

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

The Examining Authority's Additional Written Questions and requests for information (ExQ3)

Issued on 19 August 2019

The following table sets out the Examining Authority's (ExA's) Additional Written Questions and requests for information – ExQ3.

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 3 (indicating that it is from ExQ3) and then has an issue number and a question number. For example, the first question on the draft DCO is identified as Q3.2.1. 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 A585WindyHarbourtoSkippool@planninginspectorate.gov.uk and include 'A585 Windy Harbour to Skippool Improvement Scheme' in the subject line of your email.

Responses are due by **Monday 2 September 2019 (Deadline 6a 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>		
FC	<i>Fylde Council</i>	SI	<i>Statutory Instrument</i>
GB	<i>Green Belt</i>	SoR	<i>Statement of Reasons</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 ExQ3.0.3 – refers to question 1 in this table.

ExQ3	Question to:	Question:
3.0	General and Cross-topic Questions	
3.0.3	The Applicant	No further questions at this stage
3.1	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 	
3.1.1.	The Applicant	No further questions at this stage
3.1.2.	The Applicant	
3.1.3.	The Applicant	
3.1.4.	The Applicant	
3.1.5.	The Applicant, Carrington Group (Agent – Eversheds Sutherland (International) Ltd)	
3.1.6.	The Applicant	
3.1.7.	The Applicant	
3.1.8.	The Applicant	
3.1.9.	The Applicant	
3.1.10.	The Applicant	
3.1.11.	The Applicant	Statutory Undertakers: land or rights Please ensure that you submit your case on s127 by Deadline 7 so that there will be time for the relevant SU's to comment on this before the end of examination.

ExQ3	Question to:	Question:
3.1.12.	The Applicant	No further questions at this stage
3.1.13.	The Applicant	
3.1.14.	The Applicant	
3.2	Draft Development Consent Order (dDCO) <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. 	
3.2.1.	The Applicant	<p>2(1) Interpretation – “Commence” The ExA acknowledges that the Applicant has amended the record of environmental actions in an attempt to limit the pre-commencement works but has not explained how the DCO ensures that pre-commencement works cannot take place other than in accordance with the record of environmental actions. Please explain how each of the 4 points noted below is secured in the dDCO.</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>

ExQ3	Question to:	Question:
		<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>
3.2.2.	The Applicant	<p>2(1) Interpretation – "Maintain" Article 6 is entitled 'Limits of Deviation'. You have stated in answer to the ExA's first written question [REP2-041] that <i>"The power to maintain is constrained by Article 6, and therefore cannot be used in such a way as to give rise to materially different environmental effects to those assessed."</i> It is still not clear to the ExA how the power to maintain is limited by article 6 (limits of deviation); please explain explicitly how the power to maintain is limited by article 6.</p>
3.2.3.	The Applicant	No further questions at this stage
3.2.4.	The Applicant	
3.2.5.	The Applicant	
3.2.6.	The Applicant	
3.2.7.	The Applicant, Electricity North West Ltd, United Utilities Group Plc, BT Plc, GTC Ltd, Cadent gas Ltd	<p>8(4) Transfer of Benefit No further questions at this stage</p>
3.2.8.	The Applicant	No further questions at this stage

ExQ3	Question to:	Question:
3.2.9.	The Applicant	<p>14 Access to Works No further questions at this stage.</p>
3.2.10.	The Applicant	<p>No further questions at this stage</p>
3.2.11.	The Applicant	<p>23 Compulsory Acquisition of rights and restrictive covenants The ExA considers that the wording in the application dDCO did limit the power to impose restrictive covenants to the land in Schedule 5, the suggestion to include the word “only” was for clarity. Therefore, in seeking these amendments, the Applicant is effectively asking for additional CA of restrictive covenants which did not form part of the original application.</p> <p>The ExA considers that this change would involve the inclusion of a provision authorising the CA of additional land for the purpose of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. For ease of reference the relevant amendments are highlighted in yellow below</p> <p><i>23(3) The power to impose restrictive covenants under paragraph (1) is only exercisable in respect of the plots specified in column (1) of Schedule 5 or to the extent provided for in article 29(9) (temporary use of land for the carrying out of the authorised development).</i></p> <p><i>29(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from— (a) acquiring new rights or impose restrictive covenants over any part of</i></p>

ExQ3	Question to:	Question:
		<p><i>that land under article 23 (compulsory acquisition of rights and restrictive covenants) 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; ...</i></p> <p>The ExA cannot accept this change in the absence of consent from all persons with an interest in the affected land in accordance with regulation 4 or following an application in accordance with regulation 5. The Applicant is requested to remove these amendments from the dDCO. If the applicant wishes to include this provision in the dDCO please provide evidence of the consent of all persons with an interest in the affected land or details of how regulations 5 to 9 can be complied with within the Examination Timetable.</p>
3.2.12.	The Applicant and all persons with an interest in the land in schedule 7	<p>29 Temporary Use of Land The ExA notes from the response [REP5-022] that the Applicant says: <i>"the applicant is in the process of communicating with all landowners where permanent rights may be required to ensure they are informed of this".</i></p> <p>The Applicant is requested to:</p> <ul style="list-style-type: none"> • identify all persons to whom this applies with an interest in the land in Schedule 7 • request and submit to the ExA their views on the CA of new rights over the land which they have an interest in
3.2.13.	The Applicant	No further questions at this stage
3.2.14.	The Applicant	

ExQ3	Question to:	Question:
3.2.15.	The Applicant	
3.2.16.	The Applicant, The Crown	
3.2.17.	The Applicant	
3.2.18.	The Applicant	
3.2.19.	The Applicant	Requirement 3(1) No further questions at this stage
3.2.20.	The Applicant	No further questions at this stage
3.2.21.	The Applicant	
3.2.22.	The Applicant	Part 2 of Schedule 2 Discharge of Requirements No further questions at this stage
3.2.23.	The Applicant, MMO	Schedule 8 Deemed Marine Licence (DML) No further questions at this stage
3.2.24.	The Applicant	No further questions at this stage
3.2.25.	The Applicant	
3.2.26.	The Applicant	Additional works The ExA notes that works listed within the draft Order limits include those sought by the Applicant in their letter of 17 May 2019 [AS-027]; these changes have not been accepted by the ExA, please refer to the ExA letter of 3 June 2019 [PD-011]. The dDCO and all other documents should not include any of the changes which the Applicant sought in their letter of the 17 May 2019 as these changes have not been accepted by the ExA and should be removed by the Applicant by the next deadline.

ExQ3	Question to:	Question:
		The Applicant is also requested to confirm if they intend to resubmit the request for changes to the application to accommodate these works with the consent of all persons with interest in the additional land.
3.2.27.	The Applicant	<p>Area not included in the DCO boundary The ExA still does not understand what the land coloured yellow on the plans is for, or why it is identified on the plans at all. The Applicant has not explained this in their response. If the land is not required for any works or required to be acquired permanently or used temporarily why is it highlighted on the plans? It is also confusing for it to have a red boundary if the intention is for this area to be outside of the draft order limits which are defined by a red boundary. Please explain the reasons for the above?</p>
3.3	<p>Biodiversity</p> <ul style="list-style-type: none"> • European and National designated sites. • European and National protected species. • Change in hedgerow and deciduous woodland habitats. • Other biodiversity effects. • Mitigation. 	
	No further questions at this stage	
3.4.	<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	

ExQ3	Question to:	Question:
3.5.	Landscape and Visual <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
3.6.	Transportation and Traffic <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
3.7.	Water Environment <ul style="list-style-type: none"> • Surface and groundwater effects. • Drainage. • Marine Environment. • Flood Risk. 	
		No further questions at this stage
3.8.	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. 	

ExQ3	Question to:	Question:
	<ul style="list-style-type: none"> • Effects on local businesses. • Effects on potential delivery of land for housing. 	
		No further questions at this stage
3.9.	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