

# M3 Junction 9 Improvement

**Scheme Number: TR010055**

## 4.1 Statement of Reasons

(Rev 4)  
Tracked

APFP Regulation 5(2)(h)

Planning Act 2008

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

Volume 4

17 July 22 September 2023

## Infrastructure Planning

### Planning Act 2008

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

### M3 Junction 9 Improvement Development Consent Order 202[x]

#### **4.1 STATEMENT OF REASONS**

<b>Regulation Number:</b>	Regulation 5(2)(h)
<b>Planning Inspectorate Scheme Reference:</b>	TR010055
<b>Application Document Reference:</b>	4.1
<b>BIM Document Reference:</b>	HE551511-VFK-LSI-X_XXXX_XX-RP-LE-0001
<b>Author:</b>	M3 Junction 9 Improvement Project Team, National Highways

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Rev 0	November 2022	Application Submission
Rev 1	January 2023	Update to Land Interests
Rev 2	15 June 2023	Deadline 2 Submission
Rev 3	17 July 2023	Deadline 3 Submission

<u>Rev 4</u>	<u>22 September 2023</u>	<u>Deadline 5 Submission</u>
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## **1 Introduction**

### **1.1 Summary**

- 1.1.1 This Statement of Reasons (this ‘Statement’) relates to an application, made by National Highways (‘the Applicant’) to the Secretary of State for Transport via the Planning Inspectorate under the Planning Act 2008 for a Development Consent Order (‘DCO’). If made, the DCO would grant consent for the M3 Junction 9 Improvement Scheme (‘the Scheme’).
- 1.1.2 This Statement has been prepared in accordance with the requirements of Regulation 5(2)(h) of the Infrastructure Planning (Prescribed Forms and Procedure) Regulations 2009 (‘the APFP Regulations’) and the Planning Act 2008: ‘Guidance related to procedures for compulsory acquisition of land’ (DCLG, September 2013) (‘the CA Guidance’).
- 1.1.3 The purpose of this Statement is to demonstrate that the powers of compulsory acquisition and temporary possession sought in the DCO are necessary, proportionate, justified, and that the legislative and policy tests are met. Detail is provided concerning the extent and nature of the powers sought and how this is set out in the application documents.

### **1.2 Definition under the Planning Act 2008**

- 1.2.1 The Scheme is a Nationally Significant Infrastructure Project (NSIP) within Sections 14(1)(h) and 22(1)(b) of the Planning Act 2008.
- 1.2.2 Section 14(1)(h) of the Planning Act 2008 defines an NSIP as highway-related development falling within the criteria set out in Section 22 of the Planning Act 2008. Under Section 22(1) an NSIP for highway-related development must fall within one of three specified categories, namely construction, improvement or alteration of a highway.
- 1.2.3 The Scheme constitutes “alterations” to a highway within the meaning of Section 22(1)(b) and meets the requirements of this definition under Section 22(3) and 22(4) as follows:
- The highway is wholly in England (Section 22(3)(a)).
  - National Highways (as the strategic highways company) is the highway authority for the highway (Section 22(3)(b)).
  - The area of development within the order limits is greater than 15 hectares (Sections 22(3)(c) and 22(4)(a)).
- 1.2.4 The approximate area within the Application Boundary is 109 hectares.
- 1.2.5 As the Scheme is an NSIP, development consent must be obtained from the Secretary of State (SoS) to authorise it, and an application for a DCO must be

made to the Planning Inspectorate who administer the DCO process on behalf of the SoS under Section 37 of the Planning Act 2008. If granted by the SoS, the DCO will provide the necessary authorisation to allow the Scheme to be constructed and operated.

- 1.2.6 Further information regarding how the Scheme qualifies as an NSIP can be found in the **Explanatory Memorandum (Document Reference 3.2)**.

### 1.3 Compulsory acquisition

- 1.3.1 In the DCO for the Scheme, the Applicant seeks compulsory acquisition and temporary possession powers in respect of certain land interests. A detailed description of the extent and nature of the powers sought is set out by reference to the DCO application documents in **Chapter 3** of this Statement.

### 1.4 Land interests

- 1.4.1 The extent of the land interests affected by the compulsory acquisition and temporary possession powers sought by the Applicant in relation to the land within the order limits ('the Land') is described in **Chapter 4** of this Statement and is shown on the **Land Plans (Document Reference 2.2)**.
- 1.4.2 The Applicant has carried out diligent inquiry, as prescribed by the APFP Regulations and the CA Guidance, to identify all the persons with an interest in the Land and the persons with a potential claim for compensation as a result of the Scheme. These persons have been consulted pursuant to section 42 of the Planning Act 2008. The categories of persons identified and the methods used to identify them are described in **Chapter 4** of this Statement by reference to the categories in the **Book of Reference (Document Reference 4.3)**.
- 1.4.3 The Applicant has entered into negotiations to acquire interests voluntarily and is progressing those discussions. These negotiations are not yet completed. The current position on these negotiations is set out in **Annex B** of this Statement.
- 1.4.4 It is necessary to have the power to acquire land interests by compulsory acquisition to ensure that the Scheme can be delivered. Further details are set out in **Chapter 4** of this Statement.

### 1.5 The case for compulsory acquisition

- 1.5.1 This Statement sets out the reasons for the inclusion of compulsory acquisition powers within the **draft Development Consent Order (Document Reference 3.1)**. It explains it is necessary to include compulsory acquisition powers within the DCO so that the Applicant can acquire the land interests required for the construction and operation (including maintenance) of the Scheme that is not already in its possession. It also explains why powers of compulsory acquisition are necessary to enable the Applicant to use land temporarily and acquire, suspend, interfere with or extinguish rights over land. This is in order to construct and maintain the Scheme in a way that is both proportionate and in the public



interest by reducing environmental impacts, minimising the cost to the Applicant (and hence the public purse) and mitigating the impact on affected land interests.

1.5.2 The powers of compulsory acquisition and temporary possession sought in the application are necessary, proportionate and justified. The powers sought are in accordance with all relevant statutory and policy guidance.

1.5.3 There is a compelling case in the public interest for the compulsory acquisition and temporary possession powers sought as set out in **Chapter 5** of this Statement. The conclusion of this Statement is that the grant of the compulsory powers requested would be lawful under all applicable legal regimes.

## 1.6 Human rights

1.6.1 In preparing the DCO, the Applicant has had regard to the European Convention of Human Rights and the Human Rights Act 1998. **Chapter 6** of this Statement considers how the Scheme complies with this legislation, notwithstanding any infringement of private rights of those whose interests in the land may be affected by the exercise of powers of compulsory acquisition and temporary possession.

## 1.7 Special considerations

1.7.1 As confirmed in **Chapter 7** of this Statement, there is no special category land, Crown land or National Trust inalienable land which is affected by the compulsory acquisition powers. There will also be no compulsory acquisition of land owned by statutory undertakers.

## 1.8 Compliance with statutory requirements and policy guidance

1.8.1 This Statement has been prepared in accordance with the requirements of Regulation 5(2)(h) of the APFP Regulations and the CA Guidance.

1.8.2 This Statement is required because the DCO, if made, would confer upon the Applicant the compulsory acquisition powers described in this Statement, including the power to acquire land outright, the power to acquire rights over land, the power to extinguish rights over land and the power to occupy land temporarily for construction and maintenance purposes.

1.8.3 This Statement forms a suite of documents accompanying the application submitted in accordance with Section 55 of the Planning Act 2008 and Regulations 5 and 6 of the APFP Regulations and should be read alongside the other DCO application documents that relate to the compulsory acquisition powers sought by the Applicant, including:

- Draft Development Consent Order (**Document Reference 3.1**)
- Explanatory Memorandum (**Document Reference 3.2**)

- Book of Reference (**Document Reference 4.3**)
- Land Plans (**Document Reference 2.2**)
- Works Plans (**Document Reference 2.3**)
- Funding Statement (**Document Reference 4.2**)
- Case for the Scheme (**Document Reference 7.1**)
- National Policy Statement for National Networks (NPSNN) Accordance Table (**Document Reference 7.2**)
- Introduction to the Application (**Document Reference 1.3**)
- Consents and Agreements Position Statement (**Document Reference 3.3**).

## 2 The Scheme

### 2.1 Description of the scheme

2.1.1 The improvements proposed as part of the Scheme both maintain existing connectivity on the road network, whilst providing enhanced capacity, simplified routing and improved facilities for walking, cycling and horse-riding routes and landscaping enhancements. The Scheme would provide new free flow links between the M3 and A34, as well as a dedicated new A33 alignment. The Scheme elements are as follows:

- Widening of the M3 from a dual two-lane motorway (two-lane motorway with hard shoulders) to a four-lane motorway (with hard shoulders) between the proposed M3 Junction 9 gyratory north and south slip roads.
- A new smaller grade separated gyratory roundabout arrangement within the footprint of the existing roundabout, incorporating new connections over the M3 with improved walking, cycling and horse-riding routes.
- Connector roads from and to the new gyratory roundabout.
- Improved slip roads to/from the M3.
- New structures (in the form of gyratory bridges, underpasses, retaining walls, subway and a new cycle and footbridge over the River Itchen).
- A new surface water runoff system with associated drainage and infiltration features.
- New signage and gantries.
- Utility diversions.
- New lighting (subways, underpasses and gantries).
- Modifications to topography through cuttings and false cuttings as well as re-profiling of existing landform.
- New walking, cycling and horse-riding provision.

2.1.2 The Application Boundary covers an area of approximately 109 hectares. This includes the proposed land required for gantries, signage, temporary construction compound areas, areas for environmental mitigation, areas for drainage requirements (some of which would be temporary) and traffic management.

2.1.3 The Scheme includes a package of environmental mitigation and enhancement measures to reduce the impacts from the Scheme to the environment where possible. Consideration has also been given to the enhancement of the South Downs National Park where reasonably practicable.

- 2.1.4 Bridleways, footpaths and cycleways have been designed to allow all gradients to be less than 1:20 to comply with Department for Transport's (DfT) inclusive mobility impaired users. The walking, cycling and horse-riding routes are designed for cyclists, and therefore as all horizontal radii are suited for cyclists, they are also considered acceptable for mobility impaired users. The range of opportunities and barriers to all forms of users have been given due consideration in the design of the Scheme.
- 2.1.5 A number of new structures are required to be both constructed and demolished to facilitate the Scheme. Some of the main structures are as follows:
- The existing bridges at the M3 Junction 9 gyratory roundabout are proposed to be demolished and replaced by the two new bridge structures carrying the new gyratory
  - A new underpass is proposed to carry the A34 southbound under the new A33 link road and the existing M3. The A34 northbound underpass would carry the new A34 northbound over the new A33 link
  - The existing subways (Winnall Subway East and Winnall Subway West) located under the existing gyratory are proposed to be demolished to facilitate the construction of the reconfigured roundabout. New subways are proposed along the proposed walking, cycling and horse-riding route
  - A new footbridge over the River Itchen is proposed between the existing Itchen Bridge, (which carries the A34 northbound carriageway), and the existing Kings Worthy Bridge which will carry the A33 north and southbound carriageways and the A34 southbound carriageway, respectively.
- 2.1.6 The walking, cycling and horse-riding facilities around and within the Scheme are to be upgraded. This includes an improvement to the National Cycle Network (NCN) Route 23. An additional footpath, cyclepath and bridleway is proposed on the eastern side of the Scheme to link Easton Lane with Long Walk. Such a route would provide a circular leisure path for those using the South Downs National Park with a link to the other paths around Long Walk with their links to local villages. A new combined footpath and cyclepath for the western side of the Scheme is proposed to link the A33 / B3047 Junction to Winnall Industrial Estate situated on Easton Lane A detailed description of the Scheme is provided in **Chapter 2 (The Scheme and its Surroundings)** of the **Environmental Statement (ES) (Document Reference 6.1)**.
- 2.1.7 The Scheme has five strategic objectives, supported by the National Highways Delivery Plan 2015-2020 (Highways England, 2015):
- To reduce delays at M3 Junction 9 on all links M3, A33 and A34

- Smooth the flow of traffic by improving journey time reliability and reducing delays (time lost per vehicle per mile) at M3 Junction 9 and the exit and entry roads for the A33 and A34
- Improve the safety for all road users and reduce the annual collision frequency and severity ratio on the M3 Junction 9
- Support economic growth and ensure the junction can accommodate additional traffic
- Improvements for walkers and cyclists, including connecting the National Cycle Network Route 23 which is severed by the current junction layout

## 2.2 Case for the scheme

2.2.1 Hampshire County Council (HCC) identified in 2013 that infrastructure improvements were necessary to reduce congestion levels and assist with the strategic movement of traffic at Junction 9 of the M3, a key arterial intersection, to make sure that traffic congestion and increased journey times do not compromise the scale of potential future economic growth in the sub-region.

2.2.2 To address this, an improvement to M3 Junction 9 was included in the Department for Transport's Road Investment Strategy (RIS) 1 for the 2015/16 – 2019/20 Road Period and the RIS 2: 2020 – 2025. The improvement contributes to national transport objectives by:

- Providing additional capacity
- Enhancing journey time reliability
- Supporting the development of housing and the creation of jobs, as set out in the existing and emerging Local Plans

2.2.3 The Scheme is necessary for the following reasons:

- The M3 Junction 9 currently attracts a significant amount of Strategic Road Network (SRN) traffic between the M3 and the A34. This causes delays impacting strategic and local traffic flows, and also affecting commuters and local businesses.
- To relieve northbound and southbound movements between the M3 and the A34 which are particularly intensive, with downstream queues on the northbound off-slip of the M3 often resulting in safety concerns during peak periods.
- To address lengthy queues on the A272 Spitfire Link and Easton Lane during the morning and evening peak periods respectively.

- To connect the National Cycle Network (NCN) 23 through the M3 Junction 9.

2.2.4 The Scheme is included in the Solent to Midlands Route Strategy (National Highways, 2017), which identifies the M3 junction 9 improvement as a major improvement project as part of this route upgrade. Within this, junction 9 of the M3 is specifically highlighted as being a location where there is a substantial barrier to connectivity in relation to the South Downs National Park and Walking, Cycling and Horse-riding.

2.2.5 The **Case for the Scheme (Document Reference 7.1)** and the **NPSNN Accordance Table (Document Reference 7.2)** set out how the Scheme complies with national and local policy.

## 2.3 Benefits of the Scheme

2.3.1 The Scheme will deliver a range of benefits as listed below with further details provided in the **Case for the Scheme (Document Reference 7.1)**, the **Environmental Statement (ES) (Document Reference 6.1)** and the **Combined Modelling and Appraisal Report (Document Reference 7.10)**:

- A significant reduction in congestion and delays will improve travel times for business users using the M3 and in particular those transiting between the M3 and the A34.
- The Scheme will reduce traffic congestion thereby reducing journey times and driver frustration. The strategic modelling predicts that
  - the northbound A34 route between the M3 Junction 10 and the A34/A272 junction north of Winchester is forecast to have journey time savings in excess of two minutes in 2027, in excess of three minutes in 2042 and in excess of four minutes in 2047 in the evening peak time period as a result of the provision of the direct connection between the M3 and A34.
  - Journey times on the A33 route between Easton Lane and Kings Worthy are predicted to reduce across all years and time periods, with the largest reductions in 2047 of two and half minutes in the AM Peak in the northbound direction.
  - Routes in Winchester also experience improvement in journey time due to a reduction in strategic traffic through the city.
  - The Scheme is predicted to provide eastbound journey time benefits for the mainline M3.
- Improved journey time reliability as it provides more capacity, which in turn reduces congestion and journey time delay.
- The Scheme will provide employment opportunities during its construction.

- The Scheme is forecast to generate economic benefits in the order of ~~£161.7M~~ **£152.3M**. The greatest benefit relates to user travel time savings, amounting to £155.5M, which are predominantly due to the provision of the free-flow movement between the A34 and the M3.
- There will be a decrease in the total number of collisions and casualties with the Scheme. The greatest benefits are experienced as a consequence of the reduced traffic demand through the proposed junction gyratory.
- Overall, the Scheme will improve the air quality and noise environment within Winchester city centre.
- Once restoration measures and ground remodelling have been implemented and mitigation and enhancement measures, such as planting, have started to mature, the Scheme will improve visual amenity and the landscape particularly to the east within the South Downs National Park where new earthworks and planting will screen the existing road and provide additional chalk grassland which will be integrated into the existing landscape.
- Wildlife fencing will ensure species are protected from road traffic which will be an improvement over the existing situation and green infrastructure links will be enhanced.
- The Scheme will provide enhanced pollution and run off control compared with the existing situation.
- The Scheme will provide significantly enhanced provision for pedestrians, cyclists and horse riders and the new public rights of way network will increase opportunities for active travel. In total an extra 4.8km of public rights of way / footways are provided.

## 2.4 The authorised works

### 2.4.1 The Scheme comprises:

- Provision of a same direction free-flow link between the M3/A34
- Widening of the existing M3 northbound and southbound carriageways to create four traffic lanes in each direction
- Reconfiguration of the main junction 9 grade separated roundabout
- Construction of three new bridges and a number of other structures including new underpasses
- Revising and providing new walking, cycling and horse-riding routes
- Improvements to and provision of new M3 motorway slip-roads.

2.4.2 A full description of the works and associated development, referred to in the DCO as the 'authorised development' is set out in **Schedule 1** of the **draft Development Consent Order (Document Reference 3.1)** and set out on the **Works Plans (Document Reference 2.3)**.

## **2.5 Alternatives and flexibility**

2.5.1 There are no elements of the Scheme where an alternative option is proposed within the **draft Development Consent Order (Document Reference 3.1)**.

2.5.2 Due to the nature of the design process and the timing of the consenting process, the Applicant requires a degree of flexibility as to where certain elements of the Scheme can be constructed. It has not been possible for all aspects of the Scheme to be settled in precise detail, for example there is a need for flexibility regarding the height of the retaining walls. This flexibility is defined through the limits of deviation which are provided in the **draft Development Consent Order (Document Reference 3.1)** and shown on the **Works Plans (Document Reference 2.3)**.

2.5.3 At this stage, all the Land is considered to be necessary to deliver the Scheme. However, should it transpire that any part of the Land is not required, for instance, as a result of the detailed design process, the Applicant would only seek to acquire that part of the Land required, and in all events, will seek to minimise the effects on land interests.



### 3 Compulsory acquisition

#### 3.1 Scope of compulsory acquisition powers with reference to the draft DCO

3.1.1 The purpose of the compulsory acquisition powers in the draft DCO is to enable the Applicant to construct, operate and maintain the Scheme. The specific compulsory acquisition powers sought by the Applicant are set out in full in **Part 5** of the **draft Development Consent Order (Document Reference 3.1)**.

3.1.2 Section 122 of the Planning Act 2008 provides that an order granting development consent, may include provision authorising compulsory acquisition of land. To the extent that this is sought, the decision maker (the SoS) in respect of the application must be satisfied that certain conditions are met. The way in which the Scheme meets these conditions is considered in **Chapter 5** of this Statement.

3.1.3 In addition to the powers of compulsory acquisition, Section 120 of the Planning Act 2008 provides that the DCO may make provision relating to, or to matters ancillary to the development in respect of which a DCO is sought. The matters in respect of which provision may be made includes (but is not expressly limited to) the matters listed in Schedule 5 of the Planning Act 2008, including:

- a) the acquisition of land, compulsorily, or by agreement (paragraph 1);
- b) the creation, suspension or extinguishment of, or interference with, interests in rights over land, compulsorily, or by agreement (paragraph 2);
- c) the abrogation or modification of agreements relating to land (paragraph 3); and
- d) the payment of compensation (paragraph 36).

#### 3.2 Main compulsory acquisition powers

3.2.1 The main powers authorising the compulsory acquisition of land, or interests in, or rights over land, are contained in Article 24 (compulsory acquisition of land) and 27 (compulsory acquisition of rights) of the draft DCO. Table 1 of Annex A of this Statement provides a description of the land which is subject to powers of outright acquisition in terms of Article 24. The purpose for acquiring this land is to enable the Applicant to construct the permanent works on the land and other elements described in Annex A.

3.2.2 Article 27 allows rights over land to be acquired instead of outright acquisition. This allows flexibility in approach and a reduction in the impact on the interests of the land. Compulsory acquisition of rights and the compulsory imposition of restrictive covenants is authorised by Article 27. **Table 2** of **Annex A** of this Statement provides a description of the land which is subject to the acquisition of rights or the imposition of restrictive covenants. These rights are necessary for the purposes of constructing the works and the maintenance of the works

thereafter, ensuring that the operator of the finished Scheme is able to fulfil their functions.

3.2.3 Other compulsory acquisition powers are sought in the **draft Development Consent Order (Document Reference 3.1)** (identified below) and these similarly relate to land and will, or may, authorise, interfere with property, rights or interests.

3.2.4 In addition, powers are sought in the **draft Development Consent Order (Document Reference 3.1)** to enable the temporary possession and use of land.

3.2.5 In each case, the party having an interest in the land, or the interest or right in the land, may be entitled to compensation.

### **3.3 Other compulsory acquisition powers**

3.3.1 The other compulsory acquisition powers sought by the Applicant in the **draft Development Consent Order (Document Reference 3.1)** include:

#### **Article 28 Public Rights of Way**

3.3.2 Article 28 provides for the extinguishment of public rights of way (PRoW) following the Applicant erecting a site notice at each end of the right of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

#### **Article 29 Private Rights Over Land**

3.3.3 Article 29 provides for the extinguishment of private rights over land from the earlier of the date of acquisition of the land or the date on which the Applicant enters the land.

3.3.4 The Article further provides that, where new rights are being compulsorily acquired or restrictive covenants are being imposed on land then any existing private rights or restrictive covenants which that land is subject to, may be extinguished to the extent that continuing enjoyment of those private rights or restrictive covenants would be inconsistent with the new rights acquired or restrictive covenants imposed.

3.3.5 With regard to the land that the Applicant may take temporary possession, **Article 29 (4)** of the **draft Development Consent Order (Document Reference 3.1)** provides that all private rights over that land will be suspended and unenforceable for as long as the Applicant is in lawful possession of the land.

3.3.6 The power to extinguish existing rights is required to ensure that such rights do not interfere with the construction and operation of the Scheme.

3.3.7 The Article provides that any person who suffers loss caused by the extinguishment or suspension of rights (pursuant to the exercise of the power in Article 29 (5)) is entitled to reasonable compensation.

#### **Article 32: Acquisition of subsoil or airspace only**

3.3.8 Article 32 provides that where the Applicant has, in respect of any land, powers of compulsory acquisition under Article 24 then it may, for the same purposes for which it is authorised to acquire the whole of the land, choose instead to acquire only the subsoil underneath, or airspace over the land. This power is included for flexibility as it would allow the Applicant to minimise its costs and/or impact to land interests by acquiring subsoil or airspace only where it is possible to do so and still deliver the Scheme.

#### **Article 33: Rights under or over streets**

3.3.9 Article 33 is not in a strict sense a power of compulsory acquisition. However, it is included here for completeness because it would authorise the Applicant to:

- a) enter on and appropriate so much of the subsoil underneath or the airspace over any street within the limits of the DCO as may be required to provide the Scheme; and
- b) use that subsoil or airspace for the purposes of carrying out the Scheme or any purpose ancillary to it.

3.3.10 Save in the case of subways or underground buildings, or to cellars or similar structures forming part of a building fronting the street, the Applicant may exercise its power under Article 33 without having to acquire any part of the street or any easement or right in the street.

### **3.4 Temporary possession powers**

3.4.1 The Applicant further seeks, in the DCO, powers to take temporary possession of the land to carry out and thereafter maintain the Scheme. **Table 3 of Annex A** of this Statement provides a description of the land which may be occupied temporarily. The powers of temporary possession in the DCO are as follows:

#### **Article 34: Temporary use of land for carrying out the authorised development**

3.4.2 Article 34 would authorise the Applicant to take temporary possession of:

- a) the land specified in columns 1 and 2 of Schedule 7 to the DCO; or
- b) any other land within the limits of the DCO, so long as the Applicant has not served a notice of entry or executed a General Vesting Declaration (GVD) in respect of the land.

- 3.4.3 In addition to taking possession of the land Article 34 would authorise the Applicant to:
- a) remove buildings and vegetation from the land;
  - b) construct temporary works (including accesses) and buildings on the land; and
  - c) construct any permanent works specified in Schedule 7 to the DCO.
- 3.4.4 The power to take temporary possession would be subject to time limits under Article 26(2). The Applicant cannot remain in possession unless the owner of the land agrees:
- a) as regards to any land specified in columns 1 and 2 of Schedule 7 to the DCO, for more than a year after completing that part of the Scheme specified in relation to that land in column 4 of Schedule 7; and
  - b) as regards to any other Order land, for more than a year after completing the work for which temporary possession was taken (unless before the end of that period the Applicant has made a GVD or served notice of entry in relation to that land).
- 3.4.5 Article 34(4) provides that before giving up possession of any land the Applicant would be obliged to 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 or such other condition as may be agreed with the owners of the land.

#### **Article 35: Temporary use of land for maintaining the authorised development**

- 3.4.6 Article 35 would empower the Applicant to take temporary possession of any land within the limits of the DCO, if reasonably required for the purpose of maintaining the Scheme, at any time during the maintenance period (i.e. five years from the date on which that part of the Scheme is first open for use).
- 3.4.7 This Article would allow the Applicant to construct temporary works and buildings on the land, so far as reasonably necessary for the purpose of maintenance. The Applicant would not be able to take temporary possession of a house, or a garden belonging to a house, or any other occupied building under this Article.
- 3.4.8 The Applicant 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 Scheme for which possession was taken. Before giving up possession of land temporarily possessed under this article, the Applicant would be required to 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 or such other condition as may be reasonably agreed with the owners of the land.

3.4.9 The powers to use land temporarily for carrying out the Scheme ensures that appropriate work sites, working space and means of access are available for use during the construction and maintenance period and provides space for mitigation and other permanent works. This temporary power minimises the impact on land interests by ensuring that the Applicant does not have to acquire land it only requires temporarily.

3.4.10 The powers to use land temporarily for maintaining the Scheme ensures that the land is available for maintenance works during a five-year period from when that part of the Scheme is first opened for use. This is in the public interest as it ensures that it is possible to maintain the Scheme and the public benefits it will deliver. Temporary powers are sought for this purpose as permanent powers would entail an excessive impact on land interests.

### 3.5 Other rights and powers

3.5.1 In addition to powers of compulsory acquisition, if made the DCO would also confer other rights and powers on the Applicant that may interfere with property rights and private interests. These additional powers (which are explained in more detail in the **Explanatory Memorandum (Document Reference 3.2)** are:

- a) Article 11: Street works;
- b) Article 16: Temporary stopping up and restriction of use of streets;
- c) Article 17: Permanent stopping up and restriction of use of streets and private means of access;
- d) Article 21: Discharge of water;
- e) Article 22: Protective works to buildings;
- f) Article 23: Authority to survey and investigate the land;
- g) Article 25: Compulsory acquisition of land – incorporation of the mineral code;
- h) Article 36: Statutory undertakers;
- i) Article 37: Apparatus and rights of statutory undertakers in stopped up streets;
- j) Articles 39: Felling or lopping of trees and removal of hedgerows; and
- k) Article 40: Trees subject to tree preservation orders.

3.5.2 In each case (for both the principal powers and other powers) the parties having interest in the land, or the interest or right in the land, may be entitled to compensation. Any dispute in respect of the compensation payable is to be determined by the Lands Chamber of the Upper Tribunal.

## 4 Land interests

### 4.1 The extent of the land subject to powers

- 4.1.1 The full extent of the Land subject to compulsory acquisition and temporary possession powers and required in order to enable the Applicant to construct the Scheme is described in **Chapter 2** of this Statement and is shown on the **Land Plans (Document Reference 2.2)** and the **Works Plans (Document Reference 2.3)**. It is further described in the **Book of Reference (Document Reference 4.3)**.
- 4.1.2 Of the land within the Application Boundary approximately 76 hectares will be acquired permanently, 18 hectares will be subject to temporary possession with use of land and 1 hectare will be permanent acquisition of rights over land.
- 4.1.3 The Applicant has sought powers of compulsory acquisition (or rights of use) in respect of all plots of land where works are required for the Scheme. There are some parts of the M3 corridor where it is not proposed to seek powers of compulsory acquisition. This is because National Highways are the registered owner and the land is included within the Application Boundary primarily to facilitate associated development. As the land is operational motorway and in the ownership of the highway authority it is considered that it is unlikely that there are any rights of others that would need to be overridden to facilitate delivery of the Scheme. However, for all other plots compulsory acquisition powers are sought to ensure that the Applicant has the right to acquire the interest it needs in all of the Land, even where an unknown or unregistered interest later asserts an interest in land which the Applicant believes it owns.
- 4.1.4 The purpose for which each plot of land is required is described in **Annex A** of this Statement.

### 4.2 Location

- 4.2.1 The Scheme is located in the county of Hampshire running from north of Junction 10 of the M3 to the A34 in a north westerly direction and north eastwards along the M3 north of the B3047. There are approximately 11.9km of roads within the Application Boundary.
- 4.2.2 The Scheme location is provided on the **Location Plan (Document Reference 2.1)**.
- 4.2.3 The land is within the administrative areas of Winchester City Council, Hampshire County Council and South Downs National Park Authority.

### 4.3 Existing land use and character

- 4.3.1 The existing M3 Junction 9 is a grade separated, partially signalised gyratory roundabout connecting multiple nationally and locally significant routes. The M3 is joined with the A34 towards Newbury A272 towards Petersfield and southern

Winchester, and Easton Lane towards Winnall and northern Winchester. Approximately 1km north of the roundabout, the A33 from Basingstoke connects with the A34, and approximately 1km south of the roundabout the A31 from Alton connects to the A272.

- 4.3.2 The surrounding area is primarily urban to the west of the M3 and primarily rural to the east. There are large concentrations of residential receptors close to the A34 in the north of the Application Boundary (in Headbourne Worthy, Kings Worthy and Abbots Worthy) and close to the M3 within the southern extent of the Application Boundary (on the eastern fringe of Winchester). A small number of isolated farm holdings or rural dwellings lie to the east and south-east of the Application Boundary. There are a small number of schools and education facilities, including St Swithun's School north of the B3404 and east of the M3, Winnall primary school and Stepping Stones pre-school to the south-west of the junction.
- 4.3.3 Immediately west of the Application Boundary, there is an area of commercial development. This includes Sun Valley Business Park, Tesco, Winnall Industrial Estate and Scylla Industrial Estate. Wykeham Trade Park and the National Highways' maintenance depot are located to the north-west of the junction.
- 4.3.4 The South Downs National Park is an important designated area within and adjacent to the Application Boundary to the north, east, south and in some areas, the west. The Scheme constitutes 'Major Development' within the National Park. The western extent of the wider South Downs National Park boundary is shown on **Figure 1.3 (Environmental Constraints Plan) Chapter 1 (Introduction – Figures)** of the **ES (Document Reference 6.2)**.
- 4.3.5 The River Itchen Special Area of Conservation (SAC) (a European designated site) (which is also designated a Site of Special Scientific Interest (SSSI) is located (in part) beneath the existing alignment of the A34, the A33 and the M3.

#### **4.4 Identifying persons with an interest in the land**

- 4.4.1 In preparing the DCO application, the Applicant has carried out diligent inquiry in order to identify all persons with an interest in the Land as defined by Section 44 of the Planning Act 2008.
- 4.4.2 Those persons who were identified by the Applicant are listed in the **Book of Reference (Document Reference 4.3)** and have been consulted about the application in accordance with Section 42 of the Planning Act 2008, as described in the **Consultation Report (Document Reference 5.1)**.
- 4.4.3 Diligent inquiry to identify affected landowners and occupiers, those with another type of interest in land and those with a potential claim was undertaken by the Applicant's expert land referencing supplier. The categories of persons identified and the methods used to identify them are described below with reference to the categories in the **Book of Reference (Document Reference 4.3)**.

4.4.4 Land referencing has been undertaken throughout the pre-application period to ensure any changes in interest or new interests have been identified, consulted and subject to engagement. Land referencing will continue to be undertaken throughout the DCO process to ensure that any changes in interest are identified and to ensure any owners of new interests will be consulted and subject to engagement. Any changes will also be recorded and updated in the **Book of Reference (4.3, Rev 3)**.

#### **4.5 Category 1 and 2 persons**

4.5.1 Identification of Category 1 and 2 persons, as defined in Section 44 of the Planning Act 2008, was undertaken at the early stages of development of the Scheme in order to inform its design and the preparation of the application.

4.5.2 A shapefile of the search area, being the anticipated land requirements (before the Application Boundary shown on the **Land Plans (Document Reference 2.2)** was defined), was submitted to the Land Registry so that a polygon plus search could be completed in November 2020 across the route option that existed at that time.

4.5.3 Ongoing Land Registry searches have been conducted throughout the preparation of the application to ensure that any changes in title were identified. The official copies of Registered Titles and Plans were examined to identify all land interests. Further Land Registry searches have been used to ensure that any changes in title in respect of Land potentially required for or affected by the Scheme were identified.

4.5.4 All parties identified through the Land Registry searches were contacted by the land referencing supplier through the land referencing process. This included issuing a Request for Information (RFI) to all parties and issuing further forms to any new parties identified through returns. Where RFIs were not returned to the Applicant, further follow up letters were issued and site visits were conducted to visit properties to verify information. The forms were supported by a number of emails, telephone calls and landowner engagement meetings to verify and confirm information.

4.5.5 On completion of the initial desk-based exercise described above, the extent of unregistered land interests became known. In order to establish interests in relevant areas of unregistered land that falls within the proposed order limits, public sources of information were used including site visits, posting of sites notices, contacting the relevant Highway Authority, querying records held by Statutory Undertakers and other online resources (i.e. Experian, TracelQ and Companies House). Discussions were also held as part of the ongoing engagement and consultation with affected landowners.

4.5.6 The Applicant has relied on the presumption in law that where the subsoil of a highway is unregistered and no other owner has been identified as a result of diligent enquiry the frontagers to that highway own the subsoil to the half width



of the highway unless it is known that it is in some other ownership. In all cases reasonable diligent enquiries have been made to establish ownership.

4.5.7 The information obtained from the above exercises was used to populate Part 1, Part 2 and Part 3 of the **Book of Reference (Document Reference 4.3)**.

#### **4.6 Category 3 persons – Section 10 of the Compulsory Purchase Act 1965 (CPA 1965) and/or Section 152(3) of the Planning Act 2008**

4.6.1 Category 3 persons as defined in Section 44 of the Planning Act 2008 are those with potential claims under the above legislation should the Scheme be carried out. They mainly relate to those whose land may be injuriously affected (i.e. its value would be diminished) as a result of the Scheme, although the land in question is not acquired outright.

4.6.2 Steps to identify Category 3 persons were undertaken at an early stage of development of the Scheme and this was kept under review through the development of the Scheme. In order to identify potential Category 3 persons who may be entitled to make a claim under Section 10 of the Compulsory Purchase Act 1965 (CPA 1965), a desk-based assessment was carried out. Land and property in close proximity to the Application Boundary was examined for the possibility that the value of said land or interests may be devalued by physical interference with some legal right, due to the construction or operation of the Scheme.

4.6.3 Furthermore, proposed new residential developments identifiable from the Local Plans (Winchester District Local Plan Part 2 – Development Management and Site Allocations (adopted April 2017) and the South Downs Local Plan (adopted July 2019)) or from local authority information on developments with the benefit of planning permission were taken into account.

#### **4.7 Assessment of Category 3 persons which fall under Part I of the Land Compensation Act 1973 (LCA 1973)**

4.7.1 In assessing potential claimants under Part I of the Land Compensation Act 1973 (LCA 1973), physical factors and the impacts of the Scheme were considered, including:

- a) Properties closest to the construction activities
- b) Category 1 persons identified as a receptor as a consequence of the property being located outside of the Application Boundary but adjacent to the highway
- c) Impact of temporary works such as construction compounds.

4.7.2 The Applicant's land referencing team were provided with guidance from environmental specialists involved in the compilation of the **Environmental Statement (ES) (Document Reference 6.1)**. This guidance was based on the topography of the land and the likely significant effects arising from the Scheme.

For example, the noise assessments had regard to information available at the time regarding:

- a) background noise levels; and
- b) distance to receptors.

4.7.3 Based on the above information, professional judgement was used to ascertain whether a person may be able to make a relevant claim for compensation as a result of a reduction in value of their property as a result of the use of the Scheme caused by physical factors under Section 57(4) of the Planning Act 2008, based on a worse-case assessment. Further details about the noise assessments undertaken can be found in **Chapter 11 (Noise and Vibration)** of the **Environmental Statement (ES) (Document Reference 6.1)**.

4.7.4 Following guidance from environmental specialists and the District Valuer, a precautionary approach was adopted to only include those who may experience a perceptible increase in noise of 3 decibel or greater from the existing background noise level to the predicted noise level. Further details in relation to the noise assessments and other environmental assessments undertaken can be found in **Chapter 11 (Noise and Vibration)** of the **Environmental Statement (ES) (Document Reference 6.1)**.

#### **4.8 Contact referencing**

4.8.1 Following the initial non-contact methods described above, persons identified as having an interest in the Land or a potential claim were issued with a letter with a plan describing the extents of the Scheme, and a questionnaire requesting return of information about their interests in the Land. Requests for information (RFI) were issued between December 2020 and March 2021.

4.8.2 This was followed up by telephone and letter contact confirming that the Scheme was in development and because there could be impact on the recipient's land interest the Applicant needed to ensure the correct information was held.

4.8.3 Due to further evolution of the Scheme and the Application Boundary following statutory consultation in summer 2021, further RFIs were issued between November 2021 and December 2021. After a further review and refresh of the data, additional RFIs were issued between October 2022 and November 2022.

4.8.4 Confirmation Schedules were issued to parties identified as having an interest in the land in October 2022 to confirm that the information held on their land/property was still correct.

#### **4.9 Negotiation to acquire by agreement**

4.9.1 As well as consulting all persons with an interest in the Land about the Scheme proposals in accordance with Section 42 of the Planning Act 2008, the Applicant is aware of the requirement (Paragraph 25 of the CA Guidance) to seek to

acquire land by negotiation wherever practicable. The power to acquire land compulsorily should only be sought if attempts to acquire by agreement fail.

- 4.9.2 At the same time, the Applicant notes that the CA Guidance also recognises that where proposals would entail the compulsory acquisition of many separate plots of land, it may not always be practicable to acquire each plot of land by negotiation. As the CA Guidance states *“Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset”*.
- 4.9.3 The Applicant has engaged with all affected landowners, leaseholders and occupiers with a view to acquiring their land interest by agreement by writing to them to inform them of the Applicant’s willingness to negotiate to acquire the Land by agreement, and to invite dialogue at that point. Letters were issued to all affected Landowners where permanent acquisition and permanent rights are required on 18 November 2021 and to all Landowners with temporary rights; all leaseholders and occupiers on 18 November 2021. As a result, the Applicant is in the process of engaging with a number of land interests with regard to the acquisition of land and interests by agreement; and negotiations will be ongoing throughout the DCO process. The status of such negotiations is set out in **Annex B** of this Statement.
- 4.9.4 Alongside the Confirmation Schedules (October 2022) 6 parties were requested to make contact with the District Valuer to re-engage into negotiations.
- 4.9.5 Whilst negotiations are ongoing, the Applicant is mindful that it is under a duty to acquire land at best value and that it is required to deliver the Scheme within a specified timescale. It has concluded that it may not be possible to acquire by agreement all land interests necessary to deliver the Scheme within this timescale.
- 4.9.6 There are further parcels of land in unknown ownership which cannot be acquired by agreement. These are set out in **Table 4.1** below.

Table 4.1: Unregistered Land Interests within the Order Limits relevant to Permanent Acquisition

Nature of Interest	Description of the Affected Land	Affected Land Plot Numbers
Freehold	Riverbank (River Itchen), public footpath (128/27/1), trees, shrubbery and bridge carrying motorway (M3); south of Martyr Worthy Road, B3047 and west of Easton Lane	2/2

Nature of Interest	Description of the Affected Land	Affected Land Plot Numbers
Freehold	Public highway (Winchester Bypass, A33), public footpath (111/6/1), foul pipe, trees, shrubbery and access roads; south of London Road, B3047 and west of M3	3/3a
Freehold	Public highway (Winchester Bypass, A33), trees, shrubbery and river (River Itchen); west of M3 and east of Worthy Road, B3047	3/3b
Freehold	Public highway (Winchester Bypass, A33); south of London Road, B3047 and west of M3	5/2a
Freehold	River (River Itchen), trees, shrubbery and bridge carrying public highway (Winchester Bypass, A33); west of M3 and east of Worthy Road, B3047	5/2b
Freehold	Trees, shrubbery and bridge carrying public highway (Winchester Bypass, A33); west of M3 and east of Worthy Road, B3047	5/2c
Freehold	Public highway, verge (Winchester Bypass, A33 and A34) and public footpath (128/21/2); east of Worthy Road, B3047 and west of M3	5/2f
Freehold	Wooded area and public footpath (128/21/2); east of Worthy Road, B3047 and west of M3	5/2g
Freehold	Wooded area; east of Worthy Road, B3047 and west of M3	5/2h
Freehold	Wooded area; east of Worthy Road, B3047 and west of M3	5/2i
Freehold	Wooded area; north of Moorside Road and west of M3	6/1a
Freehold	Wooded area; north of Moorside Road and west of M3	6/1b

Nature of Interest	Description of the Affected Land	Affected Land Plot Numbers
Freehold	Wooded area; north of Moorside Road and west of M3	6/1c
Freehold	Public highway and verge (Winchester Bypass, A34); east of Moorside Road and west of M3	6/1d
Freehold	Public highway verge (Winchester Bypass, A34), trees and shrubbery; west of M3 and east of Moorside Road	6/1e
Freehold	Public highway (Easton Lane), public bridleway (253/502/1), hedges and telecommunications apparatus; west of Long Walk and east of M3	6/1h
Freehold	Public highway (Easton Lane), public bridleway (253/502/1), hedges and telecommunications apparatus; east of M3 and west of Long Walk	7/2a
Freehold	Public highway and verge (Easton Lane); west of M3 and south of Leicester Way	7/2b
Freehold	Motorway (M3), trees and shrubbery; north of Alresford Road, B3404 and east of Turnpike Down	8/3
Freehold	Motorway (M3), trees and shrubbery; north of Alresford Road, B3404 and east of Turnpike Down	9/1a
Freehold	Motorway (M3), bridge carrying public highway (Alresford Road, B3404), low pressure gas pipeline, telecommunications apparatus, underground electricity cables, water mains and foul pipe; north of Chalk Ridge and east of Quarry Road	9/1b
Freehold	Motorway (M3), trees, shrubbery, underground electricity cables and telecommunications apparatus; south	9/1c

Nature of Interest	Description of the Affected Land	Affected Land Plot Numbers
	of Alresford Road, B3404 and east of Quarry Road	
Freehold	Motorway (M3), trees, shrubbery, telecommunications apparatus and underground electricity cables; east of Gordon Avenue and west of Petersfield Road, A31	9/1d
Freehold	Motorway (M3), trees, shrubbery, footbridge carrying public bridleway (253/504/3) and telecommunications apparatus; east of Gordon Avenue and south of Petersfield Road, A31	9/1e
Freehold	Motorway (M3), trees, shrubbery, telecommunications apparatus and underground electricity cables; east of Gordon Avenue and south of Petersfield Road, A31	9/1f

4.9.7 Therefore, the Applicant has concluded that the Scheme is unlikely to be capable of being delivered without the compulsory acquisition powers being sought in the **draft DCO (Document Reference 3.1)**.

#### 4.10 Utility diversions

- A number of existing utility services are located in the surrounding area that would be affected by the Scheme. The relevant major utility diversions are summarised below and have been defined as specific works within the development, listed in Schedule 1 of the **draft Development Consent Order (Document Reference 3.1)**. These works are also shown on the **Works Plans (Document Reference 2.3)**. Works No. 5 – Diversion of Southern Water water main under the realigned A33 carriageway and new A33 carriageway 1095m in length commencing at grid reference [SU49567 30844] and terminating at grid reference [SU49145 31776].
- Works No. 20 – Diversion of Southern Gas Networks Low Pressure Gas Main pipeline under the new M3 southbound off slip and A34 carriageway 216m in length commencing at grid reference [SU49707 30835] and terminating at grid reference [SU49904 30783].
- Works No. 21 – Diversion of Scottish and Southern Electricity Networks 11kv power cable under the M3 improvements and new M3 southbound off-slip and new footway/cycleway/bridleway 269m in length commencing at grid

reference [SU49642 30764] and terminating at grid reference [SU49832 30887].

- Works No. 26 – Diversion of Openreach Networks telecommunication cable through the new southern Junction 9 Gyratory bridge and along the new footway/cycleway/bridleway 499m in length commencing at grid reference [SU49559 30400] and terminating at grid reference [SU49819 30675].
- Works No. 35 – Diversion of Scottish and Southern Electricity Low Voltage power cable adjacent to M3 bridge over Long Walk 50m in length commencing at grid reference [SU4980 32007] and terminating at grid reference [SU49864 32050].

## 5 The Case for Compulsory Acquisition

### 5.1 Introduction

5.1.1 In seeking compulsory acquisition and temporary possession powers in the **draft Development Consent Order (Document Reference 3.1)**, the Applicant has had regard to the conditions in Section 122 of the Planning Act 2008 and to the tests set out in the CA Guidance.

### 5.2 The statutory conditions and Compulsory Acquisition Guidance

5.2.1 Section 122 of the Planning Act 2008 states that:

*“An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met”*

5.2.2 The conditions are:

- In subsection (2), that the land:
  - a) *“is required for the development to which the development consent relates;*
  - b) *is required to facilitate or is incidental to that development; or*
  - c) *is replacement land which is to be given in exchange for the order land under sections 131 and 132 ” and*
- In subsection (3) *“that there is a compelling case in the public interest for the land to be acquired compulsorily”*

5.2.3 The CA Guidance (paragraph 11) sets out the considerations which the SoS will take into account in deciding whether the condition in subsection (2) has been met. It states:

- a) *“In respect of whether land is required for the development, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.*
- b) *In respect of whether the land is required to facilitate or is incidental to the proposed development, the Secretary of State will need to be satisfied that the development could only be carried out to a satisfactory standard if the land in question were to be compulsorily acquired and that the land to be taken is no more that is reasonably necessary for that purpose and that it is proportionate.*



*c) In respect of whether the land is replacement land, the Secretary of State will need to be satisfied that the compulsory acquisition is needed for replacement land, that no more land is being taken than is reasonably necessary for that purpose and that it is proportionate”*

5.2.4 In respect of the condition in subsection (3), the CA Guidance states at paragraphs 12 and 13 that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

5.2.5 Paragraphs 8 to 10 of the CA Guidance are also relevant, setting out a number of general considerations to be taken into account by the applicant in seeking compulsory acquisition powers:

- a) “That all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored;*
- b) That the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate;*
- c) That the applicant has a clear idea of how they intend to use the land which is to be acquired;*
- d) That there is a reasonable prospect of the necessary funds for the acquisition becoming available; and*
- e) That the purposes for which compulsory acquisition powers are included in the application are legitimate and sufficiently justify interfering with the human rights of those with an interest in the affected land”.*

5.2.6 Finally, paragraph 25 of the CA Guidance states that applicants should seek to acquire land by negotiation wherever practicable.

### **5.3 Need for the Land and the purposes for which compulsory acquisition powers are sought**

5.3.1 Paragraph 2.2 of the National Policy Statement for National Networks (NPSNN) states that there is a "critical need" to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. It goes on to state that improvements may also be required to address the impact of the national networks on quality of life and environmental factors.

5.3.2 The way in which the strategic objectives of the Scheme are aligned with the NPSNN is set out in detail in the **Case for the Scheme (Document Reference 7.1)**. The **Case for the Scheme (Document Reference 7.1)** also provides a

detailed account of how the Scheme complies with the policy requirements of the NPSNN. This clearly demonstrates that there would be substantial public benefits arising from the implementation of the Scheme.

- 5.3.3 The Applicant is satisfied that the condition in Section 122(2) of the Planning Act 2008 is met. As explained in **Chapter 3** of this Statement the Land subject to compulsory acquisition powers is either needed for the development ('the Scheme' or is needed to facilitate the development of the Scheme or is incidental to that development.
- 5.3.4 At **Annex A** of this Statement, the Applicant sets out why compulsory powers are necessary in relation to each individual parcel of the Land, with reference to the relevant DCO works numbers and the nature of the works as set out in Schedule 1 of the **draft Development Consent Order (Document Reference 3.1)**. The proposed use of this land and the benefits this will bring to the Scheme are set out in general summary in **Chapter 2** of this Statement. **Annex A** of this Statement sets out in detail the purpose of acquisition / use of each plot.
- 5.3.5 The Applicant considers that the land included in the **draft Development Consent Order (Document Reference 3.1)** is the minimum land-take required to construct, operate, maintain and mitigate the Scheme and is necessary to achieve the objectives of the Scheme. The Applicant has sought to achieve a balance between minimising land-take and securing sufficient land to deliver the Scheme, noting that the detailed design of the Scheme has yet to be developed. In that context, the limits of deviation have been drawn as tightly as possible so as to avoid unnecessary land-take. In the event that less land proves to be required in a particular area following the detailed design stage, the Applicant would only seek to acquire that part of the land that is required and, in all events, will seek to minimise effects on land interests.
- 5.3.6 The compulsory acquisition powers are also required to override any existing rights and interests in the land as well as grant the right to take temporary possession of land for construction and maintenance purposes. Again, without these rights over the Land, the Scheme cannot be delivered.
- 5.3.7 The Applicant is accordingly satisfied that the Land to be taken is reasonable and proportionate.

#### **5.4 Compelling case in the public interest**

- 5.4.1 This Statement sets out the reasons for the inclusion of compulsory acquisition powers in the DCO. It also explains it is necessary to include compulsory powers in the DCO so that the Applicant can acquire the land required for the construction of the Scheme. It also explains why powers of compulsory acquisition are necessary to enable the Applicant to use land temporarily and acquire or extinguish rights over land in order to construct the Scheme in a way that is both proportionate and in the public interest by reducing environmental impacts, minimising costs to the Applicant (and hence the public purse) and

mitigating the impact on land interests. This compelling case is evidenced further in the wider documentation that accompanies the application.

- 5.4.2 The Applicant is satisfied that the condition set out in Section 122(3) of the Planning Act 2008 is met.
- 5.4.3 The case for the Scheme is set out in **Chapter 2** of this Statement and in other application documents, including the **Case for the Scheme (Document Reference 7.1)**.
- 5.4.4 The way in which the Scheme conforms with the NPSNN is set out in detail in **Chapter 6** of the **Case for the Scheme (Document Reference 7.1)**. General compliance with the NPSNN is set out in the **NPSNN Accordance Table (Document Reference 7.2)**.
- 5.4.5 The location of the Scheme partially within the South Downs National Park is considered a particularly important factor when making the case for the Scheme in terms of the case in the public interest for compulsory acquisition of the Land. As such **Chapter 7** of the **Case for the Scheme (Document Reference 7.1)** considers this issue and the compliance of the Scheme with the NPSNN in relation to the development proposed within the South Downs National Park. Together they demonstrate that there is a compelling case in the public interest for the Scheme to be delivered. **Table 5.1** outlines the benefits delivered by the Scheme and its objectives.

Table 5.1: Scheme Objectives and the Benefits Delivered

Scheme Objectives	Scheme Performance
To reduce delays at M3 junction 9 on all links M3, A33 and A34	<p>The Scheme reduces the delays at key areas that are currently congested. The Scheme also reduces journey times from the M3 to the A34 and the A34 to the M3 in the AM and PM peak period. Furthermore, there are reductions in journey times from the A33 to Easton Lane and Easton Lane to the A33.</p> <p>The Transport case for the Scheme in <b>Section 4</b> of the <b>Case for the Scheme (Document Reference 7.1)</b> and the <b>Transport Assessment Report (Document Reference 7.13)</b> provide more details regarding traffic improvements.</p>
Smooth the flow of traffic by improving journey time reliability and reducing delays (time lost per vehicle per mile) at M3 Junction 9 and the exit	The operational traffic model shows that there are reductions in journey times with the Scheme in place on key approaches to the M3 Junction 9. There are reductions in delays on the M3 southbound off-slip/A34 in the PM peak and reductions in delays on the A33 approach to the Junction in the AM and PM peak period.

Scheme Objectives	Scheme Performance
and entry roads for the A33 and A34	<p>The A34 route between M3 Junction 10 and the A34/A272 junction is predicted to have journey time savings in excess of two minutes in 2027, in excess of three minutes in 2042, and in excess of four minutes in 2047 in the PM peak period and around one minute for the AM Peak. The equivalent southbound journey time savings are approximately one minute in 2027, 2042 and 2047. The Scheme provides a direct connection between the M3 and A34, hence the journey time improvements.</p> <p>The Transport case for the Scheme in <b>Section 4</b> of the <b>Case for the Scheme (Document Reference 7.1)</b> and the <b>Transport Assessment Report (Document Reference 7.13)</b> provide more details regarding the traffic improvements.</p>
Improve the safety for all road users and reduce the annual collision frequency and severity ratio on the M3 Junction 9	<p>The study area, identified in <b>Figure 8.2</b> of the <b>Transport Assessment Report (Document Reference 7.13)</b>, will experience a decrease in the total number of collisions and casualties with the Scheme. The greatest benefits are experienced as a consequence of the reduced traffic demand through the junction gyratory.</p> <p>The Transport case for the Scheme in <b>Section 4</b> of the <b>Case for the Scheme (Document Reference 7.1)</b> and the <b>Transport Assessment Report (Document Reference 7.13)</b> provide more details on the safety benefits.</p>
Support economic growth and ensure the junction can accommodate additional traffic	<p>The Scheme has wider economic benefits of £41.8M which is expected to stimulate local development sites and economic activity.</p> <p>The Scheme is forecast to generate economic benefits in the order of <del>£161.7M</del> <u>£152.3M</u>. The greatest benefit relates to travel time savings, amounting to £155.5M which are predominantly due to the provision of free-flow movement between the A34 and the M3. The Economic Case Overview in <b>Section 5</b> of <b>Case for the Scheme (Document Reference 7.1)</b> and the <b>Combined Modelling and Appraisal Report (Document Reference 7.10)</b></p>

Scheme Objectives	Scheme Performance
	provide more details regarding the economic benefits of the Scheme.
Improvements for walkers, cyclists including connecting the National Cycle Network Route 23 which is severed by the current junction layout	<p>The walking, cycling and horse-riding facilities around and within the Scheme are to be upgraded. This includes an improvement to the National Cycle Network (NCN) Route 23. A bridleway (allowing people to walk, cycle and horse-ride along the route) is proposed on the eastern side of the Scheme to link Easton Lane with Long Walk. Such a route would provide a circular leisure path for those using the South Downs National Park with a link to the other paths around Long Walk. Such a route would provide a circular leisure path for those using the South Downs National Park with a link to the other paths around Long Walk with their links to local villages. A shared path (an unsegregated, combined footpath, cycle track and footway) for the western side of the Scheme is proposed to link the A33 / B3047 Junction to Winnall Industrial Estate situated on Easton Lane.</p> <p>The provision of safer travel infrastructure will reduce fear of accidents for pedestrians and cyclists which will improve journey quality. The Scheme improvements to cycle connectivity, especially for the National Cycle Network route 23, are expected to result in benefits associated with the fitness impact of increased physical activity.</p> <p>In total, an additional 4.8km of public rights of way are to be provided as part of the Scheme.</p>

5.4.6 The Applicant is satisfied that the condition set out in Section 122(3) of the Planning Act 2008 is met.

## 5.5 Consideration of alternatives

5.5.1 As explained in **Chapter 3 (Assessment of Alternatives)** of the **Environmental Statement (ES) (Document Reference 6.1)** and **Case for the Scheme (Document Reference 7.1)** the Applicant has explored alternative options for the Scheme.

5.5.2 In designing the Scheme and determining the Land subject to compulsory acquisition and temporary possession powers, the Applicant has considered

alternatives and modifications to the Scheme to minimise the potential land-take. These alternatives and modifications were consulted on and the preferred route has been chosen based on a thorough consideration of relevant issues.

- 5.5.3 Between January and February 2018, non-statutory consultation was undertaken which presented the details of the proposed preferred option. The rejected options and the environmental design considerations were also presented as part of the consultation. This non-statutory consultation helped to develop the Preferred Route announcement made in July 2018. This decision took account of various factors, including amongst others, views of consultees, including persons with a land interest. Other factors included environmental impacts, meeting the objectives of the Scheme, affordability, value for money, safety, construction and operational considerations. This process is described in detail in **Chapter 3 (Assessment of Alternatives)** of the **Environmental Statement (ES) (Document Reference 6.1)** and **Chapter 2** of the **Case for the Scheme (Document Reference 7.1)**.
- 5.5.4 Since the Preferred Route Announcement, design development and the consideration of alternatives has continued with many of the design developments seeking to limit the effect on land. Following the statutory consultation in summer 2021 a number of alterations were made that further reduced Scheme land-take.
- 5.5.5 As a result of feedback from South Downs National Park Authority on the proposed landscape measures further material was incorporated into the design to screen the motorway from the South Downs National Park and better integrate the landscape into the surrounding topography. This alternative landscape scheme obviated the need for the material deposition areas that had been presented at statutory consultation. As a result, all three deposition areas were removed with land take reduced accordingly.
- 5.5.6 Following feedback from South Downs National Park Authority and continued refinement of the main construction compound layout the footprint of this compound was reduced. Further consideration of the construction working space location and requirements also enabled the northern (satellite) construction compound to be entirely removed from the Scheme.
- 5.5.7 Further design refinements reduced the land take associated with the River Itchen SSSI.
- 5.5.8 Some minor design refinement was undertaken following the ministerial statement on 12 January 2022 to pause the roll out of all lane running (ALR) schemes not yet constructed but this had no impact on the land required for the Scheme.

## 5.6 Reasonable prospect of funding

5.6.1 The Applicant is content that there is reasonable prospect of the necessary funds for acquisition being available for the reasons set out in the **Funding Statement (Document Reference 4.2)**.

## 5.7 Acquisition by agreement

5.7.1 The Applicant recognises that the authority to acquire land compulsorily should only be sought if attempts to acquire by agreement fail. However, the Applicant notes that the CA Guidance recognises that, in some cases, it may not always be practicable to acquire each plot of land by agreement. Where this is the case the CA Guidance confirms that it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset. It also recognises that in some cases it may be preferable, or necessary, to acquire land compulsorily rather than by agreement.

5.7.2 The Applicant sets out **Chapter 4** and **Annex B** of this Statement the discussions it has had with holders of land interests to acquire the Land by agreement. It is satisfied that compulsory acquisition and temporary possession powers are required to ensure that the Scheme can be delivered in a reasonable timescale and in the event that it does not prove possible to acquire all of the Land by agreement.

## 5.8 Conclusions

5.8.1 The Applicant is satisfied that the conditions in Section 122 of the Planning Act 2008 are met and that the tests in the CA Guidance are satisfied.

5.8.2 All of the land subject to compulsory acquisition and temporary possession powers is necessary to construct, operate, maintain and mitigate the Scheme; and necessary to achieve the objectives of the Scheme. The extent of the Land sought is reasonable and proportionate.

5.8.3 There is a compelling case in the public interest to include the compulsory acquisition powers sought by the Applicant in the DCO. The exercise of the compulsory acquisition powers that are sought is shown throughout this Statement to be 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 Scheme, and benefits of the Scheme would not be realised.

## 6 Human rights

### 6.1 The protected rights

6.1.1 The Human Rights Act 1998 incorporated into domestic law the provision of the European Convention on Human Rights (ECHR). The relevant articles can be summarised as follows:

- Article 1 of The First Protocol – protects the rights to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest.
- Article 6 – entitles those affected by compulsory powers to a fair and public hearing.
- Article 8 – protects the right of the individual to respect for his private and family life, his home and his correspondence. Interference with this right can be justified if it is in accordance with law and is necessary in the interests of, among other things, national security, public safety or the economic wellbeing of the country.

6.1.2 Section 6 of the Human Rights Act 1998 prohibits the public authorities from acting in a way which is incompatible with rights protected by the ECHR.

6.1.3 Paragraph 10 of the CA Guidance sets out how applicants should take into account Human Rights:

*“The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.”*

6.1.4 The DCO, if made, may infringe the human rights of persons with an interest in land. This infringement is authorised by law provided that:

- There is a compelling case in the public interest for the compulsory acquisition powers included within the DCO, and that proper procedures are followed.
- Any interference with a human right is proportionate and otherwise justified.

### 6.2 Compliance with the convention

6.2.1 There are no commercial buildings or residential properties being acquired as part of the Scheme. However, the Applicant recognises that the Scheme may have an impact on individuals but considers that the significant public benefits that will arise from the Scheme, as set out in this Statement outweigh any harm



to those individuals. The DCO strikes a fair balance between the public interest in seeing the Scheme proceed (which is unlikely to happen in the absence of the DCO) and the private rights which will be affected by the compulsory acquisition.

- 6.2.2 In relation to both Article 1 and 8, the compelling case in the public interest for the compulsory acquisition powers included within the DCO has been demonstrated in **Chapter 5** of this Statement and in the **Case for the Scheme (Document Reference 7.1)**. The land over which compulsory acquisition powers are sought as set out in the DCO is the minimum necessary to ensure the delivery of the Scheme and has been reduced as the Scheme design has been developed. The Scheme has been designed to minimise harm whilst achieving its publicly stated objectives. In this respect the interference with human rights is both proportionate and justified.
- 6.2.3 In relation to Article 6 the Applicant is content that proper procedures have been followed for both the consultation on the Scheme and for the determination of the compulsory acquisition powers included in the DCO. Throughout the development of the Scheme, the Applicant has given persons with an interest in the Land a full opportunity to comment on the proposals, both in a statutory and non-statutory capacity, and the Applicant has endeavoured to engage with land interests. The Applicant has had regard to land interest feedback in both the initial design of the Scheme and in iterative design changes throughout the life of the Scheme. Examples of design changes are provided within the Consultation Report (**Document Reference 5.1**).
- 6.2.4 Furthermore, any individuals affected by the DCO may submit representations by way of an objection to the application in response to any notice given under Section 56 of the Planning Act 2008, the examination of the application by the Examining Authority, any written representations procedures which the Examining Authority decides to hold and in particular, any compulsory acquisition hearing held under Section 92 of the Planning Act 2008, at which each affected person is entitled to make oral representations about the compulsory acquisition request.
- 6.2.5 If the DCO is made, a person aggrieved may challenge the DCO by judicial review in the High Court if they consider that the grounds for doing so are made out pursuant to Section 118 of the Planning Act 2008.

### **6.3 Fair compensation**

- 6.3.1 Any person affected by the exercise of compulsory acquisition powers or by the exercise of temporary possession, may be entitled to compensation. This entitlement to compensation is provided for by the existing compensation code and Article 26 and Schedule 6 to the draft DCO (Document Reference 3.1).
- 6.3.2 Any dispute in respect of the compensation payable can be referred for determination to the Upper Tribunal (Lands Chamber).

6.3.3 Paragraph 9 of the CA Guidance states that there must be a reasonable prospect of the requisite funds for the scheme being available. Certainty of funding for the Scheme, including a guarantee that all compensation claims will be funded is detailed in the Funding Statement (Document Reference 4.2).

#### **6.4 Consideration of duties under the Equality Act 2010**

6.4.1 The Applicant has complied with its duties under section 149 of the Equality Act 2010 and has had due regard to the need to: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by or under the Equality Act 2010; (ii) advance equality of opportunity between persons who share a protected characteristic and persons who do not share it; and (iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.4.2 The Applicant has conducted an **Equality Impact Assessment (Document Reference 7.14)** which explains how it has had regard to its public sector equality duty in the context of the application for development consent for the Scheme.

#### **6.5 Conclusions**

6.5.1 For the reasons set out above, the Applicant considers that any infringement of the ECHR rights of those whose interests in the land might be affected by the exercise of powers of compulsory acquisition would be proportionate and legitimate, would be in the public interest and would be in accordance with national and European law. The Applicant therefore considers that it would be appropriate and proportionate for the Secretary of State to make the DCO including the grant of compulsory acquisition powers.

## **7 Special considerations**

### **7.1 Crown Land**

7.1.1 None of the Land is Crown land for the purposes of section 135 of Planning Act 2008.

### **7.2 Special category land – land forming part of a common, open space, or fuel or field garden allotment – including any exchange land arrangements**

7.2.1 None of the Land to be acquired for the Scheme comprises land forming part of a common, open space, or fuel or field garden allotment for the purposes of section 131 and section 132 of the Planning Act 2008.

### **7.3 National Trust ‘Inalienable’ Land**

7.3.1 None of the land to be acquired for the Scheme is National Trust “inalienable” land for the purposes of section 130 of the Planning act 2008.

### **7.4 Statutory Undertaker land**

7.4.1 The DCO, if made, will authorise the compulsory acquisition of statutory undertakers rights on land comprising of plots as described in the Book of Reference (Document Reference 4.3) and shown on the Land Plans (Document Reference 2.2). The land rights are held by statutory undertakers for the purposes of carrying out their statutory undertaking.

7.4.2 Section 127(3) of the Planning Act 2008 provides that a DCO may only authorise the compulsory acquisition of statutory undertakers’ land where there is an extant representation made by the statutory undertaker objecting to the acquisition if the SoS is satisfied that:

- a) The land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- b) If purchased, the land can be replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.

7.4.3 Section 127(6) of the Planning Act 2008 provides that a DCO may only authorise the compulsory acquisition of rights over statutory undertakers’ land where a representation has been made by the statutory undertaker objecting to the acquisition and the SoS is satisfied that:

- a) The rights can be acquired without serious detriment to the carrying on of the undertaking; or

- b) b. Any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of other land belonging to or available for acquisition by the undertaker.

- 7.4.4 Section 138 of the Planning Act 2008 provides that a DCO may include provision for the extinguishment of a relevant right, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which the order relates.
- 7.4.5 Adequate protection for statutory undertakers' assets will be included within the protective provisions in Schedule 9 to the draft DCO and/or in asset protection agreements between the Applicant and the undertaker. Accordingly, the Applicant considers that the statutory undertakers will not suffer serious detriment to the carrying out of their undertaking as a result of the compulsory acquisition of the land or as a result of the acquisition of rights over land. The tests set out in sections 127(3) and 127(6) of the Planning Act 2008 are therefore satisfied. In addition, proposals for the removal of apparatus are wholly necessary for the carrying out of the scheme and therefore the requirements of section 138 of the Planning Act 2008 are also met.
- 7.4.6 The Applicant has, during the preparation of the DCO application, been in discussion with SGN, Southern Water (waste and clean water), SSE and Openreach about the diversion of existing utilities along the Scheme length. These diversions comprise: Works No. 5 – Diversion of Southern Water water main under the realigned A33 carriageway and new A33 carriageway 1095m in length commencing at grid reference [SU49567 30844] and terminating at grid reference [SU49145 31776].
- 7.4.7 Works No. 20 – Diversion of Southern Gas Networks Low Pressure Gas Main pipeline under the new M3 southbound off slip and A34 carriageway 216m in length commencing at grid reference [SU49707 30835] and terminating at grid reference [SU49904 30783].
- 7.4.8 Works No. 21 – Diversion of Scottish and Southern Electricity Networks 11kv power cable under the M3 improvements and new M3 southbound offslip and new footway/cycleway/bridleway 269m in length commencing at grid reference [SU49642 30764] and terminating at grid reference [SU49832 30887].
- 7.4.9 Works No. 26 – Diversion of Openreach Networks telecommunication cable through the new southern Junction 9 Gyratory bridge and along the new footway/cycleway/bridleway 499m in length commencing at grid reference [SU49559 30400] and terminating at grid reference [SU49819 30675].
- 7.4.10 Works No. 35 – Diversion of Scottish and Southern Electricity Low Voltage power cable adjacent to M3 bridge over Long Walk 65m in length commencing at grid reference [SU4980 32007] and terminating at grid reference [SU49864 32050].

7.4.11 Telent Technology operate the National Roads Telecommunications System (NRTS) which lies within the footprint of the existing M3. Discussions have been held via email with Telent about the required temporary bypass needed during the construction works.

7.4.12 Further information about the status of engagement with statutory undertakers is presented in Annex C of this Statement.

## 7.5 Summary

7.5.1 The DCO includes provision to authorise the necessary interference by the Applicant with the apparatus of statutory undertakers, in connection with the delivery of the scheme.

7.5.2 The relevant major utilities as summarised above, have been defined as specific Works within the authorised development as listed within Schedule 1 of the Draft DCO (Document Reference 3.1).

## 7.6 Other consents

7.6.1 The **Consents and Agreements Position Statement (Document Reference 3.3)** sets out the additional consents outside of the DCO and the current position as to the status of securing those consents. The Consents and Agreements Position Statement will continue to be updated as necessary during examination.

7.6.2 The Applicant is seeking to agree with each affected body the principles against which applications for the consents, licences, permits etc. should be considered. This will also be captured in the Statements of Common Ground being prepared with each relevant body (refer to the **Progress with Statements of Common Ground (Document Reference 7.12)**).

7.6.3 The Applicant is not aware of any impediments to the delivery of the Scheme. Whilst there are a number of other consents being sought, there are no obvious impediments to securing those consents.

7.6.4 The Applicant is satisfied that all necessary consents to enable the Scheme to proceed have been identified and that there is no reason why such consents should not be secured or granted.

## 8 Conclusions

### 8.1 Overview

- 8.1.1 This Statement sets out why compulsory acquisition powers have been sought in the DCO application and explains why the Applicant considers such powers they are necessary, proportionate, and justified.
- 8.1.2 In determining the extent of compulsory acquisition and temporary possession powers proposed in the **draft DCO (Document Reference 3.1)** the Applicant has had regard to the legislative tests set out in the Planning Act 2008 and to the advice in the CA Guidance. The Applicant is content that the scope of powers sought and the extent of the interests in the Land to be acquired by compulsory acquisition are required for the Scheme and are the minimum necessary that will allow the Applicant to construct, operate and maintain the Scheme. The purpose for which each part of the Land is required is set out in Annex A of this Statement.
- 8.1.3 The Applicant has consulted all persons affected by the compulsory acquisition and temporary possession powers and persons who may have a claim for compensation arising from the Scheme. The Applicant has consulted such persons during preparation of the DCO application and in the design of the Scheme to address their concerns and to ensure that any impacts are reduced or removed. The Applicant has further sought to acquire any interests in the Land by agreement wherever practicable. The status of negotiations with affected land interests for the acquisition of their interest is set out in Annex B of this Statement.
- 8.1.4 The Applicant has considered the human rights of the individuals affected by the compulsory acquisition and temporary possession powers. The Applicant is satisfied that there is a compelling public interest case for compulsory acquisition and that the significant public benefits arising from the Scheme will outweigh the harm to those individuals. Without the grant of compulsory acquisition and temporary possession powers the Applicant considers that it will not be possible to construct the Scheme or realise the public benefits arising from it.