



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

A585 Windy Harbour to Skippool Improvement Scheme

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Transport

Examining Authority

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9 January 2020

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OVERVIEW

File Ref: TR010035

The application, dated 29 October 2018, was made under section 37 of the Planning Act 2008 (as amended) and was received in full by The Planning Inspectorate on 29 October 2018.

The Applicant is Highways England.

The application was accepted for Examination on 26 November 2018.

The Examination of the application began on 9 April 2019 and was completed on 9 October 2019.

The development proposed comprises an application for an Order granting development consent for the construction of a 3 miles dual carriageway bypass between the Windy Harbour and Skippool junctions on the A585 in Lancashire.

Summary of Recommendation:

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

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**Examining authority’s Report of Findings and Conclusions and
Recommendation to the Secretary of State for Transport, dated 9
January 2020**

**Corrections agreed by the Examining Authority prior to a decision
being made**

Page No.	Paragraph	Error	Correction	
3	Fifth paragraph	"miles"	Change to "mile".	Agree
3	Sixth paragraph	:	Insert a full stop instead.	Agree
3	Chapter Heading 7	Extra space	Close the space between "The" and "Case".3	Agree
3	Chapter Heading 8	Extra space	Close the space between "Acquisition" and "And".	Agree
3	Chapter Heading 9	Extra space	Close the space between "Order" and "And".	Agree
3	Chapter Heading 10	Extra space	Close the space between "Findings" and "And".	Agree
4	1.1.1	Extra letter	Change "miles" to "mile"	Agree
4	1.1.2 first line	Extra letter	Change "miles" to "mile".	Agree
5	1.1.4	Extra space	Close the space between "with" and "s55".	Agree
6	1.4.3	"his procedural decisions."	Change to "his procedural decisions; and"	Agree
7	1.4.9	"Windy Harbour junction".	Change to "Windy Harbour Junction".	Agree
7	1.4.9	"Skippool junction".	Change to "Skippool Junction".	Agree
12	1.8.2	"2016.;" in second last point.	Change to "2016;".	Agree
13	1.9.2	"Appendix A - the Examination Events".	Change to "Appendix A - the Examination".	Agree
17	2.2.2	Extra Space in last sentence.	Close the space between "September" and "that".	Agree

Page No.	Paragraph	Error	Correction	
43	5.4.8	Extra word in first sentence.	Remove the first word "that".	Agree
43	5.4.8	Insert a space.	Insert a "space" between "km" and "south".	Agree
44	5.5.8	Close space in first sentence.	Close space between "The" and "residual".	Agree
47	5.5.20	Close space in second last sentence.	Close the space between "and" and "I".	Agree
60	6.4.7	Missing word.	Insert the word "the" between "on" and "integrity".	Agree
62	6.6.6	Missing word in second last sentence.	Insert the word "as" between "well" and "construction".	Agree
71	8.2.10	Missing comma.	Insert a comma after the word "consequently".	Agree

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for an Order granting development consent for the construction of a new offline 3 miles dual carriageway bypass between the Windy Harbour and Skippool junctions on the A585 in Lancashire (the Proposed Development) [APP-001 to APP-087] was submitted by Highways England (the Applicant) to the Planning Inspectorate on 29 October 2018 under section (s) 31 of the Planning Act 2008 (as amended) (PA2008) and accepted for Examination under s55 of PA2008 on 26 November 2018 [[PD-001](#)].

1.1.2. The Proposed Development comprises:

- A 4.85km (3 miles) long dual 2-lane carriageway bypass from Windy Harbour Junction to the Skippool Junction on the A585.
- Four new junctions including: conversion of Skippool Junction to a traffic signal controlled crossroads with A588 Breck Road and B5412 Skippool Road; Skippool Bridge Junction in the form of a three-arm traffic signal-controlled junction with the existing Mains Lane; Poulton Junction in the form of a signal controlled crossroads connecting the new bypass to A586 Garstang Road East and modification to Little Singleton Junction (also known as Five Lane Ends) to accommodate U-turning traffic including buses. Between Skippool Bridge Junction and Poulton Junction the bypass is on an embankment. East of Poulton Junction through to east of Lodge Lane the bypass is mostly in cutting.
- Three new major structures including: replacement of Skippool Bridge; Lodge Lane Bridge and Grange Footbridge.
- Alterations to the existing road network on completion of the bypass include: detrunking the A585 between Skippool Bridge Junction and the end of Garstang New Road east of Little Singleton; applying a reduction in speed limit to 30 miles per hour (mph) and providing a combined footway/cycleway along Mains Lane between Shard Road Junction and Little Singleton; altering Garstang New Road east of Little Singleton to allow restricted access to farmers' fields and provide a shared footway/cycleway route between Windy Harbour Junction and Little Singleton; applying a reduced speed limit of 30mph along Garstang Road East between the proposed Poulton Junction and Little Singleton and upgrading the lighting along Mains Lane and Garstang Road East.
- The application includes provision in the Development Consent Order (DCO) for the compulsory acquisition (CA) and / or temporary possession (TP) of land in order to facilitate the development.

1.1.3. The location of the Proposed Development is shown in the Environmental Statement (ES) [APP-030 to APP-080] and Land Plans, final updated versions of which were received at Deadline (D) 5 [[REP5-004](#)]. The site lies mostly within the area administered by Fylde Borough Council (FBC) but a small section of the scheme at the western end is within the

administrative area of Wyre Borough Council (WBC). Both Council areas are in Lancashire. The site is wholly in England.

- 1.1.4. 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 Local Government (MHCLG) in its decision to accept the Application for Examination in accordance with s55 of PA2008 [[PD-001](#)].
- 1.1.5. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [[APP-002](#)] that the Proposed Development is an NSIP as, whilst the scheme includes some alteration and improvement of the existing A585, the new carriageway will follow a different alignment requiring construction of sections of new highway with a speed limit in excess of 50mph on an area in excess of 12.5 hectares (ha). It is also wholly within England and the Applicant, as the strategic highways company, will be the highway authority for the highway. The Proposed Development is therefore within s22(1)(a) of PA2008, and so requires development consent in accordance with s31 of PA2008. The Proposed Development therefore meets the definition of an NSIP set out in s14(1)(h) and 22(1) of PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 13 December 2018, Gareth Symons was appointed as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [[PD-003](#)]. The appointed Examiner submitted his resignation to the SoS under s80(2) and I was appointed as the ExA under s79 and in accordance with s82(1) of PA2008 with effect from 24 June 2019 [[PD-008](#)]. I reviewed all of the evidence submitted to the Examination at that point as required by s82(3).

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 CA and / or TP proposal made as part of the application and objected to it at any stage in the Examination.
 - Other Persons, who were invited to participate in the Examination by the ExA because they were either affected by it in some other relevant way or because they had particular expertise or evidence that the ExA considered to be necessary to inform the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.4.1. The Examination began on 9 April 2019 and concluded on 9 October 2019.

- 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.

The Preliminary Meeting

- 1.4.3. On 12 March 2019, the previous ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and an Open Floor Hearing (OFH) [[PD-005](#)], outlining:
- the arrangements and agenda for the PM;
 - an Initial Assessment of the Principal Issues (IAPI);
 - the draft Examination Timetable;
 - availability of RRs and application documents;
 - his procedural decisions.
 - notification of an OFH.
- 1.4.4. The PM took place on 10 April 2019 at Wyre Civic Centre, Breck Road, Poulton-le-Fylde, Lancashire, FY6 7PU. An audio recording [[EV-001](#)] and a note of the meeting [[EV-002](#)] were published on the Planning Inspectorate National Infrastructure website¹.
- 1.4.5. The previous ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [[PD-006](#)], dated 16 April 2019.

Key Procedural Decisions

- 1.4.6. The procedural decisions set out in the Rule 8 Letter [[PD-006](#)] related to matters that were confined to the procedure of the Examination and did not bear on the previous ExA's consideration of the planning merits of the Proposed Development. I was therefore content to confirm my agreement of all previous decisions under s82(2) of PA2008.

Site Inspections

- 1.4.7. 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.
- 1.4.8. Where the 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 requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/north-west/a585-windy-harbour-to-skipool-improvement-scheme/>

1.4.9. The following USIs were held by Mr Symons as ExA:

- USI1, 8 April 2019 to see in broad context the line of the new bypass and where it would intersect existing highways. Also, to gain a general understanding of the existing highway arrangements and junctions. Furthermore, the previous ExA noted the location of various properties referred to in the application documentation [[EV-003](#)];
- USI2, 9 April 2019 to the location of certain properties referred to in the OFH held earlier on the same day and to drive along the A585 from the Windy Harbour junction to junction 3 of the M55 and from the Skippool junction to Fleetwood [[EV-003](#)];

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

1.4.10. I held the following ASI:

- ASI, 2 July 2019 to see in broad context the line of the new bypass and where it would intersect existing highways. Also, to gain a general understanding of the existing highway arrangements and junctions. Furthermore, I viewed the location of various properties referred to in the application documentation [[EV-006](#)].

1.4.11. The itinerary for the ASI can be found in the Examination Library under the above reference.

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

Hearing Processes

1.4.13. 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 persons affected by CA and/or TP proposals (Affected Persons) object and request to be heard at a Compulsory Acquisition Hearing (CAH); and / or
 - where IPs request to be heard at an OFH.
- 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.

1.4.14. The ExAs held several hearings to ensure the thorough examination of the issues raised by the application.

1.4.15. An Issue Specific Hearings (ISH) under s91 of PA2008 was held at Thornton Little Theatre Fleetwood Road North Thornton-Cleveleys FY5 3SZ, a location within proximity of the application site and residences of the majority of IPs.

1.4.16. An ISH was held on the subject matter of the draft DCO on:

- 3 July 2019 ISH[1], [[EV-008](#)];
- 1.4.17. A Compulsory Acquisition Hearing (CAH) was held under s92 of PA2008 at Thornton Little Theatre on:
- 3 July 2019 CAH[1], [[EV-007](#)];
- 1.4.18. All APs were provided with an opportunity to be heard. I also used this hearing to examine the Applicants case for CA and / or TP in the round.
- 1.4.19. An Open Floor Hearing (OFH1) was held under s93 of PA2008 at Wyre Civic Centre, Breck Road, Poulton-le-Fylde, Lancashire, FY6 7PU at 1400 on 9 April 2019 [[EV-004](#)]. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.
- 1.4.20. A further Open Floor Hearing (OFH2) was held at Thornton Little Theatre at 1800 on 3 July 2019 [[EV-009](#)]. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

Written Processes

- 1.4.21. 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 this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets [] and hyperlinked to the original document held online. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in my conclusions. I have considered all important and relevant matters arising from them.
- 1.4.22. Key written sources are set out further below.

Relevant Representations

- 1.4.23. Thirty-one relevant representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-31]. 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. The issues that they raise are considered in later Chapters of this Report.

Written Representations and Other Examination Documents

- 1.4.24. The Applicant, IPs and Other Persons were provided with opportunities to:
- make written representations (WRs) (D2);
 - comment on WRs made by the Applicant and other IPs (D3);
 - summarise their oral submissions at hearings in writing (D1 and D4);
 - make other written submissions requested or accepted by the ExAs;
 - and

- comment on documents issued for consultation by the ExAs including:
 - A Report on Implications for European Sites (RIES) [[PD-013](#)] published on 27 August 2019 by D7; and
 - A commentary on the draft Development Consent Order (dDCO) [[REP5-008](#)] published on 9 August 2019 by D6.

1.4.25. I have considered all WRs and other Examination documents. The issues that they raise are considered in later Chapters of this Report.

Local Impact Reports

1.4.26. A Local Impact Report (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 of PA2008.

1.4.27. LIRs were received from the following relevant local authorities:

- FBC [[REP2-067](#)];
- Lancashire County Council (LCC) [[REP2-070](#)]; and
- WBC [[REP2-076](#)]

1.4.28. I have taken the LIRs fully into account in all relevant Chapters of this Report.

Statements of Common Ground

1.4.29. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them.

1.4.30. By the end of the Examination, the following bodies had concluded SoCG with the Applicant:

- Historic England [[REP1-006](#)];
- Electricity North West [[REP1-007](#)];
- Openreach Limited [[REP1-008](#)];
- Gas Transportation Company (GTC) [[REP1-009](#)];
- LCC [[REP9-013](#)];
- WBC – [[REP4-024](#)];
- FBC – [[REP7-024](#)] - signed with minor matters outstanding relating to the dDCO and landscape and visual matters.
- Natural England (NE) [[REP8-013](#)];
- Environment Agency (EA) [[REP4-023](#)];
- Marine Management Organisation (MMO) [[REP9-014](#)];
- United Utilities Group Plc (UUG) [[REP2-053](#)] – unsigned with minor matters outstanding relating to the dDCO; Protective Provisions and design and engineering;
- Cadent Gas Limited [[REP2-054](#)] – unsigned with minor matters outstanding relating to Protective Provisions;

1.4.31. I have taken the SoCG (other than the unsigned or incomplete ones referred to above) fully into account in all relevant Chapters of this Report.

Written Questions

- 1.4.32. The ExAs asked three round(s) of Written Questions:
- First Written Questions (ExQ1) [[PD-007](#)] and procedural decisions were set out in the Rule 8 letter [[PD-006](#)], dated 16 April 2019;
 - Further Written Questions (ExQ2) [[PD-010](#)] were issued on 23 July 2019; and
 - Additional Written Questions (ExQ3) [[PD-012](#)] were issued on 19 August 2019.
- 1.4.33. The following requests for further information and comments under Rule 17 of the EPR were issued on:
- 3 June 2019 [[PD-011](#)], requesting further information regarding the Applicant's proposed design changes including the CA of additional land;
 - 25 September 2019 [[PD-015](#)], this included a procedural decision issued under Rule 9 of the EPR regarding the Applicant's proposed design changes and CA of additional land, and requested any comments or submissions from IPs and APs on this matter;
 - 30 September 2019 [[PD-017](#)], this included a procedural decision issued under Rule 9 of the EPR to accept the Applicant's proposed design changes, and requested any comments or submissions from IPs and APs on this matter; and
 - 30 September 2019 [[PD-018](#)], requesting further information regarding: the change in the emissions target in The Climate Change Act 2008; temporary use of land; culvert safety proposals; the Applicant and Statutory Undertakers (SU) to submit their cases on the tests in s127 and s138; how the Construction Environmental Management Plan (CEMP) will regulate night-time working; and how the shooting rights, in relation to the Bird Mitigation Strategy, will be secured within the DCO.
- 1.4.34. All responses to the ExAs' written questions have been fully considered and taken account of in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.35. The following persons, who were not already IPs, requested that the ExA should enable them to join the Examination at or after the PM:
- Grant Stringer
 - Terence Bryan
 - Christine Bryan
 - Jai Cheswick
 - Carl Benfield

All made requests under s102A of PA2008 to become IPs. The previous ExA decided that they considered they were within one or more of the categories set out in s102B. The previous ExA confirmed therefore that they were IPs under s102(1)(ab).

- Jacinta Walsh
- Andrew Walsh

Whilst not making a request under s102A of PA2008 to become IPs. The previous ExA nevertheless decided that they considered they were within one or more of the categories set out in section 102B. The previous ExA confirmed therefore that they were IPs under s102(1)(ab) and I adopted this decision under s82(2).

1.4.36. There were no requests to join the Examination by persons who were not already IPs at or after the PM.

1.4.37. No persons wrote to the ExA to formally record the settlement of their issues and the withdrawal of their representations.

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. On 8 November 2017, the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2263) (as amended) (the EIA Regulations) in order to request an opinion about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion). It follows that the Applicant is deemed to have notified the SoS under Regulation 8(1)(b) of the EIA Regulations that it proposes to provide an ES in respect of the Project.

1.5.3. In December 2017 the Planning Inspectorate provided a Scoping Opinion [[APP-079](#)]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES dated October 2018.

1.5.4. On 5 February 2019 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 16 of the EIA Regulations had been complied with [[OD-002](#)].

1.5.5. Consideration is given to the adequacy of the ES and matters arising from it in later chapters of this Report.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report or Reports has been provided.

1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it later in this Report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. By the end of the Examination, there were no matters subject to any separate undertakings, obligations and / or agreements. All relevant considerations are addressed in this Report as bearing on the DCO.

1.8. OTHER CONSENTS

1.8.1. The application documentation and questions during this Examination have identified the following consents that the Proposed Development has obtained or must obtain, in addition to Development Consent under PA2008, [[REP2-029](#)]. The latest position on these is recorded below.

1.8.2. Where required, the following consents would be obtained outside the DCO by the Contractor once appointed and the detailed design is at a sufficiently advanced stage:

- Flood Risk Activity Permits under the Environment Permitting (England and Wales) Regulations 2016;
- Ordinary Watercourse Consent under the Water Resources Act 1991 or the Land Drainage Act 1991;
- Water Abstraction Licences, Permits for temporary dewatering and discharge from excavations under the Water Resources Act 1991;
- Licences to carry out works affecting protected species under the Wildlife and Countryside Act 1981;
- Trade effluent consent under the Environmental Permit Regulations 2016;
- Mobile plant licences under the Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016.; and
- Notification of noxious weeds (if encountered) under the Waste (England and Wales) Regulations 2011.

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 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** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the planning issues that arose from the application and during the Examination.
- **Chapter 5** provides a more detailed response to individual planning issues.
- **Chapter 6** considers effects on European Sites and HRA.

- **Chapter 7** 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 8** sets out my Examination of CA and TP proposals.
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 10** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events.
- **Appendix B** – the 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 applied under s37 of PA2008 for an order granting development consent for what was described as the A585 Windy Harbour to Skippool Improvement Scheme [APP-001 to APP-003]. The Applicant is appointed and licensed by the Secretary of State for the Department for Transport (SoST) as the strategic highways company for England. It is responsible for operating, maintaining and improving the strategic road network in England on behalf of the SoST.
- 2.1.2. The dDCO includes principal powers that relate to the CA of land; the creation of new rights in land; the interference with or extinguishment of existing rights in land. TP of land is also proposed. None of the Order land includes any areas of Common Land or public open space. The Statement of Reasons (SoR) explains the need for the Proposed Development and offers a public interest case for the land to be acquired compulsorily [[APP-017](#)].
- 2.1.3. Chapter 2 of the ES provides a full description of the Proposed Development [[APP-032](#)]. The main works are summarised below.

The Application Site

- 2.1.4. Consideration of the details of the Proposed Development and its effects are set out in relevant Chapters below. However, what follows is a broad introductory overview of the application site and the proposal.
- 2.1.5. The Proposed Development is located along the A585 between the Windy Harbour Junction and the Skippool Junction near Poulton-le-Fylde, Lancashire. The River Wyre is located approximately 10 metres to the north of the Proposed Development at the closest point. Several watercourses lie within the Order limits, the largest being Main Dyke which runs beneath the existing A585 Mains Lane at Skippool Bridge along with Horsebridge Dyke that runs beneath the existing A585 at Skippool Junction.
- 2.1.6. The Proposed Development lies entirely within landscape National Character Area: NCA32: Lancashire and Amounderness Plain. The landscape surrounding the Proposed Development is low lying and coastal, characterised by arable fields, pasture, drainage ditches and small to medium sized blocks of mixed woodland. There is a greater density of residential properties surrounding the western half of the Proposed Development with farmland becoming more prevalent to the east. There are, however, a group of properties close to the bypass's route in a deep cutting underneath Lodge Lane. Several accesses and tracks lie within the Order limits, predominantly of an agricultural nature. Several Public Rights of Way (PRoW) also cross the Order limits.
- 2.1.7. Areas of land surrounding the settlements of Carleton and Thornton form part of the Blackpool Green Belt (GB). About 2.7ha of land, primarily the

Skippool junction, is in the GB. Singleton Conservation Area is located 775 metres (m) south of the Proposed Development and Poulton-Le-Fylde Conservation Area is located 720m west of the Proposed Development. There are no Grade I or II* Listed Buildings within the Order limits, although there is one Grade II Listed Building, the Ice House at Singleton Hall.

- 2.1.8. There are no World Heritage Sites, Scheduled Monuments, Registered Parks and Gardens or Registered Battlefields within the Order limits or immediately adjacent to it. The Wyre Estuary Country Park is located approximately 2 kilometres (km) north of the existing A585 roundabout at Skippool Bridge. The Wyre Way regional trail runs east of the Wyre Estuary Country Park along the southern bank of the Wyre Estuary as far as Little Singleton.
- 2.1.9. To the south of Little Singleton and east of the B5260 there is an area of non-designated parkland (Singleton Park). There are eight Noise Important Areas (NIAs) along Breck Road, Mains Lane and Fleetwood Road within the vicinity of the Proposed Development. NIAs are defined by Defra as where the top 1% of the population that are affected by the highest noise levels from major roads are located according to the results of the Environmental Noise Directive (END) noise mapping.
- 2.1.10. There are no statutory designated sites for nature conservation within the Order limits, with the Skippool Marsh and Thornton Bank Biological Heritage Site (BHS) (a non-statutory designation) located to the west of the Proposed Development.
- 2.1.11. Environmental constraints within the locality of the Proposed Development include the Morecambe Bay and Duddon Estuary Special Protection Area (SPA); Morecambe Bay Ramsar site; Morecambe Bay Site of Special Scientific Interest (SSSI); and the Wyre and Lune recommended Marine Conservation Zone (rMCZ). There are also 2 additional BHS designations associated with the Wyre Estuary (important at a local level) within proximity to the Proposed Development. The Main Dyke watercourse lies to the west of the Proposed Development and there are areas of low-lying floodplain and areas of flood zone 3 associated with Main Dyke and the Wyre Estuary coinciding with the Scheme footprint.

The Principal Works

- 2.1.12. The Applicant provides a detailed Description of the Scheme in ES Chapter 2 [[APP-032](#)]. A summary of the Proposed Development is provided at 1.1.2. above.

Other works within the Order limits

Mitigation Land

- 2.1.13. An area of land has been defined within the draft Order limits to provide mitigation for the potential construction disturbance/displacement impacts on bird species associated with the Morecambe Bay and Duddon

Estuary SPA/Morecambe Bay Ramsar site. The size and location of the area was determined as part of the HRA [[APP-027](#)] in consultation with NE. It is located adjacent to the River Wyre, north of the Proposed Development. This area was specifically chosen as a parcel of land located away from the construction area which would not be affected by disturbance/displacement effects associated with the Proposed Development. It would also provide a sufficiently large area to support use by SPA/Ramsar site species for the duration of the construction phase.

- 2.1.14. It would be under the control of Highways England for the duration of the construction period (2020 to 2022) and managed accordingly to deliver the required mitigation.

Borrow Pits

- 2.1.15. The Applicant's analysis indicates that there would not be enough excavated material to form the proposed embankments. Consequently, two borrow pits have been identified south of Little Singleton, west of Lodge Lane on both the north and south sides of the bypass. Additional material could be excavated up to 2.5m below existing ground level. As most of the material would be required to construct the embankment north of Poulton Junction, the location of the borrow pits has been chosen to avoid construction traffic having to pass through Little Singleton or having to cross the existing A585 road. It is intended that the land would be returned to agricultural use after putting back stored topsoil and regrading of the land levels.

Construction Compounds

- 2.1.16. Construction is anticipated to last for approximately 2 years and, if granted consent, commence in Spring 2020. Construction staging would be determined by the Contractor in detail. However, anticipated phases of construction can be found in Chapter 2 of the ES [[APP-032](#)], ES Appendix 2.1: Construction Information [[APP-033](#)] and the Traffic Management Plan [[APP-085](#)].
- 2.1.17. Within the limits of the dDCO, four construction compounds are proposed. At the western end of the new bypass there would be a compound on the north side of Breck Road, a main compound on the north-east side of the proposed Poulton junction, with a further compound on the south-west side of the same junction and at the eastern end there would be further compound near to where the new offline bypass would leave the existing A585.
- 2.1.18. The Applicant anticipates that approximately one year after construction the temporary construction compounds would be restored to the conditions they were on the date on which TP of the land was first taken, or such condition as may be agreed with the owner. Article 29 of the dDCO [[REP9-005](#)] covers the temporary use of land for carrying out the development.

2.2. THE APPLICATION AS EXAMINED

- 2.2.1. No material changes, as determined by the ExAs, were made to the proposals during the course of the Examination. However, changes were made to plans and documents, such as the CEMP, the Book of Reference (BoR), and the Archaeological Mitigation Strategy, to reflect ongoing discussions between the Applicant and other parties, including the ExA.
- 2.2.2. On 17 May 2019 the Applicant submitted a request for two design changes to the application [[AS-027](#)]. On 3 June 2019 the previous ExA responded that the changes could not be accepted without compliance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regs), particularly regarding providing evidence that all persons with an interest in the additional land consent to its inclusion in the DCO as land subject to CA [[PD-011](#)]. The Applicant submitted further information in support of the changes and made a second request for them to be accepted on 20 August 2019 [[AS-029](#)]. I responded on the 29 August 2019 that the changes could not be accepted without compliance with the CA Regs [[PD-014](#)]. On 19 September 2019 the Applicant submitted a further request for acceptance of the changes [[REP7-025](#)] whilst stating that all necessary consents had been obtained. However, the consents from United Utilities Group PLC [[REP7-030](#)] and Electricity North West [[REP7-026](#)] were conditional, and consequently the I was unable to accept the proposed design changes [[PD-015](#)]. Subsequently the Applicant submitted the relevant unconditional consents [[AS-035](#)]. This enabled me to respond on 30 September that I was satisfied that the changes were not so material as to warrant a new application and that they do not give rise to any new or different significant environmental effects [[PD-017](#)].
- 2.2.3. The current status of each document at the close of the Examination can be seen in the Application and Examination Document Tracker submitted at D9 [[REP9-002](#)].
- 2.2.4. A final version of the dDCO (Revision 5) was submitted at D9 [[REP9-005](#)].

2.3. RELEVANT PLANNING HISTORY

- 2.3.1. A list of planning applications in and around the Proposed Development site is contained in WBC's LIR [[REP2-076](#)]; these proposals are extant, or commenced but incomplete.
- 2.3.2. FBC does not have a record of any other formal planning applications having been made on land within the Order limits [[REP2-067](#)].
- 2.3.3. LCC's LIR confirms there is no planning history that is relevant to the Proposed Development [[REP2-070](#)].

3. LEGAL AND POLICY CONTEXT

3.1. THE PLANNING ACT 2008

3.1.1. The PA2008 provides different decision-making processes for NSIP applications where a relevant National Policy Statement (NPS) has been designated (s104) and where there is no designated NPS (s105). Paragraph 1.1.4 and 1.1.5 above identify that the application is for NSIP development. For reasons expanded upon in paragraph 3.2.1 below, this is an application to which s104 is applicable because it is subject to policy in a designated NPS.

3.1.2. S104(3) of PA2008 requires that the SoS must decide an application for development consent in accordance with any relevant 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.

3.1.3. S104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, the matters set out include:

- any relevant NPSs;
- any LIR;
- certain prescribed matters (which in respect of this application are referred to in Section 3.4); and
- any other matters the SoS considers are both important and relevant to the decision.

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

Consultation

Policy Background

3.1.5. The Applicant of a proposed NSIP, when meeting their statutory pre-application consultation obligations under s42 of the PA2008 must, where relevant, make diligent inquiries carrying out their own investigations and taking their own legal advice, as appropriate. It is the responsibility of the Applicant to ensure that their pre-application consultation fully accords with the requirements of the PA2008, including associated regulations, and that they have regard to relevant guidance.

3.1.6. All EIA notification and consultation is made in accordance with the EIA Regulations.

Consultation bodies

3.1.7. Consultation bodies are defined under the EIA Regulations² as:

- a body prescribed under s42(1)(a) of the PA2008 (duty to consult) and listed in column 1 of the table set out at Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 where the circumstances set out in column 2 are satisfied in respect of that body;
- each authority that is within s43 of the PA2008 (local authorities for purposes of s42(1)(b)).

Regulation 11(1)(c) bodies

3.1.8. Regulation 11(1)(c) of the EIA Regulations relates to particular person(s) whom the Planning Inspectorate considers *"to be, or to be likely to be, affected by, or to have an interest in"* a Proposed Development and who are *"unlikely to become aware of the proposed development by means of the measures taken in compliance with Part 5 (applications for orders granting development consent) of the Act"*.

3.1.9. Applicants need to have regard to the requirements imposed under the EIA Regulations with regard to notifying and consulting Regulation 11(1)(c) persons³.

Acceptance stage

3.1.10. During the acceptance stage of this application for development consent the Planning Inspectorate, on behalf of the SoS, determined that the Applicant had complied with Chapter 2 of part 5 of the PA2008 (pre-application procedure).

Applicant's Approach

3.1.11. The Applicant's approach to consultation is detailed in ES Chapter 3: Consultation [[APP-034](#)].

3.1.12. A public non-statutory consultation ran for 6 weeks from 5 September to 17 October 2016 at the options stage. Publicity and documentation for the consultation related to a number of Scheme options. Three public exhibition events were also held during the consultation period in 2016. The Preferred Route Announcement was made on 24 October 2017.

² Regulation 3(1) of the EIA Regulations

³ EIA Regulations 13, 16, 19, 20, 22 and 24 also refer to notification requirements with regard to Regulation 11(1)(c) persons

- 3.1.13. A statutory consultation ran for 7 weeks from 21 March to 8 May 2018 in accordance with the Statement of Community Consultation (SoCC).⁴ Four public exhibition events were also held during the consultation period in 2018. An additional statutory consultation event was also undertaken between August and September 2018. This was to ensure that the commitment in the SoCC that all members of the public who had previously contacted Highways England regarding the A585 Windy Harbour to Skippool Improvement Scheme received the public consultation brochure. Further details of the statutory consultation process and the feedback received is outlined within the Consultation Report [APP-020, APP-021, APP-022 and APP-023].
- 3.1.14. During the preparation of the ES a number of topic specific consultations were undertaken with various organisations as part of the baseline data gathering and assessment process (both with statutory and non-statutory consultees).
- 3.1.15. SoCG were prepared in draft to confirm and agree as many aspects of the ES as possible with statutory and non-statutory consultees prior to the submission of the DCO application. These were developed further during the Examination process.

Issues Arising During the Examination

- 3.1.16. The adequacy of the consultation undertaken by the Applicant was questioned by members of the public throughout the Examination. Representative examples of this questioning are highlighted below.
- 3.1.17. Several RR's questioned the adequacy of consultation and the options presented [[RR-003](#), [RR-017](#), [RR-020](#), [RR-022](#) etc]. The issue of alternatives assessment is dealt with at paragraph 3.2.3. With regard to adequacy of consultation the Applicant responded with reference to the non-statutory consultation informing the preferred route announcement [[REP1-004](#)].
- 3.1.18. The Applicant further stated [[REP1-004](#)]:
- that the statutory consultation was held in accordance with the SoCC which was agreed by all the LAs;
 - that consultation material was available to view online and at deposit locations around the Proposed Development area;
 - that s42 letters were sent in accordance with the requirements of the PA2008, and a s46 notification letter was sent to the Planning Inspectorate; and
 - four public consultation events were held in accordance with s47 of the PA2008.

Conclusion

⁴ <https://highwaysengland.citizenspace.com/he/a585-windy-harbour-to-skipool-statutory-consultat/>

3.1.19. I conclude that:

- the Applicant has ensured that the Pre-application consultation fully accords with the requirements of the PA2008;
- the EIA notification and consultation has been made in accordance with the EIA Regulations; and
- taking all these matters into consideration I conclude that consultation matters have been considered appropriately at acceptance and there is nothing to prevent the SoS from making a decision on the application.

3.2. NATIONAL POLICY STATEMENT

3.2.1. The National Policy Statement National Networks (NPSNN) has been designated as the NPS for roads for which the SoS is the highway authority and remains in force. It is relevant to this Application because the Proposed Development comprises the construction and alteration of a highway where the speed limit for any class of vehicle is expected to be 50mph or greater, the area of development exceeds 12.5ha and Highways England is the highway authority. The Proposed Development is therefore a NSIP, and the NPS provides the primary basis for decisions by the SoS.

3.2.2. The NPSNN 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. Individual policy requirements and tests arising from the NPSNN are addressed in Chapter 4 of this Report.

Alternatives

3.2.3. Paragraphs 4.26 and 4.27 deal with the assessment of alternatives. Paragraph 4.26 of the NPSNN includes the following requirements:

"The EIA Directive requires projects with significant environmental effects to include 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 the environmental effects. ..."

3.2.4. Paragraph 4.27 of the NPSNN states: *"All projects should be subject to an options appraisal. ... Where projects have been subject to full options appraisal in achieving their status within Road or Rail Investment Strategies ..., option testing need not be considered by the Examining Authority or the decision maker. For national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process. It is not necessary for the Examining Authority and the decision maker to reconsider this process, but they should be satisfied that this assessment has been undertaken."*

Applicant's Approach

- 3.2.5. Schedule 4 of the EIA Regulations requires an ES to provide "A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects".
- 3.2.6. The consideration of alternatives is set out in the ES in Chapter 4: Alternatives [[APP-035](#)]. This outlines the main alternatives studied and how the environmental effects of options have been taken into account.
- 3.2.7. The specific legal requirements have been addressed through the Habitats Regulations Assessment and the Water Framework Directive Assessment contained in the application documents. The sequential test for flood risk is included in the Flood Risk Assessment (FRA).
- 3.2.8. As the Proposed Development is included in the Government's Road Investment Strategy (RIS), the Applicant notes that a viable modal alternatives assessment will have been undertaken.
- 3.2.9. ES Chapter 4 [[APP-035](#)] sets out the process for assessing options and arriving at the preferred scheme. Three corridors were considered during the Applicant's options stages, online, southern and northern corridors. Five options were identified for the southern corridor, while two options were identified for both the northern and online corridors. The options were different in terms of the junction strategy, the number of lanes as well as lane utilisation.
- 3.2.10. A number of alternative arrangements were suggested by members of the public as part of the non-statutory public consultation. The main suggestion was for an alternative southern bypass much further south between Poulton Junction and Windy Harbour Junction than the Proposed Development alignment.
- 3.2.11. Highways England's Preferred Route Announcement document (2017) stated that the Proposed Development was the most expensive option, however, it reduced congestion, journey times and improved overall safety. It was also found to better support proposed developments further north on the Fylde Peninsula, by increasing the overall capacity of the road. The scheme also provides greater improvements for pedestrians and cyclists in taking traffic away from the existing A585.

Issues Arising During the Examination

- 3.2.12. Several RRs [RR-003, RR-022, and RR-025] raised the issue of possible alternative routes. The previous ExA's First Written Question (FWQ) 1.6.1 questioned the Applicant about alternative routes considered leading to the current Proposed Development.
- 3.2.13. In response [[REP2-041](#)] the Applicant confirmed that the Proposed Development has been subject to an options appraisal as required by paragraph 4.27 of the NPSNN, as detailed in ES Chapter 4.

Conclusion

3.2.14. I conclude that:

- in accordance with paragraph 4.26 of the NPSNN the Applicant has included within the ES an outline of the main alternatives studied and provided an indication of the main reasons for choice of the preferred route, taking into account the environmental effects;
- in accordance with paragraph 4.27 of the NPSNN, the ExA is satisfied that this project has been subject to a full options appraisal in achieving its status within the RIS, and that proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process; and
- taking all these matters into consideration I conclude that alternatives matters have been considered by the applicant and there is nothing to prevent the SoS from making a decision on the application.

3.3. UK LEGISLATION

Marine and Coastal Access Act 2009

3.3.1. The Marine and Coastal Access Act 2009 (MCAA2009) is relevant to the decision. The MMO is an IP for the Examination of the dDCO because the development contains construction activities which would extend within the marine environment. They would concern the Skippool Clough culvert replacement, comprising works to Horsebridge Dyke and alterations of the headwall and apron including re-provision of the EA flap valve and alterations to the highway drainage outfall through the headwall. Article 35 of the dDCO makes provision for a Deemed Marine Licence (DML) to be granted on the terms set out in Schedule 8 pursuant to Part 4 of the MCAA2009.

3.3.2. The Marine Conservation Zone affected is the Wyre and Lune recommended Marine Conservation Zone.

Environmental Legislation

The Wildlife and Countryside Act 1981

3.3.3. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects animals, plants, and certain habitats in the UK. It provides for the notification and confirmation of SSSIs. In England, these sites are identified for their flora, fauna, geological or physiographical interest by NE. WACA1981 contains measures for the protection and management of SSSIs.

3.3.4. The WACA1981 is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV containing miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from NE.

- 3.3.5. The Act is relevant to the application in view of the sites and species identified in the ES [APP- 30 to APP-80]. Relevant considerations are discussed in Chapter 4 of this Report.

Natural Environment and Rural Communities Act 2006

- 3.3.6. The Natural Environment and Rural Communities Act 2006 (NERCA2006) makes provisions for bodies concerned with the natural environment and rural communities, 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 conservation of biodiversity (the biodiversity duty). In complying with the biodiversity duty, regard must be had to the United Nations Environment Programme (UNEP) Convention on Biological Diversity of 1992. The Act also requires that, as respects England, the SoS must publish a list of the living organisms and types of habitat which in the SoS's opinion are of principal importance for conserving biodiversity. I have had regard to NERCA2006 and the biodiversity duty in all relevant Chapters of this Report.

Other Environmental Conservation Legislation

- 3.3.7. The following additional legislation contains relevant provisions that must be met and are considered in this Report:
- Protection of Badgers Act 1992;
 - The Environment Act 1995;
 - Wild Mammals (Protection) Act 1996;
 - The Hedgerows Regulations 1997; and
 - Countryside and Rights of Way Act 2000.

Environmental Regulation and Other Consents

Climate Change

- 3.3.8. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. The Climate Change Act 2008, and The Climate Change Act 2008 (2050 Target Amendment) Order 2019 establishes statutory climate change projections and carbon budgets, which have been taken into account in this report.

Other Specific Statutory Duties

The Public Sector Equality Duty (PSED)

- 3.3.9. 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.

Human Rights Act 1998

- 3.3.10. The CA of land can engage various relevant Articles under the Human Rights Act 1998. The implications of this are considered later in this Report.

The Historic Built Environment

- 3.3.11. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving the Grade II listed Ice House or its setting or any features of special architectural or historic interest which it possesses in Chapter 4 of this Report, and the SoS must also have regard to this in making their decision.

3.4. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union

- 3.4.1. The UK is due to leave the European Union on 31 January 2020 and under the terms of the Withdrawal Act (2008) there is provision for the retention of European law and caselaw until specifically superseded. This Report has been drafted on the basis of the law currently in force. It will be a matter for the SoS to satisfy themselves as to the position at the time of the decision.

The Habitats Directive

- 3.4.2. The Habitats Directive (92/43/EEC) forms a cornerstone of Europe's nature conservation policy. It is built around two pillars: a network of protected sites, and a system of species protection.
- 3.4.3. Habitat types requiring the designation of Special Areas of Conservation (SAC) are listed in Annex I of the directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 ecological network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.

The Birds Directive

- 3.4.4. The Birds Directive (2009/147/EC) is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. It requires classification of areas as SPAs comprising all the most suitable territories for these species. All SPAs form part of the Natura 2000 ecological network.

The Habitats Regulations

- 3.4.5. The Conservation of Habitats and Species Regulations 2017 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 Morecambe Bay and Duddon Estuary SPA and Morecambe Bay Ramsar Site adjacent to the Proposed Development [[APP-027](#)]. Chapter 5 gives further detailed consideration to these matters.

The Water Framework Directive

- 3.4.7. Directive 2000/60/EC established a framework for community action in the field of water policy (the Water Framework Directive or WFD) which includes objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It provides for the production of River Basin Management Plans to provide for the sustainable management of rivers.
- 3.4.8. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- 3.4.9. The WFD is relevant to the application as it is located to the south of the estuary of the River Wyre which is tidally influenced and within the vicinity of the Proposed Development are Main Dyke and Horsebridge Dyke which are both classed as main rivers by the EA. Furthermore, across much of the site, deposits support an aquifer classified as Secondary (undifferentiated). There is also one groundwater body underlying the Proposed Development, the West Lancashire Quaternary Sand and Gravel Aquifer.

The Air Quality Directive

- 3.4.10. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values (LV) are exceeded for ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and mono-nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give direct statutory effect to the Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.
- 3.4.11. The UK Air Quality Strategy establishes the UK framework for air quality improvements. The UK Air Quality Strategy establishes a long-term vision for improving air quality in the UK and offers options to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework 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 more localised Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities.

- 3.4.12. One AQMA was identified within the air quality study area for this Proposed Development; Chapel Street AQMA in Poulton-le-Fylde, which is about one mile away from the Skippool junction. The Chapel Street AQMA was declared by WBC in 2009 for the exceedance of the annual mean nitrogen dioxide (NO₂) Air Quality Strategy Objective as a result of traffic emissions, congestion and the location of buildings preventing the dispersion of air pollutants.

3.5. OTHER RELEVANT LEGAL PROVISIONS

United Nations Environment Programme (UNEP) Convention on Biological Diversity 1992

- 3.5.1. The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (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 1992 has been taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The UK EIA and transboundary assessment processes referred to below satisfy with regard to impacts on biodiversity the requirements of Article 14 of the Convention (Impact Assessment and Minimizing Adverse Impacts).
- 3.5.3. This is of relevance to the biodiversity and ecological considerations and landscape and visual impact which are discussed in Chapter 4 of this Report.

3.6. MADE DEVELOPMENT CONSENT ORDERS

- 3.6.1. The dDCO includes wording derived from other made DCOs as explained in the Explanatory Memorandum (EM) [[REP8-06](#)]. These include:
- the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016;
 - the A19/A1058 Coast Road (Junction Improvement) Order 2016;
 - the A14 Cambridge to Huntingdon Improvement Order 2016; and
 - the A19/A184 Testo's Junction Improvement Order 2018.

3.7. TRANSBOUNDARY EFFECTS

- 3.7.1. The project is of local and regional impact. A transboundary screening under Regulation 32 of the 2017 EIA Regulations [[OD-001](#)] was undertaken on behalf of the SoS on 5 April 2018 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. The Regulation 32 duty is an ongoing duty, and on that basis, I have considered whether any facts have emerged to change these screening conclusions, 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. The other policies⁵ that give rise to important and relevant considerations for the SoS include the following:

National policies

- Road Investment Strategy (RIS) 2015-2020 (2015);
- Department for Communities and Local Government (DCLG) Planning Act 2008 Guidance on the Pre-Application Process (March 2015);
- National Infrastructure Delivery Plan 2016-2021, Infrastructure and Projects Authority reporting to HM Treasury and Cabinet Office (March 2016);
- Northern Transport Strategy: 'The Northern Powerhouse: One Agenda, One Economy, One North.', HM Government (March 2015); and
- Planning Act 2008: guidance related to procedures for the compulsory acquisition of land, DCLG 2013.

Regional policies

- South Pennines Route Strategy (2014)

Local policies

- The Lancashire Strategic Transport Prospectus (January 2016); and
- Lancashire County Council: Local Transport Plan 2011-2021: A Strategy for Lancashire, May 2011.

3.9. THE NATIONAL PLANNING POLICY FRAMEWORK

3.9.1. The National Planning Policy Framework (NPPF) (February 2019) and its accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied, for the purposes of making Development Plans and deciding applications for planning permission and related determinations under the Town and Country Planning Act 1990 (as amended) (TCPA1990). Paragraph 5 of the NPPF makes it clear that it does not contain specific policies for NSIP decision-making as these are determined in accordance with the decision-making framework in the PA2008 as well as relevant NPSs and any other matters which are relevant, which may include the NPPF.

3.9.2. Paragraphs 1.17 to 1.20 of the NPSNN further describe the relationship between the NPPF and the NPSNN. In summary, these paragraphs provide:

- The NPPF may be an important and relevant consideration in decisions

⁵ List includes policies raised and referred to by the Applicant in its Introduction to the Application and Planning Statement [APP-003 and APP-081]

- on NSIPs, but only to the extent relevant to a particular project;
- The NPPF is not intended to contain specific policies for individual NSIPs where particular considerations can apply. The NPSNN performs that function;
- The NPPF provides a framework within which responses to individual project effects can be considered, but that in relation to particular tests or standards to be met, these are normally derived from the NNNPS.

3.9.3. Although the NPPF has been revised twice (July 2018 and February 2019) since the NPSNN was published (December 2014), I have concluded that NPSNN paragraphs 1.17 to 1.20 remain as a complete statement of the relationship between the two documents.

3.9.4. NPPF policies have been considered in respect of all planning issues addressed in Chapter 4. They are drawn out there only where they identify different or additional considerations from those arising from the NPSNN.

3.10. LOCAL IMPACT REPORTS

3.10.1. LIRs have been received from the following relevant local authorities:

- FBC [[REP2-067](#)];
- LCC [[REP2-070](#)]; and
- WBC [[REP2-076](#)].

3.11. THE DEVELOPMENT PLAN

3.11.1. When the application was submitted, FBC and WBC had emerging Development Plans (DPs). Since then, on 22 October 2018 FBC adopted the Fylde Local Plan to 2032, which has now replaced the former Fylde Borough Local Plan as Altered 2005. Furthermore, on 28 February 2019 WBC subsequently adopted the Wyre Local Plan 2011-2031, which has replaced the saved policies of the 1999 Wyre Local Plan and the Fleetwood-Thornton Area Action Plan 2009. These two DPs were well advanced in terms of plan preparation when the application was submitted, and they were referenced by the Applicant in its Planning Statement [[APP-081](#)]. Therefore, despite the changes to their status and the former Local Plans being replaced, this has not materially changed the local planning policy against which this Proposed Development should be considered.

3.11.2. FBC drew attention to the DP in force in its LIR [[REP2-067](#)], listing the policies of the Fylde Local Plan to be relevant to the Proposed Development at paragraph 4.3 as:

- S1: The proposed settlement hierarchy
- DLF1: Development locations for Fylde
- GD4: Development in the countryside
- GD7: Achieving good design in development
- GD9: Contaminated land

- EC1: Overall provision of employment land and existing employment sites
- H1: Housing delivery and the allocation of housing land
- INF1: Service accessibility and infrastructure
- T1: Strategic Highway Improvements
- T4: Enhancing sustainable transport choice
- CL1: Flood alleviation, water quality and water efficiency
- CL2: Surface water run-off and sustainable drainage
- ENV1: Landscape
- ENV2: Biodiversity
- ENV5: Historic environment

3.11.3. Furthermore, at paragraph 4.5 of its LIR [[REP2-067](#)] FBC stated that at a regional level, the following transport policy document was also relevant to this case:

- The Fylde Coast Highways and Transport Masterplan (FCHTM) – adopted July 2015.

3.11.4. WBC drew attention to the DP in force in its LIR [[REP2-076](#)], listing the relevant policies of the Wyre Local Plan at paragraphs 3.12 – 3.22 as:

- Policy SP1 – Development Strategy
- Policy SP2 – Sustainable Development
- Policy SP3 – Green Belt
- Policy SP7 - Infrastructure Provision and Developer Contributions
- Policy SP8 – Health and Wellbeing
- Policy CDMP1 – Environmental Protection
- Policy CDMP2 - Flood Risk and Surface Water Management
- Policy CDMP4 - Environmental Assets
- Policy CDMP6 - Accessibility and Transport
- Policy HP1 - Housing Land Supply
- Policy EP1- Employment Land Supply

3.11.5. LCC drew attention to relevant policies of the DP in its LIR [[REP2-070](#)] as follows:

- Lancashire County Council Transport Policy (para.5.7); and
- Policy M2 of the Lancashire Minerals and Waste Local Plan (para. 15.1).

3.11.6. Individual policies are referred to as required in Chapters 4 and 5 of this Report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. The previous ExA set out an IAPI arising from the application, which were provided to all recipients of the Rule 6 letter [[PD-005](#) Annex B]. The IAPI was an item for discussion at the PM [[EV-002](#)]. No matters were raised at the PM that required amendment to the IAPI.

4.1.2. The remainder of this Chapter addresses the broad planning issues from the IAPI. The IAPI identified the following Principal Issues, they are listed in alphabetical order:

- biodiversity;
- compulsory acquisition;
- cultural heritage;
- draft Development Consent Order;
- emissions;
- landscape and visual;
- socio-economic effects;
- transportation and traffic; and
- water environment.

4.1.3. Chapter 5 addresses the relevant planning issues. This includes relevant planning issues, in addition to the IAPI, which were important and relevant raised during the course of the Examination as follows:

- climate; and
- noise and vibration.

4.1.4. CA, TP and other land or rights are reported on in Chapter 7. The detailed content of the dDCO is reported on in Chapter 8.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. The IPs were broadly content with the IAPI and the main issues were largely agreed between them.

Conclusion

4.2.2. The Examination processes and events are recorded in Chapter 1 and Appendix A and all relevant issues arising are taken into account in Chapter 5.

4.3. ISSUES ARISING IN LOCAL IMPACT REPORTS

4.3.1. FBC's LIR sets out the local authority's assessment of the Proposed Development's positive, neutral and negative impacts in relation to each of the principal topics identified in the previous ExA's Rule 6 letter, along with its views on the relative importance of each. No further main issues were raised.

4.3.2. LCC's LIR reviews the policy context and the main issues covered in the ES. No further main issues were raised.

- 4.3.3. WBC's LIR reviews the policy context and the main issues covered in the ES. No further main issues were raised.

Conclusion

- 4.3.4. All relevant individual LIR issues arising are taken into account in Chapter 5.

4.4. CONFORMITY WITH THE NATIONAL POLICY STATEMENT

- 4.4.1. The Proposed Development conforms with the NNNPS; no other NPSs are relevant.

4.5. CONFORMITY WITH DEVELOPMENT PLAN

- 4.5.1. Relevant DPs and their policies are detailed at paragraph 3.12.

Conclusion

- 4.5.2. Conformity of the Proposed Development against relevant local planning, minerals and transport policies for each of the relevant local planning authorities is detailed in Chapter 5.

4.6. APPLICATION OF OTHER POLICIES

- 4.6.1. Other relevant policies are detailed in Chapter 3.

Conclusion

- 4.6.2. Conformity of the Proposed Development against other relevant policies is detailed in Chapter 5.

4.7. ENVIRONMENTAL IMPACT ASSESSMENT

Introduction

- 4.7.1. As is recorded in Chapter 1 of this Report and for reasons set out there, the application is EIA development. This section records the documents comprised in the ES and changes to those documents provided during the Pre-Examination and Examination stages. It 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.

- 4.7.2. This Section concludes on the question of whether the submitted ES and EIA process provide an adequate basis for decision-making by the SoS.

The Submitted ES

- 4.7.3. An ES [APP-30 to APP-80] was provided with the application documents. The documents comprising the ES are:

- Chapter 1: Introduction and accompanying appendix
- Chapter 2: Description of the scheme and accompanying appendix
- Chapter 3: Consultation
- Chapter 4: Alternatives assessment
- Chapter 5: Approach to environmental impact assessment and accompanying appendices
- Chapter 6: Air quality and accompanying appendices
- Chapter 7: Cultural heritage and accompanying appendices
- Chapter 8: Biodiversity and accompanying appendices
- Chapter 9: Landscape and accompanying appendices
- Chapter 10: People and communities and accompanying appendices
- Chapter 11: Noise and vibration and accompanying appendices
- Chapter 12: Road drainage and the water environment
- Chapter 13: Geology and contaminated land and accompanying appendices
- Chapter 14: Materials
- Chapter 15: Climate
- Chapter 16: Cumulative effects and accompanying appendix
- Chapter 17: Summary
- Chapter 18: Non-technical summary
- Chapter 19: Environmental masterplan
- Chapter 20: The Planning Inspectorates' scoping opinion

Environmental Management Documents

4.7.4. The ES is supported by the following existing and intended environmental management documents:

- a record of environmental actions and commitments (REAC) [[REP7-009](#)];
- an outline Construction Environmental Management Plan (OCEMP) [[REP7-007](#)];
- following approval, the Construction Environmental Management Plan (CEMP); and
- following completion and handover as an operational asset, the Handover Environmental Management Plan (HEMP).

4.7.5. These documents are defined and secured in the Schedule 2 Requirements in the dDCO [[REP9-005](#)]. Schedule 2 provides that the various schemes, details and plans to be approved must reflect the mitigation measures set out in the REAC which contains all of the mitigation commitments made in the ES. This is the mechanism to ensure that environmental mitigation is secured by the DCO.

4.7.6. Schedule 2 further requires that a final version of the CEMP is to be prepared, submitted and approved by the SoS prior to commencement of the authorised development.

The Applicable Regulations

- 4.7.7. The EIA directive⁶ is transposed into law for NSIPs in England and Wales by The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations), which came into force on 16 May 2017. This case is proceeding under the 2017 EIA Regulations.

An Adequate Environmental Impact Assessment Process and Environmental Statement

- 4.7.8. The ES, together with the other information submitted by the Applicant during the Examination, is adequate and meets the requirements under the EIA Regulations. Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS.

Conclusion on the Environmental Impact Assessment and the Environmental Statement

- 4.7.9. Taking the EIA process, the submitted ES, and the Environmental Masterplan into account, I conclude as follows:
- The Proposed Development is EIA development.
 - The submitted ES has provided a generally adequate assessment of the environmental effects of the Proposed Development, sufficient to describe the Rochdale Envelope for it and, as referred to within the dDCO, to secure its delivery within that envelope.

4.8. HABITATS REGULATIONS ASSESMENT

Introduction

- 4.8.1. As is recorded in Chapter 1 of this Report and for reasons set out there, the application is subject to HRA. This section sets out the documents submitted to support the HRA process for this application.

Habitats Regulation Assessment Documentation

- 4.8.2. The application was accompanied by a HRA Report [[APP-027](#)]. The Proposed Development is not located within any European sites and is not directly connected with, or necessary for the management of any European sites. Nor is it associated with emergency works. However, the potential presence of mobile qualifying species associated with Morecambe Bay and Duddon Estuary SPA / Morecambe Bay Ramsar site within and adjacent to the Proposed Development meant that there was a requirement for the potential for effects on such sites to be considered. The HRA Report therefore provides HRA Stage 1 (Screening) and HRA Stage 2 (Appropriate Assessment) of the Proposed Development.
- 4.8.3. The report concluded that the Proposed Development would not prevent Morecambe Bay and Duddon Estuary SPA / Morecambe Bay Ramsar site from achieving their Conservation Objectives, and therefore there would

⁶ Directive 85/337/EEC was amended three times and codified by 2011/92/EU, which has itself been amended by 2014/52/EU

be no adverse effect on the integrity of any European sites and features as a result of the Proposed Development.

4.8.4. The ExAs raised questions and sought advice, particularly from the relevant local authority and the statutory nature conservation body. The main area of contention with NE concerned shooting rights in and around the mitigation area. This issue was resolved through agreement of the Bird Mitigation Strategy.

4.8.5. Chapter 6 addresses issues relating to the content of the HRA report and submissions on it. Relevant HRA issues that might have implications for the wider planning balance of the decision are identified under the relevant natural environment heading in Chapter 5.

Conclusion on the Habitats Regulation Assessment

4.8.6. Taking the HRA process, the submitted HRA report and related evidence into account, I conclude as follows:

- The HRA evidence submitted to the Examination provides an adequate basis on which the SoS can make an appropriate assessment (AA) – if one is required;
- Consideration of factual matters and conclusions on HRA are reserved to Chapter 6 of this Report.

5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

5.1. INTRODUCTION

5.1.1. This chapter contains a number of sections, each of which deals with a significant topic that was assessed during the Examination. These are the IAPI and other issues which were important and relevant raised during the course of the Examination. The issues are dealt with alphabetically.

5.1.2. The sections all follow a common structure:

- *Policy Background*: which identifies the main policy against which the topic has been examined, principally from the NPSNN;
- *Applicant's Approach*: which summarises the main features of the approach that the Applicant has undertaken, as described in the application documents;
- *Issues Arising During the Examination*: which identifies matters that arose in the course of the Examination and my reasoning in respect of these issues;
- *Conclusions*: which distils my conclusions on the topic for carrying forward to Chapter 7.

5.1.3. The position between the Applicant and each main party was updated through the course of the Examination in the SoCG [in chronological order: REP1-006, REP1-007, REP1-008, REP1-009, REP2-053, REP2-054, REP4-023, REP4-024, REP7-024, REP8-013, REP9-013 and REP9-014].

5.1.4. To facilitate navigation, the Applicant has used formatting and colour coding to indicate changes in matters agreed, under discussion and not agreed as the Examination progressed. The position at the close of the Examination is captured at D9 [[REP9-007](#)].

Biodiversity

Policy Background

5.1.5. NPSNN paragraphs 5.22 to 5.38 detail the basis for the Examination by the ExA and decisions by the SoS relating to biodiversity issues.

5.1.6. NPSNN paragraph 5.22 states that: "*Where the project is subject to EIA the applicant should ensure that the environmental statement clearly sets out any likely significant effects on internationally, nationally and locally designated sites of ecological or geological conservation importance (including those outside England) on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity and that the statement considers the full range of potential impacts on ecosystems.*"

5.1.7. NPSNN paragraph 5.33 states that: "*development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design. When considering proposals,*

the Secretary of State should consider whether the applicant has maximised such opportunities in and around developments.”

Applicant’s Approach

- 5.1.8. The assessment undertaken within the ES has considered the likely impacts of the Proposed Development on designated sites of international, national and local importance, protected species, habitats and other species of principal importance for nature conservation.
- 5.1.9. There are no statutory or non-statutory designated sites of nature conservation importance within the Order limits. The Morecambe Bay and Duddon Estuary SPA and SSSI and Morecambe Bay Ramsar site boundary lies immediately to the north of the Proposed Development.
- 5.1.10. The Proposed Development crosses Main Dyke, a tributary of the River Wyre which flows directly into the Morecambe Bay and Duddon Estuary SPA and Morecambe Bay Ramsar site at two locations. A HRA Report [[REP2-027](#)], including HRA Screening and AA, has been undertaken for the Proposed Development. Findings and conclusions in relation to HRA are detailed in Chapter 6 of this Report.
- 5.1.11. In relation to protected species, the surveys undertaken as part of the EIA, confirmed the presence of great crested newts 110m north of the Proposed Development and the presence of barn owl within 300m of the Proposed Development, as well as bats and badgers along the Proposed Development corridor.
- 5.1.12. In accordance with NPSNN paragraph 5.36, ES Chapter 8: Biodiversity [[APP-047](#)] sets out the approach the Applicant has taken to avoid and mitigate the effects on ecology and nature conservation. In terms of mitigation, a number of measures are proposed in accordance with policy guidance.
- 5.1.13. Opportunities for environmental enhancement as part of the Proposed Development design have been taken where possible. This includes the creation of reptile hibernacula; installation of bird boxes; bee posts and wildflower meadows, to be created around pond and wetland areas along the route corridor; and landscape planting to increase connectivity of hedgerow and woodland habitats on either side of the carriageway.

Issues Arising During the Examination

- 5.1.14. Two issues arose during the Examination which the previous ExA raised in FWQs [[PD-007](#)] as follows:
- Q.1.3.2: requesting confirmation that the baseline information for European Protected Species Licences was sufficient and acceptable to NE; and
 - Q.1.3.3: mitigation proposed relating to European Protected Species was acceptable to NE.
- 5.1.15. In relation to these two issues NE confirmed agreement to issuing letters of no impediment relating to European Protected Species Licensing and

associated mitigation measures, as confirmed in the SoCG with NE [[REP8-013](#)].

Conclusion

5.1.16. I conclude that:

- in accordance with NPSNN paragraph 5.22 "*the environmental statement clearly sets out any likely significant effects on ... designated sites of ... conservation importance ... on protected species and on habitats and other species ... of principal importance for the conservation of biodiversity ... considers the full range of potential impacts on ecosystems*";
- the proposed development avoids significant harm to biodiversity interests; and
- where biodiversity benefits can be achieved, these have been incorporated as part of enhancement measures, to be delivered in accordance with the policy requirements.
- Taking all these matters into consideration I conclude that biodiversity matters do not weigh against the Order being made.

5.2. CLIMATE

5.2.1. Climate is a relevant planning issue, in addition to the IAPI, which was important and relevant and raised during the course of the Examination.

Policy Background

5.2.2. NPSNN paragraphs 4.36 to 4.47 relating to climate change adaptation, and paragraphs 5.16 to 5.19 carbon emissions detail the basis for the Examination by the ExA and decisions by the SoS.

Applicant's Approach

5.2.3. In compliance with NPSNN paragraph 4.40, a 30% allowance for climate change has been adopted as part of the design, in line with The UK Climate Projections 2009 (UKCP09) high emissions scenario 2080 projections.

5.2.4. ES Chapter 15 Climate [[APP-073](#)] details the Applicant's assessment of the impacts on greenhouse gas emissions and vulnerability of the Proposed Development to climate change. Chapter 15 sets out how the Proposed Development seeks to reduce greenhouse gas emissions as far as practicable to contribute to the UK's net reduction in carbon emissions. The design described in ES Chapter 2 Description of the Scheme [[APP-032](#)] aims to reduce the overall carbon footprint by reusing excavated materials where practicable. The Applicant states that the footprint of structures and junctions have been made as compact as practicable, ensuring minimal land use change and materials use. Additionally the design material resources have been evaluated and their carbon emissions calculated, with the aim of ensuring that material resources with lower carbon emissions have been fully considered.

5.2.5. A detailed FRA [[REP2-025](#)] has been undertaken for the Proposed Development. The latest EA climate change guidance has been used in the FRA and this has been agreed with the EA. The FRA includes an assessment to ensure that the Proposed Development is not at increased risk of flooding over its lifetime due to climate change.

Issues Arising During the Examination

5.2.6. The previous ExA requested the Applicant to confirm that their evidence base adequately took climate change into account [[PD-007](#)]. In detailing the evidence base the Applicant confirmed that a suitable allowance to represent the uplift in tidal flood levels in the Wyre Estuary in accordance with the UK Climate Impacts Programme 2018 (UKCP18) H++ scenario had been agreed with the EA as detailed in the SoCG [[REP4-023](#)].

5.2.7. Various representations were submitted concerning projected flooding and the basis for estimates, for example [[REP4-025](#)]. The Applicant confirmed that the FRA [[REP2-025](#)] included an allowance for climate change to the year 2120, that is based on the findings of the most current UKCP18 research, published in November 2018. The UKCP18 scenario applies an increase of 1.253m on the 0.5% AEP present day tidal boundary in the Wyre Estuary, and this margin of uplift has been agreed as appropriate by the EA.

5.2.8. The Climate Change Act 2008 (2050 Target Amendment) Order 2019, published in June 2019, amended the 2050 emissions target from 80% to 100%. I requested the Applicant to provide an update on how the amended emissions target in the NPSNN affects assessments made in the application [[PD-018](#)]. In response the Applicant confirmed that "*Environmental Statement 15: Climate ...states that 'Overall, the effects on climate are anticipated to be Not Significant during the construction phase. At this stage, it is anticipated that due to the quantity of material resources required for the Scheme, a further carbon assessment, including GHG emissions, should be undertaken post-construction. During operation, effects on climate are anticipated to be Not Significant.'*" This conclusion would not change when considering the revised targets." [[REP9-010](#)]. I consider that the Applicant has demonstrated that the ES has made a realistic assessment of the effects of the Proposed Development on climate. Furthermore, that the effects are anticipated to be Not Significant; and that these would not change for the amended emissions target.

Conclusion

5.2.9. I conclude that:

- the ES sets out how the proposal will take account of the projected impacts of climate change;
- adaptation measures have been assessed in the ES which also sets out how and where such measures are proposed to be secured;
- evidence is provided of the carbon impact of the project and an assessment against the Government's carbon budgets; and

- the mitigation measures relating to design and construction are viewed to be adequate.
- Taking all these matters into consideration I conclude that climate matters do not weigh against the Order being made.

5.3. CULTURAL HERITAGE

Policy Background

- 5.3.1. NPSNN paragraphs 5.126 to 5.132 detail the basis for the Examination by the ExA and decisions by the SoS relating to historic environment issues; I am considering cultural heritage on this basis.
- 5.3.2. NPSNN paragraph 5.131 states: *"When considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset's conservation. The more important the asset, the greater the weight should be...Substantial harm to or loss of a grade II Listed Building or a grade II Registered Park or Garden should be exceptional. ..."*

Applicant's Approach

- 5.3.3. ES Chapter 7 Cultural Heritage [[REP2-031](#)] considers the potential effects of the Proposed Development on archaeology and cultural heritage during both the construction and operational phases. The assessment has been undertaken in accordance with Design Manual for Roads and Bridges (DMRB), Volume 11 Section 3 Part 2 (Highways Agency, 2007), the Chartered Institute for Archaeologists (CifA) 'Code of Conduct' (CifA 2014a) and 'Standards and Guidance for Historic Environment Desk Based Assessments' (CifA 2014b).
- 5.3.4. There are no designated heritage assets located within the Order limits of the Proposed Development. However, a Grade II listed Ice House at Singleton Hall (60m to the south of the Order limits) and Singleton Conservation Area (775m to the south of the Order limits) are located in proximity to the Proposed Development.
- 5.3.5. With regards to the Grade II listed Ice House (LB8), mitigation would comprise an area of new woodland planting around the existing planting within Singleton Park together with acoustic fencing. Planting would result in an additional area of separation between the Ice House and the Proposed Development, with the aim of helping to maintain the green rural setting of the receptor.
- 5.3.6. The conclusions of the ES are that the significance of the Grade II listed Ice House would be negatively impacted during both construction and operation. The rural setting of the Ice House is a contributor to the receptor's significance. Impacts are predicted to be a moderate significance of effect, which is considered to be significant.
- 5.3.7. The Applicant identifies that work within the Order limits to the north of Garstang Road would result in the direct loss of potential archaeological

remains related to the known Romano-British settlements to the west of the Main Dyke at Moorfield Park. This effect has been assessed within the ES as negative and significant. An archaeological watching brief, trial trenching and boreholes would therefore be undertaken. The dDCO (Schedule 2 Part 1 (9)) [[REP9-005](#)] requires that a written scheme for the investigation of areas of archaeological interest is produced and approved by the relevant authorities, before development may commence.

Issues Arising During the Examination

Archaeology

- 5.3.8. The issue of direct loss of potential archaeological remains related to the known Romano-British settlements to the west of the Main Dyke at Moorfield Park was raised by the previous ExA in FWQ 1.4.1 [[PD-007](#)], and whether Requirement 9 in the dDCO adequately addressed the issue by investigation for approval by relevant authorities.
- 5.3.9. The Applicant responded [[REP2-041](#)] that the archaeological investigations would be undertaken during the Examination period and the mitigation designed and consulted with the archaeological advisor to LCC. Following this the Archaeology Mitigation Strategy and draft Written Scheme of Investigation will be submitted to the ExA prior to the close of the Examination.
- 5.3.10. LCC confirmed their agreement with the mitigation measures proposed, as confirmed in the SoCG with LCC [[REP9-013](#)].

Heritage

- 5.3.11. The issue of the adverse impact on the setting of heritage assets including the Grade II listed Ice House was raised by the previous ExA in FWQ 1.4.2 [[PD-007](#)]. The Applicant confirmed that the mitigation proposed in ES Chapter 7: Cultural Heritage had been deemed appropriate by Historic England, as the statutory consultee for designated assets such as the Ice House as confirmed in the SoCG [[REP1-006](#)].
- 5.3.12. FBC considered that it would be preferable for the acoustic fence proposed to the east of the Lodge Lane bridge to be replaced with an alternative boundary treatment (e.g. a red brick wall) to afford a more sympathetic relationship with the vernacular of neighbouring buildings [[RR-009](#)].
- 5.3.13. The Applicant responded that a commitment had been included within the REAC [[REP7-010](#)] to state that the specification of the material of the acoustic fencing required along the Singleton Hall access road will be discussed with FBC prior to construction commencing. The Environmental Masterplan [[REP6-006](#)] has been updated accordingly. FBC confirmed their agreement with the mitigation measures proposed; as confirmed in the SoCG with FBC [[REP7-024](#)].

Conclusion

5.3.14. I conclude that:

- the significance of the Grade II listed Ice House would be negatively impacted during both construction and operation. Impacts are predicted to be a moderate significance of effect. In accordance with NPSNN paragraph 5.132 this needs to be weighed against the public benefit of development. The ES demonstrates the public benefits of the Proposed Development in terms of the role the Proposed Development would play in underpinning the Government's social, economic and environmental policy aspirations, and the improved conditions in which people travel that the Proposed Development would provide. The ExA therefore concludes that these considerable predicted public benefits outweigh the anticipated moderate harm; and
- that the potential effects of the Proposed Development on archaeology and cultural heritage during both the construction and operational phases has been appropriately assessed and the mitigation measures proposed are acceptable.
- Taking all these matters into consideration I conclude that cultural heritage matters do not weigh against the Order being made.

5.4. EMISSIONS

Policy background

- 5.4.1. NPSNN paragraphs 5.6 to 5.11 detail the basis for the Examination by the ExA and decisions by the SoS relating to air quality issues; I am considering emissions on this basis.
- 5.4.2. Current UK legislation sets out health-based ambient air quality objectives. In addition, the European Union has established common, health-based and eco-system based ambient concentration limit values (LVs) for the main pollutants in the Ambient Air Quality Directive (2008/50/EU) ('the Air Quality Directive'), which Member States are required to meet by various dates.
- 5.4.3. Where the impacts of the project (both on and off-scheme) are likely to have significant air quality effects in relation to meeting EIA requirements and / or affect the UK's ability to comply with the Air Quality Directive, the applicant should undertake an assessment of the impacts of the proposed project as part of the ES.
- 5.4.4. NPSNN paragraph 5.10 states: "*The Secretary of State should consider air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the scheme...*"
- 5.4.5. In addition to information on the likely significant effects of a project in relation to EIA, the SoS must be provided with a judgement on the risk as to whether the project would affect the UK's ability to comply with the Air Quality Directive.

5.4.6. NPSNN paragraph 5.11 advises that "Air quality considerations are likely to be particularly relevant where schemes are proposed:

- *within or adjacent to Air Quality Management Areas (AQMA) ..."*

Applicant's Approach

5.4.7. ES Chapter 6: Air Quality [[APP-039](#)] describes existing air quality, forecasts air quality at the time of opening and assesses the significance of environmental effects in line with the NPSNN requirements, as to whether the effects of the Proposed Development are significant and whether it would affect the UK's ability to comply with the Air Quality Directive.

5.4.8. The ES notes that that no AQMAs have been designated within FBC, although there is one in WBC (Chapel Street AQMA in Poulton-le-Fylde), approximately 1.2kmsouth west of Skippool Junction.

5.4.9. The ES document concludes:

- Base year (2015) monitored and modelled concentrations indicate that air quality concentrations do not exceed Air Quality Strategy (AQS) Objectives.
- The evaluation of the operational significance of effects for air quality is that the Proposed Development does not have a significant impact on local air quality.
- The assessment demonstrates that in terms of impact on compliance with the EU Directive on ambient air quality (2008/60/EC), the Proposed Development is Low Risk in relation to affecting the UK's reported ability to comply with the EU Directive in the shortest timescales possible, as exceedances of the EU limit values are not predicted.
- Construction phase impacts from dust and emissions would be negligible with the implementation of mitigation measures included in the OCEMP [[REP7-007](#)].

Issues Arising During the Examination

5.4.10. No issues relating to air quality arose during the Examination.

Conclusion

5.4.11. I conclude that:

- in accordance with paragraph 5.10 of the NPSNN the ES has adequately considered air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the Proposed Development, and that the project is unlikely to lead to a breach of the air quality thresholds set out in domestic and European legislation; and
- in accordance with paragraph 5.9 of the NPSNN the ExA agrees with the Applicant's assessment that the Proposed Development is low risk in terms of the UK's ability to comply with the Air Quality Directive.

- Taking all these matters into consideration I conclude that air quality matters do not weigh against the Order being made.

5.5. LANDSCAPE AND VISUAL

Policy Background

- 5.5.1. NPSNN paragraphs 5.144 to 5.146, 5.149 and 5.158 relating to landscape and visual impacts detail the basis for the Examination by the ExA and decisions by the SoS relating to landscape issues.
- 5.5.2. NPSNN paragraph 5.178 deals with decision making regarding projects located in the GB. This states *"When located in the GB national networks infrastructure projects may comprise inappropriate development. ... there is a presumption against it except in very special circumstances. 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."*

Applicant's Approach

Landscape effects

- 5.5.3. The assessment undertaken within ES Chapter 9: Landscape [[APP-057](#)], notes that the Site of the Proposed Development lies outside of any statutory or non-statutory designated landscapes.
- 5.5.4. The site does, however, lie within landscape National Character Area 32: Lancashire and Amounderness Plain and within the county-level Landscape Character Area (LCA) 15d: The Fylde, within Landscape Character Type (LCT) 15: Coastal Plain. The wider study area also includes LCA 18c Wyre Marshes, and Urban Landscape Type Suburban.
- 5.5.5. The national and county-level LCTs and LCAs cover relatively large areas and consequently a Scheme-specific character study has been undertaken as part of the assessment in order to add local detail to the character descriptions. This study has identified 6 local LCAs and 9 local Townscape Character Areas (TCAs). Of these 3 LCAs and 3 TCAs are considered to be potentially affected by the Proposed Development. Of these receptors and taking account of the nature of the Proposed Development, 2 TCAs are considered to have a low value and low sensitivity, 1 TCA and 2 LCAs a moderate value and moderate sensitivity, and 1 LCA a high value and high sensitivity.
- 5.5.6. The Proposed Development includes a range of measures designed to mitigate for potential effects on landscape character and visual amenity. This includes the retention of existing vegetation and features within the Order limits, along with mitigation measures identified on the Environmental Masterplan both during the construction and operational phases [[REP6-006](#)].

- 5.5.7. The dDCO (Schedule 2 Part 1 (5)) [[REP9-005](#)] requires that a landscaping scheme, including implementation timetables and aftercare measures, is produced and approved by the relevant authorities, before development may commence.
- 5.5.8. The residual effects assessment undertaken within ES Chapter 9: Landscape [[APP-057](#)] assesses the construction phase effects of the Proposed Development on landscape and townscape character (and features) as being slight for the majority of character areas, with two improving to become beneficial effects. A large adverse effect was predicted for LCAs 4, 5 and 6 (Main Dyke Farmland, Singleton Enclosed Farmland and Singleton Hall and Parkland), during the construction phase of the Proposed Development. A moderate adverse, reducing to neutral effect on TCA3 (Skiptool Bridge) was predicted, with a moderate adverse, reducing to a minor beneficial effect on TCA5 (A585 Mains Lane).
- 5.5.9. The worst-case operational phase effects of the Proposed Development on landscape and townscape character (and features) have been assessed within the ES as slight adverse or neutral for NCA32 (Lancashire and Amounderness Plain) and LCA 15d (The Fylde), with no discernible effect on LCA 18c (Wyre Marshes) and TCA3 (Skiptool Bridge). A slight beneficial effect on TCA5 and TCA7 (A585 Mains Lane and Little Singleton) has been predicted. A large adverse significant effect on LCAs 4, 5 and 6 (Main Dyke Farmland, Singleton Enclosed Farmland, and Singleton Hall and Parkland) is also predicted [[APP-057](#)].
- 5.5.10. The Applicant's view is that:
- over time, and by year 15, the proposed mitigation planting would become established and start to mature, and the overall planting scheme itself would form a notable integrating landscape feature within LCAs 4, 5 and 6;
 - the planting would also further reduce the visibility of traffic travelling along the Proposed Development;
 - by year 15 the overall magnitude of impact on LCAs 4, 5 and 6 would reduce to moderate adverse; and
 - with moderate sensitivity, this would result in a moderate adverse and significant effect.

Sensitive receptors

- 5.5.11. The assessment undertaken within ES Chapter 9: Landscape [[APP-057](#)], identifies that a Zone of Theoretical Visibility (ZTV) has been generated for an area extending to 5km, representing the theoretical area from which any part of the Proposed Development may be seen.
- 5.5.12. Twenty-one representative viewpoints have been assessed in detail for effects on visual amenity, and a further desk-based assessment has been undertaken for a wide range of other potential visual receptors.
- 5.5.13. During the construction phase significant adverse effects on local visual amenity would be experienced at 13 of the 21 representative viewpoints.

Of these, 2 representative viewpoints would experience very large adverse effects, with 10 viewpoints experiencing a large adverse effect and 1 experiencing moderate adverse effects. 28 individual or groups of visual receptors, all within 300m of the Order limits, would experience significant adverse effects during the construction phase.

- 5.5.14. Adverse effects at year 1 and year 15 are assessed; by year 15 of the Proposed Development's operation, 9 of the 21 representative viewpoints would continue to experience significant adverse effects. Of these, 1 would experience a large adverse effect and 6 would experience a moderate adverse effect.
- 5.5.15. By year 15, 7 individual or groups of visual receptors reported to experience significant adverse effects at opening year would continue to experience significant effects.
- 5.5.16. Approximately 104 residential properties located along the existing A585 Mains Lane may experience views with reduced traffic flows as a result of the Proposed Development. This would result in improvements to the view and a slight beneficial effect. However, in most cases views from properties are filtered as a result of in-curtilage vegetation and the nature of the properties being set back from the highway. Furthermore, a number of these may also, as a result of the Proposed Development, experience filtered visibility of the operational Proposed Development and its traffic flows to the rear of their gardens. At worst, by year 15, these receptors would experience a slight adverse effect, which is not considered significant by the Applicant.
- 5.5.17. The Applicant identifies the public benefits of the Proposed Development in the ES, including the role the Proposed Development would play in underpinning the Government's social, economic and environmental policy aspirations, and the improved conditions in which people travel that the Proposed Development would provide.
- 5.5.18. I consider that the Applicant has adequately considered effects on the landscape, benefits of the Proposed Development and proposed reasonable mitigation to minimise harm.

Issues Arising During the Examination

- 5.5.19. Part of the Proposed Development, about 2.7ha around the Skippool junction, falls within the GB. NSIP schemes are deemed to be inappropriate development in the GB. The previous ExA asked the Applicant if the harm to the GB and any other harm clearly outweighed other considerations so as to amount to the very special circumstances needed to justify the development, FWQ 1.5.2 [[PD-007](#)].
- 5.5.20. The Applicant responded that the section of Proposed Development lying within GB land is limited to improvement works to Skippool Junction and Amounderness Way, extending a short distance (around 400m) to the west of the existing Skippool roundabout. In view of the nature of the Proposed Development proposals and their containment within the existing highway boundary, the Applicant considers that this would not

lead to an extension of the urban area, nor further incursion into the GB. Further the Applicant asserts that it would also not impact on or reduce the ability of the GB to prevent neighbouring towns from merging. The Applicant asserted that based on the above, potential harm to the GB would be minimal and would be clearly outweighed by the very special circumstances justifying the Proposed Development [[REP2-041](#)]. I agree that the incursion into the GB is contained within the existing highway boundary and I consider this further in Chapter 7. I note that the ES demonstrates anticipated public benefits of the Proposed Development in terms of the role it would play in underpinning the Government's social, economic and environmental policy aspirations, and the improved conditions in which people would travel.

- 5.5.21. The dDCO would allow for deviations to the approved Proposed Development whilst under construction. The most significant of those would be the depth and restoration levels for the borrowpits. The previous ExA asked the Applicant to justify these variations, how they have been considered in terms of the Landscape and Visual Impact Assessment (LVIA) and whether such deviations would constitute material changes to the Proposed Development; FWQ 1.5.3 [[PD-007](#)].
- 5.5.22. The Applicant explained that the limits of deviation as set out in the dDCO would allow for approximately 70,000m³ of material to be excavated from the borrow pits from a depth of up to 10m, however, the land would be reinstated following use to a maximum of 2.6m below existing levels [[REP2-041](#)]. The large limit of deviation relates to the depth at which this amount of material could be excavated, due to lack of certainty of the quality and suitability of the material. The Applicant noted that removing 70,000m³, from 10m below existing levels, then restoring the land to 2.6m below represents the worst-case as a lower amount (or none at all) could also be extracted. The ES Chapter 9: Landscape [[APP-057](#)] has assessed worst-case during construction when bulk earthworks, and bulk earthwork excavations would be undertaken and the full amount of material (70,000m³) would be excavated from the borrow pits and used during construction. Following the use of this material, the borrow pits would be restored in accordance with the Borrow Pit Restoration and Aftercare Plan (Appendix N, OCEMP) [[REP7-008](#)] to a maximum of 2.6m below existing levels. This has been assessed in the LVIA which is secured as part of the CEMP, in accordance with dDCO Schedule 2 Requirement 4 [[REP9-005](#)].
- 5.5.23. In answer to FWQ 1.2.6 the Applicant confirms that the maximum limits of deviation stated in Article 6 of the dDCO [[REP9-005](#)] were assessed within the ES [[REP2-041](#)].
- 5.5.24. The LAs did not comment on this matter. One IP requested confirmation that their land would be used as borrow pits and not as quarrying areas for the removal of minerals and other material which is not then replaced [[REP6-025](#)]. The Applicant responded that the need for the borrow pits would be determined and confirmed with the landowner during the detailed design stage [[REP7-020](#)].

5.5.25. I consider that the Applicant provided substantiated justification for the volumes of material required from borrow pits and the deviations stated in the dDCO. I also consider that the Borrow Pit Restoration and Aftercare Plan was realistic and adequately secured in the dDCO.

Conclusion

5.5.26. I conclude that:

- the application adequately considers landscape effects in terms of the existing landscape likely to be affected and nature of the effect likely to occur. In judging the impact of the project on landscape I consider that the application minimises harm to the landscape, providing reasonable mitigation where possible and appropriate;
- the benefits of the development outweigh the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area; and
- part of the Proposed Development falls within the GB. The incursion into the GB is contained within the existing highway boundary. The ES demonstrates anticipated public benefits of the Proposed Development in terms of the role it would play in underpinning the Government's social, economic and environmental policy aspirations, and the improved conditions in which people would travel. These matters are returned to in Chapter 7 under Planning Balance.
- Taking all these matters into consideration I conclude that landscape and visual matters do not weigh against the Order being made.

5.6. NOISE AND VIBRATION

5.6.1. Noise and vibration is a relevant planning issue, in addition to the IAPI, which was important and relevant raised during the course of the Examination.

Policy Background

5.6.2. NPSNN paragraphs 5.189 to 5.191 set out guidance for undertaking the assessment of noise impacts.

Applicant's Approach

5.6.3. An assessment of both construction and operational road traffic noise has been undertaken within ES Chapter 11 Noise and Vibration [[APP-064](#)] in accordance with DMRB, which has considered road traffic noise impacts in both the short-term (year of opening) and long-term (15 years after opening).

5.6.4. ES Chapter 11 concludes that road traffic noise nuisance associated with the Proposed Development would result in both increases and decreases in road traffic noise nuisance compared to the existing situation. This is regarded as being typical for a bypass scheme where traffic noise contribution to an area is transferred from the existing road network to a new scheme located in areas of previously low-level road traffic noise.

- 5.6.5. The findings of the noise assessment indicate that, in the short and long-term, adverse changes in road traffic noise level above a Significant Observed Adverse Effect Level (SOAEL), where significant adverse impacts on health and quality of life from operational road traffic noise would occur, would not be of a sufficient magnitude to be considered significant. This has been achieved through the implementation of mitigation into the design, including the use of a low noise/thin surfacing system to be laid on new or altered roads and 2m and 3m high acoustic/landscape bunds.
- 5.6.6. A CEMP and Noise and Vibration Management Plan would be prepared and agreed with the SoS, in consultation with FBC and WBC, prior to commencing construction. An OCEMP [[REP7-008](#)] has been prepared together with a REAC [[REP7-010](#)]. This includes a set of best practice working methods for the control of construction noise and vibration. Noise monitoring during construction would be undertaken at key sensitive receptors to ensure that mitigation was working effectively. The dDCO (Schedule 2 Part 1 (4)) [[REP9-005](#)] requires that a CEMP is produced and approved by the SoS, following consultation with the relevant planning authority and NE to the extent that it relates to matters relevant to their function, before development may commence.

Issues Arising During the Examination

- 5.6.7. Various residents raised concerns regarding the effects on living conditions caused by increased noise from the Proposed Development, for example [[RR-017](#)]. In response the Applicant stated that increases in road traffic noise levels generated by the Proposed Development in this location would be mitigated to a minimum and below a level where significant adverse effects on health would occur through the implementation of low noise surfacing, a 2m high noise barrier and the Proposed Development being located within a cutting [[Paragraph 1.8.2 of REP2-041](#)].
- 5.6.8. The previous ExA asked a series of questions relating to: Noise Insulation Regulations; use of low noise surfacing; noise survey plan; and heights and locations of earth mounds and acoustic fencing [[PD-007](#)]. The Applicant provided detailed and substantiated answers to these questions [[Paragraphs 1.9.1 to 1.9.4 of REP2-041](#)].

Conclusion

- 5.6.9. I conclude that:
- the Proposed Development seeks to avoid significant adverse impacts on health and quality of life from noise;
 - the Proposed Development seeks to mitigate and minimise other adverse impacts on health and quality of life from noise; and
 - that the dDCO secures the mitigation measures (Schedule 2 Part 1 (4)) put forward by the Applicant to ensure that the noise levels do not exceed those described in the assessment.
 - Taking all these matters into consideration I conclude that noise and vibration matters do not weigh against the Order being made.

5.7. SOCIO-ECONOMIC EFFECTS

5.7.1. There are overlaps between topics in this Chapter and the following Transportation and Traffic Chapter, for example: benefits of the Proposed Development; how the Proposed Development would support economic growth and housing development. Because these topics are also linked to other transportation and traffic matters, they have been discussed in that chapter.

Policy Background

5.7.2. A number of sections in the NPSNN relate to socio-economic effects including the following:

- Paragraphs 3.19 – 3.22 Accessibility;
- Paragraphs 4.79 – 4.82 Health; and
- Paragraphs 5.162 – 5.185 Land use

These detail the basis for the Examination by the ExA and decisions by the SoS.

Applicant's Approach

5.7.3. ES Chapter 10 People and Communities [[APP-061](#)] presents the assessment of impacts associated with the Proposed Development on people and communities. This assessment includes the socio-economic effects of the Proposed Development. The methodology adopted by the Applicant in undertaking this assessment included the following:

- items scoped in and out of the assessment;

People and communities includes a number of sub-topics. The following sub-topics have been scoped in to the assessment during both the construction and operation phases of the Proposed Development:

- Land use (this includes development land, tourism and agricultural land);
- Journey length, severance and amenity;
- View from the road; and
- Driver stress.

No people and communities themes have been scoped out.

- gathering baseline information;
- post-scoping and preliminary environmental information consultation; and
- identifying mitigation and enhancement measures and assessing residual effects;

5.7.4. ES Chapter 10: People and Communities [[APP-061](#)] concludes that, during operation, *"the Scheme would improve connectivity and minimise potential conflicts for NMUs by improving the safety of pedestrians, equestrians and cyclists around the existing A585; the impact of the*

Scheme in terms of journey length, travel patterns and amenity is therefore considered to be beneficial.”

- 5.7.5. ES Chapter 10: People and Communities [[APP-061](#)] identifies that during operation, new and improved crossing facilities would improve connectivity, enhancing the permeability of the area.
- 5.7.6. ES Chapter 10 People and Communities [[APP-061](#)] considers that the improved connectivity as a result of the Proposed Development has the potential to improve human health through increasing opportunities for walking and cycling. This is particularly important as physical activity levels in both FBC and WBC areas are below the national average. It is also maintained that the design of the new road to a higher highway standard would help reduce uncertainty, fear and driver stress. The Proposed Development is therefore predicted to have a beneficial effect on human health through reduced stress levels typical of delayed or congested road use.
- 5.7.7. The future baseline assessment in ES Chapter 10 People and Communities [[APP-061](#)] includes for projections of economic growth, wealth creation and employment opportunities for a growing population from 2012 to 2030, based upon FBC’s Economic Development Strategy and Action Plan 2012 to 2030.
- 5.7.8. In addition, the SoR summarises the Scheme objectives which includes improving community cohesion, supporting employment and residential/commercial development and growth opportunities; reducing the impact on the wider environment for air quality and noise and supporting the removal of obstacles to economic growth potential in both Wyre and Fylde [[REP8-009](#)].
- 5.7.9. I consider the Applicant’s assessment of the impacts of the Proposed Development to be soundly based. Additionally, the anticipated benefits are considered realistic.

Issues Arising During the Examination

- 5.7.10. The issue relating to the GB is dealt with in the Landscape section above. No other issues relating to socio-economic effects arose during the Examination.

Conclusion

- 5.7.11. I conclude that:
- in accordance with paragraph 3.21 of the NPSNN the Applicant has considered the needs of disabled people because the Proposed Development would have an overall significant positive effect on NMUs;
 - in accordance with paragraph 3.22 of the NPSNN the Proposed Development will deliver improvements that reduce community severance and improve accessibility;

- in accordance with paragraph 4.82 of the NPSNN the Applicant has identified measures to avoid, reduce or compensate for adverse health impacts as appropriate; and
- the Applicant has assessed the Proposed Development in accordance with paragraphs 5.165 to 5.168 of the NPSNN. This assessment concludes: no direct impacts on open space, sports or recreation buildings; neutral impact overall on the visitor economy; no residual effects in relation to agricultural land and farm businesses; no loss of existing open space, sport or recreational facilities; and minimal agricultural land use change.
- Taking all these matters into consideration I conclude that socio-economic effects weigh positively for the Order being made.

5.8. TRANSPORTATION AND TRAFFIC

Policy background

- 5.8.1. NPSNN refers extensively to transportation and traffic requirements. This includes: paragraph 3.17 (Sustainable transport); 4.6 (local transport model); and 5.203 to 5.205 (Impacts on transport networks).
- 5.8.2. Whilst the LCC Local Transport Plan (2011-2021) provides a strategic framework in which it supports a number of improvements to tackle congestion and bring forward new development.
- 5.8.3. The majority of the Proposed Development falls within FBC. The Adopted Local Plan (The Fylde Borough Local Plan (As Altered) (Oct 2005)) seeks to reduce traffic congestion on the existing A585(T) trunk road. Policy T1 Strategic Highway Improvements identifies the A585 Windy Harbour to Skippool Improvement Scheme as a road scheme being promoted by the Applicant and supported by the Council.

Applicant's Approach

- 5.8.4. The Transport Assessment [[APP-084](#)] provides details of the traffic forecasts prepared for the preferred route of the Proposed Development. This is based on the Department for Transport's (DfT's) standard assumptions about growth in travel demand and incorporates proposed local housing and employment development and network assumptions.
- 5.8.5. One of the RIS's Key Performance Indicators is helping cyclists, walkers and other vulnerable users of the Network. The Proposed Development seeks to improve connectivity and minimise potential conflicts for NMUs by improving the safety of pedestrians, equestrians and cyclists around the existing A585, which would be de-trunked. This includes controlled crossing facilities for pedestrians and cyclists at Skippool Junction, with pedestrian and cycle access provided at the Skippool Bridge and Poulton Junctions. A new footbridge (Grange Footbridge) would include the creation of a new, accessible footpath with links across Garstang New Road and to the wider PRow network. New and improved crossing facilities aim to improve connectivity, enhancing the permeability of the area, thus having a beneficial impact on community severance.

Issues Arising During the Examination

5.8.6. Several RRs, including [[RR-003](#); [RR-004](#); [RR-017](#); [RR-022](#); and [RR-025](#)] raised the following issues. Additionally a number of IPs voiced similar concerns during OFH2 on 3 July 2019 [[EV-011](#)].

- possible alternative routes;
- the case for and benefits of the Proposed Development;
- concerns that the public benefits would be limited in terms of the travel time saved set against the cost of the Proposed Development;
- how the Proposed Development would support economic growth and housing development;
- how the Proposed Development fits into any planned improvements for the A585 corridor from the M55 to Fleetwood; and
- how the use of traffic lights would assist in meeting one of the Proposed Development's objectives which is to improve journey time reliability by reducing congestion.

These issues were asked by the previous ExA in FWQ 1.6.1 and 1.6.2 [[PD-007](#)].

5.8.7. The Applicant responded [[REP2-041](#)] detailing:

- the options selection process during which a range of 9 possible options were developed in sufficient detail to allow them to be considered;
- the consultation process in which two main options were presented leading to a preferred route identification;
- a statutory consultation with more detail provided of the single preferred route option;
- the benefits of the Proposed Development including: savings in travel time and vehicle operating costs; reduction in accidents; improvements in greenhouse gas emissions, air quality and noise levels; and journey reliability. These benefits are quantified to generate the measures of economic worth;
- the provision for future housing and economic growth forecasts totalling a Proposed Development benefit of £51m over the 60-year appraisal period;
- the other associated road schemes that the Applicant is currently developing including: Norcross junction improvement; J3 M55 junction improvement; and various cycle routes; and
- junction performance assessment and the use of traffic lights to introduce standardisation of junctions and continuity to the road user. The Applicant anticipates that this would facilitate the free-flowing of traffic and prevent slowing which will improve journey times and reduce congestion.

5.8.8. Various representations were received concerning the provision for cycling and NMUs within the Proposed Development, for example [[REP3-021](#)] and [[REP3-025](#)]. These concerned:

- the cycling route from Fleetwood to Skippool;
- provision for pedestrians and cyclists; and
- potential loss of bus services.

- 5.8.9. The Applicant responded [[REP4-022](#)] detailing:
- reasons for the cycle routes selected along with details and justification of the design considerations employed;
 - proposed parts of the existing road network (A585) to be bypassed and/or de-trunked to be used for pedestrians and cyclists along with the design criteria employed; and
 - references to LCC's LIR in which the potential loss of bus service number 42 is addressed and the possible modification of other bus services in the area to serve Little Singleton;
- 5.8.10. With respect to the GB, I note the incursion into the GB is contained within the existing highway boundary and as such, I conclude that harm to the GB would be minimal.
- 5.8.11. I consider that the Applicant has provided detailed and substantiated answers to the transportation and traffic issues raised by IPs.

Conclusion

- 5.8.12. I conclude that:
- the Applicant has used reasonable endeavours to address the needs of cyclists, pedestrians and other NMUs in the design;
 - the application was supported by an appropriate local transport model including an assessment of the benefits and costs of the Proposed Development;
 - the Proposed Development has been developed and options considered in the light of relevant local policies and local plans; and
 - the Applicant has demonstrated anticipated public benefits of the Proposed Development in terms of improved transport as well as economic benefits.
 - Taking all these matters into consideration I conclude that transportation and traffic matters do not weigh against the Order being made.

5.9. WATER ENVIRONMENT

Policy Background

- 5.9.1. NPSNN paragraphs 5.219 to 5.231 relating to water quality and resources detail the basis for the Examination by the ExA and decisions by the SoS.

Applicant's Approach

- 5.9.2. ES Chapter 12: Road Drainage and the Water Environment [[APP-068](#)] sets out the Applicant's assessment of the road drainage and the water environment impacts associated with the Proposed Development.
- 5.9.3. Chapter 12 sets out the relevant baseline conditions of the study area, including surface and groundwater features, as well as groundwater quality and resources.

- 5.9.4. In consultation with the EA the Applicant concluded that no significant impacts on the abstraction located in the study area are predicted during construction or operation of the Proposed Development.
- 5.9.5. The OCEMP [[REP7-008](#)] aims to ensure the quality of the water environment does not deteriorate during construction. The OCEMP aims to include best practice for the management of environmental impacts during construction. It is expected to include a Pollution Control Plan to safeguard the quality of surface water and groundwater, drawing on standard best practice and relevant CIRIA (the Construction Industry Research and Information Association) publications.
- 5.9.6. During operation, the pollution potential of the Proposed Development has been tested, during both routine runoff and accidental spillage scenarios, using the DMRB Highways Agency Water Risk Assessment Tool (HAWRAT). The findings, detailed in the drainage strategy, which is appended to the FRA [[REP2-025](#)] have informed the drainage design.
- 5.9.7. Residual effects are assessed in the ES as being not significant during both the construction and operational phases.
- 5.9.8. In compliance with NPSNN paragraph 4.26, during the options stage, Environmental Assessment Reports were prepared which assessed the options in accordance with the DMRB Volume 11. Through this process the Applicant argues that the Proposed Development has considered alternatives in line with the requirements of the Sequential Test [[REP2-025](#)].

Issues Arising During the Examination

- 5.9.9. The previous ExA asked a series of questions relating to: groundwater investigation; compensatory storage areas; replacement culverts; and enhanced tidal modelling [[PD-007](#)]. The Applicant provided detailed and substantiated answers to these questions [paragraphs 1.7.1 to 1.7.4 of [REP2-041](#)].
- 5.9.10. Various residents raised concerns regarding the effects of potential flooding in the Skippool area caused by the Proposed Development, for example [[REP2-057](#), [REP2-058](#), [REP2-063](#)]. In response the Applicant explained the drainage design of the Proposed Development which aims to ensure no detriment to existing surface water flood risk, and stated that a FRA [[REP2-025](#)] had been prepared and the EA has accepted its contents as stated in the SoCG [[REP4-023](#)].

Conclusion

- 5.9.11. I conclude that:
- in accordance with NPSNN paragraphs 5.221 and 5.222 the Applicant has made early contact with the relevant regulators, including the EA, LCC as the Lead Local Flood Authority (LLFA), WC and FBC. SoCG have been agreed with the EA and MMO [[REP9-007](#)]; and

- the Applicant has put forward proposals to mitigate adverse effects on the water environment and these Requirements are attached to the dDCO.
- Taking all these matters into consideration I conclude that water environment matters do not weigh against the Order being made.

6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

6.1. INTRODUCTION

- 6.1.1. This Chapter of the Report sets out my analysis and conclusions relevant to the Habitats Regulations Assessment. This will assist the SoST, as the competent authority, in performing their duties under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 6.1.2. Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European Site designated under the Habitats Regulations⁷ (either alone or in-combination with other plans or projects), then the competent authority must undertake an AA of the implications for that site in view of its conservation objectives. Consent can only be granted if the AA concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).
- 6.1.3. Evidence has been sought throughout the Examination from the Applicant and the relevant IPs through WQs and ISHs, with the aim of ensuring that the SoS has such information as may reasonably be required to carry out their duties as the competent authority.
- 6.1.4. I prepared a RIES [[PD-013](#)] during the Examination, with support from the Planning Inspectorate's Environmental Services Team. The purpose of the RIES was to compile, document and signpost information provided in the application and submitted by the Applicant and IPs during the Examination (up to and including D6 of the Examination (21 August 2019) in relation to potential effects on European sites. The RIES was published on the Planning Inspectorate's website on 27 August 2019 and IPs, including NE, were notified. Consultation on the RIES was undertaken between 27 August 2019 and 20 September 2019.
- 6.1.5. The RIES was issued to ensure that IPs, including NE as the statutory nature conservation body, had been consulted formally on Habitats Regulations matters. This process may be relied upon by the SoS for the purposes of Regulation 63(3) of the Habitats Regulations. No comments on the RIES were received other than agreement by NE [[REP7-041](#)].

6.2. PROJECT LOCATION

⁷ Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, Special Protection Areas (SPAs); and under UK policy, potential SPAs and listed Ramsar sites.

- 6.2.1. As described in Chapter 2 above, the Proposed Development comprises a new road between Skippool Bridge and Windy Harbour and detrunking of the existing A585 between the two points.
- 6.2.2. Following DMRB guidance⁸, the Applicant considered European sites within 2km of the route corridor, and European sites within 30km, where bats are noted as a qualifying interest. In addition, European sites within 10km were considered on a precautionary basis. In their RR [[RR-019](#)], NE did not question the approach to determining relevant European sites for the purposes of the assessment.
- 6.2.3. Accordingly, the Applicant identified seven European sites for inclusion within the HRA, as follows:
- Morecambe Bay and Duddon Estuary SPA
 - Morecambe Bay Ramsar site
 - Morecambe Bay SAC
 - Ribble and Alt Estuaries SPA
 - Ribble and Alt Estuaries Ramsar site
 - Liverpool Bay SPA
 - Shell Flat and Lune Deep SAC
- 6.2.4. I am satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

6.3. HRA IMPLICATIONS OF THE PROJECT

- 6.3.1. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.
- 6.3.2. The Applicant provided a HRA report entitled 'Habitats Regulations Assessment' [[APP-027](#)], together with screening and integrity matrices [Appendix 4, APP-027] with the DCO application. This concluded that there would be no adverse effect on the integrity (AEoI) of any European site, either alone or in-combination with other plans or projects [APP-027].
- 6.3.3. During Acceptance of the DCO application, it was noted that a number of references in the screening matrices needed to be updated, as a change of chapter numbering resulted in references to the HRA report being incorrect. The Applicant was provided with s51 advice that a review and update of the screening matrices was needed [[PD-004](#)]. The Applicant submitted a revised version of the HRA Report [[AS-006](#), superseding APP-027] with updated screening matrices.
- 6.3.4. In response to comments made by NE in their RR [[RR-019](#)], the Applicant provided a second revision of the HRA report at D2 [[REP2-027](#),

⁸ DMRB, Volume 11, Section 4, Part 1, HD 44/09

superseding AS-006]. The second revision of the HRA addressed NE's concerns in relation to:

- lack of detail on mitigation measures for water quality and run-off;
- the level of mitigation required to address impacts from night time construction;
- lack of clarity in the assessment of noise and vibration disturbance for bird species; and
- lack of consideration of impacts from the Proposed Development to the waterbird assemblage.

6.3.5. One question relating to the feature HRA was raised in the FWQs [Question 1.3.1, [PD-007](#)], asking the Applicant to rectify the issue included within the s51 advice [[PD-004](#)], which was only partly resolved by the Applicant's first revision of the HRA Report [[AS-006](#)]. The Applicant's comments on RRs [[REP1-004](#)] acknowledged the concerns about the erroneous references, and the screening and integrity matrices accompanying the second revision of the HRA Report [[REP2-027](#)] rectified the issue.

6.3.6. The second revision of the HRA Report is the report used to inform this Chapter, and all subsequent references to the HRA Report are to this version unless otherwise stated.

6.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

6.4.1. The Applicant has described how they have determined what would constitute a 'significant effect' within section 3.5 of their HRA report [[REP2-027](#)]. The HRA report refers to European Commission (EC) guidance on habitats assessment (EC Guidance documents: '*Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*' (2018) and '*Assessment of plans and projects significantly affecting Natura 2000 sites*' (2001)).

6.4.2. The Applicant's conclusions on LSE from the Proposed Development alone are presented in section 6.4 of the HRA report [[REP2-027](#)].

6.4.3. The Applicant has addressed potential in-combination effects within sections 6.10, 6.11, and 7.5 of their HRA report [[REP2-027](#)]. The following plans and projects have been included in the Applicant's in-combination assessment (as identified in Table 13 of the HRA Report):

- 16/01043/OULMAJ Outline application for the erection of up to 130 dwellings. Land Off Holts Lane Poulton-le-Fylde Lancashire.
- 17/00050/REMMAJ Reserved matters application for the erection of 160 dwellings with associated works. Land on The East Side of Lambs Road Thornton Cleveleys Lancashire.
- 13/00200/OULMAJ Outline application for mixed use development. Land at Norcross Lane Thornton Cleveleys Lancashire FY5 3TZ.
- 17/00951/OUTMAJ Outline application for the erection of up to 66 dwellings. Land on the East Side of Lambs Road Thornton Cleveleys Lancashire.

- 16/00742/OUTMAJ Outline application for the erection of up to 108 no. dwellings (Use Class C3) with all matters reserved except for access. Land Off Brockholes Crescent Poulton-le-Fylde Lancashire.
- Policy SA 1/8 (within Wyre Local Plan) Blackpool Road, Poulton-le-Fylde.
- The Fleetwood – Thornton Area Action Plan establishes a clear vision and planning framework for development of Fleetwood and Thornton over the next 15-20 years and is a very important consideration in any decision on planning applications in the area. It includes areas identified for residential, industry and community facilities.

6.4.4. The scope of the in-combination assessment has been agreed with NE, as evidenced in the draft SoCG [REP2-048]. NE’s agreement with the methodology adopted for the screening assessment is also recorded in the SoCG [REP2-048].

6.4.5. The Applicant’s screening assessment [REP2-027] concluded that the Proposed Development would have no LSE, either alone or in-combination with other projects or plans, on the qualifying features of the five European sites listed below:

- Morecambe Bay SAC;
- Ribble and Alt Estuaries SPA;
- Ribble and Alt Estuaries Ramsar site;
- Liverpool Bay SPA; and
- Shell Flat and Lune Deep SAC.

6.4.6. NE has agreed [RR-019, REP2-048] that the Proposed Development would have no LSE on these five sites. As a result of the screening assessment, the Applicant concluded that there is potential for LSE, either alone or in-combination with other projects or plans, on the qualifying features of the following two European sites:

- Morecambe Bay and Duddon Estuary SPA; and
- Morecambe Bay Ramsar site.

6.4.7. NE agreed [RR-019, REP2-048] that adverse effects on integrity of the Morecambe Bay and Duddon Estuary SPA and Ramsar site should be considered.

6.4.8. For both of these European sites, the Applicant has identified LSE in relation to:

- disturbance and displacement to birds using land within and adjacent to the construction works for the Proposed Development. Disturbance and displacement results from construction traffic and noise and visual effects on the birds utilising land adjacent to the operational road (Pink-footed goose; Curlew; Lapwing; Little egret; Overwintering waterbird assemblage);
- direct loss of foraging/roosting habitat under the footprint of construction works, including temporary loss during construction and permanent loss during operation (Pink-footed goose; Curlew; Lapwing; Little egret; Overwintering waterbird assemblage); and

- change in water quality downstream of the Main Dyke and its tributaries as a result of construction works (screened out for operational effects) (Overwintering waterbird assemblage).

6.4.9. Potential impacts associated with habitat fragmentation were also identified during screening, but were screened out of consideration in the AA as surveys indicate that the existing road network in the area had not resulted in a severance of flight lines between European sites and the surrounding agricultural land, and given that the new road would follow in parallel with the existing A585/Mains Line.

6.4.10. The Examination generally focused on whether there was sufficient information to undertake an AA and whether an AEoI of the Morecambe Bay and Duddon Estuary SPA and the Morecambe Bay Ramsar would occur. The Applicant's conclusions with regard to other European sites and the finding of LSE were not disputed by any IPs during the Examination [[REP2-048](#)] [[REP2-055](#)].

6.5. CONSERVATION OBJECTIVES

6.5.1. The conservation objectives for the Morecambe Bay and Duddon Estuary SPA were provided by the Applicant within Appendix 2 of the HRA Report [[REP2-027](#)]. Paragraph 7.2.3 of the HRA Report explains that whilst there are no stand-alone conservation objectives for the Morecambe Bay Ramsar site, the Applicant considers that the conservation objectives set out for the SPA designation would be relevant to the Ramsar site designated features.

6.5.2. I note that NE published an updated version of the conservation objectives documents for the Morecambe Bay and Duddon Estuary SPA (dated February 2019), subsequent to that cited in the Applicant's HRA Report [[APP-027](#)] (dated September 2017). I understand that the updated conservation objective documents reflect the consolidation of the Habitats Regulations in 2017 and do not materially change the conservation objectives of the European sites.

6.6. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)

6.6.1. The Applicant assessed the potential for AEoI from the Proposed Development alone within Section 7 of the HRA Report [[REP2-027](#)]. Section 7.5 of the HRA Report considered the potential for AEoI in-combination with the plans and projects considered in the in-combination assessment set out in Table 13 [[REP2-027](#)].

6.6.2. The Applicant concluded that the Proposed Development would not have an AEoI on any of the European sites and qualifying features considered in the HRA Report [[REP2-027](#)].

Habitat Loss

6.6.3. NE raised concerns [[RR-019](#)] that waterbird assemblage was not addressed in relation to the anticipated loss of foraging or roosting

habitat. The Applicant's revised HRA Report [[REP2-027](#)] includes an assessment of the waterbird assemblage in relation to habitat loss.

6.6.4. In their HRA Report [[REP2-027](#)], the Applicant concludes that whilst there would be a small amount of habitat loss as a result of the construction phase of the Scheme, the potential impact would not be significant, and no specific mitigation measures are required. For the operational phase, a 4ha loss of land is not considered to be detrimental to the conservation objectives of European sites, and no mitigation is proposed.

6.6.5. NE are in agreement with the assessment conclusions in relation to habitat loss and fragmentation as confirmed in their final SoCG [[REP8-013](#)].

Water Quality

6.6.6. NE made comments [[RR-019](#)] in relation to a lack of detail for mitigation measures proposed to combat water run-off and pollution via Main Drain during construction. The revised HRA Report [[REP2-027](#)] identifies mitigation measures included within the OCEMP including provision of temporary cut-off drains, settlement ponds, screens and bunds, as well construction of a cofferdam above the mean high water mark to prevent wash-out (detail included in Table 20 [[REP2-027](#)]). I am of the view that, with these measures in the OCEMP, and secured by the dDCO, there is sufficient certainty to conclude no AEOI for this matter.

6.6.7. NE's response to the revised HRA [[REP2-071](#)] confirms that they agree with the conclusion of the report, and that with these mitigation measures in place, there will be no AEOI due to a change in water quality as a result of construction works and run off. The final SoCG [[REP8-013](#)] confirms that NE are in agreement on this matter.

Disturbance and Displacement

6.6.8. Chapter 7 of the HRA Report [[REP2-027](#)] presents the assessment of noise disturbance to birds (paragraphs 7.4.2-7.4.34). The methodology is agreed with NE in their SoCG [[REP8-013](#)], including agreement on a distance of 300m for considering potential disturbance/displacement associated with the Proposed Development.

6.6.9. The Applicant's conclusions in relation to effects on integrity of the Morecambe Bay and Duddon Estuary SPA and Morecambe Bay Ramsar site from disturbance and displacement have not been disputed by any IPs other than NE.

6.6.10. There was one issue relating to the assessment of noise disturbance where agreement with NE remained outstanding at the time that the RIES was published, in relation to a bird mitigation area proposed by the Applicant as mitigation for noise impacts during the construction period (as described in Table 20 of the HRA Report [[REP2-027](#)]).

- 6.6.11. It is proposed that the bird mitigation area is subject to a 'Bird Mitigation Strategy', which the Applicant states is required to avoid an AEoI of the Morecambe Bay and Duddon Estuary SPA and Morecambe Bay Ramsar site [REP2-027]. NE's concerns (as set out in their WR [REP2-071]) related to Fylde Wildflowers sporting rights (shooting rights) over the land north of the bird mitigation area, which would render the area unsuitable for mitigation from disturbance and displacement. NE stated [REP2-071] that the Bird Mitigation Strategy (as provided with the DCO application [APP-082]) should be amended to clarify that, in order for the mitigation site to be effective, all the shooting rights from the surrounding fields and the foreshore will be removed for the duration of the construction works to ensure that there is no AEoI of the Morecambe Bay & Duddon Estuary SPA and Morecambe Bay Ramsar site.
- 6.6.12. An updated version of the Bird Mitigation Strategy was included as Appendix B to the third revision of the OCEMP at D6 [REP6-014], which confirms further details of the management of the bird mitigation area. NE's response to the third revision [REP6-022], includes concerns that the mitigation measures are not adequately secured, and that the dDCO should include a specific requirement implementation of mitigation, monitoring and adaptive management measures contained in the approved CEMP.
- 6.6.13. The final SoCG with NE [REP8-013] shows that all matters relating to disturbance and displacement have now been agreed, with the Applicant securing TP of the fields within and surrounding the bird mitigation area, and suspending sport shooting rights over the land north of the bird mitigation area, which covers the River Wyre for 3 years. This involves an agreement with the Duchy of Lancaster who hold the rights over the land. This element of the final bird mitigation strategy and how it is secured in the dDCO (Requirement 7(6)) has now been agreed with NE.
- 6.6.14. I note that all matters in relation to HRA are now agreed between the Applicant and NE in their final SoCG [REP8-013]. I am of the view that, with the above measures secured by the dDCO, there is sufficient certainty for the SoS to conclude no AEoI from disturbance or displacement.

6.7. HRA CONCLUSIONS

- 6.7.1. I have carefully considered all the information provided in the application, including the HRA Report and the ES, the RIES [PD-013], and submissions made by IPs. I am content that the relevant sites and features have been taken forward for consideration of AEoI.
- 6.7.2. Having taken into account the information received and considering that the mitigation measures proposed are, in my view, adequately secured through dDCO provisions as set out above, I advise the SoS that on the basis of the information before him he considers that the Proposed Development would have no adverse effect, either alone or in combination with other plans or projects, on the integrity of any European site.

- 6.7.3. I have reached this conclusion having applied the precautionary principle and being of the view that there is no remaining reasonable scientific doubt.
- 6.7.4. I am also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an AA, should he consider it necessary, and discharge his obligations under the Habitats Regulations.

7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1. INTRODUCTION

- 7.1.1. The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in s104 of PA2008. Subject only to specific exceptions provided for in s104, the SoS must decide the application in accordance with a relevant designated NPS, which in the case of this application is the NPSNN. Paragraph 1.2 of the NPSNN sets out that one exception is where the application for national networks infrastructure would result in adverse impacts of the development outweighing its benefits.
- 7.1.2. Accordingly, this Chapter summarises my findings on each of the matters in Chapters 4, 5 and 6 in order to reach a conclusion on the case for granting development consent for this application. This is based on an assessment of those matters which I consider are both important and relevant to the decision as well as the LIRs submitted to the Examination, as required by s104 PA2008.
- 7.1.3. In the light of my conclusion on the case for development consent in this Chapter, Chapter 8 then turns to the Applicant's proposals for CA and related matters, followed by discussion of the dDCO in Chapter 9 before reaching an overall recommendation about whether development consent should be granted for the application in Chapter 10.

7.2. FINDINGS AND CONCLUSIONS

- 7.2.1. This section summarises the conclusions reached in Chapter 4 (The Planning Issues), Chapter 5 (Findings and Conclusions in Relation to the Planning Issues), and Chapter 6 (Findings and Conclusions in Relation to Habitats Regulations Assessment). I have not included references in this summary, since the full references are in the corresponding sections of Chapters 4, 5 and 6.

Biodiversity

- 7.2.2. The effects on ecology and nature conservation are assessed and avoidance and mitigation measures proposed.
- 7.2.3. The Proposed Development seeks to avoid significant harm to biodiversity interests. Where biodiversity benefits can be achieved, these have been incorporated as part of enhancement measures, to be delivered in accordance with the policy requirements.
- 7.2.4. I conclude that biodiversity matters do not weigh against the Order being made.

Climate

- 7.2.5. The Applicant has taken account of the projected impacts of climate change and proposed adaptation measures. Evidence is provided of the carbon impact of the project and adequate mitigation measures proposed.
- 7.2.6. I conclude that climate matters do not weigh against the Order being made.

Cultural heritage

- 7.2.7. The potential impacts of the Proposed Development on archaeology and cultural heritage are mitigated through a written scheme of investigation, and planting measures.
- 7.2.8. The significance of the Grade II listed Ice House would be negatively impacted; impacts are predicted to be a moderate significance of effect. This needs to be weighed against the public benefits of the Proposed Development. These are demonstrated to be the role the Proposed Development would play in underpinning the Government's social, economic and environmental policy aspirations, and the improved conditions in which people travel. I conclude that these considerable predicted public benefits outweigh the anticipated moderate harm.
- 7.2.9. I conclude that the mitigation measures proposed in terms of the potential effects on archaeology are acceptable.
- 7.2.10. I conclude that cultural heritage matters do not weigh against the Order being made.

Emissions

- 7.2.11. The ES has adequately considered air quality impacts over the wider area likely to be affected, as well as in the near vicinity of the Proposed Development. I conclude that the Proposed Development is unlikely to lead to a breach of the air quality thresholds set out in domestic and European legislation.
- 7.2.12. I agree with the Applicant's assessment that the Proposed Development is low risk in terms of the UK's ability to comply with the Air Quality Directive.
- 7.2.13. I conclude that air quality matters do not weigh against the Order being made.

Landscape and Visual

- 7.2.14. The application adequately considers landscape effects in terms of the existing landscape likely to be affected and nature of the effect likely to occur. In judging the impact of the Proposed Development on landscape I consider that the application minimises harm to the landscape, providing reasonable mitigation where possible.

- 7.2.15. The benefits of the development outweigh the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area.
- 7.2.16. Part of the Proposed Development falls within the GB. The ES demonstrates anticipated public benefits of the Proposed Development. These are detailed under Transportation and Traffic below.
- 7.2.17. I conclude that landscape and visual matters do not weigh against the Order being made.

Noise and Vibration

- 7.2.18. The Proposed Development seeks to avoid significant adverse impacts on health and quality of life from noise; and seeks to mitigate and minimise other adverse impacts on health and quality of life from noise.
- 7.2.19. I conclude that noise and vibration matters do not weigh against the Order being made.

Socio-Economic Effects

- 7.2.20. The Applicant has considered the needs of disabled people because the Proposed Development would have an overall significant positive effect on NMUs and deliver improvements that reduce community severance and improve accessibility. The Applicant has identified measures to avoid, reduce or compensate for adverse health impacts.
- 7.2.21. The Applicant has demonstrated anticipated public benefits of the Proposed Development in terms of economic benefits. These weigh positively for the Order being made.
- 7.2.22. I conclude that socio-economic effects matters weigh positively for the Order being made.

Transportation and Traffic

- 7.2.23. The Applicant has used reasonable endeavours to address the needs of cyclists, pedestrians and other NMUs in the design, supported by use of an appropriate local transport model which assesses the benefits and costs. Options have been considered in the light of relevant local policies and local plans.
- 7.2.24. The incursion into the GB is contained within the existing highway boundary and I conclude that harm to the GB would be minimal.
- 7.2.25. The Applicant has demonstrated anticipated public benefits of the Proposed Development in terms of improved transport as well as economic benefits, which weigh positively for the Order being made.
- 7.2.26. I conclude that transportation and traffic matters do not weigh against the Order being made.

Water Environment

- 7.2.27. The Applicant has made early contact with the relevant regulators and has put forward proposals to mitigate adverse effects on the water environment; these requirements are attached to the dDCO.
- 7.2.28. I conclude that water environment matters do not weigh against the Order being made.

7.3. THE PLANNING BALANCE

- 7.3.1. In this Chapter, I have summarised the conclusions reached in relation to each of the sections in Chapters 4, 5 and 6. The purpose of this section is to draw the threads together in reaching a recommendation as to whether the case is made out for granting development consent for the A585 Windy Harbour to Skippool Improvement Scheme application.
- 7.3.2. The Proposed Development would meet the policy justification for national network development required by the NPSNN in that it would underpin the Government's social, economic and environmental policy aspirations, and provide improved conditions in which people travel. These matters therefore weigh in favour of the draft Order, strongly so in relation to the policy justification.
- 7.3.3. Standing against the Proposed Development are a number of adverse impacts that would weigh against the Order being made.
- 7.3.4. The Proposed Development would lead to predicted damage to the setting to the Grade II listed Ice House, potential archaeological remains associated with the Romano-British settlement at Moorfield Park and predicted negative landscape effects in some areas.
- 7.3.5. Improvement works to Skippool Junction and Amounderness Way fall within the GB. Given that the incursion into the GB is contained within the existing highway boundary I conclude that harm to the GB would be minimal.
- 7.3.6. I conclude that these are 'very special circumstances', in accordance with NPSNN paragraph 5.178, that clearly outweigh the potential harm to the GB.
- 7.3.7. For all other matters considered in Chapter 5:
- biodiversity;
 - climate;
 - cultural heritage;
 - emissions;
 - landscape and visual;
 - noise and vibration;
 - socio-economic effects;
 - transportation and traffic; and

- water environment.

There are no issues which would weigh against the Order being made.

- 7.3.8. As is set out in paragraphs 3.1 and 7.1.1 of this report, the starting point for reaching a decision is that s104(3) of PA2008 requires the SoS to decide the application in accordance with any relevant national policy statement, except to the extent that one or more of the exceptions in subsections (4) to (8) applies, creating a presumption in favour of NPS compliant development. I conclude that none of the matters weighing against the Proposed Development are sufficient to outweigh the advantages of the Proposed Development through the policy, and improved travel conditions benefits. I therefore conclude that there is a clear justification in favour of granting development consent for the A585 Windy Harbour to Skipool Improvement Scheme application.

8. COMPULSORY ACQUISITION AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. The dDCO contains powers of CA and also for TP of land and rights. The Applicant is seeking these powers to;

- acquire land permanently within the Order limits;
- temporarily possess land within the Order limits;
- acquire rights over some of the land within the Order limits;
- extinguish existing rights over some of the land within the Order limits;
- create new rights over some of the land within the Order limits; and
- temporarily suspend rights over some of the land within the Order limits,

in order to construct, operate and maintain the Proposed Development [[REP9-005](#)].

8.2. THE REQUEST FOR CA AND TP POWERS

8.2.1. The application includes a request for CA and TP powers; the source of those powers is contained in the Applicant's preferred dDCO [[REP9-005](#)]. All further references to the dDCO in this Chapter relate to this version.

8.2.2. The application was accompanied by:

- a BoR;
- Land, Works and Crown Land Plans;
- A SoR; and
- A Funding Statement (FS).

8.2.3. Taken together, these documents set out the land and rights sought by the Applicant together with the reasons for their requirement and the basis under which compensation would be funded. Where the Examination and due diligence processes led to changes to this documentation, the changes are recorded. By the close of the Examination, the most up-to date versions were as follows:

- BoR [[REP7-006](#)];
- Land, Works and Crown Land Plans [[REP5-004](#); [REP5-006](#); and [REP2-015](#)];
- SoR [[REP8-009](#)]; and
- FS [[APP-018](#)].

8.2.4. These documents taken together form the basis of the analysis in this Chapter. References to the BoR and the Land, Works and Crown Land Plans in this Chapter from this point should be read as references to the latest revisions cited above.

8.2.5. Land over which CA and TP powers are sought is referred to in this Chapter as the Order land.

Creation of new rights over Schedule 7 land

- 8.2.6. Article 23 of the dDCO permits the Undertaker to acquire existing rights, create new rights and impose restrictive covenants over all of the Order land. This is limited to rights and restrictive covenants as may be required to carry out or to facilitate or is incidental to the authorised development. The Order land is defined in Article 2 as 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. The power to impose restrictive covenants is limited to the land listed in Schedule 5 (land in which only new rights etc may be acquired). The Undertaker's powers of CA over the land in Schedule 5 is further limited to the rights and restrictions described in the Schedule.
- 8.2.7. Article 29 of the dDCO permits the undertaker to take TP of the land in Schedule 7 and any other Order land in respect of which no notice of entry has been served and no declaration has been made, other than land relating to acquisition of rights only (i.e. this permits the Undertaker to take TP of any land which is subject to any CA before the Undertaker exercises those powers).
- 8.2.8. Article 29(9) originally limited the Undertaker's powers of CA in the land listed in Schedule 7 to the acquisition of new rights under Article 23.
- 8.2.9. The ExAs were concerned that the effect of the drafting of Articles 23(1) and 29(9) might enable the creation of undefined new rights over the land listed in Schedule 7, which was described as being for TP only in the SoR and BoR and shown as being for TP on the Land Plans.
- 8.2.10. Consequently in April 2019 the previous ExA asked questions to establish the Applicant's intention in relation to the land in Schedule 7 through WQ [[PD -007](#)]. I asked further WQ [[PD-010](#)] and made requests for further information [[PD-014](#) and [PD-015](#)]. It was clear to the ExAs from the Applicant's responses [[REP2-041](#), [REP5-022](#), [REP6a-002](#), [REP7-023](#)] that they were seeking a power to CA new rights in the land listed in Schedule 7, described as being for TP, but that they did not consider this power should be limited to the new rights described in Schedule 5, as suggested by the ExAs [[PD-007](#) & [PD-016](#), [REP2-041](#) & [REP5-022](#)].
- 8.2.11. The Applicant did not consider that the power granted by Article 23 to create new rights in the Order land ("*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*" (Article 2 DCO)) limited the Undertakers' ability to CA new rights to the rights described in the BoR (in the "*Extent, Description and Situation of the Land or Right*" column) and shown on the Land Plans coloured blue (land to be used temporarily and rights to be acquired permanently) [[PD-010](#) & [REP5-022](#)].
- 8.2.12. The Applicant said that the general power to create new rights over the TP land was necessary just in case permanent rights were required following hand back of the land, for example for access rights for maintenance beyond the usual maintenance period. They also said that

this approach allowed for reducing the area of outright acquisition [[REP2-041](#)].

- 8.2.13. It was not clear from the application documents that persons with an interest in the land listed in Schedule 7 would have been aware that the Applicant was seeking to CA new rights in that land. The land was described as being for TP in the BoR, shown as being for TP only on the Land Plans (coloured yellow) and described as being required temporarily in the SoR. Furthermore, the Land Plans separately identify land which the Applicant was seeking to use temporarily and create new rights in (coloured blue). I raised this concern with the Applicant and asked the Applicant to confirm that all persons with an interest in the land in Schedule 7 were consulted on the understanding that new rights may be created in that land [[PD-010](#)]. The Applicant did not directly confirm this but said that they were "*in the process of communicating with all landowners where permanent rights may be required to ensure they are aware of this*" [[REP5-022](#)]. In the absence of confirmation from the Applicant that all persons with an interest in the land were consulted, nor any statement from the landowners, I could not be certain that the landowners had been consulted.
- 8.2.14. It was evident from the details provided by the Applicant of these persons [Appendix A of [REP6a-002](#)] that the Applicant did not think that they might need to create new rights in all of the plots in Schedule 7. I asked the Applicant to specifically identify the plots over which they intended to CA new rights in a separate Schedule and to amend Articles 23 and 29 to ensure that those Plots over which they were not seeking any CA were in fact excluded from the scope of CA. This led to the insertion of Part 2 to Schedule 7 in the final dDCO [[REP9-005](#)].
- 8.2.15. The Applicant also sought to address concerns raised by the ExAs during Examination by restricting the power to create new rights in the land in Schedule 7 to the purpose for which TP was sought and by expanding the description of those purposes [[REP5-022](#) & [REP5-007](#)].
- 8.2.16. In the final version of the dDCO [[REP9-005](#)] the Applicant included Part 2, a table of new rights sought in the Schedule 7 land. I note that the rights are mostly related to maintenance of the works. TP for ongoing maintenance for the Proposed Development is authorised under Article 30 of the dDCO and the Applicant has not offered any explanation as to why any further permanent new rights would be required in these Plots to undertake maintenance works.
- 8.2.17. It is also unclear why the Applicant is making a distinction between these Plots in which the Applicant seeks to create new rights and the Plots in Schedule 5 in which the Applicant seeks to create new rights (which could also be listed in Schedule 7 as being for TP); and the Applicant has not explained why these Plots are still identified as being for TP on the Land Plans (yellow land) instead of identified as being for TP and the creation of new rights (blue land).

- 8.2.18. In order to recommend the CA sought by the Applicant the ExA needs to be satisfied that the tests in s122 of PA2008 are met and that the DCLG Guidance⁹ has been followed. I note the following:
- the lateness of the identification of these new rights in the dDCO;
 - the apparent failure to consult on these at Pre-application and during Examination; and
 - in the absence of adequate consultation with the relevant landowners and persons with an interest in the land in Part 2 of Schedule 7, it is questionable whether these persons have been given adequate opportunity to effectively participate in the Examination and receive a fair hearing in relation to the CA of new rights in this land.
- 8.2.19. I conclude that the CA of new rights over the Part 2 land in Schedule 7 is not recommended.
- 8.2.20. The arguments relating to CA and TP considered in the remainder of this section are considered and addressed on the assumption that new rights over the land in Schedule 7 is not recommended.

Proposed design changes and additional land

- 8.2.21. As detailed at paragraph 2.2 of this Report the Applicant submitted various requests for two design changes to the application; the design changes included the need for additional land. The ExAs responded that the changes could not be accepted without compliance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regs). Regulation 4(b) of the CA Regs confirms that Regulations 5 to 19 will apply where a person with an interest in the additional land does not consent to the inclusion of the provision, under s123 of PA2008, which authorises the CA of land only if the SoS is satisfied that the prescribed procedures have been followed in relation to the land.
- 8.2.22. The Applicant provided the necessary consents of persons with an interest in the additional land [[AS-035](#)]. This enabled me to accept the design changes and confirm that the prescribed procedures in the CA Regs do not apply [[PD-017](#)].

8.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

Land for CA

- 8.3.1. The land for which CA is required is:
- 51.9ha required permanently (freehold to be acquired where not already held by the Applicant), 54.9ha is required for TP, 1.1ha required for rights of access and 5.6ha required for the de-trunked road. It should be noted that 5.0ha of the land to be acquired or used permanently is land contained within the existing trunk road highway

⁹ Planning Act 2008: guidance related to procedures for the compulsory acquisition of land, DCLG 2013

boundary and 1.8ha is within the existing local authority highway boundary [[REP8-009](#)];

- approximately 1.3ha Schedule 5: land in which CA of new rights may be acquired;
- to remove existing easements servitudes and other private rights in relation to all plots; and
- I wish to make clear that I am proceeding on the basis that new rights in the Schedule 7 land are not recommended.

8.3.2. The Proposed Development includes 19 Crown land plots [[REP8-020](#)]. The Crown interest is held by the Duchy of Lancaster. The acquisition of the third-party interests in this land has been sought and consent has been provided [[REP3-23](#)]. Crown interest is excluded from the scope of CA.

8.3.3. SUs' land and apparatus is involved. The following SUs are affected:

- United Utilities Group PLC;
- Electricity North West Limited;
- Cadent Gas Limited;
- Openreach (British Telecommunications PLC); and
- GTC.

8.3.4. The dDCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 (with possible modifications) and the provisions set out in s158 of the Act relating to the statutory authority and protection given to override easements and other rights.

Land for TP

8.3.5. The land for which TP is required is:

- 54.9ha required for TP;
- Article 29(1)(a)(ii) enables the Undertaker to use TP to enter the land over which CA of the freehold is proposed before any notice of entry has been served or any declaration made;
- issues regarding creation of new rights over Schedule 7 land are detailed in paragraph 8.2;
- the power to take TP of land would be subject to the time limits set out in Article 29 of the dDCO. This limit is effectively no more than a year after completing that part of the Proposed Development specified in relation to that land in column 3 of Schedule 7. I consider that the time period proposed by the Applicant for TP is appropriate; and
- the Neighbourhood Planning Act 2017 (NPA2017) TP provisions do not apply.

8.4. LEGISLATIVE REQUIREMENTS

8.4.1. 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 (DCLG) CA Guidance) are met.

- 8.4.2. S122(2) of PA2008 requires 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 and be proportionate¹⁰.
- 8.4.3. S122(3) of PA2008 requires that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.
- 8.4.4. Section 123 of PA2008 requires that one of three procedural conditions in subsections (2) to (4) must be met by the application proposal, namely:
- 2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
 - 3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.
 - 4) The condition is that the prescribed procedure has been followed in relation to the land.
- 8.4.5. A number of general considerations also have to be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to CA must have been explored;
 - the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
 - the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
 - the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 8.4.6. Further to Part 1 of Schedule 5 to PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated DCLG Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land.

8.5. EXAMINATION OF THE CA AND TP CASE

The Examination Process

- 8.5.1. Particular measures relating to Examination of the CA and TP case included the following.

¹⁰ DCLG CA Guidance

- 8.5.2. Eight objections have been made to the Proposed Development relating to concerns regarding acquisition of the land, and the impact on use of the land [[REP8-016](#)]. The Applicant has been in dialogue with all the landowners and is at an advanced stage of agreement with three of the objectors.
- 8.5.3. The ExAs undertook the following site inspections to land subject to CA and TP proposals:
- USIs on 8 and 9 April 2019 [[EV-003](#)]; and
 - ASI on 2 July 2019 [[EV-006](#)].
- 8.5.4. One CAH was held on 3 July 2019 where individuals subject to CA and TP proposals could be heard [[EV-012](#)].
- 8.5.5. No agreements about and withdrawals of submissions have been submitted to the Examination.

General Consideration

- 8.5.6. The Applicant's general case for CA and TP is set out in Chapter 5 of the SoR [[REP8-009](#)] under the following headings:
- Statutory Conditions and the Case for Compulsory Acquisition;
 - Need for the Land and the purposes for which the compulsory acquisition powers are sought (Section 122(2));
 - Compelling Case in the Public Interest (Section 122 (3));
 - Case for the Scheme and Alternatives Considered;
 - Compensation;
 - Funding Statement; and
 - Acquisition by Agreement.
- 8.5.7. The Applicant concludes that:
- the conditions in s122 of PA2008 are met and that the tests in the CA Guidance are satisfied;
 - all of the land subject to CA and TP powers is necessary to construct, operate, maintain and mitigate the Proposed Development are necessary to achieve the objectives of the Proposed Development.
 - the extent of the land sought is reasonable and proportionate; and
 - there is a compelling case in the public interest to include the CA powers sought by the Applicant in the dDCO. The exercise of the CA powers that are sought is necessary and proportionate to the extent that interference with private land and rights is required. In the absence of compulsory powers, the Applicant considers that it would not be possible to proceed with the Proposed Development, therefore the public benefits of the Proposed Development would not be realised.
- 8.5.8. I agree with the Applicant's conclusions on the generality of the case, but the overarching conclusion on CA and TP cannot be reached until individual objections and all other relevant and important considerations have been addressed.

Consideration of Individual Objections and Issues

- 8.5.9. The Schedule of CA and TP Objections sets out the status of any objections in relation to land owners [[REP8-016](#)].
- 8.5.10. Consideration of individual objections are set out in the following tables.

Name(s):	Carrington Group Ltd	[RR-008]
Location(s):	Land off Mains Lane	
Interests:	Plots	
	CA of Plots 4/02, Half widths: 2/05, 4/02a	
	TP of Plots 4/02b, 4/02c, 4/02d	
	CA of rights in respect of Plot 4/02e	
Status summary:	The Applicant and land owner are in dialogue in regard to the objectors concerns in relation to acquisition of land [REP8-016]. RR and WRs [AS-017]; [AS-037]; [REP8-033 to 035] not withdrawn.	
	<ul style="list-style-type: none">▪ Applicant's case: [REP9-012] summarises the Applicant's case as follows: The Applicant notes the comments made by The Carrington Group which have been raised previously and orally at the CAH [EV-012]. The Applicant responded to the comments on those occasions, refer to RR-008 in comments on RRs [REP1-004], ExQ 1.1.5, ExQ 1.8.7 in responses to the previous ExA's WQs [REP2-041]. Also 1.1.5 and 1.8.7 in FBC's responses to the previous ExA's WQs [REP2-065].▪ Objector's response: The objector maintains that the Proposed Development will [REP8-033]:<ul style="list-style-type: none">○ stifle development proposed for the land;○ prevent current use of large parts of the land; and○ have an onerous effect on the value of the land▪ ExA conclusion. The Applicant argues that the alignment of the bypass has been subject to rigorous options assessment, and that there will be no significant adverse impact on the amenity of residents of any future development. The Applicant notes that FBC does not consider that Carrington Group's ability to implement the planning permission for its 9 dwelling scheme is being curtailed by the Proposed Development. I agree with the Applicant's arguments and concludes that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the land to be acquired compulsorily.	

Name(s):	Mr & Mrs Moreton	[RR-026]
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Location(s): The Beeches, 205 Mains Lane, Poulton le Fylde

Interests: **Plots**

CA of Plots 4/01, 4/01a, Half-width 4/01b.

Status summary: A Blight notice has been agreed. Discussions are in advanced stages with a value now agreed and Heads of Terms being finalised [[REP8-016](#)], but RR and WR [[REP2-074](#)] not withdrawn.

- Applicant's case: The Applicants argument is contained in the SoR [[REP8-009](#)] as follows: The land comprising the majority of the 20m deep front garden of this property is required for the construction and operation of the main carriageway including the realigned A585 providing a stopping sight distance of a minimum of 120m for westbound traffic and for the neighbouring petrol station. As a result, approximately two-thirds of the front garden would be required from the property resulting in the boundary being within 7.5m of the front of the building. It would be possible for access to this property to be re-provided off the new main carriageway. Harm has been minimised to this property by maintaining stopping sight distances through the junction away from the property. However due to the likely impact to the property's front garden and its general setting close to the Skippool Bridge Junction it is likely that the current owners may wish to relocate due to the level of impact to their property. Engagement has been carried out with the owners of the residential property since the non-statutory consultation in Autumn 2016. The Applicant is currently in discussion with the owners as to how they wish to proceed. In the event that the owners wish the property to be acquired by the Applicant it is considered unlikely that this property could be re-sold on completion of the construction works. In that instance, the buildings would be demolished and the land used for environmental mitigation.
- Objector's response: The extent of the land take proposed is excessive; no mitigation measures have been proposed; the access and egress from the property is effectively impossible post construction of the proposed highway improvement and therefore continued use and enjoyment of the property is not possible. The objector requested that the design of the Proposed Development is amended so as not to require the purchase of any of the property and is redesigned in such a way that an effective access to the property through the existing gateway is facilitated from the new highway [[REP2-074](#)].
- **ExA conclusion.** Land Plots 4/01, 4/01a, and 4/01b (half-width) contain the residential property The Beeches; which engages Articles 6, 8 and Protocol 1, Article 1 of the ECHR. I conclude due process in accordance with Article 6 has been adhered to. With regard to Article 8 and Protocol 1, Article 1; I conclude that any infringement of the right to respect for private and family life and

the home, and the right to the peaceful enjoyment, is outweighed by the case in the public interest for the CA of the stated plots. I also conclude that the land is required for the Proposed Development and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Name(s): Oyston Estates Limited

Location(s): Land near Mains Lane and Shard Road

Interests: **Plots**

CA of Plots: 3/01, 8/02, 8/03 Half width: 2/10, 3/01b, 3/01c, 8/02a, 8/02b, 8/02c

TP of Plots: 3/01a, 8/02d, 8/02e

Status summary: An offer has been made and accepted for the purchase of the land plots, and signed Heads of Terms has been received by the Applicant. [\[REP8-016\]](#).

- Applicant's case: The Applicant outlined the requirements for the Proposed Development in meeting with the land agent. An offer has been made for the purchase of the land plots with land values agreed. Signed Heads of Terms received by Applicant, SoR [\[REP8-009\]](#).
- Objector's response: An offer has been accepted for the purchase of the land plots.
- **ExA conclusion.** The Applicant has presented the argument for the Proposed Development and made an offer for the purchase of the land (Plots: 2/10, 8/02, 8/02a, 8/02b, 8/02c, 8/03, 3/01, 3/01b, 3/01c). I agree with the Applicant's argument and concludes that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Name(s): Trustees of Thornton Cleveleys District Horse Club

Location(s): Grassland to the north of A585 Breck Road

Interests: **Plots**

CA of Plots 1/05

Status summary: Meeting held (9 September 2019) to further understand the Clubs land requirements for accommodating their events both on and off site [\[REP8-016\]](#).

- Applicant's case: SoR [[REP8-009](#)] details meetings and correspondence between Applicant and land owner to discuss concerns.
- Objector's response: The Horse Club has land requirements for accommodating their events both on and off site.
- **ExA conclusion.** I conclude that the land (Plot 1/05) is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Name(s): Stephen Dale and Michelle Dale

Location(s): Land near Lodge Lane

Interests: **Plots**

TP of Plots 5/15, 5/15a

Status summary: Applicant has been advised that this land has been sold, BoR updated [[REP8-016](#)]. The BoR still shows Stephen and Michelle Dale as the owners; the SoS may like to ask the Applicant to provide an updated BoR to include details of the new owners if the sale is complete.

- Applicant's case: SoR [[REP8-009](#)] states that the Applicant has been advised that this land has been sold.
- Objector's response: The Applicant stated that they were in dialogue with the original landowner in regard to the objector's concerns in relation to temporary acquisition of the land, and then stated that they had been advised that the land had been sold.
- **ExA conclusion.** I conclude that the land (Plots: 5/15, 5/15a) is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for TP of the land.

Name(s): Trustees of The R.A Wells Trust

Location(s): Trustees of The R.A Wells Trust

Interests: **Plots**

CA of Plots: 7/01 Half widths:7/01b

TP of Plot: 7/01a

Status summary: The owners have indicated that they are content to discuss acquisition by negotiated agreement [[REP8-016](#)].

- Applicant's case: SoR [[REP8-009](#)] details discussions and correspondence between Applicant and land owner. The Applicant provided a technical overview as to why CA is required.
- Objector's response: Following receipt of the technical overview, the owners have indicated that they are content to discuss acquisition by negotiated agreement.
- **ExA conclusion.** I conclude that the land (Plots: 7/01; 7/01b (half width)) is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Name(s): Messrs John Richard Wood, Alan Wood, Christopher John Wood and Mark Wood

Location(s): Land near Garstang New Road

Interests: **Plots**
CA of Plots: 7/08, 7/08b
TP of Plot: 7/08a

Status summary: The Applicant and landowner are in dialogue in regard to the objectors concerns in relation to acquisition of land [[REP8-016](#)].

- Applicant's case: SoR [[REP8-009](#)] details meetings between the Applicant and land owner.
- Objector's response: The objector has concerns in relation to acquisition of land.
- **ExA conclusion.** I conclude that the land (Plots: 7/08, 7/08b) is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the land to be acquired compulsorily.

Name(s): Michael Evered Buckley and Valerie [[RR-005](#)]
Buckley

Location(s): Land adjacent to Skippool junction

Interests: **Plots**
CA of Plots: 1/07b, 1/07g,1/07p
TP of Plot: 1/07f

Status summary: Option for potential mitigation solution presented to agent for consideration [[REP8-016](#)], but RR and WR [[REP8-045](#)] not withdrawn.

- Applicant's case: The Applicant states that the land is required for construction of a road junction; culvert and associated works [[REP8-009](#)].
- Objector's response: The objector argues that the land acquisition will bring the Proposed Development closer to his property with an increase in noise, exhaust fumes and loss of privacy. He argues that the impact could be reduced by the construction of a suitable barrier or fence round the North and Easterly boundaries to create privacy and reduce traffic noise and fumes [[RR-005](#)]. The objectors have indicated that they would be content to sell subject to agreeing terms including mitigation for their property [[REP8-009](#)]. Providing the Applicant confirms a definite commitment to construct a fence 1.8m high for its full length the objector will have no further comments [[REP8-045](#)].
- **ExA conclusion.** I conclude that the land (Plots: 1/07b; 1/07g, 1/07p) is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the land to be acquired compulsorily.

8.6. OTHER PARTICULAR CONSIDERATIONS

Special Land and Rights Provisions

8.6.1. The Applicant was asked throughout the Examination whether the Proposed Development bore on any of the special land and rights provisions that arise under PA2008. Issues arising are reported under individual headings below. Matters included:

- effects on SU land, rights or apparatus;
- effects on and provision of replacement open space and related land; and
- the status of submissions that include objections in respect of these matters.

SU land, rights or apparatus

8.6.2. S127 of PA2008 applies to land acquired by SUs for the purposes of their undertaking, and places restrictions on the CA of such land where a representation is made by a SU in relation to a DCO application and is not withdrawn by the close of the Examination of that application. The dDCO includes provision to authorise the CA of land and rights held by SUs for the purposes of their undertaking.

8.6.3. If s127 applies CA of SU's land can only be authorised if the SoS is satisfied that the land or right can be purchased and not replaced without serious detriment to the SU or if purchased can be replaced by other land belonging to or available for purchase by the SU without detriment.

8.6.4. S138 applies where an Order authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus.

- 8.6.5. S138(4) provides that an Order may include provision for the extinguishment of the relevant right or the removal of relevant apparatus only if the SoS is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates.
- 8.6.6. At the close of the Examination the Applicant's position in relation to these matters is contained in the document entitled ExQ1.1.9: PA2008 s127 SU's Land/ Rights [[REP8-018](#)].
- 8.6.7. The Applicant recognises that where s127 applies to land or rights which are required to be acquired to enable the delivery of the Proposed Development, and the SU that owns such land or rights makes a representation to the SoS in relation to the dDCO and does not withdraw that representation before the completion of the Examination into the application, the Applicant will be required to seek confirmation that the SoS is satisfied of the matters set out in subsections 127(3) and/or 127(6) as appropriate.
- 8.6.8. The Applicant has engaged with all of the SUs affected by the Proposed Development in order to address any issues that have been raised by them to date and to reach an agreed position through negotiations. Protective Provisions for SUs have been included in the dDCO and formed part of the negotiations. No SU raised any issues with regard to CA.
- 8.6.9. SoCG have been agreed and signed with all SUs (except for Cadent Gas and United Utilities) as follows:
- Electricity North West Limited [[REP1-007](#)];
 - Openreach (British Telecommunications PLC) [[REP1-008](#)]; and
 - GTC [[REP1-009](#)];
- These demonstrate that the SUs are content with the Proposed Development.
- 8.6.10. The Applicant considers that the tests set out in subsections 127(3) and/or 127(6) (as appropriate) can be demonstrated.
- 8.6.11. The dDCO proposes to CA the land in the ownership of United Utilities, and Electricity North West. The Applicant states that the land to be acquired from United Utilities is being acquired to provide a new and improved access which United Utilities will be able to continue to use before, during and after construction of the Proposed Development. The land to be acquired from Electricity North West comprises a half width of subsoil under Mains Lane under adopted public highway. The acquisition of this land will have no impact on Electricity North West who will be able to continue to use Mains Lane before, during and after construction of the Proposed Development [[REP8-018](#)].
- 8.6.12. The dDCO includes provision to authorise necessary interference by the Applicant with the apparatus of SUs, in connection with the delivery of the Proposed Development. The location of these works is shown on the

Works Plans [[REP5-006](#)] and defined as specific works within Schedule 1 (Authorised Development) of the dDCO [[REP9-005](#)].

- 8.6.13. A DCO may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the SoS is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates (s138(4) of the PA2008).
- 8.6.14. The Applicant proposes to acquire and provide new permanent rights over land for the benefit of the relevant utility company and the carrying out of their undertakings, in such cases where existing rights have been extinguished or interfered with.
- 8.6.15. At the close of the Examination Cadent Gas had reached agreement with the Applicant on the form of the Protective Provisions except for two outstanding issues relating to the form of the indemnity and the extent of the arbitration powers [[REP8-025](#)]. The Protective Provisions I recommend in the DCO are detailed in Chapter 9. In summary I:
- Agree with Cadent Gas that sufficient protections are afforded to the Applicant without the inclusion of paragraph 28(3)(c) regarding liability; and
 - recommend that that no change is made to paragraph 26 of the dDCO regarding retained apparatus.
- 8.6.16. At the close of the Examination the draft SoCG with United Utilities [[REP2-053](#)] was unsigned with minor matters outstanding relating to the dDCO; Protective Provisions and design and engineering. No further information was submitted during the Examination regarding this matter. I recommend that that no further changes are made to Schedule 10 Part 1 of the dDCO.
- 8.6.17. With regard to s127 of PA2008 I conclude:
- no SU raised any issues with regard to CA.
- 8.6.18. In accordance with s138(4) I am satisfied that the extinguishment of the SU rights, and removal of the SU apparatus is necessary for the purpose of carrying out the development to which the Order relates.

Crown Land

- 8.6.19. The BoR identifies Crown Land. The Duchy of Lancaster has provided consent to the acquisition of interests owned otherwise than by or on behalf of the Crown in this land under s135 of PA2008 [[REP7-037](#)].
- 8.6.20. The interests owned by or on behalf of the Crown are excluded from the scope of CA. This is done by excluding them from the description of the land in the BoR and listing the interests separately in Part 4 [[REP8-010](#)]. The BoR also states at para.2.4.2 "*The DCO does not authorise the Applicant to acquire any interests in the Order Land owned by or on behalf of the Duchy of Lancaster.*"

8.6.21. Article 44 of the dDCO protects the Crown interest [[REP9-005](#)].

Human Rights Act 1988 Considerations

8.6.22. The Human Rights Act 1988 places the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not European Union institutions and are unaffected by the decision to leave the European Union.

8.6.23. Relevant provisions of the ECHR that are normally engaged by CA and / or TP proposals include:

- Article 6 – the right to due process in civil proceedings, including a public hearing before an independent and impartial tribunal;
- Article 8 – the right to respect for private and family life and the home is relevant where property that is a home is affected;
- Protocol 1, Article 1 – the right to the peaceful enjoyment of property and not to be deprived of this other than in the public interest.

8.6.24. Chapter 7 of the SoR deals with Human Rights [[REP8-009](#)]. There are two occurrences on the Proposed Development of acquiring residential property as follows.

8.6.25. West Wynds, Old Mains Lane, Poulton-le-Fylde, plot ref. 1/38. The building is directly affected by the Proposed Development and is proposed for demolition. The land is required for the construction and operation of the main carriageway, construction of the replacement Skippool bridge and associated retaining walls. The Applicant is in negotiation with the owners, Lancashire County Council, to purchase the residential property. Persons with an interest in this plot did not object to the CA.

8.6.26. The Beeches, 205 Mains Lane, Poulton-le-Fylde, plots refs. 4/01; 4/01a; and 4/01b, owned by Mr and Mrs Moreton. This matter constitutes an individual objection which has been dealt with above.

8.6.27. The Applicant deals with compliance with the relevant provisions of the ECHR and fair compensation in Chapter 7 of the SoR [[REP8-009](#)].

8.6.28. The Applicant concludes that any infringement of the ECHR rights of those whose interests in the land might be affected by the exercise of powers of CA would be proportionate and legitimate, would be in the public interest and would be in accordance with national and European law.

8.6.29. I conclude that apart from the new rights in Part 2 Schedule 7 the CA sought is compatible with the Human Rights Act.

8.7. CONCLUSIONS

Conclusions regarding creation of new rights over Schedule 7 land

8.7.1. The Applicant originally sought a general power to create new rights over the land in Schedule 7 which has been described as being for TP. S122(2) of PA2008 requires that the land subject to CA must be required for the development to which the development consent relates. A general power does not satisfy this test. Later in the Examination, as a result of concerns raised by the ExA, the Applicant included Part 2 to Schedule 7, a table of new rights sought in the Schedule 7 land.

8.7.2. I have noted the following:

- the lateness of the identification of these new rights in the dDCO;
- the apparent failure to consult on these at Pre-application and during Examination; and
- in the absence of adequate consultation with the relevant landowners and persons with an interest in the land in Part 2 of Schedule 7, it is questionable whether these persons have been given adequate opportunity to effectively participate in the Examination and receive a fair hearing in relation to the CA of new rights in this land.

I conclude that this does not satisfy s122 of PA2008, Article 6 of the Human Rights Act, or the DCLG Guidance.

8.7.3. I have recommended changes to the dDCO to remove the new rights sought listed in Part 2 of Schedule 7.

Conclusion relating to design change request & additional land

8.7.4. The Applicant has provided the necessary consents of persons with an interest in the additional land, enabling me to accept the design changes and confirm that the prescribed procedures in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 do not apply.

Conclusion relating to individual objections and issues

8.7.5. I have concluded that in all cases relating to individual objections and issues that CA and TP is justified to enable implementation of the Proposed Development.

Conclusion relating to SU land, rights or apparatus

8.7.6. No SU raised any issues with regard to CA. SoCG have been agreed with all SUs except for Cadent Gas and United Utilities demonstrating that the SUs are content with the Proposed Development. The outstanding issues with regard to Cadent Gas and United Utilities relate to Protective Provisions which I regard to be relatively minor.

8.7.7. In accordance with s138(4) of PA2008 I am satisfied that the extinguishment of relevant rights and removal of the relevant apparatus is necessary for the purpose of carrying out the development to which the order relates.

Crown land

8.7.8. I conclude that the relevant consent has been provided.

Human rights

8.7.9. I conclude that, apart from the new rights in Part 2 Schedule 7, the CA sought is compatible with the Human Rights Act and the ECHR.

Final Conclusion

8.7.10. I conclude that the SoS can be satisfied that conditions 123(2) and 123(3) PA2008 are met.

8.7.11. Assuming that the SoS accepts the proposed changes to the dDCO to remove the new rights sought, I conclude that the SoS can be satisfied that the tests in s122(2) and s122(3) PA2008 are met and recommends acceptance of the CA and TP powers proposed in the DCO as a whole.

9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1. INTRODUCTION

9.1.1. This chapter outlines the structure and evolution of the dDCO from the version submitted with the application to the recommend DCO included with this Report at Appendix D.

9.2. THE DCO AS APPLIED FOR

9.2.1. The dDCO as initially applied for was included with the application [[APP-015](#)], and the final version Revision 5 [[REP9-005](#)] was submitted on 7 October 2019.

9.2.2. The dDCO consists of seven parts:

- Part 1: Preliminary (Articles 1-2);
- Part 2: Principal Powers (Articles 3-8);
- Part 3: Streets (Articles 9-16);
- Part 4: Supplemental Powers (Articles 17-19);
- Part 5: Powers of acquisition and possession (Articles 20-33);
- Part 6: Operations (Article 34);
- Part 7: Miscellaneous and general (Articles 35-44);
- Schedules 1-11.

9.2.3. Schedule 1 specifies the proposed works. Works Nos. 1 to 123 would comprise the NSIP and the associated development.

9.2.4. Schedule 2 details the 15 Requirements that would need to be met by the Proposed Development, and the procedure for the discharge of the Requirements. Schedules 3 and 4 deal with the classification of roads and the stopping up of roads, respectively. Schedule 5 addresses new rights. Schedules 6 and 7 address CA and TP, respectively. Schedule 8 contains the DML. Schedule 9 details hedgerows and trees. Schedule 10 contains the Protective Provisions in favour of 3 parties. Finally, Schedule 11 contains a list of the documents to be certified.

9.2.5. The Applicant's explanation for the various components of the dDCO is in the EM submitted at the close of the Examination [[REP8-007](#)].

9.3. CHANGES DURING EXAMINATION

9.3.1. This section of the Report addresses the matters in respect of which there was discussion between the Applicant, the ExAs, IPs and APs at the hearings and through correspondence about potential changes to the dDCO.

9.3.2. Discussions occurred throughout the course of the Examination, and the Applicant worked to produce a dDCO that met the requirements of the various parties. In doing so, the Applicant submitted a number of

revisions to the dDCO with accompanying explanatory documents which were as follows:

- The Applicant's dDCO Revision 1 [[AS-012](#)] at 18 December 2018 contains minor updates following s51 advice.
- In Revision 2 [[REP2-017](#)] at D2, 17 May 2019, many of the changes made were agreed and included in the Applicant's response to Written Representations, LIRs, and the Applicant's response to the previous ExA's WQ [[REP2-041](#)]. Revision 2 also included non-material design changes requested by the Applicant [[AS-027](#)].
- At D5 on 9 August 2019 in Revision 3 [[REP5-008](#)], most of the changes arose from and were agreed in the Applicant's response to my additional WQ's [[REP5-022](#)]; and the Applicant's Responses to Representations received at D4 [[REP5-023](#)].
- At D8 on 1 October in Revision 4 [[REP8-005](#)], changes were made to reflect changes agreed with IPs, and other points which the Applicant identified as requiring amendment since Revision 3 of the dDCO; and proposed Protective Provisions negotiated with Cadent Gas Limited [[REP8-023](#)].
- In the final revision, Revision 5 [[REP9-005](#)] at 7 October 2019, most of the changes were made in response to my request for further information [[REP9-010](#)].

9.3.3. The dDCO provisions in respect of which I recommend changes to the final submitted dDCO [[REP9-005](#)] in the recommended DCO (Appendix D) are summarised in Table 1 below.

9.3.4. By way of context, various parties had different views on the following matters relating to the dDCO during the Examination:

- 1) *Article 23: Compulsory acquisition of rights and restrictive covenants.* This was the subject of considerable discussion through the Examination with regard to acquiring existing rights, creating new rights and imposing restrictive covenants over the land.
- 2) *Article 29: Temporary use of land for carrying out the authorised development.* This was the subject of considerable discussion through the Examination with regard to taking temporary possession of the land in Schedule 7.
- 3) *Schedule 2, Part 1, Requirement 4(2).* An additional clause relating to "night time working" has been inserted. FBC considers that amendments are needed which were not agreed before the end of the Examination.
- 4) *Schedule 2, Part 1, Requirement 5.* FBC considers that the clause relating to replacement planting requires amendments which were not agreed before the end of the Examination.
- 5) *Schedule 10 (Protective Provisions).* Schedule 10 includes 3 sets of Protective Provisions. Parts 1 (United Utilities Group Plc) and Part 3 (Cadent Gas Ltd) required substantial dialogue between the party concerned and the Applicant. The Protective Provisions with United Utilities Group Plc, and Cadent Gas Ltd were not fully agreed before the end of the Examination, as detailed in Table 1 below.

Table 1: DCO issues outstanding at end of Examination – recommended changes to the dDCO and included in the recommended DCO at Appendix D

Provision	Examination Issue and ExA’s Recommendation
<p>Article 23: Compulsory acquisition of rights and restrictive covenants.</p> <p>Article 29: Temporary use of land for carrying out the authorised development.</p> <p>Schedule 7: Land for which temporary possession may be taken</p>	<p>I was concerned that the effect of the drafting of Articles 23(1) and 29(9) might enable the creation of undefined new rights over the land listed in Schedule 7, which was described as being for TP only in the SoR and BoR and shown as being for TP on the Land Plans.</p> <p>Questions were asked to establish the Applicant’s intention in relation to the land in Schedule 7 through WQs [PD -007], further WQs [PD-010] and requests for further information [PD-014 and PD-015]. It was clear from the Applicant’s responses [REP2-041, REP5-022, REP6a-002, REP7-023] that they were seeking a power to CA new rights in the land listed in Schedule 7, described as being for TP, but that they did not consider this power should be limited to the new rights described in Schedule 5, as suggested by the ExAs [PD-007 & PD-016, REP2-041 & REP5-022].</p> <p>The Applicant did not consider that the power granted by Article 23 to create new rights in the Order land (<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> (Article 2 DCO)) limited the Undertakers ability to compulsorily acquire new rights to the rights described in the BoR (in the <i>“Extent, Description and Situation of the Land or Right”</i> column) and shown on the Land Plans coloured blue (<i>land to be used temporarily and rights to be acquired permanently</i>) [PD-010 & REP5-022].</p> <p>I am not satisfied that a general power to create undefined new rights satisfies the tests in s122 PA2008 or that the DCLG PA2008 guidance has been followed.</p> <p>It was not clear from the application documents that persons with an interest in the land listed in Schedule 7 would have been aware that the Applicant was seeking to compulsorily acquire new</p>

Provision	Examination Issue and ExA's Recommendation
	<p>rights in that land. The land was described as being for TP in the BoR, shown as being for TP only on the Land Plans (coloured yellow) and described as being required temporarily in the SoR. Furthermore, the Land Plans separately identify land which the Applicant was seeking to use temporarily and create new rights in (coloured blue). I raised this concern with the Applicant and asked the Applicant to confirm that all persons with an interest in the land in Schedule 7 were consulted on the understanding that new rights may be created in that land [PD-010]. The Applicant did not directly confirm this but said that they were <i>"in the process of communicating with all landowners where permanent rights may be required to ensure they are aware of this"</i>. [REP5-022]. I consider that the Applicant did not specifically consult these landowners on this basis.</p> <p>It was evident from the details provided [Appendix A REP6a-002] that the Applicant did not think that they might need to create new rights in all of the plots in Schedule 7. I asked the Applicant to specifically identify the plots over which they intend to compulsorily acquire new rights in a separate Schedule and to amend Articles 23 and 29 to ensure that those plots over which they were not seeking any CA were in fact excluded from the scope of CA. This led to the insertion of Part 2 to Schedule 7 in the final dDCO [REP9-005].</p> <p>The Applicant also sought to address concerns raised during Examination by restricting the power to create new rights in the land in Schedule 7 to the purpose for which TP was sought and by expanding the description of those purposes [REP5-022 & REP5-007].</p> <p>In the final version of the dDCO [REP9-005] the Applicant included Part 2, a table of new rights sought in the Schedule 7 land. The rights are mostly related to maintenance of the works. TP for ongoing maintenance for the Proposed Development is authorised under Article 30 of the dDCO and the Applicant has not offered any explanation as to why any further permanent new</p>

Provision	Examination Issue and ExA's Recommendation
	<p>rights would be required in these plots to undertake maintenance works.</p> <p>I conclude that there has not been adequate consultation with the relevant landowners and persons with an interest in the land in Part 2 of Schedule 7 due to the lateness of the identification of these new rights in the dDCO.</p> <p>Accordingly, I recommend that Article 29(1), 29(9) and Schedule 7 are amended as follows:</p> <p>Temporary use of land for carrying out the authorised development</p> <p>29.—(1) The undertaker may, in connection with the carrying out of the authorised development—</p> <p>(a) enter on and take temporary possession of—</p> <p>(i) the land specified in column (1) of Part 1 of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Part of that Schedule relating to the part of the authorised development specified in column (3) of that Part of that Schedule; and</p> <p>(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 acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;...</p> <p>...(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—</p> <p>(a) acquiring new rights <u>or imposing restrictive covenants over the land listed in schedule 5 over any part of the land referred to in paragraph (1)(a)(i) which is specified in Part 2 of Schedule 7</u> under Article 23 (compulsory acquisition of rights and restrictive covenants) <u>for the purpose</u></p>

Provision	Examination Issue and ExA's Recommendation
	<p>specified in relation to that land in column (2) of Part 2 of that Schedule relating to the part of the authorised development specified in column (3) of Part 2 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>Schedule 7: Land for which temporary possession may be taken</p> <p>Part 2 is deleted in its entirety.</p>
<p>Schedule 2, Part 1, Requirement 4(2): night-time working</p>	<p>FBC's D6 comments on the Applicant's revised dDCO noted an additional clause relating to "night time working" has been inserted in Requirement 4 (2) (c) (ix) of the D5 version of the dDCO. SoCG [REP6-020]. FBC raised issues concerning: definition of the term; failure of REAC to specify locations of anticipated night-time working; and the nature of the operations. FBC maintains that as a result of the above, FBC is unable to assess what effects the operations that the Applicant expects to carry out during the night working periods are likely to have on the amenity of surrounding occupiers, having particular regard to potential nuisances associated with noise disturbance and light pollution. In the absence of this information, FBC objects to the insertion of clause (ix) to Requirement 4 (2) (c).</p> <p>The Applicant responded that "A Section 61 will be applied for by the Contractor prior to construction. Night-time working hours, construction noise limits and locations of night-time works will all be defined within the application submitted to Fylde Borough Council" [REP7-024].</p> <p>I agree with FBC that in the absence of this information, clause (ix) to Requirement 4 (2) (c) is deleted.</p>
<p>Schedule 2, Part 1, Requirement 5: Landscaping</p>	<p>For the reasons set out in its submissions at D2 [REP2-064], D4 [REP4-026], and D6 [REP6-020] FBC maintains that the length of the rectification period specified in Requirement 5(5) of the dDCO</p>

Provision	Examination Issue and ExA's Recommendation
	<p>should be increased from 5 years to 10 years, and that the commitments in the REAC should be carried through to Requirement 5(5) of the dDCO.</p> <p>The Applicant argues [REP5-023] that the 5 year rectification period is common practice, and references the HEMP for details of the requirements for planting replacement as a result of failure / loss during a 5-year rectification period. The Applicant also referenced other DCOs which included either a 2-year or 5-year rectification period. Regarding FBC's request that the commitments in the REAC should be carried through to Requirement 5(5) the Applicant has proposed the revised wording in the SoCG [REP7-024], and the final dDCO [REP9-005].</p> <p>I agree with the Applicant's arguments regarding the 5-year rectification period, and the revised wording to Requirement 5(5) to reflect the REAC commitments.</p> <p>Therefore, I recommend that that no change is made to Requirement 5(5) of the dDCO.</p>
<p>Schedule 10: Part 1, Protective Provisions for the protection of electricity, gas, water and sewage undertakers</p>	<p>The draft SoCG with United Utilities [REP2-053] is unsigned with minor matters outstanding relating to the dDCO; Protective Provisions and design and engineering. No further information was submitted during the examination regarding this matter.</p> <p>I recommend that that no further changes are made to Schedule 10 Part 1 of the dDCO.</p>
<p>Schedule 10: Part 3, Protective Provisions for the protection of Cadent Gas Ltd;</p> <p>paragraph 28(3)(c) regarding liability</p>	<p>The indemnity from the Undertaker to Cadent Gas in paragraph 28 is given in relation to damage to Cadent Gas apparatus or property, interruption of service or supply of goods and liability to third parties. The disputed part (28(3)(c)) relates to the exclusion of indirect or consequential loss of any third party arising from damage or interruption, which is not reasonably foreseeable.</p> <p>The Applicant argues [REP8-023] that should sub-paragraph 28(3)(c) not be included in the Protective Provisions it would unacceptably raise the financial risk of the Proposed Development.</p>

Provision	Examination Issue and ExA's Recommendation
	<p>Cadent Gas argues [REP8-025] that:</p> <ul style="list-style-type: none"> ▪ the indemnity provides a procedure that sufficiently protects the Applicant for only properly incurred costs; ▪ Cadent Gas derives no benefit from the Proposed Development and should not be exposed to any costs as a result whether foreseeable or not; ▪ the provision was added after DL7 and the Applicant has not justified it other than it being included in the Eggborough DCO; and ▪ the sub-paragraph goes beyond the standard PPs (paragraph 11) which does not carve out indirect or consequential loss in the same way and reflects the Applicant's position throughout the Examination. <p>I agree with Cadent Gas that sufficient protections are afforded to the Applicant without the inclusion of paragraph 28(3)(c).</p> <p>Therefore, the I recommend that paragraph 28(3)(c) is deleted.</p>
<p>Schedule 10: Part 3, Protective Provisions for the protection of Cadent Gas Ltd;</p> <p>paragraph 26 regarding retained apparatus</p>	<p>Cadent Gas want to exclude any disputes arising under paragraph 26 from the scope of arbitration [REP8-025]. The Applicant wants disputes arising under paragraph 26 to be subject to arbitration with the exception of any dispute under 26(11) [REP8-023].</p> <p>Paragraph 26 relates to Cadent Gas' retained apparatus. It requires the Undertaker to submit a plan before commencing any of the specified works. The Undertaker cannot commence works until Cadent Gas has given consent to the plan. The consent can be subject to reasonable conditions or reasonable modifications.</p> <p>26(11) relates to compliance with Cadent Gas policies for safe working in proximity to gas apparatus. I agree that this is something which should not be subject to arbitration.</p> <p>The Applicant argues that Cadent Gas is permitted to withhold its approval to the plan pursuant to</p>

Provision	Examination Issue and ExA's Recommendation
	<p>sub-paragraph 26(4) subject only to the requirement that the plan must be 'reasonable', and without the ability to subject the decision to arbitration, there is an unacceptable risk to the delivery of the Proposed Development.</p> <p>Cadent Gas argues that it must ensure that its apparatus is adequately protected to ensure network integrity. I do not consider that allowing any dispute under paragraph 26 (with the exception of paragraph 26(11)) to be referred to arbitration offends this principle.</p> <p>Therefore, I recommend that no change is made to paragraph 26 of the dDCO.</p>

9.4. CONCLUSIONS

- 9.4.1. The Applicant's dDCO was subject to five revisions through the course of the Examination, as a result of the hearings, the ExAs' Written Questions and submissions by the IPs and APs.
- 9.4.2. Table 1 above summarises the matters that were not fully resolved by the end of the Examination, and on which the I have concluded and made recommendations to the SoS. These proposed changes to the dDCO submitted at the end of the Examination are therefore contained in the recommended DCO in Appendix D.

10. SUMMARY OF FINDINGS AND CONCLUSIONS

10.1. INTRODUCTION

10.1.1. This Chapter summarises my conclusions arising from this Report as a whole and sets out the primary recommendation to the SoS. It relies for its position on the planning balance on the conclusions recorded in Chapter 7. However, in addition to those conclusions it also draws in the conclusions arising from Chapters 8 (CA and TP) and 9 (the DCO).

10.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

10.2.1. In relation to s104 of PA2008 I conclude in summary broadly that:

- making the recommended DCO would be in accordance with the NPS, any relevant development plans and other relevant policy, all of which have been taken into account in this report, reference Chapter 3 of this Report;
- matters arising from the LIRs from three Councils have been taken into account, reference paragraph 1.4.28 of this Report;
- whilst the SoS is the competent authority under the Habitats Regulations and will make the definitive assessment, the proposal would not be likely to have significant effects on European sites, species or habitats and this finding has been taken into account in reaching the recommendation, reference paragraph 6.7 of this Report;
- in regard to all other matters and representations received, there are no important and relevant matters that would individually or collectively lead to a different recommendation to that below, reference paragraph 7.3.6 of this Report;
- with the mitigation proposed through the recommended DCO, there are no adverse impacts arising from the Proposed Development that would outweigh its benefits, reference paragraph 7.3.7 of this Report; and
- there is no reason to indicate that the application should be decided other than in accordance with the relevant NPS.

10.2.2. I have considered the case for any CA and TP of land and rights required in order to implement the Proposed Development in Chapter 8 of this Report. The objections to CA and TP have been considered but (subject to recommended changes to the dDCO) do not give rise to a fundamental barrier to the granting of the powers sought. The CA and TP powers requested are necessary to enable the Applicant to complete the Proposed Development. In addition, there is a compelling case in the public interest, the Applicant has a clear idea of how it intends to use the land, and funds are available for the implementation.

10.2.3. I have concluded that there has not been adequate consultation with the relevant landowners and persons with an interest in the land in Part 2 of Schedule 7 due to the lateness of the identification of these new rights in the dDCO. Accordingly, I recommend that Article 29(1), 29(9) and

Schedule 7 of the dDCO are amended. The SoS should note that the recommendation to make the Order is capable of being implemented without the new rights sought.

- 10.2.4. I confirm that I have had regard to the provisions of the Human Rights Act 1998. In some instances, there would be interference with private and family life and home in contravention of Article 8 and Protocol 1, Article 1. The interference in their human rights would be proportionate and justified in the public interest, reference paragraph 8.6.28 of this Report.
- 10.2.5. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. The Proposed Development affects the listed building, its setting and features. I conclude that the predicted public benefits outweigh the loss, reference paragraph 5.3.14.
- 10.2.6. Part of the Proposed Development falls within the GB. The incursion into the GB is contained within the existing highway boundary and consequently I conclude that harm to the GB would be minimal. The ES demonstrates anticipated public benefits of the Proposed Development. I concluded that these are 'very special circumstances' that clearly outweigh the potential harm to the GB.
- 10.2.7. With the changes to the Applicant's preferred dDCO proposed in Appendix D to this Report, the Proposed Development meets the tests in s104 of PA2008.

10.3. RECOMMENDATION

- 10.3.1. Findings and conclusions on important and relevant matters are set out in this Report.
- 10.3.2. The SoS is recommended to make the A585 Windy Harbour to Skippool Improvement Scheme Order in the form attached at Appendix D to this report.

APPENDICES

APPENDIX A: THE EXAMINATION	II
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APPENDIX A: THE EXAMINATION

See the Recommendation Report Appendices Document

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	Examination Event
08 April 2019	Unaccompanied Site Inspection
09 April 2019	Preliminary Meeting
09 April 2019	Open Floor Hearing
16 April 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Examination Timetable • ExA's Written Questions
26 April 2019	<p>DEADLINE 1</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on updated application documents • Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Post Hearing submissions including written submissions of oral case made at OFH1 • Notification by Statutory Parties of their wish to be considered as an IP by the ExA • Applicant's draft itinerary for Accompanied Site Inspection (ASI) • Suggested locations for site inspections, and justification, for consideration by the ExA • Notification of wish to speak at any subsequent Open Floor Hearing (OFH) • Notification of wish to make oral representations at an Issue Specific Hearing (ISH) • Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • Notification of wish to have future correspondence received electronically • Comments on any additional information/submissions received • Responses to any further information requested by the ExA for this deadline
17 May 2019	<p>DEADLINE 2</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Local Impact Reports from any local authorities • Statements of Common Ground (SoCG) requested by the ExA • Responses to the ExA's Written Questions • Applicant's first revised draft DCO • Responses to comments on RRs • Comments on draft itinerary for ASI and suggested locations for site inspections • Notification of wish to attend an ASI • Comments on any additional information/submissions received by D1 • Responses to any further information requested by the ExA for this deadline

APPENDIX A: THE EXAMINATION

Date	Examination Event
31 May 2019	<p>DEADLINE 3</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on WRs • Comments on Local Impact Reports • Comments on SoCG • Comments on responses to the ExA's Written Questions • Comments on Applicant's first revised draft DCO • Comments on any additional information/ submissions received by D2 • Responses to any further information requested by the ExA for this deadline
04 June 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Procedural Decision Notification of Hearings and Site Inspection
02 July 2019	Accompanied Site Inspection
03 July 2019	Issue Specific Hearing 1 (ISH1)
03 July 2019	Compulsory Acquisition Hearing 1 (CAH1)
03 July 2019	Open Floor Hearing 2 (OFH2)
12 July 2019	<p>DEADLINE 4</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Post Hearing submissions including written submissions of oral case • Any revised/ updated SoCG (if any) • Comments on any additional information/ submissions received by D3 • Responses to any further information requested by the ExA for this deadline
23 July 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Further Written Questions
09 August 2019	<p>DEADLINE 5</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to the ExA's further Written Questions • Applicant's revised draft DCO • Comments on any revised/ updated SoCG • Comments on any additional information/ submissions received by D4 • Responses to any further information requested by the ExA for this deadline
16 August 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Rule 8(3) – Notification of change to the Examination Timetable
19 August 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Additional Written Questions

APPENDIX A: THE EXAMINATION

Date	Examination Event
21 August 2019	<p>DEADLINE 6</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on responses to the ExA's further Written Questions (issued on 23 July 2019) • Comments on Applicant's revised draft DCO • Comments on any additional information/ submissions received by D5 • Responses to any further information requested by the ExA for this deadline
27 August 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Report on the Implications for European Sites (RIES)
02 September 2019	<p>DEADLINE 6a</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to the ExA's Additional Written Questions (issued on 19 August 2019) • Responses to any further information requested by the ExA for this deadline
10 September 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • ExA's proposed schedule of changes to the draft DCO
20 September 2019	<p>DEADLINE 7</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on the ExA's proposed schedule of changes to the draft DCO • Comments on the RIES • Comments on any responses to the ExA's Additional Written Questions (issued on 19 August 2019) • Comments on any additional information/ submissions received by D6 • Responses to any further information requested by the ExA for this deadline
25 September 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Rule 9, Rule 8(3) and Rule 17 letter in relation to the proposed Design Changes and Additional Land, Notification of change to the Examination Timetable and Request for Further Information
30 September 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Rule 17 letter – request for further information
30 September 2019	<p>Issue by ExA</p> <ul style="list-style-type: none"> • Rule 9 and Rule 17 letter in relation to the proposed Design Changes and Additional Land and request for comments

APPENDIX A: THE EXAMINATION

Date	Examination Event
1 October 2019	DEADLINE 8 Deadline for receipt of: <ul style="list-style-type: none">• Response to comments on the RIES• Responses to comments on the ExA's proposed schedule of changes to the draft DCO• Final DCO to be submitted by the Applicant in the SI template with the SI template validation report• Final updated Book of Reference• Final SoCG• Final Compulsory Acquisition Schedule• Final updated Guide to the Application• Comments on any additional information/ submission received by D7• Responses to any further information requested by the ExA for this deadline
07 October 2019	DEADLINE 9 Deadline for receipt of: <ul style="list-style-type: none">• Responses to Rule 9, Rule 8(3) and Rule 17 letter (issued on 25 September 2019)• Responses to Rule 17 letter (issued on 30 September 2019)• Responses to Rule 9 and Rule 17 letter (issued on 30 September 2019)• Comments on any additional information/ submissions received by D8• Responses to any further information requested by the ExA for this deadline
09 October 2019	EXAMINATION CLOSED

APPENDIX B: EXAMINATION LIBRARY

See the Recommendation Report Appendices Document

A585 Windy Harbour to Skippool Improvement Scheme Project Examination Library

Updated – 25 October 2019

This Examination Library relates to the A585 Windy Harbour to Skippool Improvement Scheme Project 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 are used within the Report on the Implications for European Sites and are 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 was a working document and was updated periodically as the Examination progressed.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate is published to the National Infrastructure Planning 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.

TR010035 – A585 Windy Harbour to Skippool Improvement Scheme Project**Examination Library - Index**

Category	Reference
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority’s questions, s55, and post acceptance s51	PD-xxx
Additional Submissions 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	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:	REP1-xxx
Deadline 2:	REP2-xxx
Deadline 3:	REP3-xxx
Deadline 4:	REP4-xxx
Deadline 5:	REP5-xxx
Deadline 6:	REP6-xxx
Deadline 6a:	REP6a-xxx

Deadline 7:	REP7-xxx
Deadline 8:	REP8-xxx
Deadline 9:	REP9-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

TR010035 – A585 Windy Harbour to Skippool Improvement Scheme**Examination Library****Application Documents**

APP-001	Highways England 1.1 Application Letter and Schedule of Compliance with Section 55 Checklist
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APP-083	Highways England 7.3 Record of Environmental Actions and Commitments
APP-084	Highways England 7.4 Transport Assessment
APP-085	Highways England 7.5 Traffic Management Plan
APP-086	Highways England 7.6 Ground Investigation Report
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Adequacy of Consultation Responses	
AoC-001	Cumbria County Council
AoC-002	Fylde Borough Council
AoC-003	Lancashire County Council
AoC-004	Sefton Council
AoC-005	West Lancashire Borough Council
AoC-006	Wigan Council
AoC-007	Wyre Borough Council
Relevant Representations	
RR-001	Rodney Barnes
RR-002	Irene B O
RR-003	Ian Brooker
RR-004	Mrs S Brown
RR-005	Michael Buckley
RR-006	Cadent Gas Limited
RR-007	Environment Agency
RR-008	Eversheds Sutherland (International) LLP on behalf of Carrington Group Limited & Carrington Group Mains Lane Limited
RR-009	Fylde Borough Council
RR-010	Fleetwood Renewable and Energy Enterprise 2007
RR-011	Lancashire County Council
RR-012	David Gardner
RR-013	Historic England, North West
RR-014	Barbara Hargreaves
RR-015	Greenhalgh with Thistleton Parish Council
RR-016	Colin Hirst
RR-017	Robert Partington Kearsley
RR-018	Marine Management Organisation
RR-019	Natural England
RR-020	Ida Pinson
RR-021	Public Health England
RR-022	Gary Shuttleworth
RR-023	Helen Shuttleworth
RR-024	Singleton Hall Management Company Ltd
RR-025	Peter Merrick
RR-026	P Wilson and Company on behalf of Mr and Mrs G Moreton
RR-027	Clerk Singleton Parish Council on behalf of Singleton Parish Council

RR-028	Richard Turner & Son on behalf of Singleton Hall Management Company
RR-029	Tim Hancock Associates Ltd on behalf of Shell U.K Limited
RR-030	United Utilities
RR-031	Wyre Borough Council
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 55 Checklist
PD-003	Initial choice of single appointed person
PD-004	Section 51 advice to the Applicant
PD-005	Rule 6 letter - Notification of the preliminary meeting and matters to be discussed
PD-006	Rule 8 Letter - Notification of Timetable for the Examination
PD-007	Written Questions
PD-008	Notification of change to the appointed Examining Authority
PD-009	Notice of a change to the Examining Authority, Examination Timetable and clarification of matters relating to the Accompanied Site Inspection
PD-010	Further Written Questions
PD-011	Examining Authority decision following the request to accept the proposed non material design changes dated 17 May 2019
PD-012	Additional Written Questions
PD-013	Report on the Implications for European Sites (RIES) Issued by the Examining Authority – 27 August 2019
PD-014	Examining Authority decision following receipt of additional information regarding the change request
PD-015	Procedural Decision - Rule 9, Rule 8(3) and Rule 17 Procedural decision in relation to the proposed Design Changes and Additional Land, Notification of change to the Examination Timetable and Request for Further Information
PD-016	Examining Authority's proposed schedule of changes to the draft Development Consent Order
PD-017	Further Procedural Decision – Rule 9 and 17 Further Procedural Decision in relation to the proposed Design Changes and Additional Land and request for comments
PD-018	Procedural Decision – Rule 17 Request for Further Information
PD-019	Notification of completion of the Examining Authority's Examination
PD-020	Rule 8(3) – Notification of change to the Examination Timetable
Additional Submissions	
AS-001	Highways England Crown Land Plan (Rev 1) (Tracked) - Accepted at the discretion of the Examining Authority
AS-002	Highways England Crown Land Plan (Rev 1) (Clean) - Accepted at the discretion of the Examining Authority
AS-003	Highways England Environmental Statement Chapter 18 Non-Technical Summary (Rev 1) (Tracked) - Accepted at the discretion of the Examining Authority
AS-004	Highways England

	Environmental Statement Chapter 18 Non-Technical Summary (Rev 1) (Clean) - Accepted at the discretion of the Examining Authority
AS-005	Highways England Habitats Regulations Assessment (Rev 1) (Tracked) - Accepted at the discretion of the Examining Authority
AS-006	Highways England Habitats Regulations Assessment (Rev 1) (Clean) - Accepted at the discretion of the Examining Authority
AS-007	Highways England Land Plans (Rev 1) (Tracked) - Accepted at the discretion of the Examining Authority
AS-008	Highways England Land Plans (Rev 1) (Clean) - Accepted at the discretion of the Examining Authority
AS-009	Highways England Book of Reference (Rev 1) (Tracked) - Accepted at the discretion of the Examining Authority
AS-010	Highways England Book of Reference (Rev 1) (Clean) - Accepted at the discretion of the Examining Authority
AS-011	Highways England Draft Development Consent Order (Rev 1) (Tracked) - Accepted at the discretion of the Examining Authority
AS-012	Highways England Draft Development Consent Order (Rev 1) (Clean) - Accepted at the discretion of the Examining Authority
AS-013	Highways England Response to S51 advice - Accepted at the discretion of the Examining Authority
AS-014	Highways England Statement of Reasons (Rev 1) (Tracked) - Accepted at the discretion of the Examining Authority
AS-015	Highways England Statement of Reasons (Rev 1) (Clean) - Accepted at the discretion of the Examining Authority
AS-016	Trinity House Additional Submission - Accepted at the discretion of the Examining Authority
AS-017	Eversheds Sutherland on behalf of Carrington Group Limited and Carrington Group Mains Lane Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-018	Ministry of Defence, DIO Additional Submission - Accepted at the discretion of the Examining Authority
AS-019	Highways England 4.3 Book of Reference (Rev 2) (Tracked)
AS-020	Highways England 4.3 Book of Reference (Rev 2) (Clean)
AS-021	Highways England

	Letter from Highways England about an extension to the Relevant Representation deadline
AS-022	Matt Hodges, Right to Ride Representative, Cycling UK Additional Submission - Accepted at the discretion of the Examining Authority
AS-023	Rodney Barnes Response to Rule 6 Letter
AS-024	Michael Buckley Response to Rule 6 Letter
AS-025	United Utilities Response to Rule 6 Letter
AS-026	Edward Greenwood on behalf of Fleetwood Renewable Energy Enterprise 2007 Response to Rule 6 Letter
AS-027	Highways England Additional Submission accepted at the discretion of the Examining Authority - proposed non material design changes to DCO application
AS-028	Homes England Additional Submission accepted at the discretion of the Examining Authority
AS-029	Highways England Additional Submission - Proposed changes to the Application - Proposed Design Changes and Additional Land - 20.08.19
AS-030	Highways England Additional Submission - Proposed changes to the Application - Meadows Approval
AS-031	Highways England Additional Submission - Proposed changes to the Application - Design Change Landowner Approval Mr Legge
AS-032	Highways England Additional Submission - Proposed changes to the Application - Design Change Landowner Approval Hargreaves
AS-033	Highways England Additional Submission - Proposed changes to the Application - Design Change Landowner Approval Wyre Borough Council
AS-034	Highways England Additional Submission - Proposed changes to the Application - Design Change Landowner Approval Mr Litherland
AS-035	Highways England Additional Submission accepted at the discretion of the Examining Authority
AS-036	Duchy of Lancaster Additional Submission accepted at the discretion of the Examining Authority
AS-037	Carrington Group Mains Lane Limited Additional Submission accepted at the discretion of the Examining Authority
Events and Hearings	

Preliminary Meeting – 9 April 2019	
EV-001	Recording of Preliminary Meeting - 09 April 2019
EV-002	Preliminary Meeting Note
Accompanied, Unaccompanied Site Inspections, and Hearings	
EV-003	Note of Unaccompanied Site Inspection - Monday 8 and Tuesday 9 April 2019
EV-004	Recording of Open Floor Hearing - 09 April 2019
EV-005	Hearings and ASI Notification
EV-006	Accompanied Site Inspection Itinerary
EV-007	Agenda for Compulsory Acquisition Hearing 1 (CAH1) - 3 July 2019
EV-008	Agenda for Issue Specific Hearing on the draft Development Consent Order (ISH1) - 3 July 2019
EV-009	Agenda for Open Floor Hearing 2 (OFH2) - 3 July 2019
EV-010	Issue Specific Hearing 1 (ISH1) 03 July 2019 Issue Specific Hearing: Recording of hearing
EV-011	Open Floor Hearing 2 (OFH2) 03 July 2019 Open Floor Hearing 2: Recording of hearing
EV-012	Compulsory Acquisition Hearing (CAH) 03 July 2019 Compulsory Acquisition Hearing: Recording of hearing
Representations	
Deadline 1 – Friday 26 April 2019	
<ul style="list-style-type: none"> • Comments on updated application documents • Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Post Hearing submissions including written submissions of oral case made at OFH1 • Notification by Statutory Parties of their wish to be considered as an IP by the ExA • Applicant’s draft itinerary for Accompanied Site Inspection (ASI) • Suggested locations for site inspections, and justification, for consideration by the ExA • Notification of wish to speak at any subsequent Open Floor Hearing (OFH) • Notification of wish to make oral representations at an Issue Specific Hearing (ISH) • Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • Notification of wish to have future correspondence received electronically • Comments on any additional information/ submissions received • Responses to any further information requested by the ExA for this deadline 	
REP1-001	Highways England Deadline 1 Submission - Covering Letter for Deadline 1
REP1-002	Highways England Deadline 1 Submission - 1.4 Application Document Tracker
REP1-003	Highways England Deadline 1 Submission - 7.12 Combined Modelling and Appraisal Report
REP1-004	Highways England Deadline 1 Submission - 7.9 Comments on Relevant Representations
REP1-005	Highways England

	Deadline 1 Submission - 7.7 Progress with Statements of Common Ground (Rev 1)
REP1-006	Highways England Deadline 1 Submission - 8.6 Statement of Common Ground with Historic England
REP1-007	Highways England Deadline 1 Submission - 8.11 Statement of Common Ground with Electricity North West
REP1-008	Highways England Deadline 1 Submission - 8.13 Statement of Common Ground with Openreach
REP1-009	Highways England Deadline 1 Submission - 8.15 Statement of Common Ground with GTC
REP1-010	Highways England Deadline 1 Submission - 7.8 Accompanied Site Inspection Information Pack
REP1-011	Fylde Borough Council Deadline 1 Submission
REP1-012	Marine Management Organisation Deadline 1 Submission
REP1-013	Shakespeare Martineau on behalf of Cadent Gas Limited Deadline 1 Submission
REP1-014	Carrington Group Mains Lane Ltd Deadline 1 Submission
REP1-015	Emma Allonby Deadline 1 Submission
REP1-016	Graham & Heather Evans Deadline 1 Submission
REP1-017	John Bailie Deadline 1 Submission
REP1-018	John Bailie Deadline 1 Submission
REP1-019	Matt Hodges Deadline 1 Submission
<p>Deadline 2 – 17 May 2019</p> <ul style="list-style-type: none"> • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words • Local Impact Reports from any local authorities • Statements of Common Ground (SoCG) requested by the ExA • Responses to the ExA’s Written Questions • Applicant’s first revised draft DCO • Responses to comments on RRs • Comments on draft itinerary for ASI and suggested locations for site inspections • Notification of wish to attend an ASI • Comments on any additional information/submissions received by D1 • Responses to any further information requested by the ExA for this deadline 	
REP2-001	Highways England Deadline 2 Submission - Cover Letter
REP2-002	Highways England

	Deadline 2 Submission - 1.4 Application Document Tracker (Rev 1)
REP2-003	Highways England Deadline 2 Submission - 2.2 Land Plans (Rev 2) (Tracked)
REP2-004	Highways England Deadline 2 Submission - 2.2 Land Plans (Rev 2) (Clean)
REP2-005	Highways England Deadline 2 Submission - 2.3 Works Plans (Rev 1) (Tracked)
REP2-006	Highways England Deadline 2 Submission - 2.3 Works Plans (Rev 1) (Clean)
REP2-007	Highways England Deadline 2 Submission - 2.4 Streets, Rights of Way and Access Plans - Sheet 1 (Rev 1)
REP2-008	Highways England Deadline 2 Submission - 2.5 General Arrangement Plans (Rev 1) (Tracked)
REP2-009	Highways England Deadline 2 Submission - 2.5 General Arrangement Plans (Rev 1) (Clean)
REP2-010	Highways England Deadline 2 Submission - 2.7 Classification of Roads Plans - Sheet 1 (Rev 1)
REP2-011	Highways England Deadline 2 Submission - 2.8 Traffic Regulation Measures and De-Trunking Plans - Sheet 1 (Rev 1)
REP2-012	Highways England Deadline 2 Submission - 2.9 Outline Drainage Works Plans - Sheet 1 (Rev 1)
REP2-013	Highways England Deadline 2 Submission - 2.10 Hedgerows and Protected Trees to be Removed Plans - Sheet 1 (Rev 1)
REP2-014	Highways England Deadline 2 Submission - 2.11 Crown Land Plan (Rev 2) (Tracked)
REP2-015	Highways England Deadline 2 Submission - 2.11 Crown Land Plans (Rev 2) (Clean)
REP2-016	Highways England Deadline 2 Submission - 3.1 Draft Development Consent Order (Rev 2) (Tracked)
REP2-017	Highways England Deadline 2 Submission - 3.1 Draft Development Consent Order (Rev 2) (Clean)
REP2-018	Highways England Deadline 2 Submission - 3.2 Explanatory Memorandum (Rev 1) (Tracked)
REP2-019	Highways England Deadline 2 Submission - 3.2 Explanatory Memorandum (Rev 1) (Clean)
REP2-020	Highways England Deadline 2 Submission - 4.1 Statement of Reasons) (Rev 2) (Tracked)
REP2-021	Highways England Deadline 2 Submission - 4.1 Statement of Reasons (Rev 2) (Clean)

REP2-022	Highways England Deadline 2 Submission - 4.3 Book of Reference (Rev 3) (Tracked)
REP2-023	Highways England Deadline 2 Submission - 4.3 Book of Reference (Rev 3) (Clean)
REP2-024	Highways England Deadline 2 Submission - 5.2 Flood Risk Assessment (Rev 1) (Tracked)
REP2-025	Highways England Deadline 2 Submission - 5.2 Flood Risk Assessment (Rev 1) (Clean)
REP2-026	Highways England Deadline 2 Submission - 5.4 Habitats Regulations Assessment (Rev 2) (Tracked)
REP2-027	Highways England Deadline 2 Submission - 5.4 Habitats Regulations Assessment (Rev 2) (Clean)
REP2-028	Highways England Deadline 2 Submission - 5.5 Consents and Agreements Position Statement (Rev 1) (Tracked)
REP2-029	Highways England Deadline 2 Submission - 5.5 Consents and Agreements Position Statement (Rev 1) (Clean)
REP2-030	Highways England Deadline 2 Submission - 6.7 Environmental Statement - Chapter 7 - Cultural Heritage (Rev 1) (Tracked)
REP2-031	Highways England Deadline 2 Submission - 6.7 Environmental Statement - Chapter 7 - Cultural Heritage (Rev 1) (Clean)
REP2-032	Highways England Deadline 2 Submission - 6.7.1 Appendix 7.1 - Cultural Heritage Desk-based Assessment (Rev 1) (Tracked)
REP2-033	Highways England Deadline 2 Submission - 6.7.1 Appendix 7.1 - Cultural Heritage Desk-based Assessment (Rev 1) (Clean)
REP2-034	Highways England Deadline 2 Submission - 6.19 Environmental Statement - Chapter 19 - Environmental Masterplan (Rev 1)
REP2-035	Highways England Deadline 2 Submission - 7.2 Outline Construction Environmental Management Plan (Rev 1) (Tracked)
REP2-036	Highways England Deadline 2 Submission - 7.2 Outline Construction Environmental Management Plan (Rev 1) (Clean)
REP2-037	Highways England Deadline 2 Submission - 7.3 Record of Environmental Actions and Commitments (Rev 1) (Tracked)
REP2-038	Highways England Deadline 2 Submission - 7.3 Record of Environmental Actions and Commitments (Rev 1) (Clean)
REP2-039	Highways England Deadline 2 Submission - 7.7 Progress with Statements of Common Ground (Rev 2) (Tracked)

REP2-040	Highways England Deadline 2 Submission - 7.7 Progress with Statements of Common Ground (Rev 2) (Clean)
REP2-041	Highways England Deadline 2 Submission - 7.10 Responses to the Examining Authority's Written Questions (Rev 0)
REP2-042	Highways England Deadline 2 Submission - 7.11 Environmental Statement Changes and Corrections Document (Rev 0)
REP2-043	Highways England Deadline 2 Submission - 7.13 ExQ1.1.8 Schedule of CA and TP Objections (Rev 0)
REP2-044	Highways England Deadline 2 Submission - 7.14 ExQ1.1.9: PA2008 s127 Statutory Undertakers Land/ Rights (Rev 0)
REP2-045	Highways England Deadline 2 Submission - 7.15 ExQ1.1.10: PA2008 s138 Statutory Undertakers Apparatus etc. (Rev 0)
REP2-046	Highways England Deadline 2 Submission - 7.16 Comments on Further Representations Received at Deadline 1 (Rev 0)
REP2-047	Highways England Deadline 2 Submission - 7.17 ExQ1.1.7 - Crown Land and Consent (Rev 0)
REP2-048	Highways England Deadline 2 Submission - 8.1 Draft Statement of Common Ground with Natural England (Rev 0)
REP2-049	Highways England Deadline 2 Submission - 8.2 Draft Statement of Common Ground with Lancashire County Council (Rev 0)
REP2-050	Highways England Deadline 2 Submission - 8.3 Draft Statement of Common Ground with Environment Agency (Rev 0)
REP2-051	Highways England Deadline 2 Submission - 8.4 Draft Statement of Common Ground with Wyre Council (Rev 0)
REP2-052	Highways England Deadline 2 Submission - 8.5 Draft Statement of Common Ground with Fylde Borough Council (Rev 1.1)
REP2-053	Highways England Deadline 2 Submission - 8.10 Draft Statement of Common Ground with United Utilities (Rev 0)
REP2-054	Highways England Deadline 2 Submission - 8.12 Draft Statement of Common Ground with Cadent (Rev 0)
REP2-055	H Deadline 2 Submission - Highways England 8.16 Draft Statement of Common Ground with Marine Management Organisation (Rev 0)
REP2-056	John Bailie Deadline 2 Submission
REP2-057	Mrs S J Brown

	Deadline 2 Submission - Written Representation
REP2-058	Michael Buckley Deadline 2 Submission - Written Submission
REP2-059	Cadent Gas Limited Deadline 2 Submission - Response to ExA's Written Questions
REP2-060	Cadent Gas Limited Deadline 2 Submission - Written Representation
REP2-061	Environment Agency Deadline 2 Submission - Response to ExA's Written Questions
REP2-062	Environment Agency Deadline 2 Submission - Written Representation
REP2-063	Fleetwood Renewable Energy Enterprise 2007 Deadline 2 Submission
REP2-064	Fylde Borough Council Deadline 2 Submission - Response to Highways England Comments on Relevant Representations
REP2-065	Fylde Borough Council Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-066	Fylde Borough Council Deadline 2 Submission - Written Representation
REP2-067	Fylde Borough Council Deadline 2 Submission - Local Impact Report
REP2-068	Fylde Borough Council Deadline 2 Submission - Comments on draft itinerary for ASI and suggested locations for site inspections
REP2-069	Fylde Borough Council Deadline 2 Submission - FBC document 2.3 (Draft Statement of Common Ground with Highways England)
REP2-070	Lancashire County Council Deadline 2 Submission - Local Impact Report & response to the Examining Authority's Written Questions
REP2-071	Natural England Deadline 2 Submission - Written Representation
REP2-072	Marine Management Organisation Deadline 2 Submission & response to the Examining Authority's Written Questions
REP2-073	Singleton Hall Management Company Deadline 2 Submission - Written Representation
REP2-074	P Wilson & Company LLP on behalf of Mr Garth and Mrs Helen Moreton Deadline 2 Submission - Written Representation
REP2-075	Wyre Borough Council Deadline 2 Submission - Summary of Local Impact Report
REP2-076	Wyre Borough Council Deadline 2 Submission - Local Impact Report
REP2-077	Highways England Deadline 2 Submission - 3.1 Draft Development Consent Order (Rev 2a) (Tracked) Showing all tracked changes
Deadline 3 – 31 May 2019	

- Comments on WRs
- Comments on Local Impact Reports
- Comments on SoCG
- Comments on responses to the ExA's Written Questions
- Comments on Applicant's first revised draft DCO
- Comments on any additional information/ submissions received by D2
- Responses to any further information requested by the ExA for this deadline

REP3-001	Highways England Deadline 3 Submission - Cover Letter
REP3-002	Highways England Deadline 3 Submission - 1.4 Application Document Tracker (Rev 3)
REP3-003	Highways England Deadline 3 Submission - 4.1 Statement of Reasons (Rev 3)
REP3-004	Highways England Deadline 3 Submission - 4.3 Book of Reference (Rev 4)
REP3-005	Highways England Deadline 3 Submission - 7.7 Progress with Statements of Common Ground (Rev 3) (Tracked)
REP3-006	Highways England Deadline 3 Submission - 7.7 Progress with Statements of Common Ground (Rev 3) (Clean)
REP3-007	Highways England Deadline 3 Submission - 7.13 ExQ1.1.8 Schedule of CA and TP Objections (Rev 1)
REP3-008	Highways England Deadline 3 Submission - 7.14 ExQ1.1.9 PA2008 s127 Statutory Undertakers Land Rights (Rev 2)
REP3-009	Highways England Deadline 3 Submission - 7.15 ExQ1.1.10 PA2008 s138 Statutory Undertakers Apparatus etc (Rev 1)
REP3-010	Highways England Deadline 3 Submission - 7.17 ExQ1.1.7: Crown Land Consent (Rev 1)
REP3-011	Highways England Deadline 3 Submission - 7.18 Comments on Written Representations (Rev 0)
REP3-012	Highways England Deadline 3 Submission - 7.19 Comments on Local Impact Reports (Rev 0)
REP3-013	Highways England Deadline 3 Submission - 7.20 Comments on responses to the Examining Authority's Written Questions (Rev 0)
REP3-014	Cadent Gas Limited Deadline 3 Submission
REP3-015	Environment Agency Deadline 3 Submission - Comments on Deadline 2 Submission
REP3-016	Fleetwood Renewable Energy Enterprise 2007 Deadline 3 Submission
REP3-017	Fylde Borough Council Deadline 3 Submission - Comments on Deadline 2 Submissions
REP3-018	Marine Management Organisation

	Deadline 3 Submission - Comments on Deadline 2 Submissions
REP3-019	Natural England Deadline 3 Submission - Comments on Applicant's first revised draft DCO.pdf
REP3-020	Network Rail Deadline 3 Submission
REP3-021	Cllr Alf L Clempson Deadline 3 Submission - Additional Submission accepted at the discretion of the Examining Authority
REP3-022	Cllr Lesley McKay Deadline 3 Submission
REP3-023	Duchy of Lancaster Deadline 3 Submission
REP3-024	John Bailie Deadline 3 Submission
REP3-025	Matt Hodges Deadline 3 Submission - Late submission accepted at the discretion of the Examining Authority
REP3-026	Paul D Dennis on behalf of R & B Hargreaves Deadline 3 Submission - Late submission accepted at the discretion of the Examining Authority
Deadline 4 – 12 July 2019	
<ul style="list-style-type: none"> • Post hearing submissions including written submissions of oral case • Any revised/ updated SoCG (if any) • Comments on any additional information/ submission received by D3 • Responses to any further information requested by the ExA for this deadline 	
REP4-001	Highways England Deadline 4 Submission - Covering Letter
REP4-002	Highways England Deadline 4 Submission - 1.4 Application Document Tracker (Rev 3)
REP4-003	Highways England Deadline 4 Submission - 4.1 Statement of Reasons (Rev 4) (Tracked)
REP4-004	Highways England Deadline 4 Submission - 4.1 Statement of Reasons (Rev 4) (Clean)
REP4-005	Highways England Deadline 4 Submission - 4.3 Book of Reference (Rev 5) (Tracked)
REP4-006	Highways England Deadline 4 Submission - 4.3 Book of Reference (Rev 5) (Clean)
REP4-007	Highways England Deadline 4 Submission - 6.19 Environmental Masterplan (Rev 2)
REP4-008	Highways England Deadline 4 Submission - 7.2 Outline Construction Environmental Management Plan (Rev 2) (Tracked)
REP4-009	Highways England Deadline 4 Submission - 7.2 Outline Construction Environmental Management Plan (Rev 2) (Clean)
REP4-010	Highways England

	Deadline 4 Submission - 7.3 Record of Environmental Actions and Commitments (Rev 2) (Tracked)
REP4-011	Highways England Deadline 4 Submission - 7.3 Record of Environmental Actions and Commitments (Rev 2) (Clean)
REP4-012	Highways England Deadline 4 Submission - 7.7 Progress with Statements of Common Ground (Rev 4) (Tracked)
REP4-013	Highways England Deadline 4 Submission - 7.7 Progress with Statements of Common Ground (Rev 4) (Clean)
REP4-014	Highways England Deadline 4 Submission - 7.11 Environmental Statement Changes and Corrections (Rev 1) (Tracked)
REP4-015	Highways England Deadline 4 Submission - 7.11 Environmental Statement Changes and Corrections (Rev 1) (Clean)
REP4-016	Highways England Deadline 4 Submission - 7.13 ExQ1.1.8 Schedule of CA and TP Objections (Rev 2) (Tracked)
REP4-017	Highways England Deadline 4 Submission - 7.13 ExQ1.1.8 Schedule of CA and TP Objections (Rev 2) (Clean)
REP4-018	Highways England Deadline 4 Submission - 7.14 ExQ1.1.9 PA2008 s127 Statutory Undertakers Land Rights (Rev 2)
REP4-019	Highways England Deadline 4 Submission - 7.15 ExQ1.1.10 PA2008 s138 Statutory Undertakers Apparatus etc (Rev 2)
REP4-020	Highways England Deadline 4 Submission - 7.17 ExQ1.1.7 Crown Land and Consent (Rev 2) (Tracked)
REP4-021	Highways England Deadline 4 Submission - 7.17 ExQ1.1.7 Crown Land and Consent (Rev 2) (Clean)
REP4-022	Highways England Deadline 4 Submission - 7.21 Comments on Written Representations Received at Deadline 3
REP4-023	Highways England Deadline 4 Submission - 8.3 Statement of Common Ground with the Environment Agency (Rev 1)
REP4-024	Highways England Deadline 4 Submission - Statement of Common Ground with Wyre Borough Council (Rev 1)
REP4-025	Fleetwood Renewable Energy Enterprise 2007 Deadline 4 Submission - Post Hearing submissions
REP4-026	Fylde Borough Council Deadline 4 Submission - Post Hearing submissions
REP4-027	Marine Management Organisation Deadline 4 Submission
REP4-028	Natural England

	Deadline 4 Submission - Update on issuing letters of no impediment for Bats and Great Crested Newts
REP4-029	Angus Blyth Deadline 4 Submission
REP4-030	Brian Sillett Deadline 4 Submission - Post Hearing submissions
REP4-031	Derek Shuttleworth Deadline 4 Submission
REP4-032	Edward Clarke Deadline 4 Submission - Post Hearing submissions
REP4-033	Gary and Helen Shuttleworth Deadline 4 Submission - Post Hearing submissions
REP4-034	Gary Bullen Deadline 4 Submission
REP4-035	Ian Brooker Deadline 4 Submission
REP4-036	John Bailie Deadline 4 Submission - Post Hearing submissions including written submissions of oral case
REP4-037	Kristopher Thacker Deadline 4 Submission
REP4-038	Maria Cassidy Deadline 4 Submission
REP4-039	Mr and Mrs Geoffrey Evans Deadline 4 Submission
REP4-040	Susan Earnshaw Deadline 4 Submission
REP4-041	Stuart Smith Deadline 4 Submission
REP4-042	Tim Wyncoll Deadline 4 Submission
REP4-043	Valerie Milligan Deadline 4 Submission - Post Hearing submissions including written submissions of oral case
REP4-044	Angus Blyth Deadline 4 Submission - Late submission accepted at the discretion of the Examining Authority
<p>Deadline 5 – 9 August 2019</p> <ul style="list-style-type: none"> • Responses to the ExA's further Written Questions • Applicant's revised draft DCO • Comments on any revised/ updated SoCG • Comments on any additional information/ submissions received by D4 • Responses to any further information requested by the ExA for this deadline 	
REP5-001	Highways England Deadline 5 Submission - Covering Letter
REP5-002	Highways England Deadline 5 Submission - 1.4 Application Document Tracker (Rev 4)
REP5-003	Highways England Deadline 5 Submission - 2.2 Land Plans (Rev 3) (Tracked)

REP5-004	Highways England Deadline 5 Submission - 2.2 Land Plans (Rev 3) (Clean)
REP5-005	Highways England Deadline 5 Submission - 2.3 Work Plans (Rev 2) (Tracked)
REP5-006	Highways England Deadline 5 Submission - 2.3 Work Plans (Rev 2) (Clean)
REP5-007	Highways England Deadline 5 Submission - 3.1 Draft Development Consent Order (Tracked)
REP5-008	Highways England Deadline 5 Submission - 3.1 Draft Development Consent Order (Clean)
REP5-009	Highways England Deadline 5 Submission - 4.1 Statement of Reasons (Rev 5) (Tracked)
REP5-010	Highways England Deadline 5 Submission - 4.1 Statement of Reasons (Rev 5) (Clean)
REP5-011	Highways England Deadline 5 Submission - 4.3 Book of Reference (Rev 6) (Tracked)
REP5-012	Highways England Deadline 5 Submission - 4.3 Book of Reference (Rev 6) (Clean)
REP5-013	Highways England Deadline 5 Submission - 7.3 Record of Environmental Actions and Commitments (Rev 3) (Tracked)
REP5-014	Highways England Deadline 5 Submission - 7.3 Record of Environmental Actions and Commitments (Rev 3) (Clean)
REP5-015	Highways England Deadline 5 Submission - 7.7 Progress with Statements of Common Ground (Rev 5) (Tracked)
REP5-016	Highways England Deadline 5 Submission - 7.7 Progress with Statements of Common Ground (Rev 5) (Clean)
REP5-017	Highways England Deadline 5 Submission - 7.13 ExQ1.1.8 Schedule of CA and TP Objections (Rev 3) (Tracked)
REP5-018	Highways England Deadline 5 Submission - 7.13 ExQ1.1.8 Schedule of CA and TP Objections (Rev 3) (Clean)
REP5-019	Highways England Deadline 5 Submission - 7.14 ExQ1.1.9 PA2008 s127 Statutory Undertakers Land Rights (Rev 3)
REP5-020	Highways England Deadline 5 Submission - 7.15 ExQ1.1.10 PA2008 s138 Statutory Undertakers Apparatus etc (Rev 3)
REP5-021	Highways England Deadline 5 Submission - 7.17 ExQ1.1.7 Crown Land and Consent (Rev 3)
REP5-022	Highways England Deadline 5 Submission - 7.22 Responses to the Examining Authority's Further Written Questions

REP5-023	Highways England Deadline 5 Submission - 7.23 Responses to Representations received at Deadline 4
REP5-024	Highways England Deadline 5 Submission - 7.24 Response to Oral Representations
REP5-025	Cadent Gas Limited Deadline 5 Submission - Response to the Examining Authority's Further Written Questions (ExQ2)
REP5-026	Marine Management Organisation Deadline 5 Submission - Response to the Examining Authority's Further Written Questions (ExQ2) and comments on Statement of Common Ground (SoCG)
REP5-027	Natural England Deadline 5 Submission - Comments on Applicant's first revised draft Development Consent Order (DCO) and comments on Outline Construction Environmental Management Plan (CEMP)
REP5-028	Edward Greenwood, Fleetwood Renewable Energy Enterprise 2007 Deadline 5 Submission
<p>Deadline 6 – 21 August 2019</p> <ul style="list-style-type: none"> • Comments on responses to the ExA's further Written Questions • Comments on Applicant's revised draft DCO • Comments on any additional information/ submissions received by D5 • Responses to any further information requested by the ExA for this deadline 	
REP6-001	Highways England Deadline 6 Submission - Covering letter
REP6-002	Highways England Deadline 6 Submission - 1.4 Application Document Tracker (Rev 5)
REP6-003	Highways England Deadline 6 Submission - 4.1 Statement of Reasons (Rev 6) (Clean)
REP6-004	Highways England Deadline 6 Submission - 4.1 Statement of Reasons (Rev 6) (Tracked)
REP6-005	Highways England Deadline 6 Submission - 4.3 Book of Reference (Rev 7)
REP6-006	Highways England Deadline 6 Submission - 6.19 Environmental Masterplan (Rev 3)
REP6-007	Highways England Deadline 6 Submission - 7.2 Outline CEMP (Rev 3) (Tracked)
REP6-008	Highways England Deadline 6 Submission - 7.11 ES Changes and Corrections (Rev 2) (Clean)
REP6-009	Highways England Deadline 6 Submission - 7.11 ES Changes and Corrections (Rev 2) (Tracked)
REP6-010	Highways England Deadline 6 Submission - 7.13 ExQ 1.1.8 Schedule of CA and TP Objections (Rev 4)
REP6-011	Highways England

	Deadline 6 Submission - 7.14 ExQ 1.1.9 PA2008 s127 Statutory Undertakers Land Rights (Rev 4)
REP6-012	Highways England Deadline 6 Submission - 7.15 ExQ 1.1.10 PA2008 s138 Statutory Undertakers Apparatus etc (Rev 4)
REP6-013	Highways England Deadline 6 Submission - 7.17 ExQ 1.1.7 Crown Land and Consent (Rev 4)
REP6-014	Highways England Deadline 6 Submission - 7.2 Outline CEMP (Rev 3) (Clean)
REP6-015	Highways England Deadline 6 Submission - 7.25 Responses to Representations Received at Deadline 5
REP6-016	Highways England Deadline 6 Submission - 7.3 Record of Environment Actions and Commitments (Rev 4) (Tracked)
REP6-017	Highways England Deadline 6 Submission - 7.3 Record of Environment Actions and Commitments (Rev 4) (Clean)
REP6-018	Highways England Deadline 6 Submission - 7.7 Progress with Statements of Common Ground (Rev 6) (Tracked)
REP6-019	Highways England Deadline 6 Submission - 7.7 Progress with Statements of Common Ground (Rev 6) (Clean)
REP6-020	Fylde Borough Council Deadline 6 Submission - Comments on Applicant's revised draft DCO
REP6-021	Environment Agency Deadline 6 Submission - Comments on Applicant's revised draft DCO
REP6-022	Natural England Deadline 6 Submission - Comments on Applicant's revised draft DCO and Deadline 5 documents
REP6-023	Fleetwood Renewable Energy Enterprise 2007 Deadline 6 Submission - Comments on the Applicant's 5.2 Flood Risk Assessment submitted at Deadline 2 (REP2-024)
REP6-024	Richard Turner & Son on behalf of Messrs Ditchfield Deadline 6 Submission - Response to the Examining Authority's Further Written Questions
REP6-025	Richard Turner & Son on behalf of Mrs M Smith Deadline 6 Submission - Response to the Examining Authority's Further Written Questions
Deadline 6a – 02 September 2019	
<ul style="list-style-type: none"> • Responses to the ExA's Additional Written Questions (issued on 19 August 2019) • Responses to any further information requested by the ExA for this deadline 	
REP6a-001	Highways England Deadline 6a Submission: Covering Letter

REP6a-002	Highways England Deadline 6a Submission: Response to the Examining Authority's Additional Written Questions and request for information
REP6a-003	Michael Buckley Deadline 6a Submission - Comments on decision not to hold any further hearings
Deadline 7 – 20 September 2019	
<ul style="list-style-type: none"> • Comments on the ExA's proposed schedule of changes to the draft DCO • Comments on the RIES • Comments on any responses to the ExA's Additional Written Questions (issued on 19 August 2019) • Comments on any additional information/ submissions received by D6 • Responses to any further information requested by the ExA for this deadline 	
REP7-001	Highways England Deadline 7 Submission - Cover Letter
REP7-002	Highways England Deadline 7 Submission - 1.6 Application Document Tracker (Rev 6)
REP7-003	Highways England Deadline 7 Submission - 4.1 Statement of Reasons (Rev 7) (Clean)
REP7-004	Highways England Deadline 7 Submission - 4.1 Statement of Reasons (Rev 7) (Tracked)
REP7-005	Highways England Deadline 7 Submission - 4.3 Book of Reference (Rev 8) (Tracked)
REP7-006	Highways England Deadline 7 Submission - 4.3 Book of Reference (Rev 8) (Clean)
REP7-007	Highways England Deadline 7 Submission - 7.2 Outline Construction Environmental Management Plan (Rev 4) (Tracked)
REP7-008	Highways England Deadline 7 Submission - 7.2 Outline Construction Environmental Management Plan (Rev 4) (Clean)
REP7-009	Highways England Deadline 7 Submission - 7.3 Record of Environmental Actions and Commitments (Rev 5) (Tracked)
REP7-010	Highways England Deadline 7 Submission - 7.3 Record of Environmental Actions and Commitments (Rev 5) (Clean)
REP7-011	Highways England Deadline 7 Submission - 7.7 Progress with Statements of Common Ground (Rev 7) (Tracked)
REP7-012	Highways England Deadline 7 Submission - 7.7 Progress with Statements of Common Ground (Rev 7) (Clean)
REP7-013	Highways England Deadline 7 Submission - 7.13 ExQ1.1.8 Schedule of CA and TP Objections (Rev 5) (Tracked)
REP7-014	Highways England

	Deadline 7 Submission - 7.13 ExQ1.1.8 Schedule of CA and TP Objections (Rev 5) (Clean)
REP7-015	Highways England Deadline 7 Submission - 7.14 ExQ1.1.9 PA2008 s127 Statutory Undertakers Land Rights (Rev 5) (Tracked)
REP7-016	Highways England Deadline 7 Submission - 7.14 ExQ1.1.9 PA2008 s127 Statutory Undertakers Land Rights (Rev 5) (Clean)
REP7-017	Highways England Deadline 7 Submission - 7.15 ExQ1.1.10 PA2008 s138 Statutory Undertakers Apparatus etc (Rev 5)
REP7-018	Highways England Deadline 7 Submission - 7.17 ExQ1.1.7 Crown Land and Consent (Rev 5) (Tracked)
REP7-019	Highways England Deadline 7 Submission - 7.27 Responses to Comments on the Applicant's Revised Draft DCO
REP7-020	Highways England Deadline 7 Submission - 7.28 Responses to Representations Received at Deadline 6 & 6a
REP7-021	Highways England Deadline 7 Submission - 7.29 Comments on the Report on the Implications for European Sites (RIES)
REP7-022	Highways England Deadline 7 Submission - 7.30 Draft Archaeological Mitigation Strategy
REP7-023	Highways England Deadline 7 Submission - 7.31 Responses to the Examining Authority's Proposed Schedule of Changes to the dDCO
REP7-024	Highways England Deadline 7 Submission - 8.5 Statement of Common Ground with Fylde Borough Council (Rev 3)
REP7-025	Highways England Deadline 7 - Cover Letter - Non-Material Changes - Additional Land
REP7-026	Highways England Deadline 7 Submission - Electricity North West Consent to Acquisition of Additional Land
REP7-027	Highways England Deadline 7 Submission - Environment Agency Consent to Acquisition of Additional Land
REP7-028	Highways England Deadline 7 Submission - Trustees of Thornton Cleveleys District Horse Club Consent to Acquisition of Additional Land
REP7-029	Highways England Deadline 7 Submission - Marine Management Organisation Consent to Acquisition of Additional Land
REP7-030	Highways England Deadline 7 Submission - United Utilities Group plc Response to Non-Material Change
REP7-031	Highways England

	Deadline 7 Submission - Mr Hargreaves' Consent to Acquisition of Additional Land (4043)
REP7-032	Highways England Deadline 7 Submission - Mr Hargreaves' Consent to Acquisition of Additional Land (4047)
REP7-033	Highways England Deadline 7 Submission - Mr Litherland Consent to Acquisition of Additional Land
REP7-034	Highways England Deadline 7 Submission - Mr Ronald Meadows' Consent to Acquisition of Additional Land
REP7-035	Highways England Deadline 7 Submission - Mrs Rosindale's Consent to Acquisition of Additional Land
REP7-036	Highways England Deadline 7 Submission - Paul Smith's Area of Interest Lease Plan
REP7-037	Duchy of Lancaster Deadline 7 Submission - Comments on any additional information
REP7-038	Environment Agency Deadline 7 Submission - Response to further information requested by the Examining Authority for this deadline
REP7-039	Edward Greenwood, Fleetwood Renewable Energy Enterprise 2007 Deadline 7 Submission
REP7-040	Marine Management Organisation Deadline 7 Submission - Comments on any additional information and submissions received by Deadline 6
REP7-041	Natural England Deadline 7 Submission - Comments on the Examining Authority's proposed schedule of changes to the Development Consent Order, RIES, CEMP and REAC
Deadline 8 – 01 October 2019	
<ul style="list-style-type: none"> • Response to comments on the RIES • Responses to comments on the ExA's proposed schedule of changes to the draft DCO • Final DCO to be submitted by the Applicant in the SI template with the SI template validation report • Final updated Book of Reference • Final SoCG • Final Compulsory Acquisition Schedule • Final updated Guide to the Application • Comments on any additional information/ submissions received by D7 • Responses to any further information requested by the ExA for this deadline 	
REP8-001	Highways England Deadline 8 Submission - Covering Letter
REP8-002	Highways England Deadline 8 Submission - 1.4 (7) Application Document Tracker (Rev 7)
REP8-003	Highways England Deadline 8 Submission - 3.1 (4) Draft Development Consent Order Validation Report (01-10-2019)
REP8-004	Highways England

	Deadline 8 Submission - 3.1 (4) Draft Development Consent Order (Rev 4) (Tracked)
REP8-005	Highways England Deadline 8 Submission - 3.1 (4) Draft Development Consent Order (Rev 4) (Clean)
REP8-006	Highways England Deadline 8 Submission - 3.2 (2) Draft Explanatory Memorandum (Rev 2) (Tracked)
REP8-007	Highways England Deadline 8 Submission - 3.2 (2) Draft Explanatory Memorandum Clean (Rev 2) (Clean)
REP8-008	Highways England Deadline 8 Submission - 4.1 (8) Statement of Reasons (Rev 8) (Tracked)
REP8-009	Highways England Deadline 8 Submission - 4.1 (8) Statement of Reasons (Rev 8) (Clean)
REP8-010	Highways England Deadline 8 Submission - 4.3 (9) Book of Reference (Rev 9) (Clean)
REP8-011	Highways England Deadline 8 Submission - 7.7 (8) Progress with Statements of Common Ground (Rev 8) (Tracked)
REP8-012	Highways England Deadline 8 Submission - 7.7 (8) Progress with Statements of Common Ground (Rev 8) (Clean)
REP8-013	Highways England Deadline 8 Submission - 8.1 (2) Statement of Common Ground with Natural England (Rev 2)
REP8-014	Highways England Deadline 8 Submission - 8.2 (1) Statement of Common Ground with Lancashire County Council (Rev 1)
REP8-015	Highways England Deadline 8 Submission - 7.13 (6) ExQ1.1.8 Schedule of CA and TP Objections (Rev 6) (Tracked)
REP8-016	Highways England Deadline 8 Submission - 7.13 (6) ExQ1.1.8 Schedule of CA and TP Objections (Rev 6) (Clean)
REP8-017	Highways England Deadline 8 Submission - 7.14 (6) ExQ1.1.9 PA2008 s127 Statutory Undertakers Land Rights (Rev 6) (Tracked)
REP8-018	Highways England Deadline 8 Submission - 7.14 (6) ExQ1.1.9 PA2008 s127 Statutory Undertakers Land Rights (Rev 6) (Clean)
REP8-019	Highways England Deadline 8 Submission - 7.15 (6) ExQ1.1.10 PA2008 s138 Statutory Undertakers Apparatus etc (Rev 6) (Tracked)
REP8-019	Highways England Deadline 8 Submission - 7.15 (6) ExQ1.1.10 PA2008 s138 Statutory Undertakers Apparatus etc (Rev 6) (Clean)
REP8-020	Highways England

	Deadline 8 Submission - 7.17 (6) ExQ1.1.7 Crown Land and Consent (Rev 6)
REP8-022	Highways England Deadline 8 Submission - 7.32 Responses to Representations Received at Deadline 7
REP8-023	Highways England Deadline 8 Submission - 7.33 Submissions in respect of Part 3 of Schedule 10 to the Development Consent Order
REP8-024	Cumbria County Council Deadline 8 Submission - No comments
REP8-025	Cadent Gas Limited Deadline 8 Submission - Response to Deadline 8
REP8-026	Cadent Gas Limited Deadline 8 Submission - Cadent's preferred protective provisions
REP8-027	Cadent Gas Limited Deadline 8 Submission - Highways England's preferred protective provisions
REP8-028	Cadent Gas Deadline 8 Submission - Comparison of protective provisions
REP8-029	Cadent Gas Limited Deadline 8 Submission - The Eggborough Power Limited DCO decision letter
REP8-030	Cadent Gas Limited Deadline 8 Submission - The Eggborough Power Limited DCO Examining Authority's Report
REP8-031	Cadent Gas Limited Deadline 8 Submission - The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016
REP8-032	Cadent Gas Limited Deadline 8 Submission - The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016
REP8-033	Carrington Group Mains Lane Limited Deadline 8 Submission - Letter to Planning Inspectorate
REP8-034	Carrington Group Mains Lane Limited Deadline 8 Submission - Plan 1
REP8-035	Carrington Group Mains Lane Limited Deadline 8 Submission - Plan 2
REP8-036	Marine Management Organisation Deadline 8 Submission - Responses for Deadline 8
REP8-037	Natural England Deadline 8 Submission - Response for Deadline 8
REP8-038	Matt Hodges on behalf of Right to Ride Representative, Cycling UK Deadline 8 - Response for Deadline 8
REP8-039	Edward Clarke Deadline 8 Submission - Responses for Deadline 8
REP8-040	Edward Greenwood, Fleetwood Renewable and Energy Enterprise 2007 Deadline 8 Submission - Response for Deadline 8
REP8-041	Richard Turner & Sons on behalf of Messrs Ditchfield Deadline 8 Submission - Late Submission accepted at the discretion of the Examining Authority - Response for Deadline 8

REP8-042	Richard Turner & Sons on behalf of Mrs M Smith Deadline 8 Submission - Late Submission accepted at the discretion of the Examining Authority - Response for Deadline 8
REP8-043	Richard Turner & Son on behalf of B Cocker Deadline 8 Submission - Late submission accepted at the discretion of the Examining Authority - Response for Deadline 8
REP8-044	Richard Turner & Son on behalf of Singleton Hall Management Company Deadline 8 Submission - Late submission accepted at the discretion of the Examining Authority - Response for Deadline 8
REP8-045	Richard Turner & Son on behalf of Michael Buckley Deadline 8 Submission - Late submission accepted at the discretion of the Examining Authority - Response for Deadline 8
Deadline 9 – 07 October 2019	
<ul style="list-style-type: none"> • Comments on any additional information/ submissions received by D8 • Responses to any further information requested by the ExA for this deadline 	
REP9-001	Highways England Deadline 9 Submission - Covering Letter
REP9-002	Highways England Deadline 9 Submission - 1.4 Application Document Tracker (Rev 8)
REP9-003	Highways England Deadline 9 Submission - 3.1 Draft Development Consent Order Validation Report (Rev 5)
REP9-004	Highways England Deadline 9 Submission - 3.1 Draft Development Consent Order (Rev 5) (Tracked)
REP9-005	Highways England Deadline 9 Submission - 3.1 Draft Development Consent Order (Rev 5) (Clean)
REP9-006	Highways England Deadline 9 Submission - 7.7 Progress with Statements of Common Ground (Rev 9) (Tracked)
REP9-007	Highways England Deadline 9 Submission - 7.7 Progress with Statements of Common Ground (Rev 9) (Clean)
REP9-008	Highways England Deadline 9 Submission - 7.30 Draft Archaeological Mitigation Strategy (Rev 1) (Tracked)
REP9-009	Highways England Deadline 9 Submission - 7.30 Draft Archaeological Mitigation Strategy (Rev 1) (Clean)
REP9-010	Highways England Deadline 9 Submission - 7.34 Responses to the Examining Authority's Request for Further Information
REP9-011	Highways England Deadline 9 Submission - 7.34 CA Rights over Temporarily Acquired Land - Correspondence received
REP9-012	Highways England

	Deadline 9 Submission - 7.35 Responses to Representations Received at Deadline 8
REP9-013	Highways England Deadline 9 Submission - 8.2 Statement of Common Ground with Lancashire County Council (Rev 1)
REP9-014	Highways England Deadline 9 Submission - 8.16 Statement of Common Ground with Marine Management Organisation (MMO) (Rev 1)
REP9-015	Angus Blyth Deadline 9 Submission - Response for Deadline 9
REP9-016	Edward Greenwood, Fleetwood Renewable Energy Enterprise 2007 Deadline 9 Submission – Response for Deadline 9
REP9-017	John Bailie Deadline 9 Submission - Response for Deadline 9
REP9-018	Network Rail Deadline 9 Submission - No comments
REP9-019	Marine Management Organisation Deadline 9 Submission - Response for Deadline 9
Other Documents	
OD-001	WHSK - Regulation 32 Transboundary Screening
OD-002	Highways England Cover letter – Compliance Certificates

APPENDIX C: LIST OF ABBREVIATIONS

See the Recommendation Report Appendices Document

Abbreviation or usage	Reference
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
AA	Appropriate assessment
AEoI	Adverse effects on the integrity
AP	Affected Person
APFP	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
AQD	Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe
AQMA	Air Quality Management Area
ASI	Accompanied Site Inspection
BHS	Biological Heritage Site
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CA Regs	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CEA	Cumulative Effects Assessment
CEMP	Construction Environmental Management Plan
D (number)	Deadline, with a number referring to a specific deadline identified in the Examination Timetable
DCLG	Former Department for Communities and Local Government, re-organised to form Ministry of Housing, Communities and Local Government (MHCLG) in January 2018. References to documents (eg Examination Guidance) or decisions taken by the former department are referred to using the abbreviation DCLG.
DML	Deemed Marine Licence
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
DPs	Development Plans
EA	Environment Agency
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
END	Environmental Noise Directive
EPS	European Protected Species
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
ExA	Examining Authority
ExQ (number)	Written examination questions by the ExA
FBC	Fylde Borough Council

Abbreviation or usage	Reference
FCHTM	The Flyde Coast Highways and Transport Masterplan
FRA	Flood Risk Assessment
FS	Funding Statement
FWQ	First Written Question
GB	Green Belt
GTC	Gas Transportation Company
ha	hectare
HAWRAT	Highways Agency (now Highways England) Water Risk Assessment Tool
HEMP	Handover Environmental Management Plan
HGV	Heavy Goods Vehicle
HRA	Habitats Regulations Assessment
IAPI	Initial Assessment of Principal Issues
IP	Interested Party
ISH (number)	Issue Specific Hearing and where followed by a number, the number is a reference to a specific ISH on a date in the examination timetable
km	kilometre
LCC	Lancashire County Council
LIR	Local Impact Report
LCA	Landscape Character Area
LCT	Landscape Character Type
LV	Limit value(s) – a regulatory limit expressed as a value above which a regulated substance should not be found in the environment and triggering action for pollution control
MCAA2009	Marine and Coastal Access Act 2009
MMO	Marine Management Organisation
MHCLG	Ministry of Housing, Communities and Local Government
MMP	Materials Management Plan
mph	miles per hour
NE	Natural England
NERCA2006	Natural Environment and Rural Communities Act 2006
NIA	Noise Important Area
NMUs	Non-motorised users
NPSNN	National Policy Statement for National Networks
NO ₂	Nitrogen Dioxide
NOx	Mono-nitrogen oxide
NPA2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
OCEMP	Outline Construction Environmental Management Plan
OFH	Open Floor Hearing
PA2008	Planning Act 2008 (as amended)
PM	Preliminary Meeting
PPG	Planning Practice Guidance accompanying the NPPF
PRoW	Public Right of Way
PSED	Public Sector Equality Duty

Abbreviation or usage	Reference
REAC	Register of environmental actions and commitments
rMCZ	Recommended Marine Conservation Zone
RIES	Report on the Implications for European Sites
RIS	Road Investment Strategy (2015–2020) (2015)
RR	Relevant Representation
s(number)	Section of a statute and when followed by a number, a particular section number from a named statute
SAC	Special Area of Conservation
SOAEL	Significant Observed Adverse Effect
SoCC	Statement of Community Consultation
SoCG	Statement of Common Ground
SO2	Sulphur dioxide
SoR	Statement of Reasons
SoS	Secretary of State
SoS HCLG	... for Housing, Communities and Local Government (from Jan 2018)
SoST	... for Transport
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
SWMP	Site Waste Management Plan
TCA	Townscape Character Area
TCPA1990	Town and Country Planning Act 1990
TP	Temporary Possession
UK	United Kingdom
UKCP18	UK Climate Impacts Programme 2018
UNEP	United Nations Environment Programme
UUG	United Utilities Group
USI (number)	Unaccompanied Site Inspection and where followed by a number, the number is a reference to a USI on a particular date.
WACA1981	The Wildlife and Countryside Act 1981
WFD	Water Framework Directive
WBC	Wyre Borough Council
WR	Written Representation
ZTV	Zone of Theoretical Visibility

APPENDIX D: THE RECOMMENDED DCO

See the Recommendation Report Appendices Document

20[] No.

INFRASTRUCTURE PLANNING

**The A585 Windy Harbour to Skippool Highway 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 24, 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 A585 Windy Harbour to Skippool Highway Development Consent Order 201[] and comes into force on [] 201[].

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);

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- (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.
- (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. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

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

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

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

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

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

“the 2008 Act” means the Planning Act 2008(f);

“the 2009 Act” means the Marine and Coastal Access Act 2009(g);

“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) or any part of it, 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;

“British Telecommunications PLC” means the company registered in England and Wales, company number 01800000, whose registered address is 81 Newgate Street, London EC1A 7AJ;

“building” includes any structure or erection or any part of a building, structure or erection;

“Cadent Gas Ltd” means the Company registered in England and Wales, company number 10080864, whose registered address is Ashbrook Court, Prologis Park, Central Boulevard, Coventry CV7 8PE;

“carriageway” has the same meaning as in the 1980 Act and includes part of a carriageway;

“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 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

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- (a) 1980 c. 66. Section 1(1) was amended by section 21(2) to the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections J(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) to the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 (c. 50) and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.
- (c) 1984 c. 27.
- (d) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (f) 2008 c. 29.
- (g) 2009 c. 23.

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;

“the Crown land plans” means the plans of that description referenced in Schedule 11 (documents to be certified) certified by the Secretary of State as the Crown land plans for the purposes of this Order;

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

“Electricity North West Limited” means the company registered in England and Wales, company number, 02366949, whose registered address is 304 Bridgewater Place, Birchwood Park, Warrington WA3 6XG;

“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 11 (documents to be certified) and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“Environment Agency” means the body created by the Environment Act 1995 or any successor in function to it;

“environmental statement” means the document of that description submitted with the application for this Order and 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 and include part of a footway or footpath;

“The Gas Transportation Company Limited” means the company registered in Guernsey, company number, 29431, whose registered address is Energy House, Woolpit Business Park, Bury St Edmunds, Suffolk IP30 9UP;

“hedgerow and protected trees plans” means the drawings listed in Schedule 11 (documents to be certified) and certified as the hedgerow and protected trees plans by the Secretary of State for the purposes of this Order;

“HEMP” means handover environmental management plan;

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

“the land plans” means the plans listed in Schedule 11 (documents to be certified) and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” has the same meaning as in the Flood and Water Management Act 2010;

“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 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;

“Natural England” means the body created by the Natural Environment and Rural Communities Act 2006 or any successor in function to it;

“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;

(a) 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).

“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;

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

“street” means a street within the meaning of section 48 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 Schedule 11 (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;

“traffic authority” has the same meaning as in 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—

- (c) section 10 or 19(1) of the 1980 Act; or
- (d) an order or direction under section 10 of that Act; or
- (e) an order granting development consent; or
- (f) any other enactment;

“undertaker” means Highways England Company Limited (Company No. 09346363) of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“United Utilities Group PLC” means the Company registered in England and Wales, company number 06559020, whose registered office is Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington WA5 3LP;

“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 11 (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 and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(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.

(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 7 which are not relevant to this Order.

(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.

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

(7) The provisions of the Neighbourhood Planning Act 2017(a), insofar as they relate to temporary possession of land under articles 29 and 30 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 30(11), any maintenance of any part of the 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.

(3) Nothing in this Order prevents the carrying out of operations pursuant to article 19 (authority to survey and investigate the land) immediately upon this Order coming into force.

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(b).

Limits of deviation

6. 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 1.0 metres upwards or downwards, with the exception of the following—
 - (i) to a maximum of 0.5 metres upwards or downwards at Little Singleton Junction as defined by Work Nos.84, 85, 86, 87, 88 and 89;

(a) 2017 c. 20.

(b) 1991 c. 59

- (ii) to a maximum of 0.5 metres upwards or downwards at Lodge Lane as defined by Work No.70; and
- (iii) in respect of the borrow pits, during excavation to a maximum of 10 metres downwards and to any distance upwards and, following restoration, to a maximum of 2.6 metres downwards and to any distance upwards to ground level, as defined by Work Nos.63 and 78,

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 worse adverse environmental effects in comparison with those reported in the environmental statement.

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 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), include 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, except where the transfer or grant is made to—

- (a) Electricity North West Limited for the purposes of undertaking Work No.6, 8, 26, 30, 31, 42, 64, 71, 72 and 112;
- (b) United Utilities Group PLC for the purposes of undertaking Work No.3, 7, 34, 36, 37, 51, 53, 60, 61, 67, 73, 77 and 116;
- (c) British Telecommunications PLC (or a related or subsidiary company) for the purposes of undertaking Work No.15, 24, 32, 33, 65, 75, 81 121;
- (d) The Gas Transportation Company Limited (or a related or subsidiary company) for the purposes of undertaking Work No.120; and
- (e) Cadent Gas Ltd for the purposes of undertaking Work No.16, 27, 54, 69, 76 and 80

provided that any transfer or grant under this paragraph (4) shall not include the transfer or grant of any benefit of the provisions of Part 5 (powers of acquisition and possession) of this Order without the consent of the Secretary of State.

PART 3

STREETS

Application of the New Roads and Street Works Act 1991

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 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) of that Act (which defines what highway authority works are major highway works); 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 Part 3 the 1991 Act (street works in England and Wales) do not apply in relation to any works executed under the powers of this Order—

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

(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(h) referred to in paragraph (4) are—

- section 54 (advance notice of certain works)(i), subject to paragraph (6);
- section 55 (notice of starting date of works)(j), subject to paragraph (6);

-
- (a) Section 64 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the 1991 Act.
 - (b) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48).
 - (c) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).
 - (e) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).
 - (g) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).
 - (h) 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 (c. 18).
 - (i) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).
 - (j) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).

section 57 (notice of emergency works)(a);
section 59 (general duty of street authority to co-ordinate works)(b);
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)(c);
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 of the 1991 Act (prospectively maintainable highways) and the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (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 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 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;

(a) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).

(b) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

(c) As amended by section 58(2) of the Traffic Management Act 2004 (c. 18).

- (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 the authorised development is completed and open for traffic—

- (a) the roads described in columns (1) and (2) of Part 1 (classification of roads, etc.) of Schedule 3 will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads;
- (b) the road described in columns (1) and (2) of Part 2 (classification of roads, etc.) of Schedule 3 is to be classified as the A585 and 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; and
 - (iii) as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act;
- (c) the road described in columns (1) and (2) of Part 3 (un-classified roads) of Schedule 3 are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads;
- (d) the public rights of way described in Part 4 (classification of roads, etc.) of Schedule 3 will be of the types described in column (1) to the extent described in column (2).

(2) Subject to paragraph (3), on such day as the undertaker may determine, the roads described in Part 5 (roads to be de-trunked) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads.

(3) The undertaker may only make a determination for the purposes of paragraph (2) with the consent of the Secretary of State, who must consult the local highway authority before deciding whether to give that consent.

(4) From the date on which the roads specified in Part 6 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Part 6 of Schedule 3 along the lengths of road identified in the corresponding row of column (2) of that Part.

(5) On such day as the undertaker may determine, the order specified in column (3) of Part 7 (revocations and variations of existing traffic regulation orders) of Schedule 3 is to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(6) On such day as the undertaker may determine, the orders specified in column (3) of Part 8 (new traffic regulation order sought) of Schedule 3 are to be made in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.

(7) The application of paragraphs (1) to (6) 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, 3 and 4 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 3 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 or private means of access specified in column (1) of Part 4 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 32 (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 lay out 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 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) may apply—

- (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, inspection, maintenance, alteration, repair, renewal or removal 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 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;
 - (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(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(c); 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

(a) 2003 c. 21.
 (b) 1991 c. 56.
 (c) 2000 c. 26.

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.

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
 - (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 its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its 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 (power of local authorities to provide parking spaces)(a) 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

(a) As 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 8 to, the 1991 Act.

(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(a).

(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 of 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) 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 of the Water Industry Act 1991 (right to communicate with public sewers).

(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) Save where permitted by this Order, 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 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

(a) 2004 c. 18.

(b) S.I. 2016/1154.

- (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(a) 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
- (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

(a) 1991 c. 57.

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

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

(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 (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation to the scope of sub-paragraph (a), make any excavations or trial holes and boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater and remove soil and water samples and discharge water samples on to the land;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (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 and boreholes.

(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 surveyor investigation or to make the trial holes and boreholes.

(4) No trial holes or boreholes are to be made under this article—

- (a) in land located within a highway boundary for which the local highway authority is the highway authority without the consent of the local 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 authority conferred by this article, such

(a) As amended by S.I. 2009/1307

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 local 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 local 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

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 (2) of article 23 (compulsory acquisition of rights and restrictive covenants), paragraph (9) of article 29 (temporary use of land for carrying out the authorised development) and paragraph (4) of article 44 (Crown rights).

Compulsory acquisition of land – incorporation of the mineral code

21. Part 2 of Schedule 2 to the Acquisition of Land Act 1981(a) (minerals) is incorporated in this Order subject to the modification that for the “acquiring authority” substitute “the undertaker”.

Time limit for exercise of 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 article 25 of this Order; and

(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 Compulsory Purchase (Vesting Declarations) Act 1981).

(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 and restrictive covenants

23.—(1) Subject to paragraphs (2) to (4) of this article, paragraph (9) of article 29 (temporary use of land for carrying out the authorised development) 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 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.

(a) 1981 c. 67.

(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 covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(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.

(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.

(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.

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant 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.

(6) This article does not apply in relation to any right to which section 138(b) of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981, 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).

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

- (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 rights or the imposition of restrictive covenants 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 Compulsory Purchase Act 1965

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

- (2) In section 4A(1) (extension of time limit during challenge)(b)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[]”.
- (3) In section 11A(c) (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 exercise of authority to acquire land compulsorily) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[]”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
 - (b) “(2) But see article 27(3) (acquisition of subsoil or airspace only) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[], which excludes the acquisition of subsoil or airspace only from this Schedule”; and

(a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c.22).
 (b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
 (c) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

(c) 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 articles 18 (protective work to buildings), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[]”.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

(2) The 1981 Act, as so applied, has effect with the modifications set out in this article.

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

(5) Omit section 5A (time limit for general vesting declaration)(b).

(6) In section 5B(1) (extension of time limit during challenge)(c)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[]”.

(7) In section 6 (notices after execution of declaration) in subsection (1)(b)(d) 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 (constructive notice to treat) in subsection (1)(a)(e), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(f), 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 article 25 (modification of the Compulsory Purchase Act 1965) 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 (c. 22).

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(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 (c. 22).

(f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

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 Compulsory Purchase Act 1965 as modified by article 25 of this Order;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; 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 of the 1991 Act (sharing cost of necessary measures) 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—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 7 (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 2008 (c.22).

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 Part 1 of Schedule 7, 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 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; 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 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 of the 2008 Act (compensation in case where no right to claim in nuisance) 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) except that the undertaker is not to be precluded from—

- (a) acquiring new rights or imposing restrictive covenants over the land listed in schedule 5 under article 23 (compulsory acquisition of rights and restrictive covenants); or
- (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).

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

Temporary use of land for maintaining the authorised development

30.—(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 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.

(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.

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

(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).

Statutory undertakers

31.—(1) Subject to the provisions of Schedule 10 (protective provisions), article 23 (compulsory acquisition of rights and restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants 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 32 of this Order (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

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

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“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

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (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 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 32 (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(b); and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

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

(b) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

34.—(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—

- (a) must do no unnecessary damage to any tree or shrub;
- (b) must not fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots if the tree or shrub is identified as being retained in the environmental statement unless the undertaker reasonably believes it to be necessary to do so for the purposes of the construction and/or operation of the authorised development provided that the Secretary of State is satisfied that the removal, felling, lopping or cutting back of roots would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement; and
- (c) 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 described in Part 1 of Schedule 9 (Hedgerows).

(5) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow which is not described in Part 1 of Schedule 9 (Hedgerows) with the prior consent of the local authority.

(6) In carrying out any activity authorised by paragraph (4) and (5), the undertaker must pay compensation to any person for any loss or damage arising from such activity.

(7) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997^(a) and includes important hedgerows.

PART 7

MISCELLANEOUS AND GENERAL

Deemed Marine Licence

35. The undertaker is deemed to have been granted the licence under Part 4 of the 2009 Act contained in Schedule 8 to this Order, to carry out works and make the deposits described in that licence and subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

Application of landlord and tenant law

36.—(1) This article applies to—

(a) S.I. 1997/1160.

- (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) Accordingly, 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.

Trees subject to tree preservation orders

37.—(1) The undertaker may fell or lop any tree described in Part 2 of Schedule 9 (Trees subject to tree preservation orders) or cut back its roots or undertake such other works if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall 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; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

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) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

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

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

- (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 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 10 (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 11 (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 11 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.

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 of the Interpretation Act 1978(b) 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.
 (b) 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) 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.

Crown rights

44.—(1) Nothing in this Order affects prejudicially any estate right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to

take, use, enter upon or in any manner interfere with any land or rights of any description (including any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of The Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

(4) Nothing in this Order shall authorise the compulsory acquisition of any interest in the Order Land held by or on behalf of the Duchy of Lancaster.

Date

Signed
Title
Department

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administrative areas of Lancashire County Council, Wyre Council and Fylde Borough Council

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 and alteration of the mainline A585 Amounderness Way commencing at the Scheme limit and terminating at Skippool Junction, approximately 301 metres in length, including associated features such as embankments, additional structures and roadside furniture, as shown on Sheet 1 of the Works Plans.

Work No.2 – The construction of a non-motorised user pedestrian crossing facilities across left arm (A585 Amounderness Way) of Skippool Junction, approximately 96 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.3 – The diversion of utilities (United Utilities), approximately 176 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

Work No.4 – The construction of the eastbound left turning lane (off-slip road), at Skippool Junction, approximately 158 metres in length from the A585 Amounderness Way onto the B5412 Skippool Road, as shown on Sheet 1 of the Works Plans.

Work No.5 – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians), south west of Skippool Junction, approximately 57 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.6 – The diversion of utilities (Electricity North West), approximately 206 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

Work No.7 – The diversion of utilities (United Utilities), approximately 57 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

Work No.8 – The diversion of utilities (Electricity North West), approximately 105 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

Work No.9 – The construction of the left turning lane from the A588 Breck Road onto the A585 (westbound), approximately 124 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.10 – The construction of pedestrian crossing facilities across the northern arm of Skippool Junction (B5412 Skippool Road), approximately 53 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.11 – The construction of pedestrian crossing facilities across the southern arm (A588 Breck Road) of Skippool Junction approximately 52 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.12 – The construction of an at-grade, signalised crossroad junction (Skippool Junction), tying in with the existing A588 Breck Road, the B5412 Skippool Road and the A585 Amounderness Way, including all associated widening works and retaining structures, approximately 186 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.13 – The construction of the left turning lane from the B5412 Skippool Road onto Breck Road, (eastbound), at Skippool Junction, approximately 128 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.14 – The construction of pedestrian crossing facilities across the eastern arm (A585 Breck Road) of Skippool Junction, approximately 90 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.15 – The diversion of utilities (British Telecommunications PLC), approximately 151 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

Work No.16 – The diversion of utilities (Cadent), approximately 160 metres in length, across Skippool Junction, as shown on Sheet 1 of the Works Plans.

Work No.17 – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) approximately 596 metres in length, commencing at a tie in point with the existing footway on the B5412 Skippool Road and terminating at the diverted Old Mains Lane, as shown on Sheet 1 of the Works Plans.

Work No.18 – The construction of the westbound, left turn lane at Skippool Junction, approximately 155 metres in length, from the A585 Breck Road, continuing onto the A588 Breck Road, heading southbound, as shown on Sheet 1 of the Works Plans.

Work No.19 – The construction and alteration of Breck Service Road, running parallel to the main A585 Breck Road, approximately 156 metres in length, including the stopping up of the east end entrance and the construction of a “hammerhead” turning area, as shown on Sheet 1 of the Works Plans.

Work No.20 – The construction of alterations to the existing private means of access, on the north side of A585 Breck Road, approximately 36 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.21 – The construction of a new section of A585 dual carriageway between Skippool Junction and Skippool Bridge Junction, approximately 444 metres in length, including associated features such as embankments, additional structures and roadside furniture, as shown on Sheet 1 of the Works Plans.

Work No.22 – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) commencing at the turning point into Breck Road access road and running for approximately 220 metres along the south side of Mains Lane, including pedestrian crossing facilities at Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

Work No.23 – The construction of alterations to the existing private means of access on the north side of the A585 Breck Road, approximately 41 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.24 – The diversion of utilities (British Telecommunications PLC), approximately 90 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.25 – The construction of a new underbridge over Main Dyke, including all associated bridge foundations, widening, parapets and roadside furniture, approximately 34 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.26 – The diversion of utilities (Electricity North West), approximately 218 metres in length, running along Mains Lane and across Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

Work No.27 - The diversion of utilities (Cadent), approximately 258 metres in length, running along Mains Lane and across Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

Work No.28 – The construction of the eastbound A585 off-slip lane at Skippool Bridge Junction, approximately 163 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.29 – The construction of the diverted Old Mains Lane Road, approximately 225 metres in length and tying in with the existing Old Mains Lane alignment, as shown on Sheet 1 of the Works Plans.

Work No.30 – The diversion of utilities (Electricity North West), approximately 384 metres in length, running across Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

Work No.31 – The diversion of utilities (Electricity North West), approximately 379 metres in length, running along diverted Old Mains Lane and across the north side of A585 Breck Road, as shown on Sheet 1 of the Works Plans.

Work No.32 – The diversion of utilities (British Telecommunications PLC), approximately 357 metres in length, running along diverted Old Mains Lane and across to the north side of the A585 Breck Road, as shown on Sheet 1 of the Works Plans.

Work No.33 – The diversions of utilities (British Telecommunications PLC), approximately 728 metres in length, running around Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

Work No.34 – The diversion of utilities (United Utilities), approximately 607 metres in length, running from the northern arm of the Skippool Junction along A585 Breck Road and terminating on the diverted Old Mains Lane, as shown on Sheet 1 of the Works Plans.

Work No.35 – The construction of an at-grade, signalised junction (Skippool Bridge Junction), tying in with the existing A585 Mains Lane, and the new A585 bypass, including all associated widening works and retaining structures, approximately 111 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.36 - The diversion of utilities (United Utilities), approximately 216 metres in length, around Skippool Bridge Junction, as shown on Sheet 1 of the Works Plans.

Work No.37 – The construction of the eastbound, left turn lane at Skippool Bridge Junction, approximately 34 metres in length, from the A585 Mains Lane, as shown on Sheet 1 of the Works Plans.

Work No.38 – The construction of an environmental bund (false cutting), approximately 369 metres in length, running along the north side of the new A585 dual carriageway, as shown on Sheet 1 of the Works Plans.

Work No.39 – The construction of an environmental bund (false cutting), approximately 363 metres in length, running along the south side of the new A585 dual carriageway, as shown on Sheet 1 of the Works Plans.

Work No.40 – The construction of a section of the new A585 dual carriageway, approximately 1476 metres in length, commencing at Skippool Bridge Junction and terminating at Poulton Junction, including associated features such as embankments, additional structures and roadside furniture, as shown on Sheets 1 and 2 of the Works Plans.

Work No.41 – The construction of a culvert, approximately 144 metres in length, running at 45° to the alignment of the new A585 dual carriageway, as shown on Sheet 1 of the Works Plans.

Work No.42 – The diversion of utilities (Electricity North West), approximately 82 metres, running perpendicular to the new A585 Dual Carriageway alignment, as shown on Sheet 1 of the Works Plans.

Work No.43 – The construction of a drainage attenuation pond and accompanying environmental bund (banking) with a perimeter approximately 322 metres in length, adjacent to the proposed eastbound carriageway as shown on Sheets 1 and 2 of the Works Plans.

Work No.44 – The construction of a culvert perpendicular to the new A585 Dual Carriageway of length approximately 99 metres, north west of Poulton Junction as shown on Sheet 2 of the Works Plans.

Work No.45 – The construction of a culvert perpendicular to the new A585 Dual Carriageway of length approximately 105 metres, north west of Poulton Junction as shown on Sheet 2 of the Works Plans.

Work No.46 – The construction of the new A585 Dual Carriageway westbound on-slip, left turning, lane at Poulton Junction, approximately 80 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.47 – The construction of an at grade crossroad junction (Poulton Junction) tying in with the existing A586 Garstang Road East and the new A585 Dual Carriageway including all associated widening works and retaining structures approximately 402 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.48 – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) along A586 Garstang Road East, approximately 169 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.49 – The construction of the new A585 Dual Carriageway eastbound off-slip, left turning, lane at Poulton Junction, approximately 87 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.50 – The construction of the new A585 Dual Carriageway eastbound on-slip, left turning, lane at Poulton Junction, approximately 28 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.51 – The diversion of utilities (United Utilities) along A586 Garstang Road East at Poulton Junction approximately 315 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.52 – The construction of an access route (path) to the drainage attenuation pond located South East of Poulton Junction approximately 45 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.53 – The diversion of utilities (United Utilities) along A586 Garstang Road East at Poulton Junction approximately 253 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.54 – The diversion of utilities (Cadent) along A586 Garstang Road East at Poulton Junction approximately 253 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.55 – The construction of an environmental bund (false cutting) along the south side of the new A585 Dual Carriageway, south of Poulton Junction, approximately 351 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.56 – The construction of the new A585 Dual Carriageway westbound off-slip left turning lane at Poulton Junction approximately 81 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.57 – The construction of a drainage attenuation pond and accompanying environmental bund (banking) with a perimeter approximately 210 metres in length, adjacent to Poulton Junction, as shown on Sheet 2 of the Works Plans.

Work No.58 – The construction of a section of the new A585 Dual Carriageway, approximately 2609 metres in length, commencing at Poulton Junction, and terminating at Windy Harbour Junction, including all associated features such as embankments, cuttings, additional structures and roadside furniture, as shown on Sheets 2, 3 and 4 of the Works Plans.

Work No.59 – The construction of an environmental bund along the north side of the new A585 Dual Carriageway, south of Poulton Junction, approximately 531 metres in length, as shown on Sheets 2 and 3 of the Works Plans.

Work No.60 – The diversion of utilities (United Utilities) parallel to the new A585 Dual Carriageway, running for approximately 828 metres in length, as shown on Sheets 2 and 3 of the Works Plans.

Work No.61 – The diversion of utilities (United Utilities) commencing in land adjacent to the new A585 Dual Carriageway and running for approximately 746 metres in length, as shown on Sheets 2 and 3 of the Works Plans.

Work No.62 – The construction of a culvert, approximately 94 metres in length, perpendicular to the new A585 Dual Carriageway, as shown on Sheet 2 of the Works Plans.

Work No.63 – The construction of a borrow pit including the excavation, working and restoration to win material required for the construction of the A585 Windy Harbour to Skippool Improvement Scheme, situated adjacently to the west of Lodge Lane to the north of the proposed bypass, with a perimeter approximately 1270 metres, as shown on Sheets 2 and 3 of the Works Plans.

Work No.64 – The diversion of utilities (Electricity North West), approximately 165 metres in length, running parallel to the north of the new A585 Dual Carriageway, as shown on Sheet 3 of the Works Plans.

Work No.65 – The diversion of utilities (British Telecommunications PLC), approximately 143 metres in length, along Lodge Lane Bridge, as shown on Sheet 3 of the Works Plans.

Work No.66 – The stopping up of the existing private means of access road, approximately 29 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.67 – The diversion of utilities (United Utilities), approximately 59 metres in length, running along Lodge Lane Bridge, as shown on Sheet 3 of the Works Plans.

Work No.68 The construction of alterations to the private means of access, approximately 16 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.69 – The diversion of utilities (Cadent), approximately 439 metres in length at Lodge Lane Bridge, as shown on Sheet 3 of the Works Plans.

Work No.70 – The construction and alteration of Lodge Lane and new overbridge (Lodge Lane Bridge) including all associated bridge foundations, widening, parapets and roadside furniture, approximately 191 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.71 – The diversion of utilities (Electricity North West), approximately 204 metres in length, along private means of access to Singleton Manor and up Lodge Lane to the north, as shown on Sheet 3 of the Works Plans.

Work No.72 – The diversion of utilities (Electricity North West), approximately 269 metres in length, along private means of access to Singleton Manor, across Lodge Lane and running along the south side of the new A585 dual carriageway, as shown on Sheet 3 of the Works Plans.

Work No.73 – The diversion of utilities (United Utilities), approximately 203 metres in length, along private means of access to Singleton Manor, as shown on Sheet 3 of the Works Plans.

Work No.74 – The construction of a new private means of access, approximately 117 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.75 – The diversion of utilities (British Telecommunications PLC), approximately 119 metres in length, along private means of access to Singleton Manor, as shown on Sheet 3 of the Works Plans.

Work No.76 – The diversion of utilities (Cadent), approximately 55 metres in length, along private means of access to Singleton Manor, as shown on Sheet 3 of the Works Plans.

Work No.77 – The diversion of utilities (United Utilities), approximately 90 metres in length, running at 45° to the alignment of the new A585 dual carriageway, as shown on Sheet 3 of the Works Plans.

Work No.78 – The construction of a borrow pit including the excavation, working and restoration to win material required for the construction of the A585 Windy Harbour to Skippool

Improvement Scheme, situated adjacently to the west of Lodge Lane to the south of the proposed bypass, with a perimeter approximately 768 metres, as shown on Sheet 3 of the Works Plans.

Work No.79 – The construction of a footbridge (Grange Footbridge), including accompanying bridge foundations, stairs, ramps and non-motorised user footway, approximately 394 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.80 – The diversion of utilities (Cadent), approximately 1005 metres in length, running along the north side of the new A585 dual carriageway, commencing at Garstang New Road and terminating at Windy Harbour Junction, as shown on Sheets 3 and 4 of the Works Plans.

Work No.81 – The diversion of utilities (British Telecommunications PLC), approximately 1033 metres in length, running along the north side of the new A585 dual carriageway, commencing at Garstang New Road and terminating at Windy Harbour Junction, as shown on Sheets 3 and 4 of the Works Plans.

Work No.82 – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) along the north side of the new A585 dual carriageway, commencing at Grange Footbridge, running for approximately 987 metres in length and terminating at Windy Harbour Junction, as shown on Sheets 3 and 4 of the Works Plans.

Work No.83 – The detrunking of a section of Garstang New Road between Little Singleton Junction and Grange Footbridge, approximately 753 metres in length including the construction of a non-motorised user footway (including provisions for cyclists and pedestrians), as shown on Sheet 3 of the Works Plans.

Work No.84 – The construction of the northwest arm of Little Singleton Junction, approximately 71 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.85 – The construction of the northeast arm of Little Singleton Junction, approximately 60 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.86 – The construction of the west arm of Little Singleton Junction, approximately 74 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.87 – The construction of the “Q-turn” at Little Singleton Junction, approximately 46 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.88 – The construction of the south arm of Little Singleton Junction, approximately 50 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.89 – The construction of the east arm of Little Singleton Junction, approximately 77 metres, in length, including the stopping up of Garstang New Road, as shown on Sheet 3 of the Works Plans.

Work No.90 – The construction of a drainage attenuation pond and accompanying environmental bund, with a perimeter of approximately 203 metres, located on the south side of the new A585 dual carriageway, as shown on Sheet 4 of the Works Plans.

Work No.91 – The construction of a culvert, perpendicular to the new A585 dual carriageway, approximately 55 metres in length, as shown on Sheet 4 of the Works Plans.

Work No.92 – The construction of a culvert, perpendicular to the new A585 dual carriageway, approximately 53 metres in length, as shown on Sheet 4 of the Works Plans.

Work No.93 – The construction of a drainage attenuation pond and accompanying environmental bund, with a perimeter of approximately 176 metres, located on the south side of the new A585 dual carriageway, as shown on Sheet 4 of the Works Plans.

Work No.94 – The construction of pedestrian crossing facilities and footpath at the termination of the new A585 dual carriageway at Windy Harbour Junction, tying in with existing crossing facilities at the junction, approximately 62 metres in length, as shown on Sheet 4 of the Works Plans.

Work No.95 – The improvements associated with the de-trunking of the existing A585 between Skippool Bridge Junction and Little Singleton Junction, approximately 1947 metres in length as shown on Sheets 1, 2 and 3 of the Works Plans, including the construction of a non-motorised user footway (including provisions for cyclists and pedestrians).

Work No.96 – The construction of a culvert, perpendicular to the new A585 dual carriageway, approximately 57 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.97 – The construction and alteration of Shard Road Junction, approximately 55 metres in length, including associated features such as embankments, additional structures and roadside furniture, as shown on Sheet 1 of the Works Plans.

Work No.98 – The construction of flood mitigation area (1) with a perimeter of approximately 367 metres, including associated embankments, as shown on Sheet 1 of the Works Plans.

Work No.99 – The construction of a non-motorised user footway (including provision for cyclists and pedestrians) between Skippool Bridge Junction and Old Mains Lane, approximately 36 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.100 – The construction of pedestrian crossing facilities across the new A585 Dual Carriageway at Poulton Junction, approximately 93 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.101 – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) along A586 Garstang Road East, approximately 168 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.102 – The construction of pedestrian crossing facilities across the new A585 Dual Carriageway westbound at Skippool Bridge Junction, approximately 38 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.103 – The construction of pedestrian crossing facilities across the new A585 Dual Carriageway eastbound at Skippool Bridge Junction, approximately 21 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.104 – The construction of pedestrian crossing facilities across the new Skippool Bridge Junction left turning lane, approximately 24 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.105 – The construction of pedestrian crossing facilities across the new Skippool Bridge Junction left turning lane, approximately 47 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.106 – The construction of a non-motorised user footway (including provisions for cyclists and pedestrians) along the A585 Mains Lane, approximately 111 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.107 – The construction of an environmental bund (false cutting), approximately 667 metres in length, running along the north side of the new A585 dual carriageway, as shown on Sheet 2 of the Works Plans.

Work No.108 – The construction of an environmental bund (false cutting), approximately 298 metres in length, running along the south side of the new A585 dual carriageway, as shown on Sheet 1 of the Works Plans.

Work No.109 – The construction of flood mitigation area (4) with a perimeter of approximately 288 metres, including associated embankments, as shown on Sheet 2 of the Works Plans.

Work No.110 – The construction of flood mitigation area (3) with a perimeter of approximately 491 metres, including associated embankments, as shown on Sheet 2 of the Works Plans.

Work No.111 – The construction of flood mitigation area (2) with a perimeter of approximately 619 metres, including associated embankments, as shown on Sheets 1 and 2 of the Works Plans.

Work No.112 – The diversion of utilities (Electricity North West) running perpendicular to the A585 approximately 42 metres in length, as shown on Sheet 1 of the Works Plans.

Work No.113 – The construction of a new private means of access to the west of Poulton Junction on the A586, approximately 516 metres in length, as shown on Sheets 1 and 2 of the Works Plans.

Work No.114 – The construction of a new private means of access to the south of Grange footbridge, approximately 758 metres in length, as shown on Sheet 3 of the Works Plans.

Work No.115 – The construction of a culvert (Skippool Clough), approximately 104 metres in length, running directly beneath Skippool Junction, including the abandoning of the existing Skippool Clough culvert, as shown on Sheet 1 of the Works Plans.

Work No.116 – The diversion of utilities (United Utilities), approximately 27 metres in length, running perpendicular to the new A585 Dual Carriageway, as shown on Sheet 1 of the Works Plans.

Work No.117 – The construction of a farm access track and accommodation fencing on the north side of the track, approximately 84 metres in length, running parallel to the north side of the new A585 Dual carriageway towards Ryecroft Farm, as shown on Sheet 1 of the Works Plans.

Work No.118 – The construction of an altered connection, approximately 21 metres in length, from the footway to the section of Wyre Way west of Horsebridge Dyke, as shown on Sheet 1 of the Works Plans.

Work No.119 – The construction of an altered connection, approximately 12 metres in length, from the footway to the section of Wyre Way west of Horsebridge Dyke, as shown on Sheet 1 of the Works Plans.

Work No.120 – The diversion of utilities (The Gas Transportation Company Limited), approximately 69 metres in length, along private means of access to Singleton Manor, as shown on Sheet 3 of the Works Plans.

Work No.121 – The diversion of utilities (British Telecommunications PLC) along A586 Garstang Road East at Poulton Junction, approximately 344 metres in length, as shown on Sheet 2 of the Works Plans.

Work No.122 – The construction of a dwarf wall, approximately 135 metres in length, along the northern footway at Skippool Junction from Throstles Nest to a point east of Skippool Junction, as shown on Sheet 1 of the Works Plans.

Work No.123 – The construction of an accommodation culvert, perpendicular to a new access track, approximately 13 metres in length, as shown on Sheet 1 of the Works Plans.

In connection with the construction of any of those works, further development within the Order limits 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) works for the strengthening, alteration or demolition of any building;
- (d) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (e) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;

- (f) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (g) works to place, alter, divert, relocate, remove 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;
- (h) works to alter the course of, or otherwise interfere with, a watercourse;
- (i) 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;
- (j) works for the benefit or protection of land affected by the authorised development;
- (k) works to place, alter, remove or maintain road furniture;
- (l) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soils stripping and storage, site levelling);
- (m) the felling of trees and hedgerows;
- (n) 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;
- (o) the provision 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
- (p) 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 regulation 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(b);

“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 record of environmental actions and commitments at Volume 7 of the environmental statement (Application Document TR010035/APP/7.3).

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 works plans and 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 works plans and engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially worse adverse 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 works plans and engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Construction and handover environmental management plans

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

(a) 1990 c. 43 as amended by section 86(2) of the Water Act 2003 c. 37.

(b) S.I. 2017/1012.

(c) 1981 c. 69.

the Secretary of State, following consultation with the relevant planning authority and Natural England to the extent that it relates to matters relevant to their function.

- (2) The CEMP must be written in accordance with ISO14001 and must—
- (a) be in accordance with 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 Mondays to Fridays and 08:00–14:00 on Saturday except for—
 - (i) deliveries, movements to work, maintenance and general preparation works but not including running plant and machinery for a period of one hour either side of the above times;
 - (ii) night-time closures including for road crossings and final surfacing tie ins;
 - (iii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iv) junction tie-in works;
 - (v) repair or maintenance of construction equipment;
 - (vi) removal of overhead power lines;
 - (vii) overnight traffic management measures;
 - (viii) cases of emergency; and
 - (ix) as otherwise agreed by the local authority in advance;
 - (d) include the following management plans which must be in accordance with the REAC—
 - (i) Bird Mitigation Strategy;
 - (ii) Biodiversity Enhancement Strategy;
 - (iii) Soil Management Plan;
 - (iv) Soil Resource Plan;
 - (v) Noise and Vibration Management Plan;
 - (vi) Pollution Control Plan;
 - (vii) Emergency Spillage Response Plan;
 - (viii) Emergency Flood Response Plan;
 - (ix) Dewatering Management Plan;
 - (x) Construction Water Management Plan;
 - (xi) Site Waste Management Plan;
 - (xii) Materials Management Plan;
 - (xiii) Borrow Pit – Restoration Aftercare Plan;
 - (xiv) Asbestos Management Plan;
 - (xv) Flood Warning Evacuation Plan.

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP and any mitigation, monitoring and adaptive management measures contained in the approved CEMP must be implemented.

(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 within the environmental statement (Application Document TR010035/APP/6.19).

(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 at least the same species and size as that originally planted, or where significant loss occurs a size and species which accords with the provisions for replacement planting identified in the approved HEMP, 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) In the event that any protected species which are not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds when carrying out the authorised development. Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

(4) Prior to demolition of Skippool Bridge the undertaker must carry out an endoscope survey of the features on the bridge which have the potential to be used by bats. If the results of the survey show that bats are present and a protected species licence is required, no further work shall be undertaken to the bridge until a written scheme of investigation and mitigation has been prepared.

(5) The undertaker must implement the written scheme prepared under sub-paragraph (4) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

(6) The undertaker must implement the Bird Mitigation Strategy prepared under requirement 4(2)(d)(i) at all times during construction of the authorised development unless otherwise agreed in writing by the Secretary of State following consultation with Natural England.

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 lead local flood 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 lead local flood 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 worse adverse environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the Archaeology Mitigation Strategy and draft Written Scheme of Investigation, 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 carried out in accordance with the scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(4) 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.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority.

(6) 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 local highway 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 or plans approved under this Schedule, the approved details or schemes or plans are taken to include any amendments that may subsequently be approved in writing.

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.

Details of consultation

13.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the undertaker must provide such other party with not less than 14 days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

Temporary compensatory flood storage system

14.—(1) Development shall not be commenced within the 1% plus 30% for climate change flood extent of the Main Dyke, illustrated in Figure D8 of the Flood Risk Assessment (document reference TR010035/APP/5.2–v1) until details of a temporary compensatory flood storage scheme

is submitted to and approved in writing by the Secretary of State. The scheme shall include details of the design, function, construction and, as appropriate, decommissioning of the temporary compensatory flood storage area, to ensure that a suitably engineered solution is provided that will not impede access to Main Dyke (Skipool Creek) for maintenance purposes and will allow for the storage and subsequent drain down of flood waters that would be displaced by the development.

(2) The scheme shall be fully implemented as approved and subsequently maintained in accordance with the approved details until it is decommissioned.

Soil survey and mitigation plan

15.—(1) No part of the authorised development is to commence until an agricultural land classification and soil survey has been undertaken and a soil mitigation plan has been prepared and has been submitted and approved in writing by the Secretary of State following consultation with Natural England.

(2) The undertaker must implement the soil mitigation plan prepared under sub-paragraph (1) during construction of the authorised development.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

16.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval requirement 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 17; 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 worse 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

17.—(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 16 (applications made under requirements) and in this paragraph.

Register of requirements

18.—(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

19. 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>
A585 at Skippool Junction cross roads	Entire junction within Point 1 of the Streets, Rights of Way and Access Plans (Sheet 1)
A585(T) between Skippool Junction and Skippool Bridge Junction	Shown within Point 1 of the Streets, Rights of Way and Access Plans (Sheet 1)
A585 at Skippool Bridge Junction	Entire junction within Point 1 of the Streets, Rights of Way and Access Plans (Sheet 1)
A585(T) between Skippool Bridge Junction and Poulton Junction	Shown by Point 7 of the Streets, Rights of Way and Access Plans (Sheets 1 and 2)
A585 at Poulton Junction cross roads	Cross roads shown by Point 8 of the Streets, Rights of Way and Access Plans (Sheet 2)
A585(T) between Poulton Junction and intersect with de-classified Garstang New Road	Shown by Point 9 of the Streets, Rights of Way and Access Plans (Sheets 2 and 3)
A585(T) between intersect with de-classified Garstang New Road and Windy Harbour Junction	Shown by Point 14 of the Streets, Rights of Way and Access Plans (Sheet 4)

PART 2

CLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
A586 Garstang Road East (west of proposed Poulton Junction)	Shown by Point 10 of the Streets, Rights of Way and Access Plans (Sheet 2)
B5260 Lodge Lane Bridge	Shown by Point 12 of the Streets, Rights of Way and Access Plans (Sheet 3)
Garstang Road East (to be re-classified as the B5260)	Shown by Point 11 of the Streets, Rights of Way and Access Plans (Sheets 2 and 3)
Mains Lane between Skippool Bridge Junction and Shard Road Junction (to be re-classified as the A588)	Shown by Point 19 and 18 of the Streets, Rights of Way and Access Plans (Sheet 1)

PART 3
UN-CLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Mains Lane between Shard Road Junction and Little Singleton Junction	Shown by Point 17 of the Streets, Rights of Way and Access Plans (Sheets 1, 2 and 3)
De-classified Garstang New Road between Little Singleton Junction and Garstang footbridge	Shown by Point 15 of the Streets, Rights of Way and Access Plans (Sheet 3)

PART 4
OTHER PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Public right of way</i>	<i>(2)</i> <i>Extent</i>
Non-segregated footway/cycle track (including crossing facilities over Skippool Junction, Skippool Bridge Junction, Poulton Junction and Little Singleton Junction)	Shown with Points 1, 8, 10, 11, 18, 17, 16, 15 and 14 of the Streets, Rights of Way and Access Plans

PART 5
ROADS TO BE DE-TRUNKED

In the administration areas of Lancashire County Council, Wyre Council and Fylde Borough Council

The section of highway between Point A on Sheet 1 of the Traffic Regulation Measures and De-Trunking Plans, being a point 488 metres west of Shard Road Junction and Point C on Sheet 3 of the Traffic Regulation Measures and De-Trunking Plans, being a point 678 metres east of Little Singleton Junction for a distance of approximately 2700 metres in a south easterly direction.

PART 6
SPEED LIMITS

<i>(1)</i> <i>Parish(es)</i>	<i>(2)</i> <i>Road name, number and length</i>	<i>(3)</i> <i>Speed Limit</i>
Poulton-le-Fylde	A585 (eastbound) From where the A585 Amounderness Way meets Skippool Junction heading east along its length to a point 135 metres south of Skippool Bridge Junction for a total distance of 920 metres As shown on Sheet 1 of the	40 miles per hour

	Traffic Regulation Measures and De-trunking Plans	
Poulton-le-Fylde	A585 (westbound) From a point 373 metres south of Skippool Bridge Junction heading west along its length to where the A585 Amounderness Way meets Skippool Junction for a total distance of 1112 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Poulton-le-Fylde	A588 Breck Road From Skippool Junction to a point 41 metres south from Skippool Junction for a total distance of 41 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Poulton-le-Fylde	B5412 Skippool Road From Skippool Junction to a point 37 metres north from Skippool Junction for a total distance of 37 metres A shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Singleton	Old Mains Lane From Skippool Bridge Junction along its length to a point 213 metres north west from Skippool Bridge Junction for a total distance of 213 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	30 miles per hour
Singleton	Skippool Bridge Junction eastbound between A585 and the re-classified A588 Mains Lane for a total distance of 217 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Singleton	Skippool Bridge Junction westbound between the re-classified A588 Mains Lane and A585 for a total distance of 110 metres As shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour
Singleton	A585 (eastbound)	National de-restricted speed

	<p>From a point 135 metres south of Skippool Bridge heading east along its length to a point 306 metres north west from Poulton Junction for a total distance of 995 metres</p> <p>As shown on Sheet 1 and 2 of the Traffic Regulation Measures and De-trunking Plans</p>	limit (70 miles per hour)
Singleton	<p>A585 (westbound)</p> <p>From a point 306 metres north west from Poulton Junction heading west along its length to a point 373 metres south of Skippool Bridge Junction for a total distance of 801 metres</p> <p>As shown on Sheet 1 and 2 of the Traffic Regulation Measures and De-trunking Plans</p>	National de-restricted speed limit (70 miles per hour)
Singleton	<p>A585 (eastbound)</p> <p>From a point 306 metres north from Poulton Junction heading east along its length to a point 280 metres south east of Poulton Junction for a total distance of 589 metres</p> <p>As shown on Sheet 2 of the Traffic Regulation Measures and De-trunking Plans</p>	50 miles per hour
Singleton	<p>A585 (westbound)</p> <p>From a point 280 metres south east from Poulton Junction heading west along its length to a point 306 metres north west of Poulton Junction for a total distance of 589 metres</p> <p>As shown on sheet 2 of the Traffic Regulation Measures and De-trunking Plans</p>	50 miles per hour
Singleton	<p>A585 (eastbound)</p> <p>From a point 280 metres south east of Poulton Junction heading east along its length to a point 238 metres west from Windy Harbour Junction for a total distance of 2094 metres</p> <p>As shown on Sheet 2, 3 and 4 of the Traffic Regulation Measures and De-trunking Plans</p>	National de-restricted speed limit (70 miles per hour)
Singleton	<p>A585 (westbound)</p> <p>From a point 240 metres west from Windy Harbour Junction heading west along its length</p>	National de-restricted speed limit (70 miles per hour)

	to a point 280 metres south east of Poulton Junction for a total distance of 2094 metres As shown on Sheet 2,3 and 4 of the Traffic Regulation Measures and De-trunking Plans	
Singleton	Mains Lane For the whole length of Mains Lane between Shard Road Junction and Little Singleton Junction, a length of 1515 metres As shown on Sheet 1, 2, and 3 of the Traffic Regulation Measures and De-trunking Plans	30 miles per hour
Singleton	(Re-classified B5260) Garstang Road East From a point 66 metres east of Poulton Junction along its length to Little Singleton Junction for a total distance of 719 metres As shown on Sheet 2 and 3 of the Traffic Regulation Measures and De-trunking Plans	30 miles per hour
Singleton	De-classified Garstang New Road For the whole length of the de-classified Garstang New Road between Little Singleton Junction and Grange Footbridge, a length of 631 metres As shown on Sheet 3 of the Traffic Regulation Measures and De-trunking Plans	30 miles per hour
Singleton	B5260 Lodge Lane From Little Singleton Junction along its length for a total distance of 532 metres As shown on Sheet 3 of the Traffic Regulation Measures and De-trunking Plans	40 miles per hour

PART 7

REVOCATIONS AND VARIATIONS OF EXISTING TRAFFIC REGULATION ORDERS

(1)	(2)	(3)	(4)
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<i>Parishes</i>	<i>Road name, number and length</i>	<i>Title of Order</i>	<i>Revocations or Variations</i>
Singleton	Mains Lane, A585, 2904 yards	Order 1973 (No.2)	Revocation

PART 8
NEW TRAFFIC REGULATION ORDERS SOUGHT

<i>(1)</i> <i>Parish(es)</i>	<i>(2)</i> <i>Road name and number</i>	<i>(3)</i> <i>Traffic Regulation Sought</i>
Poulton-le-Fylde	A585 Breck Road	No entry on westbound carriageway at Skippool Junction for traffic travelling east, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Poulton-le-Fylde	A585 Breck Road	No entry on eastbound carriageway at Skippool Junction for traffic travelling west, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Poulton-le-Fylde	Breck Service Road	No through road for traffic entering Breck Service Road from A588 Breck Road, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Poulton-le-Fylde	A585 Breck Road	Prohibition of right turn movements for all traffic entering on to the A585 westbound carriageway from accesses to the south of the A585 Breck Road between Skippool Junction and proposed Skippool Bridge Junction, as show on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Poulton-le-Fylde	A585 Breck Road	Prohibition of right turn movements for all traffic entering on to the A585 eastbound carriageway from accesses to the south of the A585 Breck Road between Skippool Junction and proposed Skippool Bridge Junction, as show on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans

Singleton	A585	No entry on westbound carriageway at proposed Skippool Bridge Junction for traffic travelling east, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Singleton	A585	No entry on eastbound carriageway at proposed Skippool Bridge Junction for traffic travelling west, as shown on Sheet 1 of the Traffic Regulation Measures and De-trunking Plans
Singleton	A585	No entry on westbound carriageway at proposed Poulton Junction for traffic travelling east, as shown on Sheet 2 of the Traffic Regulation Measures and De-trunking Plans
Singleton	A585	No entry on eastbound carriageway at proposed Poulton Junction for traffic travelling west, as shown on Sheet 2 of the Traffic Regulation Measures and De-trunking Plans
Singleton	Mains Lane	One way road for traffic using the proposed “U” turn facility at Little Singleton Junction, as shown on Sheet 3 of the Traffic Regulation Measures and De-trunking Plans
Singleton	Garstang New Road	No through road for traffic entering Garstang New Road from Little Singleton Junction, as shown on Sheet 3 of the Traffic Regulation Measures and De-trunking Plans

SCHEDULE 4

Article 13

PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

PART 1

PUBLIC RIGHTS OF WAY OR HIGHWAY TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way or highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be substituted</i>
The stopping up of public right of way FP 8 (Singleton)	At Point E as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point 5 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
The stopping up of highway known as Old Mains Lane	At Point F as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point 6 as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
The stopping up of public right of way FP 2 (Singleton)	At Point U as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point 13 as shown on Sheet 3 of the Streets, Rights of Way and Access Plans

PART 2

PUBLIC RIGHTS OF WAY OR HIGHWAY TO BE STOPPED UP AND FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Public right of way or highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
The stopping up of highway at Old Breck Road Service Road	At Point B as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
The stopping up of highway at Old Breck Road Service Road	At Point C as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
The stopping up of highway at Old Breck Road Service Road	At Point D as shown on Sheet 1 of the Streets, Rights of Way and Access Plans

PART 3

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND 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 the	At Point J as shown on Sheet 1 of the Streets, Rights of Way	At Point h as shown on Sheet 1 of the Streets, Rights of Way

A585	and Access Plans	and Access Plans
Private means of access adjacent to the north of the A585	At Point K as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point k as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the east of the A588	At Point M as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point p as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the north of the A586	At Point N as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	At Point m as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the north of the A586	At Point Q as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	At Point m as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the south of the A586	At Point P as shown on Sheet 2 of the Streets, Rights of Way and Access Plans	At Point P as shown on Sheet 2 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the east of the B5260	At Point R as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point w as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the east of the B5260	At Point S as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point w as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the south of the A585	At Point T as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point z as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the east of Pool Foot Lane	At Point V as shown on Sheet 3 of the Streets, Rights of Way and Access Plans	At Point y as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the south of the A585	At Point W as shown on Sheet 4 of the Streets, Rights of Way and Access Plans	At Point z as shown on Sheet 3 of the Streets, Rights of Way and Access Plans
Private means of access adjacent to the north of the A585	At Point Z as shown on Sheet 1 of the Streets, Rights of Way and Access Plans	At Point ac as shown on Sheet 3 of the Streets, Rights of Way and Access Plans

PART 4

PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH NO 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>
Private means of access (gate) adjacent to the south of Old Mains Lane	At Point G as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access (gate) adjacent to the south of the A585	At Point H as shown on Sheet 1 of the Streets, Rights of Way and Access Plans
Private means of access (gate) adjacent to the south of the A585	At Point X as shown on Sheet 4 of the Streets, Rights of Way and Access Plans
Private means of access (gate) adjacent to the south of the A585	At Point Y as shown on Sheet 4 of the Streets, Rights of Way and Access Plans

SCHEDULE 5

Article 23(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>
Land Plans – Sheet 1	
1/34c	To construct, operate, access and maintain Skippool bridge (Work No.25)
Land Plans – Sheet 4	
4/02e, 4/06i	To construct, operate, access and maintain a culvert/ditch outfall (Work No.41)
4/06j, 4/08h	To construct, operate, access and maintain a culvert/ditch outfall (Work No.96)
4/08i	To construct, operate, access and maintain a culvert/ditch outfall (Work No.44)
4/08j	To construct, operate, access and maintain a culvert/ditch outfall (Work No.45)
4/08k	To operate, access and maintain a bridge
Land Plans – Sheet 5	
5/01m	To operate, access and maintain a bridge
5/01n, 5/02a, 5/02, 5/01d, 5/03, 5/04, 5/05a, 5/06f	To operate, access and maintain a drainage outfall (Work No.62)
5/14a, 5/13c, 5/09g, 5/13b	To construct, operate, access and maintain Lodge Lane Bridge (Work No.70)
Land Plans – Sheet 7	
7/10, 7/04e, 7/04d	To construct, operate, access and maintain a culvert/ditch outfall (Work No.92)

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 or imposition of a restrictive covenant 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 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(3) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

“(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 6 of the A585 Windy Harbour to Skippool Highway Development Consent Order 201[]);

(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 6 to the A585 Windy Harbour to Skippool Highway Development Consent Order 201[]) 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.”.

3.—(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-paragraph (2).

(3) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5(3)—

(a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from”; and

(b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

Application of the 1965 Act

4. —(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1865 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of the 1965 Act)) to the acquisition of land under article 20 (compulsory acquisition of land) applies to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 23(1) (compulsory acquisition of rights and restrictive covenants)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

(a) 1973 (c.26)

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

(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—

(4) 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 or the restrictive covenant 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

(5) 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 or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(6) 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 or enforcing that restrictive covenant; 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.

(7) Section 20(f) (protection for interests of 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 or the enforcement of the restrictive covenant in question.

(8) 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.

(9) For Schedule 2A of the 1965 Act substitute—

-
- (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) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
 - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c.22).
 - (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. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of this Order in respect of the land to which the notice to treat relates (but see article 27(3) (acquisition of subsoil and airspace only) of this Order 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 its 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 or the imposition of the restrictive covenant 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) 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the proposed use of the right or covenant proposed to be acquired, and
- (c) if the right or covenant is proposed to be acquired 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 or the imposition of the covenant 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 7

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

PART 1

TEMPORARY POSSESSION

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
Land Plans – Sheet 1		
1/07a, 1/07f, 1/07i	Required to provide construction working area for replacement culvert and for the diversion of electric cables and associated auxiliary cables	Work No.6 Work No.115
1/05a, 1/05b	Required to provide construction working area for replacement culvert and dwarf wall and for the diversion of a water pipeline	Work No.34 Work No.115 Work No.122
1/05c	Required for the provision of 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	All Works
1/05d	Required to provide construction working area for the combined footway/cycleway and for the diversion of a water pipeline	Work No.17 Work No.34
1/30a, 1/34a	Required to provide an improved private means of access and for the diversion of a water pipeline and for the diversion of electric cables and associated auxiliary cables	Work No.23 Work No.24 Work No.30 Work No.31
1/30b, 1/34b, 1/34f, 1/34g	Required for the diversion of a water pipeline and for the diversion of electric cables and associated auxiliary cables	Work No.24 Work No.30 Work No.31
Land Plans – Sheet 3		
3/01a	Required to provide a construction working area and improved private means of access	Work No.97
Land Plans – Sheet 4		
4/02c	Required to provide a construction working area for highway boundary fencing and for the diversion of electric cables and associated auxiliary cables	Work No.36 Work No.40
4/02b, 4/02c, 4/03a, 4/02d, 4/06c, 4/06d, 4/06h, 4/06e, 4/06g, 4/08b, 4/08e, 4/08g	Required to provide a construction working area for highway boundary fencing	Work No.40
4/06d, 4/06h, 4/06g	Required to provide a construction working area for highway boundary fencing and for the diversion of electric cables and associated	Work No.40 Work No.42

	auxiliary cables	
4/06f	Required to provide a flood mitigation area	Work No.98
4/08a	Required to provide a flood mitigation area	Work No.111
4/08d	Required to provide a flood mitigation area	Work No.110
4/08f	Required to provide a flood mitigation area	Work No.109
4/08l	Required to provide a construction working area and for drainage works	Work No.113
4/10a, 4/12	Required for the provision of 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	All Works
Land Plans – Sheet 5		
5/01a	Required to provide a construction working area (including for construction material storage, construction access and storage of plant) and for the diversion of water pipelines	All Works
5/01c	Required to provide a construction working area for highway boundary fencing and for the diversion of a water pipeline	Work No.48 Work No.53 Work No.55 Work No.58
5/01e	Required to provide a temporary access for main construction compound	All Works
5/01f, 5/01k, 5/01i	Required to provide a construction working area for highway boundary fencing	Work No.57 Work No.58 Work No.59
5/01h, 5/06j	Required for the diversion of a water pipeline and construction working area for culvert	Work No.61 Work No.62
5/05b	Required for the diversion of a water pipeline	Work No.60
5/06a	Required to provide a borrow pit area and for the diversion of electric cables and associated auxiliary cables and water pipeline	Work No.63 Work No.61 Work No.64
5/06c	Required to provide a construction working area for highway boundary fencing and for the diversion of water pipelines and electric cables and associated auxiliary cables	Work No.58 Work No.59 Work No.61
5/06i	Required to provide a construction working area for the bridge and for the diversion of electric cables and associated auxiliary cables	Work No.58 Work No.70 Work No.64
5/06d	Required to provide a construction working area for highway boundary fencing and for the diversions of water pipelines and electric cables and associated auxiliary cables	Work No.58 Work No.60 Work No.61 Work No.72
5/06b	Required to provide a borrow pit area and for the diversion of electric cables and associated auxiliary cables and for diversion of a gas pipeline and for the diversion of water pipelines	Work No.60 Work No.61 Work No.69 Work No.72 Work No.78
5/06h	Required to provide a construction working area for the bridge and for the diversion of electric cables and associated auxiliary cables and gas pipeline	Work No. 69 Work No.70 Work No.72
5/07c, 5/15a	Required for the diversion of a water pipeline	Work No.61

5/12	Required to provide an improved private means of access and for the diversion of a gas pipeline	Work No.67 Work No.68
5/15, 5/07b, 5/07d	Required for the diversion of a water pipeline	Work No.60
5/09e, 5/09c, 5/09d, 5/09b	Required to provide an improved private means of access and for the diversion of electric cables and associated auxiliary works and for the diversion of a gas pipeline and for the diversion for telecommunications cables	Work No.71 Work No.72 Work No.73 Work No.74 Work No.75 Work No.76 Work No.120
Land Plans – Sheet 6		
6/43a	Required to provide a construction working area for highway boundary fencing	Work No.87
Land Plans – Sheet 7		
7/01a	Required to provide a construction working area for highway boundary fencing	Work No.58
7/02d	Required to provide a construction working area for highway boundary fencing and for the diversion of a water pipeline	Work No.58 Work No.77
7/06b, 7/06c, 7/08a, 7/07a	Required to provide a construction working area for highway boundary fencing	Work No.58 Work No.90 Work No.93
7/07b, 7/07c	Required to provide a construction working area for highway boundary fencing and pavement widening	Work No.58
7/04a	Required to provide a construction working area for highway boundary fencing and culvert	Work No.58 Work No.91
Land Plans – Sheet 8		
8/02d	Required to provide a construction working area for highway boundary fencing	Work No.29
8/02e, 8/04	Required to provide a habitat mitigation area	All Works

SCHEDULE 8

Article 35

DEEMED MARINE LICENCE

PART 1

INTRODUCTORY

Interpretation

1.—(1) In this licence—

“the 2008 Act” means the Planning Act 2008(a);

“the 2009 Act” means the Marine and Coastal Access Act 2009(b);

“authorised development” has the meaning given in paragraph 4;

“licence holder” means the undertaker and any agent, contractor or sub-contractor acting on its behalf;

“licensed activity” means any activity described in Part 2 of this licence;

“Local Office” means MMO Office, Lutra House, Dodd Way, Walton Summit, Lancashire PR5 8BX;

“MMO” means the Marine Management Organisation;

“the Order” means The A585 Windy Harbour to Skippool Highway Development Consent Order [];

“the undertaker” means Highways England Company Limited (registered company number 09346363);

“Works Plans” means the plans certified as the Works Plans by the Secretary of State under article 41 of the Order, references to a particular Works Plan must be construed accordingly.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

Addresses

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this licence is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH, telephone 0300 123 1032.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk and the address for electronic communication with the Local Office for the purposes of this licence is preston@marinemanagement.org.uk.

(a) 2008 c.29.
(b) 2009 c.23.

PART 2

LICENSED ACTIVITIES

3. Subject to the licence conditions in Part 4 of this licence, this licence authorises the licence holder to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

4. In this licence, “authorised development” means—

- (a) The construction of a culvert (Skippool Clough), approximately 104 metres in length, running directly beneath Skippool Junction, including the abandoning of the existing Skippool Clough culvert comprising—
 - (i) Works to Horsebridge Dyke.
 - (ii) The works include alterations of the headwall and apron including re-provision of the Environment Agency’s flap valve and alterations to highway drainage outfall through the headwall.
 - (iii) Any works ancillary to these works.
- (b) The works described above are located at—
 - (i) Point reference 1 – Easting 335495E, Northing 440629N, 10km Tile SD3549540629;
 - (ii) Point reference 2 – Easting 335485E, Northing 440609N, 10km Tile SD3548540609;
 - (iii) Point reference 3 – Easting 335485E, Northing 440610N, 10km Tile SD3548240610; and
 - (iv) Point reference 4 – Easting 335491E, Northing 440630N, 10km Tile SD3549140630.

PART 3

ENFORCEMENT

5. Any breach of this licence does not constitute a breach of the Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as a licence deemed to have been granted under section 149A of the 2008 Act.

PART 4

CONDITIONS

6. The licence holder must inform the MMO and the Local Office in writing of the intended start date and the likely duration of licensed activities on a site at least 10 business days prior to the commencement of the first licensed marine activity.

7. Should the licence holder become aware that any of the information on which the granting of this licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity. Failure to do so may render this licence invalid and may lead to enforcement action.

8. The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Guidelines.

9. The licence holder must ensure that the MMO and the Local Office is notified in writing of the completion of the works within 10 business days following the completion of any of the works.

10. The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of any of the works.

11. The licence holder must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on the licensed activity on behalf of the licence holder.

12.—(1) Any oil fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours

(a) Within office hours: 0300 200 2024

(b) Outside office hours: 07770 977 825

(c) At all times if other numbers are unavailable 0345 0518486.
dispersants@marinemanagement.org.uk

13. Bunding and/or storage facilities must be installed to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment. Secondary containment must be used with a capacity of no less than 110% of the container's storage capacity.

14. The licence holder must submit a method statement to the MMO at least 10 weeks prior to the proposed commencement of the licensed activities. Once approved the method statement and any mitigation measures contained therein must be strictly adhered to. Licensed activities must not commence until written approval is used by the MMO.

15. The licence holder must not discharge waste concrete slurry or wash water from concrete or cement into the river. The licence holder must site concrete and cement mixing and washing areas at least 10 metres from the river or surface water drain to minimise the risk of run off entering the river.

16.—(1) Vibro-piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth. If percussive piling is necessary soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

(a) The sort-start duration must be a period of not less than twenty minutes.

(b) Should piling cease for a period greater than ten minutes, then the soft start procedure must be repeated.

17. If concrete is to be sprayed suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the water environment. Rebounded material must be cleared away before the sheeting is removed.

18. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

SCHEDULE 9

Article 34 and 37

HEDGEROWS AND TREES

PART 1

HEDGEROWS

<i>(1)</i> <i>Hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>Important Hedgerow</i>
H1	Removal	Work Nos.13, 15, 16, 17, 21 and 34	No
H2	Removal	Work Nos.17, 21, 34 and 122	No
H3	Removal	Work Nos.21, 22, 26, 27 and 36	No
H4	Removal	Work Nos.28, 29, 30, 31, 32, 33 and 34	No
H5	Removal	Work Nos.38, 39 and 40	No
H6	Removal	Work No.41	Yes
H7	Removal	Work Nos.38 and 41	Yes
H8	Removal	Work Nos.40, 96 and 108	Yes
H9	Removal	Work Nos.40, 44 and 107	Yes
H10	Removal	Work No.107	Yes
H11	Removal	Work Nos.58, 60 and 62	Yes
H12	Removal	Work Nos.58, 64, 65, 67, 69, 70, 71, 72, 73, 74, 75 and 76	Yes
H13	Removal	Work Nos.58, 64, 65, 67, 69, 70, 71, 72, 73, 74, 75 and 76	No
H14	Removal	Work Nos.85, 87 and 89	No
H15	Removal	Work Nos. 58, 79 and 114	Yes
H16	Removal	Work Nos.58, 80, 81, 82, 91 and 92	No
H17	Removal	Work Nos.58 and 90	Yes
H18	Removal	Work Nos.58 and 93	Yes
H19	Removal	Work Nos.58, 80, 81, 82, 91 and 92	No
H20	Removal	Work No.58	No
H21	Removal	Work Nos.58, 80, 81, 82, 91 and 92	No
H22	Removal	Work No.97	No
H23	Removal	Work No.115	No

PART 2

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>	<i>(4)</i> <i>TPO reference</i>
Multiple species (group TPO)	Felling/Removal	Work Nos.58, 64, 65, 69, 70, 71 and 73	FYLDE TPO 1- 1974

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 (excluding Cadent Gas Ltd to whom the provisions of Part 3 of this Schedule shall apply) 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) of that Act or an agreement to adopt made under section 104 of that Act,

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

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) 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.

- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (h) 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 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 an 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 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.

(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 31 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of 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.

PART 3

FOR THE PROTECTION OF CADENT GAS LTD AS GAS UNDERTAKER

Application

18. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

19. In this Part of this Schedule—

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

“acceptable insurance” means a third party public & products liability insurance maintained by the undertaker or their contractors with a limit of fifty million pounds (£50,000,000) in respect of any one occurrence without limit to the number of occurrences in any annual policy period, but fifty million pounds (£50,000,000) for any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Ltd and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“commence” has the same meaning as in article 2(1) of the Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 24(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 24(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties GD/SP/SSW/22”); and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

20.—(1) Except for paragraphs 21 (apparatus in stopped up streets), 26 (retained apparatus : protection of Cadent), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Paragraph 24 and 25 of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway.

Apparatus of Cadent in stopped up streets

21.—(1) Without prejudice to the generality of any other protection afforded to Cadent elsewhere in the Order, where any street is stopped up under article 13 (*permanent stopping up and restriction of use of streets and private means of access*), if Cadent has any apparatus in the street or accessed via that street Cadent will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent, or will procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 24.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (*temporary stopping up and restriction of use of streets*), Cadent will be at liberty to all

times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over article 32(2) to (7) to the Order which shall not apply to Cadent.

Protective works to buildings

22.—(1) 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 without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to Cadent for any loss sustained by it; and
- (b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement, admission of liability or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

23.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph 23(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Cadent under paragraph 26 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 23(1).

(5) As a condition of an agreement between the parties in sub-paragraph 23(1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 24 do not apply, the undertaker must:

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

24.—(1) If, in the exercise of the agreement reached in accordance with paragraph 23 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and, the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 25(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If 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, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-

paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

25.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph 25(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 33 (*arbitration*) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance

with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement

(8) If Cadent, 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 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 24(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent High pressure Gas pipelines and associated installation requirements for third parties SPGD/SP /SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains, the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 27.

Expenses

27.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 7(3) if it elects to do so; and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;

- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 9(6).

(2) There will 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 and which is not re-used as part of the alternative apparatus, 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 paragraph 33 (*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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not 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 will 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 Cadent in respect of works by virtue of sub-paragraph (1) will, 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 Cadent 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.

Indemnity

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these 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 the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply;
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (*consent to transfer benefit of order*) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) The undertaker confirms that:

- (a) it is a self-insuring body, bound by the guidance set out in the HM Treasury Handbook "Managing Public Money";,
- (b) it holds a certificate of exemption under which the Secretary of State exempts it from any obligation to maintain Employers Liability Insurance but it shall be under an obligation to effect and maintain any insurance it is required to hold by statute or law unless an appropriate certificate of exemption is held;
- (c) if, at any time, it ceases to comply with (a) or (b) above it will immediately notify Cadent in writing, shall forthwith put into place the acceptable insurance and shall then maintain that acceptable insurance for the construction period of the authorised works; and
- (d) its response to any indemnity provided under this Part of this Schedule will not be reduced in anyway and any claim shall not be prejudiced because of the undertaker's self-insuring strategy.

(6) In the event that the undertaker fails to comply with paragraph 28(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker Cadent must provide an explanation of how the claim has been minimised.

Enactments and agreements

29. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the

undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

30.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 24(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 26, the undertaker shall use its 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 Cadent's undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

31. If in consequence of the agreement reached in accordance with sub-paragraph 23(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Save for differences or disputes arising under sub-paragraphs 24(2) 24(4) and 26(11) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 43 (*arbitration*).

Notices

33. The plans submitted to Cadent by the undertaker pursuant to sub-paragraph 26(1) must be sent to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

SCHEDULE 11

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	TR010035/APP/4.3	[]
Flood Risk Assessment	TR010035/APP/5.2	[]
Habitat Regulation Assessment	TR010035/APP/5.4	[]
Environmental Statement	TR010035/APP/6.1 – 6.20	[]
Outline CEMP	TR010035/APP/7.2	[]
Location Plan	TR010035/APP/2.1	[]
Land Plans	TR010035/APP/2.2	[]
Works Plans	TR010035/APP/2.3	[]
Streets, Rights of Way and Access Plans	TR010035/APP/2.4	[]
Traffic Regulation Measures and De-trunking Plans	TR010035/APP/2.8	
Classification of Road Plans	TR010035/APP/2.7	[]
Engineering Drawings and Sections	TR010035/APP/2.6	[]
Hedgerow and Protected Trees Plans	TR010035/APP/2.10	[]
Crown land plans	TR010035/APP/2.11	[]
Record of Environmental Actions and Commitments	TR010035/APP/7.3	[]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to alter and improve the A585 Windy Harbour to Skippool Highway 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, Piccadilly Gate, Store Street, Manchester, M1 2WD.