

Application by Highways England for a Development Consent Order in relation to the A585 Windy Harbour to Skippool Improvement Scheme

The Examining Authority's further written questions and requests for information (ExQ2)

Issued on 23 July 2019

The following table sets out the Examining Authority's (ExA's) further written questions and requests for information – ExQ2.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annexe B to the Rule 6 letter of 12 March 2019. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Each question has a unique reference number which starts with 2 (indicating that it is from ExQ2) and then has an issue number and a question number. For example, the first question on the draft DCO is identified as Q2.2.1. When you are answering a question, please start your answer by quoting the unique reference number.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact A585WindyHarbourtoSkipool@planninginspectorate.gov.uk and include 'A585 Windy Harbour to Skippool Improvement Scheme' in the subject line of your email.

Responses are due by **Friday 9 August 2019 (Deadline 5 in the Examination timetable)**.

Abbreviations used

Art	<i>Article</i>	IP	<i>Interested Person</i>
ALA 1981	<i>Acquisition of Land Act 1981</i>	LIR	<i>Local Impact Report</i>
Art	<i>Article</i>	LVIA	<i>Landscape and Visual Impact Assessment</i>
CA	<i>Compulsory Acquisition</i>	LPA	<i>Local Planning Authority</i>
CEMP	<i>Construction Environmental Management Plan</i>	MMO	<i>Marine Management Organisation</i>
BoR	<i>Book of Reference</i>	MP	<i>Model Provision (in the MP Order)</i>
CPO	<i>Compulsory purchase order</i>	MP Order	<i>The Infrastructure Planning (Model Provisions) Order 2009</i>
		NPA	<i>Neighbourhood Planning Act</i>
		NE	<i>Natural England</i>
		NPS	<i>National Policy Statement</i>
dDCO	<i>Draft DCO</i>		
DCO	<i>Development Consent Order</i>	NSIP	<i>Nationally Significant Infrastructure Project</i>
DML	<i>Deemed Marine Licence</i>	PA2008	<i>Planning Act 2008</i>
EM	<i>Explanatory Memorandum</i>		
ES	<i>Environmental Statement</i>	R	<i>Requirement</i>
ExA	<i>Examining authority</i>	SI	<i>Statutory Instrument</i>
FC	<i>Fylde Council</i>	SoR	<i>Statement of Reasons</i>
GB	<i>Green Belt</i>		
HE	<i>Historic England</i>		
HRA	<i>Habitats Regulations Assessment</i>	SoS	<i>Secretary of State</i>
		TP	<i>Temporary Possession</i>
		WC	<i>Wyre Council</i>

The Examination Library

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

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010035/TR010035-000308-Windy%20Harbour%20Examination%20Library.pdf>. It will be updated as the Examination progresses.

Citation of Questions

Questions in this table should be cited as follows:

Question reference: issue reference: question number, eg ExQ2.0.3 – refers to question 1 in this table.

ExQ2	Question to:	Question:
2.0	General and Cross-topic Questions	
2.0.3	The Applicant	There have been a number of representations from the public both in the hearings and in writing concerning the broader justification for the scheme alongside other proposed highways schemes in the area, and how the scheme itself works in terms of traffic flows and interactions with the local road network. The ExA acknowledges technical answers that the Applicant has already provided to these questions. However, the ExA encourages the Applicant to answer these concerns in a manner which is more easily understandable for the general public.
2.1.	Compulsory Acquisition (CA) <ul style="list-style-type: none"> • The need for the land proposed to be compulsorily acquired and/or temporarily possessed. • Effects on those affected by compulsory acquisition and/or temporary possession, including Statutory Undertakers/infrastructure. • The case for CA. • Adequacy and security of funding for compensation. • Crown Land 	
2.1.1.	The Applicant	No further questions at this stage
2.1.2.	The Applicant	
2.1.3.	The Applicant	
2.1.4.	The Applicant	
2.1.5.	The Applicant, Carrington Group (Agent – Eversheds Sutherland (International) Ltd)	
2.1.6.	The Applicant	
2.1.7.	The Applicant	

ExQ2	Question to:	Question:
2.1.8.	The Applicant	No further questions at this stage
2.1.9.	The Applicant	
2.1.10.	The Applicant	
2.1.11.	The Applicant, Electricity North West Ltd, United Utilities Group Plc, BT Plc, GTC Ltd, Cadent gas Ltd	<p>Statutory Undertakers: land or rights</p> <p>The ExA notes that discussions are ongoing with Statutory Undertakers with a view to reaching agreement and is grateful for the table submitted by the Applicant as document 7.147.14 ExQ1.1.9: PA2008 s127 Statutory Undertakers Land/ Rights [REP4-018]. In the event that agreement cannot be reached before the end of the Examination and objections withdrawn, s.127 will apply, please can the Applicant and the affected Statutory Undertakers provide their case on s.127.</p>
2.1.12.	The Applicant	No further questions at this stage
2.1.13.	The Applicant	
2.1.14.	The Applicant	<p>Crown land</p> <p>In accordance with s.135 PA 2008 it is not permissible for a DCO to authorise the CA of any interest which is owned by or on behalf of the Crown. The ExA notes that the Applicant does not intend to acquire the Duchy of Lancaster's interests and their assertion that this will not be authorised by the DCO (paragraph 6.1.3 SoR [REP4-003]). However, the dDCO does not exclude the interests of the Duchy of Lancaster from the scope of CA sought. Please can the Applicant ensure that the dDCO does not authorise the CA of any interests owned by or on behalf of the Duchy of Lancaster. The ExA suggests that this could be achieved by including the wording in the description of land section in the BoR to say "excluding all interests owned by or on behalf of the Duchy of Lancaster"</p>

ExQ2	Question to:	Question:
		or by specifically excluding interests owned by or on behalf of the Duchy of Lancaster from the CA articles (articles 20 and 23) in the DCO.
2.2.	<p>Draft Development Consent Order (dDCO)</p> <ul style="list-style-type: none"> • The structure of the dDCO. • The appropriateness of proposed provisions. • Relationships with other consents. • Whether the dDCO is satisfactory in all other respects. 	
2.2.1.	The Applicant	<p>2(1) Interpretation – “Commence”</p> <p>The Applicant states [REP2-041] that the items excluded from the definition of commencement are “<i>minor operations</i>” and “<i>de minimis / have minimal potential for adverse effects</i>”, please can the Applicant explain how this is secured in the dDCO.</p> <p>The Applicant also states [REP2-041] that “<i>none of the ecological surveys are intrusive</i>”, please can the Applicant explain how this is secured in the dDCO.</p> <p>In relation to the archaeological investigations the Applicant states [REP2-041] that “<i>the works, whilst intrusive, would be reversible and on completion the land would be restored to its original condition</i>” please can the Applicant explain how this is secured in the dDCO.</p> <p>The Applicant states [REP2-041] that the soil works are reversible, and the land would be restored to its original condition, please can the Applicant explain how this is secured in the dDCO.</p>

ExQ2	Question to:	Question:
2.2.2.	The Applicant	2(1) Interpretation – “Maintain” Please explain how the power to maintain is constrained by article 6
2.2.3.	The Applicant	No further questions at this stage
2.2.4.	The Applicant	
2.2.5.	The Applicant	
2.2.6.	The Applicant	
2.2.7.	The Applicant, Electricity North West Ltd, United Utilities Group Plc, BT Plc, GTC Ltd, Cadent gas Ltd	8(4) Transfer of Benefit Please explain how the dDCO ensures that “ <i>the CA and TP articles cannot be transferred to utility companies without SoS consent</i> ”. The ExA notes that the power to transfer to the utility companies in article 8 is limited to certain works but it does not exclude the transfer of any CA or TP powers associated with those works. Please ensure that the drafting of article 8 achieves the Applicant’s intention to prevent transfer of CA and TP powers without consent.
2.2.8.	The Applicant	No further questions at this stage
2.2.9.	The Applicant	14 Access to Works Please can the Applicant explain the basis for the assertion that “ <i>there is no reason to suppose that adverse impacts would result from the power provided for such that prior approval or Examination should be required</i> ” [REP2-041].
2.2.10.	The Applicant	No further questions at this stage
2.2.11.	The Applicant	23 Compulsory Acquisition of rights and restrictive covenants The ExA notes the intention to limit the power to create restrictive covenants to the plots listed in Schedule 5 for the purpose described in

ExQ2	Question to:	Question:
		<p>that Schedule. The ExA is concerned that the current drafting does not achieve this and asks that the Applicant consider amending article 23(3) to secure this by including the word “only” as follows:</p> <p><i>(3) The power to impose restrictive covenants under paragraph (1) is only exercisable in respect of plots specified in column (1) of Schedule 5.</i></p>
2.2.12.	The Applicant	<p>29 Temporary Use of Land</p> <p>The power to CA new rights in article 23 of the dDCO is limited to rights over the “Order Land”. The “Order Land” is defined as “<i>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 BoR</i>”. The BoR describes the land in Schedule 7 as being for temporary possession and the Land Plans show this land as being for temporary possession (TP), there is no indication that new rights will be created in this land. The ExA considers that this demonstrates a clear intention for the land listed in Schedule 7 to be for TP only, unless there is an overlap with this land and the land in Schedule 5, where new rights are defined and identified in the BoR and on the Land Plans.</p> <p>The SoR provides justification for TP of the land described as being for TP in the BoR and shown as being for TP on the Land Plans. No justification has been given for CA of new rights in this land (save for any overlap with the new rights identified in Schedule 5). Furthermore, the SoR explicitly says in relation to the land listed in Schedule 7:</p>

ExQ2	Question to:	Question:
		<p><i>The temporary power minimises the impact on landowners by ensuring that the Applicant does not have to acquire land it only requires temporarily. (Paragraph 5.2.11)</i></p> <p>The ExA understands the Applicant’s submission regarding the creation of new rights on land which the Applicant is seeking outright acquisition, the result of which would be the exercise of a lesser CA power over land identified as being for permanent acquisition on the Land Plans and in the BoR, reducing the area of outright acquisition. This applies to the land identified as being for permanent acquisition in the BoR and the Land Plans, which the Applicant is authorised to possess temporarily in accordance with article 29(1)(ii). The same rationale does not apply to the creation of new rights over land in Schedule 7, identified as being for temporary possession on the Land Plans and in the BoR, which the Applicant is authorised to possess temporarily in accordance with article 29(1)(i). Exercising a power to create undefined new rights over this land would have no impact on the area of outright acquisition and would in fact increase the area over which CA powers are exercised.</p> <p>If, contrary to the submissions in the SoR, the Applicant is seeking to CA undefined new rights over this land, please can the Applicant provide justification for this with reference to the relevant tests in the PA 2008 and the DCLG Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land.</p> <p>The ExA notes the Applicant’s reference to other DCO’s containing the same provision as 29(9), however this is insufficient justification for the</p>

ExQ2	Question to:	Question:
		<p>grant of CA in this Order. Furthermore, the drafting of other articles and definitions which interact with this provision in other DCO's may cause the provision to have a different effect.</p> <p>The ExA considers that the current drafting of the dDCO may, through the definition of "Order land", prevent the CA of new rights in land described as being for TP in the BoR and shown as such on the Land Plans in any event. However, the ExA is concerned that some ambiguity remains. If, as the supporting documentation suggests, the Applicant is only seeking TP powers over this land, the Applicant is asked to consider amending article 29(9) to remove any ambiguity. For examples of drafting the ExA suggests the Applicant consider article 26(10) of the Hornsea Two DCO and article 23(8) of East Anglia Three DCO.</p> <p>If the Applicant is seeking to create undefined new rights in the land listed in Schedule 7, please can the Applicant confirm that persons with an interest this land, described as being for TP in the dDCO and the BoR and shown as being for TP on the Land Plans, have been consulted on the understanding that new rights may be created in that land.</p>
2.2.13.	The Applicant	No further questions at this stage
2.2.14.	The Applicant	
2.2.15.	The Applicant	
2.2.16.	The Applicant, The Crown	
2.2.17.	The Applicant	
2.2.18.	The Applicant	

ExQ2	Question to:	Question:
2.2.19.	The Applicant	Requirement 3(1) Please can the Applicant explain how requirement 3(1) ensures that <i>"nothing beyond that which is assessed could ever be built"</i> [REP2-041].
2.2.20.	The Applicant	No further questions at this stage
2.2.21.	The Applicant	
2.2.22.	The Applicant	Part 2 of Schedule 2 Discharge of Requirements Please can the Applicant explain why the adopted wording provides greater certainty than the wording set out in Appendix 1 of Advice Note 15.
2.2.23.	The Applicant, MMO	Schedule 8 Deemed Marine Licence (DML) The DML in Schedule 8 of the dDCO does not include the co-ordinates of the area where the licence applies. Please can the Applicant include this information in Schedule 8. Have the MMO agreed the wording of the DML, and if not what plans are there for getting this agreed?
2.2.24.	The Applicant	No further questions at this stage
2.2.25.	The Applicant	Regarding the copy of the dDCO submitted with the Applicant's e-mail of 16 th July. The ExA notes that this was originally submitted for Deadline 2 but there had been issues when pdfing the track changes and some deletions not showing up. For clarity please can the Applicant confirm the changes made between the previous version of the dDCO (pre-

ExQ2	Question to:	Question:
		Deadline 2 [AS-012]) and the current version submitted with the e-mail of 16 th July.
2.2.26.		<p>Additional works The ExA also notes that the dDCO contains additional works; please can the Applicant explain them and confirm that they are within the order limits?</p>
2.2.27.	The Applicant	<p>Area not included in the DCO boundary What is the area identified on the Land and Work Plans in yellow as “area not included in the DCO boundary”?</p> <p>It appears from the plans that this area is within the “order limits” i.e. within the red line boundary on the plan. The “order limits” are defined in the DCO as “the limits of land to be acquired or used permanently or temporarily shown on the Land Plans and Work Plans within which the authorised development may be carried out”. There is no definition of “DCO boundary”. Please explain what the “DCO boundary” is and how this interacts with the “order limits”.</p> <p>Please explain how the area identified as “area not included in the DCO boundary” relates to the dDCO, in particular to the works and CA for which authorisation is sought.</p>
2.3.	<p>Biodiversity</p> <ul style="list-style-type: none"> • European and National designated sites. • European and National protected species. 	

ExQ2	Question to:	Question:
	<ul style="list-style-type: none"> • Change in hedgerow and deciduous woodland habitats. • Other biodiversity effects. • Mitigation. 	
		No further questions at this stage
2.4.	<p>Cultural Heritage</p> <ul style="list-style-type: none"> • Effects on designated and non-designated heritage assets. • The proposed strategy for dealing with archaeological remains, including archaeologically significant peat deposits. • Cumulative and in-combination effects on and with other major projects and proposals. 	
		No further questions at this stage
2.5.	<p>Landscape and Visual</p> <ul style="list-style-type: none"> • Effect on landscape and townscape character. • Short and long-term visual impacts. • Grange footbridge. • Effects on the Green Belt. • Cumulative and in-combination effects on and with other major projects and proposals. 	
		No further questions at this stage
2.6.	<p>Transportation and Traffic</p> <ul style="list-style-type: none"> • Alternative routes/solutions. • The case for and benefits of the scheme. • Effects on the existing road network during construction and after. • Cumulative effects. • Scheme context – A585 corridor from the M55 to Fleetwood, strategic vision and objectives for national networks. 	
		No further questions at this stage

ExQ2	Question to:	Question:
2.7.	Water Environment <ul style="list-style-type: none"> • Surface and groundwater effects. • Drainage. • Marine Environment. • Flood Risk. 	
		No further questions at this stage
2.8.	Socio-Economic Effects <ul style="list-style-type: none"> • Community consultation. • Economic/regeneration effects. • Effect on BMV agricultural land. • Effects on living conditions of surrounding residents – during construction and after. • Effects on local businesses. • Effects on potential delivery of land for housing. 	
		No further questions at this stage
2.9.	Emissions <ul style="list-style-type: none"> • Noise. • Vibration. • Air quality. • Light. • Cumulative and in-combination effects on and with other major projects and proposals. 	
		No further questions at this stage

ExQ2: 23 July 2019
Responses due by Deadline 5: Friday 9 August 2019