

A585 Windy Harbour to Skippool Improvement Scheme

TR010035

7.26 Responses to the ExA's Additional Written Questions and requests for information – ExQ3

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
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Infrastructure Planning

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

**A585 Windy Harbour to Skippool
Improvement Scheme**
Development Consent Order 20[19]

**RESPONSES TO THE EXA'S ADDITIONAL WRITTEN QUESTIONS AND
REQUESTS FOR INFORMATION – EXQ3**

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ABBREVIATIONS

Abbreviations contained within this document are listed below with an indication of their meaning in the context of this Scheme.

Abbreviation	Meaning
CA	Compulsory Acquisition
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DML	Deemed Marine License
ExA	Examiner appointed by the Secretary of State
MMO	Marine Management Organisation
PA 08	Planning Act 2008
[REP2-XXX]	Previous Representations
Rev	Revision
TA	Temporary Acquisition

1 RESPONSES TO THE EXA'S ADDITIONAL WRITTEN QUESTIONS AND REQUESTS FOR INFORMATION – EXQ3

- 1.1.1 The purpose of this document is to set out the responses to the ExA's Additional Written Question and Requests for Information – ExQ3.
- 1.1.2 These can be found in Table 1-1 below.

Table 1-1: Responses to the ExA's Additional Written Questions and requests for information – ExQ3

Reference Number	Written Representations	Response to Written Representation
3.0	General and Cross-topic Questions	
3.0.3	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	No further questions at this stage	
3.1.2		
3.1.3		
3.1.4		
3.1.5		
3.1.6		
3.1.7		
3.1.8		
3.1.9		
3.1.10		
3.1.11	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.	The Applicant confirms that their case on s127 will be submitted at Deadline 7 if no agreement has been made with the Statutory Undertakers by that date.
3.1.12	No further questions at this stage	
3.1.13		
3.1.14	Crown land Please provide a new s135 consent letter from the Duchy of Lancaster for the updated wording in the dDCO submitted at Deadline 5.	The Applicant has requested a new s135 consent from the Duchy of Lancaster. It will be forwarded to the ExA upon receipt.
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	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. 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. The Applicant also states [REP2-041] that “ <i>none of the ecological surveys</i>	Although the pre-commencement works are excluded from the definition of "commence", they do form part of the authorised development permitted by the dDCO. The Applicant will therefore be subject to the terms of the dDCO when carrying out such pre-commencement works. In particular, the Applicant will be bound by the commitments in the Record of Environmental Actions and Commitments (document reference TR010035/APP/7.3) as a certified document. As the ExA will be aware, it would be an offence for the Applicant to carry out the authorised development, including the pre-commencement works, without complying with the same (s161 of the PA08). The Applicant accordingly does not consider that these points need to be set out in the dDCO. However, to provide the ExA with further comfort on this point, the Applicant proposes to

Reference Number	Written Representations	Response to Written Representation
	<p><i>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>	<p>amend the definition of "commence" as follows:</p> <p>"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 the erection of any temporary means of enclosure, the temporary display of site notices or advertisements, non-intrusive investigations for the purpose of assessing ground conditions, and, where capable of being reversed and the land restored to its original condition, operations consisting of any archaeological investigations, non-intrusive 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, and "commencement" is to be construed accordingly.</p>
3.2.2	<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>	<p>Article 6 does not explicitly refer to maintenance. However, the power to maintain only applies to maintenance of the authorised development which has been constructed in accordance with the assessed limits of deviation set out in Article 6. It therefore follows that the powers to maintain are limited to the authorised development which has been provided in accordance with Article 6.</p> <p>In order to provide the ExA with further comfort on this point, however, the Applicant suggests that the definition of "maintain" be updated to read as follows in the draft dDCO to be submitted at Deadline 8:</p> <p><i>"maintain" in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct to the extent that is unlikely to give rise to any materially new or materially worse environmental effects from those identified in the environmental statement and any derivative of "maintain" is to be construed accordingly;</i></p>
3.2.3	No further questions at this stage	
3.2.4		
3.2.5		
3.2.6		
3.2.7	<p>8(4) Transfer of Benefit No further questions at this stage</p>	
3.2.8	No further questions at this stage	
3.2.9	14 Access to Works No further questions at this stage.	
3.2.10	No further questions at this stage	
3.2.11	<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. 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</p>	<p>The Applicant confirms that the highlighted amendments will be removed as requested by the ExA in the updated draft dDCO to be submitted at Deadline 8.</p>

Reference Number	Written Representations	Response to Written Representation
	<p>below</p> <p>23(3) <i>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>29(9) <i>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 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> 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	<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> 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 	<p>A list of the persons to whom this applies is appended. The Applicant confirms that letters have been or are in the process of being sent to all such persons requesting that they submit their views on the CA of new rights over land in which they have an interest. The Applicant will submit any responses at Deadline 7.</p>
3.2.13	No further questions at this stage	
3.2.14		
3.2.15		
3.2.16		
3.2.17		
3.2.18		
3.2.19	<p>Requirement 3(1) No further questions at this stage</p>	
3.2.20	No further questions at this stage	
3.2.21		
3.2.22	<p>Part 2 of Schedule 2 Discharge of Requirements No further questions at this stage</p>	
3.2.23	<p>Schedule 8 Deemed Marine Licence (DML) No further questions at this stage</p>	
3.2.24	No further questions at this stage	
3.2.25		
3.2.26	<p>Additional works The ExA notes that works listed within the draft Order limits include those</p>	<p>The Applicant is in the process of securing the additional consents listed in the letter entitled <i>‘Examining Authority’s decision following receipt of additional information regarding the</i></p>

Reference Number	Written Representations	Response to Written Representation
	<p>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].</p> <p>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.</p> <p>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.</p>	<p><i>change request</i>' dated 29/08/2019. If the additional consents cannot be secured then the changes to the dDCO and other documents will be removed by the Applicant at Deadline 7.</p>
3.2.27	<p>Area not included in the DCO boundary</p> <p>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>	<p>The land coloured yellow is not part of the Development Consent Order and therefore is not required permanently or temporarily to deliver the scheme. [This is explained in the key to the drawings.]</p> <p>This approach is an accepted industry standard method of identifying land which is enclosed by the red lines of the order limits but is not required for the scheme. Other applications have used a similar approach (such as A19 Testos). Colouring the land yellow helps the reader of the plans to easily identify that the land is outside the red lines, something which cannot always be readily seen where there are inner and outer red lines.</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. 	
	<p>No further questions at this stage</p>	
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. 	
	<p>No further questions at this stage</p>	
3.5	<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. 	
	<p>No further questions at this stage</p>	
3.6	<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. 	
	<p>No further questions at this stage</p>	
3.7	<p>Water Environment</p> <ul style="list-style-type: none"> • Surface and groundwater effects. • Drainage. 	

Reference Number	Written Representations	Response to Written Representation
	<ul style="list-style-type: none"> • Marine Environment. • Flood Risk. 	
	No further questions at this stage	
3.8	<p>Socio-Economic Effects</p> <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	
3.9	<p>Emissions</p> <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	

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Appendix A – List of TA of land with potential CA of rights

Plot Reference	Cat 1 Interest	Cat 2 Interest
1/05a, 1/05c	Wyre Council	The Duchy of Lancaster United Utilities Trustees of Thornton Cleveleys District Horse Club Paul Smith
1/05b	Wyre Council	The Duchy of Lancaster Environment Agency MMO Trustees of Thornton Cleveleys District Horse Club Paul Smith
1/07a	Lancashire County Council	
1/30a, 1/30b	United Utilities	Electricity North West Openreach Limited The Duchy of Lancaster
1/34a, 1/34b	Key Office Developments (Bipsham) Limited	The Duchy of Lancaster
1/34c	Key Office Developments (Bipsham) Limited	United Utilities Environment Agency
1/34f, 1/34g	Key Office Developments (Bipsham) Limited	
4/02b, 4/02d	Carrington Group Mains Lane Ltd	United Utilities Martin Salthouse
4/02c	Carrington Group Mains Lane Ltd	Martin Salthouse Trevor Dooley Mr J Conlen
4/06c	Albert Hargreaves Terry Hargreaves Jane Rosindale	
4/06d, 4/06g, 4/06h	Albert Hargreaves Terry Hargreaves Jane Rosindale	Electricity North West
4/06e	Albert Hargreaves Terry Hargreaves Jane Rosindale	Jones Homes (Lancashire) Limited
4/08g, 4/08l, 5/01h	Beryl Cocker Cowburns Farm Ltd	
5/01a, 5/01c	Beryl Cocker Cowburns Farm Ltd	United Utilities
5/05b	Mr John Alan Kitchingman and Jacqueline Ann Kitchingman	Defence Infrastructure Organisation
5/06a, 5/06b, 5/06c	Margaret Esther Smith Edward Clarke	Lodge Farm Singleton Ltd United Utilities Electricity North West
5/06h	Margaret Esther Smith Edward Clarke	Lodge Farm Singleton Ltd Cadent Gas Limited
5/06i, 5/06j	Margaret Esther Smith Edward Clarke	Lodge Farm Singleton Ltd

5/07b, 5/07c	John David Loftus	
5/07d	John David Loftus	Cadent Gas Ltd United Utilities Lancashire County Council
5/09b, 5/09d	Highways England Company Limited	Santander UK Plc Electricity North West
5/09c	Highways England Company Limited	Santander UK Plc Openreach Limited
5/09e	Highways England Company Limited	Santander UK Plc
5/12	Barnfield Manor (Management) Limited	Electricity North West Mr John Alan Kitchingman and Mrs Jacqueline Ann Kitchingman Simon Roger Medhurst Ian Philip and Margaret Janice Atkinson Christopher and Anne Bailey Barnfield Manor (Shareholders) United Utilities Cadent Gas Limited Openreach Limited
5/15	Stephen Mark Dale and Michelle Sheila Dale	William Alan Smith and Christine Ann Smith Peter Issac Rhodes Defence Infrastructure Organisation
7/02d	The Official Custodian for Charities on behalf of The Richard Dumbreck Singleton Trustcare of Messrs Ingham Yorke John David Loftus	United Utilities