. Access to farmed land during the works would be maintained wherever possible to enable continued farming on all the holdings affected by

construction. Disruption to farms would be minimised through measures in the CEMP and CTMP, such as measures to reduce dust, construction site run-off and temporary access arrangements. Replacement access points would be needed for fields severed and for areas where existing access was lost, to enable continued operation of farm units. Without such mitigation two farm units would experience significant land loss. However, mitigation measures would not reduce the land take area.

- 4.17.20. To maintain agricultural land quality effective land drainage is required in winter for sustainable farming operations. This would be taken into account in the detailed design of the Proposed Development in order to minimise the impact on agriculture through provision of outfalls for land drainage systems.

Community Effects

- 4.17.21. The ES [APP-020] records that there would be no residual significant adverse effect on any community land or community facilities as a result of the operation of the Proposed Development. There are only two areas of open space land in proximity to the Proposed Development, but both would be unaffected by the construction or operation of the Proposed Development.
- 4.17.22. The implementation of the CTMP would control diversions, help minimise disruption and prevent community severance during the construction period. The CEMP would address the Proposed Development's environmental effects, including those relating to air quality and noise, and would provide mitigation for such impacts caused during the construction phase.
- 4.17.23. During construction there would be some minor severance effects on users accessing community facilities within Town End Farm and also on the communities of Town End Farm and Hylton Castle and access to wider community facilities located at Boldon Colliery. There would be no residual significant adverse effects in terms of community severance during the operational phase.

Public Rights of Way

- 4.17.24. Section 1.9 of the TA [APP-053] recognises that Downhill Lane junction is a significant crossing over the A19 for equestrians, recreational walkers and cyclists. There are various footpaths, bridleways and cycle routes in the vicinity but of particular note are Bridleway B46, (the Don Valley Footpath) which runs north-south from the A184 to Downhill Lane immediately to the east of the A19 and the cycle route alongside the A1290.
- 4.17.25. The scheme objectives set out in the Planning Statement (paragraph 2.7.1) [APP-050] include the need to improve provision for walkers, cyclists and NMUs. As set out in the ES [APP-020] this would be achieved largely through creating a new NMU route connecting Bridleway B46 with the A1290 to the west of Downhill Lane junction while providing a greater degree of separation between vehicles and NMU traffic. Two new at grade

signalised crossings (at Downhill Lane (East) and across the A1290) would be provided and a new NMU footbridge across the A19 would improve safety and reduce severance between communities and employment centres.

4.17.26. During the construction phase there would be some disruption and other effects on users of existing NMUs. The Applicant [APP-020] anticipated that the effects would be significant adverse due to the sensitivity of this junction and surrounding roads, footpaths and cycleways as a commuter route to the NMUK Plant.

4.17.27. As set out in the IRD [REP3-018] provision was made within the Testo's DCO to improve connectivity between the existing Bridleway B46 and Downhill Lane junction. This included a cycleway adjacent to the southbound link road, whilst retaining the B46 Bridleway at the foot of the embankment. However, the Testo's Scheme NMU proposals would potentially put users at greater risk because they would not complement the NMU facilities proposed under the Proposed Development. Consequently, the application proposed to amend the Testo's Order to authorise the modification of plans approved in that scheme removing the proposed cycleway and maintaining the B46 Bridleway in its current form, should both schemes be delivered. The mechanism for changing the NMU route is described in paragraphs 8.4.35-8.4.43 below.

Green Belt

4.17.28. Section 5.5 of the Planning Statement [APP-050] provided the Applicant's justification for the Proposed Development being located within the Green Belt. It recognised that Green Belt is intended, amongst other things, to preserve the openness of land and prevent settlements merging and that there is a general presumption not to develop in the Green Belt unless other overriding reasons justify development.

4.17.29. The Applicant considered that the Proposed Development was not inappropriate development in the Green Belt for the following reasons:

- It is in accordance with paragraph 170-171 of the Framework as the Proposed Development is supported by specific policies of the development plan, namely through the IAMP AAP and the STC Site Specific Allocations.
- The existing Downhill Lane junction is already in the Green Belt and as some elements of the existing junction will be removed as a result of the Proposed Development the proposals are not inconsistent with the current use of the land.
- The Proposed Development and environmental mitigation proposals were designed with reference to guidelines in DMRB for aesthetic appearance as well as function and cost to keep the impact of the Proposed Development on the openness and purpose of the Green Belt to a minimum.
- The location of the Proposed Development in the Green Belt is unavoidable as it is related to an existing junction. The Framework identifies that local transport developments that cannot avoid a Green Belt location are not inappropriate development.

- The Framework recognises that infrastructure projects have to be located in the Green Belt if they are to go ahead. The exception to this might be if alternative alignments not within the Green Belt are available and suitable but that is not the case for the Proposed Development.
- The allocation of IAMP and its removal from the Green Belt reduces the function of the Green Belt in this area particularly in terms of separating settlements and retaining openness. As the Proposed Development is integral to the delivery of the IAMP AAP as ancillary infrastructure then its inclusion in the IAMP AAP has taken into account any impact on the Green Belt. The extent of harm on the Green Belt is therefore minimal.

The Examination

Economic Development

- 4.17.30. In the LIR [REP2-021] STC and SCC noted that the Downhill Lane junction improvement scheme has a vital strategic position in the national road network, providing access to economically significant employment destinations in the A19 corridor including NMUK and IAMP. The Councils viewed the Proposed Development as contributing to economic growth both during construction and operation, with improved accessibility throughout the A19 corridor making employment areas more attractive to new businesses and attracting further investment for improvements at existing sites.
- 4.17.31. In delivering highway improvements, the Councils were content that the proposals were in full accordance with current local plan and SEP policies to improve access both to key employment corridors and residential areas.
- 4.17.32. The proposals would be delivered alongside a range of other local network improvements which will help to ensure that opportunities to improve access are maximised. As a result, the Councils concluded that the economic and social effects would be positive.

Agricultural Effects

- 4.17.33. There were no representations which dealt with agricultural matters and the topic did not arise during the Examination.

Community Effects

- 4.17.34. There were no representations which dealt with community matters and the topic did not arise during the Examination.

Public Rights of Way

- 4.17.35. Prior to the Examination the Applicant submitted a number of documents [AS-016] to [AS-022] in support of a proposal to deliver an NMU solution which was integrated with the IAMP TWO development, provided that development had been consented and had been constructed and was open to the public. The matter was discussed at ISH1 [EV-002] [EV-003]

where I raised concerns including about the delivery of an NMU solution as part of the Proposed Development and the reliance upon the delivery of a NMU proposals at a potentially much later date. At D1, the Applicant concluded [REP1-001] that it would not progress the integrated NMU provision further through the Examination.

- 4.17.36. In their joint LIR [REP2-021] STC and SCC noted the need for safe alternative routes for NMUs during the construction phase particularly where highway is temporarily stopped up with appropriate diversion routes put in place prior to commencement of the works. They concluded that when operational, the provision of new infrastructure and improvements to existing infrastructure would encourage modal shift to travel on foot or cycle as well as providing safety benefits through segregating NMUs from road traffic.

Green Belt

- 4.17.37. 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.

Other Strategic Projects

- 4.17.38. Interrelationship effects with other topics have been considered in light of these individual effects, particularly the interrelationship with effects in: Chapter 6 (Air Quality); Chapter 8 (Landscape and Visual Effects); and Chapter 12 (Noise and Vibration). These have already been considered within the assessment of effects on community amenity, and there would be no additional inter-relationship impacts.
- 4.17.39. There would be no significant change in the effects on local communities outlined in Chapter 12 of both the Proposed Development and Testo's Scheme ESs as a result of the shared and extended use of the Testo's Scheme main compound.

ExA's Conclusion

Economic Development

- 4.17.40. The 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 STC and SCC. 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.

Agricultural Effects

- 4.17.41. It is accepted that the Applicant has sought to minimise the permanent take of agricultural land and because this land is not best and most versatile land, this loss does not carry significant weight in policy terms. The temporary loss of agricultural land during construction would be much greater but again, the extent of temporary loss has been

adequately justified. Furthermore, should the Testo's site compound be used by the Proposed Development, then there is potential to reduce the temporary take of agricultural land.

- 4.17.42. The Soil Management Plan, forming part of the CEMP, and secured through R4 of the dDCO [REP5-007] would provide for the sustainable use of soil resources thereby minimising damage to agricultural land and supporting the effective return to agricultural use of land temporarily acquired.

Community Effects

- 4.17.43. There would be no significant effects on any community land or community facilities as a result of the construction or operation of the Proposed Development. Mitigation to minimise disruption, prevent community severance and address environmental impacts caused during the construction phase would be appropriately managed through the CTMP and CEMP.

Public Rights of Way

- 4.17.44. During the construction phase there would be disruption and other environmental effects for users of PRowS and NMUs in the vicinity of the Downhill Lane junction. These effects would be significant even after taking mitigation into account given the importance of this junction and surrounding routes for people commuting to the NMUK Plant. Nevertheless, the measures provided through the CTMP and CEMP should ensure that the impacts will be kept to a minimum.
- 4.17.45. Following the implementation of the Proposed Development, including through modifications to the Testo's Scheme, PRow and NMUs users would experience a significant long-term beneficial effect as a result of improved connectivity (particularly with Bridleway B46), improved safety and improved environmental conditions.
- 4.17.46. The Applicant's aspirations for a more fully integrated NMU route to address the potential opportunities for improvement arising from the IAMP TWO scheme do not form a part of the current application. The opportunity to progress a fully integrated scheme could be addressed as part of the IAMP TWO scheme or in some other way outside of this application. The PRow / NMU proposals within the Proposed Development would meet the project's objectives, would be of considerable benefit to users and are as integrated as possible in the absence of approved plans for IAMP TWO.

Green Belt

- 4.17.47. As the Proposed Development is in the Green Belt, I have carefully considered to whether it harms the purposes of Green Belt designation and might be "*inappropriate development*". Paragraph 5.178 of the NNNPS has been taken into account, together with paragraphs 143, 144 and 146 of the Framework, the IAMP AAP, STC 2012 Policy Map, the SCC Core Strategy and Development Plan and the STC Core Strategy. The Proposed Development is identified by both the Applicant and the

relevant local planning authorities as being of strategic importance in transportation and economic development terms. Nevertheless, it also serves a range of local needs and as such I consider that it is supported by the development plan as a form of *"local transport infrastructure which can demonstrate a requirement for a Green Belt location"*. On this basis 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.

- 4.17.48. The Proposed Development would not have a significant impact on openness with development primarily close to its existing A19 alignment and adjoining local roads. Landscape planting would ensure that new infrastructure is appropriately integrated into the local landscape. Nevertheless, the openness of the Green Belt, which does not imply freedom from any form of development, would not be harmed by the Proposed Development in the operational phase. With regard to the purposes of including land in the Green Belt as set out in paragraph 134 of the Framework, the Proposed Development would not be harmful to any of the five purposes.
- 4.17.49. In summary, the Proposed Development leaves openness unharmed and broadly reinforces the Green Belt purposes. Whilst being part of the SRN it also serves as a local transport improvement scheme to secure economic benefit. As such it is *"local transport infrastructure which can demonstrate a requirement for a Green Belt location"*, the Proposed Development is not inappropriate development. Consequently, the SoS does not need to consider *"very special circumstances"* in this case.
- 4.17.50. Concluding on economic and social effects I find that there are substantial economic benefits arising from the Proposed Development. There would be short-term and long-term effects on agricultural land which are unavoidable, but the impacts will be effectively managed through the CTMP and CEMP. Similarly, mitigation to address community effects during construction would be through the CTMP and CEMP with no adverse effects on communities during the operational phase.
- 4.17.51. Changes to PRow and facilities for NMUs would be greatly enhanced in the long term although some disruption during construction is unavoidable but would be appropriately managed. Although part of the Proposed Development is in the Green Belt, it is local transport improvement infrastructure which can demonstrate a requirement for its location and would not harm openness or the purposes of Green Belt designation. It is therefore not inappropriate development.
- 4.17.52. With overall neutral effects, the substantial economic benefits of the Proposed Development together with major improvements to the PRow and NMU network significantly outweigh the adverse impact on agriculture.

4.18. HISTORIC ENVIRONMENT

Policy Considerations

- 4.18.1. Paragraphs 5.120 to 5.142 of NNNPS address the historic environment explaining that where the development is subject to EIA the applicant should undertake an assessment of any likely significant heritage impacts of the proposed project. In determining applications, the SoS is required to seek to identify and assess the particular significance of any heritage assets that may be affected by the proposed development including the setting of a heritage asset.
- 4.18.2. In considering the impact, the SoS should take into account the desirability of sustaining and where appropriate enhancing the significance of the heritage assets, the contribution of the setting and the positive contribution that the conservation can make to sustainable communities.
- 4.18.3. The NNNPS also acknowledges that where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interests a requirement should be included to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

The Applicant's Case

- 4.18.4. Chapter 7 of the ES [APP 020] addresses cultural heritage issues including the effects on built heritage assets, archaeology and historic landscapes. An Assessment of Historic Environmental Effects [APP-047] also forms part of the application. The assessment identified 28 cultural heritage assets within the 200m study area comprising 10 archaeological sites, 12 historic buildings and 6 historic landscape types. One Grade II* listed building, nine Grade II listed buildings and one conservation area are located outside the 200m study area and within the Zone of Theoretical Visibility and were included in the baseline for the assessments due to the potential for construction and / or operation of the scheme to affect the setting.
- 4.18.5. One historic building was identified within the study area: Make-Me-Rich Farm, identified as a non-designated heritage asset of low value. A cluster of listed buildings around Scots House were assessed as having medium value with Scots House itself (Grade II*) assessed as high value. A range of other historic buildings locally and the West Bolton Conservation Area some 850m from the Proposed Development were assessed as having medium value. All six historic landscape types within the study area were recorded as being common within the locality and therefore assessed to have negligible value.
- 4.18.6. The assessment identified direct impacts on four archaeological sites resulting from construction comprising two agricultural features of medieval or later date, a disused railway and the site of an associated level crossing. The value of all four assets was assessed as negligible and no mitigation proposed. No significant effects on Make-Me-Rich Farm or

on any of the historic landscape types considered as part of the baseline were predicted as a result of construction and therefore no specific mitigation measures were proposed.

- 4.18.7. In terms of operational impacts the ES notes that there would be no significant effects on Make-Me-Rich Farm, archaeological remains or any of the historic landscape types and so no mitigation measures are proposed although general landscape planting would help to integrate the Proposed Development within the surrounding landscape.

Examination

- 4.18.8. No matters of concern were raised by IPS in RRs or WRs in relation to cultural heritage matters.
- 4.18.9. Through initial Written Questions (ExQ1) [PD-006] I sought clarification in respect of different asset numbers being used on Figures compared with the ES text and Gazetteer (ES Appendix 7.3) [APP-O34]. Similarly, in the listing descriptions in Appendix 7.3 not all listed properties were shown on Figure 7.1 [APP-024]. The Applicant clarified such matters and revised the relevant documentation [REP2-009].
- 4.18.10. The joint LIR [REP2-021] noted that the archaeological sites were of low value due to being well understood in terms of their function and dates and therefore the impacts on these sites were defined as negligible.
- 4.18.11. It is noted that the siting of the temporary construction compound to the south-west of the Testo's junction, if used would have adverse impacts on the setting of the listed Scots House. STC approves of the proposed temporary screening of construction activities to mitigate these impacts.
- 4.18.12. Both Councils consider the impact on views and the setting of historic buildings and landscapes during the operational phase will be mitigated by measures identified in the CEMP and REAC. Consequently, both Councils consider the archaeological and cultural heritage impacts of the scheme to be not significant indicating a neutral impact "*and the referenced issues are mitigated through the measures identified in the CEMP and REAC*".

ExA Conclusion

- 4.18.13. This section has had regard to the likely significant effects resulting from the Proposed Development on heritage assets including buried archaeological sites, historic buildings and areas, and historic landscapes. It has considered the effects in terms of the potential for direct physical disturbance and indirect effects on settings in terms of the overall effect and the significance of the predicted effects.
- 4.18.14. Direct effects on four archaeological sites have been identified but none of these are considered to be significant. Accordingly, no mitigation is proposed beyond measures set out in the CEMP and REAC. Similarly, the potential for the discovery of currently unknown archaeological interests

during construction would be addressed through measures proposed in the CEMP and REAC and through R4 and R9 of the dDCO.

- 4.18.15. There would be no other cultural heritage related effects from the construction or operation of the Proposed Development either physically or on the setting of any listed building or other designated heritage asset in the surrounding area. There would therefore be no significant adverse effects on heritage assets or significant cumulative effects on archaeological or cultural heritage receptors as a result of the Proposed Development and the duty to consider the desirability of sustaining and where appropriate enhancing the significance of the heritage assets, the contribution of the setting and the positive contribution that the conservation can make to sustainable communities would be met.
- 4.18.16. Consequently, on the basis of the evidence presented and with the proposed mitigation secured through the dDCO [REP5-007] all impacts have been appropriately addressed in a manner which complies with the historic environment sections of the NNNPS such that the effects of the Proposed Development on the historic environment would be neutral.

4.19. OTHER CONSIDERATIONS

- 4.19.1. This section of the Report addresses a number of remaining policy topics and important and relevant considerations that need to be taken into account in the planning balance, comprising: geology and soils; material resources and waste management; human health; and all other legislative and policy considerations drawn to the ExA's attention.

Geology and soils

- 4.19.2. Paragraph 5.168 of the NNNPS makes reference to soil contamination. It advises that where possible developments should be on previously developed sites provided that it is not of high environmental value. In such circumstances, applicants should ensure that they have considered the risk posed by land contamination and how it is proposed to address this.
- 4.19.3. Geology and soils are addressed in the ES at Chapter 10 [APP-020]. It notes that the geological and geomorphological features of the local landscape are not highly sensitive to the effects of highway construction and operation. A site investigation had not identified any significant risks associated with existing contaminated land but in the event that such land was encountered, contaminated soils / excavated materials would be handled, managed and disposed of appropriately. With the implementation of relevant mitigation measures, the residual effects on the geology and soils of the site were considered to be slight.
- 4.19.4. In the SoCG [AS-029] between the Applicant and the EA it was agreed that the application adequately assessed the potential for land contamination, and should any unsuspected contamination be discovered during construction R6 in the dDCO would ensure that it is dealt with in a satisfactory manner.

- 4.19.5. STC's and SCC's joint LIR [REP2-021] identified that during construction there would be a risk from potential land contaminants but both Councils were content with the assessment of potential impacts and the mitigation measures provided through R6. When operational, the Councils recognised that there could be slight impacts relating to contamination left from fill material. However, measures set out in the REAC would mitigate any concerns. Consequently, the Councils identified geology, soil and ground conditions impacts as a neutral consideration.
- 4.19.6. There were no other representations that raised important and relevant considerations bearing on geology and soils that have not been addressed elsewhere in this Report.

Materials resources and waste management

- 4.19.7. Paragraphs 5.39 to 5.45 of the NNNPS address waste management. The SoS is required to consider the extent to which the effective management of waste arising from the construction and operation of the proposed development has been addressed. Materials are only briefly mentioned (paragraph 5.183) in respect of the need to safeguard mineral resources while paragraph 5.19 highlights the use of materials in terms of mitigation to address carbon impacts.
- 4.19.8. Material resources and waste management matters are addressed in the ES at Chapter 11 [APP-020]. By applying appropriate sustainability and waste management principles, such as the waste management hierarchy, the effects on natural resources and the need for disposal of wastes could be reduced. This could be achieved for example, by re-using existing soils and infrastructure, where feasible, taking into consideration the embodied carbon and water impacts of products, and sourcing materials from local suppliers. Effects could reduce with the implementation of mitigation measures including the CEMP, which would include a Site Waste Management Plan (SWMP), a Materials Management Plan (MMP) in accordance with CL:aire and a Soils Management Plan (SMP).
- 4.19.9. STC's and SCC's joint LIR [REP2-021] confirms that both Councils agree with the methodology and the baseline data used in respect of the use of material resources. Both Councils, support the production of a MMP, a SWMP and a CTMP within the framework provided by the CEMP and the REAC as means of managing the impacts if materials resourcing and waste management during construction. The effects of material resources and waste management are therefore considered by the Councils to be neutral.
- 4.19.10. The SoCG [AS-029] between the Applicant and the EA raised no issues in respect of material resources or waste management provisions.
- 4.19.11. No IPs raised concerns about materials resources or waste in RRs or WRs and the matter was not a principal issue at the Examination. At the construction stage R4 of the dDCO provides for a CEMP to be prepared which would address materials resources and measures to reduce and manage waste.

Human health

- 4.19.12. 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.
- 4.19.13. I have considered whether the Proposed Development might give rise to any material adverse effects on human health and have concluded that it does not. It follows that there are no proposals for changes to the dDCO to address this issue.

Other policies

- 4.19.14. All other legislative and policy considerations drawn to my 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

- 4.19.15. Taking all other relevant documents and policies drawn to my 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 HRA and will assist the SoST as the competent authority in performing their duties under the Habitats Directive¹⁷, as transposed in the United Kingdom (UK) through the Habitats Regulations¹⁸.
- 5.1.2. The broad stages for the HRA process are outlined in the Planning Inspectorate's Advice Note 10 (AN10), in particular the process diagram set out in Figure 1.
- 5.1.3. Regulation 63 of the Habitats Regulations states that if an application proposal is likely to have a significant effect (either alone or in combination with other plans or projects), then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives.
- 5.1.4. 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.
- 5.1.5. The SoST is the competent authority for the purposes of the Habitats Directive and Habitats Regulations for transport applications submitted under PA2008. Throughout the Examination process I have considered 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 NNNPS.
- 5.1.6. As such, I have reviewed the evidence presented during the Examination concerning likely significant effects on the integrity of European sites¹⁹ potentially affected by the Proposed Development.

5.2. PROJECT LOCATION

- 5.2.1. As described in Chapter 2 above, the Proposed Development comprises upgrading the A19 Downhill Lane Junction from a signalised priority,

¹⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).

¹⁸ The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations)

¹⁹ The term European Sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs) and candidate SACs (cSACs), Special Protection Areas (SPAs), possible SACs (pSACs), potential SPAs (pSPAs), Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above.

grade separated junction with a single bridge crossing to a two bridge, grade separated, signalised roundabout junction with a full circulatory carriageway across the mainline A19.

- 5.2.2. The location of the Proposed Development is described as being located on the A19 dual carriageway at Downhill Lane Junction. The A19 is the main strategic highway route to the Tyne Tunnel and a key trade link to the Port of Tyne and the Port of Sunderland [APP-003].

5.3. HRA IMPLICATIONS OF THE PROJECT

- 5.3.1. The Applicant submitted an HRA Report as part of the application [APP-049]. This indicates that the Proposed Development would not fall within the boundary of any European or Ramsar sites.

- 5.3.2. The HRA Report indicates that in order to identify the nearest European and Ramsar designated sites, a 30 km search radius was employed following guidance published in DRMB Volume 11, Section 4 (HD44/09). This took into consideration the scheme size and scope. The HRA Report confirms that the nearest European and/or a Ramsar designations are located to the east of Downhill Lane junction, all approximately 6.5km distant, namely:

- Northumbria Coast Ramsar Site;
- Northumbria SPA; and
- Durham Coast SAC.

- 5.3.3. A map showing the locations of these sites relative to the location of the DCO boundary was provided in Appendix A of the HRA Report.

- 5.3.4. The qualifying features of the Northumbria Coast Ramsar and SPA are:

- Breeding little tern (*Sterna albifrons*);
- Migratory (overwintering) purple sandpiper (*Calidris maritima*); and
- Turnstone (*Arenaria interpres*).

- 5.3.5. The qualifying feature of the Durham Coast SAC is the only example of vegetated sea cliffs on Magnesian Limestone in the UK.

- 5.3.6. As the HRA Report notes, guidance published by the Planning Inspectorate sets out a four-stage process to be undertaken when deciding whether an Appropriate Assessment needs to be undertaken. The first stage of this is a '*screening process*' designed to determine whether it is necessary to proceed to the later stages. The DMRB specifies that when carrying out the screening process for HRA purposes, consideration should be given to any European or Ramsar site within 2km of a route corridor or project boundary (or within 30km if bats are a qualifying feature) plus any waterbody in the same catchment if the project crosses a designated river.

- 5.3.7. The Proposed Development would not be located wholly or partially within a European or Ramsar site and would be located at least 6.5 km from the nearest of them. There would also be no European or Ramsar

sites within 30 km with bats as a qualifying feature and the Proposed Development would not cross a designated river.

- 5.3.8. The HRA Report notes that consideration has also been given to whether traffic-related effects, such as changes in air quality or noise, could affect the nearest European and Ramsar sites. This has been done through examining the network of affected roads beyond the extent of the Proposed Development in which induced traffic changes would be sufficient to warrant being included in the study area for air and/or noise assessment. It records that no such affected roads would be within 2 km of the relevant European or Ramsar sites. Further details of the consideration of air quality and the affected road network can be found in Chapter 6 of the ES [APP-020] and its associated Figures [APP-023] and Appendices [APP-033].
- 5.3.9. The combination of the localised nature of the works and its construction, together with the relative distance between the Proposed Development and European and Ramsar sites, provides no pathway directly, or by way of emissions for any potential adverse, or otherwise, effects upon the qualifying features of the designated European or Ramsar sites. 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.
- 5.3.10. For the reasons presented the HRA Report concluded that an Appropriate Assessment of likely significant effects upon European sites was not required.
- 5.3.11. In its RR [RR-012] NE (the relevant SNCB) indicated that they had been a part of stakeholder consultation from the beginning of the development planning process. As such they had no further comment to make regarding this proposal. In its WR [REP1-014] NE confirmed that it was satisfied that any impacts on European Protected Species have been identified through appropriate surveys, and suitable protection was in place through the draft DCO conditions should any European protected species be encountered during the project lifetime. At the same time NE indicated that it was satisfied that there was no pathway for impacts from the project upon any internationally designated sites of conservation importance or nationally designated conservation sites.
- 5.3.12. In response to Q1.3.2 of ExQ1 [PD-006] regarding the screening for potential effects on Natura 2000 sites NE confirmed that there was no potential for the Proposed Development to impact upon any Natura 2000 sites, and that screening for effects was not necessary [REP1-014].
- 5.3.13. In a signed SoCG [REP1-012] the Applicant and NE agreed that no European designated sites (SAC or SPA) or Ramsar wetland sites located within the vicinity of the proposed Development would be affected by the application.
- 5.3.14. No HRA relevant issues were raised by any other Interested Parties.

5.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

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

5.5. HRA CONCLUSIONS

5.5.1. I conclude 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.
- 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. This Chapter provides a balanced evaluation of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 4 and 5 above. The designated NNNPS provides the primary basis for the SoS to make decisions on development consent applications for national networks NSIPs in England. 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, I have taken all other relevant law and policy into account.

6.2. THE PLANNING BALANCE

6.2.1. I have reached a number of conclusions on the effects of the Proposed Development and its performance against relevant policy and legislation which draw on the analysis of the planning considerations in Chapter 4 and the relevant facts and issues documented in the HRA in Chapter 5.

Issues Arising in Written and Oral Submissions

6.2.2. There were no objection in principle to the Proposed Development or representations suggesting that the Proposed Development was inappropriate in policy terms and the majority of representations were related to matters of specific interest which were largely resolved during the Examination.

6.2.3. The host local authorities STC and SCC, acknowledged that *“whilst there will be some negative local impacts primarily during the construction of the improvement works, none are so significant as to lead to either Council to object to the principle of the scheme”* [REP2-021].

Issues arising in the LIR

6.2.4. The joint LIR [REP2-021] concluded that in STC’s and SCC’s view the Proposed Development would not give rise to significant concerns. Furthermore, the Applicant and both Councils submitted a SoCG agreeing all matters in respect of the effects of the Proposed Development, that the proposed mitigation was appropriate and could be secured through the DCO and that there were no matters of disagreement between the parties [REP5-018].

6.2.5. The LIR confirmed the local authorities’ stated position as being to *“welcome this development which will significantly improve traffic flows at this key junction, relieving congestion and improving accessibility to and from the IAMP and supporting access to new economic development in accordance with national and local planning policy”*.

Conformity with the NPS

6.2.6. In relation to the relevant NPS, the NNNPS I find:

- no instances of non-compliance with the NNNPS were identified by IPs or APs;
- the need for the Proposed Development is established through the NNNPS;
- the Proposed Development generally conforms to high-level policy in the NNNPS; and
- the compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues within relevant NNNPS paragraphs, with this analysis provided below.

Conformity with the Development Plan

6.2.7. The Proposed Development conforms with the development plans of STC and SCC and no instances of unaddressed policy conflict have been identified. In welcoming the Proposed Development, the host local authorities considered it to be '*in accordance with ... local planning policy*'. Moreover, there are no issues arising from development plan policies that conflict with relevant policy directions arising from the NNNPS so development plan policies will be fully met by a decision that is in accordance with the relevant NPS.

Application of Other Policies

6.2.8. I have found that the Proposed Development conforms with other relevant policies identified by STC, SCC and the Applicant. Furthermore, as there are no conflicts between the NNNPS and these other policies they would be addressed by a decision that is in accordance with relevant NPS.

Consideration of Other DCOs

6.2.9. The Applicant has generally justified its proposals for the drafting of the DCO with precedent made Orders 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.

Environmental Impact Assessment

6.2.10. The Proposed Development is EIA development. No submissions were made which raised concerns about the overall adequacy of the (EIA) or the ES. The ES and associated information submitted by the Applicant during the Examination provided an adequate assessment of the environmental effects of the Proposed Development. As the transitional provisions in the 2017 EIA Regulations apply, the application remains subject to the 2009 EIA Regulations which have been complied with by the Applicant. It is sufficient to describe the Rochdale Envelope for it and to secure its delivery within that envelope through the DCO.

HRA Considerations

- 6.2.11. The Proposed Development would not have any likely significant effects on any European sites or their qualifying features. No HRA relevant mitigation measures have been provided because none are required, Consequently, the Proposed Development can proceed without an Appropriate Assessment being undertaken by the SoS.

The Need for the Proposed Development

- 6.2.12. Improvements to Downhill Lane junction are justified on the basis of addressing existing workplace traffic generation as well as future traffic generation through IAMP ONE. Improvements to the junction are required to facilitate future economic growth locally and regionally. This could not be achieved through demand management measures alone.

Transportation and Traffic

- 6.2.13. The transportation and traffic effects of the Proposed Development were assessed in a manner that broadly complies with applicable NNNPS policy. The assessment identified an existing congestion issue that the Proposed Development would address. It would also address modelled traffic growth arising from national trends, local and regional growth.
- 6.2.14. The only traffic element of concern raised by IPs was to ensure disruption was minimised during the construction of the Proposed Development alongside the Testo's Scheme. The transportation and traffic effects during construction would be negative. All reasonable steps to minimise these have been taken by the Applicant and a CTMP would be secured through R10 of the dDCO. The transportation and traffic effects of the Proposed Development during operation would be strongly positive.

Other Strategic Projects and Proposals

- 6.2.15. All relevant interrelationships between the Proposed Development and the Testo's Scheme were considered and no significant adverse cumulative effects identified. The potential use of the Testo's Scheme construction compound as part of the construction of the Proposed Development would not lead to any significant cumulative impacts.
- 6.2.16. Similarly, no significant adverse cumulative effects would arise in terms of relevant interrelationships between the Proposed Development and IAMP ONE, IAMP TWO or the A1 Birtley to Coalhouse Improvement Scheme. Likewise, no significant interrelationships between the Proposed Development and other development or highway projects have been identified and so no significant adverse cumulative effects identified. NNNPS policy requirements in relation to cumulative and in combination assessments for EIA purposes have therefore been met and the overall effect is considered to be neutral.

Air Quality and Emissions

- 6.2.17. In terms of air quality and emissions there would be no significant effects caused by the construction of the Proposed Development. Construction

would result in fugitive dust impacts that would have a negative impact, but the impacts would be mitigated to an acceptable level and secured through the CEMP and ECPs. During the operational phase no exceedances of the relevant air quality objectives are predicted and there are no other local or regional operational air quality impacts that require mitigation. The Leam Lane / Lindisfarne Roundabout AQMA is in compliance and the Proposed Development will not drive it out of compliance in the operational phase.

- 6.2.18. Should the Proposed Development make joint use of construction facilities with the Testo's Scheme, this would not lead to any material change to the air quality assessed in the ES. Overall, the impact on air quality and emissions would be neutral.

Biodiversity, Ecology and the Natural Environment

- 6.2.19. The Proposed Development would result in some loss of habitats which currently provide connectivity and dispersal routes for species with wildlife also at risk of disturbance, direct mortality and pollution, as well as fragmentation and severance of their habitats.
- 6.2.20. Some construction effects would remain significant at a local level but would be short-term. The adverse effects of the Proposed Development would be mitigated through measures in the CEMP, REAC, ECPs and DCO. During operation, following the implementation of mitigation, there would be no residual significant effects.
- 6.2.21. Notwithstanding the improvement in the quality of habitats, as there would be no net gain in habitat area there would be limited harm to biodiversity and an adverse effect overall. Accordingly, in line with paragraph 5.35 of the NNNPS this must be weighed against the benefits of the Proposed Development.

Landscape and Visual Effects

- 6.2.22. Landscape and visual effects would be caused by loss of vegetation on and around the Downhill Lane junction. These adverse impacts would occur as a result of construction activities which would be substantial. These impacts would be managed through appropriate construction management measures, secured through the CEMP, ECPs and DCO but as with any major construction programme residual adverse effects would result.
- 6.2.23. During the operational phase, the overall effects would be negative initially, but with landscape planting maturing the effects of the Proposed Development would move from adverse towards neutrality over time. Mitigation measures to address operational impacts would be secured through requiring the preparation of a landscape scheme that must reflect the mitigation measures in the REAC and be based on the Environmental Masterplan.
- 6.2.24. Although designed carefully in landscape impact terms, the Proposed Development would lead to adverse landscape impacts in terms of

construction and operation. However, this harm would be minimised by reasonable mitigation and so is compliant with the NNNPS. The Proposed Development would also result in adverse visual effects on sensitive receptors, including local residents, but such effects would similarly be minimised through appropriate design and landscaping. As landscape mitigation matures the initially adverse impacts during operation will reduce leading towards a neutral impact.

Noise and Vibration

- 6.2.25. During the construction phase noise and vibration impacts would be appropriately mitigated through the operation of the CEMP although it is still possible that some residents would experience significant noise for short durations. R10 provides for a CTMP which has relevance to the management of construction vehicle traffic noise.
- 6.2.26. The Proposed Development would lead to adverse impacts in terms of construction noise and vibration, but this would be mitigated as far as possible and so would meet the relevant aims of Government policy and guidance in relation to noise and vibration, while the operational effects of noise on surrounding sensitive receptors would on balance be neutral.

Water Environment

- 6.2.27. The Proposed Development would replace elements of the existing A19 drainage system with a new system would improve the operational effects of the Proposed Development.
- 6.2.28. The Proposed Development is policy compliant in relation to flood risk both during construction and operation and takes account of predicted impacts of climate change. During construction there would be no adverse effects on water quality and all effects on surface water quality would be neutral to moderate beneficial during operation. Discharges from the Proposed Development to the River Don catchment would meet the WFD and are therefore policy compliant. Cumulative effects would not undermine that compliance.
- 6.2.29. In respect of geomorphological impacts minor adverse residual effects may occur during the construction and operation of the Proposed Development. A range of management plans of relevance to the control of impacts on the water environment would be secured through R4 and the CEMP while R6 addresses contaminated land and groundwater and R8 addresses surface and foul water drainage to appropriately address mitigation. Following improvements to the existing drainage system the effects of the Proposed Development on the water environment would be positive overall.

Economic and Social Effects

- 6.2.30. There would be substantial economic benefits arising from the Proposed Development although short-term and long-term adverse impacts would arise due to the unavoidable permanent loss of agricultural land. These impacts would be managed as far as possible through the CTMP and CEMP. Similarly, mitigation to address community effects during

construction would be secured through the CTMP and CEMP with no adverse effects on communities during the operational phase.

- 6.2.31. Changes to PRoWs and facilities for NMUs would be greatly enhanced in the long-term although some disruption during construction is unavoidable but would be appropriately managed. Although part of the Proposed Development is in the Green Belt, it is local transport improvement infrastructure which can demonstrate a requirement for its location and would not harm openness or the purposes of Green Belt designation. It is therefore not inappropriate development.

Historic Environment

- 6.2.32. Direct effects on four archaeological sites have been identified but none of these are considered to be significant. Accordingly, no mitigation is proposed beyond measures set out in the CEMP and REAC. Similarly, the potential for the discovery of currently unknown archaeological interests during construction would be addressed through the CEMP, REAC and R4 and R9 of the dDCO.
- 6.2.33. There would be no other cultural heritage related effects from the construction or operation of the Proposed Development either physically or on the setting of any listed building or other designated heritage asset in the surrounding area. There would therefore be no significant adverse effects on heritage assets or significant cumulative effects on archaeological or cultural heritage receptors as a result of the Proposed Development and the duty to consider the desirability of sustaining and where appropriate enhancing the significance of the heritage assets, the contribution of the setting and the positive contribution that the conservation can make to sustainable communities would be met.
- 6.2.34. With the proposed mitigation secured through the dDCO all impacts have been appropriately addressed in a manner which complies with the historic environment sections of the NNNPS such that the effects of the Proposed Development on the historic environment would be neutral.

Other Considerations

- 6.2.35. Taking all other relevant documents and policies drawn to my attention into account, no other matters have arisen which affect the identification in sections 4.1-4.19 above, of the planning matters that are required to be balanced by the SoS or taken into account in the DCO decision.

6.3. OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT

- 6.3.1. Paragraph 4.2 of the NNNPS advises that, subject to the provisions of s104 of PA2008, the starting point for the determination of an application for a National Networks NSIP is a presumption in favour of development.
- 6.3.2. In reaching conclusions on the case for the Proposed Development, I have had regard to NNNPS as the relevant NPS, the Framework, the LIR and all other matters which I consider are both important and relevant to

the SoS's decision. I have 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. I conclude that, in all respects, this will not be the case.

- 6.3.3. Taking account on the conclusions above there is strong policy support for schemes which will deliver improvements to the SRN. The A19 Downhill Lane junction project has support through RIS1 and would deliver such improvements resulting in a strongly positive effect. I have also found the Proposed Development to have substantial economic benefits and would result in a considerably improved PRoW network for NMUs. The effects of on the water environment would also be positive.
- 6.3.4. The potential adverse impacts of the Proposed Development and the concerns raised in submissions on the application have been considered. The ES identified that the Proposed Development would not have any significant adverse effects on the environment and that the identified adverse effects could be mitigated as far as possible through practices which are appropriately secured in the dDCO. All harmful effects are within the scope envisaged in the relevant NPS as still being policy compliant. I concur with these findings.
- 6.3.5. However, I have found that in respect of biodiversity the adverse effects from the construction of the Proposed Development would not be entirely mitigated. Nevertheless, such impacts are reflective of the nature and scale of the development. Other adverse effects to be weighed in the balance include short-term construction impacts, particularly in terms of transportation and traffic and the loss of agricultural land.
- 6.3.6. The benefits of the Proposed Development can be identified in the context of NNNPS's recognition of the presumption in favour of granting consent for National Network NSIPs.
- 6.3.7. In conclusion, I find that the benefits of the Proposed Development particularly in terms of addressing existing and predicted congestion at a key intersection, improving conditions for NMUs and promoting major economic benefits for the region, are such that they outweigh the impacts identified above in relation to the construction and operation of the Proposed Development.
- 6.3.8. Consequently, the potential harm is substantially outweighed by the benefits of the Proposed Development in meeting Government policy as set out in the NNNPS. Furthermore, I further conclude that there is no breach of NPS policy overall.
- 6.3.9. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.
- 6.3.10. For the reasons set out in the preceding chapters and summarised above, I conclude that the Proposed Development is acceptable, and that development consent should be granted. I carry this conclusion forward noting also that my reasoning above identifies the basis for a small number of changes to the DCO, documented in Chapter 7 below.

7. COMPULSORY ACQUISITION AND RELATED MATTERS

7.1. INTRODUCTION

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

7.2. LEGISLATIVE REQUIREMENTS

7.2.1. CA powers can only be granted if the conditions set out in s122 and s123 of 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) (the DCLG CA Guidance) are met.

7.2.2. Section 122(2) of PA2008 states 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 for the purposes of the development, is no more than is reasonably necessary and is proportionate²⁰.

7.2.3. Section 122(3) of PA2008 requires that there must be a compelling case in the public interest to acquire the land compulsorily. The DCLG CA Guidance states at paragraphs 12 and 13 that the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired. In balancing public interest against private loss, CA must be justified in its own right.

7.2.4. Section 123 of PA2008 relates to land to which authorisation of CA can relate. S123(1) permits CA if one of the following conditions is met: i) a request was made for CA; ii) that all persons with an interest in the land consent to the inclusion of the provision; or iii) the prescribed procedure has been followed in relation to the land. In the case of the current application the first of these conditions is met.

7.2.5. The DCLG CA Guidance also sets out a number of general considerations to be addressed when CA powers are sought:

- that all reasonable alternatives to CA (including modifications to the development) have been explored;
- that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;

²⁰ DCLG CA Guidance

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

- 7.2.6. Finally, paragraph 25 of the DCLG CA Guidance states that applicants should seek to acquire land by negotiation wherever practicable.
- 7.2.7. S127 of PA 2008 applies to land acquired by a statutory undertaker for the purpose of their undertaking where a representation is made about the application for the DCO and not withdrawn. S127(5) states that an order granting development consent may include provision authorising the creation of a new right over statutory undertakers' land providing that it can be done without serious detriment to the carrying out of the undertaking or any detriment can be made good by the undertakers.
- 7.2.8. In line with S135 of PA2008, an order granting development consent may include provision authorising the CA of an interest in Crown land only: i) if the interest is held by or on behalf of the Crown; and ii) that the appropriate Crown authority consents to the acquisition.
- 7.2.9. S138 of PA2008 provides for an order to include provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus of statutory undertakers only if the SoS is satisfied that such actions are necessary for the purposes of carrying out the development to which it relates.
- 7.2.10. Further to Part 1 of Schedule 5 to PA2008, TP powers are capable of being within the scope of a DCO. PA2008 and the 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 for CA powers because, by definition, such powers do not seek to permanently deprive or amend a person's interests in land. However, they must be justifiable and compatible with Human Rights tests as discussed below.

7.3. THE REQUEST FOR CA AND TP POWERS

- 7.3.1. The application dDCO (Revision 0) [APP-011] and all subsequent versions submitted by the Applicant up to the latest dDCO (Revision 6) submitted at D5 [REP5-007] include provisions intended to authorise the CA of land and rights over land. Powers for the TP of land were also sought.
- 7.3.2. Accordingly, the application was accompanied by a BoR [APP-017], Land Plans [APP-007], an SoR [APP-015] and a FS [APP-016]. Taken together, these documents describe the land sought by the Applicant together with the reasons why the land is required and the basis under which compensation would be funded.

7.3.3. The Examination and the Applicant's 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 5) submitted at D5 [REP5-011];
- Land Plans (Revision 1) submitted at D5 [REP5-003];
- FS (Revision 1) submitted at D3 [REP3-007]; and
- SoR (Revision 0) submitted at acceptance [APP-015].

7.3.4. References to the BoR, the Land Plans and the FS 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 version at D5 (Revision 1) [REP5-003].

7.3.5. 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 [REP5-011] and SoR [APP-015].

7.4.2. CA is sought for land that would be required or used permanently for construction, operation and maintenance works for a new circulatory carriageway incorporating the existing Downhill Lane overbridge and new overbridge together with related works. The main powers authorising the CA of land are contained in Article (Art) 20 (compulsory acquisition of land) and Art 23 (compulsory acquisition of rights) of the Recommended (r)DCO. Art 23 allows for rights in land to be acquired as well as the land itself, and also for new rights to be created over land.

7.4.3. Land to be acquired or used permanently is identified on the Land Plans [REP5-003] as being shaded pink. It is centred around the existing A19 Downhill Lane junction and all plots to be acquired are contiguous apart from a small area at the junction of the A1290 and Follingsby Lane which is required for the construction of a new NMU crossing.

7.4.4. Other CA powers sought by the Applicant include Art 24 which provides for the extinguishment of all existing private rights over land and Art 27 which allows the Applicant to acquire only the subsoil beneath, or airspace above, the land. Art 28 would allow the Applicant to appropriate and use land above and below streets in the Order limits without having to acquire any part of the street or easement right in it.

7.4.5. The Applicant owns a number plots which are either subject to the rights of others or to unknown rights which are, or may be, incompatible with the construction of the authorised development. To ensure that any such rights can be removed (and appropriate compensation provided) the Applicant has included its own land within the land to which the compulsory powers sought would apply.

- 7.4.6. Powers are sought to take TP of land to carry out the authorised development. This is identified on the Land Plans [REP5-003] as being shaded green. Art 29 would allow the land set out in Schedule 6 of the rDCO to be occupied temporarily and for new rights to be created in such land. It would prevent the Applicant having to permanently acquire land which is necessary to construct the authorised development but is not needed permanently.
- 7.4.7. Art 30 would empower the Applicant to continue to take TP of a construction compound used as part of the Testo's Scheme. If this power is exercised, Plot 1/14b will not be used for construction activities.
- 7.4.8. Art 31 provides for the Applicant to take TP of land within the Order Limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of 5 years from the date on which that part of the authorised development is first used.
- 7.4.9. Finally, it is appropriate to mention Art 32 to Art 34 which addresses the CA of statutory undertakers' land, including powers to remove or reposition apparatus belonging to statutory undertakers in stopped up streets.

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 with the processes involved described below.

Written Process

- 7.5.2. Of the 12 RRs made, three appeared to state an objection to the CA or TP provisions in the application or to the effects of it. These were those on behalf of Mr Davinder Singh Kandola [RR-004], on behalf of Town End Farm Development Ltd [RR-005] and the RR of Hellens [RR-008]. They are addressed in paragraphs 7.6.23 to 7.6.53 below.
- 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.
- 7.5.4. ExQ1 [PD-006] included questions relevant to CA and TP, (ExQ1.4.1-ExQ1.4.16), which can be summarised as addressing the following issues:
- how matters relating to statutory undertakers' interest in land had been addressed;
 - funding for CA;
 - the approach to dealing with the extinguishment of private rights;
 - how the tests in s122 of PA2008 had been addressed;
 - matters relating to the due diligence around land and rights documents, including whether any new APs had emerged, and any new prospective objections had been raised; and

- questions about individual plots including plots 1/9a and 1/9b which lists The Crown Estate as proprietor and plots 1/14a and 1/14b identified for TP.

7.5.5. ExQ1 also requested the Applicant to complete a CA Objections Schedule taking account of the positions expressed in RRs and giving reasons for any additions. Additionally, the Applicant was asked to prepare and at each successive deadline to update as required, tables identifying and responding to any representations made by statutory undertakers with land or rights to which PA2008 s127 and s138 apply.

7.5.6. The Applicant provided a CA Objections Schedule at D2 within the Applicant's response to ExQ1.4.1 [RE2-014], which can be found as Appendix B. It provides an update to Annex B of the SoR [APP-015]. A table identifying and responding to representations made by statutory undertakers was also provided at D2 [REP2-014]. There were no responses to or changes to these Schedules during the Examination.

Hearings

7.5.7. CAH1 examined the Applicant's underlying case for CA and tested whether relevant legislative and policy requirements had been met. A request to be heard at a CAH was made by Hellens [REP1-019] while IAMP LLP [REP1-021] also indicated that they wished to attend CAH1.

7.5.8. The CAH took place on 17 October 2019 with the Agenda which had been published on the project website [EV-006]. A recording of the hearing is available [EV-013]. Matters arising from CAH1 are dealt with in section 7.6 below.

7.5.9. The Examination timetable made provision for a second CAH on 11 December 2019 if required. Following CAH1, Hellens [REP3-025] noted their intention to speak at CAH2 (if required) indicating that they would welcome the opportunity to discuss matters further at the hearing if they remained unresolved. This request was repeated at D4 [REP4-005]. At D4 the Applicant set out its reasons why a further CAH was not required [REP4-001].

7.5.10. In a Procedural Decision [PD-007] dated 12 November 2019 I noted that in respect of the timetabled CAH2 I had had regard to representations made by the Applicant and Hellens primarily at D4. Whilst recognising that there was an unresolved matter it was my view that it was unlikely to be concluded at CAH2 and that the ongoing discussions between parties was the appropriate way forward. Consequently, I indicated that I did not propose to hold CAH2 unless any AP considered that their remaining concerns could not be adequately dealt with other than by a further oral CAH and notified me of that view by D5. As I had not received such a request by D5 I decided that it was not necessary to hold CAH2 and accordingly cancelled it.

Site Inspections

7.5.11. Two USIs [EV-001b] [EV-015] enabled me to view most of the land subject to CA and TP requests from the adjacent public highway.

- USI1 [EV-001b] primarily allowed me to gain an appropriate understanding of the context of the Proposed Development within the wider setting. Nevertheless, I also took the opportunity to familiarise myself with the general extent of land being sought to be acquired permanently and the land to be acquired temporarily, particularly in the vicinity of Town End Farm. During this USI I also observed the land identified as a possible construction compound located adjacent to the Testo's roundabout (Plots 2/1, 2/2a and 2/2b).
- USI2 [EV-015] focussed on the traffic impacts of the Proposed Development but also allowed me to see areas proposed for CA and TP in the vicinity of the Downhill Lane junction. In particular I took account of the land sought at the junction of the A1290 and Follingsby Lane as well as land along the A1290 and land to the west of the A19 mainline.

7.5.12. At the ASI [EV-016] land in the vicinity of Downhill Lane junction was viewed extensively. This inspection provided me with an opportunity to see land in the vicinity of Bridleway B46 and land subject to the outstanding CA / TP objection from Hellens Land Ltd.

7.5.13. Taken together, the two USIs and the single ASI provided me 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 also provides my review of the Applicant's case against relevant legislation and policy.

7.6.2. Consideration is also given to 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 one outstanding objection remaining at the end of the Examination.

7.6.3. Finally, this section considers a range of technical matters relevant to CA and TP, including those relating to statutory undertakers, Crown land considerations and human rights considerations.

THE APPLICANT'S CASE

7.6.4. The SoR [REP5-011] sets out the Applicant's position that the powers of CA and TP sought in the DCO are necessary, proportionate and justified. Furthermore, the Applicant believes that the powers sought are in accordance with all relevant statutory and policy guidance.

7.6.5. The reason for the inclusion of CA / TP powers within the dDCO is so that the Applicant can acquire new rights and TP of land required for the construction of the Proposed Development that is not already in its possession. The powers would enable the Applicant to construct the Proposed Development in a way which minimises the costs to the Applicant (and hence the public purse) and the impact on affected landowners.

7.6.6. At the CAH the Applicant addressed the statutory tests and those within the DCLG CA Guidance under five key headings.

Reasonable alternatives to CA have been explored.

7.6.7. Consideration of possible alternatives to the Proposed Development is provided in Chapter 3 and Appendix A of the Consultation Report [APP-018] and Chapter 3 of the ES [APP-020]. These provide both the history of the scheme evolution, including the options considered, and the reasons for their rejection in favour of the preferred option. None of the alternative options would obviate the need for CA and the improvements are proposed to be carried out predominantly within the alignment of the existing A19 thereby maximising land already within the Applicant's ownership and minimising the need for CA. Moreover, the scope of the CA powers is limited to that which is necessary.

7.6.8. In the SoR [APP-015] (Section 5.6) and in response to ExQ1 [REP2-014] the Applicant set out the process which it followed to identify a scheme design that balanced its project requirements and those of key stakeholders, including adjacent landowners to ensure that land-take was minimised. Initially, a long list of possible options for improvement at Downhill Lane junction were identified which was narrowed to a shortlist of six to be taken forward to a more detailed environmental assessment and technical appraisal. Consideration was also given to the effect of alternatives on the Testo's Scheme including whether the Downhill Lane proposals would require major changes to the Testo's design, resulting in additional work, cost and delays to delivering those improvements.

7.6.9. A finite and detailed summary of land-take for alternative options was not undertaken by the Applicant but on the basis of the options appraisal the Applicant concluded that the discounted options would require, on the whole, significantly more land acquisition than the preferred option.

7.6.10. Through Art 29 of the DCO the Applicant could take TP of the Order Land and only CA what is required subsequently. This would provide scope to reduce the land-take following detailed design to enable the final land-take to be as efficient as possible, thereby minimising CA.

The Applicant has a clear idea of how they intend to use the land which it is proposed to acquire

7.6.11. Annex A of the SoR [APP-015] provides the justification for the CA or TP for each plot. The Land Plans [REP5-003] show which plot needs to be acquired permanently or be subject to temporary use. In addition, Appendix D to the Applicant's Response to ExQ1 [REP2-014] provides further detail to justify the extent of the land sought to be used temporarily and justification for the area of plot required in each case.

7.6.12. The SoR [APP-015] also confirms that CA powers are required as a means of overriding existing rights and interests in or over the land as well as creating new rights and granting the power to take TP.

- 7.6.13. The Applicant considers that the land included in the DCO is the minimum land-take required to construct, operate, maintain and mitigate the Proposed Development and is therefore necessary to achieve the objectives of the project. It has sought to achieve a balance between minimising land-take and securing sufficient land to ensure delivery, noting that the detailed design has yet to be developed.
- 7.6.14. As set out in paragraph 2.4.1 of the SoR [APP-015], the Proposed Development is programmed for construction to overlap in part with the Testo's Scheme. As such, it would be possible for the Proposed Development to share the use of the Testo's main site compound. The Testo's compound comprises Plots 2/1, 2/2a and 2/2b with the first two providing access and the latter plot being the main site compound itself.
- 7.6.15. Art 30 of the rDCO sets out how the powers of TP would be exercised in this scenario. Should the Testo's compound be used it would be in conjunction with Plot 1/14a. Consequently Plot 1/14b is required for construction activities only if the Testo's construction compound is not, or cannot, be used.

There is a reasonable prospect of the requisite funds for acquisition becoming available

- 7.6.16. The FS [REP3-007] (paragraph 3.1.4) confirms that the Proposed Development '*will be funded by the Department for Transport and consequently [it] is not dependent on funding contributions from other parties*'. Accordingly, the Applicant's view is that there is no impediment to the delivery of the Proposed Development, or the payment of compensation to persons affected by CA, TP or a blight claim.
- 7.6.17. The FS recognises that the Proposed Development is intrinsically linked with the Testo's Scheme with the two projects being designed and constructed together. However, the projects have separate applications and funding for the Downhill Lane junction improvements is not dependent on funding for the Testo's Scheme.
- 7.6.18. The most likely cost estimate for the Proposed Development, as set out in the revised FS at D3 [REP3-007] is £54 million which includes all costs up to the opening for traffic. As confirmed by the Applicant in responding to ExQ1.4.3 [REP2-014] the estimate includes the land acquisition and compensation costs and claims associated with the Proposed Development. It also includes legal fees and land agent costs.
- 7.6.19. RIS1 provides certainty of Government funding with over £15 billion to be invested in major roads between 2015/16 and 2020/21. The Proposed Development was announced in RIS1 as a committed and therefore funded scheme. The funding commitment was reiterated in the HE Delivery Plan 2015-2020 and in subsequent delivery plans.

The proposed acquisition is legitimate, necessary and proportionate

- 7.6.20. The Applicant provided justification for the CA and TP of land [REP3-016] on the basis of the DCLG CA Guidance which requires interference with the rights of those with an interest in land to be for a legitimate purpose, and that it is necessary and proportionate.
- 7.6.21. In undertaking a proportionality test for individual plots, the Applicant reviewed each plot on the basis of the practical engineering requirements against the individual impacts that would occur at the local level. Moreover, the vast majority of land to be acquired is within the existing highway boundary. This process allowed the Applicant to refine the land requirements and, wherever possible, to mitigate the effects on landowners. As a result of the above process of challenge and scrutiny, the Applicant confirmed that the powers of CA and TP sought in the DCO are necessary, proportionate and justified acknowledging that an interference with private rights can only be justified where CA is for such purposes.

A compelling case in the public interest

- 7.6.22. Six broad reasons were provided by the Applicant [REP3-016] to establish a compelling case in the public interest for the proposed acquisition as follows:
- the Proposed Development 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;
 - an improvement in safety would be achieved by reducing the accident rate at the junction due to a safer highways configuration. An assessment of the accident cost savings was undertaken which concluded that total accident benefits generated by the improvements over the 60-year assessment period amounted to £1.69 million;
 - access for local traffic would be maintained whilst the conditions for strategic traffic would be improved. The proposals have been designed to mitigate adverse impacts, ensure minimal impact on local access routes and to create an integrated network which is more free-flowing;
 - the Proposed Development will help support economic development in the surrounding area and is designed to accommodate predicted growth, including IAMP;
 - there would be improved connectivity for users travelling from residential areas to the north and from Town End Farm to the NMUK plant and full segregation for NMU and vehicular traffic would be provided along the route. Compared to the existing provision this provides improved safety for NMU users; and
 - the Proposed Development is expressly supported by RIS1 and IAMP AAP and is in accordance with the "*critical need*" to improve the SRN

as recognised in NNNPS in the context of the projected national growth in traffic levels.

INDIVIDUAL CA AND TP OBJECTIONS AND ISSUES

7.6.23. As indicated above at paragraph 7.5.2, my review of RRs indicated that there were three representations which potentially related to CA / TP issues. I deal with each of these below alongside the representations of IAMP LLP who also attended CAH1 on 17 October 2019.

7.6.24. Appendix A to the Applicant's Written Summary of Oral Evidence for CAH1 [REP3-016] provided an update to Annex B of the SoR [APP-015] and Annex B of the Applicant's Responses to ExQ1 [REP2-014].

Mr Davinder Singh Kandola

7.6.25. The RR of Mr Davinder Singh Kandola [RR-004] recorded that his ownership related to land to the north east of Downhill Lane junction (Plots 1/14a and 1/14b). It indicated that part of a field in his ownership within the Order limits had been identified for TP, leaving a small area of land inaccessible and therefore incapable of use. He therefore requested that the entire field was acquired rather than just the part identified.

7.6.26. As set out in paragraphs 7.6.14 to 7.6.15 above Art 30 would provide for the Testo's compound (Plots 2/1, 2/2a and 2/2b) to be used in conjunction with Plot 1/14a. Plot 1/14b would only be required if the Testo's compound were not used. In the event that Plot 1/14b is not required it would be landlocked as it does not have independent access.

7.6.27. In the Applicant's responses to RR-004 [REP1-009] and ExQ1.4.8 [REP2-014] it stated that it would continue to progress discussions with Mr Kandola to agree appropriate compensation for the potential loss of Plot 1/14b but noted that the detail of any compensation was not an issue for the Examination. This would require either the landowner to bring a claim in respect of the use of Plot 1/14a, or the Applicant could take possession of Plot 1/14b and pay any appropriate compensation under Art 29 in accordance with the Land Compensation Manual notwithstanding construction activities would not be carried out on that plot.

7.6.28. Mr Kandola did not object to the principle of his land being subject to TP and did not raise the matter of his residual land through a WR or at any other stage of the Examination including the CAH. No comment was provided by Mr Kandola in response to the Applicant's submissions at D1 and D2 and Mr Kandola did not withdraw his representation.

7.6.29. The Applicant has set out below in paragraphs 8.4.27 to 8.4.34 in relation to Art 30(2) how it would ensure that Plot 1/14b would not be used for construction purposes if the Testo's compound is used and how the land would not be subject to TP. I find that this would also provide an appropriate means of addressing Mr Kandola's concerns about the possibility of part of the landholding becoming inaccessible.

7.6.30. In the absence of a voluntary agreement being reached between the Applicant and Mr Kandola I find that in the circumstances where the

Testo's main compound is not used then the case for the TP of Plots 1/14a and 1/14b is justified. If the Testo's compound is used, then there is no need for the use of Plot 1/14b for construction activities nor justification for its TP. Art 30(2) would ensure that this did not happen.

Town End Farm Partnership

- 7.6.31. In respect of the RR submitted on behalf of Town End Farm Development Ltd. [RR-005], the Applicant submitted an additional submission [AS-015] to clarify the ownership position. This confirmed that the RR submitted should have been submitted on behalf of Town End Farm Partnership (TEFP), an unregistered partnership of three individuals as joint owners of land north of the NMUK plant. The submission [AS-015] was signed by the three individual owners as well as the Applicant and I was content to accept the submission and proceed on that basis.
- 7.6.32. The RR noted that while discussions were ongoing with the Applicant there were areas of disagreement which would be set out subsequently. No specific issues were raised in the RR relating to CA or TP matters and the Applicant's response to RRs [REP1-009] recorded that it would continue to progress discussions with TEFP.
- 7.6.33. Immediately prior to the CAH a joint statement submitted by the Applicant [AS-028] and TEFP [AS-027] set out the status of discussions between the parties. This described the plots in the Land Plan [REP5-003] which are owned by TEFP, namely Plots 1/3a, 1/3b and 1/3c. For Plot 1/3a, TEFP confirmed that it accepted and does not object to the powers included in the dDCO for the TP of the plot which is required to provide construction access (Schedule 6 [REP5-007]). Furthermore, it was agreed that the Applicant and TEFP would continue to negotiate TP of this plot, but such powers were necessary in the event an agreement was not reached.
- 7.6.34. With regard to Plot 1/3b the parties agreed to explore alternative arrangements within the plot during the detailed design stage, but it would not affect the land required nor the powers sought under the DCO based on the preliminary scheme design. For Plots 1/3b and 1/3c TEFP accepted and does not object to the powers included in the draft DCO for the acquisition of these plots. The statement recorded that the Applicant and TEFP would continue to negotiate terms for the acquisition of these plots by agreement, but the Applicant considered the CA powers (in connection with Work Nos. 1, 2, 3 and 8, in respect of Plot 1/3b and Work Nos. 1 and 18 in respect of Plot 1/3c) in the draft DCO were necessary in the event an agreement was not reached. In respect of Plots 1/3b and 1/3c the BoR [REP5-011] records the extent of acquisition or use as all interests and rights in land to be acquired and used permanently under Art 20.
- 7.6.35. The joint statement ended with confirmation that the Applicant and TEFP would seek to reach agreement in order to avoid the use of compulsory powers to expedite the construction of the scheme, subject to SoS approval of the DCO application. It was also confirmed by the Applicant [REP3-016] that negotiations would continue to secure the land parcels

in due course. No further updates were provided by the Applicant or TEFP before the end of the Examination.

- 7.6.36. On this basis I conclude that should it not be possible to reach voluntary agreements with TEFP in respect of their land interests then the TP of Plot 1/3a and the CA of Plots 1/3b and 1/3c in the dDCO are justified, necessary and proportionate.

Hellens Land Ltd

- 7.6.37. Hellens' interest is in land at Downhill Farm (Plots 1/7a, 1/7b and 1/7c). In the BoR [REP5-011], for Plots 1/7a and 1/7c the Applicant records the extent of acquisition or use as all interests and rights in land to be acquired and used permanently under Art 20. For Plot 1/7b the land is proposed to be used temporarily for construction material storage and access for the full duration of the construction programme. Hellens objected to TP [RR-008] on the basis that they were promoting that land for housing and TP would have a major impact on the early delivery of the site. In their WR [REP1-019] they noted that STC had recently undertaken a consultation on their Draft Local Plan. This identified land within Hellens' control as a large housing allocation.
- 7.6.38. Hellens confirmed that *'overall, we do not object to the proposed DCO and recognise the benefits that the proposed improvements will bring to the A19 and Downhill Lane junction'*. However, concern was raised about the proposals for CA including in relation to the provision for the NMU route (Work No. 8) which is the basis on which Plot 1/7a is required by the Applicant. Hellens noted that if the IAMP proposals for an integrated NMU route were brought forward then the proposed NMU route for the Downhill Lane DCO would not be required.
- 7.6.39. In responding to Hellens' RR and WR the Applicant noted [REP1-009] [REP2-015] that the relevant local plan showed no housing currently proposed within the Order land and that the draft Local Plan was at an early stage in the plan making process and was therefore not at a stage which would permit reliance on it. In contrast both STC and SCC's local plans support the need for the Proposed Development in its proposed location with support provided by wide ranging national, regional and local policy documents. The Applicant had also served a notification of development in respect of the Downhill Lane junction upgrade on SCC and STC effectively safeguarding land proposed for highway improvements.
- 7.6.40. With respect to the NMU proposals, while the Applicant submitted revised proposals for an NMU solution integrated with the IAMP TWO scheme prior to the Examination commencing [AS-016], subsequently those proposals were withdrawn [REP1-001]. Nevertheless, the Applicant and Hellens agreed, in a joint statement submitted at D4 [REP4-004] that an integrated solution remained a possibility for the future.
- 7.6.41. With respect to Plot 1/7a, the Applicant and Hellens agreed to continue to negotiate terms for the acquisition of this plot by agreement but the

Applicant considers the CA powers in the dDCO are necessary in the event an agreement is not reached [REP4-004].

- 7.6.42. Addressing the concerns about the TP of Plot 1/7b, the Applicant and Hellens agreed to continue to negotiate TP of this plot by agreement but the statement acknowledged that TP powers in the dDCO are necessary in the event an agreement is not reached [REP4-004].
- 7.6.43. Plot 1/7c was identified by Hellens [REP1-019] as providing the only link to a stream, being a tributary of the River Don, to the north of their proposed development site within their control with the potential to provide a connection for surface water drainage as part of their proposed housing development. Concern was raised about the possibility of the Applicant permanently acquiring Plot 1/7c which would impact upon Hellens' potential connection point for surface water drainage resulting in major cost implications for the development. Hellens strongly objected to the CA of the whole of Plot 1/7c unless they retained rights to connect into the water course currently within their control.
- 7.6.44. At D2, the Applicant [REP2-015] expressed agreement in principle to the provision of rights to allow connection into the stream in Plot 1/7c. The Applicant also noted that on completion of construction, the ownership of Plot 1/7c would be transferred to STC as local highway authority under Art 10 of the dDCO and therefore the approval of the proposals by STC would be required. However, STC confirmed [REP3-023] that the Council would not be prepared to enter into a land transfer agreement that had third party access rights.
- 7.6.45. For that reason, the Applicant concluded that it was unable to guarantee to Hellens that it could make provision for the creation of a drainage right and did not consider it could reasonably oppose that position given STC's statutory function. Nevertheless, the Applicant acknowledged that this would not prejudice the same right being granted by STC in the future.
- 7.6.46. At CAH1 [REP3-016] and D3 [REP3-001] the Applicant confirmed that it was exploring a range of potential solutions to the drainage access issue, but at D4 [REP4-003] it confirmed that it was unable to guarantee to Hellens that it could make provision for the creation of a drainage right on the basis of STC's position.
- 7.6.47. At D4 [REP4-004] the Applicant and Hellens stated that they were continuing to discuss a range of options that would provide options to establish a future drainage connection The Applicant agreed to explore the following options:
- A. A voluntary land agreement between the parties over the use of Plot 1/7c, which would obviate the need for a drainage connection right over any land proposed to be transferred to STC; and/or
 - B. Utilising existing highway / land drainage features that are likely to be retained following the completion of the Proposed Development. This would potentially remove the need to create a connection from the highway to the tributary of the River Don; and / or

- C. Investigate other drainage connections to the existing highway networks within the Proposed Development boundary to inform the detailed design.

7.6.48. Each one is deliverable by the Applicant [REP4-001] but none of the options could be settled upon or discounted prior to the end of the Examination. The Applicant and Hellens [REP4-004] agreed to continue to negotiate terms for the acquisition of Plot 1/7c by agreement but the Applicant considers the CA powers in the draft DCO are necessary in the event an agreement is not reached. Accordingly, the Applicant does not consider that any of the land proposed to be taken permanently should be removed from the Proposed Development boundary.

7.6.49. Hellens requested that the Applicant reconsider the location of Pond 6 as a means of resolving the future drainage connection across Plot 1/7c, the preliminary drainage design having been revised previously at the request of Hellens, relocating Pond 6 from Plot 1/7a to Plot 1/7c. The Applicant indicated [REP4-001] that relocation was not possible because:

- the relocation Pond 6 into Plot 1/7c would reduce the permanent footprint of the scheme over land to the south of Downhill Lane, where Hellens is promoting residential development;
- Plot 1/7c provides the optimum location for Pond 6 from a design, construction and environmental perspective;
- relocating Pond 6 would effectively result in the extension of Plot 1/7a (permanent land) over Plot 1/7b (temporary land), potentially increasing the scheme's overall footprint; and
- relocating Pond 6 into Plot 1/7b would not necessarily resolve the issue of drainage rights because the relocated pond may have to be positioned to the north of Plot 1/7b. The land required for maintenance access may recreate the same issue over the extended Plot 1/7a.

7.6.50. In ExQ2.4.1 [PD-009] the Applicant, Hellens and STC were asked to confirm the outcome of any further discussions on this matter by D5 and at subsequent deadlines if the matter remained unresolved. The Applicant responded at D5 [REP5-016] to state that there was no update to the position as stated at D4. The Applicant had carried out further drainage investigations in relation to Plot 1/7c and STC's response at D5 [REP5-021] confirmed that the matter was ongoing. No further substantive responses on this matter were received from any other parties by the end of the Examination.

7.6.51. In conclusion, whilst Hellens' objections remain outstanding the Applicant has sought to resolve their concerns without the need for CA /TP powers to be used. In respect of Plot 1/7a an integrated NMU solution is not achievable at present but a solution which would reduce the impact on Hellens' land interests may be possible in the future. A possible way forward also exists for an agreement to be reached about a future drainage connection involving Hellens and STC should the Order be confirmed by the SoS. However, for the reasons advanced by the Applicant, and not challenged by Hellens, relocating Pond 6 would not appear to provide a solution.

- 7.6.52. In the absence of a voluntary agreement being reached, there is a compelling case in the public interest for the acquisition of Plots 1/7a and 1/7c. This is on the basis of the demonstrable need for the Proposed Development, Hellens' development not currently being supported by local plan policy, nothing in the DCO preventing a planning application being submitted, and the possibility of the drainage right being secured by agreement with the local highway authority.
- 7.6.53. Similarly, with regard to the TP of Plot 1/7b, given the initial stage of Hellens' residential development proposals and the advanced planning stage of the Proposed Development, TP is justified should a voluntary agreement not be reached.

IAMP LLP

- 7.6.54. At CAH1 the Applicant confirmed [REP3-016] that it had been undertaking a process to explore the overlaps between the footprint of IAMP TWO and the Proposed Development with IAMP LLP, in order to provide assurance that there was no inconsistency between the Proposed Development and IAMP's proposed land assembly. IAMP LLP also confirmed that some land had recently changed hands due to IAMP acquiring new plots [EV-013].
- 7.6.55. The SoCG between the Applicant and IAMP LLP [REP5-015] confirmed that IAMP LLP were in broad agreement with the Applicant about the temporary and permanent footprint of the Proposed Development project. Moreover, the parties were working together on a plot-by-plot analysis for areas where the footprints of IAMP TWO and the Downhill Lane junction project overlap.
- 7.6.56. The SoCG also confirmed that IAMP LLP had no issue with the CA of their interests. The comments were recorded as agreed. As a result, I am satisfied that the CA and TP powers in the dDCO in respect of IAMP LLP's land interests are justified, necessary and proportionate.

SPECIAL LAND AND RIGHTS PROVISIONS

- 7.6.57. At D1 [REP1-010] (Appendix 1 Q47) the Applicant confirmed that statutory undertakers with land interests within the Order limits comprised BT Group Plc, Northern Gas Networks, Northern Powergrid and Northumbria Water. The Applicant also indicated that s127 is only engaged where a representation is made, noting that none of those statutory undertakers had submitted a RR. As a result, the Applicant did not consider that there were any outstanding issues with statutory undertakers. The Applicant also noted that National Grid, having submitted a RR confirmed that it did not have any assets to be affected by CA and there was agreement between the Applicant and National Grid that s127 and s138 of PA2008 were not engaged [AS-026].
- 7.6.58. In response to ExQ1.4.2 the Applicant noted [REP2-014] that the dDCO had been shared with the relevant statutory undertakers, and they had raised no issue with the proposed protective provisions. Consequently,

the Applicant did not anticipate the need for any agreements nor anticipate any impediments to carrying out the relevant works.

- 7.6.59. In ExQ1.4.5 and ExQ1.4.6 I asked the Applicant to prepare, and at each successive deadline update as required, a table identifying and responding to any representations made by statutory undertakers with land or rights to which s127 and s128 of PA2008 applied. In response [REP2-014] the Applicant provided a table and did not anticipate needing to provide an update, but should any statutory undertaker unexpectedly submit any representations to which s127 and s128 applied, the table would be updated. No such updates were provided.
- 7.6.60. At CAH1 the Applicant confirmed [REP3-016] that under Art 32 the undertaker may CA land belonging to statutory undertakers and extinguish rights or reposition apparatus within Order limits. Schedule 7 of the DCO contains protective provisions which would be engaged where a statutory undertaker's apparatus is affected by the works.
- 7.6.61. The Applicant also confirmed that as part of the statutory consultations statutory undertakers had confirmed the position of their apparatus. The Applicant had engaged with both Northern Powergrid and BT Group on the issue.
- 7.6.62. Part 5 of the BoR [REP5-011] confirms that no land is required that would be subject to special parliamentary procedure, is special category land or is replacement land. The SoR [APP-015] also confirms the Applicant's view that there is no land forming part of a common, open space or fuel garden allotment pursuant to s131 and s132 of PA2008 and that none of the land to be acquired is National Trust land '*held inalienably*' for the purposes of s130 of PA2008.
- 7.6.63. Accordingly, I conclude that there are no special land considerations (arising under PA2008 ss127, 130, 131 or 132) that the SoS needs to take into account.

CROWN LAND

- 7.6.64. The SoR [APP-015] states that none of the land which is proposed to be used is Crown land for the purposes of s135 of PA2008. This was confirmed in Part 4 of the BoR [REP5-011].
- 7.6.65. Section 7.1 of the SoR [APP-015] states that two plots are subject to '*escheat*' and that it has previously been confirmed by The Crown Estate that plots such as these do not constitute Crown land. On this basis the two plots (1/9a and 1/9b) are not included in Part 4 of the BoR [REP5-011].
- 7.6.66. At D2 the Applicant provided a letter from The Crown Estate's solicitors confirming the position that no act of management has been undertaken by The Crown Estate in relation to these properties and accordingly they do not form part of The Crown Estate. Consequently, the property cannot be Crown land, nor do The Crown Estate Commissioners have remit

under PA2008 to consent to the acquisition of any interest in such land within the DCO.

7.6.67. Whilst noting that it was an issue for the ExA the solicitors indicated that they were not aware of any reason why the DCO cannot be granted over land that is subject to escheat. Although the letter from The Crown Estate's solicitors had been provided to the Examination into the Testo's Scheme, the land parcels referred to are part of the same Land Registry title as the escheat plots in the Downhill Lane Junction scheme.

7.6.68. Accordingly, I conclude that the CA and TP proposals in the application do not affect any Crown land and that The Crown Estate does not need to provide consent under s135 of PA2008.

HUMAN RIGHTS ACT (1998) CONSIDERATIONS

7.6.69. At CAH1 [REP3-016] the Applicant confirmed that it had considered the potential infringement of the European Convention on Human Rights as a result of the CA and TP powers sought in the DCO. In response to ExQ1.4.12 the Applicant set out how the land requirements of the Proposed Development were balanced with the interference with human rights [REP2-014].

7.6.70. In summary the Applicant's case [REP3-016] is that:

- the land to be acquired has been kept to a minimum and the design has sought to minimise interference with the peaceful enjoyment of a person's possessions under Art 1 of the First Protocol (the right to peaceful enjoyment of possessions);
- there would be very significant public benefit arising from the grant of development consent which can only be realised if the development consent is accompanied by the grant of powers of CA;
- as the CA powers are necessary to deliver the Proposed Development and the benefits, there would not be a disproportionate interference with the Art 8 rights to a person's home, and Article 1 of the First Protocol rights;
- those affected by CA powers will be entitled to compensation and the Applicant has the resources to pay such compensation, as demonstrated by the FS;
- in relation to the Art 6, entitlement to a fair and public hearing, there has been an opportunity for those affected to make representations on and object to the Proposed Development. This has been backed by extensive consultation including with known owners and occupiers of the land and those who might make claims either under s10 of the Compulsory Purchase Act 1965, s152(3) of PA2008 in respect of injurious affection, or under Part 1 of the Land Compensation Act 1973.

7.6.71. The Applicant has had regard to the DCLG CA Guidance in developing its case for CA and TP [APP-015], including the general consideration that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate. It stated that there is a compelling case in the public interest for the CA

powers included in the DCO which is sufficient to justify the interference with rights. The land over which CA powers are sought as set out in the DCO is the minimum necessary to construct, operate, maintain and mitigate the Proposed Development. The Applicant has sought to achieve a balance between minimising land take and securing sufficient land to ensure delivery of the Proposed Development, noting that the detailed design has yet to be developed. The Applicant has also sought to minimise the private loss suffered by individual landowners and occupiers by seeking to acquire land through agreement where possible. Section 4.9 of the SoR [APP-015] sets out the approach taken by the Applicant to acquire interests in land by agreement, while Annex B sets out the progress made in negotiations.

- 7.6.72. As set out in response to ExQ1.4.12 [REP2-014], paragraph 6.2.1 of the SoR [APP-015] indicates that the Proposed Development will have an impact on individuals but the public benefits that will arise from the Proposed Development outweigh the harm to those individuals.
- 7.6.73. The submission version of the dDCO [APP-011] included at Art 29(9) provision to create undefined new rights in the land described as being for TP in Schedule 7 (land of which TP may be taken). This provision was subject to consideration at a number of stages throughout the Examination as explained in paragraphs 8.4.19 to 8.4.26 below. Had I accepted the Applicant's provision I would not have been able to conclude that the CA tests in s122 of PA2008 had been met in respect of the land in Schedule 7 [APP-011] nor that APs had been given an opportunity to effectively participate in the Examination in accordance with their Art 6 rights. Consequently, I have proposed an amended to Art 29(9) in the rDCO and this change is highlighted in paragraph 8.5.1 below.
- 7.6.74. I conclude that as set out in the rDCO 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. S122 and s123 of PA2008 sets out the purposes for which CA may be authorised. I am satisfied that the legal interests in all the plots of land included in the revised BoR [REP5-011] and shown on the Land Plans [REP5-003] would be required for the Proposed Development with respect to both CA and TP powers. 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.
- 7.7.2. I have considered whether the public benefit in delivering the Proposed Development would outweigh the private loss. Having considered individual cases, I am satisfied that the public benefit in delivering the Proposed Development would outweigh the private loss.
- 7.7.3. I have given careful consideration to the overlap of both land requirement and delivery timing between the Proposed Development and

the Testo's Scheme. 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 and provides the potential for efficiency in the delivery of the Proposed Development.

- 7.7.4. Concerning s122(3), I am satisfied, and recommend to the SoS that a compelling case in the public interest exists for the following reasons:
- the development for which the land is sought would be in accordance with national policy as set out in the NNNPS and development consent should be granted;
 - there is support for the Proposed Development from IPs including from the local planning authorities;
 - the NNNPS identifies a critical 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 and to construct the Proposed Development within a reasonable timeframe, and it 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 explored all reasonable alternatives to the CA of the rights and interests sought and it is reasonable that the Applicant should retain CA and TP powers as a guarantee against the possible failure of voluntary agreements;
 - there are no alternatives which ought to be preferred; and
 - funding is available to meet any compensation liabilities for CA and / or TP and for any blight claims 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.
- 7.7.5. In respect of s127 and s138 of PA2008, the Proposed Development will not result in any outstanding issues regarding the land and apparatus of statutory undertakers and the only representation from a statutory undertaker indicated that s127 and s128 were not engaged. In addition, no statutory undertaker raised an issue with the proposed protective provisions.
- 7.7.6. With regard to special category land there is no National Trust Land that engages s130 of PA2008 and there is no common, open space or related land that engages s131 or s132 of PA2008. There are no other considerations relating to special category land under PA2008 that need to be taken into account.
- 7.7.7. With regard to s135 of PA2008, land recorded in the BoR as in the ownership of The Crown Estate is proposed to be acquired for the Proposed Development. The Crown Estate Commissioners have confirmed that as this land is held in escheat, it is not part of The Crown Estate and cannot be Crown land for the purposes of the Act [REP2-014].
- 7.7.8. The case for CA powers needs to be based on the case for the development overall. I have shown in Chapter 6 that I have reached the view that development consent should be granted. As I have set out

above, I am satisfied that the CA powers sought by the Applicant are justified and should be granted because I have concluded that 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.

- 7.7.9. As far as human rights are concerned, I am satisfied that the Examination has ensured a fair and public hearing, that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest and that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

8. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1. INTRODUCTION

- 8.1.1. A dDCO [APP-011] (Revision 0) and an EM [APP-012] (Revision 0) were submitted by the Applicant as part of the application. The EM describes the purpose of the dDCO as originally submitted, and each of its articles and schedules.
- 8.1.2. While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, (the Model Provisions Order) has been repealed, the submission version of the dDCO drew on the model provisions as well precedent set by made Orders for highways development under PA2008 [APP-012]. There has been a change of approach to the use of Model Provisions since the Localism Act 2011, and although they provide a starting point for the consideration of the DCO, precedent cases are generally more appropriate. The submission version dDCO [APP-011] and subsequent iterations are in the form of a statutory instrument as required by s117(4) of PA2008.
- 8.1.3. This Chapter provides an overview of the changes made to the dDCO during the Examination process, between the original submission dDCO and a preferred dDCO submitted by the Applicant at D5 [REP5-007] (Revision 6) and a revised EM [REP5-009] (Revision 5). It then considers changes made to the preferred dDCO in order to arrive at the rDCO in Appendix D to this Report.
- 8.1.4. The following sections of this Chapter:
- report on the structure and functions of the dDCO;
 - report on the processes used to examine the dDCO and its progress through the Examination;
 - summarise changes made to the dDCO during the Examination;
 - set out final changes proposed; and
 - address the relationship between the DCO and other consents and legal agreements.

8.2. THE STRUCTURE OF THE DCO

- 8.2.1. This section records the structure of the dDCO which is based on the Applicant's preferred dDCO [REP5-007] and is as follows:
- Part 1 (Art 1 and Art 2) sets out how the Order may be cited and when it comes into force. Art 2 sets out the meaning of various terms used in the Order;
 - Part 2 (Art 3 to Art 8) contains the principal powers in relation to the Order, provides for the grant of development consent for the Proposed Development and allows it to be carried out and maintained. Art 7 and Art 8 set out who has the benefit of the powers of the Order and how those powers can be transferred;

- Part 3 (Art 9 to Art 16) "*Streets*" refers to matters relating to the application of the New Roads and Street Works Act 1991 as well as construction and maintenance, classification, stopping up, access to works, clearways and traffic regulation;
- Part 4 (Art 17 to Art 19) provides supplemental powers relating to the discharge of water, protective works to buildings and the authority to survey and investigate the land;
- Part 5 (Art 20 to Art 34) contains powers in relation to the acquisition and temporary possession of land;
- Part 6 (Art 35) contains powers in relation to operations affecting trees and hedgerows;
- Part 7 (Art 36 to Art 43) is concerned with miscellaneous and general matters including the procedure in relation to certain approvals under requirements, operational land under TCPA1990, a defence to proceedings in respect of statutory nuisance, the protection of interests, the certification of plans, the serving of notices and arbitration.

8.2.2. There are nine schedules to the Order, providing for:

- the description of the Authorised Development (Schedule 1);
- the Requirements applying to the Authorised Development (Schedule 2);
- classification of roads (Schedule 3);
- permanent stopping up of streets and private means of access (Schedule 4);
- modification of compensation and compulsory purchase enactments for the creation of new rights (Schedule 5);
- land of which temporary possession may be taken (Schedule 6);
- protective provisions (Schedule 7);
- amendment to the Testo's Order (Schedule 8); and
- documents to be certified (Schedule 9).

8.2.3. I find that the structure of the DCO is fit for purpose and no changes to the structure as outlined above are recommended.

8.3. THE EXAMINATION OF THE DCO

8.3.1. My review of the submission versions of the dDCO [APP-011] (Revision 0) and the EM [APP-012] (Revision 0) commenced before the PM. There were a number of technical and drafting matters which were desirable to address early in the Examination. These were matters which did not particularly relate to the interests of IPs and therefore it was appropriate to address them before the relationship between IP issues, planning merits and the dDCO was examined in any detail.

8.3.2. 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 (described in Chapter 1 above) related to the dDCO. The Rule 6 Letter [PD-004] was accompanied by notice of ISH1 on the DCO (Annex D), an Agenda (Annex E) and a Schedule of the ExA's Issues and Questions relating to the dDCO (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.

- 8.3.3. Similarly, the Applicant commenced its review of the dDCO during the pre-examination stage. In response to matters raised in advice under s51 of PA2008 [OD-001] and to its own ongoing refinement of documentation for the Proposed Development, dDCO (Revision 1) [AS-002] (clean copy) and [AS-003] (tracked changes) together with EM (Revision 1) [AS-004] (clean copy) and [AS-005] (tracked changes) were submitted and published before the Examination commenced.
- 8.3.4. As a consequence of the initial Procedural Decisions [PD-004], ISH1 into the dDCO was held on 13 August 2019 on the same day as the PM. An audio recording of the hearing was subsequently put on the project website [EV-002] [EV-003]. This hearing was based on dDCO (Revision 1) [AS-002].
- 8.3.5. In Table 1 to Annex E of the Rule 6 Letter [PD-004] a number of questions were posed principally in respect to the wording and provisions within the dDCO [APP-011]. A response to these questions was provided in Written Submission of Applicant's Case at ISH1 and OFH1 [REP1-010] and the Applicant produced a further dDCO [REP3-004] (clean copy) and [REP3-003] (tracked changes) which included changes which the Applicant considered necessary.
- 8.3.6. In my initial Written Questions (ExQ1) [PD-006] dated 21 August 2019 I requested responses to matters addressed in Table 1 of Annex E of my Rule 6 letter [PD-004] by D1 (27 August 2019) and comments on any matters raised in those submissions by D2 (10 September 2019). ExQ1.5.1 also stated that with respect to matters raised in RRs or WRs but which were not discussed at ISH1 and which in the view of IPs required changes to the DCO, any proposed changes should be provided by D2 with an explanation of what was proposed and what it aimed to achieve.
- 8.3.7. Matters for Examination arising from the DCO and progress on them were tracked throughout the Examination with a further ISH on the DCO, ISH3, held on 17 October 2019 [EV-014] (audio recording). The agenda was published on 8 October 2019 [EV-009].
- 8.3.8. The Applicant updated the dDCO several times during the Examination, responding to issues raised in questions, to 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 versions of the dDCO submitted by the Applicant were as follows:
- Revision 0 (Application Issue) [APP-011], January 2019;
 - Revision 1 (Post Application Issue) [AS-002] (clean copy) and [AS-003] (tracked changes) was submitted in response to matters raised in s51 advice, March 2019;

- Revision 2 (Updated for PM) [AS-019] (clean copy) and [AS-018] (tracked changes) was submitted to address changes to the design of the scheme to allow for an integrated NMU provision, July 2019;
- Revision 3 (Updated for D1) [REP1-004] (clean copy) and [REP1-003] (tracked changes), August 2019;
- Revision 4 (Updated for D2) [REP2-004] (clean copy) and [REP2-003] (tracked changes), September 2019;
- Revision 5 (Updated for D3) [REP3-005] (clean copy) and [REP3-004] (tracked changes), October 2019; and
- Revision 6 (Updated for D5) [REP5-007] (clean copy) and [REP5-006] (tracked changes), November 2019.

8.3.9. Similarly, the EM was updated throughout the Examination as the dDCO evolved. The versions of the EM submitted by the Applicant were as follows:

- Revision 0 (Application Issue) [APP-012];
- Revision 1 (Post Application Issue) [AS-004] (clean copy) and [AS-005] (tracked changes);
- Revision 2 (Updated for PM) [AS-021] (clean copy) and [AS-020] (tracked changes);
- Revision 3 (Updated for D1) [REP1-006] (clean copy) and [REP1-005] (tracked changes);
- Revision 4 (Updated for D2) [REP2-006] (clean copy) and [REP2-005] (tracked changes); and
- Revision 5 (Updated for D5) [REP3-009] (clean copy) and [REP3-008] (tracked changes).

8.3.10. The ExA's dDCO / DCO Commentary was published on 19 November 2019 [PD-008] with responses sought by D5, 5 December 2019. This was in the form of a Schedule of Recommended Amendments to the Applicant's draft DCO Revision 5 [REP3-005]. At D5 [REP5-007] the Applicant provided a response to the ExA's Schedule of Recommended Amendments.

8.4. CHANGES DURING EXAMINATION

8.4.1. In this section I do not report on every change made to the dDCO in the updated versions, as many were as a result of typographical errors, or slight revisions of the wording following dialogue between the Applicant and relevant IPs or from their WRs, or as a result of my questions (ExQ1) [PD-006] and (ExQ2) [PD-009]. I do however comment on those changes made during the Examination which I consider to be significant because of their effect or because they were subject to further consideration after ISH1. Numbers for Articles and Requirements are based on the application version (Revision 0) of the dDCO unless otherwise referenced.

8.4.2. In the Written Submission of the Applicant's Case at ISH1 and OFH1 [REP1-010] the Applicant explained that a fundamental principle of its drafting approach was to make sure that the dDCO is aligned with other HE DCOs. The Applicant has aimed to learn from these and to be consistent with previous and evolving DCOs. As a sister scheme to the

Testo's Scheme the Applicant also sought to establish a consistent pair of Orders because both schemes are proposed to be implemented under a combined delivery programme. Consequently, a number of the measures proposed to be secured via the dDCO, including traffic regulation measures and consultation forums, had already been set up through the Testo's Scheme and the Applicant sought to continue and / or replicate these through the A19 Downhill Lane Junction Order. Whilst recognising these benefits it is incumbent upon me to consider the provisions of the A19 Downhill Lane Junction Order on its own merits.

- 8.4.3. Revision 2 of the dDCO [AS-019] included a proposed change to the name of the DCO from "A19 Downhill Lane Junction Improvement Order" to "A19 Downhill Lane Junction Order". This reflected the latest HE drafting practice as a result of the Testo's examination. Having regard to schemes elsewhere in the country, the Applicant decided that the drafting strategy going forward was to name each scheme in the Order without setting out the NSIP classification or the title given to a project in RIS1. It was on this basis that the proposed change to the name of the DCO was made which seems appropriate to me.

Article 2 Definition of Maintain

- 8.4.4. Through ISH1 (Q9) and ExQ1.1.3 [PD-006] I asked the Applicant to clarify the extent to which the need to maintain the Proposed Development had been assessed in the ES and whether there was a need for the dDCO to limit the extent of maintenance activities to those which had been considered as part of the ES. The Applicant confirmed [REP2-014] that it did not consider it necessary for the DCO to limit maintenance activities any further, confirming that the ES assessed an envelope of effects and maintenance activities would not materially change the conclusions of the assessments.
- 8.4.5. Nevertheless, following ISH3 the Applicant [REP3-017] accepted my suggestion regarding the definition of "maintain" with the definition amended [REP3-005] to make clear that it is limited to works which do not give rise to materially new or materially different environmental effects to those identified in the ES.

Article 2 Definition of the Testo's Plans

- 8.4.6. At ISH1 (Q10) the Applicant was asked to clarify whether the definition of "the Testo's plans" in Art 2 was intended to be the documents referenced as Revised Plans, Drawings and Sections for the A19/A184 Testo's Junction Alteration Scheme [APP-054]. If this was correct the Applicant was asked to include the document reference in Schedule 9 – Documents to be Certified [AS-019]. At ISH3 I also sought clarification from the Applicant about referencing the Testo's plans in the Schedule.
- 8.4.7. The Applicant responded [REP1-010] indicating that Schedule 9 relates to certified documents for the purposes of the Downhill Lane junction scheme and refers to documents certified pursuant to Art 41(1) of the dDCO only. The Testo's Order plans are proposed to become certified documents under the Testo's Order by the operation of Art 41(4).

- 8.4.8. As set out in the Written Submission of the Applicant's Case at ISH3 [REP3-017] this would be achieved through the insertion of a reference number into the definition of the Testo's plans. The references to the plans would therefore be secured through the modifications in Schedule 8 of the dDCO to Schedule 10 in the Testo's Order. These changes were confirmed in Revision 6 of the dDCO [REP5-007] and I am content with this proposed change as it provides clarity about the definition. This change should also be considered alongside changes to Art 41 (8.4.44), Schedule 2 (8.4.51) and Schedule 9 (8.4.53) below.

Article 6 Limits of Deviation

- 8.4.9. Art 6(1) provides for the SoS to approve changes to the limits of deviation in excess of the assessed limits following consultation with the relevant planning authority and subject to the limits described in the next paragraph. The matter was raised in ISH1 (Q15) with the Applicant satisfying me of the need for the provision at D1 [REP1-010].
- 8.4.10. Draft DCO Revision 2 [AS-019] revised Art 6 altering the term "*would not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement*" to "*would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement*". The change from "*materially worse adverse*" to "*materially different*" was also included in R3 and R8. The Applicant's justification for the proposed change was to reflect the drafting of the Testo's Order [AS-016]. I find the proposed change to be acceptable as it allows a greater amount of works to be captured by the restriction than the original.
- 8.4.11. The Applicant confirmed [REP3-017] that the procedures for discharging a variation to a requirement which are set out in Schedule 2 would not apply to a change to the Limits of Deviation because the provision was within an article rather than a requirement. Consequently, it was confirmed that the process which applies to requirements would also apply to an application for certification under Article 6(2). Accordingly, at D3 [REP3-005] a new paragraph 6(2) was inserted to make clear the procedure set out in Part 2 of Schedule 2 of the dDCO is to apply to an application for certification under Article 6(1).

Article 23 Compulsory acquisition of rights

- 8.4.12. As submitted [APP-011], Art 23 would grant wide powers for the creation of new rights and restrictive covenants over the Order land. It was not limited to the creation of specific rights and restrictions set out in Schedule 5 of the application dDCO [APP-011] or to the description of the extent or acquisition of use in the BoR [APP-017]. Furthermore, the Land Plans show the land to either be acquired to use permanently or land to be acquired temporarily and do not include any land in which new rights / restrictive covenants are to be created. Without a description of the rights / restrictions sought it would be difficult for the SoS to be satisfied that the CA tests had been met in relation to the new rights and restrictions.

- 8.4.13. Revision 1 of the dDCO [AS-002] was submitted in response to matters raised in s51 advice regarding consistency between the BoR and Schedule 5 [APP-011]. It amended Art 23 removing Art 23(2) and Art 23(3), namely the provisions relating to land in which only new rights may be required. Consequently Schedule 5 which set out the land in which only new rights were to be acquired was deleted.
- 8.4.14. In responding to Q29 at ISH1, the Applicant stated [REP1-010] that in relation to the acquisition of rights, it was not aware of any rights that would be required. Nevertheless, the Applicant sought the power on the basis that whilst it allowed relevant land to be acquired, at the point of scheme implementation it recognised that there may be scope to reduce the land interference, with associated public benefits. In respect of rights, in the event that less land proved to be required in a particular area following the detailed design stage, the Applicant would only seek to acquire that part of the Land that is required.
- 8.4.15. The Applicant considered that the general power was justified as the flexibility to achieve its aim through the exercise of a lesser power to acquire rights, rather than acquiring the whole of the land outright, would allow the Applicant to take a proportionate approach should the opportunity arise. Without the inclusion of Art 23, the Applicant argued it would have to acquire land outright if an alternative agreement could not be reached by private agreement. Accordingly, with regard to the permanent land acquisition, the Applicant argued that the proposed power would permit a reduction in the interference with land. My concern was that the drafting of Art 23 permitted rights to be created over all Order land, not simply for land over which there was a CA power to acquire. This matter is addressed further in relation to Art 29.
- 8.4.16. The Applicant also sought the power in circumstances where the power to acquire rights may arise before the acquisition of the relevant land in connection with Art 29, where there may be a need to acquire a right prior to the acquisition of the land.
- 8.4.17. At D2 [REP2-001] the Applicant stated that it had concluded that the power to impose restrictive covenants was not required. Accordingly, the Applicant amended the dDCO (Revision 4) removing references to the imposition of restrictive covenants primarily in relation to Art 23 but also, Art 2, Art 24, Art 29, Art 31 and Schedule 5 [REP2-004].
- 8.4.18. The issue of the creation of rights over land, described as being for TP only is addressed below in relation to Art 29.

Article 29 Temporary use of the land for carrying out the authorised development

- 8.4.19. Art 29(9) limits the undertaker's CA powers in respect of the land listed in Schedule 7 (land of which TP may be taken) [APP-011] to the acquisition of any part of the subsoil under Art 27 and the acquisition of new rights under Art 23. Under Art 23 the creation of new rights is permitted over all Order land. The effect of this is that all of the land in Schedule 7 would be subject to the CA of new rights but the SoR [APP-

015] and BoR [REP5-011] describe the land in Schedule 7 as being for TP.

- 8.4.20. Notwithstanding that the Applicant confirmed [REP1-010] that it had consulted all persons as necessary on the basis of its intended use of land, as evidenced in the Consultation Report [APP-018], the Applicant was asked to demonstrate that persons with an interest in that land have been given adequate opportunity to effectively participate in the Examination on the basis that their land may be subject to the CA of new rights. Without further clarification on these matters the ExA's dDCO / DCO Commentary recommended an amendment to Art 29(9) to exclude the power to compulsorily acquire undefined new rights in land listed and described as being for TP in Schedule 7 [PD-008].
- 8.4.21. The Applicant's response to the recommended amendment [PD-008] and ExQ2.5.3 [REP5-016] reiterated that the power to compulsorily acquire new rights in Schedule 7 provides important and justifiable flexibility should the creation of a permanent right prove to be necessary at a future stage. With regard to the creation of as yet unspecified rights, the Applicant indicated that it *'does not consider there would be an onerous human rights impact on the basis that the right would be making provision for a right that had already existed on the land'*.
- 8.4.22. DCLG CA Guidance at paragraph 10 of Annex D states that *"where it is proposed to create and acquire new rights compulsorily they should be clearly identified"*. The Applicant [REP5-016] took the view that paragraph 10 related *"to circumstances where it is known a right is to be imposed, rather than a situation such as this. The Applicant re-iterates its early submission that it has consulted persons on the basis of the intended use of the land."*
- 8.4.23. It is acknowledged that the creation of a permanent right would increase the Applicant's liability to pay compensation, and therefore the power is only likely to be used when necessary and in the public interest. Moreover, without such a power the Applicant could be in a ransom situation in terms of seeking a private agreement with the landowner for a new right.
- 8.4.24. In terms of DCO drafting the Applicant made reference to numerous precedent cases, including the Testo's Order. Nevertheless, imposing a burden of undefined new rights on APs consulted on the basis that the Applicant only intends to take TP of their land would not be in line with the CA tests in s122 of PA2008 or the DCLG CA Guidance. It has not been adequately demonstrated to me that the undefined new rights are required for the Proposed Development and therefore I am not convinced that there is a compelling case in the public interest for these new rights. Furthermore, whilst the Applicant has demonstrated that consultation has been carried out with AP's it is not sufficiently clear that they would have fully understood the potential implications of the inclusion of land within Schedule 7 and the SoR [APP-015] which provides justification for TP and not for new rights.

- 8.4.25. With respect to the Applicant's case that there would not be an onerous Human Rights impact (response to ExQ2.5.3) [REP5-016], the example given is simply an example; the power to create new rights is not restricted to those circumstances and would apply to any new right associated with the authorised development.
- 8.4.26. Having recommended the removal of Article 29(9)(a) [PD-008] I have taken account of the Applicant's general comments as outlined above and the comment that sub-paragraph (b) would also need to be removed as it allows for the acquisition of subsoil in relation to temporary land in addition to preventing the imposition of rights over temporary land. Accordingly, my recommended amendment to Art 29 is as follows "... (9) *The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).*"

Article 30 Temporary use of land for construction compound

- 8.4.27. At ISH3 the Applicant confirmed that the purpose of Art 30(1) was to allow the use of Testo's construction compound for the Proposed Development provided it continues to be utilised for the purposes of the Testo's scheme [REP3-017]. In circumstances where the Testo's compound is used for the Proposed Development Art 30(2) prevents the undertaker from carrying out construction activities on Plot 1/14b on the Land Plans [REP5-003] at the same time as it is in possession of Plots 2/1, 2/2a and 2/2b. It does not explicitly prevent the exercise of TP powers or CA powers over that land. "*Construction activities*" were initially undefined in the order. As a result, as originally drafted, it would have been possible for all Plots 2/1, 2/2a, 2/2b and 1/14b to be used temporarily, potentially at the same time, and certainly at different times.
- 8.4.28. The Applicant confirmed [REP3-017] that its intention was not to curtail TP powers over Plot 1/14b but to ensure that where the Testo's construction compound is being used, no physical works take place on Plot 1/14b.
- 8.4.29. Because it has no access other than through Plot 1/14a, Plot 1/14b is not capable of being used whilst Plot 1/14a is being occupied temporarily for construction. To avoid having to provide a temporary access to Plot 1/14b the Applicant has considered taking TP of both plots which the landowner of Plots 1/14a and 1/14b would be content with.
- 8.4.30. At D3 [REP3-005] Art 30(2) was amended to make clear that the Applicant would be able to take TP of Plot 1/14b notwithstanding the Testo's construction compound being utilised provided that construction activities are not being carried out on Plot 1/14b. The Applicant has further inserted paragraph 30(3) to provide a definition for "*construction activities*". The definition makes clear that any material operations would not be permitted in the event that the Testo's construction compound was being utilised for the purposes of the Proposed Development.
- 8.4.31. I proposed an amendment to Art 30 [PD-008] to reflect the lack of justification for the TP of Plot 1/14b in the event that Plots 2/1, 2/2a and

2/2b were to be used. Furthermore, in ExQ2.5.4 [PD-009] the Applicant was asked to clarify how it could lawfully possess the land temporarily if it did not require the land for the purposes specified in Schedule 6.

- 8.4.32. The Applicant's response [REP5-016] indicated that it had amended the dDCO [REP5-007] so that it cannot take TP of Plot 1/14b under the DCO if it is in possession of the Testo's construction compound. The Applicant's proposed wording of Art 30(2) of the dDCO (Revision 6) [REP5-007] was: "*(2) Where the undertaker is in possession of the land identified as plot reference 2/1, 2/2a and 2/2b on the land plans for the purposes of the authorised development, the undertaker may not enter upon and take temporary possession of the specified land under article 29 (temporary use of land for carrying out the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of this Order or carry out construction activities on that land for the purposes of the authorised development*".
- 8.4.33. The Applicant's inclusion of the wording "*for the purposes of the authorised development*" and the reference to Art 29 and Art 31 was as a means of simplifying compensation matters, allowing the Applicant to voluntarily take possession of the land by agreement with the landowner. This is because the land (Plot 1/14b) is landlocked, and compensation in respect of both plots may be payable. In circumstances where Plot 1/14b is effectively rented as a compensatory measure, the proviso not to carry out construction activities would still apply. This would ensure that no works outside of the scope of the environmental assessments are to be carried out on Plot 1/14b whilst also making clear that TP would not be taken using the TP powers under the DCO.
- 8.4.34. I was content with the proposed change which would ensure that Plot 1/14b would not be used for construction activities if the Testo's compound was used and the land would not be subject to TP powers in such circumstances.

Article 36 Disapplication of legislative provisions

- 8.4.35. As originally drafted paragraph (1) of Art 36 would amend the Testo's Order with the purpose of the amendments (Schedule 9) [APP-011] being to authorise the modification of plans approved in the Testo's Scheme. This would have enabled an NMU route proposed for the Testo's Scheme (and the associated stopping up of the B46) to be removed from the Testo's Scheme. The basis for amending the Testo's Order is s120 of PA2008.
- 8.4.36. R3(1) of the Testo's Order requires the Applicant to deliver that project in accordance with the preliminary scheme design unless otherwise agreed by the SoS. However, the Applicant has taken the opportunity to promote proposed changes to the Testo's Scheme in the current application, for clarity and to avoid the need for two separate applications to the SoS [REP3-008].
- 8.4.37. The Applicant argued that the NMU route approved as part of the Testo's Scheme does not complement the NMU facilities proposed under the

Proposed Development which provides a safer segregated route for all users. The new cycle-track consented in the Testo's Order would potentially put cyclist and other users at greater risk due to the new Downhill Lane junction arrangements and I accept this view.

- 8.4.38. When the application was submitted Work No. 4 (construction of a new cycle-track) and Work No. 6 (construction and realignment of a section of the B46 Bridleway) of the Testo's Order had not commenced and were not anticipated to be commenced until after the Proposed Development had been granted development consent.
- 8.4.39. An amendment to Art 36(1) was proposed in the ExA's DCO / DCO Commentary [PD-008] which sought to ensure that the proposed changes to the Testo's Scheme were only implemented provided that work on the original Testo's NMU proposals had not commenced. This was intended to ensure that the Downhill Lane junction proposals for NMU users would not be prevented from implementation. The Applicant's response to this proposed amendment and to ExQ2.5.5 [REP5-016] indicated that if the Proposed Development were authorised and constructed, the new cycle-track, if not removed from the Testo's Order, would effectively lead to a dead end which would be wasteful of resources and confusing for users. Moreover, it would restrict the flexibility to integrate the Testo's and Downhill Lane junction schemes.
- 8.4.40. At D5 [REP5-016] the Applicant advised that the Testo's Scheme construction had reached the point where Work No. 6 had commenced and been substantially implemented, in part due to its integration with the delivery of other works authorised by the Testo's Scheme. Moreover, Work No. 6 is complementary to the Proposed Development's NMU route unlike Work No. 4.
- 8.4.41. Consequently, the Applicant [REP5-007] proposed amendments to Art 36(1) and Schedule 9 [APP-011] to address the effects on Work No. 4 and to Schedule 9 of the dDCO to address the effects of Work No. 6. The changes to Schedule 9 are addressed in paragraphs 8.4.53 to 8.4.61 below.
- 8.4.42. Accordingly, the only substantive change to Art 36(1) during the Examination [REP5-007] was to include "*upon commencement of the authorised development*" at the start of the article in order to make the amendment contingent on the commencement of the Proposed Development. This is reasonable because on commencement of the Proposed Development it will be sufficiently certain that the NMU proposals for Downhill Lane junction will be delivered and therefore that it would be no longer appropriate to deliver Work No. 4 in the Testo's Order. I am therefore content with the proposed amendment to Art 36(1) in the context of the proposed changes to Schedule 9 [APP-011].
- 8.4.43. An amendment along similar lines has been made to Art 41(4) of the rDCO to ensure that the re-certification of the Testo's plans would only occur on commencement of the Proposed Development [REP5-016].

Article 41 Certification of documents

- 8.4.44. At D5 [REP5-007] the Applicant proposed an amendment to Art 41(4) to provide for the submission of copies of the Testo's plans to the SoS after the commencement of the authorised development instead of after the making of the Order. Such a change would bring Art 41 into line with the proposed change to Art 36(1) and complements the amendment to Art 40 of the Testo's Order contained in Schedule 8 to the dDCO. Such a change appears reasonable in the circumstances of this application.

Schedule 1 Authorised development

- 8.4.45. Items (a) to (o) of Schedule 1 of the dDCO [APP-011] contain an extensive list of further development that may be carried out in addition to the numbered Works. At ISH1 [PD-004] I sought clarification from the Applicant as to whether works (a) – (o) were limited to works which do not give rise to any materially new or material different environmental effects to those assessed within the ES, rather than simply work (o).
- 8.4.46. The Applicant confirmed [REP1-010] that all the lettered works had been considered within the ES, whether as specific assessment elements or detailed elements within broader issues. All of the lettered works are necessary to ensure flexibility in the construction of the Scheme. They can only be used "*in connection with*" the numbered works, hence they are not standalone powers. Moreover, the Applicant argued it was standard drafting to have a list of development which may be undertaken within the Order limits for the purposes of or in connection with the construction of any of the numbered works.
- 8.4.47. At D3 [REP3-017] in relation to Schedule 1, the Applicant indicated that a limitation concerning environmental assessments inserted before the lettered works was not necessary given the lettered works are only exercisable "*in connection with*" the numbered works. Accordingly, the works form part of the environmental assessments, and certainty over their location is provided by the plans and sections which accompany the application, and which will become certified documents.
- 8.4.48. In PD-008 I proposed an amendment to Schedule 1 which proposed the separation of the text is required so that the final statement applies to (a) – (o) as well as (o).
- 8.4.49. The Applicant accepted the principle behind the amendment [REP5-016] and proposed a drafting amendment along similar lines [REP5-007].
- 8.4.50. I am content with this proposed amendment as it achieves the same effect as my suggested change.

Schedule 2 R1 Interpretation and R4 Construction Environmental Management Plan

- 8.4.51. As originally submitted R1 – Interpretation included a comprehensive description of the Handover Environmental Management Plan (HEMP). In response to Q40 at ISH1 [PD-004], dDCO (Revision 3) [REP1-004] amended the interpretation with the references to the HEMP largely

relocated to R4. Whilst the provision remains the same in substance it is now aligned with the Testo's Order.

Schedule 2 R3 Detailed design

- 8.4.52. Prior to the Examination, the Applicant also replaced the phrase "*materially worse environmental effects*" with "*materially different environmental effects*" which is in line with changes made to Art 41 (8.4.44) Schedule 1 (8.4.45) and Schedule 9 (8.4.53).

Schedule 9 Amendments to the A19 / A184 Testo's Junction Alteration Development Consent Order 2018

- 8.4.53. Schedule 9 of the application dDCO [APP-011] is headed "*Amendments to the A19 Testo's Junction Alteration Development Consent Order 2018*". The correct reference should be to "*...the A19 / A184 Testo's...*". Similarly, the contents page of the dDCO omits reference to the A184. This has been corrected in the rDCO. (At this point it is also appropriate to highlight that Schedule 9 in the application dDCO becomes Schedule 8 in the Applicant's final version (Revision 6) [REP5-007] and in the rDCO.)
- 8.4.54. The first part of Schedule 9 modifies the certification article, Art 40 of the Testo's Order so that the updated plans are taken to be updated plans for the purposes of Art 40(2) of the Testo's Order. This would be through the insertion of a new sub-paragraph (4) which provides for the Testo's plans, (defined in Art 2 of the dDCO) to be certified, once certified in accordance with Art 41 of the rDCO. This element of the Schedule did not change from Revision 0 [APP-011] to Revision 6 [REP5-007].
- 8.4.55. The second proposed amendment [REP5-007] as set out in Schedule 9 [APP-011] relates to Schedule 1 of the Testo's Order. As originally submitted [APP-011], it proposed to omit Work No. 4 (construction of a new cycle-track) and Work No.6 (construction and realignment of a section of the B46 Bridleway). Because Work No. 6 has now been implemented under the Testo's Order I accept that the need to remove it from the Testo's DCO through Schedule 9 falls away. As a result, the reference to Work No. 6 was removed from Schedule 8 of the dDCO [REP5-007]. However, I find that it is still appropriate for this Schedule to provide for Work No. 4 to be omitted from the Testo's Order in order to avoid the Testo's NMU route becoming obsolete on the implementation of the Proposed Development.
- 8.4.56. Schedule 9 [APP-011] also proposes an amendment to Schedule 3: Classification of Roads, of the Testo's Order which includes in Part 3: Other PRoW, a cycle track "*Between points 1/3 and 1/8 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans*". Schedule 9 provides for the omission of this classification because the cycle track, under Work No. 4 of the Testo's Scheme, would no longer be provided between these points, being replaced with the upgraded B46 as part of the Proposed Development.
- 8.4.57. The Testo's Order as originally made would extinguish the PRoW between Points 1/N and 1/P shown on the Downhill Lane Streets, Rights of Way

and Access Plans [REP5-004]. With the implementation of Work No. 6 of the Testo's DCO, the B46 would no longer follow the former alignment of the PRoW shown between Points 1/Q, 1/P and 1/N on the Downhill Lane Streets, Rights of Way and Access Plans [REP5-004]. The corresponding change on the Testo's Streets, Rights of Way and Access Plans [REP5-014] would have been to extinguish 1/7 to 1/8 as the B46 would no longer follow the alignment between 1/9, 1/8 and 1/7.

- 8.4.58. Through Schedule 8 [REP5-007] a change would be made to Schedule 4: Permanent Stopping Up of Streets and Private Means of Access, of the Testo's Order. This would address the stopping up of PRoW B46. Schedule 4 includes in Part 1: PRoW to be stopped up and for which a substitute is to be provided. As originally proposed [APP-011] the intention was to omit row 1 of Part 1 in Schedule 4, because Work No. 6 was to be removed from the Testo's Order. This would have stopped up B46 "from point 1/7 to 1/8 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans" with Work No. 6 providing a substitute route directly between points 1/9 and 1/7.
- 8.4.59. However, with the implementation of Work No. 6, Schedule 8 of the dDCO [REP5-007] makes provision for an additional part of the original B46 between points 1/8 to 1/9 [REP5-014] to be stopped up; the original route between 1/7, 1/8 and 1/9 being replaced by Work No. 6. For clarification, the Applicant confirmed [REP8-003] that the extinguishment of PRoW B46 is carried out under Art 13(1) of the Testo's Order which authorises the stopping up of PRoW in Schedule 4 to that Order.
- 8.4.60. Schedule 8 of the dDCO [REP5-007] would amend Schedule 4 of the Testo's Order so that the PRoW over that part of the B46 which is now obsolete is extinguished. The Testo's Order already has the effect of extinguishing that part of the B46 between Points 1/N and 1/P on the Downhill Lane Streets, Rights of Way and Access Plans [REP5-004] (points 1/7 to 1/8 on the Testo's Streets, Rights of Way and Access Plans [REP5-014]). The proposed extinguishment between points 1/P and 1/Q is, therefore clearing an errant stretch of PRoW (extending approximately 42 metres) over an area in which there would be no path (between points 1/8 and 1/9 on the Testo's Streets, Rights of Way and Access Plans [REP5-014]).
- 8.4.61. The final part of Schedule 8 [REP5-007] would amend documents to be certified in Schedule 10 of the Testo's Order. These are the revised Works Plans, Streets, Rights of Way and Access Plans and Engineering Drawings and Sections [REP5-014] for the Testo's Scheme. They have been updated during the Examination to reflect the changed position regarding Work No. 4 and Work No. 6.

8.5. SUMMARY OF ExA's CHANGES

- 8.5.1. In summary the changes which I am proposing in the rDCO which differ from the Applicant's final draft (Revision 6) [REP5-007] are as follows:

- Art 29(9) – removal of text after (1)(a)(i) to exclude the power to compulsorily acquire undefined new rights in land listed and described as being for TP in Schedule 6;
- Schedule 8 – amend title to "...A19 / A184 Testo's..." to correct the name of the DCO; and
- Contents page 5 – amend title of Schedule 8 as above.

8.6. LEGAL AGREEMENTS AND OTHER CONSENTS

- 8.6.1. There are no development consent obligations pursuant to the TCPA1990 or equivalent undertakings or agreements of which the SoS needs to be aware or to take into account in the decision.
- 8.6.2. The Applicant confirmed that a side agreement between HE, STC and SCC containing information relating to the future maintenance of assets to be transferred to the respective local authorities had been concluded [REP6-001].
- 8.6.3. In responding to ExQ2.1.1 the Applicant stated [REP5-019] that matters relating to the adoption of roads were included in a side agreement, at the request of the local authorities, rather than being submitted to the Examination for two reasons. Firstly, Art 10(1) includes the provision that any street to be constructed must be to the reasonable satisfaction of the local highway authority with the side agreement setting out how that would operate in practice. Secondly, the side agreement contains commercially sensitive information. For these reasons I was content that it was not necessary to put the side agreement before the Examination.
- 8.6.4. 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. The 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.

8.7. CONCLUSIONS

- 8.7.1. I have considered all iterations of the dDCO as provided by the Applicant, from the application version (Revision 0) to the D5 version (Revision 6) and considered the degree to which the Applicant's final version [REP5-007] has addressed outstanding matters. A number of matters are the subject of recommendations in this Chapter and are included in the rDCO in Appendix D of this Report.
- 8.7.2. 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 my conclusions arising from the Report as a whole and sets out the primary recommendation to the SoST.

9.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

9.2.1. In relation to s104 of PA2008, I conclude that making the rDCO would be in accordance with the NNNPS. It would also accord with the development plan and other relevant policy, all of which have been taken into account in this report. I have also had regard to the LIR produced by STC and SCC in reaching my conclusion.

9.2.2. Whilst the SoS is the competent authority under the Habitats Regulations²¹, and will make the definitive assessment, I conclude that the Proposed Development would not be likely to have significant effects on European sites, and I have taken this finding into account in reaching my recommendation.

9.2.3. I have considered the case for CA and TP of land and rights required in order to implement the Proposed Development. Subject to the change I propose to Art 29(9) of the rDCO, I am satisfied that the CA and TP powers sought by the Applicant are justified and should be granted. They are necessary to enable the Applicant to complete the Proposed Development. In addition, there is a compelling case in the public interest for land and interests to be compulsorily acquired, the Applicant has a clear idea of how it intends to use the land, and funds are available for the implementation. Therefore, the proposal would comply with PA2008.

9.2.4. I have also 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. In relation to the Art 6, the Examination has ensured a fair and public hearing and any interference with human rights arising from implementation of the Proposed Development would be proportionate and strike a fair balance between the rights of the individual and the public interest.

9.2.5. 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

²¹ The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

TP of lands. The interference in their human rights would be proportionate and justified in the public interest.

- 9.2.6. I have had regard to the PSED throughout the Examination and in producing this Report. 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.
- 9.2.7. With regard to all other matters and representations received, I have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.
- 9.2.8. With the mitigation proposed through the rDCO in Appendix D to this Report, as per s104(7), there are no adverse impacts arising from the Proposed Development that would outweigh its benefits and the Proposed Development meets the tests in s104 of PA2008.
- 9.2.9. Furthermore, there is nothing to indicate that the application should be decided other than in accordance with the relevant National Policy Statement, NNNPS.

9.3. RECOMMENDATION

- 9.3.1. For all of the above reasons, and in the light of my findings and conclusions on important and relevant matters set out in the Report, I recommend that the SoS for Transport makes The A19 Downhill Lane Junction Development Consent Order in the form recommended at Appendix D to this Report.

APPENDICES

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APPENDIX A: THE EXAMINATION

APPENDIX A: THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA)

Date	Event
12 July 2019	<p>Procedural Decision: 'Rule 6 Letter' Issue [PD-004] by the ExA of:</p> <ul style="list-style-type: none"> • Draft Examination Timetable • Procedural Decisions • Notification of Hearings
13 August 2019	Preliminary Meeting
13 August 2019	<p>Issue Specific Hearing 1 (ISH1)</p> <p>ISH1 on the draft Development Consent Order (dDCO)</p>
13 August 2019	Open Floor Hearing (OFH1)
21 August 2019	<p>Procedural Decision: 'Rule 8 Letter' Issue [PD-005] by the ExA of:</p> <ul style="list-style-type: none"> • Examination Timetable • The ExA's Written Questions (ExQ1)
27 August 2019	<p>Deadline 1</p> <p>Deadline for receipt by ExA of:</p> <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 – see Annex G of the Rule 6 letter • 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)

Date	Event
	<ul style="list-style-type: none"> • notification of wish to speak at any subsequent Open Floor Hearing (OFH) • notification of wish to attend an Accompanied Site Inspection (ASI) • provision of suggested locations and justifications for site inspections for consideration by the ExA • Draft Itinerary to be provided by the Applicant for an ASI • post-hearing submissions including written submissions of oral cases and • notification of wish to have future correspondence received electronically
10 September 2019	<p>Deadline 2</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on WRs • any revised/updated SoCGs • Local Impact Reports (LIR) from any Local Authorities • responses to ExA's Written Questions (ExQ1) • comments on any updates to Application Documents submitted by the Applicant • the Applicant's revised dDCO • post-hearing submissions including written submissions of oral cases • response to any further information requested by the ExA for this deadline • comments on any additional information/submissions received by Deadline 1 • Applicant to submit report on consultation undertaken about proposed change to the Application – see Annex B • Applicant to submit clarification document on how the proposed changes would be secured through the DCO
15 October 2019	Accompanied Site Inspection (ASI)
15 October 2019	Open floor Hearing (OFH2)
16 October 2019	<p>Issue Specific Hearing 2 (ISH2)</p> <p>ISH2 on the interrelationship of major proposals in the area, environmental &</p>

Date	Event
	landscape/visual issues and transport matters
17 October 2019	Compulsory Acquisition Hearing (CAH1)
17 October 2019	Issue Specific Hearing 3 (ISH3) ISH3 on the draft Development Consent Order (dDCO)
29 October 2019	Deadline 3 Deadline for receipt by ExA of: <ul style="list-style-type: none"> • any revised/updated SoCGs • comments on LIRs • comments on responses to ExA's Written Questions (ExQ1) • post-hearing submissions including written submissions of oral cases • the Applicant's revised dDCO • responses to any further information requested by the ExA for this deadline • comments on the Applicant's proposed changes to the Application • comments on any additional information/submissions received by Deadline 2
05 November 2019	Deadline 4 Deadline for receipt by ExA of: <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 Deadline 3 • responses to any further information requested by the ExA for this deadline
12 November 2019	Procedural Decision: 'Rule 8(3) Letter' Issue [PD-007] by the ExA of: <ul style="list-style-type: none"> • Amended Examination Timetable • Procedural Decisions
19 November 2019	Publication by ExA of –

Date	Event
	<ul style="list-style-type: none"> • Further Written Questions (ExQ2) • the ExA's preferred dDCO or dDCO commentary
28 November 2019	<p>Deadline 5</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • responses to ExQ2 • comments on the ExA's preferred dDCO or dDCO commentary • final signed SoCGs • comments on any additional information/submissions received by Deadline 4 • responses to any further information requested by the ExA for this deadline
05 December 2019	<p>Deadline 6</p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on responses to ExQ2 • the Applicant's Final Preferred DCO in the SI template validation report • comments on any final signed SoCGs • comments on any additional information/submissions received by Deadline 5 • responses to any further information requested by the ExA for this deadline
12 December 2019	<p>Deadline 7</p> <p>For receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on the Applicant's Final Preferred DCO • responses to any further information requested by the ExA for this deadline • comments on any additional information/submissions received by Deadline 6 • responses to any further information requested by the ExA for this deadline
20 December 2019	<p>Procedural Decision: 'Rule 8(3) Letter' Issue [PD-010] by the ExA of:</p>

Date	Event
	<ul style="list-style-type: none"> • Amended Examination Timetable • Procedural Decisions
07 January 2020	<p>Deadline 8</p> <p>For receipt by ExA of:</p> <ul style="list-style-type: none"> • Applicant’s response to ExA’s request for further information • comments on any additional information/submissions received by Deadline 7
14 January 2020	<p>Deadline 9</p> <p>For receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on Applicant’s response to ExA’s request for further information • comments on any additional information/submissions received by Deadline 8
17 January 2020	<p>Close of Examination [PD-016]</p>

APPENDIX B: EXAMINATION LIBRARY

A19 Downhill Lane Junction Improvement Examination Library

Updated 20-01-2020

This Examination Library relates to the A19 Downhill Lane Junction Improvement application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

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Examination Library - Index

Category	Reference
<p>Application Documents</p> <p>As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received</p>	APP-xxx
<p>Adequacy of Consultation responses</p>	AoC-xxx
<p>Relevant Representations</p>	RR-xxx
<p>Procedural Decisions and Notifications from the Examining Authority</p> <p>Includes Examining Authority's questions, s55, and post acceptance s51</p>	PD-xxx
<p>Additional Submissions</p> <p>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</p>	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: <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP1-xxx
Deadline 2: <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP2-xxx
Deadline 3:	REP3-xxx
Deadline 4:	REP4-xxx
Deadline 5:	REP5-xxx
Deadline 6:	REP6-xxx
Deadline 7:	REP7-xxx
Deadline 8:	REP8-xxx
Deadline 9:	REP9-xxx
Other Documents	OD-xxx

Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	
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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
APP-004	Highways England 1.4 Application Document Tracker
APP-005	Highways England 2.1 Location Plan
APP-006	Highways England 2.2 Scheme Layout Plan
APP-007	Highways England 2.3 Land Plans
APP-008	Highways England 2.4 Works Plans
APP-009	Highways England 2.5 Streets, Rights of Way and Access Plans
APP-010	Highways England 2.6 Engineering Drawings and Sections

APP-011	Highways England 3.1 Draft Development Consent Order
APP-012	Highways England 3.2 Explanatory Memorandum to Draft Development Consent Order
APP-013	Highways England 3.3 Consents and Agreements Position Statement
APP-014	Highways England 3.4 DCO Validation Report
APP-015	Highways England 4.1 Statement of Reasons
APP-016	Highways England 4.2 Funding Statement
APP-017	Highways England 4.3 Book of Reference (Parts 1-5)
APP-018	Highways England 5.1 Consultation Report
APP-019	Highways England 5.2 Consultation Report Appendices
APP-020	Highways England 6.1 Environmental Statement Volume 1
APP-021	Highways England 6.2 Environmental Statement Figures - Chapter 1
APP-022	Highways England 6.2 Environmental Statement Figures - Chapter 2
APP-023	Highways England 6.2 Environmental Statement Figures - Chapter 6

APP-024	Highways England 6.2 Environmental Statement Figures - Chapter 7
APP-025	Highways England 6.2 Environmental Statement Figures - Chapter 8
APP-026	Highways England 6.2 Environmental Statement Figures - Chapter 9
APP-027	Highways England 6.2 Environmental Statement Figures - Chapter 10
APP-028	Highways England 6.2 Environmental Statement Figures - Chapter 12
APP-029	Highways England 6.2 Environmental Statement Figures -Chapter 13
APP-030	Highways England 6.2 Environmental Statement Figures - Chapter 14
APP-031	Highways England 6.2 Environmental Statement Figures - Chapter 15
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APP-033	Highways England 6.3 Environmental Statement Appendices - Chapter 6
APP-034	Highways England 6.3 Environmental Statement Appendices - Chapter 7
APP-035	Highways England 6.3 Environmental Statement Appendices - Chapter 8
APP-036	Highways England 6.3 Environmental Statement - Appendices Chapter 9

APP-037	Highways England 6.3 Environmental Statement Appendix 9.1E - Barn Owl Report - This report contains confidential information which has been redacted. Therefore a non-redacted version of this document is only available on request to those who have a legitimate need to view the Information
APP-038	Highways England 6.3 Environmental Statement Appendix 9.1H - Badger Report - This report contains confidential information which has been redacted. Therefore a non-redacted version of this document is only available on request to those who have a legitimate need to view the Information
APP-039	Highways England 6.3 Environmental Statement Appendices - Chapter 12
APP-040	Highways England 6.3 Environmental Statement Appendices - Chapter 13
APP-041	Highways England 6.3 Environmental Statement Appendices - Chapter 14
APP-042	Highways England 6.3 Environmental Statement Appendices - Chapter 15
APP-043	Highways England 6.4 Environmental Statement - Non-Technical Summary
APP-044	Highways England 6.5 Statement on Statutory Nuisances
APP-045	Highways England 6.6 Flood Risk Assessment

APP-046	Highways England 6.7 Assessment of Nature Conservation Effects
APP-047	Highways England 6.8 Assessment of Historic Environmental Effects
APP-048	Highways England 6.9 Environmental Impact Assessment Scoping Opinion
APP-049	Highways England 6.10 Habitat Regulation Assessment
APP-050	Highways England 7.1 Planning Statement including NNNPS Accordance Table
APP-051	Highways England 7.2 Outline Construction Environmental Management Plan
APP-052	Highways England 7.3 Interrelationship with Highways England and International Advanced Manufacturing Park Schemes
APP-053	Highways England 7.4 Transport Assessment Report
APP-054	Highways England 7.5 Revised Plans, Drawings and Sections for the A19/A184 Testo's Junction Alteration Scheme
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AoC-001	Sunderland City Council Adequacy of Consultation Representation
AoC-002	Durham County Council Adequacy of Consultation Representation

AoC-003	South Tyneside Council Adequacy of Consultation Representation
Relevant Representations	
RR-001	Edward Wylie
RR-002	John Deighan
RR-003	Pinsent Masons LLP on behalf of IAMP LLP
RR-004	YoungsRPS on behalf of Davinder Singh Kandola
RR-005	Hedley Planning Services Limited on behalf of Town End Farm Development Limited
RR-006	Public Health England
RR-007	National Grid Electricity Transmission PLC and National Grid Gas PLC
RR-008	Hellebs Land Ltd
RR-009	Environment Agency
RR-010	John Belshaw
RR-011	BNP Paribas Real Estate on behalf of Royal Mail Group Limited
RR-012	Natural England
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PD-005	Rule 8 - Notification of timetable for the Examination
PD-006	Written Questions

PD-007	Variation to Timetable – Rule 8(3)
PD-008	Examining Authority Commentary on the draft Development Consent Order (dDCO)
PD-009	Examining Authority Further Written Questions (ExQ2)
PD-010	Variation to Timetable – Rule 8(3)
PD-011	Notification of completion of the Examining Authority's Examination
Additional Submissions	
AS-001	Highways England 1.4(1) - Application Document Tracker - Section 51 Response Document - Accepted at the discretion of the Examining Authority
AS-002	Highways England 3.1(1) - Draft Development Consent Order - Section 51 Response Document - Accepted at the discretion of the Examining Authority
AS-003	Highways England 3.1(1) - Draft Development Consent Order (Tracked Changes) - Section 51 Response Document - Accepted at the discretion of the Examining Authority
AS-004	Highways England 3.2(1) - Explanatory Memorandum - Section 51 Response Document - Accepted at the discretion of the Examining Authority
AS-005	Highways England 3.2(1) - Explanatory Memorandum (Tracked Changes) - Section 51 Response Document - Accepted at the discretion of the Examining Authority
AS-006	Highways England

	Update document letter to PINs 05032019 - Section 51 Response Document - Accepted at the discretion of the Examining Authority
AS-007	South Tyneside Council Additional Submission - Accepted at the discretion of the Examining Authority
AS-008	Sunderland City Council Additional Submission - Accepted at the discretion of the Examining Authority
AS-009	Highways England 1.4(2) - Application Document Tracker - Additional Submission - Accepted at the discretion of the Examining Authority
AS-010	Highways England 4.3(1) - Book of Reference - Additional Submission - Accepted at the discretion of the Examining Authority
AS-011	Highways England 4.3(1) - Book of Reference (Tracked Changes) - Additional Submission - Accepted at the discretion of the Examining Authority
AS-012	Highways England Additional Submission - Accepted at the discretion of the Examining Authority. Letter explaining a number of persons were not provided with section 56 notifications
AS-013	Historic England Response to Rule 6 - Accepted at the discretion of the Examining Authority
AS-014	North Tyneside Council Response to Rule 6 - Accepted at the discretion of the Examining Authority
AS-015	Highways England

	Additional Submission -Clarification to Town End Partnership Relevant Representation. Accepted at the discretion of the Examining Authority
AS-016	Highways England Additional Submission - Proposed changes to the Application. Covering letter
AS-017	Highways England Additional Submissions - Proposed changes to the Application. 1.4(3) - Application Document Tracker
AS-018	Highways England Additional Submission - Proposed changes to the Application. 3.1(2) - Draft Development Consent Order (Tracked Changes)
AS-019	Highways England Additional Submission - Proposed changes to the Application. 3.1(2) - Draft Development Consent Order
AS-020	Highways England Additional Submission - Proposed changes to the Application. 3.2(2) - Explanatory Memorandum (Tracked Changes)
AS-021	Highways England Additional Submission - Proposed changes to the Application. 3.2(2) - Explanatory Memorandum
AS-022	Highways England Withdrawal of Highways England submission as requested at Deadline 3 - letter on 29/10/2019
AS-023	Highways England Additional Submission - Description: Proposed changes to the Application. 7.3(1) - Updated Interrelationship with Testo's Junction, A1 Birtley to Coalhouse Scheme and IAMP (Tracked Changes)

AS-024	Highways England Additional Submission - Proposed changes to the Application. 7.3(1) - Updated Interrelationship with Testo's Junction, A1 Birtley to Coalhouse Scheme and IAMP
AS-025	Highways England Additional Submission - Proposed changes to the Application. 7.6 - Application Document Errata
AS-026	National Grid Electricity Transmission Plc Additional Submission - Joint Statement between National Grid and Highways England. Accepted at the discretion of the Examining Authority
AS-027	Hedley Planning Services Limited on behalf of Town End Farm Development Limited Additional Submission - Joint Statement on behalf of Town End Farm Partnership (TEFP) and Highways England - Accepted at the discretion of the Examining Authority
AS-028	Highways England Additional Submission - Joint Statement on behalf of Town End Farm Partnership (TEFP) and Highways England - Accepted at the discretion of the Examining Authority
AS-029	Highways England Additional Submission - 7.9 Statement of Common Ground (SOCG) with the Environment Agency - Accepted at the discretion of the Examining Authority
Events and Hearings	
Accompanied, Unaccompanied Site Visits and Hearings	
EV-001	Recording of Preliminary Meeting on 13 August 2019
EV-001a	Preliminary meeting note
EV-001b	Note of Unaccompanied Site Inspection – 12 August 2019

EV-002	Recording of Issue Specific Hearing 1 - 13 August 2019 Part 1 of 2
EV-003	Recording of Issue Specific Hearing 1 - 13th August 2019 Part 2 of 2
EV-004	Recording of Open Floor Hearing on 13th August 2019
EV-005	ASI Notification Letter
EV-006	Agenda for Compulsory Acquisition Hearing (CAH 1)
EV-007	Agenda for Open Floor Hearing 2 (OFH 2)
EV-008	Agenda for Issue Specific Hearing 2 (ISH2) ISH2 on the Interrelationship of Major Proposals in the Area, Environmental & Landscape, Visual Issues and Transport Matters
EV-009	Agenda for Issue Specific Hearing 3 (ISH3) ISH3 on the draft Development Consent Order (dDCO)
EV-010	Recording of Open Floor Hearing 2 - 15 October 2019
EV-011	Recording of Issue Specific Hearing 2 - Part 1 - 16 October 2019
EV-012	Recording of Issue Specific Hearing 2 - Part 2 - 16 October 2019
EV-013	Recording of Compulsory Acquisition Hearing 1 - 17 October 2019
EV-014	Recording of 3rd Issue Specific Hearing - 17 October 2019
EV-015	Note of Unaccompanied Site Inspection - 15 October 2019
EV-016	Note of Accompanied Site Inspections - 15 Oct 2019

Representations

Deadline 1 – 27.8.2019

For Receipt by ExA of:

- 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 – see Annex G of the Rule 6 letter
- 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 any subsequent Open Floor Hearing (OFH)
- Notification of wish to attend an Accompanied Site Inspection (ASI)
- Provision of suggested locations and justifications for site inspections for consideration by the ExA
- Draft Itinerary to be provided by the Applicant for an ASI
- Post-hearing submissions including written submissions of oral cases and
- Notification of wish to have future correspondence received electronically

REP1-001	Highways England Deadline 1 Submission: Cover Letter
REP1-002	Highways England Deadline 1 Submission: Application Document Tracker Rev 4 - updated for Deadline 1
REP1-003	Highways England Deadline 1 Submission: Draft Development Consent Order (Tracked Changes) (Rev 3)) - updated for Deadline 1
REP1-004	Highways England Deadline 1 Submission: Draft Development Consent Order (Rev 3) - updated for Deadline 1

REP1-005	Highways England Deadline 1 Submission: Explanatory Memorandum Rev 3 (Tracked Changes) - updated for Deadline 1
REP1-006	Highways England Deadline 1 Submission: Explanatory Memorandum Rev 3 - updated for Deadline 1
REP1-007	Highways England Deadline 1 Submission: Book of Reference Rev 2 (Tracked Changes) - updated for Deadline 1
REP1-008	Highways England Deadline 1 Submission: Book of Reference Rev 2 - updated for Deadline 1
REP1-009	Highways England Deadline 1 Submission: Applicants Responses to Relevant Representations
REP1-010	Highways England Deadline 1 Submission: Written Submission of Applicant's Case at ISH1 & OFH1 and responses to ExA's question on the dDCO
REP1-011	Highways England Deadline 1 Submission: Covering Letter - Statements of Common Ground (SoCG) requested by ExA
REP1-012	Highways England Deadline 1 Submission: Statement of Common Ground with Natural England
REP1-013	Environment Agency Deadline 1 Submission: Written Representation
REP1-014	Natural England Deadline 1 Submission: Written Representation

REP1-015	South Tyneside Council Deadline 1 Submission: Request to submit joint Local Impact Report and draft Statement of Common Ground for South Tyneside Council and Sunderland City Council
REP1-016	South Tyneside Council Deadline 1 Submission: South Tyneside Council's response to ExA's written questions as discussed during ISH1
REP1-017	Sunderland City Council Deadline 1 Submission: Request to submit joint Local Impact Report and draft Statement of Common Ground for South Tyneside Council and Sunderland City Council
REP1-018	Sunderland City Council Deadline 1 Submission: Sunderland City Council's response to ExA's written questions as discussed during ISH1
REP1-019	Hellens Land Ltd Deadline 1 Submission: Written Representation
REP1-020	Hellens Land Ltd Deadline 1 Submission: Notification of wish to speak at future hearings
REP1-021	IAMP LLP Deadline 1 Submission: Notification of wish to speak at future hearings
REP1-022	IAMP LLP Deadline 1 Submission: Notification of wish to attend accompanied site inspection
REP1-023	IAMP LLP Deadline 1 Submission: Written Representation

REP1-024	Edward Wylie Deadline 1 Submission: post-hearing submission
REP1-025	Edward Wylie Deadline 1 Submission: Notification of wish to speak at future hearings
<p>Deadline 2 – 10.9.2019</p> <p><u>For Receipt by ExA of:</u></p> <ul style="list-style-type: none"> • Comments on WRs • Any revised/ updated SoCGs • Local Impact Reports (LIR) from any Local Authorities • Responses to the ExA’s Written Questions (ExQ1) • Comments on any updates to Application Documents submitted by the Applicant • The Applicant’s revised dDCO • Post-hearing submissions including written submissions of oral cases • Response to any further information requested by the ExA for this deadline • Comments on any additional information/submission received by deadline 1 • Applicant to submit report on consultation undertaken about proposed changes to the application – see Annex B • Applicant to submit clarification document on how the proposed changes would be secured through the DCO 	
REP2-001	Highways England Deadline 2 Submission: Cover Letter
REP2-002	Highways England Deadline 2 Submission: Application Document Tracker (Rev 5) - updated for Deadline 2
REP2-003	Highways England Deadline 2 Submission: Draft Development Consent Order (Tracked Changes) (Rev 4) - updated for Deadline 2
REP2-004	Highways England Deadline 2 Submission: Draft Development Consent Order (Rev 4) - updated for Deadline 2

REP2-005	Highways England Deadline 2 Submission: Explanatory Memorandum (Rev 4) (Tracked Changes) - updated for Deadline 2
REP2-006	Highways England Deadline 2 Submission: Explanatory Memorandum (Rev 4) - updated for Deadline 2
REP2-007	Highways England Deadline 2 Submission: Book of Reference (Rev 3) (Tracked Changes) - updated for Deadline 2
REP2-008	Highways England Deadline 2 Submission: Book of Reference (Rev 3) - updated for Deadline 2
REP2-009	Highways England Deadline 2 Submission: Application Documents Errata (Rev 1) - updated for Deadline 2
REP2-010	Highways England Deadline 2 Submission: Draft Statement of Common Ground with Environment Agency
REP2-011	Highways England Deadline 2 Submission: Draft Statement of Common Ground with IAMP LLP
REP2-012	Highways England Deadline 2 Submission: Final Statement of Common Ground with Natural England
REP2-013	Highways England Deadline 2 Submission: Joint Statement of Common Ground with South Tyneside Council and Sunderland City Council
REP2-014	Highways England Deadline 2 Submission: Applicant's Responses to Examination Authority's Written Questions (ExQ1)

REP2-015	Highways England Deadline 2 Submission: Applicant's Responses to Written Representations
REP2-016	Environment Agency Deadline 2 Submission: Covering Letter
REP2-017	Environment Agency Deadline 2 Submission: Environment Agency's Response to Examination Authority's Written Questions and Request for Information (ExQ1)
REP2-018	South Tyneside Council Deadline 2 Submission: Cover Letter
REP2-019	South Tyneside Council Deadline 2 Submission: South Tyneside Council's Response to Examination Authority's Written Questions and Request for Information (ExQ1)
REP2-020	South Tyneside Council Deadline 2 Submission: Appendix A - Relevant extracts from the Local Development Framework
REP2-021	South Tyneside Council & Sunderland City Council Deadline 2 Submission: Joint Local Impact Report
REP2-022	Sunderland City Council Deadline 2 Submission: Sunderland City Council's Response to the Draft Development Consent Order
REP2-023	Sunderland City Council Deadline 2 Submission: Sunderland City Council's Response to Examination Authority's Written Questions and Request for Information (ExQ1)
REP2-024	IAMP LLP Deadline 2 Submission: IAMP LLP Response to Examination Authority's Written Questions and Request for Information (ExQ1)

Deadline 3 – 29.10.2019**For Receipt by ExA of:**

- Any revised/updated SoCGs
- Comments on LIRs
- Comments on responses to ExA’s Written Questions (ExQ1)
- Post-hearing submissions including written submissions of oral cases
- The Applicant’s revised dDCO
- Responses to any further information requested by the ExA for this deadline
- Comments on the Applicant’s proposed changes to the Application
- Comments on any additional information/submissions received by Deadline 2

REP3-001	Highways England Deadline 3 Submission: Cover Letter
REP3-002	Highways England Deadline 3 Submission: Application Document Tracker (Rev 6) - updated for Deadline 3
REP3-003	Highways England Deadline 3 Submission: Engineering Drawings and Sections (Rev 1) - updated for Deadline 3
REP3-004	Highways England Deadline 3 Submission: Draft Development Consent Order (Tracked Changes) (Rev 5) - updated for Deadline 3
REP3-005	Highways England Deadline 3 Submission: Draft Development Consent Order (Rev 5) - updated for Deadline 3
REP3-006	Highways England Deadline 3 Submission: Funding Statement (Tracked Changes) (Rev 1) - updated for Deadline 3
REP3-007	Highways England

	Deadline 3 Submission: Funding Statement (Rev 1) - updated for Deadline 3
REP3-008	Highways England Deadline 3 Submission: Book of Reference (Rev 4) (Tracked Changes) - updated for Deadline 3
REP3-009	Highways England Deadline 3 Submission: Book of Reference (Rev 4) - updated for Deadline 3
REP3-010	Highways England Deadline 3 Submission: Joint Statement of Common Ground with South Tyneside Council and Sunderland City Council (Tracked Changes) (Rev 1) - updated for Deadline 3
REP3-011	Highways England Deadline 3 Submission: Joint Statement of Common Ground with South Tyneside Council and Sunderland City Council (Rev 1) - updated for Deadline 3
REP3-012	Highways England Deadline 3 Submission: Applicant's Comments on South Tyneside Council and Sunderland City Council's Local Impact Report
REP3-013	Highways England Deadline 3 Submission: Applicant's Comments on Responses to ExA's Written Questions (ExQ1) and on Additional Information / Submissions Received by Deadline 2
REP3-014	Highways England Deadline 3 Submission: Written Submission of Applicant's case put orally at Open Floor Hearing 2 on 15th October 2019

REP3-015	Highways England Deadline 3 Submission: Written Submission of Applicant's case put orally at Issue Specific Hearing 2 on 16th October 2019
REP3-016	Highways England Deadline 3 Submission: Written Submission of Applicant's case put orally at Compulsory Acquisition Hearing 1 on 17th October 2019
REP3-017	Highways England Deadline 3 Submission: Written Submission of Applicant's case put orally at Issue Specific Hearing 3 on 17th October 2019
REP3-018	Highways England Deadline 3 Submission: Interrelationship with Testo's Junction, A1 Birtley to Coal House Scheme and International Advanced Manufacturing Park (Rev 2) - updated for Deadline 3
REP3-019	Highways England Deadline 3 Submission: Interrelationship with Testo's Junction, A1 Birtley to Coal House Scheme and International Advanced Manufacturing Park (Tracked Changes) (Rev 2) - updated for Deadline 3
REP3-020	Highways England Deadline 3 Submission: Transport Assessment (Tracked Changes) (Rev 1) - updated for Deadline 3
REP3-021	Highways England Deadline 3 Submission: Transport Assessment (Rev 1) - updated for Deadline 3
REP3-022	South Tyneside Council Deadline 3 Submission: South Tyneside Council Cover Letter

REP3-023	South Tyneside Council Deadline 3 Submission: South Tyneside Council's post-hearing submissions including written submissions of oral cases
REP3-024	Sunderland City Council Deadline 3 Submission: Sunderland City Council's response to further information requested by the ExA for this deadline
REP3-025	Hellens Land Ltd Deadline 3 Submission: Hellens Land Ltd.'s post-hearing submission
REP3-026	IAMP LLP Deadline 3 Submission: IAMP LLP's response to further information requested by the ExA for this deadline
REP3-027	John Deighan Deadline 3 Submission: written submissions of oral case
<p>Deadline 4: 05.11.2019</p> <p><u>For receipt by ExA of:</u></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 Deadline 3 • responses to any further information requested by the ExA for this deadline 	
REP4-001	Highways England Deadline 4 Submission: Cover Letter
REP4-002	Highways England Deadline 4 Submission: Application Document Tracker (Rev 7) - Updated for Deadline 4

REP4-003	Highways England Deadline 4 Submission: Applicant's comments on any additional information/submissions received by Deadline 3
REP4-004	Highways England Deadline 4 Submission: Joint Statement between Highways England and Hellens Land Limited - submitted for Deadline 4
REP4-005	Hellens Land Limited Deadline 4 Submission - Written Representations - responses to any further information requested by the ExA for this deadline
REP4-006	Hellens Land Limited Deadline 4 Submission: Joint Statement between Highways England and Hellens Land Limited - submitted for Deadline 4
Deadline 5: 28.11.2019 <u>For receipt by ExA of:</u> <ul style="list-style-type: none"> • responses to ExQ2 • comments on the ExA's preferred dDCO or dDCO commentary • final signed SoCGs • comments on any additional information/submissions received by Deadline 4 • responses to any further information requested by the ExA for this deadline 	
REP5-001	Highways England Deadline 5 Submission: Cover Letter
REP5-002	Highways England Deadline 5 Submission: Application Document Tracker (Rev 8) - Updated for Deadline 5
REP5-003	Highways England Deadline 5 Submission: Land Plans (Rev 1) - Updated for Deadline 5

REP5-004	Highways England Deadline 5 Submission: Streets, Rights of Way and Access Plans (Rev 1) - Updated for Deadline 5
REP5-005	Highways England Deadline 5 Submission: Engineering Drawings and Sections (Rev 2) Updated for deadline 5
REP5-006	Highways England Deadline 5 Submission: Draft Development Consent Order (Tracked Changes) (Rev 6) - updated for Deadline 5
REP5-007	Highways England Deadline 5 Submission: Draft Development Consent Order (Rev 6) - updated for Deadline 5
REP5-008	Highways England Deadline 5 Submission: Explanatory Memorandum (Rev 5) (Tracked Changes) - updated for Deadline 5
REP5-009	Highways England Deadline 5 Submission: Explanatory Memorandum (Rev 5) - updated for Deadline 5
REP5-010	Highways England Deadline 5 Submission: DCO Validation Report (Rev 2) - Updated for Deadline 5
REP5-011	Highways England Deadline 5 Submission: Book of Reference (Rev 5) (Tracked Changes) - updated for Deadline 5
REP5-012	Highways England Deadline 5 Submission: Book of Reference (Rev 5) - updated for Deadline 5

REP5-013	Highways England Deadline 5 Submission: Revised Plans, Drawings and Sections for the A19/A184 Testo's Junction Alteration Scheme (Rev 1) (Tracked Changes) - Updated for Deadline 5
REP5-014	Highways England Deadline 5 Submission: Revised Plans, Drawings and Sections for the A19/A184 Testo's Junction Alteration Scheme (Rev 1) - Updated for Deadline 5
REP5-015	Highways England Deadline 5 Submission: Final Statement of Common Ground with IAMP LLP
REP5-016	Highways England Deadline 5 Submission: Applicant's Responses to ExA's Second Written Questions (ExQ2)
REP5-017	Highways England Deadline 5 Submission: Cover letter for Statement of Common Ground with South Tyneside Council and Sunderland City Council
REP5-018	Highways England Deadline 5 Submission: Final Joint Statement of Common Ground with South Tyneside Council and Sunderland City Council
REP5-019	Sunderland City Council Deadline 5 Submission: Sunderland City Council's Response to the Examining Authority's Written Questions issued on 19th November 2019 (ExQ2).
REP5-020	South Tyneside Council Deadline 5 Submission: Cover Letter
REP5-021	South Tyneside Council Deadline 5 Submission: South Tyneside Council's Response to the Examining Authority's Written Questions issued on 19th November 2019 (ExQ2)

Deadline 6: 05.12.2019**For receipt by ExA of:**

- comments on responses to ExQ2
- the Applicant's Final Preferred DCO in the SI template validation report
- comments on any final signed SoCGs
- comments on any additional information/submissions received by Deadline 5
- responses to any further information requested by the ExA for this deadline

REP6-001

[Highways England](#)

Deadline 6 Submission: Applicant's Cover letter and Responses to Local Authorities submissions at Deadline 5 and final preferred DCO and Validation Report

REP6-002

[Sunderland City Council](#)

Deadline 6 Submission: Sunderland City Council responses to any further information requested by the ExA for this deadline

REP6-003

[South Tyneside Council](#)

Deadline 6 Submission: South Tyneside Council's Comments in relation to the various responses submitted at Deadline 5

Deadline 7: 12.12.2019**For receipt by ExA of:**

- comments on the Applicant's Final Preferred DCO
- responses to any further information requested by the ExA for this deadline
- comments on any additional information/submissions received by Deadline 6
- responses to any further information requested by the ExA for this deadline

REP7-001

[Highways England](#)

Deadline 7 Submission - Comments on any additional information/submissions received by Deadline 6

REP7-002	South Tyneside Council Deadline 7 Submission - Comments on any additional information/submissions received by Deadline 6
REP7-003	Sunderland City Council Deadline 7 Submission - Comments on any additional information/submissions received by Deadline 6
Deadline 8: 07.01.2020 <u>For receipt by ExA of:</u> <ul style="list-style-type: none"> • Applicant's response to ExA's request for further information • comments on any additional information/submissions received by Deadline 7 	
REP8-001	Highways England Deadline 8 Submission - Cover Letter
REP8-002	Highways England Deadline 8 Submission - Application Document Tracker (Rev 9) - Updated for Deadline 8
REP8-003	Highways England Deadline 8 Submission - Applicant's Response to Request for Further Information under Rule 17 of the Examination Procedure Rules
REP8-004	Sunderland City Council Deadline 8 Submission - Late Submission accepted at the discretion of the Examining Authority
Deadline 9: 14.01.2020 <u>For receipt by ExA of:</u> <ul style="list-style-type: none"> • comments on Applicant's response to ExA's request for further information • comments on any additional information/submissions received by Deadline 8 	
REP9-001	South Tyneside Council Deadline 9 Submission - Comments on any additional information/submissions received by Deadline 8
Other Documents	

OD-001	Section 51 advice to the Applicant
OD-002	Highways England Regulation 9 Notice
OD-003	Regulation 24 Transboundary Screening document

APPENDIX C: LIST OF ABBREVIATIONS

Appendix C

Abbreviation or usage	Reference
AAP	Area Action Plan
AP	Affected Person
AQD	Air Quality Directive
AQMA	Air Quality Management Area
AQP2017	Air quality plan for nitrogen dioxide (NO ₂) in the UK, DEFRA (2017)
AQS	Air Quality Strategy
Art	Article
ASI	Accompanied Site Inspection
BCR	Benefit Cost Ratio
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CCA2008	Climate Change Act 2008
CEMP	Construction Environmental Management Plan
CO ₂	Carbon Dioxide
CTMP	Construction Traffic Management Plan
D	Deadline
dB	Decibel
DCLG	Department for Communities and Local Government
DCLG CA Guidance	'Planning Act 2008: Guidance Related to Procedures for Compulsory Acquisition of Land
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
EA1995	Environment Act 1995
ECPs	Environmental Control Plans
EIA	Environmental Impact Assessment
the 2017 EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)
the 2009 EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
EM	Explanatory Memorandum
ExQ1	Initial written question(s)
ExQ2	Further written question(s)
FS	Funding Statement
FRA	Flood Risk Assessment

Abbreviation or usage	Reference
the Framework	National Planning Policy Framework
ha	hectare
the Habitats Regulations	Conservation of Habitats and Species Regulations 2017 (as amended)
HE	Highways England
Hellens	Hellens Land Ltd
HEMP	Handover Environmental Management Plan
HDV	Heavy Duty Vehicle
HOMP	Highways Operational Management Plan
HRA	Habitats Regulations Assessment
HRAR	HRA Report
IAMP	International Advanced Manufacturing Park
IAMP LLP	IAMP Limited Liability Partnership
IAPI	Initial Assessment of the Principal Issues
IP	Interested Party
ISH	Issue Specific Hearing
IRD	Interrelationship Document
km	Kilometre
LIR	Local Impact Report
LNR	Local Nature Reserves
LNRS	Low Noise Road Surface
LOAEL	Lowest Observable Adverse Effect Level
LTP3	Tyne and Wear Local Transport Plan
LV	Limit Values
LWS	Local Wildlife Sites
m	metre
MHCLG	Ministry of Housing, Communities and Local Government
MMP	Materials Management Plan
the Model Provisions Order	Infrastructure Planning (Model Provisions) (England and Wales) Order 2009
mph	miles per hour
NE	Natural England
NERCA2006	Natural Environment and Rural Communities Act 2006
NIA	Noise Important Area
NIP	National Infrastructure Delivery Plan
NMU	Non-Motorised User
NMUK	Nissan Motor Manufacturing UK Ltd
NNNPS	National Networks National Policy Statement
NO ₂	Nitrogen Dioxide
NO _x	Nitrogen Oxide
NOEL	No Observed Effect Level
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NSIP	Nationally Significant Infrastructure Project
NTS	Non-Technical Summary
OFH	Open Floor Hearing
PA2008	Planning Act 2008 (as amended)

Abbreviation or usage	Reference
PM	Preliminary Meeting
PM _{2.5}	Particulate Matter which is 2.5 micrometres or less in diameter
PM ₁₀	Particulate Matter which is 10 micrometres or less in diameter
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R	Requirement
rDCO	Recommended Development Consent Order
REAC	Register of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy
RPA	Relevant Planning Authority
RR	Relevant Representation
s	section
SAC	Special Area of Conservation
SCC	Sunderland City Council
SEP	Strategic Economic Plan
SNCB	Statutory Nature Conservation Body
SO ₂	Sulphur Dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoS EFRA	SoS for Environment, Food and Rural Affairs
SoST	Secretary of State for Transport
SPA	Special Protection Area
Sqm	Square metres
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
STC	South Tyneside Council
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990
TEFP	Town End Farm Partnership
the Testo's Scheme	A19 / A184 Testo's Junction Alteration
TP	Temporary Possession
UDP	Unitary Development Plan
UK	United Kingdom
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
USI	Unaccompanied Site Inspection
WACA1981	Wildlife and Countryside Act 1981
WFD	Water Framework Directive
WR	Written Representation

APPENDIX D: THE RECOMMENDED DCO

20[] No. []

INFRASTRUCTURE PLANNING

**The A19 Downhill Lane Junction Development Consent Order
20[]**

Made - - - - - ***
Coming into force - - - - - ***

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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 section 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 23, 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 Downhill Lane Junction Development Consent Order 20[] and comes into force on [] 20[].

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);

“the 1980 Act” means the Highways Act 1980(f);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g);

“the 1984 Act” means the Road Traffic Regulation Act 1984(h);

“the 1990 Act” means the Town and Country Planning Act 1990(i);

“the 1991 Act” means the New Roads and Street Works Act 1991(a);

(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, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.

(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.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1981 c. 66.

(h) 1984 c. 27.

(i) 1990 c. 8.

“the 2008 Act” means the Planning Act 2008^(b);

“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) and any other development authorised by this Order, 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;

“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;

“CEMP” means the construction environmental management plan;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, pre-construction ecology surveys, pre-construction ecological mitigation and works under mitigation licences, 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 and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in the 1980 Act and includes part of a cycle track^(c);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the engineering drawings and sections” means the drawings and sections listed in Schedule 9 (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;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans listed in Schedule 9 (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, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

“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;

(a) 1991 c. 22.

(b) 2008 c. 29.

(c) 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).

“owner”, in relation to land, has the same meaning as in section 7 (Interpretation) 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) (statutory undertakers’ land), of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works, undertakers) 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 of Schedule 9 (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;

“the Testo’s plans” means the revised Testo’s plans, drawings and sections submitted with the application for this Order with the reference TR10024/APP/7.5 (Revision 1) and certified by the Secretary of State for the purposes of the A19/A184 Testo’s Junction Alteration Development Consent Order 2018(b) pursuant to article 41(4) (certification of documents, etc.) of this Order;

“traffic authority” has the same meaning as in section 121A(c) (traffic authorities) of the 1984 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10(d) or 19(1)(e) of the 1980 Act;
- (b) an order or direction under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) 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 9 (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.

(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.

(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.

(b) S.I. 2018/994.

(c) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 of Schedule 8, to the New Roads and Street Works Act 1991 (c. 22).

(d) Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991; paragraph 22 of Schedule 2 to the Planning Act 2008; and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(e) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

(6) References in this Order to numbered works are references to works as numbered in Schedule 1 (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.

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(a).

Limits of deviation

6.—(1) 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 0.50 metres upwards or 0.50 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.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) shall apply to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

(a) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

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 the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

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.

PART 3 STREETS

Application of the 1991 Act

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 Part 3 (street works in England and Wales) 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) (which defines what highway authority works are major highway works) of that Act; 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(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) 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 the 1991 Act do not apply in relation to any works executed under the powers of this Order—

-
- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
 - (b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.

section 56(a) (power to give directions as to timing);
section 56A(b) (power to give directions as to placing of apparatus);
section 58(c) (restrictions on works following substantial road works);
section 58A(d) (restriction on works following substantial street works);
section 73A(e) (power to require undertaker to re-surface street);
section 73B(f) (power to specify timing etc. of re-surfacing);
section 73C(g) (materials, workmanship and standard of re-surfacing);
section 78A(h) (contributions to costs of re-surfacing by undertaker); and
Schedule 3A(i) (restriction on works following substantial street works).

(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.

(5) The provisions of the 1991 Act(j) referred to in paragraph (4) are—
section 54(k) (advance notice of certain works), subject to paragraph (6);
section 55(l) (notice of starting date of works), subject to paragraph (6);
section 57(m) (notice of emergency works);
section 59(n) (general duty of street authority to co-ordinate works);
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 (prospectively maintainable highways) of the 1991 Act and the undertaker is not by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

-
- (a) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(b) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
(c) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.
(d) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
(e) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
(f) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
(g) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
(h) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
(i) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.
(j) 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.
(k) As also amended by section 49(1) of the Traffic Management Act 2004.
(l) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(m) As also amended by section 52(3) of the Traffic Management Act 2004.
(n) As amended by section 42 of the Traffic Management Act 2004.

- (b) 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 in writing 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 in writing 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.

(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 a street described in Schedule 3 is completed and open for traffic—

- (a) a road described in columns (1) and (2) of Part 1 (trunk roads) of Schedule 3 (classification of roads, etc.) will be a trunk road as if it had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which it is to become a trunk road;
- (b) a road described in columns (1) and (2) of Part 2 (other classified roads) of Schedule 3 (classification of roads, etc.) 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) a non-motorised user route described in Part 3 (non-motorised user routes) of Schedule 3 (classification of roads, etc.) will be of the type described in column (1) to the extent described in column (2).

(2) From such day as the undertaker may determine no person is to drive any motor vehicle at a speed exceeding the limit of 40 miles per hour on the roads described in columns (1) and (2) of Part 4 (roads subject to 40 miles per hour limit) of Schedule 3 (classification of roads, etc.).

(3) The application of paragraphs (1) and (2) 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 specified in column (1) of Part 3 (streets to be stopped up for which no substitute is to be provided) 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 33 (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 (trunk roads) 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) applies—

- (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, maintenance, or renewal 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 electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(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;

(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

- (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(a); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(b); 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 person’s 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.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(c).

Traffic regulation

16.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(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

(a) 1991 c. 56.
 (b) 2000 c. 26.
 (c) 2004 c. 18.

- (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 the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of the 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(a) (power of local authorities to provide parking spaces) 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).
- (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.
- (8) Before exercising the powers conferred by 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) Subject to paragraphs (3) and (4), 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 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(a) Section 32 was 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 to, the 1991 Act.

(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(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016**(b)**.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, 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**(c)** have the same meaning as in that Act.

(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

(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154, as amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428 and S.I. 2018/757.

(c) 1991 c. 57.

- (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 43 (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(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(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 on 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 on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(a) Section 152 was amended by S.I 2009/1307.

(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 survey or 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 powers 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 OF LAND

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 (9) 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 (minerals) to the Acquisition of Land Act 1981(a) is incorporated in this Order subject to the modification that for the “acquiring authority” substitute the “undertaker” and for “undertaking” substitute “authorised development.”

Time limit for the exercise of the 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 as modified by this Order; and

(a) 1981 c. 67.

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act).

(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

23.—(1) Subject to paragraph (2), the undertaker may acquire such rights over 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) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 5 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.

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)(a) (power of entry) of the 1965 Act,

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 under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right 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.

(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186 (1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(6) This article does not apply in relation to any right to which section 138(a) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (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 right over 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.

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(b) (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 22 (time limit for the exercise of the authority to acquire land compulsorily) of A19 Downhill Lane Junction Development Consent Order 20[]”.

(3) In section 11A(d) (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”;

(b) in subsection (2), after “land” insert “under that provision”.

(4) 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 the exercise of the authority to acquire land compulsorily) of the A19 Downhill Lane Junction Development Consent Order 20[]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) —

(a) for paragraphs 1(2) and 14(2) substitute—

(a) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

(b) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c.22).

(c) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.

(d) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

“(2) But see article 27(3) (acquisition of subsoil or airspace only) of the A19 Downhill Lane Junction Development Consent Order 20[], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, 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), 30 (temporary use of land for construction compound), or 31 (temporary use of land for maintaining the authorised development) of the A19 Downhill Lane Junction Development Consent Order 20[].”.

Application of the 1981 Act

26.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.

(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) In section 5(a) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(b) (time limit for the execution of a general vesting declaration).

(6) In section 5B(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 22 (time limit for the exercise of the authority to acquire land compulsorily) of the A19 Downhill Lane Junction Development Consent Order 20[]”.

(7) In section 6(d) (notices after execution of declaration) for subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7(e) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), 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 (and as modified by the Order) 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

(a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.

(d) 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).

(e) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016.

(f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

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) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 25 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(a) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990).

(4) Paragraphs (2) and (3) are to be disregarded 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 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

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 but subject to article 22 (time limit for the exercise of the authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of Schedule 6 (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

(a) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

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 6, 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 (compensation in case where no right to claim in nuisance) of the 2008 Act 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).

(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(a) (refusal to give possession to acquiring authority) 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 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary use of land for construction compound

30.—(1) The undertaker may only enter on and take temporary possession of the land identified as plot reference 2/1, 2/2a and 2/2b shown on the land plans for the purposes of the authorised development if the development authorised by the A19/A184 Testo’s Junction Alteration Development Consent Order 2018(b) (the “Testo’s Order”) has commenced and the main construction compound referred to as Work No. 31 in Schedule 1 to the Testo’s Order has not been vacated at the commencement of development authorised by this Order.

(2) Where the undertaker is in possession of the land identified as plot reference 2/1, 2/2a and 2/2b on the land plans for the purposes of the authorised development, the undertaker may not enter on and take temporary possession of the specified land under article 29 (temporary use of land for carrying out the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of this Order or carry out construction activities on that land for the purposes of the authorised development.

(3) In this article—

“construction activities” means any material operation (as defined in section 56(4) of the 1990 Act) proposed under this Order; and

“the specified land” means the land identified as plot reference 1/14b shown on the land plans.

Temporary use of land for maintaining the authorised development

31.—(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.

(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).

(b) S.I. 2018/994.

(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 (compensation in case where no right to claim in nuisance) of the 2008 Act 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.

(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

32.—(1) Subject to the provisions of Schedule 7 (protective provisions), article 23 (compulsory acquisition of rights) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights over any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over or within 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 (street works in England and Wales) of the 1991 Act; and
- (b) article 33 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

33.—(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 (sharing of cost of necessary measures) of that Act 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—

- “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

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (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 32, 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

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

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 33 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“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

35.—(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

Disapplication of legislative provisions, etc.

36.—(1) Upon commencement of the authorised development, the A19/A184 Testo’s Junction Alteration Development Consent Order 2018(c) is amended in accordance with Schedule 8, where—

(a) column 1 sets out where the amendment is to be made;

(b) column 2 sets out how the amendment is to be made; and

(c) column 3 sets out the text to be substituted, inserted or omitted.

(2) The provisions of the Neighbourhood Planning Act 2017(d), insofar as they relate to temporary possession of land under article 29 (temporary use of land for carrying out the

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

(b) S.I. 1997/1160.

(c) S.I. 2018/994.

(d) 2017 c. 20.

authorised development), article 30 (temporary use of land for construction compound), and article 31 (temporary use of land for maintaining the authorised development) 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 31(11), any maintenance of any part of the authorised development.

Application of landlord and tenant law

37.—(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) 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;
- (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.

Operational land for purposes of the Town and Country Planning Act 1990

38. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

39.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) 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

(a) 1990 c. 43. There are amendments to this subsection which are not relevant to this Order.

(b) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.

given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(a); 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.

(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

40. Schedule 7 (protective provisions) to the Order has effect.

Certification of documents, etc.

41.—(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 9 (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 9 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.

(4) As soon as practicable after the commencement of the authorised development, the undertaker must submit copies of the Testo's plans to the Secretary of State for certification as true copies of those plans and documents for the purposes of the A19/A184 Testo's Junction Alteration Development Consent Order 2018(b).

Service of notices

42.—(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 (references to service by post) of the Interpretation Act 1978(c) 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) 1974 c. 40. Section 61(9) amended by section 162 of, and paragraphs 15(1) and 15(3) of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to this subsection which are not relevant to this Order.

(b) S.I. 2019/994.

(c) 1978 c. 30.

- (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.

(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) the notice or document is 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

43. 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.

Date

Signed
Title
Department

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administration area of Sunderland, South Tyneside, or both Sunderland & 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 Act, comprising—

Work No. 1 – The construction of a new private means of access approximately 960m in length that links the A1290 with; the new drainage attenuation ponds (Work Nos. 2 & 18), and the fields to the south of the junction (Plots 1/3a and 1/5b), as shown between points 1/1, 1/27, 1/28 and 1/29 on the Streets, Rights of Way and Access Plans.

Work No. 2 – The construction of a new drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No.2 is adjacent to the existing A19, approximately 50m north of Washington Road footbridge and accessed via a new private means of access (Work No. 1).

Work No. 3 – The stopping up and removal of an existing A19 layby as shown between points 1/A and 1/B on the Streets, Rights of Way and Access Plans, the construction of a new edge of carriageway for the A19 mainline including drainage works, and the construction of a new northbound off-slip and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 3 is approximately 625m in length that originates at the existing A19 dual carriageway and terminates at the proposed Downhill Lane circulatory carriageway (Work No. 7), as shown between points 1/4 and 1/8 on the Streets, Rights of Way and Access Plans.

Work No. 4 – The construction of drainage features and the reinstatement of barrier in the existing mainline A19 central reserve as shown between points 1/2 and 1/6 on the Streets, Rights of Way and Access Plans.

Work No. 5 – The construction of a new southbound on-slip and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 5 is approximately 640m in length that originates at the proposed Downhill Lane circulatory carriageway (Work No. 7) and terminates at the existing A19 dual carriageway as shown between points 1/10 and 1/3 on the Streets, Rights of Way and Access Plans.

Work No. 6 – The construction of a new shared non-motorised user facility – footway/cycle track approximately 260m in length between a proposed non-motorised user crossing facility on Washington Road (East) and a junction with Work No. 8, as shown between points 1/5 and 1/9 on the Streets, Rights of Way and Access Plans.

Work No. 7 – The construction of a new circulatory carriageway, incorporating the existing Downhill Lane overbridge and a new overbridge to the south; including earthworks, abutments and a single span structure, and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 7 is approximately 550m in length and will accommodate the new entry/exit links of Work Nos. 3, 5, 9, 10, 19 and 20, and the improved existing entry/exit links of Work Nos. 23 and 24.

Work No. 8 – The construction of a new shared use non-motorised user facility and ancillary works including, but not limited to, embankments, cuttings, roadside furniture, roadside signage, electrical connections and the construction of a multi-span structure with approach ramps. Work No. 8 is approximately 1,110m in length that links to the improved existing Bridleway B46 via a non-motorised user crossing facility on Downhill Lane (East) and the A1290 non-motorised user facilities as shown between points 1/15 and 1/26 on the Streets, Rights of Way and Access Plans.

Work No. 9 – The construction of a new section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 9 is approximately 320m in length, forming the new Washington Road (East), originating at the entry/exit with the new circulatory carriageway (Work No. 7) and tying into the existing Washington Road (East), as shown between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans.

Work No. 10 – The construction of a widened and realigned road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 10 is approximately 115m in length, forming the new Downhill Lane (East) and including a new shared non-motorised user crossing facility; originating at the entry/exit with the new circulatory carriageway (Work No. 7) and tying into the existing Downhill Lane (East), as shown between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans.

Work No. 11 – The construction of a new private means of access linking Downhill Lane (East) with the field to the southeast (Plot 1/7b), as shown at point 1/16 on the Streets, Rights of Way and Access Plans.

Work No. 12 – The construction of a new private means of access approximately 150m in length that links Downhill Lane (East) with the new drainage attenuation pond (Work No. 13) as shown between points 1/17 and 1/20 on the Streets, Rights of Way and Access Plans.

Work No. 13 – The construction of a drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No.13 is adjacent to the improved Bridleway B46 (Work No. 14), and accessed via a new private means of access (Work No. 12).

Work No. 14 – Improvement to the existing Bridleway B46 for a length of approximately 215m, from the site boundary to the proposed Downhill Lane (East) non-motorised user crossing facility, as shown between points 1/21 and 1/19 on the Streets, Rights of Way and Access Plans.

Work No. 15 – The improvement of the existing A1290 for a length of approximately 50m for the construction of a non-motorised user crossing facility, as shown between points 1/22 and 1/24 on the Streets, Rights of Way and Access Plans.

Work No. 16 – The construction of a new shared use non-motorised user facility approximately 60m in length that links Follingsby Lane and the proposed A1290 non-motorised user crossing facility (Work No. 15), as shown between points 1/23 and 1/25 on the Streets, Rights of Way and Access Plans.

Work No. 17 – The construction of new drainage features on the A1290 over a length of approximately 180m, including a replacement carrier pipe under the existing verge and filter drain at the earthwork toe.

Work No. 18 – The construction of a drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 18 is adjacent to the proposed A1290 non-motorised user facility (Work No. 8), and accessed via a new private means of access (Work No. 1).

Work No. 19 – The construction of a new road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside

furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 19 is approximately 290m in length, forming the new A1290 westbound carriageway; originating at the new circulatory carriageway (Work No. 7) and merging with the existing single carriageway A1290, as shown between points 1/35 and 1/30 on the Streets, Rights of Way and Access Plans.

Work No. 20 – The construction of a realigned section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 20 is approximately 290m in length, forming the new A1290 eastbound carriageway; originating at the new circulatory carriageway (Work No. 7) and terminating at the existing single carriageway A1290, as shown between points 1/36 and 1/30 on the Streets, Rights of Way and Access Plans.

Work No. 21 – The construction of a new section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 21 is approximately 115m in length, forming the new Downhill Lane (West); originating at the existing Downhill Lane (West) and terminating at a junction with the proposed eastbound A1290 carriageway (Work No. 20), as shown between points 1/31 and 1/32 on the Streets, Rights of Way and Access Plans.

Work No. 22 – The construction of a new private means of access approximately 55m in length that links the realigned Downhill Lane (West) (Work No. 21) with the existing Make-Me-Rich Farm private means of access, as shown between points 1/33 and 1/34 on the Streets, Rights of Way and Access Plans.

Work No. 23 – The construction of an improved and realigned section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 23 is approximately 135m in length, originating at the new circulatory carriageway (Work No. 7) and terminating on the northbound link to Testo's junction, as shown between points 1/37 and 1/38 on the Streets, Rights of Way and Access Plans.

Work No. 24 – The construction of an improved section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 24 is approximately 140m in length, originating on the southbound link from Testo's junction and terminating at the new circulatory carriageway (Work No. 7), as shown between points 1/40 and 1/39 on the Streets, Rights of Way and Access Plans.

Work Nos. 25A, 25B and 25C – 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 accordance with article 30 (temporary use of land for construction compound), Work No. 25 will be carried out on either—

- (a) Plots 1/14a and 1/14b, shown on Works Plan Sheet 1 labelled as Work Nos. 25A and 25B; or
- (b) Plots 1/14a, 2/1, 2/2a and 2/2b, shown on Works Plan Sheet 1 & 2 labelled as Work Nos. 25A and 25C.

In connection with the construction of any of these works, further development within the Order limits which does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, 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, divert, relocate 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 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 soil stripping and storage, site levelling);
- (l) the felling of trees and hedgerows;
- (m) establishment of site construction compounds, 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 regulations 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 1.3 of the environmental statement, application document TR010024/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 environmental management plan

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 on Mondays to Fridays and 08:00–13:00 on Saturday except for—
 - (i) night-time closures for bridge installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) junction tie-in works;
 - (iv) overnight traffic management measures;
 - (v) cases of emergency; and
 - (vi) 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 (control of substances hazardous to health) 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 illustrative environmental masterplan annexed to the environmental statement (application document TR010024/APP/6.1).

(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 that part of the authorised development, 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 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) 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.

(2) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (1) for a period of 14 days from the date of any notice served under sub-paragraph (1) unless otherwise agreed in writing by the relevant planning authority.

(3) 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 by the Secretary of State.

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. Where an application has been made to the Secretary of State for any consent, agreement or approval required 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 (further information); 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.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

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) Northbound Off-slip	Between points 1/4 and 1/8 on the Streets, Rights of Way and Access Plans
A19(T) Northbound Link Road to Testo's junction	Between points 1/37 and 1/38 on the Streets, Rights of Way and Access Plans
A19(T) Southbound Link Road from Testo's junction	Between points 1/40 and 1/39 on the Streets, Rights of Way and Access Plans
A19(T) Southbound On-slip	Between points 1/10 and 1/3 on the Streets, Rights of Way and Access Plans

PART 2

OTHER CLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Downhill Lane Junction circulatory carriageway	Entire circulatory carriageway linking points 1/35, 1/36, 1/37, 1/39, 1/14, 1/13, 1/12, 1/11, 1/10 and 1/8 on the Streets, Rights of Way and Access Plans
A1290	Between points 1/22 and 1/24 and between points 1/35, 1/36 and 1/30 on the Streets, Rights of Way and Access Plans
Washington Road (East)	Between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans
Downhill Lane (East)	Between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans
Downhill Lane (West)	Between point 1/31 and 1/32 on the Streets, Rights of Way and Access Plans

PART 3

NON-MOTORISED USER ROUTES

<i>(1)</i> <i>NMU Route</i>	<i>(2)</i> <i>Extent</i>
Non-segregated footway/cycle track	Between points 1/5 and 1/9 on the Streets, Rights of Way and Access Plans
Non-segregated footway/equestrian/cycle track	Between points 1/15 and 1/26 on the Streets, Rights of Way and Access Plans
Non-segregated footway/equestrian/cycle track	Between points 1/23 and 1/25 on the Streets, Rights of Way and Access Plans

PART 4

ROADS SUBJECT TO 40 MILES PER HOUR LIMIT

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Downhill Lane Junction circulatory carriageway	Entire circulatory carriageway linking points 1/35, 1/36, 1/37, 1/39, 1/14, 1/13, 1/12, 1/11, 1/10 and 1/8 on the Streets, Rights of Way and Access Plans
A1290	Between points 1/35, 1/36 and 1/30 on the Streets, Rights of Way and Access Plans
Washington Road (East)	Between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans
Downhill Lane (East)	Between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans

SCHEDULE 4

Article 13

PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

PART 1

STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New street to be substituted</i>
A19(T) Northbound Off-slip	Between points 1/D and 1/W on the Streets, Rights of Way and Access Plans	Work No. 3
A19(T) Southbound On-slip	Between points 1/G and 1/C on the Streets, Rights of Way and Access Plans	Work No. 5
A1290	Between points 1/U and 1/X on the Streets, Rights of Way and Access Plans	Work No. 19 & 20
Washington Road (East)	Between points 1/E and 1/F on the Streets, Rights of Way and Access Plans	Work No. 9
Washington Road (East)	Between points 1/K and 1/L on the Streets, Rights of Way and Access Plans	Work No. 7
Downhill Lane (West)	Between points 1/T and 1/V on the Streets, Rights of Way and Access Plans	Work No. 21 & 22

PART 2

PRIVATE MEANS OF ACCESS TO BE STOPPED UP 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 south of Downhill Lane (East)	At point 1/H as shown on the Streets, Rights of Way and Access Plans	Work No. 11
Private means of access adjacent to the north of Downhill Lane (East)	At point 1/J as shown on the Streets, Rights of Way and Access Plans	Work No. 12
Private means of access adjacent to the east of the A1290	At point 1/R as shown on the Streets, Rights of Way and Access Plans	Work No. 1
Private means of access	At point 1/S as shown on the	Work No. 1

<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>
adjacent to the east of the A1290	Streets, Rights of Way and Access Plans	

PART 3

STREETS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
A19(T) Northbound Layby	Between points 1/A and 1/B on the Streets, Rights of Way and Access Plans

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of 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 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable”.

3.—(1) Without limitation on the scope of 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, substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 5 to the A19 Downhill Lane Junction Development Consent Order 20[];
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 to the A19 Downhill Lane Junction Development Consent Order 20[]) 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 when it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 20 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 23 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modification referred to in paragraph 4(a) are as follows.

(a) 1973 c. 26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(3) 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 is to be imposed is depreciated by the acquisition of the right 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.”

(4) 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 is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 20), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (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 in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) is also 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.

(8) 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), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I.2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (e) 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).
 - (f) 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.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 26 (application of the 1981 Act) of the A19 Downhill Lane Junction Development Consent Order 20[] in respect of the land to which the notice to treat relates.

(2) But see article 27(3) (acquisition of subsoil or airspace only) of the A19 Downhill Lane Junction Development Consent Order 20[] which excludes the acquisition of subsoil or airspace only from this Schedule.

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 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) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if the right 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 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 6

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<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>
1/2c, 1/2d	Required to provide construction access.	Work No. 17
1/2e	Required to provide construction access.	Work Nos. 17, 19 & 20
1/3a, 1/4a, 1/5b, 1/7b, 1/11, 1/12a	Required to provide an area for construction material storage and storage of plant.	All Works
1/3a	Required to provide construction access.	Work Nos. 1, 2, 3, 8, 17, 18 & 19
1/4a	Required to provide construction access.	Work Nos. 20 & 21
1/5b	Required to provide construction access.	Work Nos. 1, 3, 7, 8, 19 & 20
1/7b	Required to provide construction access.	Work Nos. 8, 9 & 11
1/7d, 1/10h, 1/10i, 1/12b, 1/15a	Required to provide site access.	All Works
1/10f	Required to provide construction access and site access.	Work Nos. 12, 13 & 25
1/14a, 1/14b, 1/15b	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.	Work No. 25A & 25B
1/2f, 1/6	Required to provide a perimeter enclosure and exclusion zone to allow for safe construction.	Work No. 8
2/1, 2/2a	Required to provide access to the site compound.	Work No. 25C
2/2b	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.	Work No. 25C

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)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(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.

(d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (d) 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 (street works in England and Wales) 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 a utility 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 43 (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 43, 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 43 (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 sub-paragraph (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 43 (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 part 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);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

(a) 2003 c. 21.

(b) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

(a) so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) 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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 32 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) to the electronic communications code.

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 43 (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.

SCHEDULE 8

Article 36

AMENDMENTS TO THE A19/A184 TESTO'S JUNCTION ALTERATION DEVELOPMENT CONSENT ORDER 2018

<i>(1)</i> <i>Where the amendment is to be made</i>	<i>(2)</i> <i>How the amendment is to be made</i>	<i>(3)</i> <i>Text to be substituted, inserted or omitted</i>
Article 40	After sub-paragraph (3) insert	“(4) The Testo’s plans as defined in the A19 Downhill Lane Junction Development Consent Order 20[] (the “latter Order”) are to be taken as plans or documents certified in accordance with paragraph (2) above once certified in accordance with article 41 (certification of documents, etc.) of the latter Order.”
In Schedule 1 (Authorised Development)		
Work No.4	Omit	
In Schedule 3 (Classification of roads, etc.), Part 3 (Other public rights of way)		
Cycle track	Omit row 1	
In 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)		
The stopping up of public right of way B46	In column (2) (Extent of stopping up) substitute “1/8” with	“1/9”
In Schedule 10 (Documents to be certified)		
Works Plans – Regulation 5(4)	In column (3) (Revision) substitute “2” with	“3”
Streets, Rights of Way and Access Plans – Regulation 5(4)	In column (3) (Revision) substitute “1” with	“2”
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	In column (3) (Revision) substitute “1” with	“2”

SCHEDULE 9

Article 41

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	TR010024/APP/4.3	5
Environmental Statement – Volume 1	TR010024/APP/6.1	0
Environmental Statement – Volume 2: The Figures	TR010024/APP/6.2	0
Environmental Statement – Volume 3: The Appendices	TR010024/APP/6.3	0
Statement relating to Statutory Nuisances	TR010024/APP/6.5	0
Flood Risk Assessment	TR010024/APP/6.6	0
Assessment of Nature Conservation Effects	TR010024/APP/6.7	0
Assessment of Historic Environmental Effects	TR010024/APP/6.8	0
Habitat Regulation Assessment	TR010024/APP/6.10	0
Outline CEMP	TR010024/APP/7.2	0
Application Documents Errata	TR010024/APP/7.6	1
Location Plan – Regulation 5(2)(o)	TR010024/APP/2.1	0
Scheme Layout Plan – Regulation 5(2)(o)	TR010024/APP/2.2	0
Land Plans – Regulation 5(4)	TR010024/APP/2.3	1
Works Plans – Regulation 5(4)	TR010024/APP/2.4	0
Streets, Rights of Way and Access Plans – Regulation 5(4)	TR010024/APP/2.5	1
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010024/APP/2.6	2

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 Downhill Lane Junction, near West Boldon in South Tyneside and Washington in Sunderland 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 41 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, Great North House, 20 Allington Way, Darlington, D11 4DY.