

A585 Windy Harbour to Skippool Improvement Scheme

Examining Authority's (ExA)

Consultation Draft Development Consent Order (DCO)

Schedule of the ExA's recommended amendments to the Applicant's draft DCO submitted at Deadline 5 (D5) [REP5-008]

No	Reference	Text as set out in draft DCO [REP5-008]	ExA's recommended amendment	Reason and Notes
1	2(1) Interpretation – "Maintain"	"maintain" in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct and any derivative of "maintain" is to be construed accordingly;	"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;	The ExA accepts the Applicant's amended wording submitted at Deadline 6.
2	2(1) Interpretation – "Commence"	"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part	"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised	The ExA accepts the Applicant's amended wording submitted at Deadline 6.



		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;	development other than operations consisting of archaeological investigations, 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, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements and "commencement" is to be construed accordingly;	
3	Article 23 - Compulsory acquisition of rights and restrictive covenants	(1) Subject to paragraphs (2) to (4) and paragraph (4) of article 44 (Crown rights), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any	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	As per the ExA's additional written question 3.2.11, the ExA does not consider it permissible for amendments to be made increasing the CA of restrictive covenants sought over the order land



		<p>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.</p> <p>(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive (a) covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.</p> <p>(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</p>	<p>carrying out of the authorised development).</p>	<p>without the consent of all persons with an interest in the additional land. The ExA proposes changes to ensure that the CA of restrictive covenants is limited to those described in schedule 5. This reflects the CA of restrictive covenants sought in the original application and accords with the advice in PINS advice note 15 regarding restrictive covenants.</p>
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		<p>the authorised development).</p> <p>(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.</p> <p>(5) Schedule 6 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 or the imposition of a restrictive covenant.</p>		
4	Article 29 - Temporary use of land for carrying	(9) The undertaker may not compulsorily acquire under	(a) acquiring new rights or impose restrictive covenants	In the event that the ExA does not recommend the



	out the authorised development	<p>this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—</p> <p>(a) acquiring new rights or impose restrictive covenants over the land listed in schedule 5 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; or</p> <p>(b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only)</p>	<p>over the land listed in schedule 5 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; or</p>	<p>authorisation of the CA of new rights and restrictive covenants other than as described in schedule 5 or over land subject to freehold acquisition, the ExA intends to recommend the amendment of article 29(9) to ensure that this is secured in the DCO.</p>
5	Temporary use of land for carrying out the authorised development Article 29(4)	(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	(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	The ExA notes that the Applicant amended subsection (4) of this article in their DL5 DCO as set out in red in the adjacent column. The ExA also notes that the



		<p>condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land or, in the case of Work Nos. 63 and 78 comprising the borrow pits, as may otherwise be set out in the Borrow Pit – Restoration Aftercare Plan as secured by the provisions of Schedule 2 (requirements); but the undertaker is not required to—</p> <p>(a) replace a building removed under this article;</p> <p>(b) restore the land on which any permanent works have been constructed under paragraph (1)(d);</p> <p>(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or</p> <p>(d) remove any measures installed over or around statutory undertakers’ apparatus to protect that</p>	<p>condition it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land or, in the case of Work Nos. 63 and 78 comprising the borrow pits, as may otherwise be set out in the Borrow Pit – Restoration Aftercare Plan as secured by the provisions of Schedule 2 (requirements); but the undertaker is not required to— (a) replace ...</p>	<p>landowner has objected to this. Without landowner approval ExA is unlikely to recommend the amended wording which will be removed.</p>
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		apparatus from the authorised development.		
6	<p>Additional works:</p> <p>Design change 1 - construction of a dwarf wall and widening of northern footway / cycleway from Skippool Road, including removing length of hedgerow</p> <p>Design change 2 - provision of a link to the main farm land with the plot to the north - east of Culvert 1, construction of a farm access track and provisions of fencing and farm gates.</p>			<p>The change request to include these works has not been accepted by the ExA. The ExA notes that these have resulted in changes to the DCO as well as the works plans, land plans and BoR and the Applicant has not removed these.</p> <p>Consequently works 117 - 123 will be deleted from schedule 1, along with any other reference to them in the DCO.</p> <p>There are also other changes regarding the CA changes. Consequently the ExA will include plot 4/07a and plot 4/14a in schedule 7 because the change request removing them was not accepted.</p> <p>The ExA will remove any other amendments to the DCO which relate to the change request because the change request has not been accepted.</p>



7	Mr Buckley's concerns regarding covering of the culvert [REP6a-003]			The ExA requests the Applicant to provide drafting to address Mr Buckley's concerns in the event that the ExA agrees that some covering to the culvert is required.
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